

**CS/CS/SB 154 by CA, ED, Hays; (Similar to CS/CS/CS/1ST ENG/H 0041) Hazardous Walking Conditions**

671800	A	S	RCS	AP, Hays	Before L.30:	04/16 05:30 PM
895826	A	S	RCS	AP, Hays	Delete L.91 - 178:	04/16 05:30 PM
868178	A	S	RCS	AP, Hays	btw L.178 - 179:	04/16 05:30 PM

**CS/SB 228 by EE, Clemens (CO-INTRODUCERS) Richter; (Similar to H 0227) Online Voter Application**

950848	A	S	L	RS	AP, Smith	btw L.90 - 91:	04/16 05:51 PM
443378	SA	S	L	RCS	AP, Smith	btw L.90 - 91:	04/16 05:51 PM

**CS/CS/SB 268 by FT, RI, Stargel (CO-INTRODUCERS) Latvala, Abruzzo; (Similar to CS/1ST ENG/H 0641) Amusement Games or Machines**

**CS/CS/SB 288 by CU, CU, Latvala; (Similar to CS/H 7109) Utilities Regulation**

467536	A	S	RCS	AP, Latvala	Delete L.93 - 99:	04/16 09:01 PM
171144	A	S	RCS	AP, Latvala	Delete L.236:	04/16 09:01 PM
887258	A	S	RCS	AP, Latvala	btw L.1195 - 1196:	04/16 09:01 PM

**CS/SB 314 by EP, Simpson; (Compare to CS/H 0733) Petroleum Restoration Program**

510704	PCS	S	RCS	AP, AGG		04/16 07:33 PM
753040	PCS:A	S	RCS	AP, Latvala	Delete L.46:	04/16 07:33 PM
282746	PCS:A	S	RCS	AP, Latvala	Delete L.247 - 249:	04/16 07:33 PM
866006	PCS:A	S	WD	AP, Latvala	btw L.393 - 394:	04/16 07:33 PM

**CS/SB 382 by HP, Sobel (CO-INTRODUCERS) Gaetz; (Similar to CS/CS/H 1001) Assisted Living Facilities**

377856	D	S	RCS	AP, Garcia	Delete everything after	04/16 06:47 PM
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**SB 434 by Detert; (Similar to H 0553) Public Libraries**

**CS/CS/SB 496 by JU, CF, Detert; (Similar to CS/CS/H 0437) Guardians**

694176	A	S	RCS	AP, Simmons	Before L.52:	04/16 08:59 PM
514250	A	S	WD	AP, Simmons	btw L.137 - 138:	04/16 08:59 PM

**CS/SB 510 by EP, Garcia; (Similar to CS/H 0359) Miami-Dade County Lake Belt Area**

**CS/SB 574 by GO, Montford; (Similar to CS/H 0615) Electronic Auction Services**

**SB 622 by Montford (CO-INTRODUCERS) Bean; (Similar to H 0461) Higher Education Facilities Financing**

**SB 662 by Latvala; (Similar to CS/CS/H 0307) Mobile Homes**

**CS/SB 680 by EP, Dean; (Similar to CS/H 7021) Fish and Wildlife Conservation Commission**

556478	PCS	S	RCS	AP, AGG		04/16 08:01 PM
261850	PCS:A	S	RCS	AP, Hukill	Delete L.70:	04/16 08:01 PM
425562	PCS:A	S	RCS	AP, Hukill	Delete L.355 - 397:	04/16 08:01 PM

**CS/SB 758** by **HP, Evers**; (Similar to H 0155) Prescription and Use of Opioid Antagonists for Emergency Treatment of Opioid Overdoses

761094 D S RCS AP, Grimsley Delete everything after 04/16 05:32 PM

**CS/SB 798** by **CM, Lee**; (Similar to CS/CS/H 0765) Household Moving Services

275316 PCS S RCS AP, AGG 04/17 11:39 AM

**SB 874** by **Stargel**; (Similar to H 0713) Dual Enrollment Program

517502 A S RCS AP, Hays Delete L.115 - 221: 04/16 07:35 PM

**SB 942** by **Gaetz**; (Identical to H 0993) Rapid Response Education and Training Program

**CS/SB 968** by **BI, Detert**; (Identical to CS/CS/H 0731) Employee Health Care Plans

**CS/SB 972** by **FT, Flores (CO-INTRODUCERS) Margolis**; (Compare to CS/CS/H 0695) Value Adjustment Boards

196224 A S RCS AP, Negron btw L.54 - 55: 04/16 09:27 PM  
840530 A S RCS AP, Flores Delete L.65 - 220: 04/16 09:27 PM

**CS/SB 1006** by **BI, Flores (CO-INTRODUCERS) Margolis**; (Similar to CS/CS/1ST ENG/H 1087) Depopulation of Citizens Property Insurance Corporation

313118 PCS S RCS AP, AGG 04/16 09:30 PM

**SB 1016** by **Abruzzo (CO-INTRODUCERS) Negron**; (Similar to H 0711) Care for Retired Law Enforcement Dogs

130614 PCS S RCS AP, ACJ 04/16 07:54 PM

**SB 1106** by **Flores**; (Compare to CS/CS/H 0465) Human Trafficking

694962 PCS S RCS AP, ACJ 04/17 11:15 AM

**CS/SB 1108** by **GO, Flores**; (Similar to H 0467) Public Records/Identity of a Victim of Human Trafficking Offenses

**CS/SB 1110** by **GO, Flores**; (Similar to 1ST ENG/H 0469) Public Records/Residential Facilities Serving Victims of Sexual Exploitation and Human Trafficking

**CS/SB 1136** by **BI, Hukill**; (Similar to CS/H 0927) Title Insurance

**SB 1138** by **Brandes**; (Similar to H 0887) Unclaimed Property

**SB 1148** by **Stargel**; (Similar to CS/CS/H 1025) Firesafety

135278 PCS S RCS AP, AGG 04/16 07:38 PM  
420210 PCS:A S RCS AP, Hukill Delete L.51 - 77: 04/16 07:38 PM

**CS/SB 1284** by **GO, Soto**; (Similar to CS/H 0985) Maintenance of Agency Final Orders

**CS/SB 1296** by **MS, Bean**; (Similar to CS/H 1091) Military and Veterans Affairs

690730 D S RCS AP, Flores Delete everything after 04/16 07:26 PM

<b>CS/SB 1306 by BI, Bradley; (Similar to CS/CS/H 1127) Insurance Fraud</b>							
473280	A	S	L	RCS	AP, Garcia	Delete L.31 - 32:	04/16 08:59 PM

<b>SB 1362 by Simmons; (Similar to CS/CS/CS/H 0439) Department of Legal Affairs</b>							
449620	PCS	S		RCS	AP, ACJ		04/16 09:14 PM
631416	PCS:A	S		RCS	AP, Richter	btw L.156 - 157:	04/16 09:14 PM
805108	PCS:AA	S	L	WD	AP, Richter	btw L.155 - 156:	04/16 02:36 PM
159808	PCS:AA	S	L	RCS	AP, Richter	btw L.155 - 156:	04/16 09:14 PM
402422	A	S		WD	AP, Richter	btw L.163 - 164:	04/15 10:53 AM

<b>CS/SB 1402 by BI, Lee; (Similar to H 0987) Organization of the Department of Financial Services</b>							
801726	PCS	S		RCS	AP, AGG		04/17 11:43 AM

<b>CS/SB 1444 by CM, Richter; (Similar to CS/CS/CS/H 0995) Consumer Licensing</b>							
654302	PCS	S			AP, AGG		04/06 03:25 PM
441324	PCS:A	S		WD	AP, Latvala	btw L.113 - 114:	04/16 09:09 PM
127800	PCS:A	S		RCS	AP, Montford	Delete L.145 - 159.	04/16 09:09 PM
507292	PCS:A	S		RS	AP, Richter	Delete L.356 - 371.	04/16 09:09 PM
835492	PCS:SA	S	L	RCS	AP, Richter	Delete L.356 - 384.	04/16 09:09 PM
274948	PCS:A	S		RCS	AP, Richter	btw L.596 - 597:	04/16 09:09 PM
782760	PCS:A	S		RCS	AP, Richter	Delete L.879 - 882:	04/16 09:09 PM
648150	PCS:A	S		RCS	AP, Richter	btw L.934 - 935:	04/16 09:09 PM

<b>SB 1534 by Brandes; (Compare to H 1125) Disposition of Liens and Forfeited Property</b>							
333636	PCS	S		RCS	AP, ACJ		04/16 05:44 PM
849530	PCS:A	S	L	RCS	AP, Latvala	Delete L.328 - 352:	04/16 05:44 PM
202004	PCS:A	S	L	RCS	AP, Joyner	Delete L.177 - 327:	04/16 05:44 PM

<b>CS/SB 1536 by CJ, Flores; (Identical to H 7061) Public Records/Florida RICO Act Investigations</b>							
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<b>SB 7046 by ED; Education</b>							
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<b>CS/SB 7070 by JU, AP; (Compare to H 0291) Mental Health and Substance Abuse</b>							
808402	A	S	L	RCS	AP, Joyner	Delete L.2949:	04/16 08:52 PM
898338	A	S	L	WD	AP, Joyner	Delete L.546 - 547:	04/16 08:52 PM
250728	A	S	L	RCS	AP, Garcia	Delete L.293 - 2364:	04/16 08:52 PM
211274	AA	S	L	RCS	AP, Grimsley	Delete L.2023 - 2143:	04/16 08:52 PM
924612	AA	S	L	RCS	AP, Joyner	Delete L.424 - 425:	04/16 08:52 PM
861910	A	S	L	RCS	AP, Garcia	Delete L.2579 - 2891:	04/16 08:52 PM
632438	A	S	L	RCS	AP, Garcia	Delete L.3063 - 3154:	04/16 08:52 PM
927158	A	S	L	RCS	AP, Garcia	Delete L.3741 - 3824:	04/16 08:52 PM
497498	A	S	L	RCS	AP, Garcia	Delete L.3825 - 4392:	04/16 08:52 PM

<b>SB 7082 by GO; (Compare to H 0039) Death Benefits Under the Florida Retirement System</b>							
446590	A	S		RCS	AP, Ring	btw L.383 - 384:	04/16 08:56 PM
910698	A	S		RCS	AP, Ring	btw L.422 - 423:	04/16 08:56 PM

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

**APPROPRIATIONS**  
**Senator Lee, Chair**  
**Senator Benacquisto, Vice Chair**

**MEETING DATE:** Thursday, April 16, 2015  
**TIME:** 9:00 a.m.—4:00 p.m.  
**PLACE:** *Pat Thomas Committee Room, 412 Knott Building*

**MEMBERS:** Senator Lee, Chair; Senator Benacquisto, Vice Chair; Senators Altman, Flores, Gaetz, Galvano, Garcia, Grimsley, Hays, Hukill, Joyner, Latvala, Margolis, Montford, Negron, Richter, Ring, Simmons, and Smith

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>CS/CS/SB 154</b> Community Affairs / Education Pre-K - 12 / Hays (Similar CS/CS/CS/H 41)	Hazardous Walking Conditions; Requiring a district school board to correct hazardous walking conditions and provide transportation to students who would be subjected to hazardous walking conditions; requiring state or local governmental entities with jurisdiction over a road with a hazardous walking condition to correct the condition within a reasonable period of time; revising criteria that determine a hazardous walking condition for public school students, etc.  ED 02/18/2015 Fav/CS CA 03/04/2015 Fav/CS AED 03/16/2015 Favorable AP 04/16/2015 Fav/CS	Fav/CS Yeas 17 Nays 0
With subcommittee recommendation - Education			
2	<b>CS/SB 228</b> Ethics and Elections / Clemens (Similar H 227, H 7143, Compare H 1161, S 7064)	Online Voter Application; Requiring the Division of Elections of the Department of State to develop an online voter registration system; requiring the system to compare information submitted online with Department of Highway Safety and Motor Vehicles records: requiring the division to report to the Legislature regarding online voter registration implementation by a specified date, etc.  EE 03/17/2015 Fav/CS ATD 04/02/2015 Favorable AP 04/16/2015 Fav/CS	Fav/CS Yeas 13 Nays 4
With subcommittee recommendation - Transportation, Tourism, and Economic Development			

**COMMITTEE MEETING EXPANDED AGENDA**

Appropriations

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	<b>CS/CS/SB 268</b> Finance and Tax / Regulated Industries / Stargel (Similar CS/H 641)	Amusement Games or Machines; Authorizing an amusement game or machine to be operated with specified requirements; providing requirements for classifying such a device as a Type 1 or a Type 2 amusement game or machine; providing that amusement games or machines may only be located at specified locations; requiring the Department of Revenue to annually adjust the maximum value; authorizing certain persons or entities to enjoin the operation of an amusement game or machine; providing penalties, etc.  RI 02/04/2015 Temporarily Postponed RI 03/18/2015 Fav/CS FT 03/30/2015 Fav/CS AP 04/16/2015 Favorable	Favorable Yeas 16 Nays 1
4	<b>CS/CS/SB 288</b> Communications, Energy, and Public Utilities / Communications, Energy, and Public Utilities / Latvala (Similar CS/H 7109, Compare H 219)	Utilities Regulation; Requiring the Florida Public Service Commission to hold public customer service meetings in certain service territories; requiring a person who lobbies a member of the Florida Public Service Commission Nominating Council to register as a lobbyist; requiring the Governor to remove from office any commissioner found to have willfully and knowingly violated the ex parte communications statute; requiring that money received by a utility for the development of demand-side renewable energy systems be used solely for that purpose, etc.  CU 02/17/2015 Fav/CS CU 04/07/2015 Fav/CS AP 04/16/2015 Fav/CS	Fav/CS Yeas 17 Nays 0
<b>A proposed committee substitute</b> for the following bill (CS/SB 314) is available:			
5	<b>CS/SB 314</b> Environmental Preservation and Conservation / Simpson (Compare CS/H 733)	Petroleum Restoration Program; Removing the requirement that applications for the Abandoned Tank Restoration Program must have been submitted to the Department of Environmental Protection by a certain time; prohibiting the department from incorporating risk-based corrective actions principles not approved by the property owner; authorizing site owners and operators to select agency term contractors from which the department must select from under certain circumstances; revising the number of sites for certain advanced cleanup applications, etc.  EP 03/11/2015 Fav/CS AGG 04/08/2015 Fav/CS AP 04/16/2015 Fav/CS	Fav/CS Yeas 15 Nays 0
With subcommittee recommendation - General Government			

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Appropriations

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	<b>CS/SB 382</b> Health Policy / Sobel (Similar CS/CS/H 1001, Compare CS/CS/H 293, S 654, CS/S 7018)	Assisted Living Facilities; Providing that Medicaid managed care plans are responsible for mental health residents enrolled in Medicaid; specifying that managing entities under contract with the Department of Children and Families are responsible for mental health residents who are not enrolled in a Medicaid managed care plan; providing notice requirements for informing facility residents that the name and identity of the resident and complainant in any complaint made to the State Long-Term Care Ombudsman Program or a local long-term care ombudsman council is confidential and that retaliatory action may not be taken against a resident for presenting grievances or for exercising any other resident right, etc.  HP 02/03/2015 Fav/CS AHS 04/02/2015 Favorable AP 04/16/2015 Fav/CS	Fav/CS Yeas 17 Nays 0
With subcommittee recommendation - Health and Human Services			
7	<b>SB 434</b> Detert (Similar H 553)	Public Libraries; Revising the composition and duties of the State Library Council; revising the powers and duties of the Division of Library and Information Services of the Department of State; revising provisions regarding the delivery and distribution of publications; removing a provision requiring the division to provide a centralized microfilming program for state agencies, etc.  GO 02/17/2015 Favorable ATD 03/04/2015 Favorable AP 04/16/2015 Favorable	Favorable Yeas 18 Nays 0
With subcommittee recommendation - Transportation, Tourism, and Economic Development			
8	<b>CS/CS/SB 496</b> Judiciary / Children, Families, and Elder Affairs / Detert (Similar CS/CS/H 437)	Guardians; Requiring the court at the permanency review hearing to review the necessity of the guardianship and whether restoration of guardianship proceedings are needed when the young adult reaches a certain age under certain circumstances; providing that if a child is subject to proceedings under ch. 39, F.S., the parents may act as natural guardians unless the dependency or probate court finds that it is not in the child's best interests or their parental rights have been terminated, etc.  CF 02/19/2015 Fav/CS JU 03/10/2015 Fav/CS AP 04/16/2015 Fav/CS	Fav/CS Yeas 18 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	<b>CS/SB 510</b> Environmental Preservation and Conservation / Garcia (Similar CS/H 359)	Miami-Dade County Lake Belt Area; Requiring amendments to local zoning and subdivision regulations concerning properties located within a certain area to be compatible with limestone mining activities; including water quality monitoring as an environmental purpose for which the per-ton mitigation fee may be applied; decreasing the amount of the per-ton mitigation fee for limerock and sand sold after certain dates; imposing an environmentally endangered lands fee; rescinding the water treatment plant upgrade fee, etc.  EP 03/24/2015 Fav/CS CA 04/07/2015 Favorable AP 04/16/2015 Favorable	Favorable Yeas 16 Nays 0
10	<b>CS/SB 574</b> Governmental Oversight and Accountability / Montford (Similar CS/H 615)	Electronic Auction Services; Revising the powers and duties of the district school board to authorize the adoption of rules regarding procurement practices; authorizing a district school board's use of electronic auction services in conjunction with bid pooling for school buses and related purchases, etc.  GO 03/10/2015 Fav/CS AED 04/02/2015 Favorable AP 04/16/2015 Favorable	Favorable Yeas 15 Nays 0
With subcommittee recommendation - Education			
11	<b>SB 622</b> Montford (Similar H 461)	Higher Education Facilities Financing; Expanding the definition of the term "project" as it relates to the Higher Educational Facilities Financing Act, etc.  HE 03/16/2015 Favorable AED 04/02/2015 Favorable AP 04/16/2015 Favorable	Favorable Yeas 15 Nays 0
With subcommittee recommendation - Education			
12	<b>SB 662</b> Latvala (Similar CS/CS/H 307)	Mobile Homes; Requiring the Division of Florida Condominiums, Timeshares, and Mobile Homes to approve training and educational programs for board members of mobile home owners' associations; providing and revising requirements for lot rental increases; providing for the removal of a member of the board of directors under certain conditions, etc.  RI 03/11/2015 Favorable CA 03/23/2015 Favorable AP 04/16/2015 Favorable	Favorable Yeas 17 Nays 0

**A proposed committee substitute** for the following bill (CS/SB 680) is available:

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Thursday, April 16, 2015, 9:00 a.m.—4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	<b>CS/SB 680</b> Environmental Preservation and Conservation / Dean (Similar CS/H 7021, Compare H 241)	Fish and Wildlife Conservation Commission; Requiring personal flotation devices to be used in accordance with the United States Coast Guard approval labels; revising the dates for tarpon tag validity; removing the income requirement for a restricted species endorsement on a saltwater products license; deleting the requirement that the number of tags pursuant to a collection permit be equal to a safe yield of alligators; establishing penalties for the unlawful feeding of wildlife and freshwater fish, etc.  EP 03/18/2015 Fav/CS AGG 04/02/2015 Fav/CS AP 04/16/2015 Fav/CS	Fav/CS Yeas 17 Nays 0
With subcommittee recommendation - General Government			
14	<b>CS/SB 758</b> Health Policy / Evers (Similar H 155, CS/H 751)	Prescription and Use of Opioid Antagonists for Emergency Treatment of Opioid Overdoses; Citing this act as the "Florida Opioid Overdose Prevention Act"; providing the purposes of the act; providing for the prescribing of opioid antagonists to, and the use of them by, patients and caregivers who have received emergency overdose treatment information; providing for the prescribing of opioid antagonists to, and the use of them by, first responders; providing immunities from liability. etc.  HP 03/04/2015 Fav/CS AHS 04/02/2015 Favorable AP 04/16/2015 Fav/CS	Fav/CS Yeas 17 Nays 0
With subcommittee recommendation - Health and Human Services			
<b>A proposed committee substitute</b> for the following bill (CS/SB 798) is available:			
15	<b>CS/SB 798</b> Commerce and Tourism / Lee (Similar CS/CS/H 765)	Household Moving Services; Removing a prohibition that a mover may not limit its liability for the loss or damage of household goods to a specified valuation rate; requiring a mover to conduct a physical survey and provide a binding estimate in certain circumstances unless waived by the shipper; requiring a mover to tender household goods for delivery on the agreed upon delivery date or within a specified period unless waived by the shipper, etc.  CM 03/23/2015 Fav/CS AGG 04/02/2015 Not Considered AGG 04/08/2015 Fav/CS AP 04/16/2015 Fav/CS	Fav/CS Yeas 15 Nays 0
With subcommittee recommendation - General Government			

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
16	<b>SB 874</b> Stargel (Similar H 713)	Dual Enrollment Program; Exempting dual enrollment students from paying certain fees, including technology fees; deleting the requirement that a home education secondary student be responsible for his or her own instructional materials in order to participate in the dual enrollment program; authorizing certain instructional materials to be made available free of charge to dual enrollment students in public high schools, home education programs, and private schools, etc.  ED 03/18/2015 Favorable AED 04/02/2015 Favorable AP 04/16/2015 Fav/CS	Fav/CS Yeas 16 Nays 0
With subcommittee recommendation - Education			
17	<b>SB 942</b> Gaetz (Identical H 993, Compare CS/H 7125, CS/S 948)	Rapid Response Education and Training Program; Establishing the Rapid Response Education and Training Program within the Complete Florida Plus Program; requiring the Complete Florida Plus Program to work with Enterprise Florida, Inc., to offer certain education and training commitments to businesses, etc.  HE 03/23/2015 Favorable AED 04/08/2015 Favorable AP 04/16/2015 Favorable	Favorable Yeas 15 Nays 0
With subcommittee recommendation - Education			
18	<b>CS/SB 968</b> Banking and Insurance / Detert (Identical CS/CS/H 731)	Employee Health Care Plans; Removing provisions requiring certain insurance carriers to provide semiannual reports to the Office of Insurance Regulation; repealing requirements that certain insurance carriers offer standard, basic, high deductible, and limited health benefit plans; authorizing certain health benefit plans to use a stop-loss insurance policy; defining the term "stop-loss insurance policy"; providing requirements for such policies, etc.  BI 03/23/2015 Fav/CS CM 03/30/2015 Favorable AP 04/16/2015 Favorable	Favorable Yeas 17 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
19	<b>CS/SB 972</b> Finance and Tax / Flores (Compare CS/CS/H 695)	Value Adjustment Boards; Establishing deadlines for value adjustment boards to hear petitions and issue the second tax roll certification; revising the interest rate upon which unpaid and overpaid ad valorem taxes accrue; requiring a property appraiser to notify a petitioner when property record cards are available online, etc.  CA 03/17/2015 Favorable FT 03/30/2015 Fav/CS AP 04/16/2015 Fav/CS	Fav/CS Yeas 15 Nays 0

**A proposed committee substitute** for the following bill (CS/SB 1006) is available:

20	<b>CS/SB 1006</b> Banking and Insurance / Flores (Similar CS/CS/H 1087)	Depopulation of Citizens Property Insurance Corporation; Requiring takeout agreements to be approved by the Office of Insurance Regulation; requiring an insurer to provide certain information to a policyholder regarding a takeout agreement; excluding corporation policyholders from future takeout offers for 6 months under certain circumstances; allowing specified applicants for corporation coverage to be considered renewal policyholders, etc.  BI 03/23/2015 Fav/CS AGG 04/08/2015 Fav/CS AP 04/16/2015 Fav/CS	Fav/CS Yeas 15 Nays 0
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With subcommittee recommendation - General Government

**A proposed committee substitute** for the following bill (SB 1016) is available:

21	<b>SB 1016</b> Abruzzo (Similar H 711)	Care for Retired Law Enforcement Dogs; Creating the "Care for Retired Law Enforcement Dogs Program Act"; creating the Care for Retired Law Enforcement Dogs Program within the Department of Law Enforcement; requiring the department to contract with a corporation not for profit to administer and manage the program; providing requirements for the disbursement of funds for the veterinary care of eligible retired law enforcement dogs; placing an annual cap on the amount of funds available for the care of an eligible retired law enforcement dog, etc.  CJ 03/23/2015 Favorable ACJ 04/02/2015 Fav/CS AP 04/16/2015 Fav/CS	Fav/CS Yeas 17 Nays 0
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With subcommittee recommendation - Criminal and Civil Justice

**A proposed committee substitute** for the following bill (SB 1106) is available:

**COMMITTEE MEETING EXPANDED AGENDA**

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
22	<b>SB 1106</b> Flores (Compare CS/CS/H 465, H 467, H 469, CS/S 1108, CS/S 1110)	Human Trafficking; Providing enhanced criminal penalties for soliciting another to commit prostitution and similar offenses; providing for impoundment of a vehicle used in soliciting another to commit prostitution and similar offenses; requiring a judge to allow an advocate to be present with a human trafficking victim in an expunction hearing in certain circumstances, etc.  CJ 03/23/2015 Favorable ACJ 04/08/2015 Fav/CS AP 04/16/2015 Fav/CS	Fav/CS Yeas 15 Nays 0
With subcommittee recommendation - Criminal and Civil Justice			
23	<b>CS/SB 1108</b> Governmental Oversight and Accountability / Flores (Similar H 467, Compare CS/CS/H 465, S 1106)	Public Records/Identity of a Victim of Human Trafficking Offenses; Revising an exemption from public records requirements for certain criminal intelligence and investigative information to exempt information that reveals the identity of a victim of certain human trafficking offenses; providing an exemption from public records requirements for investigative information relating to criminal history records of human trafficking victims that have been ordered expunged; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc.  CJ 03/23/2015 Favorable GO 03/31/2015 Fav/CS AP 04/16/2015 Favorable	Favorable Yeas 14 Nays 0
24	<b>CS/SB 1110</b> Governmental Oversight and Accountability / Flores (Similar H 469, Compare CS/CS/H 465, S 1106)	Public Records/Residential Facilities Serving Victims of Sexual Exploitation and Human Trafficking; Providing an exemption from public records requirements for information held by an agency about the location of safe houses, safe foster homes, and other residential facilities serving victims of sexual exploitation; providing an exemption from public records requirements for information held by an agency about the location of residential facilities serving adult victims of human trafficking involving commercial sexual activity; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc.  CJ 03/23/2015 Favorable GO 03/31/2015 Fav/CS AP 04/16/2015 Favorable	Favorable Yeas 14 Nays 0

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Thursday, April 16, 2015, 9:00 a.m.—4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
25	<b>CS/SB 1136</b> Banking and Insurance / Hukill (Similar CS/H 927)	Title Insurance; Revising procedures and requirements relating to the recovery of assessments from title insurers through surcharges assessed on policies; revising provisions relating to surcharges collected in excess of the assessments paid by title insurers; revising requirements for the payment of excess surcharges to the Insurance Regulatory Trust Fund; authorizing the Financial Services Commission and the Department of Financial Services to adopt rules for certain purposes, etc.  BI 03/17/2015 Fav/CS AGG 04/02/2015 Favorable AP 04/16/2015 Favorable	Favorable Yeas 14 Nays 0
With subcommittee recommendation - General Government			
26	<b>SB 1138</b> Brandes (Similar H 887)	Unclaimed Property; Providing for escheatment to the state of unclaimed United States savings bonds; providing that a person claiming a United States savings bond may file a claim with the Department of Financial Services, etc.  BI 03/31/2015 Favorable AGG 04/08/2015 Favorable AP 04/16/2015 Favorable	Favorable Yeas 17 Nays 0
With subcommittee recommendation - General Government			
<b>A proposed committee substitute</b> for the following bill (SB 1148) is available:			
27	<b>SB 1148</b> Stargel (Similar CS/CS/H 1025)	Firesafety; Exempting nonresidential farm buildings, rather than specified structures located on agricultural property, from the Florida Fire Prevention Code under specified circumstances; requiring the State Fire Marshal to conduct a study addressing certain secondary uses of nonresidential farm buildings; authorizing a local fire official to consider a specified publication when identifying an alternative to a firesafety code, etc.  BI 03/17/2015 Favorable AGG 04/02/2015 Fav/CS AP 04/16/2015 Fav/CS	Fav/CS Yeas 16 Nays 0
With subcommittee recommendation - General Government			

**COMMITTEE MEETING EXPANDED AGENDA**

Appropriations

Thursday, April 16, 2015, 9:00 a.m.—4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
28	<b>CS/SB 1284</b> Governmental Oversight and Accountability / Soto (Similar CS/H 985)	Maintenance of Agency Final Orders; Requiring agencies to electronically transmit certain agency final orders to a centralized electronic database maintained by the Division of Administrative Hearings; authorizing agencies to maintain subject matter indexes of final orders issued before a specified date or to electronically transmit such orders to the database; requiring the Department of State to provide standards and guidelines for the certification and electronic transmittal and the secure transmittal and maintenance of agency final orders, etc.  GO 03/17/2015 Fav/CS AGG 04/08/2015 Favorable AP 04/16/2015 Favorable	Favorable Yeas 17 Nays 0
With subcommittee recommendation - General Government			
29	<b>CS/SB 1296</b> Military and Veterans Affairs, Space, and Domestic Security / Bean (Similar CS/H 1091, Compare CS/H 7055)	Military and Veterans Affairs; Creating the Military and Overseas Voting Assistance Task Force within the Department of State; providing legislative intent for the State Board of Education and the Board of Governors of the State University System to work collaboratively to align existing degree programs at state universities and Florida College System institutions, train faculty, incorporate outreach services into existing disability services, facilitate statewide meetings for personnel, and provide sufficient courses and priority registration to veterans, etc.  MS 03/10/2015 Temporarily Postponed MS 03/17/2015 Fav/CS EE 03/31/2015 Favorable ATD 04/08/2015 Favorable AP 04/16/2015 Fav/CS	Fav/CS Yeas 16 Nays 0
With subcommittee recommendation - Transportation, Tourism, and Economic Development			
30	<b>CS/SB 1306</b> Banking and Insurance / Bradley (Similar CS/CS/H 1127)	Insurance Fraud; Repealing provisions relating to criminal penalties applicable to unlicensed health care clinics and the reporting of unlicensed health care clinics; revising provisions related to unlawful, noncompensable, and unenforceable health care clinic charges or reimbursement claims; revising and providing criminal penalties for making unlawful charges, operating or failing to report an unlicensed clinic, filing false or misleading information related to a clinic license application, and other violations, etc.  BI 03/31/2015 Fav/CS CJ 04/07/2015 Favorable AP 04/16/2015 Fav/CS	Fav/CS Yeas 16 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Appropriations

Thursday, April 16, 2015, 9:00 a.m.—4:00 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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**A proposed committee substitute** for the following bill (SB 1362) is available:

31	<b>SB 1362</b> Simmons (Similar CS/CS/CS/H 439)	Department of Legal Affairs; Revising the list of offenses that may be investigated and prosecuted by the Office of Statewide Prosecution; specifying the distribution of certain funds recovered in Medicaid fraud actions; revising the maximum victim compensation amounts that the department may award to elderly persons or disabled adults who suffer a property loss that causes a substantial diminution in their quality of life in certain circumstances; providing for relocation assistance for human trafficking victims, etc.	Fav/CS Yeas 16 Nays 0
		JU 03/10/2015 Favorable ACJ 04/02/2015 Fav/CS AP 04/16/2015 Fav/CS	

With subcommittee recommendation - Criminal and Civil Justice

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**A proposed committee substitute** for the following bill (CS/SB 1402) is available:

32	<b>CS/SB 1402</b> Banking and Insurance / Lee (Similar H 987)	Organization of the Department of Financial Services; Revising the divisions and functions of the department; authorizing the Chief Financial Officer to establish divisions, bureaus, or offices of the department; providing funding from certain probate petition service charges to the Florida Clerks of Court Operations Corporation for clerk education provided by the corporation; providing powers and duties of the department's Division of Consumer Services; requiring that certain service of process fees be deposited into the Administrative Trust Fund, etc.	Fav/CS Yeas 15 Nays 0
		BI 03/17/2015 Fav/CS AGG 04/08/2015 Fav/CS AP 04/16/2015 Fav/CS	

With subcommittee recommendation - General Government

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**A proposed committee substitute** for the following bill (CS/SB 1444) is available:

**COMMITTEE MEETING EXPANDED AGENDA**

Appropriations

Thursday, April 16, 2015, 9:00 a.m.—4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
33	<b>CS/SB 1444</b> Commerce and Tourism / Richter (Similar CS/CS/CS/H 995, Compare CS/CS/H 997, Link CS/CS/S 1446)	Consumer Licensing; Requiring that the initial license application for private investigative, private security, and repossession services include payment of fingerprint processing and fingerprint retention fees; directing the Department of Law Enforcement to retain fingerprints submitted for private investigative, private security, and repossession service licenses, to enter such fingerprints into the statewide automated biometric identification system and the national retained print arrest notification program, and to report any arrest record information to the Department of Agriculture and Consumer Services; requiring notice of the suspension or revocation of a concealed weapon or firearm license or the suspension of the processing of an application for such license to be given by personal delivery, first-class mail, or e-mail; authorizing certain tax collector offices, upon approval and confirmation of license issuance by the Department of Agriculture and Consumer Services, to print and deliver concealed weapon or firearm licenses, etc.  CM 03/16/2015 Fav/CS AGG 04/02/2015 Fav/CS AP 04/16/2015 Fav/CS	Fav/CS Yeas 16 Nays 0

With subcommittee recommendation - General Government

**A proposed committee substitute** for the following bill (SB 1534) is available:

34	<b>SB 1534</b> Brandes (Compare H 1125)	Disposition of Liens and Forfeited Property; Deleting a provision authorizing a seizing agency to retain seized property for its use; revising the distribution and the use of proceeds from the sales of forfeited property seized by a county or municipal agency; deleting provisions that exempt certain agencies of the state from depositing proceeds from seizures into the General Revenue Fund, etc.  CJ 03/30/2015 Favorable ACJ 04/08/2015 Fav/CS AP 04/16/2015 Fav/CS	Fav/CS Yeas 18 Nays 0
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With subcommittee recommendation - Criminal and Civil Justice

**COMMITTEE MEETING EXPANDED AGENDA**

Appropriations

Thursday, April 16, 2015, 9:00 a.m.—4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
35	<b>CS/SB 1536</b> Criminal Justice / Flores (Identical H 7061, Compare H 7059, Link CS/S 1514)	Public Records/Florida RICO Act Investigations; Providing an exemption from public records requirements for certain documents and information held by an investigative agency pursuant to an investigation relating to an activity prohibited under the Florida RICO Act; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc.  CJ 03/23/2015 Not Considered CJ 03/30/2015 Fav/CS GO 04/07/2015 Favorable AP 04/16/2015 Favorable	Favorable Yeas 14 Nays 0
36	<b>SB 7046</b> Education Pre-K - 12 (Compare CS/S 948, CS/S 1252, S 2502, S 2508)	Education; Requiring a state research university to enter into and maintain a formal agreement with a specified organization to offer college-sponsored merit scholarship awards as a condition of designation as a preeminent state research university; authorizing a low-performing elementary school to administer the required additional hours of instruction in a summer program; revising the types and amounts of bonuses that a teacher may receive in any given school year, etc.  AED 04/02/2015 Favorable AP 04/16/2015 Favorable	Favorable Yeas 16 Nays 0
With subcommittee recommendation - Education			
37	<b>CS/SB 7070</b> Judiciary / Appropriations (Compare H 291, CS/CS/H 335, CS/H 547, H 705, H 1017, CS/H 7113, CS/S 476, CS/S 954, CS/S 1340, S 1384, S 1452, S 1458, CS/S 7068)	Mental Health and Substance Abuse; Requiring school health services plans to include notification requirements when a student is removed from school, school transportation, or a school-sponsored activity for involuntary examination; adding substance abuse services as a program focus for which the Department of Children and Families is responsible; providing authority of facilities of the United States Department of Veterans Affairs to conduct certain examinations and provide certain treatments; creating the "Jennifer Act"; requiring the Department of Children and Families to implement a Forensic Hospital Diversion Pilot Program in five specified judicial circuits, etc.  JU 04/07/2015 Fav/CS AP 04/16/2015 Fav/CS	Fav/CS Yeas 17 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Appropriations

Thursday, April 16, 2015, 9:00 a.m.—4:00 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
38	<b>SB 7082</b> Governmental Oversight and Accountability (Compare H 39)	Death Benefits Under the Florida Retirement System; Authorizing payment of death benefits to the surviving spouse or children of a Special Risk Class member killed in the line of duty under specified circumstances; requiring the State Board of Administration or the Division of Retirement to take certain action upon receipt of notification of disqualification from the Internal Revenue Service; providing for allocations for death benefits authorized by the act, etc.	Fav/CS Yeas 17 Nays 0
		AP 04/16/2015 Fav/CS	

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Other Related Meeting Documents

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**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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**BILL:** CS/CS/CS/SB 154

**INTRODUCER:** Appropriations Committee; Community Affairs Committee; Education Pre-K - 12 Committee; and Senator Hays

**SUBJECT:** Hazardous Walking Conditions

**DATE:** April 20, 2015

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Scott</u>	<u>Klebacha</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<u>Favorable</u>
4.	<u>Sikes</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/SB 154 creates “Gabby’s Law for Student Safety.” The bill requires that district school boards, in cooperation with the relevant governmental entities, inspect and identify hazardous conditions along routes that students must take while walking to or from school. The bill also requires that the relevant governmental entities correct any hazardous walking conditions within a reasonable period of time.

Furthermore, the bill:

- Revises the conditions for identifying walkways parallel to a road as hazardous.
- Creates criteria for identifying conditions at uncontrolled crossing sites as hazardous.
- Revises the process for inspecting, identifying, and correcting hazardous walking conditions.
- Authorizes a district school board to initiate a proceeding to obtain a declaratory judgment if, after inspection, the governmental representatives are unable to reach a consensus on whether a hazardous walking condition exists.
- Provides that the designation of a road as a hazardous walking condition is inadmissible as evidence in a civil action for damages against a governmental entity.
- Allows a district school board and other governmental entities to enter into an interlocal agreement for the identification and correction of hazardous walking conditions if the interlocal agreement meets certain criteria.

- Authorizes school districts to implement a safe driver hotline for reporting improper driving by a school bus driver.

The additional hazardous walking criteria provided in the bill likely will increase the number of students that can be counted for state transportation funding in the Florida Education Finance Program. However, the number of such students is not known. This increase in the number of funded student riders would cause a reallocation of student transportation funds towards districts that have a relatively greater number of students subject to the additional hazardous walking conditions identified in the bill and, dependent on the total level of the appropriation, may reduce the statewide funds per transported student for all districts.

The bill provides an effective date of July 1, 2015.

## II. Present Situation:

### Transportation of Public K-12 Students

Each district school superintendent is responsible for determining which students to transport and for making recommendations to the district school board regarding transportation plans and procedures, including the routing and scheduling of school buses.<sup>1</sup> Based on the district school superintendent's recommendations, the district school board is required to provide transportation for students in grades 6 and below, and may provide transportation to students in grades 7 through 12, if the students are subjected to hazardous walking conditions while in route to or from school.<sup>2</sup>

### Hazardous Walking Conditions

Section 1006.23, F.S., provides legislative intent for a district school board to provide transportation to students<sup>3</sup> who live within 2 miles of a school in that district and who would be subjected to hazardous walking conditions.<sup>4</sup> Furthermore, the law intends for district school boards and state or local governmental entities having jurisdiction to cooperate in identifying hazardous walking conditions and, if a hazardous condition exists, for the applicable governmental entities to correct it within a reasonable time.<sup>5</sup>

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<sup>1</sup> Sections 1006.21 and 1006.22, F.S.

<sup>2</sup> Section 1006.21(3)(b), F.S.

<sup>3</sup> A "student" is defined as "any public elementary school student whose grade level does not exceed grade 6." Section 1006.23(1), F.S.

<sup>4</sup> Section 1006.23(2) and (3), F.S. *See generally* Florida Department of Education, School Transportation Management Section, available at <http://www.fldoe.org/core/fileparse.php/7585/urlt/0085491-profiles1213.pdf> (*The Quality Link—Florida School District Transportation Profiles*), 2012-2013 (contains statewide and school district data on the total number of students subjected to hazardous walking conditions) (last visited February 24, 2015). Additional school transportation information is available at <http://www.fldoe.org/schools/safe-healthy-schools/transportation/index.shtml> (last visited February 24, 2015).

<sup>5</sup> Section 1006.23(2)(a), F.S.

### ***Criteria for Identifying Hazardous Conditions***

State law delineates the criteria for identifying hazardous walking conditions associated with walking parallel to a road or perpendicular to road for the purpose of crossing.<sup>6</sup>

A hazardous condition exists if a walkway parallel to a road is:

- Less than a four-foot wide area adjacent to the road that requires the student to walk on the road surface; or
- Uncurbed with a posted speed limit of 55 miles per hour and a walking surface less than three feet from the road.<sup>7</sup>

However, a road along which a student must walk may not be identified as a hazardous walking condition if:

- It is located in a residential area that has little to no transient traffic;
- The total traffic volume<sup>8</sup> is less than 180 vehicles per hour, per direction, during a time that a student walks to or from school; or
- It is located in a residential area that has a posted speed limit of 30 miles per hour or less.<sup>9</sup>

A hazardous walking condition exists on a walkway perpendicular to a road if:

- The total traffic volume exceeds 360 vehicles per hour, per direction, during a time that a student walks to or from school, and the crossing area is an “uncontrolled crossing site”;<sup>10</sup> or
- The total traffic volume of a road exceeds 4,000 vehicles per hour, during which time a student would be walking to or from school, through an intersection or crossing area controlled by a stop sign or other traffic signal, unless a crossing guard or traffic enforcement officer is present during a time that a student walks to or from school.<sup>11</sup>

### ***Inspection, Determination, and Correction***

After a request for review of a perceived hazardous walking condition is made to a district school superintendent, or his or her designee, a school district representative and a representative of the state or local governmental entity having jurisdiction must inspect the perceived hazardous condition.<sup>12</sup> The superintendent or designee and the applicable governmental entity or its representative must reach a mutually agreed-upon final determination as to whether the hazardous condition meets the state criteria in s. 1006.23(4), F.S.<sup>13</sup> Subsequently, the superintendent or designee reports the final determination to the Department of Education.<sup>14</sup>

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<sup>6</sup> Section 1006.23(4), F.S.

<sup>7</sup> Section 1006.23(4)(a)1., F.S.

<sup>8</sup> Traffic volume is determined by the most recent state or local government agency traffic engineering study. Section 1006.23(4)(b), F.S.

<sup>9</sup> Section 1006.23(4)(a)2., F.S.

<sup>10</sup> An “uncontrolled crossing site” is defined as “an intersection or other designated crossing site where no crossing guard, traffic enforcement officer, or stop sign, or other traffic control signal is present during the times students walk to and from school.” Section 1006.23(b)1., F.S.

<sup>11</sup> Section 1006.23(4)(b), F.S.

<sup>12</sup> Section 1006.23(3), F.S.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

If a hazardous condition is determined to exist, the district school board must request that the governmental entity determine whether it will correct the hazardous condition and the projected completion date.<sup>15</sup> The state is required to allocate funds to the school district for transporting students affected by the hazardous walking condition; however, funding ceases upon correction of the condition or upon the projected completion date, whichever occurs first.<sup>16</sup>

### III. Effect of Proposed Changes:

The bill removes the intent language in existing s. 1006.23(2)(a), F.S., and requires that district school boards and state or local governmental entities jointly inspect and identify hazardous conditions along routes that students must take while walking to or from school; that district school boards provide transportation to such students; and that the applicable governmental entity either correct the designated hazardous conditions or justify in writing to the district school superintendent and the Department of Education (DOE) why it will not correct the hazardous condition. Current law may imply an expectation that district school boards and state or local governmental entities will exercise their discretion in inspecting, identifying, and correcting such conditions. By removing the intent language in paragraph (2)(a), the bill would resolve any uncertainty that the collaborative process relating to hazardous walking conditions is discretionary and would make that paragraph consistent with the other provisions in ss. 1006.23 and 1006.21(3)(b), F.S.

#### Criteria for Identifying Hazardous Conditions

##### *Walkways Parallel to the Road*

The bill revises the criteria for identifying walkways parallel to the road as hazardous by:

- Excluding drainage ditches, sluiceways, swales, or channels from inclusion in the required minimum four-foot wide area for safely walking parallel to the road;
- Reducing the posted speed limit from 55 miles per hour to 50 miles per hour or greater; and
- Removing an exception that hazardous walking conditions do not apply to residential areas with little or no transient traffic.

In effect, the bill will likely increase the number of roads designated as hazardous and needing correction.

##### *Crossings Over the Road*

The bill creates criteria for identifying hazardous walking conditions on roads over which a student must cross while walking to or from school. The bill requires that any road with an uncontrolled crossing site is hazardous if it has:

- A posted speed limit of 50 miles per hour or greater; or
- Six lanes or more, not including turn lanes, regardless of the speed limit.

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<sup>15</sup> Section 1006.23(2)(b), F.S.

<sup>16</sup> *Id.* See Florida Department of Education, *Student Transportation General Instructions 2014-2015*, available at <http://www.fldoe.org/core/fileparse.php/7507/urlt/0077152-1415studenttransgeneralinstructions.pdf> (last visited February 24, 2015).

Current law does not provide criteria for identifying roads with uncontrolled crossing sites as hazardous. Any existing uncontrolled crossing site that meets the criteria under the bill will be deemed hazardous and require the applicable governmental entity to correct the hazardous condition or provide justification in writing for not correcting the hazardous condition to the district school superintendent and the DOE.

### **Inspecting, Identifying, and Correcting Hazardous Conditions**

#### ***Request for Review***

The bill requires, upon the district school superintendent's request for review, that a joint inspection of a perceived hazardous condition be conducted on a road within a state or local government's jurisdiction.

Current law is unclear as to who is required to make the request and states that when a request for review is made to the district school superintendent, or his or her designee, the perceived hazardous condition must be inspected. The bill clarifies this ambiguity by replacing the word "to" with "by" and requiring that the request for review be made by the superintendent to the applicable governmental entity.

The bill removes the superintendent's designee as a party authorized to request review of a hazardous condition and places the authority to initiate an inspection solely with the superintendent.

#### ***Inspection***

The bill specifically identifies the following governmental representatives who must participate in inspecting the affected road if the road is located within the applicable governmental jurisdiction:

- For a municipal road, a representative from the municipal police department;
- For a county road, a representative from the sheriff's department; and
- For a state road, a representative from the Department of Transportation.

Furthermore, the bill provides for the inclusion of a representative of a metropolitan planning organization (MPO) if the jurisdiction is within an area where there is an MPO.

The bill requires that the appropriate governmental entity most familiar with the affected road and its surrounding location participate in the entire process, *e.g.*, inspecting, identifying, and correcting the hazardous condition.

#### ***Final Determination of a Hazardous Condition***

The bill revises the process for making a final determination on whether a hazardous walking condition exists. Current law requires that the applicable state or local governmental entity, or its representative, and the district school superintendent, or his or her designee, reach a mutually agreed-upon final determination that must be reported to the DOE. The bill removes the requirements that a district school superintendent, or his or her designee, participate in and report the final determination to the DOE. The bill requires that the governing entity with jurisdiction over the area report their determination in writing to the district school superintendent.

***Declaratory Judgment***

If unable to reach consensus, the bill requires the governmental representatives to report the reasons for the impasse to the district school superintendent. Subsequently, the superintendent must provide a report and recommendation to the district school board regarding the lack of consensus. Under these circumstances, the bill authorizes a district school board to initiate a proceeding under ch. 86, F.S., to obtain a declaratory judgment as to whether the condition at issue is hazardous. If it is found that a hazardous walking condition exists, the superintendent must report the finding to DOE and formally request correction of the hazardous condition.

Existing law does not provide for a formal process or remedy if the governmental representatives are unable to agree on the existence of a hazardous walking condition.

***Request for Correction***

The bill revises the process by which a correction is requested and, unlike current law, requires that the applicable governmental entity submit a position statement informing the superintendent whether the correction will be included in its next annual 5-year transportation work program and when the correction will be completed.

Current law does not contemplate circumstances under which a governmental entity declines to correct a hazardous condition. Under the bill, if a governmental entity will not include correction of the hazardous condition in its next 5-year plan, it must justify its decision in a written statement to the district school superintendent and the DOE.

**Admissibility of Evidence in Civil Action**

The bill adds a provision that designation of a hazardous walking condition is not admissible in evidence in a civil action for damages brought against a governmental entity under s. 768.28, F.S., relating to waiver of sovereign immunity.

**Interlocal Agreements**

The bill allows a district school board and other governmental entities to enter into an interlocal agreement for the identification and correction of hazardous walking conditions if the interlocal agreement:

- Implements the Safe Paths to School Program, or
- Establishes standards for student safety and identifying and correcting hazardous walking conditions that meet or exceed the standards in the bill.

**Safe Driver Hotline**

The bill authorizes school districts to implement a safe driver toll-free telephone hotline for motorists and others to report improper driving by a school bus driver for investigation and disciplinary action by the school board.

**Effective Date**

**Section 2** provides an effective date of July 1, 2015.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

Under CS/CS/CS/SB 154, private businesses that provide student transportation services and contractors hired to correct hazardous walking conditions may experience an increase in revenues until such conditions are corrected.<sup>17</sup>

**C. Government Sector Impact:**

The increase in the number of students who would qualify for transportation and the revenues or expenditures that state or local governmental entities would accrue or incur are indeterminate.<sup>18</sup>

Student transportation is funded by a categorical allocation within the Florida Education Finance Program (FEFP). The funding is based primarily on the number of transported students, identified through school district surveys, who live more than two miles from the school, are disabled, or who are subject to hazardous walking conditions.

Under the provisions of the bill, it is likely that the number of students that can be counted for state transportation funding will increase.<sup>19</sup> This increase in the number of funded student riders could cause a reallocation of student transportation funds towards districts that have a relatively greater number of students subject to the additional

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<sup>17</sup> Florida Department of Education, 2015 Agency Legislative Bill Analysis, p. 6, received January 27, 2015 (on file with the Committee on Education Pre-K – 12).

<sup>18</sup> *Id.* at 5.

<sup>19</sup> *Id.*

hazardous walking conditions identified in the bill and, dependent on the total level of the appropriation, may reduce the statewide funds per transported student for all districts.<sup>20</sup>

The increase in costs that would be incurred by local governmental entities having jurisdiction over the roads designated as hazardous, which would require correcting, cannot be estimated until such conditions are identified.<sup>21</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 1006.23 and 1012.45.

**IX. Additional Information:**

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

**CS/CS/CS by Appropriations on April 16, 2015:**

The committee substitute:

Titles the bill “Gabby’s Law for Student Safety.

- Authorizes school districts to implement a safe driver hotline for reporting improper driving by a school bus driver.
- Allows a district school board and other governmental entities to enter into an interlocal agreement for the identification and correction of hazardous walking conditions if the interlocal agreement meets certain criteria.

**CS/CS by Community Affairs on March 4, 2015:**

Changes the words “capital improvement” to “transportation work.” Changes the entity responsible for reporting the determination of a hazardous walking condition to the district school superintendent from all of the government entities examining the area (“they” in text) to the singular government entity with jurisdiction over the area.

**CS by Education Pre-K – 12 on February 18, 2015:**

The committee substitute maintains the original substance of SB 154 with the following modifications:

- Removes a provision requiring that a district school board correct hazardous walking conditions.

<sup>20</sup> *Id.* See also, s. 1011.68, F.S., relating to the annual allocation of student transportation funds for each school district.

<sup>21</sup> *Id.*

- Authorizes a district school board to obtain a declaratory judgment under ch. 86, F.S., if a consensus cannot be reached on the existence of a hazardous walking condition.

B. Amendments:

None.

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

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671800

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
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	.	
	.	

The Committee on Appropriations (Hays) recommended the following:

**Senate Amendment (with title amendment)**

Before line 30

insert:

Section 1. This act may be cited as "Gabby's Law for Student Safety."

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

And the title is amended as follows:

Between lines 2 and 3



671800

11 insert:  
12 providing a short title;



895826

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
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The Committee on Appropriations (Hays) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 91 - 178  
and insert:  
provided in subsection (2), the governmental entity with jurisdiction shall report that determination in writing to the district school superintendent, who shall initiate a formal request for correction as provided in subsection (4).

(b) If the governmental representatives are unable to reach a consensus, the reasons for lack of consensus shall be reported



895826

11 to the district school superintendent, who shall provide a  
12 report and recommendation to the district school board. The  
13 district school board may initiate a proceeding under chapter 86  
14 seeking a determination as to whether the condition constitutes  
15 a hazardous walking condition as provided in subsection (2)  
16 after providing at least 30 days' notice in writing to the state  
17 or local governmental entity having jurisdiction over the road  
18 of its intent to do so unless, within 30 days after such notice  
19 is provided, the state or local governmental entity concurs in  
20 writing that the condition is a hazardous walking condition as  
21 provided in subsection (2) and provides the position statement  
22 pursuant to subsection (4). If a proceeding is initiated under  
23 this paragraph, the district school board has the burden of  
24 proving such condition by the greater weight of evidence. If the  
25 district school board prevails, the district school  
26 superintendent shall report the outcome to the Department of  
27 Education and initiate a formal request for correction of the  
28 hazardous walking condition as provided in subsection (4) ~~The~~  
29 ~~district school superintendent or his or her designee and the~~  
30 ~~state or local governmental entity or its representative shall~~  
31 ~~then make a final determination that is mutually agreed upon~~  
32 ~~regarding whether the hazardous condition meets the state~~  
33 ~~criteria pursuant to this section. The district school~~  
34 ~~superintendent or his or her designee shall report this final~~  
35 ~~determination to the Department.~~

36 (2) ~~(4)~~ STATE CRITERIA FOR DETERMINING HAZARDOUS WALKING  
37 CONDITIONS.—

38 (a) Walkways parallel to the road.—

39 1. It shall be considered a hazardous walking condition



895826

40 with respect to any road along which students must walk in order  
41 to walk to and from school if there is not an area at least 4  
42 feet wide adjacent to the road, not including drainage ditches,  
43 sluiceways, swales, or channels, having a surface upon which  
44 students may walk without being required to walk on the road  
45 surface. In addition, whenever the road along which students  
46 must walk is uncurbed and has a posted speed limit of 50 ~~55~~  
47 miles per hour or greater, the area as described above for  
48 students to walk upon shall be set off the road by no less than  
49 3 feet from the edge of the road.

50 2. ~~The provisions of~~ Subparagraph 1. does ~~de~~ not apply when  
51 the road along which students must walk:

52 ~~a. Is in a residential area which has little or no~~  
53 ~~transient traffic;~~

54 ~~a.b.~~ Is a road on which the volume of traffic is less than  
55 180 vehicles per hour, per direction, during the time students  
56 walk to and from school; or

57 ~~b.e.~~ Is located in a residential area and has a posted  
58 speed limit of 30 miles per hour or less.

59 (b) Walkways perpendicular to the road.—It shall be  
60 considered a hazardous walking condition with respect to any  
61 road across which students must walk in order to walk to and  
62 from school if:

63 1. ~~If~~ The traffic volume on the road exceeds the rate of  
64 360 vehicles per hour, per direction (including all lanes),  
65 during the time students walk to and from school and if the  
66 crossing site is uncontrolled. For purposes of this subsection,  
67 an "uncontrolled crossing site" is an intersection or other  
68 designated crossing site where no crossing guard, traffic



895826

69 enforcement officer, or stop sign or other traffic control  
70 signal is present during the times students walk to and from  
71 school.

72 2. ~~If~~ The total traffic volume on the road exceeds 4,000  
73 vehicles per hour through an intersection or other crossing site  
74 controlled by a stop sign or other traffic control signal,  
75 unless crossing guards or other traffic enforcement officers are  
76 also present during the times students walk to and from school.

77  
78 Traffic volume shall be determined by the most current traffic  
79 engineering study conducted by a state or local governmental  
80 agency.

81 (c) Crossings over the road.—It shall be considered a  
82 hazardous walking condition with respect to any road at any  
83 uncontrolled crossing site which students must walk in order to  
84 walk to and from school if:

85 1. The road has a posted speed limit of 50 miles per hour  
86 or greater; or

87 2. The road has six lanes or more, not including turn  
88 lanes, regardless of the speed limit.

89 (5) CIVIL ACTION.—In a civil action for damages brought  
90 against a governmental entity under s. 768.28, the designation  
91 of a hazardous walking condition under this section is not  
92 admissible in evidence.

93 (6) INTERLOCAL AGREEMENTS.—This section does not prohibit a  
94 district school board and other governmental entities from  
95 entering into an interlocal agreement pursuant to s. 163.31777  
96 that addresses the identification and correction of hazardous  
97 walking conditions, if such agreement:



895826

98           (a) Implements the Safe Paths to Schools Program as  
99 provided in s. 335.066; or

100           (b) Establishes standards for the safety of students  
101 walking to school and procedures for identifying and correcting  
102 hazardous walking conditions that meet or exceed the standards  
103 and procedures provided in subsections (2), (3), and (4).

104  
105 ===== T I T L E   A M E N D M E N T =====

106 And the title is amended as follows:

107           Between lines 25 and 26

108 insert:

109           authorizing a district school board and other  
110           governmental entities to enter into a specified  
111           interlocal agreement; providing criteria for such  
112           agreements;



868178

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
	.	
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The Committee on Appropriations (Hays) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 178 and 179

insert:

Section 2. Subsection (5) is added to section 1012.45, Florida Statutes, to read:

1012.45 School bus drivers; requirements and duties.-

(5) Each district school board may implement a safe driver toll-free telephone hotline for motorists or others who observe improper driving or operation by a school bus driver to report



868178

11 such violations to the district school board for investigation  
12 and corrective or disciplinary action by the school board.

13  
14 ===== T I T L E A M E N D M E N T =====

15 And the title is amended as follows:

16       Between lines 25 and 26

17 insert:

18       amending s. 1012.45, F.S.; providing that a district  
19       school board may implement a safe driver toll-free  
20       telephone hotline for specified purposes;

By the Committees on Community Affairs; and Education Pre-K -  
12; and Senator Hays

578-01927-15

2015154c2

1 A bill to be entitled  
2 An act relating to hazardous walking conditions;  
3 amending s. 1006.23, F.S.; requiring a district school  
4 board to correct hazardous walking conditions and  
5 provide transportation to students who would be  
6 subjected to hazardous walking conditions; requiring  
7 state or local governmental entities with jurisdiction  
8 over a road with a hazardous walking condition to  
9 correct the condition within a reasonable period of  
10 time; providing requirements for a governmental entity  
11 relating to its transportation work program; revising  
12 procedures for inspection and identification of  
13 hazardous walking conditions; requiring a district  
14 school superintendent to initiate a formal request for  
15 correction of a hazardous walking condition under  
16 certain circumstances; authorizing a district school  
17 board to initiate a declaratory judgment proceeding  
18 under certain circumstances and providing requirements  
19 therefor; deleting the requirement that the district  
20 school superintendent and specified governmental  
21 entities make a final determination that is mutually  
22 agreed upon regarding hazardous walking conditions;  
23 revising criteria that determine a hazardous walking  
24 condition for public school students; providing  
25 requirements relating to a civil action for damages;  
26 providing an effective date.

27  
28 Be It Enacted by the Legislature of the State of Florida:  
29

Page 1 of 7

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

578-01927-15

2015154c2

30 Section 1. Section 1006.23, Florida Statutes, is reordered  
31 and amended to read:  
32 1006.23 Hazardous walking conditions.—  
33 (1) DEFINITION.—As used in this section, the term “student”  
34 means any public elementary school student whose grade level  
35 does not exceed grade 6.  
36 ~~(4)(2)~~ TRANSPORTATION; CORRECTION OF HAZARDS.—  
37 (a) A district school board ~~It is intended that district~~  
38 ~~school boards~~ and other governmental entities shall work  
39 cooperatively to identify conditions that are hazardous along  
40 student walking routes to school, and a district school board  
41 shall ~~that district school boards~~ provide transportation to  
42 students who would be subjected to such conditions.  
43 Additionally, It is further intended that state or local  
44 governmental entities with having jurisdiction over a road along  
45 which a hazardous walking condition is determined to exist shall  
46 correct the condition ~~such hazardous conditions~~ within a  
47 reasonable period of time.  
48 (b) Upon a determination pursuant to subsection (3) ~~this~~  
49 ~~section~~ that a hazardous walking condition exists ~~is hazardous~~  
50 ~~to students~~, the district school superintendent ~~board~~ shall  
51 request a position statement with respect to correction of such  
52 condition determination from the state or local governmental  
53 entity with having jurisdiction over the road. Within 90 days  
54 after receiving such request, the state or local governmental  
55 entity shall inform the district school superintendent ~~regarding~~  
56 whether the entity will include correction of the hazardous  
57 walking condition in its next annual 5-year transportation work  
58 program ~~hazard will be corrected~~ and, if so, when correction of

Page 2 of 7

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

578-01927-15

2015154c2

59 the condition will be completed. If the hazardous walking  
 60 condition will not be included in the state or local  
 61 governmental entity's next annual 5-year transportation work  
 62 program, the factors justifying such conclusion must be stated  
 63 in writing to the district school superintendent and the  
 64 Department of Education regarding a projected completion date.

65 (c) State funds shall be allocated for the transportation  
 66 of students subjected to a hazardous walking condition. However,  
 67 such hazards, provided that such funding shall cease upon  
 68 correction of the hazardous walking condition hazard or upon the  
 69 projected completion date, whichever occurs first.

70 (3) IDENTIFICATION OF HAZARDOUS CONDITIONS.-

71 (a) When a request for review is made by ~~to~~ the district  
 72 school superintendent with respect to a road over which a state  
 73 or local governmental entity has jurisdiction ~~or the district~~  
 74 ~~school superintendent's designee~~ concerning a condition  
 75 perceived to be hazardous to students in that district who live  
 76 within the 2-mile limit and who walk to school, such condition  
 77 shall be inspected jointly by a representative of the school  
 78 district, ~~and~~ a representative of the state or local  
 79 governmental entity with ~~that has~~ jurisdiction over the  
 80 perceived hazardous location, and a representative of the  
 81 municipal police department for a municipal road, a  
 82 representative of the sheriff's office for a county road, or a  
 83 representative of the Department of Transportation for a state  
 84 road. If the jurisdiction is within an area for which there is a  
 85 metropolitan planning organization, a representative of that  
 86 organization shall also be included. The governmental  
 87 representatives shall determine whether the condition

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

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2015154c2

88 constitutes a hazardous walking condition as provided in  
 89 subsection (2). If the governmental representatives concur that  
 90 a condition constitutes a hazardous walking condition as  
 91 provided in subsection (2), the governing entity with  
 92 jurisdiction shall report that determination in writing to the  
 93 district school superintendent, who shall initiate a formal  
 94 request for correction as provided in subsection (4).

95 (b) If the governmental representatives are unable to reach  
 96 a consensus, the reasons for lack of consensus shall be reported  
 97 to the district school superintendent, who shall provide a  
 98 report and recommendation to the district school board. The  
 99 district school board may initiate a proceeding under chapter 86  
 100 seeking a determination as to whether the condition constitutes  
 101 a hazardous walking condition as provided in subsection (2)  
 102 after providing at least 30 days' notice in writing to the local  
 103 governmental entities having jurisdiction over the road of its  
 104 intent to do so unless, within 30 days after such notice is  
 105 provided, the local governmental entities concur in writing that  
 106 the condition is a hazardous walking condition as provided in  
 107 subsection (2) and provide the position statement pursuant to  
 108 subsection (4). If a proceeding is initiated under this  
 109 paragraph, the district school board has the burden of proving  
 110 such condition by the greater weight of evidence. If the  
 111 district school board prevails, the district school  
 112 superintendent shall report the outcome to the Department of  
 113 Education and initiate a formal request for correction of the  
 114 hazardous walking condition as provided in subsection (4). The  
 115 district school superintendent or his or her designee and the  
 116 state or local governmental entity or its representative shall

Page 4 of 7

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

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2015154c2

117 then make a final determination that is mutually agreed upon  
 118 regarding whether the hazardous condition meets the state  
 119 criteria pursuant to this section. The district school  
 120 superintendent or his or her designee shall report this final  
 121 determination to the Department.

122 ~~(2)(4) STATE CRITERIA FOR DETERMINING HAZARDOUS WALKING~~  
 123 ~~CONDITIONS.-~~

124 (a) *Walkways parallel to the road.-*

125 1. It shall be considered a hazardous walking condition  
 126 with respect to any road along which students must walk in order  
 127 to walk to and from school if there is not an area at least 4  
 128 feet wide adjacent to the road, not including drainage ditches,  
 129 sluiceways, swales, or channels, having a surface upon which  
 130 students may walk without being required to walk on the road  
 131 surface. In addition, whenever the road along which students  
 132 must walk is uncurbed and has a posted speed limit of 50 ~~55~~  
 133 miles per hour or greater, the area as described above for  
 134 students to walk upon shall be set off the road by no less than  
 135 3 feet from the edge of the road.

136 2. ~~The provisions of Subparagraph 1. does~~ ~~de~~ not apply when  
 137 the road along which students must walk:

138 a. ~~Is in a residential area which has little or no~~  
 139 ~~transient traffic;~~

140 ~~a.b-~~ Is a road on which the volume of traffic is less than  
 141 180 vehicles per hour, per direction, during the time students  
 142 walk to and from school; or

143 ~~b.e-~~ Is located in a residential area and has a posted  
 144 speed limit of 30 miles per hour or less.

145 (b) *Walkways perpendicular to the road.-*It shall be

578-01927-15

2015154c2

146 considered a hazardous walking condition with respect to any  
 147 road across which students must walk in order to walk to and  
 148 from school if:

149 1. ~~If~~ The traffic volume on the road exceeds the rate of  
 150 360 vehicles per hour, per direction (including all lanes),  
 151 during the time students walk to and from school and if the  
 152 crossing site is uncontrolled. For purposes of this subsection,  
 153 an "uncontrolled crossing site" is an intersection or other  
 154 designated crossing site where no crossing guard, traffic  
 155 enforcement officer, or stop sign or other traffic control  
 156 signal is present during the times students walk to and from  
 157 school.

158 2. ~~If~~ The total traffic volume on the road exceeds 4,000  
 159 vehicles per hour through an intersection or other crossing site  
 160 controlled by a stop sign or other traffic control signal,  
 161 unless crossing guards or other traffic enforcement officers are  
 162 also present during the times students walk to and from school.

163 Traffic volume shall be determined by the most current traffic  
 164 engineering study conducted by a state or local governmental  
 165 agency.

166 (c) Crossings over the road.-It shall be considered a  
 167 hazardous walking condition with respect to any road at any  
 168 uncontrolled crossing site which students must walk in order to  
 169 walk to and from school if:

170 1. The road has a posted speed limit of 50 miles per hour  
 171 or greater; or

172 2. The road has six lanes or more, not including turn  
 173 lanes, regardless of the speed limit.  
 174

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2015154c2

175       (5) CIVIL ACTION.—In a civil action for damages brought  
176 against a governmental entity under s. 768.28, the designation  
177 of a hazardous walking condition under this section is not  
178 admissible in evidence.

179       Section 2. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/16/15  
Meeting Date

154  
Bill Number (if applicable)

\* 895826  
Amendment Barcode (if applicable)

Topic HAZARDOUS WALKING ←

Name LAURA YOUMANS

Job Title

Address 100 S. MONROE  
Street

Phone 922-4300

TALLAHASSEE  
City State Zip

Email

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FLA. ASSOC. OF COUNTIES

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

9-16-2015

Meeting Date

154

Bill Number (if applicable)

868178

Amendment Barcode (if applicable)

Topic \_\_\_\_\_

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S  
Street

Phone 727/897-9291

St Petersburg  
City

FL  
State

33705  
Zip

Email justice2jesus@yahoo.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4 1/16/2015

Meeting Date

Topic \_\_\_\_\_

Bill Number 154  
*(if applicable)*

Name BRIAN PITTS

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

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

*Street*

SAINT PETERSBURG      FLORIDA      33705

*City*

*State*

*Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:     For     Against     Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:     Yes     No

Lobbyist registered with Legislature:     Yes     No

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

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

S-001 (10/20/11)

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

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

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/CS/SB 228

INTRODUCER: Appropriations Committee; Ethics and Elections Committee; and Senators Clemens and Richter

SUBJECT: Online Voter Application

DATE: April 20, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carlton</u>	<u>Roberts</u>	<u>EE</u>	<u>Fav/CS</u>
2.	<u>Sneed</u>	<u>Miller</u>	<u>ATD</u>	<u>Favorable</u>
3.	<u>Sneed</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/CS/SB 228 directs the Division of Elections in the Department of State to develop an operational, online voter registration system by October 1, 2017.

The Division of Elections is tasked with establishing the secure Internet website and developing security measures to prevent unauthorized tampering with a voter's registration information, including the use of a unique identifier for each applicant. The system must also comply with certain federal laws to ensure equal access to voters with disabilities. The Division of Elections is required to submit a report to the President of the Senate and the Speaker of the House of Representatives regarding the implementation of online voter registration applications no later than January 1, 2016.

The bill provides an appropriation of \$1.8 million in nonrecurring funds from the Federal Grants Trust Fund to the Department of State for the development and implementation of the online voter registration system by October 1, 2017.

The bill will also have an insignificant impact to the Department of Highway Safety and Motor Vehicles (DHSMV) related to programming costs required by the bill. These expenditures can be absorbed within the department's existing resources.

The bill provides an effective date of July 1, 2015.

## II. Present Situation:

As of December 2014, the National Conference on State Legislatures (“NCSL”) found that:

- 20 states offered online voter registration;
- 4 states had passed legislation to create online registration systems, but had not yet implemented them; and,
- 3 states offered some form of limited online voter registration.<sup>1</sup>

Florida was not included among these states, despite the fact that it has an electronic system for submitting voter registration applications from DHSMV offices.<sup>2</sup> Floridians not registering electronically at a DHSMV office must fill out a paper voter registration application and return it to their local county supervisor of elections, or to any of the following entities: any supervisor of elections’ office in the state, a voter registration agency including an armed forces recruitment office, a public library, or the Division of Elections.<sup>3</sup> The division’s website, and most if not all supervisor’s websites, contain an electronic version of the official Florida Voter Registration Application which can be printed out, sworn and affirmed by the applicant’s signature, and mailed.<sup>4</sup>

## III. Effect of Proposed Changes:

Beginning October 1, 2017, the bill creates an online voter registration system for registering first-time voters and updating existing voter registrations. The Division of Elections is tasked with establishing the secure Internet website and developing security measures to prevent unauthorized tampering with a voter’s registration information, including the use of a unique identifier for each applicant. The system must also comply with certain federal laws to ensure equal access to voters with disabilities.

---

<sup>1</sup> National Conference of State Legislatures website, <http://www.ncsl.org/research/elections-and-campaigns/electronic-or-online-voter-registration.aspx> (last accessed 3.11.2015).

<sup>2</sup> DHSMV’s staff analysis on SB 784 (2014) provides:

Currently, driver license examiners ask driver license or identification card applicants if the applicant would like to apply to register to vote or update his or her current voter registration information during the credential process. If so, an electronic voter registration application is completed, with a digital signature, and the voter oath is administered. The voter registration application includes data specific to the voter registration process, such as whether the person is a convicted felon, party affiliation, military status, whether the person needs voting assistance and previous voter registration data. The voter application also requires the examiner to re-key the customer’s address in order to verify it against a Department of State database, as required by law. The customer receives a printed application for his or her review. At the close of business, the day’s voter registration applications, changes, and declinations are submitted electronically to the Department of State.

DHSMV’s 2014 Agency Legislative Bill Analysis, *SB 784*, at p.1 (January 31, 2014) (Section 2.1., Present Situation), available at, <http://abar.laspbs.state.fl.us/ABAR/Document.aspx?id=2773&yr=2014> (last visited 3.11.2015).

<sup>3</sup> Florida Department of State website, <http://election.dos.state.fl.us/voter-registration/voter-reg.shtml> (last accessed 3.11.2015).

<sup>4</sup> Florida Voter Registration Application Form, available at the Division of Elections website, <http://election.dos.state.fl.us/pdf/webappform.pdf> (last visited 3.11.2015).

Upon submission of a completed online voter registration application, the website must generate an immediate electronic confirmation that the supervisor has received it and will provide instruction with respect to checking the status of the application.

Specifically, the new online voting system will:

- Compare an applicant's driver's license number or Florida ID number with DHSMV records, to confirm the name and birth date of the applicant.
- *If the applicant's name and birth date are consistent*, electronically transmit the application to the appropriate supervisor of elections along with the applicant's digital signature (if he or she has it on file with DHSMV), in which case the application process can proceed electronically.
- *If an otherwise eligible applicant's name and birth cannot be verified, or if the applicant has no driver's license or Florida ID card, the system must populate the form and direct the applicant to print, sign and date the application and deliver it to the appropriate Supervisor of Elections for disposition pursuant to s. 97.073, F.S.*<sup>5</sup>

The Division of Elections is required to submit a report to the President of the Senate and the Speaker of the House of Representatives regarding implementation of online voter registration applications no later than January 1, 2016.

The bill appropriates \$1.8 million in nonrecurring funds from the Federal Grants Trust Fund to the Department of State for the development and implementation of the online voter registration system.

#### **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.

---

<sup>5</sup> Section 97.073, F.S., requires a Supervisor of Elections to request any required information missing from the voter registration application

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:****Expenditures; nonrecurring (DHSMV)**

In its agency bill analysis on SB 784 (2014), which was nearly identical to CS/CS/SB 228, the Department of Highway Safety and Motor Vehicles estimated that it will take about 270 nonrecurring programming hours at a cost of \$20,400 to provide verification for the name, date of birth, Florida Driver's license number, or Florida identification card number after voter registration applications are submitted online. The DHSMV has not yet provided an agency bill analysis on CS/SB 228 (2015).

**Expenditures; recurring/nonrecurring (Division of Elections in the Department of State)**

According to the Division of Elections, the cost of developing and operating an online voter registration system is indeterminate, yet likely significant. Based on information from other states, the division projects that development costs could range from \$250,000 to \$1.8 million. The division may also need to enlist the services of experts to ensure that the new system meets nationally accepted accessibility standards for individuals with disabilities.

The bill provides an appropriation of \$1.8 million in nonrecurring funds from the Federal Grants Trust Fund to the Department of State for the development and implementation of the online voter registration system. The trust fund contains unobligated Help America Vote Act (HAVA) federal grant funds awarded annually to states for elections operating costs, including costs to update and maintain voting systems and equipment. The Division of Elections states that the proposed system could negatively disrupt and delay two independent ongoing major multi-year system modernization efforts for the Department of State and DHSMV. The Department of State has initiated plans to update its Florida Voter Registration System (FVRS). DHSMV has completed year 1 of a 5-year plan to rewrite its Driver and Vehicle Identification Database system (DAVID).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 97.0525 of the Florida Statutes.

**IX. Additional Information:**

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

**CS/CS by Appropriations on April 16, 2015:**

The committee substitute provides an appropriation for Fiscal Year 2015-2016 of \$1.8 million in nonrecurring funds from the Federal Grants Trust Fund to the Department of State to implement the bill.

**CS by Ethics and Elections on March 17, 2015:**

The committee substitute differs from the original bill in that:

- Online voter registration applications would begin on October 1, 2017;
- Applicants must have a Florida driver license or a Florida identification card;
- Provides that if the applicant does not have a Florida driver license or Florida identification card, the system must populate the form and direct the applicant to print, sign and date the application and deliver it to the appropriate Supervisor of Elections for disposition pursuant to s. 97.073, F.S.; and
- The Division of Elections is required to submit a report to the President of the Senate and the Speaker of the House of Representatives regarding implementation of online voter registration applications no later than January 1, 2016.

- B. **Amendments:**

None.



950848

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/16/2015	.	
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	.	

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The Committee on Appropriations (Smith) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 90 and 91  
insert:

Section 3. For the 2015-2016 fiscal year, the sum of \$1.8 million in nonrecurring funds from the General Revenue Fund is appropriated to the Department of State to implement this act.

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

And the title is amended as follows:



950848

11           Delete line 14  
12 and insert:  
13           a specified date; providing an appropriation;  
14           providing an effective date.



443378

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
	.	
	.	
	.	

---

The Committee on Appropriations (Smith) recommended the following:

1           **Senate Substitute for Amendment (950848) (with title**  
2 **amendment)**

3  
4           Between lines 90 and 91  
5 insert:

6           Section 3. For the 2015-2016 fiscal year, the sum of \$1.8  
7 million in nonrecurring funds from the Federal Grants Trust Fund  
8 is appropriated to the Department of State to implement this  
9 act.

10



443378

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

12 And the title is amended as follows:

13       Delete line 14

14 and insert:

15       a specified date; providing an appropriation;

16       providing an effective date.

By the Committee on Ethics and Elections; and Senators Clemens  
and Richter

582-02440-15

2015228c1

A bill to be entitled

An act relating to online voter registration; creating s. 97.0525, F.S.; requiring the Division of Elections of the Department of State to develop an online voter registration system; providing application and security requirements; requiring the system to compare information submitted online with Department of Highway Safety and Motor Vehicles records; providing for the disposition of voter registration applications; requiring system compliance with federal accessibility provisions; providing for construction; requiring the division to report to the Legislature regarding online voter registration implementation by a specified date; providing an effective date.

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

Section 1. Section 97.0525, Florida Statutes, is created to read:

97.0525 Online voter registration.-

(1) Beginning October 1, 2017, an applicant may submit an online voter registration application using the procedures set forth in this section.

(2) The division shall establish a secure Internet website to permit an applicant to:

(a) Submit a voter registration application, including first-time voter registration applications and updates to existing voter registration records.

(b) Submit information necessary to establish an

Page 1 of 4

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

582-02440-15

2015228c1

applicant's eligibility to vote, pursuant to s. 97.041, which must include the information required for the uniform statewide voter registration application pursuant to s. 97.052(2).

(c) Swear to the oath required pursuant to s. 97.051.

(3) The division shall establish appropriate technological security measures, including use of a unique identifier for each applicant, to prevent unauthorized persons from altering a voter's registration information.

(4) (a) The online voter registration system shall compare the Florida driver license number or Florida identification number submitted pursuant to s. 97.052(2)(n) with information maintained by the Department of Highway Safety and Motor Vehicles to confirm that the name and date of birth on the application are consistent with the records of the Department of Highway Safety and Motor Vehicles.

(b) If the applicant's name and date of birth are consistent with the records of the Department of Highway Safety and Motor Vehicles, the online voter registration system shall transmit, using the statewide voter registration system maintained pursuant to s. 98.035, the applicant's registration application, along with the digital signature of the applicant on file with the Department of Highway Safety and Motor Vehicles, to the supervisor of elections. The applicant's digital signature satisfies the signature requirement of s. 97.052(2)(q).

(c) If the applicant's name and date of birth cannot be verified by the records of the Department of Highway Safety and Motor Vehicles, or if the applicant indicated that he or she has not been issued a Florida driver license or Florida

Page 2 of 4

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

582-02440-15 2015228c1

59 identification card, the online voter registration system shall  
 60 populate the applicant's information into a printable voter  
 61 registration application pursuant to s. 97.052(2) and direct the  
 62 applicant to print, sign, and date the application and deliver  
 63 the application to the supervisor of elections for disposition  
 64 pursuant to s. 97.073.

65 (5) Upon submission of a completed online voter  
 66 registration application, the website must generate an immediate  
 67 electronic confirmation that the supervisor of elections has  
 68 received the application and provide instructions regarding the  
 69 ability of a registrant to check the status of the application  
 70 thereafter.

71 (6) Except as otherwise provided in this section, the  
 72 supervisor of elections shall process the application pursuant  
 73 to s. 97.053.

74 (7) The online voter registration system must conform to  
 75 nationally accepted standards for accessibility for individuals  
 76 with disabilities, including s. 508 of the Rehabilitation Act of  
 77 1973, s. 255 of the Telecommunications Act of 1996, and the Web  
 78 Content Accessibility Guidelines of the World Wide Web  
 79 Consortium, to ensure equal access for voters with disabilities.

80 (8) A legal distinction may not be made between online  
 81 voter registration under this section and voter registration in  
 82 person, by mail, or by other methods provided by general law.

83 Section 2. No later than January 1, 2016, the Division of  
 84 Elections shall submit a report to the President of the Senate  
 85 and the Speaker of the House of Representatives regarding the  
 86 implementation of online voter registration. In the report, the  
 87 division shall summarize progress to date in implementing online

Page 3 of 4

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

582-02440-15 2015228c1

88 voter registration and expected implementation timeframes, and  
 89 shall propose any further legislation needed to facilitate  
 90 online voter registration.

91 Section 3. This act shall take effect July 1, 2015.

Page 4 of 4

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development, *Vice Chair*  
Banking and Insurance  
Criminal Justice  
Education Pre-K-12  
Ethics and Elections  
Fiscal Policy

### SENATOR JEFF CLEMENS

27th District

April 6, 2015

Senator Tom Lee, Chair  
Committee on Appropriations  
201 The Capitol  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Chair Lee:

I respectfully request that SB 228 – Online Voter Application be added to the agenda for the next Committee on Appropriations meeting.

SB 228 directs the Division of Elections to develop an operational, online voter registration system that is secure and designed to prevent unauthorized use or fraud.

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

Sincerely,

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

Senator Jeff Clemens  
Florida Senate District 27

#### REPLY TO:

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

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

**ANDY GARDINER**  
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)

4/16/15  
Meeting Date

SB 228  
Bill Number (if applicable)

Topic Online voter Registration

Amendment Barcode (if applicable)

Name Christie Burnes

Job Title Legislative Affairs Director

Address 500 S. Bronough St.  
Street

Phone 245-6512

Tallahassee FL 32399  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Dept. of State

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/16/15  
Meeting Date

SB 228  
Bill Number (if applicable)

Topic Online Voter Registration

Amendment Barcode (if applicable)

Name Ken Detzner

Job Title Secretary of State

Address 500 S. Bronough St.  
Street  
Tallahassee FL 32399  
City State Zip

Phone 215-6524

Email

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Dept. of State

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)

4/16/15  
Meeting Date

728  
Bill Number (if applicable)

Topic Voter Registration

Amendment Barcode (if applicable)

Name RON LABASKY

Job Title \_\_\_\_\_

Address 225 S. ADAMS ST.

Phone 222-7718

Street

TALL  
City

FL  
State

32312  
Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FL. STATE ASSOC. OF SUPERVISORS OF ELECTIONS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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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)

4/16/15  
Meeting Date

228  
Bill Number (if applicable)

Topic Online Voter Application

Amendment Barcode (if applicable)

Name Zayne Smith

Job Title ASD

Address 200 W. College Ave

Phone 850 577-5163

Jolly  
City

FL  
State

32301  
Zip

Email zsmith@aarfp.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing AARP

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-16-15

Meeting Date

228

Bill Number (if applicable)

Topic Online voter registration

Amendment Barcode (if applicable)

Name Debbie Harrison Rumberger

Job Title Legislative Liaison

Address 540 Beverly Court

Phone 224-2545

City

State

Zip

Email LWVFadvocacy@gmail.com

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

Waive Speaking: [X] In Support [ ] Against (The Chair will read this information into the record.)

Representing Florida League of Women Voters

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

Lobbyist registered with Legislature: [X] Yes [ ] No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

9/16/2015

Meeting Date

Topic \_\_\_\_\_

Bill Number 228  
*(if applicable)*

Name BRIAN PITTS

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

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

*Street*

SAINT PETERSBURG      FLORIDA      33705

E-mail JUSTICE2JESUS@YAHOO.COM

*City*

*State*

*Zip*

Speaking:     For     Against     Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:     Yes     No

Lobbyist registered with Legislature:     Yes     No

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

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

S-001 (10/20/11)

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

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

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/CS/SB 268

INTRODUCER: Finance and Tax Committee; Regulated Industries Committee; and Senator Stargel and others

SUBJECT: Amusement Games or Machines

DATE: April 15, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Fournier</u>	<u>Diez-Arguelles</u>	<u>FT</u>	<u>Fav/CS</u>
3.	<u>Fournier</u>	<u>Kynoch</u>	<u>AP</u>	<u>Favorable</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 268 creates section 546.10, Florida Statutes, to specify methods for activating amusement games and machines, the award of coupons, points, or prizes, limits upon prize values, and locations authorized for the operation of amusement games and machines. The bill:

- Includes a statement of legislative intent to ensure that provisions regulating amusement games or machines are not subject to abuse or interpreted in any manner as creating an exception to Florida’s general prohibitions against gambling;
- Provides that in addition to the use of a coin, an amusement game may be activated by currency, card (not a credit or debit card), coupon, point, slug, token, or similar device, and is played by application of skill;
- Increases the maximum redemption value of coupons or points a player may receive for a single play of a skill-based game from 75 cents to \$5.25, with a maximum value of 100 times that amount (\$525) for an item of merchandise that may be obtained onsite using accumulated coupons or points won by a player;
- Increases the maximum wholesale cost of merchandise that may be dispensed directly to a player (e.g., “claw” machine) to 10 times that amount (\$52.50). The maximum values will be adjusted annually, based on changes in the consumer price index, beginning January 1, 2018; and
- Provides that amusement machines may be placed not only in arcades or truck stops (as currently authorized), but also in certain timeshare facilities, bowling centers, hotels,

restaurants, on the premises of certain retailers, and on the premises of certain veterans' service organizations.

The Revenue Estimating Conference determined the bill has no impact on state or local revenues.

The bill is effective July 1, 2015.

## II. Present Situation:

In general, gambling is illegal in Florida.<sup>1</sup> Chapter 849, F.S., prohibits keeping a gambling house,<sup>2</sup> running a lottery,<sup>3</sup> or the manufacture, sale, lease, play, or possession of slot machines.<sup>4</sup> Certain exceptions have been authorized, with restrictions on permitted locations, operators, and prizes, including penny-ante games,<sup>5</sup> bingo,<sup>6</sup> cardrooms,<sup>7</sup> charitable drawings,<sup>8</sup> game promotions (sweepstakes),<sup>9</sup> bowling tournaments,<sup>10</sup> and amusement games and machines.<sup>11</sup>

Section 849.161, F.S., provides that gambling laws do not prohibit amusement games or machines that:

- Are activated by insertion of a coin;
- May entitle a player, by application of skill, to receive coupons or points—the cost value of which does not exceed 75 cents on any game played—that may be exchanged onsite for merchandise; and
- Are located at either an arcade amusement center with at least 50 coin-operated amusement games or machines, or at a truck stop.

Current law specifically distinguishes and excludes the following from the exemption for authorized amusement games or machines:

- Casino-style games in which the outcome is determined by factors unpredictable by the player (s. 849.161(1)(a), F.S.);<sup>12</sup>

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<sup>1</sup> Section 849.08, F.S.

<sup>2</sup> Section 849.01, F.S.

<sup>3</sup> Section 849.09, F.S.

<sup>4</sup> Section 849.16, F.S., defines slot machines for purposes of ch. 849, F.S. Section 849.15(2), F.S., provides an exemption to the transportation of slot machines for the facilities that are authorized to conduct slot machine gaming under ch. 551, F.S.

<sup>5</sup> Section 849.085, F.S. Section 849.085(2)(a), F.S., provides that “[p]enny-ante game” means a game or series of games of poker, pinochle, bridge, rummy, canasta, hearts, dominoes, or mah-jongg in which the winnings of any player in a single round, hand, or game do not exceed \$10 in value.”

<sup>6</sup> Section 849.0931, F.S.

<sup>7</sup> Section 849.086, F.S.

<sup>8</sup> Section 849.0935, F.S.

<sup>9</sup> Section 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.

<sup>10</sup> Section 849.141, F.S.

<sup>11</sup> Section 849.161, F.S.

<sup>12</sup> In *Deeb v. Stoutamire*, 53 So.2d 873, 874 (Fla. 1951), in a challenge that a miniature bowling alley game was a slot machine, the Florida Supreme Court distinguished the characteristics “which we think differentiate an innocent machine, vending amusement or entertainment, from a guilty one affording a means of gambling,” and held that the element of unpredictability “must be inherent in the machine.” Slot machines were defined as devices that operated, as a result of the insertion of a coin, based on “any element of chance” or other outcome unpredictable by the player, and allowed the player to receive any “thing of value.” The Court determined that the element of unpredictability “is not supplied because a player may

- Games in which the player does not control the outcome through skill (s. 849.161(1)(a), F.S.);
- Any game or device defined as a gambling device<sup>13</sup> in 15 U.S.C. s. 1171,<sup>14</sup> unless excluded under s. 1178 (s. 849.161(4), F.S.);<sup>15</sup> or
- Video poker games or any other game or machine that may be construed as a gambling device under Florida law (s. 849.161(4), F.S.).

Section 212.02(24), F.S., defines coin-operated amusement games as those operated by coin, slug, token, coupon, or similar device “for the purposes of entertainment or amusement.” Accordingly, operators<sup>16</sup> of coin-operated pinball machines, music machines, juke boxes, mechanical games, video games, arcade games, billiard tables, moving picture viewers, shooting

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not be sure what score he can accomplish.” In addressing whether a device would be removed from a “standing of respectability and legality to one of one-armedbanditry,” the Court stated “[w]e all know full well the vicious devices the cited statute [s. 849.16, F.S.] was calculated to destroy, but we know also that a too drastic and intolerant interpretation of an act of this kind may well result in undermining its true and lofty purpose.” *Id.* at 875. The Court reversed the trial court’s decision, as the amusement device at issue was not a prohibited slot machine. *Id.*

<sup>13</sup> In 1952, a “digger machine” in which a player inserted a coin for an opportunity to pick up prizes enclosed in a case by means of a mechanical claw, was found to be a prohibited “gambling device” within the provisions of 15 U.S.C. s. 1171 - s. 1178 (titled “An Act to prohibit transportation of gambling devices in interstate and foreign commerce” which was approved January 2, 1951 (ch. 1194, 64 Stat. 1134) (the “1951 Gambling Devices Act”). The machine was a prohibited gambling device because it was a game of chance. *See U.S. v. 10, More or Less, Digger Machines*, 109 F. Supp. 825, 827 (E.D. Mo. 1952), where the court stated: “This device impresses this Court as a machine, subject to and cunningly equipped, providing just enough control in the customer to entice those who attend carnivals and street fairs to try to get something for comparatively nothing, under the illusion that it is a game of skill and not one of chance. They are on display for the enticement, not of experts with years of experience, but for the usual carnival frequenter. They are in fact and for all practical purposes, i. e. profit to owner and loss to operator or public, a game of chance.” The evidence showed that at a certain point, before a prize was won, the machine proceeded “on its own power independent of” any action by the player or ability of the player to control it.

<sup>14</sup> The 1951 Gambling Devices Act (see note 13 supra) was amended by Public Law 87-840, the Gambling Devices Act of 1962 (the “Gambling Devices Act”). The term “gambling device” in Section 2 was modified to refer to devices including but not limited to roulette wheels and similar devices “designed and manufactured primarily” for gambling, and which may deliver or entitle a player to money or property as the result of the application of chance. The phrase “operation by means of insertion of a coin, token, or similar object” was deleted from the definition of “gambling devices.” These three categories of machines or devices were excluded entirely from the provisions of the Gambling Devices Act:

1. Pari-mutuel betting machinery for use at a racetrack;
2. A coin-operated bowling alley, a shuffleboard, marble machine or pinball machine, or mechanical gun, if they are not designed and manufactured primarily for gambling, and which when operated do not deliver, as the result of the application of chance, any money or property, or entitle a person to receive any money or property as the result of the application of chance; and
3. Any so-called claw, crane, or digger machine and similar devices which are not operated by coin, are actuated by a crank, and are designed and manufactured primarily for use at carnivals or county or state fairs.

The amusement games or machines that are not designed and manufactured primarily for gambling, and deliver or entitle a player to receive money or property as the result of the application of skill rather than by chance, are not intended to come within any of the provisions of the Gambling Devices Act.

<sup>15</sup> Gambling devices such as slot machines are addressed in ch. 551, F.S. In s. 849.15(2), F.S., the Legislature has determined that those counties in Florida where slot machine gaming is authorized pursuant to ch. 551, F.S., are exempt from the provisions of Section 2 of the Gambling Devices Act. *See* s. 849.15(2), F.S. *See* s. 849.231, F.S., for provisions related to the manufacture, sale, purchase, or possession of gambling devices in Florida.

<sup>16</sup> For purposes of the payment of taxes on the use of amusement machines, “operator” means “any person who possesses a machine to generate sales through it and is responsible for removing receipts from it. *See* s. 212.05(1)(h)2., F.S.

galleries, and all other similar amusement devices, must pay for and conspicuously display a certificate authorizing the operation of a specified number of machines.<sup>17</sup>

A four percent tax is imposed on charges for the use of coin-operated amusement machines.<sup>18</sup> If a machine is activated by a slug, token, coupon, or any similar device which has been purchased by a user, the four percent tax is imposed on the purchase price amount.<sup>19</sup>

Section 849.21, F.S., provides that any person may petition in circuit court for a writ of injunction against a nuisance created through the use, manufacture, ownership, storage, possession, sale, lease, transport, or operation of a “slot machines or device” outside of eligible facilities.<sup>20</sup> Current law also provides that no bond is required when petitioning for a temporary injunction and that the judge may issue a restraining order to prevent removal or interference with the offending equipment.

In March 2013, a three-year, multi-state, multi-agency investigation into the operations of illegal gambling at so-called internet cafes affiliated with Allied Veterans of the World concluded with the arrest of 57 people.<sup>21</sup> Charges included racketeering and money laundering.<sup>22</sup> Recently, the Manatee County Sheriff’s seized 500 illegal gambling devices at multiple locations.<sup>23</sup>

During the 2013 Regular Legislative Session, Ch. 2013-2, Laws of Florida was enacted. This bill made several changes to s. 849.0935, F.S., s. 849.094, F.S., s. 849.16, F.S., and s. 849.161, F.S., to address the growing problem of casino-style internet cafes and senior arcades that existed in many parts of Florida. The definition of slot machine in s. 849.16(1), F.S. was amended to include operation by a user “whether by application of skill or by reason of any element of chance or of any other outcome of such operation unpredictable by the user him or her” . . . .<sup>24</sup>

After the 2013 Regular Legislative Session, third parties cited s. 849.21, F.S., in petitions for injunctions against amusement arcades, including Chuck E. Cheese’s, Dave & Buster’s, and Festival Fun Parks (Boomers!). Two cases remain pending.<sup>25</sup>

<sup>17</sup> See s. 212.05(1)(h)3.a. and b., F.S. Each certificate is non-transferrable and specifies the maximum number of machines authorized to be operated for each location. A certificate must be obtained before machines are first operated in the state and by July 1 of each year thereafter. The annual fee is based on the number of machines multiplied by \$30.

<sup>18</sup> See s. 212.05(1)(h)1, F.S. for the method of calculation.

<sup>19</sup> *Id.*

<sup>20</sup> See ss. 849.15 to 849.23, F.S.; however, such activities respecting slot machines located in or destined for certain eligible pari-mutuel facilities defined in ss. 551.102, F.S., or the facilities of manufacturers or distributors as provided in s. 551.109(2)(a), F.S., are not prohibited nuisances, and are regulated under ch. 551, F.S.

<sup>21</sup> Mary Ellen Klas, *Bill Banning Internet Cafes Becomes Law in Florida*, Governing, (April 11, 2013), available at <http://www.governing.com/news/state/mct-bill-banning-internet-cafes-becomes-law-in-florida.html> (last visited Mar. 20, 2015).

<sup>22</sup> Arrests From The Allied Veterans of the World Investigation, available at <http://jacksonville.com/content/arrests-allied-veterans-world-investigation#slide-1> (last visited Mar. 20, 2015).

<sup>23</sup> See [http://www.bradenton.com/2015/03/16/5694034\\_sheriff-thousands-of-dollars-hundreds.html?rh=1](http://www.bradenton.com/2015/03/16/5694034_sheriff-thousands-of-dollars-hundreds.html?rh=1) (last visited Mar. 20, 2015).

<sup>24</sup> See Section 4, ch. 2013-2, Laws of Fla.

<sup>25</sup> The two pending cases are *Nebb v. CEC Entertainment, Inc., d/b/a Chuck E. Cheese*, Case No. CACE-13-024356 (03), Broward County Circuit Court and *DeVarona v. Dave & Buster’s*, Case No. CACE-13-016547 (09), Broward County Circuit Court. The case styled *Forst v. Festival Fun Parks, LLC*, Case No. 2013 CA 010200 AB, Palm Beach County Circuit Court, was directed to be administratively closed by the Court on January 20, 2015.

### III. Effect of Proposed Changes:

**Section 1** creates s. 546.10, F.S. The new section of law provides legislative intent respecting regulation of the operation of skill-based amusement games or machines at limited locations, in order to prevent expansion of casino-style gambling. The bill states the compelling state interest for clarifying the operation and use of amusement games or machines is to ensure that amusement games or machines are not subject to abuse or interpreted in any manner as creating an exception to Florida's general prohibitions against gambling. Additionally, the bill expands the definition of "amusement game or machine," to include not only coin-operated machines, but also machines activated by insertion of currency, cards, coupons, points, slugs, tokens, or similar devices. The definition includes the current law provision that the amusement machine be operated for the entertainment of the general public.

The bill includes the current law provisions that the term "amusement machine or game" does not include any game or machine that uses mechanical slot reels, video depictions of slot machine reels or symbols, or video simulations or video representations of any other casino game, including, but not limited to, any banked or banking card game, poker, bingo, pull-tab, lotto, roulette, or craps; or "games in which the player does not control the outcome of the game through skill." The bill goes beyond the current definition of amusement machine by including language from s. 849.161(1), F.S., providing that the term does not include:

- Video poker games or any other game or machine that may be construed as a gambling device under Florida law; or
- Any game or device defined as a gambling device in 15 U.S.C. s. 1171, unless excluded under s. 1178.<sup>26</sup>

In newly-created s. 546.10(3)(b), F.S., the bill includes the current-law definition in s. 849.161(1)(b), F.S., for "arcade amusement center."

The bill defines "card" to mean a card other than a credit card or debit card which:

- Is used to activate an amusement game or machine;
- Contains a microprocessor chip, magnetic stripe, or other means for storing, retrieving, and transferring information, including information regarding coupons or points that are won and may be redeemed for merchandise;
- Is prefunded; and
- Is diminished by the cost of play, to reduce the prefunded value.

**Prohibition against material element of chance inherent in amusement games**—The bill enumerates indicators of the existence of a prohibited "material element of chance" inherent in an amusement game. The phrase "material element of chance inherent in the game or machine" means any of the following:

- The possibility that a player will win the game is determined by prior wins or prior losses of players (outside influence that affects the win);
- The outcome of a game is not based solely on the player achieving the object of the game or on how much the player scores (outside influence that varies the result);

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<sup>26</sup> See *supra* note 13.

- The number of the coupons or points awarded, or the value of the prize awarded, for successfully playing the game can be controlled by a source other than the player or players playing the game (outside influence that varies the result);
- The ability of the player to win is determined by a game feature or design that changes the effect of the player's actions and that is not discernible or known by the player (outside influence that varies the result);
- The accomplishment of the player's task requires the exercise of a skill that no player could exercise (outside influence that varies the result);
- A computer-based or mechanical random number generator or other factor that is not discernible, known, or predictable by the player determines the outcome or winner of the game (outside influence varies the result); and
- The game is designed or adapted with a control device to allow manipulation of the game by the operator, to prevent a player from winning or to predetermine which player will win (outside influence that varies the result).

In newly-created s. 546.10(5), F.S., the bill addresses the requirements for Type 1 amusement machines respecting the award to a player of free replays, redeemable coupons or points, accumulation and redemption of coupons and points for onsite merchandise. In s. 546.10(6), F.S., the bill sets out the requirements for Type 2 amusement machines (claw/crane machines), and the prizes that may be dispensed directly from that type of amusement machine.

**Free replays**—Under new s. 546.10(5), F.S., a Type 1 amusement machine may allow a player (by application of skill) to win free replays. The provisions in current law that an amusement machine cannot accumulate more than 15 free replays or make a permanent record of free replays are retained. The bill adds that winning a free replay may not entitle the player to receive any merchandise or a coupon or point that may be exchanged for merchandise, and a free replay may not be exchanged for anything of value. There are no replays in Type 2 (claw/crane machine) games; a prize is either won or not.

**Authorized locations of Type 1 amusement machines that dispense coupons or points to players to redeem for onsite merchandise**—Under section 1 of the bill, a Type 1 amusement machine allows a player (by application of skill), to receive coupons or points that can be redeemed onsite for merchandise, subject to the following conditions:

- The amusement machine is located at a timeshare facility as defined in s. 721.05(17), F.S., a hotel or restaurant; or an arcade amusement center, a bowling center, or a truck stop if the owner or operator of the premises has a current license issued by DBPR pursuant to ch. 509, F.S., or chs. 561-568, F.S.
- Coupons or points have no value other than for redemption onsite for merchandise;
- The redemption value<sup>27</sup> of coupons or points a person receives for a single game played does not exceed the maximum value specified in subsection (8), which is set at \$5.25 initially and adjusted for inflation annually; and
- The redemption value of coupons or points a person receives for playing multiple games simultaneously or competing against others in a multi-player game, does not exceed the maximum value specified in subsection (8).

<sup>27</sup> The bill defines "redemption value" as the imputed value of coupons or points, based on the wholesale cost of merchandise for which those coupons or points may be redeemed. *See* s. 849.161(1)(e), F.S.

**Authorized locations of Type 2 amusement machines that dispense direct merchandise from the machine to players**—A Type 2 amusement machine allows a player (by application of skill), to receive merchandise directly,<sup>28</sup> subject to the following conditions:

- The wholesale cost of the merchandise may not exceed 10 times the maximum value specified in subsection (8) (\$5.25).
- The amusement machine is located at a timeshare facility as defined in s. 721.05(17), F.S., an arcade amusement center, truck stop, bowling center, hotel, restaurant, or on the premises of a retailer as defined in s. 212.02, F.S.; or the premises of a veterans' service organization granted a federal charter, or a division, department, post, or chapter of such organization, for which an alcoholic beverage license has been issued.

**Merchandise and Maximum Value**—The bill amends the definition of “merchandise” to specifically exclude not only (1) cash equivalents (gift cards and certificates)<sup>29</sup> and (2) alcoholic beverages, but also (3) coins, cards, coupons, points, slugs, tokens, or similar devices that can be used to activate a skill-based game, and (4) coupons or points with a redemption value higher than the maximum legal value. The maximum value is currently 75 cents, but is proposed to be adjusted for inflation to \$5.25, with annual adjustments by the Department of Revenue<sup>30</sup> beginning January 1, 2018. Merchandise must be maintained on the premises by the operator of the amusement machine.

- For Type 1 amusement machines, the maximum value of coupons or points a player may receive for a single play of a skill-based game is increased from 75 cents to \$5.25, with a maximum value of 100 times that amount (\$525) for an item of merchandise that may be obtained onsite using accumulated coupons or points won by a player; and
- For Type 2 amusement machines, the maximum wholesale cost of merchandise that may be dispensed directly to a player (from a claw/crane machine) is increased to 10 times the amount specified in s. 546.10(8), F.S. (*i.e.*, \$52.50).

Section 546.10(8), F.S., provides that the maximum value on the redemption value of coupons or points is set at \$5.25 initially and adjusted for inflation annually. The bill provides that the Department of Revenue will annually adjust the maximum value based on the change in the Consumer Price Index for All Urban Consumers, U.S. City Average. The maximum value will remain at \$5.25 until the initial adjustment to the maximum value is effective January 1, 2018. The adjusted maximum value will be published in a brochure accessible from the Department of Revenue's website relating to sales and use tax on amusement machines.<sup>31</sup>

<sup>28</sup> An amusement machine that dispenses merchandise with “an unpredictable outcome or chance which is inherent in the machine” qualifies as a slot machine. *See* Fla. AGO 1989-05 (January 27, 1989), in which s. 849.161, F.S., “makes Ch. 849, F.S., inapplicable to “arcade amusement centers” with amusement machines “which by application of skill entitle the person playing to receive coupons or points which may be exchanged for merchandise only . . . .” *Id.* at footnote 4.

<sup>29</sup> Section 501.95(1)(b), F.S., defines “gift certificate” as “a certificate, gift card, stored value card, or similar instrument purchased for monetary consideration when the certificate, card, or similar instrument is redeemable for merchandise, food, or services regardless of whether any cash may be paid to the owner of the certificate, card, or instrument as part of the redemption transaction, but this term shall not include tickets as specified in s. 717.1355 or manufacturer or retailer discounts and coupons.”

<sup>30</sup> *See* s. 546.10(8) in Section 1 of the bill.

<sup>31</sup> The current web address for the Department of Revenue's publication relating to sales and use tax on amusement machines available at <http://dor.myflorida.com/dor/forms/current/gt800020.pdf> (last visited Mar. 20, 2015).

Section 1 of the bill provides that, notwithstanding any other provision of law, actions to enjoin the operation of any game or machine for an alleged violation of s. 546.10, F.S., or of ch. 849, F.S., respecting gambling, may be brought only by the following parties:

- The Attorney General;
- The state attorney of the circuit where the amusement machine is located;
- Any federally recognized tribal government with sovereign powers and rights of self-government that is a party to a compact with the state;
- The Department of Agriculture and Consumer Services or the Department of Business and Professional Regulation, in the case of a duty to enforce an alleged violation of law;
- Any substantially affected person<sup>32</sup> who is a resident of the county where the place of business operating the game is located; or
- Any substantially affected person who has a business or residence within five miles of the place of business operating the game or machine.

The penalties for violation of the requirements for the operation of amusement games or machines mirror those the penalties in existing law that may be imposed upon violators of ch. 849, F.S., regarding gambling, as follows:

- A conviction on a first offense is a second degree misdemeanor (jail time not more than 60 days; up to \$500 fine);
- A second conviction is a first degree misdemeanor (jail time not more than one year; up to \$1,000 fine);
- After two convictions, the third conviction is a third degree felony (jail time not more than five years; up to \$5,000 fine), but an enhancement in sentencing is possible (jail time up to 10 years) but only if the court finds the violator is an habitual felony offender after a second felony conviction, and the court finds it is necessary to do so for the protection of the public.

In addition, all other civil, administrative, and criminal sanctions, may be imposed against violators who do not comply with the requirements for operation of amusement games or machines.

The bill includes editorial revisions and technical changes to conform to bill drafting conventions.

**Section 2** updates a cross reference in s. 551.102, F.S., defining slot machines.

**Section 3** repeals s. 849.161, F.S.

**Section 4** of the bill provides for an effective date of July 1, 2015.

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<sup>32</sup> Substantially affected persons must have a substantial interest in the outcome of the proceeding, must show that an injury in fact has or will occur, and that the injury is of a type that the proceeding is designed to protect. *See Agrico Chemical Co. v. Dep't of Env. Reg.*, 406 So.2d 478, 483 (Fla 2d DCA 1981).

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

The Revenue Estimating Conference determined that CS/CS/SB 268 has no impact on state or local revenues.

## B. Private Sector Impact:

The law currently requires registration with the Department of Revenue of (a) all amusement machine operators as defined in s. 212.05(1)(h)2., F.S., and (b) all amusement machines by location. CS/CS/SB 268 retains the requirement that amusement game or machine operators must comply with those registration requirements and pay the associated fees for such registration.

## C. Government Sector Impact:

According to the Department of Revenue, annually calculating an adjusted cap on the per-game cost of merchandise awarded or exchanged for points awarded from an amusement machine will have an insignificant impact on the department.<sup>33</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends section 551.102 of the Florida Statutes.

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<sup>33</sup> Department of Revenue, *Senate Bill 268 Fiscal Analysis* (Jan. 15, 2015) (on file with the Senate Committee on Finance and Tax).

This bill creates section 546.10 of the Florida Statutes.

This bill repeals section 849.161 of the Florida Statutes.

## **IX. Additional Information:**

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

### **CS/CS by Finance and Tax on March 30, 2015:**

CS/CS/SB 268 adds timeshare facilities as defined in s. 712.05(17), F.S., to the list of allowable locations for Type 1 and Type 2 amusement games, and changes the definition of “card” used to activate an amusement game to allow for a card whose value does not diminish upon each activation. This change allows the use of cards that are prefunded for some fixed period of time.

### **CS by Regulated Industries on March 18, 2015:**

CS/SB 268 creates s. 546.01, F.S., respecting amusement games or machines operated for the entertainment of the general public (amusement machines). Existing s. 849.161, F.S., exempting amusement machines from the provisions of ch. 849, F.S., is repealed. The definition of slot machine in s. 551.102, F.S., is amended to conform the related cross reference.

The committee substitute includes a statement of legislative intent respecting regulation of the operation of skill-based amusement machines at limited locations, in order to prevent expansion of casino-style gambling and to ensure that the provisions regulating amusement machines are not subject to abuse or interpreted in any manner as an exception to the prohibitions against gambling.

The committee substitute updates activation methods for amusement machines; in addition to coins, a prefunded card (excluding a credit card or debit card) may activate amusement machines if the prefunded value is diminished upon each activation by the cost of play.

The committee substitute describes factors indicating the existence of a “material element of chance inherent in a game or machine” that is prohibited in an amusement machine. The committee substitute provides that the term “random number generators” includes mechanical random number generators as well as those that are computer-based.

A distinction is made between Type 1 amusement machines that issue coupons or points to winning players that may be accumulated or redeemed by players in exchange for merchandise obtained onsite, or that grant the right to limited replays of the game without additional payment by the player, and Type 2 amusement machines that allow a player to manipulate a claw or similar device within a closed space (claw/crane game) to receive merchandise directly from the amusement machine. References in subparagraphs (5) and (6) of the bill to “the application of skill” were deleted, as that phrase appears in the definition of “amusement game or machine” in subsection (3).

The committee substitute authorizes the following entities in addition to the arcade amusement centers and truck stops already authorized in existing law, to have Type 1 and Type 2 amusement machines on their premises under certain conditions:

- Bowling centers with a minimum of 12 bowling lanes; and
- Public food and lodging establishments licensed by the Department of Business and Professional Regulation.

The committee substitute authorizes retailers, and qualified veterans' service organizations that have been issued an alcoholic beverage license, to have Type 2 amusement machines (claw/crane machines) on their premises.

The committee substitute updates the redemption value of coupon or points received for a single game played on a Type 1 amusement game from 75 cents to \$5.25 (the maximum value), and limits the maximum wholesale cost of merchandise that may be obtained by redeeming coupons or points to \$525 (100 times the maximum value of \$5.25).

The committee substitute limits the prize value for Type 2 amusement machines (claw/crane machines) to \$5.25, and limits the maximum whole cost of prizes that may be obtained directly from Type 2 games to \$52.50 (10 times the maximum value of \$5.25).

The committee substitute adds to the definition of "merchandise" that prizes be maintained on the premises of the operator of the amusement games or machines, and all references to "onsite" merchandise are deleted. Uses of the term "wholesale value" were conformed to "wholesale cost" for uniformity.

The maximum value amount will be adjusted annually by the Department of Revenue, based on changes in the consumer price index, beginning January 1, 2018.

The committee substitute provides that in addition to the criminal penalties set forth in the bill (which are identical to those in s. 849.23, F.S.), all other civil, administrative, and criminal sanctions may be imposed against violators who do not comply with the requirements for operation of amusement games or machines.

**B. Amendments:**

None.

By the Committees on Finance and Tax; and Regulated Industries;  
and Senators Stargel, Latvala, and Abruzzo

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1 A bill to be entitled  
2 An act relating to amusement games or machines;  
3 creating s. 546.10, F.S.; providing legislative  
4 findings; defining terms and phrases; authorizing an  
5 amusement game or machine to be operated with  
6 specified requirements; providing requirements for  
7 classifying such a device as a Type 1 or a Type 2  
8 amusement game or machine; providing that amusement  
9 games or machines may only be located at specified  
10 locations; specifying the maximum value on the  
11 redemption value of a coupon or a point; requiring the  
12 Department of Revenue to annually adjust the maximum  
13 value; providing a formula for the adjustment of the  
14 maximum value; requiring the department to publish the  
15 amount of the adjusted maximum value; authorizing  
16 certain persons or entities to enjoin the operation of  
17 an amusement game or machine; providing penalties;  
18 amending s. 551.102, F.S.; conforming a cross-  
19 reference; repealing s. 849.161, F.S., relating to  
20 amusement games or machines; providing an effective  
21 date.  
22  
23 Be It Enacted by the Legislature of the State of Florida:  
24  
25 Section 1. Section 546.10, Florida Statutes, is created to  
26 read:  
27 546.10 Amusement games or machines.-  
28 (1) The Legislature finds that regulation of the operation  
29 of skill-based amusement games or machines at specified

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30 locations to ensure compliance with the requirements of law is  
31 appropriate to prevent expansion of casino-style gambling.  
32 (2) Therefore, the Legislature finds that there is a  
33 compelling state interest in clarifying the operation and use of  
34 amusement games or machines to ensure that provisions regulating  
35 these devices are not subject to abuse or interpreted in any  
36 manner as creating an exception to the state's general  
37 prohibitions against gambling.  
38 (3) As used in this section, the term:  
39 (a) "Amusement game or machine" means a game or machine  
40 operated only for the bona fide entertainment of the general  
41 public which a person activates by inserting or using currency  
42 or a coin, card, coupon, slug, token, or similar device, and, by  
43 the application of skill, with no material element of chance  
44 inherent in the game or machine, the person playing or operating  
45 the game or machine controls the outcome of the game. The term  
46 does not include:  
47 1. Any game or machine that uses mechanical slot reels,  
48 video depictions of slot machine reels or symbols, or video  
49 simulations or video representations of any other casino game,  
50 including, but not limited to, any banked or banking card game,  
51 poker, bingo, pull-tab, lotto, roulette, or craps.  
52 2. A game in which the player does not control the outcome  
53 of the game through skill or a game where the outcome is  
54 determined by factors not visible, known, or predictable to the  
55 player.  
56 3. A video poker game or any other game or machine that may  
57 be construed as a gambling device under the laws of this state.  
58 4. Any game or device defined as a gambling device in 15

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59 U.S.C. s. 1171, unless excluded under s. 1178.

60 (b) "Arcade amusement center" means a place of business  
 61 having at least 50 amusement games or machines on premises which  
 62 is operated for the entertainment of the general public and  
 63 tourists as a bona fide amusement facility.

64 (c) "Card" means a card other than a credit card or debit  
 65 card which is used to activate an amusement game or machine;  
 66 which contains a microprocessor chip, magnetic stripe, or other  
 67 means for storing, retrieving, and transferring information,  
 68 including information regarding coupons or points that are won  
 69 and that may be redeemed for merchandise; which is prefunded;  
 70 and for which the prefunded value is diminished by the cost of  
 71 play.

72 (d) "Game played" means the event beginning with the  
 73 activation of the amusement game or machine and ending when the  
 74 results of play are determined without the insertion or the use  
 75 of any additional currency, coin, card, coupon, slug, token, or  
 76 similar device to continue play. A free replay is not a separate  
 77 game played.

78 (e) The phrase "material element of chance inherent in the  
 79 game or machine" means any of the following:

80 1. The possibility of the player succeeding at the game or  
 81 accomplishing the player's task is determined by the number or  
 82 ratio of prior wins or prior losses of players playing the game.

83 2. An award of value is not based solely on the player  
 84 achieving the object of the game or on the player's score.

85 3. The number of the coupons or points awarded or the value  
 86 of the prize awarded for successfully playing the game can be  
 87 controlled by a source other than the player or players playing

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88 the game.

89 4. The ability of the player to succeed at the game is  
 90 determined by a game feature or design that changes the effect  
 91 of the player's actions and that is not discernible or known by  
 92 the player.

93 5. The accomplishment of the player's task requires the  
 94 exercise of a skill that no player could exercise.

95 6. A computer-based or mechanical random number generator  
 96 or other factor that is not discernible, known, or predictable  
 97 by the player determines the outcome or winner of the game.

98 7. The game is designed or adapted with a control device to  
 99 allow manipulation of the game by the operator in order to  
 100 prevent a player from winning or to predetermine which player  
 101 will win.

102 (f) "Merchandise" means noncash prizes maintained on the  
 103 premises by the operator of the amusement game or machine,  
 104 including toys and novelties. The term does not include:

105 1. A cash equivalent, such as a gift card or certificate.

106 2. An alcoholic beverage.

107 3. A card, coupon, point, slug, token, or similar device  
 108 that can be used to activate an amusement game or machine.

109 4. A coupon or a point that has a redemption value greater  
 110 than the maximum value determined under subsection (8).

111 5. Any prize or other item, if the exchange or conversion  
 112 to cash or a cash equivalent is facilitated or permitted by the  
 113 owner or operator of the game or machine.

114 (g) "Redemption value" means the imputed value of a coupon  
 115 or a point, based on the wholesale cost of merchandise for which  
 116 the individual may redeem the coupon or point.

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117 (h) "Truck stop" means a dealer registered pursuant to  
 118 chapter 212, excluding a marina, which:  
 119 1. Declares the sale of diesel fuel to be its primary fuel  
 120 business; and  
 121 2. Operates at least six functional diesel fuel pumps.  
 122 (4) Notwithstanding any other provision of law, an  
 123 amusement game or machine may be operated as provided in this  
 124 section.  
 125 (5) A Type 1 amusement game or machine is an amusement game  
 126 or machine that may entitle or enable a person to:  
 127 (a) Replay the game or device without the insertion or the  
 128 use of any additional currency, coin, card, coupon, slug, token,  
 129 or similar device, if:  
 130 1. The amusement game or machine can accumulate and react  
 131 to no more than 15 such replays;  
 132 2. The amusement game or machine can be discharged of  
 133 accumulated replays only by reactivating the game or device for  
 134 one additional play for each accumulated replay;  
 135 3. The amusement game or machine cannot make a permanent  
 136 record, directly or indirectly, of any free replay;  
 137 4. The amusement game or machine does not entitle the  
 138 player to receive any merchandise or a coupon or a point that  
 139 may be redeemed for merchandise;  
 140 5. An unused free replay may not be exchanged for anything  
 141 of value, including merchandise or a coupon or a point that may  
 142 be redeemed for merchandise; and  
 143 6. The amusement game or machine does not contain any  
 144 device that awards a credit and contains a circuit, meter, or  
 145 switch capable of removing and recording the removal of a credit

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146 if the award of a credit is dependent upon chance; or  
 147 (b) Receive a coupon or a point that may only be redeemed  
 148 for merchandise, if:  
 149 1. The coupon or point has no value other than for  
 150 redemption for merchandise;  
 151 2. The redemption value of the coupon or point a person  
 152 receives for a single game played does not exceed the maximum  
 153 value determined under subsection (8). However, a player may  
 154 accumulate coupons or points to redeem for merchandise if there  
 155 is no single item of merchandise which has a wholesale cost of  
 156 more than 100 times the maximum value determined under  
 157 subsection (8), or for a prize consisting of more than one item,  
 158 unit, or part, if the aggregate wholesale cost of all items,  
 159 units, or parts does not exceed 100 times the maximum value  
 160 determined under subsection (8); and  
 161 3. The redemption value of coupons or points that a person  
 162 receives for playing multiple games simultaneously or competing  
 163 against others in a multiplayer game does not exceed the maximum  
 164 value determined under subsection (8).  
 165 (6) A Type 2 amusement game or machine is an amusement game  
 166 or machine that allows the player to manipulate a claw or  
 167 similar device within an enclosure and entitles or enables a  
 168 person to receive merchandise directly from the game or machine,  
 169 if the wholesale cost of the merchandise does not exceed 10  
 170 times the maximum value determined under subsection (8).  
 171 (7) (a) A Type 1 amusement game or machine may only be  
 172 located at:  
 173 1. A timeshare facility as defined in s. 721.05(17);  
 174 2. A public lodging establishment or public food service

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175 establishment licensed pursuant to chapter 509;

176 3. The following premises, if the owner or operator of the  
 177 premises has a current license issued by the Department of  
 178 Business and Professional Regulation pursuant to chapter 509 or  
 179 chapters 561-568:

180 a. An arcade amusement center;

181 b. A bowling center, as defined in s. 849.141; or

182 c. A truck stop.

183 (b) A Type 2 amusement game or machine may only be located

184 at:

185 1. A timeshare facility as defined in s. 721.05(17);

186 2. An arcade amusement center;

187 3. A bowling center, as defined in s. 849.141;

188 4. The premises of a retailer, as defined in s. 212.02;

189 5. A public lodging establishment or public food service  
 190 establishment licensed pursuant to chapter 509;

191 6. A truck stop; or

192 7. The premises of a veterans' service organization granted  
 193 a federal charter under Title 36, United States Code, or a  
 194 division, department, post, or chapter of such organization, for  
 195 which an alcoholic beverage license has been issued.

196 (8) For purposes of this section, the "maximum value" is  
 197 \$5.25. Beginning September 30, 2017, and annually thereafter,  
 198 the Department of Revenue shall calculate the maximum value as  
 199 adjusted by the rate of inflation for the 12 months before  
 200 September 1, rounded to the nearest 5 cents. In calculating the  
 201 adjusted maximum value, the department shall multiply the prior  
 202 maximum value by one plus the percentage change in the Consumer  
 203 Price Index for All Urban Consumers, U.S. City Average, All

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204 Items, not seasonally adjusted, or a successor index as  
 205 calculated by the United States Department of Labor. Each  
 206 adjusted maximum value shall take effect on the following  
 207 January 1, with the initial adjusted maximum value to take  
 208 effect on January 1, 2018. Beginning October 15, 2017, and  
 209 annually thereafter, the department shall publish the maximum  
 210 value, as adjusted, in a brochure accessible from its website  
 211 relating to sales and use tax on amusement machines. If the  
 212 release of the August Consumer Price Index for All Urban  
 213 Consumers occurs after September 15, in any given year, the  
 214 department shall publish the adjusted maximum value within 30  
 215 calendar days after the release date.

216 (9) Notwithstanding any other provision of law, an action  
 217 to enjoin the operation of any game or machine pursuant to or  
 218 for an alleged violation of this section or chapter 849 may be  
 219 brought only by:

220 (a) The Attorney General, the state attorney for the  
 221 circuit in which the game or machine is located, any federally  
 222 recognized tribal government possessing sovereign powers and  
 223 rights of self-governance which is a party to a compact with the  
 224 state, or in the case of an alleged violation of statutes that  
 225 it is charged with enforcing, the Department of Agriculture and  
 226 Consumer Services or the Department of Business and Professional  
 227 Regulation; or

228 (b) Any substantially affected person who is a resident of  
 229 the county where the place of business operating the game or  
 230 machine is located, or any substantially affected person who has  
 231 a business or residence within 5 miles of the place of business  
 232 operating the game or machine.

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233 (10) In addition to other civil, administrative, and  
 234 criminal sanctions, any person who violates this section shall,  
 235 upon conviction, be guilty of a misdemeanor of the second  
 236 degree, punishable as provided in s. 775.082 or s. 775.083. Any  
 237 person convicted of violating this section a second time shall,  
 238 upon conviction, be guilty of a misdemeanor of the first degree,  
 239 punishable as provided in s. 775.082 or s. 775.083. Any person  
 240 who violates any provision of this section after having been  
 241 twice convicted shall be deemed a common offender and shall be  
 242 guilty of a felony of the third degree, punishable as provided  
 243 in s. 775.082, s. 775.083, or s. 775.084.

244 Section 2. Subsection (8) of section 551.102, Florida  
 245 Statutes, is amended to read:

246 551.102 Definitions.—As used in this chapter, the term:

247 (8) "Slot machine" means any mechanical or electrical  
 248 contrivance, terminal that may or may not be capable of  
 249 downloading slot games from a central server system, machine, or  
 250 other device that, upon insertion of a coin, bill, ticket,  
 251 token, or similar object or upon payment of any consideration  
 252 whatsoever, including the use of any electronic payment system  
 253 except a credit card or debit card, is available to play or  
 254 operate, the play or operation of which, whether by reason of  
 255 skill or application of the element of chance or both, may  
 256 deliver or entitle the person or persons playing or operating  
 257 the contrivance, terminal, machine, or other device to receive  
 258 cash, billets, tickets, tokens, or electronic credits to be  
 259 exchanged for cash or to receive merchandise or anything of  
 260 value whatsoever, whether the payoff is made automatically from  
 261 the machine or manually. The term includes associated equipment

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262 necessary to conduct the operation of the contrivance, terminal,  
 263 machine, or other device. Slot machines may use spinning reels,  
 264 video displays, or both. A slot machine is not a "coin-operated  
 265 amusement machine" as defined in s. 212.02(24) or an amusement  
 266 game or machine as described in s. 546.10 ~~s. 849.161~~, and slot  
 267 machines are not subject to the tax imposed by s. 212.05(1)(h).

268 Section 3. Section 849.161, Florida Statutes, is repealed.

269 Section 4. This act shall take effect July 1, 2015.

Page 10 of 10

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Higher Education, *Chair*  
Appropriations Subcommittee on Education  
Fiscal Policy  
Judiciary  
Military and Veterans Affairs, Space, and Domestic  
Security  
Regulated Industries

### JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

### SENATOR KELLI STARGEL

15th District

April 1, 2015

The Honorable Tom Lee  
Senate Appropriations Committee, Chair  
418 Senate Office Building  
404 S. Monroe Street  
Tallahassee, FL 32399

Dear Chair Lee:

I am respectfully requesting that SB 268, related to *Amusement Games or Machines*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kelli Stargel".

Kelli Stargel  
State Senator, District 15

Cc: Cindy Kynoch/ Staff Director  
Alicia Weiss/ AA

#### REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

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

**ANDY GARDINER**  
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)

4-16-15

Meeting Date

CS/CS/RB 268

Bill Number (if applicable)

Topic Amusement Games

Amendment Barcode (if applicable)

Name Larry Sellers

Job Title

Address 315 S. Calhoun St, #600

Phone 405-5070

Street

Tallahassee, FL

Email

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Dave A Buster's

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4-16-15

Meeting Date

268

Bill Number (if applicable)

Topic AMUSEMENT GAMES OR MACHINES

Amendment Barcode (if applicable)

Name RICHARD TURNER

Job Title GEN COUNSEL : V.P. GOVERNMENT RELATIONS

Address 230 S. ADAMS ST  
Street

Phone 850.224.2250

Tallahassee FL 32301  
City State Zip

Email rturner@fla.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FLORIDA RESTAURANT & LODGING ASSOC

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/16/15

Meeting Date

268

Bill Number (if applicable)

Topic AMUSEMENT Arcades

Amendment Barcode (if applicable)

Name Michael H. WOLF

Job Title Attorney

Address 200 SE 6th ST #603

Phone 954 673 1146

Street  
City Ft. Lauderdale State Fla Zip 33301

Email MIKEWOLFAN@Yahoo.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FLORIDA Arcade & Bingo Assoc

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)

Apr 16, 2015  
Meeting Date

SB268  
Bill Number (if applicable)

Topic SB268 Amusement Games

Amendment Barcode (if applicable)

Name Thomas Hobbs

Job Title Dir. of Operations & Gov. Relations

Address 113 E. College Ave  
Street  
Tallahassee, FL 32301  
City State Zip

Phone 841-1726

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Attractions Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

268

Meeting Date \_\_\_\_\_

Bill Number (if applicable) \_\_\_\_\_

Topic \_\_\_\_\_

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

Name Marc Dunbar

Job Title \_\_\_\_\_

Address P.O. Box 351  
Street

Phone 933-8500

City

State

Zip

Email mdunbar@gomesswalker.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Stonach Group

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/CS/CS/SB 288

INTRODUCER: Appropriations Committee; Communications, Energy, and Public Utilities Committee;  
Communications, Energy, and Public Utilities Committee; and Senator Latvala

SUBJECT: Utilities Regulation

DATE: April 20, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiehle</u>	<u>Caldwell</u>	<u>CU</u>	<u>Fav/CS</u>
2.	<u>Wiehle</u>	<u>Caldwell</u>	<u>CU</u>	<u>Fav/CS</u>
3.	<u>Betta</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/SB 288:

- Creates a process by which an electric utility may seek to recover nuclear asset recovery costs by issuing bonds to obtain funding to pay those costs, with the bonds paid through charging and collecting a nuclear asset recovery charge, and that dedicated revenue stream is used to securitize the bonds to obtain a lower interest rate;
- Creates a term limit of three consecutive terms for PSC commissioners appointed after July 1, 2015;
- Requires the Florida Public Service Commission (PSC or commission) to meet in the service territory of each public utility which supplies electricity and is regulated by the commission, and to stream all meetings live;
- Requires a person who lobbies the Florida Public Service Commission Nominating Council to register as a legislative lobbyist;
- Requires each PSC commissioner to complete annual ethics training;
- Expands the existing ex parte prohibition to all meetings and educational conferences;
- If the Public Counsel participated as a party in the relevant PSC proceeding as a party, is not a party to a settlement agreement, and files a written objection to it, prohibits submission of the settlement agreement to the PSC and prohibits the PSC from approving the settlement agreement;
- Prohibits imposing a higher rate for increased electricity use which is due solely to an extended billing period;

- Establishes a limitation on the total deposit that may be demanded from an electricity customer;
- Requires each utility to assist customers in getting the most advantageous rate;
- Requires the commission to approve all tariffs and tariff changes; and
- Requires that money received for demand-side renewable energy be used for that purpose.

The bill appropriates \$74,170 from the General Revenue Fund to the PSC to stream Commission meetings live on the Internet and to conduct meetings in each of the five investor-owned electric utilities' service territories. The PSC also could have additional costs for each commissioner to complete annual ethics training and for proceedings on a petition related to nuclear asset-recovery charges and the issuance of nuclear asset-recovery bonds by a utility, which are indeterminate.

The bill provides an effective date of July 1, 2015.

## II. Present Situation:

In recent months, a number of complaints have arisen against regulated electric utilities and involving the PSC. The following is both general background information and background information specific to individual complaints.

### **Florida Public Service Commission**

#### *Appointment*

The Florida Public Service Commission (PSC or commission) is a five-member body that has economic regulation authority over electric and water utilities that meet specified criteria. The members are appointed to four-year terms.<sup>1</sup> Appointment is a three-step process:

- Applicants are interviewed by the Florida Public Service Commission Nominating Council, which must nominate to the Governor no fewer than three persons for each vacancy;
- The Governor selects one of the nominated applicants for appointment to each vacant position; and
- Each appointee is then subject to confirmation by the Senate.<sup>2</sup>

The Florida Public Service Commission Nominating Council (council) is a 12-member panel with:

- Six members appointed by and serving at the pleasure of the President of the Senate, including three members of the Senate, one of whom must be a member of the minority party, and
- Six members appointed by and serving at the pleasure of the Speaker of the House of Representatives, including three members of the House of Representatives, one of whom must be a member of the minority party.

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<sup>1</sup> Section 350.01, F.S.

<sup>2</sup> Section 350.031, F.S.

Council members have four-year terms, except that legislator members serve two-year terms concurrent with the two-year elected terms of House members. Council meetings are subject to public records and public meetings law.

***PSC Jurisdiction***

With electric utilities, the commission has economic regulation authority over each “public utility,” which is defined to mean every person or legal entity supplying electricity to or for the public within this state, but to expressly exclude both a rural electric cooperative and a municipality or any agency thereof.<sup>3</sup>

For water and wastewater utilities, the statutes grant the commission exclusive jurisdiction over each utility with respect to its authority, service, and rates.<sup>4</sup> However, after 10 continuous years under the jurisdiction of the commission, a county can opt-out of commission jurisdiction by resolution or ordinance, in which case the county regulates the rates of all utilities within its boundaries.<sup>5</sup> The commission has exclusive jurisdiction over all utility systems whose service transverse county boundaries, whether the counties involved are jurisdictional or non-jurisdictional, except for utility systems that are subject to, and remain subject to, interlocal utility agreements in effect as of January 1, 1991, that create a single governmental authority to regulate the utility systems whose service transverse county boundaries. The commission has jurisdiction in 37 counties and counties have jurisdiction in 30 counties.<sup>6</sup> Jurisdiction is divided as listed in the following table.

Jurisdictional Counties (37)	Non-Jurisdictional Counties (30)
Alachua	Baker
Bradford	Bay
Brevard	Calhoun
Broward	Citrus
Charlotte	Collier
Clay	Columbia
Duval	Dade
Escambia	Desoto
Franklin	Dixie
Gadsden	Flagler
Gulf	Gilchrist
Hardee	Glades
Highlands	Hamilton
Jackson	Hendry
Lake	Hernando
Lee	Hillsborough
Levy	Holmes
Manatee	Indian River

<sup>3</sup> Section 366.02(1), F.S.

<sup>4</sup> Section 367.011, F.S.

<sup>5</sup> Section 367.171, F.S.

<sup>6</sup> <http://www.psc.state.fl.us/utilities/waterwastewater/wawtextchart.pdf>

Jurisdictional Counties (37)	Non-Jurisdictional Counties (30)
Marion	Jefferson
Martin	Lafayette
Monroe	Leon
Nassau	Liberty
Okaloosa	Madison
Okeechobee	Santa Rosa
Orange	Sarasota
Osceola	Suwanee
Palm Beach	Taylor
Pasco	Union
Pinellas	Wakulla
Polk	Walton
Putnam	
Seminole	
St. Johns	
St. Lucie	
Sumter	
Volusia	
Washington	

***PSC Commissioner Standards of Conduct***

***1. Generally***

Section 350.041, F.S., provides the statutory standards of conduct for PSC commissioners, which prohibit them from:

- Accepting anything from any public utility regulated by the commission or any business entity that has specified relationships with such a public utility, with exceptions for attendance at conferences and associated meals and events in accordance with specified conditions;
- Accepting any form of employment with or engaging in any business activity with any public utility regulated by the commission or any business entity that has specified relationships with such a public utility;
- Having any financial interest, other than shares in a mutual fund, in any public utility regulated by the commission or any business entity that has specified relationships with such a public utility;
- Accepting anything from a party in a proceeding currently pending before the commission;
- Serving in specified capacities with any political party;
- Making any public comment regarding the merits of any proceeding pending before the commission;
- Conducting himself or herself in an unprofessional manner at any time during the performance of his or her official duties; and
- Soliciting anything of value, directly or indirectly, from any public utility regulated by the commission or any business entity that has specified relationships with such a public utility or from any party appearing in a proceeding considered by the commission in the last two years.

Additionally, the statute requires each commissioner to avoid impropriety in all of his or her activities and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the commission. The standards contain no training requirements.

The Commission on Ethics is to accept and investigate any alleged violations of these standards and to provide the Governor and the Florida Public Service Commission Nominating Council with a report of its findings and recommendations. The Governor is authorized to enforce the findings and recommendations.

## ***2. Ex Parte Communications***

Section 350.042, F.S., provides for ex parte communications involving commissioners.<sup>7</sup> The statute prohibits a commissioner from initiating or considering ex parte communications concerning the merits, threat, or offer of reward in any proceeding other than a rulemaking proceeding, a declaratory statement proceeding, workshops, or internal affairs meetings. It also prohibits an individual from discussing ex parte with a commissioner the merits of any issue that he or she knows will be filed with the commission within 90 days. These provisions do not apply to commission staff.

The section does not apply to oral communications or discussions in scheduled and noticed open public meetings of educational programs or of a conference or other meeting of an association of regulatory agencies.

The Commission on Ethics is to investigate sworn complaints of violations of this section. If the Commission on Ethics finds that there has been a violation by a PSC commissioner, it is to provide the Governor and the Florida Public Service Commission Nominating Council with a report of its findings and recommendations. The Governor is authorized to enforce the findings and recommendations.

## **Public Counsel and Settlement Agreements**

Section 350.0611, F.S., provides the duties and powers of the Public Counsel. The duty is to provide legal representation for the people of the state in proceedings before the commission and in proceedings before counties that have jurisdiction over water and wastewater utilities, and the powers are those necessary to carry out this duty, including the power:

- To recommend to the commission or the counties, by petition, the commencement of any proceeding or action or to appear, in the name of the state or its citizens, in any proceeding or action before the commission or the counties and urge therein any position which he or she deems to be in the public interest; and
- In any proceeding in which he or she has participated as a party, to seek review of any determination, finding, or order of the commission or the counties, or of any hearing examiner designated by the commission or the counties, in the name of the state or its citizens.

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<sup>7</sup> In this context, an ex parte communication is a communication between a commissioner and a party or other interested person, including a person's attorney that was neither on the record nor on reasonable prior notice to all parties and that relates to the merits of a proceeding.

The question of whether the commission is authorized to approve a non-unanimous settlement agreement over Public Counsel's objection was recently determined by the Florida Supreme Court.<sup>8</sup>

The case resulted from an application by Florida Power & Light (FPL) for a rate increase which was filed with the commission on March 19, 2012. The Office of Public Counsel (OPC) and others intervened in the case opposing the rate increase. Shortly thereafter, FPL negotiated a settlement with the Florida Industrial Power Users Group (FIPUG), South Florida Hospital and Healthcare Association (SFHHA), and Federal Executive Agencies (FEA). In July, FPL first presented OPC with the negotiated settlement.

On August 15, 2012, the signatories to the settlement agreement – FPL, FEA, FIPUG, and SFHHA – filed joint motions to suspend the procedural schedule and approve the settlement agreement. The OPC filed motions to suspend the hearing schedule and to consider the settlement agreement on the merits. The commission denied the requests and proceeded with the hearing as scheduled, holding full evidentiary hearings on August 20–24 and August 27–31, 2012.

On August 30, 2012, during the hearing, the commission announced on the record that the hearing would reconvene on September 27, 2012, to discuss the proposed settlement agreement. At the September 27, 2012, hearing, the commission determined that the proposed settlement agreement raised five new disputed issues of material fact supplemental to the disputed issues presented in the initial petition and scheduled a hearing to take additional testimony limited to the five new disputed issues of fact for November 19–21, 2012.

The formal hearing reconvened on November 19, 2012, and concluded on November 20, 2012. On December 13, 2012, the commission held a special agenda conference to rule upon the merits of the proposed settlement agreement. After the commission voiced its concern with some items, the commission recessed to give all the parties an opportunity to engage in further settlement negotiations. When presented with the modified settlement agreement, the commission found that it satisfied all of the commission's concerns, that it established fair, just, and reasonable rates, and that it was in the public interest. The final order on January 14, 2013, memorialized this finding and incorporated the approved settlement.

The OPC appealed the commission's decision, arguing that the commission erred by approving a non-unanimous negotiated settlement agreement over OPC's objection. More specifically, OPC argued that:

- Section 350.0611, F.S., which sets forth OPC's powers, is not an exhaustive list.
- Chapter 366, F.S., which provides for PSC regulation of electric utilities, provides that it is to be liberally construed for the accomplishment of protecting the public welfare.
- The OPC must be treated differently from other intervenors as it has a unique status created by the statutes and recognized by the court in its statement in *Mayo* that "special conditions pertain in cases where public counsel has intervened. This is a consequence of the statutory nexus between the file and suspend procedures and the role prescribed for public counsel in

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<sup>8</sup> *Citizens of the State of Florida vs. Florida Public Service Commission*, 146 So.3d 1143 (Fla. 2014).

rate regulation. The public counsel was authorized to represent the citizens of the State of Florida in rate proceedings of this type. That office was created with the realization that the citizens of the state cannot adequately represent themselves in utility matters, and that the rate-setting function of the commission is best performed when those who will pay utility rates are represented in an adversary proceeding by counsel at least as skilled as counsel for the utility company.”<sup>9</sup>

- “[U]nless the Court reverses the Final Order, the effect will be to marginalize the participation of ‘the public’s advocate’ as the petitioning utility could bypass [the] OPC’s opposition through the expedient of offering a revenue concession to a willing intervenor.”<sup>10</sup>

The court agreed that the statutory list of the OPC’s powers is not meant to be an exhaustive list and that the statutes on regulation of electric utilities are to be liberally construed for the accomplishment of protecting the public welfare. However, “related statutory provisions must be read together to achieve a consistent whole”<sup>11</sup> and “further, ‘[w]here possible, courts must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another.’”<sup>12</sup>

The PSC is an arm of the legislative branch and is to perform its duties independently.<sup>13</sup> Additionally, the commission has exclusive jurisdiction to fix fair, just, and reasonable rates of electric utilities.<sup>14</sup> Thus, the plain language of the statutes clearly provides that the commission independently determines rates of public utilities subject to the statutory requirements and this authority is not conditioned on the OPC’s approval or absence of the OPC’s objections.<sup>15</sup> Further, adoption of OPC’s argument that its powers include the ability to preclude the commission from approving a settlement agreement over the OPC’s objection would render the statutory language in chapters 350 and 366 inconsistent.<sup>16</sup>

As to settlement agreements, the statutes provide for informal disposition of the rate proceeding by stipulation, agreed settlement, or consent order “[u]nless precluded by law.”<sup>17</sup> Chapters 350 and 366, pertaining to the commission and public utilities respectively, do not prohibit the commission from approving a negotiated settlement to resolve a rate-making proceeding.<sup>18</sup> Also, in *Jaber*,<sup>19</sup> this court held that the commission’s approval of a non-unanimous settlement agreement did not violate intervenor’s due process rights because “the record shows that the appellant presented arguments in opposition to the settlement during the agenda conference” in

<sup>9</sup> *Citizens v. Mayo*, 333 So.2d 1, 6-7 (Fla. 1976).

<sup>10</sup> *Citizens of the State of Florida vs. Florida Public Service Commission*, at 1153.

<sup>11</sup> *Citizens of the State of Florida vs. Florida Public Service Commission*, at 1151, citing *Raymond James Fin. Serv., Inc. v. Phillips*, 126 So.3d 186, 191 (Fla. 2013) (quoting *Heart of Adoptions, Inc. v. J.A.*, 963 So.2d 189, 199 (Fla. 2007)).

<sup>12</sup> *Id.*

<sup>13</sup> *Citizens of the State of Florida vs. Florida Public Service Commission*, at 1150, citing section 350.001, Florida Statutes, *Pub. Serv. Comm’n v. Bryson*, 569 So.2d 1253, 1254 (Fla. 1990) (noting that “the legislature granted the [Commission] exclusive jurisdiction over matters respecting the rates and service of public utilities.”); *Chiles v. Pub. Serv. Comm’n Nominating Council*, 573 So.2d 829, 832 (Fla. 1991) (“[R]ate-making by the [Commission] is a legislative function.”).

<sup>14</sup> *Id.*, citing sections 366.04(1) and 366.06(1), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*, at 1151.

<sup>17</sup> *Id.*, at 1150, citing section 120.57(4), Florida Statutes (2012).

<sup>18</sup> *Id.*

<sup>19</sup> *South Florida Hospital and Healthcare Ass’n v. Jaber*, 887 So.2d 1210, 1212 (Fla. 2004).

which the appellant was allowed thirty minutes to present its views in opposition to the settlement agreement.<sup>20</sup> Thus, the Commission is not clearly precluded by statute or case law from approving non-unanimous settlements.<sup>21</sup>

OPC argued that *Mayo* recognized that it has special status and that special conditions pertain in cases where it has intervened, status that will be marginalized if the Final Order is not reversed. The court found these arguments to be without merit.<sup>22</sup> Ultimately, the commission's actions are conditioned by statute (rates set must be fair, just, and reasonable) and its actions are subject to judicial review – the commission cannot simply accept any settlement agreement devoid of record support as in the public interest.<sup>23</sup> Moreover, none of the actions taken by the commission in this case will preclude the OPC from fully representing the public's interest in future cases because the OPC was able to “urge therein any position which he or she deem[ed] to be in the public interest” in this rate-making proceeding.<sup>24</sup> Finally, the fact situation of *Mayo* was completely different and the holding was not intended to extend to the factual circumstances present here.<sup>25</sup> In *Mayo*, the OPC was unable to cross-examine Gulf Power witnesses or present any direct evidence contradictory to the data supplied by Gulf Power because it indicated it was not prepared due to the commission's notice of hearing specifying such facets of the hearing would be held at a later date.<sup>26</sup> As a result, the commission issued an order granting Gulf Power a rate increase without the OPC ever being provided an opportunity to introduce evidence.<sup>27</sup> Here, the OPC fully represented citizens in ten days of hearings regarding FPL's petition for a rate increase and also fully participated in hearings regarding the proposed settlement agreement by submitting prefiled testimony, participating in discovery, presenting evidence in opposition to the settlement agreement, and filing post-hearing briefs.<sup>28</sup> Thus, the OPC was not precluded from zealously representing citizens, but was provided multiple opportunities to urge the public's position on FPL's petition and subsequent settlement agreement.<sup>29</sup>

## Electric Utilities

### 1. *Extended Billing Period and Tiered Rates*

Public utilities are allowed to use tiered billing, in which a higher rate is charged for higher levels of use, as a way to encourage conservation. They also are allowed to vary their billing period from the standard month-long period. Recently a utility adjusted its billing period for one billing cycle “as part of an ongoing process started in May 2013 to streamline the company’s routes for meter-reading throughout central and northern Florida.”<sup>30</sup> As a result of the extended billing period, some customers’ total usage for the extended billing period increased such that a

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<sup>20</sup> *Citizens of the State of Florida vs. Florida Public Service Commission*, at 1150.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*, at 1153.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*, at 1151.

<sup>26</sup> *Id.*, at 1152

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Jim Turner, *Duke Energy called to explain billing change*, Tallahassee Democrat, August 25, 2014, <http://www.tallahassee.com/story/news/politics/2014/08/25/duke-energy-called-explain-billing-change/14594563/>

tiered rate was applicable, even though their average daily use did not increase during that period. After many complaints, the utility agreed to refund all increased charges.<sup>31</sup>

## 2. *Public Utility Deposits*

Section 366.05, F.S., provides for the powers of the PSC including the power to prescribe fair and reasonable rates and charges. Based in part on this authority, the commission has adopted a rule on customer deposits.<sup>32</sup> As to the amount of the deposit, the rule requires each public utility's tariff to contain the utility's specific criteria for determining the amount of initial deposit. After a customer has had continuous service for a period of 23 months, has established a satisfactory payment record, and has not done any of a list of actions or non-actions which disqualify it for a refund, the utility must:

- Refund a residential customer's deposits, and
- At its option, either refund or pay the higher rate of interest<sup>33</sup> for nonresidential deposits.

The rule also allows for an increase in the deposit amount:

(3) New or additional deposits. *A utility may require, upon reasonable written notice of not less than thirty (30) days, a new deposit, where previously waived or returned, or additional deposit, in order to secure payment of current bills.* Such request shall be separate and apart from any bill for service and shall explain the reason for such new or additional deposit, *provided, however, that the total amount of the required deposit shall not exceed an amount equal to twice the average charges for actual usage of electric service for the twelve month period immediately prior to the date of notice.* In the event the customer has had service less than twelve months, then the utility shall base its new or additional deposit upon the average actual monthly usage available.<sup>34</sup>

The phrase "an amount equal to twice the average charges for actual usage of electric service for the twelve month period immediately prior to the date of notice" is ambiguous; however, it has consistently been interpreted and implemented to mean that the total amount of the deposit required by the utility may not exceed twice the average bill for the immediately preceding twelve months.<sup>35</sup>

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<sup>31</sup> Ivan Penn, *Duke Energy refunds \$1.7 million to customers because of meter issue*, Tampa Bay Times, September 10, 2014, <http://www.tampabay.com/news/business/energy/duke-energy-refunds-17-million-to-customers-because-of-meter-issue/2197029>

<sup>32</sup> Rule 25-6.097, F.A.C.

<sup>33</sup> This higher interest rate is three percent instead of the usual two percent. In all cases the interest is simple interest, not compounded.

<sup>34</sup> Rule 25-6.097, F.A.C.

<sup>35</sup> See, e.g., *Pantry Pride Enterprises, Inc. v. Florida Power & Light Company*, 1982 Fla. PUC LEXIS 607, Florida Public Service Commission (June 4, 1982); *In re: Complaint of Sears, Roebuck and Company against Florida Power & Light Company and motion to compel FPL to continue electric service and to cease and desist demands for deposit pending final decision regarding complaint*, 2006 Fla. PUC LEXIS 241 Florida Public Service Commission (May 9, 2006); *In re: Complaint of Kmart Corporation against Florida Power & Light Company and motion to compel FPL to continue electric service and to cease and desist demands for deposit pending final decision regarding complaint*, 2006 Fla. PUC LEXIS 242 Florida Public Service Commission (May 9, 2006); and *In re: Complaint of Frederick Smallakoff against Progress Energy*

Recently there have been complaints that a utility was demanding deposit increases in excess of the rules.<sup>36</sup>

### ***3. Most Advantageous Rate***

Utilities have different customer classes and a variety of rates applicable within each class based on usage amounts and patterns. Recently there were complaints that a utility was billing some customers using rates that were inappropriately high.<sup>37</sup>

#### ***Florida Energy Efficiency and Conservation Act***

Sections 366.80-366.83 and 403.519, F.S., are the “Florida Energy Efficiency and Conservation Act.” Section 366.82, F.S., provides for setting efficiency and conservation goals and establishing plans and programs to meet the overall goals. This section was amended in 2008 to require the commission to adopt appropriate goals for increasing the development of demand-side renewable energy systems. The term “demand-side renewable energy” means a system located on a customer’s premises generating thermal or electric energy using Florida renewable energy resources and primarily intended to offset all or part of the customer’s electricity requirements provided such system does not exceed two megawatts.

To implement this requirement, the PSC created a five-year solar pilot project, and each year the utilities collected money for these purposes. At the most recent goal-setting hearings, the utilities proposed ending the project early, and there was concern about what they might do with remaining funds.

## **III. Effect of Proposed Changes:**

### **Florida Public Service Commission – Meetings**

**Section 1** amends s. 350.01, F.S., which establishes the Florida Public Service Commission (PSC or commission), provides for terms of commissioners, and provides for commission proceedings. The bill limits a commissioner appointed after July 1, 2015, to serving not more than three consecutive terms.

The bill requires that the commission hold at least one public customer service meeting per year in the service territory of each public utility which supplies electricity and is regulated by the commission.

The bill also requires that specified meetings be streamed live on the Internet, with a recorded copy of the meeting available afterward on the commission’s web page. This requirement applies to:

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*Florida, Inc. concerning alleged improper billing*, 2013 Fla. PUC LEXIS 70 Florida Public Service Commission (March 13, 2013).

<sup>36</sup> Mitch Perry, *Pinellas Republican state lawmakers say the gloves are off regarding Duke Energy and the PSC*, Creative Loafing Tampa Bay, September 30, 2014, <http://cltampa.com/politicalanimal/archives/2014/09/30/pinellas-republican-state-lawmakers-say-the-gloves-are-off-regarding-duke-energy-and-the-psc#.VNEFL00cTJJ>

<sup>37</sup> Mike Deeson, *Duke bills small businesses, churches at higher rate*, WTSP News, October 8, 2014, <http://www.wtsp.com/story/news/investigations/2014/10/07/duke-energy--billing-customers/16866407/>

- Each meeting, including an internal affairs meeting, workshop, hearing, or proceeding that is attended by two or more commissioners, and
- Each meeting, workshop, hearing, or proceeding at which a decision is made which concerns the rights or obligations of any person.

### **Florida Public Service Commission – Appointment**

**Section 2** amends s. 350.031, F.S., which creates the Florida Public Service Commission Nominating Council and provides its duties and procedures. The bill recognizes that the purpose of the council is to select nominees to be appointed to an arm of the legislative branch of government and requires a person who lobbies a member of the council, whether a legislator or nonlegislator, to register as a legislative lobbyist pursuant to s. 11.045, F.S., and comply with the requirements of that section.

This will require the person to:

- Make a separate registration each principal represented;
- Include a statement signed by the principal or principal's representative that the registrant is authorized to represent the principal which identifies the principal's main business;
- State the extent of any direct business association or partnership with any current member of the Legislature;
- Preserve for a period of four years all accounts, bills, receipts, computer records, books, papers, and other documents and records necessary to substantiate compensation;
- Through his or her lobbying firm, file a compensation report for each calendar quarter during any portion of which the person was registered to represent a principal;
- Refrain from making, directly or indirectly, any expenditure to the benefit of any council member; and
- Be subject to a prohibition against knowingly failing to disclose any material fact required by this section or rules, or knowingly providing false information on any report required by this section or rules, with a violation of the prohibition a noncriminal infraction punishable by a fine not to exceed \$5,000.

### **PSC Commissioner Standards of Conduct – Generally**

**Section 3** amends s. 350.041, F.S., on commissioners' standards of conduct to require that beginning January 1, 2016, each commissioner must annually complete four hours of ethics training that addresses, at a minimum, s. 8, Art. II of the State Constitution on ethics in government, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of this state. This requirement may be satisfied by completion of a continuing legal education class or other continuing professional education class, seminar, or presentation, if the required subjects are covered.

### **PSC Commissioner Standards of Conduct – Ex Parte Communications**

**Section 4** amends s 350.042, F.S., which provides for ex parte communications involving commissioners. The statute currently prohibits a commissioner from initiating or considering ex parte communications concerning any proceeding other than a rulemaking proceeding, a declaratory statement proceeding, workshops, or internal affairs meetings, and prohibits an

individual from discussing ex parte with a commissioner the merits of any issue that he or she knows will be filed with the commission within 90 days. The bill specifies that the prohibition applies to a proceeding under ss. 120.569 or 120.57 (proceedings in which a party has a substantial affected interest involved) and expands the current 90-day language to 180 days.

The bill recognizes the value of having commissioners attend educational programs, conferences, and meetings of an association of regulatory agencies, and provides requirements for attendance and participation in such meetings that are intended to avoid a violation of the ex parte prohibition. While participating in these meetings, a commissioner must refrain from commenting on or discussing the subject matter of any proceeding covered by the prohibition and must use reasonable care to ensure that the content of a meeting in which the commissioner participates is not designed to address or create a forum to influence the commissioner on the subject matter of any such proceeding.

The bill requires the Governor to remove from office any commissioner found by the Commission on Ethics to have willfully and knowingly violated this section.

### **Public Counsel and Settlement Agreements**

**Section 5** amends s. 350.0611, F.S., on powers and duties of the Public Counsel. The bill specifies that if the Public Counsel participated as a party in a PSC proceeding, is not a party to the settlement agreement, and files a written objection to the settlement agreement; the agreement may not be submitted to or approved by the PSC...

This appears to be in reaction to the *Citizens of the State of Florida, etc., v. Florida Public Service Commission* case discussed in the Present Situation section above. Read in isolation, this section could be taken to codify the OPC's arguments in that case. However, part of the Florida Supreme Court's reasoning in that case was that:

- The PSC is an arm of the legislative branch and is to perform its duties independently; that the commission has exclusive jurisdiction to fix electric utilities' rates; and thus, the plain language of the statutes clearly provides that the commission independently determines rates of public utilities and this authority is not conditioned on the OPC's approval or absence of the OPC's objections; and
- The statutes must be interpreted and applied, to the extent possible, with consistency, in harmony, and to give full effect to all, and that it was not possible to apply OPC's argument consistently and with harmony with the PSC's statutory sole authority to independently perform its duties.

Because the bill does change the PSC's independent, exclusive authority and would continue this statutory inconsistency, the bill must intend something else.

The reasonable interpretation seems to be that if the OPC does not agree to a settlement agreement, the PSC must proceed as if there were no proposed settlement agreement, holding full evidentiary hearings, hearing pleadings that designate all relief sought, and hearing evidence to substantiate that each item of that relief meets the relevant statutory requirements. This would ensure that all of the OPC's concerns are adequately addressed, thereby better protecting the

citizens of the State of Florida, while maintaining the PSC's independent authority and the full, consistent, harmonious effect of each statute.

### **Electric Utilities – Extended Billing Period and Tiered Rates, Deposits, and Most Advantageous Rate**

**Section 6** amends s. 366.05, F.S., which provides for the powers of the PSC, including the power to prescribe fair and reasonable rates and charges. The bill adds prohibitions and limitations relating to these rates and charges:

- If the commission grants a public utility the authorizes both to charge tiered rates based upon levels of usage and to vary the billing period, the utility may not charge a customer a higher rate because of an increase in usage attributable to an extension of the billing period.
- Notwithstanding any commission rule to the contrary, a utility may not charge or receive a deposit in excess of the following amounts:
  - For an existing customer, the total deposit cannot exceed the total charges for two months of average actual usage, calculated by adding the monthly charges from the 12-month period immediately before the date any change in the deposit amount is sought, dividing this total by 12, and multiplying the result by two.<sup>38</sup>
  - For a new customer, the amount may not exceed two months of projected charges, calculated using the process specified in subparagraph one. Once a new customer has had continuous service for a 12-month period, the amount of the deposit shall be recalculated, using actual usage data. Any difference between the projected and actual amounts must be resolved by the customer paying any additional amount due or the utility returning any overcharge.
- If a utility has more than one rate for any customer class, it must notify each customer in that class of the available rates and explain how the rate is charged to the customer. If a customer contacts the utility seeking assistance in selecting the most advantageous rate, the utility must provide good faith assistance to the customer. The customer is responsible for charges for service calculated under the selected rate.
- New tariffs and changes to an existing tariff, other than an administrative change that does not substantially change the meaning or operation of the tariff, must be approved by vote of the commission.

### **Florida Energy Efficiency and Conservation Act**

**Section 7** amends s. 366.82, F.S., to require that money received by a utility for implementation of measures to encourage development of demand-side renewable energy systems be used solely for that purpose.

### **Nuclear Asset-Recovery Bonds**

**Section 8** creates s. 366.95, F.S., which is based on s. 366.8260, F.S., which was enacted following the severe tropical storm seasons of 2004 and 2005, to create a new financing mechanism, referred to as securitization, by which investor-owned electric utilities could petition the PSC for issuance of a financing order authorizing the utility to issue bonds through a separate

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<sup>38</sup> This appears to codify current PSC practice.

legal entity. Under s. 366.8260, F.S., a financing order establishes a nonbypassable charge to the utility's customers to provide a secure stream of revenues to the separate legal entity from which the bonds would be paid. This securitized revenue stream would allow the utilities access to low-cost financing to cover storm recovery costs and replenish depleted storm reserve funds. The reduced interest rates would result in savings to the utilities ratepayers. This mechanism has been used only once.<sup>39</sup>

The bill authorizes an electric utility to recover "nuclear asset recovery costs"<sup>40</sup> by issuing bonds to obtain funding to pay those costs. The bonds would be paid through charging and collecting a "nuclear asset recovery charge"<sup>41</sup> from the utility's customers. The "financing costs"<sup>42</sup> would be added to the charge. The right to bill and collect the authorized charges and to have all resulting

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<sup>39</sup> Docket No. 060038-EI, Florida Public Service Commission.

<sup>40</sup> The bill defines "nuclear asset recovery costs" as pretax costs that an electric utility has incurred or expects to incur which are caused by, associated with, or remain as a result of the early retirement or abandonment of a nuclear generating asset unit that generated electricity and is located in this state where such early retirement or abandonment is deemed to be reasonable and prudent by the commission through a final order approving a settlement or other final order issued by the commission before July 1, 2017, and where the pretax costs to be securitized exceed \$750 million at the time of the filing of the petition. Such pretax costs, where determined appropriate by the commission, include, but are not limited to, the capitalized cost of the retired or abandoned nuclear generating asset unit, other applicable capital and operating costs, accrued carrying charges, deferred expenses, reductions for applicable insurance and salvage proceeds and previously stipulated write-downs or write-offs, if any, and the costs of retiring any existing indebtedness, fees, costs, and expenses to modify existing debt agreements or for waivers or consents related to existing debt agreements. Costs eligible or claimed for recovery pursuant to s. 366.93 are not eligible for securitization under this section unless they were in the electric utility's rate base and were included in base rates before retirement or abandonment.

<sup>41</sup> A "nuclear asset recovery charge" is the charge authorized by the commission to repay nuclear asset recovery costs and financing costs. It is imposed on and part of all customer bills as a separate, nonbypassable charge.

<sup>42</sup> The term "financing costs" includes:

- Interest and acquisition, defeasance, or redemption premiums that are payable on nuclear asset recovery bonds;
- Any payment required under an ancillary agreement and any amount required to fund or replenish a reserve account or other accounts established under the terms of any indenture, ancillary agreement, or other financing documents pertaining to the bonds;
- Any other cost related to issuing, supporting, repaying, refunding, and servicing the bonds, including, but not limited to, servicing fees, accounting and auditing fees, trustee fees, legal fees, consulting fees, financial advisor fees, administrative fees, placement and underwriting fees, capitalized interest, rating agency fees, stock exchange listing and compliance fees, security registration fees, filing fees, information technology programming costs, and any other costs necessary to otherwise ensure the timely payment of the bonds or other amounts or charges payable in connection with the bonds, including costs related to obtaining the financing order;
- Any taxes and license fees imposed on the revenues generated from the collection of the nuclear asset recovery charge;
- Any state and local taxes, franchise, gross receipts, and other taxes or similar charges, including but not limited to, regulatory assessment fees, in any such case whether paid, payable, or accrued; and
- Any costs that are incurred by the commission for any outside consultants or counsel.

revenues constitutes “nuclear asset recovery property.”<sup>43</sup> A utility may transfer the nuclear asset recovery property to an assignee.<sup>44</sup>

More specifically, an electric utility would petition the PSC for a financing order. In the petition, the utility must:

- Describe the total nuclear asset recovery costs;
- Indicate whether the utility proposes to finance all or a portion of the nuclear asset recovery costs using securitized bonds, and if only a portion of the total costs will be recovered through bonds, identify that portion;
- Estimate the financing costs;
- Estimate the nuclear asset recovery charges necessary to recover the nuclear asset recovery costs and financing costs and the period for recovery of such costs;
- Estimate any projected cost savings, based on current market conditions, or demonstrate how the issuance of the securitized bonds and the imposition of nuclear asset recovery charges would avoid or significantly mitigate rate impacts to customers as compared with the traditional method of financing and recovering nuclear asset recovery costs from customers;
- Demonstrate that securitization has a significant likelihood of resulting in lower overall costs or would avoid or significantly mitigate rate impacts compared to traditional cost recovery; and
- File with the petition direct testimony supporting the petition.

Within seven days after the filing of a petition, the PSC must publish a case schedule which will permit the commission to make a decision no later than 120 days after the date the petition is filed. No later than 135 days after the date the petition is filed, the commission must issue either a financing order or an order rejecting the petition. The commission must issue a financing order authorizing financing of reasonable and prudent nuclear asset recovery costs and financing costs if it finds that the issuance of the nuclear asset recovery bonds will have a significant likelihood of resulting in lower overall costs or would avoid or significantly mitigate rate impacts to customers as compared with the traditional method of financing and recovering nuclear asset recovery costs.

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<sup>43</sup> The term “nuclear asset recovery property” means:

- All rights and interests of an electric utility or successor or assignee under a financing order, including the right to impose, bill, collect, and receive nuclear asset recovery charges as authorized in the financing order and to obtain periodic adjustments to such charges as provided in the financing order; and
- All revenues, collections, claims, rights to payments, payments, money, or proceeds arising from the rights and interests, regardless of whether such revenues, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, money, or proceeds.

<sup>44</sup> “Assignee” is defined to mean any entity, including, but not limited to, a corporation, limited liability company, partnership or limited partnership, public authority, trust, financing entity, or other legally recognized entity to which an electric utility assigns, sells, or transfers, other than as security, all or a portion of its interest in or right to nuclear asset recovery property. The term also includes any entity to which an assignee assigns, sells, or transfers, other than as security, its interest in or right to nuclear asset recovery property. Subparagraph 366.95(5)(a)3. provides that all or any portion of nuclear asset recovery property may be transferred, sold, conveyed, or assigned to a successor or assignee, that is wholly owned, directly or indirectly, by the electric utility, created for the limited purpose of acquiring, owning, or administering nuclear asset recovery property or issuing nuclear asset recovery bonds. This appears to limit the initial transfer of the nuclear asset recovery property to a subsidiary or affiliate company.

A financing order issued by the commission must:

- Specify the amount of nuclear asset recovery costs to be financed using securitized bonds, describe and estimate the amount of financing costs which may be recovered through nuclear asset recovery charges, and specify the period over which such costs may be recovered;
- Determine if the proposed structuring, expected pricing, and financing costs have a significant likelihood of resulting in lower overall costs or would avoid or significantly mitigate rate impacts to customers as compared with the traditional method of financing and recovering nuclear asset recovery costs, and provide detailed findings of fact addressing cost-effectiveness and associated rate impacts upon retail customers and retail customer classes;
- Provide that, for a specified period, the nuclear asset recovery charges authorized in the financing order shall be nonbypassable and must be paid by all existing and future customers receiving transmission or distribution service from the electric utility or its successors or assignees, even if the customer elects to purchase electricity from an alternative electric supplier including following a fundamental change in regulation of public utilities in the state;
- Include a formula-based true-up mechanism for making expeditious periodic adjustments in the nuclear asset recovery charges that are necessary to correct for any overcollection or undercollection of the charges;
- Specify the nuclear asset recovery property that is, or will be, created in favor of the electric utility or its successors or assignees and that will be used to pay or secure the nuclear asset recovery bonds;
- Specify the degree of flexibility to be afforded to the utility in establishing the terms and conditions of the bonds, including, but not limited to, repayment schedules, expected interest rates, and other financing costs;
- Provide that nuclear asset recovery charges must be allocated to the customer classes using the criteria set out in s. 366.06(1), F.S.,<sup>45</sup> in the manner in which these costs or their equivalent were allocated in the cost-of-service study approved in connection with the electric utility's last rate case. If the electric utility's last rate case was resolved by a settlement agreement, the cost-of-service methodology adopted in the settlement agreement is to be used;
- Provide that, after the final terms of an issuance of nuclear asset recovery bonds have been established and prior to the issuance of nuclear asset recovery bonds, the electric utility must determine the resulting initial nuclear asset recovery charge in accordance with the financing order and the initial nuclear asset recovery charge is final and effective upon the issuance of the securitized bonds without further commission action so long as the charge is consistent with the financing order; and
- Include any other conditions that the PSC considers appropriate and that are authorized by this section.

If the commission issues a financing order and bonds are issued, the electric utility or its assignee must file with the commission at least biannually a petition or a letter applying the formula-based true-up mechanism and, based on estimates of consumption for each rate class and other factors,

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<sup>45</sup> This statute states that in fixing fair, just, and reasonable rates for each customer class, the commission shall, to the extent practicable, consider the cost of providing service to the class, as well as the rate history, value of service, and experience of the public utility; the consumption and load characteristics of the various classes of customers; and public acceptance of rate structures.

requesting administrative approval to make necessary adjustments. Review of the request is limited to determining whether there is any error in the application of the formula-based mechanism relating to the amount of any overcollection or undercollection or in the amount of an adjustment.

Within 120 days after the issuance of nuclear asset recovery bonds, the electric utility must file with the PSC information on the actual costs of the bond issuance. The PSC must review the information to determine if the costs incurred in the issuance of the bonds resulted in the lowest overall costs that were reasonably consistent with market conditions at the time of the issuance and the terms of the financing order. The commission may disallow any incremental issuance costs in excess of the lowest overall costs by requiring the utility to make a credit to the capacity cost recovery clause in an amount equal to the excess of actual issuance costs incurred, and paid for out of bond proceeds, and the lowest overall issuance costs as determined by the commission. The commission may not make adjustments to the nuclear asset recovery charges for any excess issuance costs. The apparent effect of this is that while the amount of the charges remains the same, the ratepayers get a refund through the credit to the capacity cost recovery clause, which reduces the amount that ratepayers must pay.

Subsequent to the earlier of the transfer of nuclear asset recovery property to an assignee or the issuance of nuclear asset recovery bonds, a financing order is irrevocable and the commission may not, other than the true-up process, amend, modify, or terminate the financing order by any subsequent action or reduce, impair, postpone, terminate, or otherwise adjust nuclear asset recovery charges.

After the issuance of a financing order, the electric utility retains sole discretion regarding whether to assign, sell, or otherwise transfer nuclear asset recovery property or to cause nuclear asset recovery bonds to be issued. If the electric utility decides not to cause bonds to be issued the electric utility may not recover financing costs from ratepayers.

Within 30 days after the commission issues a financing order or another final order, an adversely affected party may petition for judicial review in the Florida Supreme Court. The Court must hear and determine the action as expeditiously as practicable and give the action precedence over other matters not accorded similar precedence by law.

A financing order remains in effect and all nuclear asset recovery property continues to exist until the nuclear asset recovery bonds have been paid in full and all financing costs have been recovered in full. A financing order remains in effect and unabated notwithstanding the reorganization, bankruptcy, or other insolvency proceedings, or merger, or sale of the electric utility or its successors or assignees.

An electric utility that has issued nuclear asset recovery bonds must disclose on its bills that portion of the charges on the bill which represents nuclear asset recovery charges and, if the nuclear asset recovery property has been transferred to an assignee, must include a statement that the assignee is the owner of the rights to the nuclear asset recovery charges and that the electric utility is acting as a collection agent for the assignee. The applicable tariff also must indicate the nuclear asset recovery charge and the ownership of that charge.

If an electric utility defaults on any payment of nuclear asset recovery charges, a court, upon application by an interested party, and without limiting any other remedies available to the applying party, must order the sequestration and payment of the revenues arising from the nuclear asset recovery property.

Any successor to an electric utility, whether pursuant to any reorganization, bankruptcy, or other insolvency proceeding or whether pursuant to any merger or acquisition, sale, or other business combination, or transfer by operation of law, as a result of electric utility restructuring or otherwise, must perform and satisfy all obligations of, and have the same rights under a financing order as, the electric utility, including collecting and paying to the person entitled to receive the revenues, collections, payments, or proceeds of the nuclear asset recovery property.

A valid, enforceable, and attached security interest is perfected against third parties as of the date of filing of a financing statement in the Florida Secured Transaction Registry and thereafter is a continuously perfected lien. The security interest in the nuclear asset recovery property and all proceeds of the nuclear asset recovery property, whether billed, accrued, or collected, and whether deposited into a deposit account and however evidenced, has priority and take precedence over any subsequent judicial or other lien creditor.

If a default or termination occurs under the terms of the nuclear asset recovery bonds, the financing parties<sup>46</sup> or their representatives may foreclose on or otherwise enforce their lien and security interest in any nuclear asset recovery property as if they were a secured party under Article 9 of the Uniform Commercial Code; and a court may order that amounts arising from nuclear asset recovery property be transferred to a separate account for the financing parties' benefit. On application by or on behalf of the financing parties to a circuit court of this state, the court must order the sequestration and payment to the financing parties of revenues arising from the nuclear asset recovery property.

The bill sets out a "state pledge" that the state will not:

- Alter the provisions which make the nuclear asset recovery charges irrevocable, binding, and nonbypassable charges;
- Take or permit any action that impairs or would impair the value of nuclear asset recovery property or revises authorized nuclear asset recovery costs; or
- Except as allowed under this section, reduce, alter, or impair nuclear asset recovery charges that are to be imposed, collected, and remitted for the benefit of the bondholders and other financing parties until all principal, interest, premium, financing costs and other fees, expenses, or charges incurred, and any contracts to be performed, in connection with the nuclear asset recovery bonds have been paid and performed in full.

If an electric utility violates this section or a financing order, it is subject to penalties under s. 366.095, F.S.,<sup>47</sup> and to any other penalties or remedies that the commission determines are

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<sup>46</sup> "Financing Party" means any and all of the following; holders of Nuclear Asset Recovery Bonds and trustees, collateral agents, any party under an Ancillary Agreement, or any other persons acting for the benefit of holders of nuclear asset recovery bonds.

<sup>47</sup> This statute authorizes the commission to impose upon a utility that is found to have refused to comply with or to have willfully violated any lawful rule or order of the commission or any provision of this chapter a penalty for each offense of not more than \$5,000, which penalty shall be fixed, imposed, and collected by the commission. Each day that such refusal or

necessary. If the commission orders a penalty or a remedy for a violation, the monetary penalty or remedy and the costs of defending against the proposed penalty or remedy may not be recovered from the ratepayers.

### **Technical Matters, Appropriation, and Effective Date**

**Sections 9, 10, and 11** reenact s. 403.537, F.S., on determination of need for transmission lines and s. 403.9422, F.S., on determination of need for natural gas transmission pipelines, for the purpose of incorporating the amendments made by this act to s. 350.01, F.S., and reenact s. 350.043, F.S., on enforcement and interpretation of ethics statutes, for the purpose of incorporating the amendments made by this act to ss. 350.031, 350.041, and 350.042, F.S.

**Section 12** appropriates \$74,170 from the General Revenue Fund to implement the act, including holding customer meetings in each of the five service territories and streaming each meeting.

**Section 13** provides an effective date of July 1, 2015.

## **IV. Constitutional Issues:**

### A. Municipality/County Mandates Restrictions:

None.

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

None.

### C. Trust Funds Restrictions:

None.

## **V. Fiscal Impact Statement:**

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

Under CS/CS/CS/SB 288, public utilities' ratepayers:

- Will save on costs of early retirement of a nuclear power plant through implementation of the bond securitization provisions;
- Will be protected against imposition of higher, tiered rates in situations where total usage over the extended billing cycle was high enough for imposition of the tiered rate, but the average daily usage during that period did not increase;

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violation continues shall constitute a separate offense. Each penalty shall be a lien upon the real and personal property of the entity, enforceable by the commission as a statutory lien.

- Will be better protected against imposition of deposits in excess of the amount currently allowed by rule, two months' average, actual usage; and
- When they have to choose among multiple potentially-applicable rates, will be better able to obtain the most advantages rate.

Individuals that lobby the Florida Public Service Commission Nominating Council will incur costs to register as a legislative lobbyist.

**C. Government Sector Impact:**

The bill appropriates \$74,170 from the General Revenue Fund to the Public Service Commission (PSC) to hold meetings in the five investor owned electric utilities' service territories and to stream all of its meetings live on the Internet. The PSC also could have additional costs for each commissioner to complete annual ethics training and for proceedings on a petition related to nuclear asset-recovery charges and the issuance of nuclear asset-recovery bonds by a utility, which are indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 350.01, 350.031, 350.041, 350.042, 350.0611, 366.05, and 366.82.

This bill creates section 366.95 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes, for the purpose of incorporating amendments made to other statutes: 403.537, 403.9422, and 350.043.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

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

**CS/CS/CS by Appropriations on April 16, 2015:**

The committee substitute:

- Deletes the requirement that the Public Service Commission (PSC) hold customer meetings in the service territories of water and wastewater utilities;
- Provides that if the Public Counsel files a written objection to a settlement agreement, the agreement may not be submitted to or approved by the PSC; and
- Provides an appropriation of \$74,170 from the General Revenue Fund to implement the act.

**CS/CS/SB 288 by Communications, Energy, and Public Utilities on April 7, 2015:**

- Creates a term limit of three consecutive terms for PSC Commissioners appointed after July 1, 2015; and
- Creates a process by which an electric utility may seek to recover nuclear asset recovery costs by issuing bonds to obtain funding to pay those costs, with the bonds paid through charging and collecting a nuclear asset recovery charge, and that dedicated revenue stream is used to securitize the bonds to obtain a lower interest rate.

**CS/SB 288 by Communications, Energy, and Public Utilities on February 17, 2015:**

- Specifies that the ex parte prohibition applies only to proceedings under ss. 120.569 and 120.57, F.S. (those in which a party has a substantial affected interest);
- Decreases the time period between a communication and when a proceeding is initiated from one year to 180 days;
- Applies the prohibition to educational programs and conferences, and providing additional requirements as to a commissioner's communications during these events;
- Provides that for the Governor to remove a commissioner from office for an ex parte violation, the ex parte communication must be done willfully and knowingly;
- Creates an exemption to the requirement that all changes to tariffs be approved by a vote of the commission to allow an administrative change that does not substantially change the meaning or operation of the tariff without approval.

**B. Amendments:**

None.



467536

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
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	.	
	.	

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The Committee on Appropriations (Latvala) recommended the following:

**Senate Amendment (with directory amendment)**

Delete lines 93 - 99

and insert:

(9) Each meeting, including an internal affairs meeting,

===== **D I R E C T O R Y C L A U S E A M E N D M E N T**=====

And the directory clause is amended as follows:

Delete line 78

and insert:



467536

11 Statutes, is amended, and subsections (8) and (9) are



171144

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
	.	
	.	
	.	

The Committee on Appropriations (Latvala) recommended the following:

**Senate Amendment (with title amendment)**

Delete line 236  
and insert:  
agreement, and has filed a written objection to it, the  
settlement agreement may not be submitted to or approved by the

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

And the title is amended as follows:

Delete lines 29 - 31



171144

11 and insert:  
12 settlement agreement from being submitted to or  
13 approved by the Florida Public Service Commission  
14 under certain circumstances; amending s. 366.05,



887258

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
	.	
	.	
	.	

---

The Committee on Appropriations (Latvala) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 1195 and 1196  
insert:

Section 12. For the 2015-2016 fiscal year, the sums of \$60,395 in recurring and \$13,775 in nonrecurring funds from the General Revenue Fund are appropriated to the Florida Public Service Commission for the purpose of implementing this act.

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



887258

11 And the title is amended as follows:  
12       Delete line 73  
13 and insert:  
14       commission; providing an appropriation; providing an  
15       effect date.

By the Committees on Communications, Energy, and Public Utilities; and Communications, Energy, and Public Utilities; and Senator Latvala

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1 A bill to be entitled  
 2 An act relating to utilities regulation; amending s.  
 3 350.01, F.S.; providing term limits for commissioners  
 4 appointed after a specified date; requiring the  
 5 Florida Public Service Commission to hold public  
 6 customer service meetings in certain service  
 7 territories; requiring that specified meetings,  
 8 workshops, hearings, or proceedings of the commission  
 9 be streamed live and recorded copies be made available  
 10 on the commission's web page; amending s. 350.031,  
 11 F.S.; requiring a person who lobbies a member of the  
 12 Florida Public Service Commission Nominating Council  
 13 to register as a lobbyist; reenacting and amending s.  
 14 350.041, F.S.; requiring public service commissioners  
 15 to annually complete ethics training; providing  
 16 applicability; amending s. 350.042, F.S.; revising the  
 17 prohibition against ex parte communication to apply to  
 18 any matter that a commissioner knows or reasonably  
 19 expects will be filed within a certain timeframe;  
 20 providing legislative intent; defining terms; applying  
 21 the prohibition against ex parte communications to  
 22 specified meetings; requiring the Governor to remove  
 23 from office any commissioner found to have willfully  
 24 and knowingly violated the ex parte communications  
 25 statute; amending s. 350.0611, F.S.; authorizing the  
 26 Public Counsel to be a party to settlement agreements  
 27 in any proceeding before the commission in which he or  
 28 she has participated as a party; prohibiting a  
 29 settlement agreement to which the Public Counsel is

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30 not a party from being submitted to or approved by the  
 31 Florida Public Service Commission; amending s. 366.05,  
 32 F.S.; limiting the use of tiered rates in conjunction  
 33 with extended billing periods; limiting deposit  
 34 amounts; requiring a utility to notify each customer  
 35 if it has more than one rate for any customer class;  
 36 requiring the utility to provide good faith assistance  
 37 to the customer in determining the best rate;  
 38 assigning responsibility to the customer for the rate  
 39 selection; requiring that the commission approve new  
 40 tariffs and certain changes to existing tariffs;  
 41 amending s. 366.82, F.S.; requiring that money  
 42 received by a utility for the development of demand-  
 43 side renewable energy systems be used solely for that  
 44 purpose; creating s. 366.95, F.S.; defining terms;  
 45 authorizing electric utilities to petition the Florida  
 46 Public Service Commission for certain financing orders  
 47 that authorize the issuance of nuclear asset-recovery  
 48 bonds, the imposition, collection, and periodic  
 49 adjustments of nuclear asset-recovery charges, and the  
 50 creation of nuclear asset-recovery property; providing  
 51 requirements; providing exceptions to the commission's  
 52 jurisdictions as it relates to financing orders;  
 53 specifying duties of electric utilities that have  
 54 obtained a financing order and issued nuclear asset-  
 55 recovery bonds; specifying properties, requirements  
 56 and limitations relating to nuclear asset-recovery  
 57 property; providing requirements as to the sufficiency  
 58 of the description of certain nuclear asset-recovery

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59 property; subjecting financing statements to the  
 60 Uniform Commercial Code; providing an exception;  
 61 specifying that nuclear asset-recovery bonds are not  
 62 public debt; specifying certain state pledges relating  
 63 to bondholders; declaring certain entities as not  
 64 electric utilities under certain circumstances;  
 65 specifying effect of certain provisions in situations  
 66 of conflict; providing for protecting validity of  
 67 certain bonds under certain circumstances; providing  
 68 penalties; reenacting ss. 403.537 and 403.9422, F.S.,  
 69 relating to determination of need for electric and  
 70 natural gas transmission lines, respectively;  
 71 reenacting s. 350.043, F.S., relating to the  
 72 enforcement and interpretation of laws relating to the  
 73 commission; providing an effective date.

74  
 75 Be It Enacted by the Legislature of the State of Florida:

76  
 77 Section 1. Subsection (3) of section 350.01, Florida  
 78 Statutes, is amended, and subsections (8), (9), and (10) are  
 79 added to that section, to read:

80 350.01 Florida Public Service Commission; terms of  
 81 commissioners; vacancies; election and duties of chair; quorum;  
 82 proceedings.—

83 (3) Any person serving on the commission who seeks to be  
 84 appointed or reappointed shall file with the nominating council  
 85 no later than June 1 prior to the year in which his or her term  
 86 expires a statement that he or she desires to serve an  
 87 additional term. A commissioner appointed after July 1, 2015,

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88 may not serve more than three consecutive terms.

89 (8) At least annually, the commission shall hold a customer  
 90 service meeting, open to the public, in the service territory of  
 91 each public utility regulated by the commission which supplies  
 92 electricity.

93 (9) The commission shall hold a customer service meeting,  
 94 open to the public, in the service territory of each water or  
 95 wastewater utility that is subject to regulation under chapter  
 96 367, upon receipt of a written request signed by at least 10  
 97 percent of the customers of that utility. Such meeting shall be  
 98 scheduled within a reasonable time after receipt of the request.

99 (10) Each meeting, including an internal affairs meeting,  
 100 workshop, hearing, or proceeding that is attended by two or more  
 101 commissioners and each meeting, workshop, hearing, or proceeding  
 102 at which a decision is made which concerns the rights or  
 103 obligations of any person, shall be streamed live on the  
 104 Internet, and a recorded copy of such meeting, workshop,  
 105 hearing, or proceeding must be made available on the  
 106 commission's web page.

107 Section 2. Subsection (10) is added to section 350.031,  
 108 Florida Statutes, to read:

109 350.031 Florida Public Service Commission Nominating  
 110 Council.—

111 (10) In keeping with the purpose of the council, which is  
 112 to select nominees to be appointed to an arm of the legislative  
 113 branch of government, a person who lobbies a member of the  
 114 council, legislator or nonlegislator, must register as a  
 115 lobbyist pursuant to s. 11.045 and comply with the requirements  
 116 of that section.

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117 Section 3. Present subsection (3) of section 350.041,  
 118 Florida Statutes, is reenacted and amended, and a new subsection  
 119 (3) is added to that section, to read:

120 350.041 Commissioners; standards of conduct.—

121 (3) ETHICS TRAINING.—Beginning January 1, 2016, a  
 122 commissioner must annually complete 4 hours of ethics training  
 123 that addresses, at a minimum, s. 8, Art. II of the State  
 124 Constitution, the Code of Ethics for Public Officers and  
 125 Employees, and the public records and public meetings laws of  
 126 this state. This requirement may be satisfied by completion of a  
 127 continuing legal education class or other continuing  
 128 professional education class, seminar, or presentation, if the  
 129 required subjects are covered.

130 (4) COMMISSION ON ETHICS.—The Commission on Ethics shall  
 131 accept and investigate any alleged violations of this section  
 132 pursuant to the procedures contained in ss. 112.322-112.3241.  
 133 The Commission on Ethics shall provide the Governor and the  
 134 Florida Public Service Commission Nominating Council with a  
 135 report of its findings and recommendations. The Governor is  
 136 authorized to enforce the findings and recommendations of the  
 137 Commission on Ethics, pursuant to part III of chapter 112. A  
 138 public service commissioner or a member of the Florida Public  
 139 Service Commission Nominating Council may request an advisory  
 140 opinion from the Commission on Ethics, pursuant to s.  
 141 112.322(3)(a), regarding the standards of conduct or  
 142 prohibitions set forth in this section and ss. 350.031, 350.04,  
 143 and 350.042.

144 Section 4. Subsections (1) and (3) and paragraph (b) of  
 145 subsection (7) of section 350.042, Florida Statutes, are amended

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146 to read:

147 350.042 Ex parte communications.—

148 (1) A commissioner should accord to every person who is  
 149 legally interested in a proceeding, or the person's lawyer, full  
 150 right to be heard according to law, and, except as authorized by  
 151 law, shall neither initiate nor consider ex parte communications  
 152 concerning the merits, threat, or offer of reward in any  
 153 proceeding under s. 120.569 or s. 120.57 which is currently  
 154 pending before the commission or which he or she knows or  
 155 reasonably expects will be filed with the commission within 180  
 156 days after the date of any such communication, other than a  
 157 proceeding under s. 120.54 or s. 120.565, workshops, or internal  
 158 affairs meetings. An ~~No~~ individual may not ~~shall~~ discuss ex  
 159 parte with a commissioner the merits of any issue that he or she  
 160 knows will be filed with the commission within 180 ~~90~~ days. ~~The~~  
 161 ~~provisions of~~ This subsection does ~~shall~~ not apply to commission  
 162 staff.

163 (3)(a) The Legislature finds that it is important to have  
 164 commissioners who are educated and informed on regulatory  
 165 policies and developments in science, technology, business  
 166 management, finance, law, and public policy which are associated  
 167 with the industries that the commissioners regulate, and the  
 168 Legislature also finds that it is in the public interest for  
 169 commissioners to become educated and informed on these matters  
 170 through active participation in meetings that are scheduled by  
 171 the sponsoring organization, such as sessions, programs, or  
 172 conferences, which are duly noticed and open to the public.

173 (b) As used in this subsection, the term "active  
 174 participation" or the term "participating in" includes, but is

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175 not limited to, attending or speaking at educational sessions,  
 176 participating in organization governance by attending meetings,  
 177 -serving on committees, or in leadership positions, participating  
 178 in panel discussions, and attending meals and receptions  
 179 associated with such events that are open to all attendees.

180 (c) The prohibition in subsection (1) remains in effect at  
 181 all times at such meetings wherever located. While participating  
 182 in such meetings, a commissioner shall:

183 1. Refrain from commenting on or discussing the subject  
 184 matter of any proceeding under s. 120.569 or s. 120.57 which is  
 185 currently pending before the commission or which he or she knows  
 186 or reasonably expects will be filed with the commission within  
 187 180 days after the meeting; and

188 2. Use reasonable care to ensure that the content of the  
 189 educational session or other session in which the commissioner  
 190 participates is not designed to address or create a forum to  
 191 influence the commissioner on the subject matter of any  
 192 proceeding under s. 120.569 or s. 120.57 which is currently  
 193 pending before the commission or which he or she knows or  
 194 reasonably expects will be filed with the commission within 180  
 195 days after the meeting ~~This section shall not apply to oral~~  
 196 ~~communications or discussions in scheduled and noticed open~~  
 197 ~~public meetings of educational programs or of a conference or~~  
 198 ~~other meeting of an association of regulatory agencies.~~

199 (7)

200 (b) If the Commission on Ethics finds that there has been a  
 201 violation of this section by a public service commissioner, it  
 202 shall provide the Governor and the Florida Public Service  
 203 Commission Nominating Council with a report of its findings and

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204 recommendations. The Governor shall remove from office a  
 205 commissioner who willfully and knowingly violates this section  
 206 and is authorized to enforce the findings and recommendations of  
 207 the Commission on Ethics, pursuant to part III of chapter 112.

208 Section 5. Section 350.0611, Florida Statutes, is amended  
 209 to read:

210 350.0611 Public Counsel; duties and powers.—It shall be the  
 211 duty of the Public Counsel to provide legal representation for  
 212 the people of the state in proceedings before the commission and  
 213 in proceedings before counties pursuant to s. 367.171(8). The  
 214 Public Counsel shall have such powers as are necessary to carry  
 215 out the duties of his or her office, including, but not limited  
 216 to, the following specific powers:

217 (1) To recommend to the commission or the counties, by  
 218 petition, the commencement of any proceeding or action or to  
 219 appear, in the name of the state or its citizens, in any  
 220 proceeding or action before the commission or the counties and  
 221 urge therein any position which he or she deems to be in the  
 222 public interest, whether consistent or inconsistent with  
 223 positions previously adopted by the commission or the counties,  
 224 and utilize therein all forms of discovery available to  
 225 attorneys in civil actions generally, subject to protective  
 226 orders of the commission or the counties which shall be  
 227 reviewable by summary procedure in the circuit courts of this  
 228 state;

229 (2) To have access to and use of all files, records, and  
 230 data of the commission or the counties available to any other  
 231 attorney representing parties in a proceeding before the  
 232 commission or the counties;

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233 (3) In any proceeding before the commission in which he or  
 234 she has participated as a party, to be a party to a settlement  
 235 agreement. If he or she is not a party to the settlement  
 236 agreement, it may not be submitted to or approved by the  
 237 commission;

238 ~~(4)(3)~~ In any proceeding in which he or she has  
 239 participated as a party, to seek review of any determination,  
 240 finding, or order of the commission or the counties, or of any  
 241 hearing examiner designated by the commission or the counties,  
 242 in the name of the state or its citizens;

243 ~~(5)(4)~~ To prepare and issue reports, recommendations, and  
 244 proposed orders to the commission, the Governor, and the  
 245 Legislature on any matter or subject within the jurisdiction of  
 246 the commission, and to make such recommendations as he or she  
 247 deems appropriate for legislation relative to commission  
 248 procedures, rules, jurisdiction, personnel, and functions; and

249 ~~(6)(5)~~ To appear before other state agencies, federal  
 250 agencies, and state and federal courts in connection with  
 251 matters under the jurisdiction of the commission, in the name of  
 252 the state or its citizens.

253 Section 6. Subsection (1) of section 366.05, Florida  
 254 Statutes, is amended to read:

255 366.05 Powers.—

256 (1) (a) In the exercise of such jurisdiction, the commission  
 257 shall have power to prescribe fair and reasonable rates and  
 258 charges, classifications, standards of quality and measurements,  
 259 including the ability to adopt construction standards that  
 260 exceed the National Electrical Safety Code, for purposes of  
 261 ensuring the reliable provision of service, and service rules

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262 and regulations to be observed by each public utility; to  
 263 require repairs, improvements, additions, replacements, and  
 264 extensions to the plant and equipment of any public utility when  
 265 reasonably necessary to promote the convenience and welfare of  
 266 the public and secure adequate service or facilities for those  
 267 reasonably entitled thereto; to employ and fix the compensation  
 268 for such examiners and technical, legal, and clerical employees  
 269 as it deems necessary to carry out the provisions of this  
 270 chapter; and to adopt rules pursuant to ss. 120.536(1) and  
 271 120.54 to implement and enforce the provisions of this chapter.

272 (b) If the commission authorizes a public utility to charge  
 273 tiered rates based upon levels of usage and to vary the billing  
 274 period, the utility may not charge a customer a higher rate  
 275 because of an increase in usage attributable to an extension of  
 276 the billing period.

277 (c) Notwithstanding any commission rule to the contrary, a  
 278 utility may not charge or receive a deposit in excess of the  
 279 amounts specified in subparagraphs 1. and 2.

280 1. For an existing customer, the total deposit cannot  
 281 exceed the total charges for 2 months of average actual usage,  
 282 calculated by adding the monthly charges from the 12-month  
 283 period immediately before the date any change in the deposit  
 284 amount is sought, dividing this total by 12, and multiplying the  
 285 result by 2.

286 2. For a new customer, the amount may not exceed 2 months  
 287 of projected charges, calculated using the process specified in  
 288 subparagraph 1. Once a new customer has had continuous service  
 289 for a 12-month period, the amount of the deposit shall be  
 290 recalculated, using actual usage data. Any difference between

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291 the projected and actual amounts must be resolved by the  
 292 customer paying any additional amount due or the utility  
 293 returning any overcharge.

294 (d) If a utility has more than one rate for any customer  
 295 class, it must notify each customer in that class of the  
 296 available rates and explain how the rate is charged to the  
 297 customer. If a customer contacts the utility seeking assistance  
 298 in selecting the most advantageous rate, the utility must  
 299 provide good faith assistance to the customer. The customer is  
 300 responsible for charges for service calculated under the  
 301 selected rate.

302 (e) New tariffs and changes to an existing tariff, other  
 303 than an administrative change that does not substantially change  
 304 the meaning or operation of the tariff, must be approved by vote  
 305 of the commission.

306 Section 7. Subsection (2) of section 366.82, Florida  
 307 Statutes, is amended to read:

308 366.82 Definition; goals; plans; programs; annual reports;  
 309 energy audits.-

310 (2) The commission shall adopt appropriate goals for  
 311 increasing the efficiency of energy consumption and increasing  
 312 the development of demand-side renewable energy systems,  
 313 specifically including goals designed to increase the  
 314 conservation of expensive resources, such as petroleum fuels, to  
 315 reduce and control the growth rates of electric consumption, to  
 316 reduce the growth rates of weather-sensitive peak demand, and to  
 317 encourage development of demand-side renewable energy resources.  
 318 The commission may allow efficiency investments across  
 319 generation, transmission, and distribution as well as

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320 efficiencies within the user base. Money received by a utility  
 321 for implementation of measures to encourage development of  
 322 demand-side renewable energy systems shall be used solely for  
 323 such purpose.

324 Section 8. Section 366.95, Florida Statutes, is created to  
 325 read:

326 366.95 Financing for certain nuclear generating asset  
 327 retirement or abandonment costs.-

328 (1) DEFINITIONS.-As used in this section, the term:

329 (a) "Ancillary agreement" means any bond, insurance policy,  
 330 letter of credit, reserve account, surety bond, interest rate  
 331 lock or swap arrangement, hedging arrangement, liquidity or  
 332 credit support arrangement, or other financial arrangement  
 333 entered into in connection with nuclear asset-recovery bonds.

334 (b) "Assignee" means any entity, including, but not limited  
 335 to, a corporation, limited liability company, partnership or  
 336 limited partnership, public authority, trust, financing entity,  
 337 or other legally recognized entity to which an electric utility  
 338 assigns, sells, or transfers, other than as security, all or a  
 339 portion of its interest in or right to nuclear asset-recovery  
 340 property. The term also includes any entity to which an assignee  
 341 assigns, sells, or transfers, other than as security, its  
 342 interest in or right to nuclear asset-recovery property.

343 (c) "Commission" means the Florida Public Service  
 344 Commission.

345 (d) "Electric utility" or "utility" has the same meaning as  
 346 in s. 366.8255.

347 (e) "Financing costs" means:

348 1. Interest and acquisition, defeasance, or redemption

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349 premiums that are payable on nuclear asset-recovery bonds;  
 350 2. Any payment required under an ancillary agreement and  
 351 any amount required to fund or replenish a reserve account or  
 352 other accounts established under the terms of any indenture,  
 353 ancillary agreement, or other financing documents pertaining to  
 354 nuclear asset-recovery bonds;  
 355 3. Any other cost related to issuing, supporting, repaying,  
 356 refunding, and servicing nuclear asset-recovery bonds,  
 357 including, but not limited to, servicing fees, accounting and  
 358 auditing fees, trustee fees, legal fees, consulting fees,  
 359 financial advisor fees, administrative fees, placement and  
 360 underwriting fees, capitalized interest, rating agency fees,  
 361 stock exchange listing and compliance fees, security  
 362 registration fees, filing fees, information technology  
 363 programming costs, and any other costs necessary to otherwise  
 364 ensure the timely payment of nuclear asset-recovery bonds or  
 365 other amounts or charges payable in connection with the bonds,  
 366 including costs related to obtaining the financing order;  
 367 4. Any taxes and license fees imposed on the revenues  
 368 generated from the collection of the nuclear asset-recovery  
 369 charge;  
 370 5. Any state and local taxes, franchise, gross receipts,  
 371 and other taxes or similar charges, including, but not limited  
 372 to, regulatory assessment fees, in any such case whether paid,  
 373 payable, or accrued; and  
 374 6. Any costs that are incurred by the commission for any  
 375 outside consultants or counsel pursuant to subparagraph (2)(c)2.  
 376 (f) "Financing order" means an order that authorizes the  
 377 issuance of nuclear asset-recovery bonds; the imposition,

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378 collection, and periodic adjustments of the nuclear asset-  
 379 recovery charge; and the creation of nuclear asset-recovery  
 380 property.  
 381 (g) "Financing party" means any and all of the following:  
 382 holders of nuclear asset-recovery bonds and trustees, collateral  
 383 agents, any party under an ancillary agreement, or any other  
 384 person acting for the benefit of holders of nuclear asset-  
 385 recovery bonds.  
 386 (h) "Financing statement" has the same meaning as in Art. 9  
 387 of the Uniform Commercial Code.  
 388 (i) "Nuclear asset-recovery bonds" means bonds, debentures,  
 389 notes, certificates of participation, certificates of beneficial  
 390 interest, certificates of ownership, or other evidences of  
 391 indebtedness or ownership that are issued by an electric utility  
 392 or an assignee pursuant to a financing order, the proceeds of  
 393 which are used directly or indirectly to recover, finance, or  
 394 refinance commission-approved nuclear asset-recovery costs and  
 395 financing costs, and that are secured by or payable from nuclear  
 396 asset-recovery property. If certificates of participation or  
 397 ownership are issued, references in this section to principal,  
 398 interest, or premium shall be construed to refer to comparable  
 399 amounts under those certificates.  
 400 (j) "Nuclear asset-recovery charge" means the amounts  
 401 authorized by the commission to repay, finance, or refinance  
 402 nuclear asset-recovery costs and financing costs. If determined  
 403 appropriate by the commission and provided for in a financing  
 404 order, such amounts are to be imposed on and be a part of all  
 405 customer bills and be collected by an electric utility or its  
 406 successors or assignees, or a collection agent, in full through

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407 a nonbypassable charge that is separate and apart from the  
 408 electric utility's base rates, which charge shall be paid by all  
 409 existing or future customers receiving transmission or  
 410 distribution service from the electric utility or its successors  
 411 or assignees under commission-approved rate schedules or under  
 412 special contracts, even if a customer elects to purchase  
 413 electricity from an alternative electricity supplier following a  
 414 fundamental change in regulation of public utilities in this  
 415 state.

416 (k) "Nuclear asset-recovery costs" means:

417 1. At the option of and upon petition by the electric  
 418 utility, and as approved by the commission pursuant to sub-  
 419 paragraph (2)(c)1.b., pretax costs that an electric utility  
 420 has incurred or expects to incur which are caused by, associated  
 421 with, or remain as a result of the early retirement or  
 422 abandonment of a nuclear generating asset unit that generated  
 423 electricity and is located in this state where such early  
 424 retirement or abandonment is deemed to be reasonable and prudent  
 425 by the commission through a final order approving a settlement  
 426 or other final order issued by the commission before July 1,  
 427 2017, and where the pretax costs to be securitized exceed \$750  
 428 million at the time of the filing of the petition. Costs  
 429 eligible or claimed for recovery pursuant to s. 366.93 are not  
 430 eligible for securitization under this section unless they were  
 431 in the electric utility's rate base and were included in base  
 432 rates before retirement or abandonment.

433 2. Such pretax costs, where determined appropriate by the  
 434 commission, include, but are not limited to, the capitalized  
 435 cost of the retired or abandoned nuclear generating asset unit,

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436 other applicable capital and operating costs, accrued carrying  
 437 charges, deferred expenses, reductions for applicable insurance  
 438 and salvage proceeds and previously stipulated write-downs or  
 439 write-offs, if any, and the costs of retiring any existing  
 440 indebtedness, fees, costs, and expenses to modify existing debt  
 441 agreements or for waivers or consents related to existing debt  
 442 agreements.

443 (1) "Nuclear asset-recovery property" means:

444 1. All rights and interests of an electric utility or  
 445 successor or assignee of the electric utility under a financing  
 446 order, including the right to impose, bill, collect, and receive  
 447 nuclear asset-recovery charges authorized under the financing  
 448 order and to obtain periodic adjustments to such charges as  
 449 provided in the financing order; or

450 2. All revenues, collections, claims, rights to payments,  
 451 payments, money, or proceeds arising from the rights and  
 452 interests specified in subparagraph 1., regardless of whether  
 453 such revenues, collections, claims, rights to payment, payments,  
 454 money, or proceeds are imposed, billed, received, collected, or  
 455 maintained together with or commingled with other revenues,  
 456 collections, rights to payment, payments, money, or proceeds.

457 (m) "Pledgee" means a financing party to which an electric  
 458 utility or its successors or assignees mortgages, negotiates,  
 459 hypothecates, pledges, or creates a security interest or lien on  
 460 all or any portion of its interest in or right to nuclear asset-  
 461 recovery property.

462 (n) "Uniform Commercial Code" has the same meaning as in  
 463 chapters 670-680.

464 (2) FINANCING ORDERS.-

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465 (a) An electric utility may petition the commission for a  
 466 financing order. For each petition, the electric utility shall:  
 467 1. Describe the nuclear asset-recovery costs;  
 468 2. Indicate whether the utility proposes to finance all or  
 469 a portion of the nuclear asset-recovery costs using nuclear  
 470 asset-recovery bonds. If the utility proposes to finance a  
 471 portion of such costs, the utility must identify which specific  
 472 portion in the petition;  
 473 3. Estimate the financing costs related to the nuclear  
 474 asset-recovery bonds;  
 475 4. Estimate the nuclear asset-recovery charges necessary to  
 476 recover the nuclear asset-recovery costs and financing costs and  
 477 the period for recovery of such costs;  
 478 5. Estimate any projected cost savings, based on current  
 479 market conditions, or demonstrate how the issuance of nuclear  
 480 asset-recovery bonds and the imposition of nuclear asset-  
 481 recovery charges would avoid or significantly mitigate rate  
 482 impacts to customers as compared with the traditional method of  
 483 financing and recovering nuclear asset-recovery costs from  
 484 customers;  
 485 6. Demonstrate that securitization has a significant  
 486 likelihood of resulting in lower overall costs or would avoid or  
 487 significantly mitigate rate impacts compared to traditional  
 488 method of cost recovery; and  
 489 7. File direct testimony supporting the petition.  
 490 (b) If an electric utility is subject to a settlement  
 491 agreement that governs the type and amount of principal costs  
 492 that could be included in nuclear asset-recovery costs, the  
 493 electric utility must file a petition, or have filed a petition,

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494 with the commission for review and approval of those principal  
 495 costs no later than 60 days before filing a petition for a  
 496 financing order pursuant to this section. The commission may not  
 497 authorize any such principal costs to be included or excluded,  
 498 as applicable, as nuclear asset-recovery costs if such inclusion  
 499 or exclusion, as applicable, of those costs would otherwise be  
 500 precluded by such electric utility's settlement agreement.  
 501 (c)1. Proceedings on a petition submitted pursuant to  
 502 paragraph (a) begin with the petition by an electric utility,  
 503 filed subject to the timeframe specified in paragraph (b), if  
 504 applicable, and shall be disposed of in accordance with chapter  
 505 120 and applicable rules, except that this section, to the  
 506 extent applicable, controls.  
 507 a. Within 7 days after the filing of a petition, the  
 508 commission shall publish a case schedule, which must place the  
 509 matter before the commission on an agenda that permits a  
 510 commission decision no later than 120 days after the date the  
 511 petition is filed.  
 512 b. No later than 135 days after the date the petition is  
 513 filed, the commission shall issue a financing order or an order  
 514 rejecting the petition. A party to the commission proceeding may  
 515 petition the commission for reconsideration of the financing  
 516 order within 5 days after the date of its issuance. The  
 517 commission shall issue a financing order authorizing financing  
 518 of reasonable and prudent nuclear asset-recovery costs and  
 519 financing costs if the commission finds that the issuance of the  
 520 nuclear asset-recovery bonds and the imposition of nuclear  
 521 asset-recovery charges authorized by the financing order have a  
 522 significant likelihood of resulting in lower overall costs or

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523 would avoid or significantly mitigate rate impacts to customers  
 524 as compared with the traditional method of financing and  
 525 recovering nuclear asset-recovery costs. Any determination of  
 526 whether nuclear asset-recovery costs are reasonable and prudent  
 527 shall be made with reference to the general public interest and  
 528 in accordance with paragraph (b), if applicable.

529 2. In a financing order issued to an electric utility, the  
 530 commission shall:

531 a. Except as provided in sub-subparagraph d. and in  
 532 subparagraph 4., specify the amount of nuclear asset-recovery  
 533 costs to be financed using nuclear asset-recovery bonds, taking  
 534 into consideration, to the extent the commission deems  
 535 appropriate, any other methods used to recover these costs. The  
 536 commission shall describe and estimate the amount of financing  
 537 costs which may be recovered through nuclear asset-recovery  
 538 charges and specify the period over which such costs may be  
 539 recovered. Any such determination as to the overall time period  
 540 for cost recovery must be consistent with a settlement  
 541 agreement, if any, as referenced in paragraph (b);

542 b. Determine if the proposed structuring, expected pricing,  
 543 and financing costs of the nuclear asset-recovery bonds have a  
 544 significant likelihood of resulting in lower overall costs or  
 545 would avoid or significantly mitigate rate impacts to customers  
 546 as compared with the traditional method of financing and  
 547 recovering nuclear asset-recovery costs. A financing order must  
 548 provide detailed findings of fact addressing cost-effectiveness  
 549 and associated rate impacts upon retail customers and retail  
 550 customer classes;

551 c. Require, for the period specified pursuant to sub-

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552 subparagraph a., that the imposition and collection of nuclear  
 553 asset-recovery charges authorized under a financing order be  
 554 nonbypassable and paid by all existing and future customers  
 555 receiving transmission or distribution service from the electric  
 556 utility or its successors or assignees under commission-approved  
 557 rate schedules or under special contracts, even if a customer  
 558 elects to purchase electricity from an alternative electric  
 559 supplier following a fundamental change in regulation of public  
 560 utilities in this state;

561 d. Include a formula-based true-up mechanism for making  
 562 expeditious periodic adjustments in the nuclear asset-recovery  
 563 charges that customers are required to pay pursuant to the  
 564 financing order and for making any adjustments that are  
 565 necessary to correct for any overcollection or undercollection  
 566 of the charges or to otherwise ensure the timely payment of  
 567 nuclear asset-recovery bonds and financing costs and other  
 568 required amounts and charges payable in connection with the  
 569 nuclear asset-recovery bonds;

570 e. Specify the nuclear asset-recovery property that is, or  
 571 shall be, created in favor of an electric utility or its  
 572 successors or assignees and that shall be used to pay or secure  
 573 nuclear asset-recovery bonds and all financing costs;

574 f. Specify the degree of flexibility to be afforded to the  
 575 electric utility in establishing the terms and conditions of the  
 576 nuclear asset-recovery bonds, including, but not limited to,  
 577 repayment schedules, expected interest rates, and other  
 578 financing costs consistent with sub-subparagraphs a.-e.;

579 g. Require nuclear asset-recovery charges to be allocated  
 580 to the customer classes using the criteria set out in s.

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581 366.06(1), in the manner in which these costs or their  
 582 equivalent was allocated in the cost-of-service study that was  
 583 approved in connection with the electric utility's last rate  
 584 case and that is in effect during the nuclear asset-recovery  
 585 charge annual billing period. If the electric utility's last  
 586 rate case was resolved by a settlement agreement, the cost-of-  
 587 service methodology that was adopted in the settlement agreement  
 588 in that case and that is in effect during the nuclear asset-  
 589 recovery charge annual billing period shall be used;

590 h. Require, after the final terms of an issuance of nuclear  
 591 asset-recovery bonds have been established and before the  
 592 issuance of nuclear asset-recovery bonds, that the electric  
 593 utility determine the resulting initial nuclear asset-recovery  
 594 charge in accordance with the financing order and that such  
 595 initial nuclear asset-recovery charge be final and effective  
 596 upon the issuance of such nuclear asset-recovery bonds without  
 597 further commission action so long as the nuclear asset-recovery  
 598 charge is consistent with the financing order; and

599 i. Include any other conditions that the commission  
 600 considers appropriate and that are authorized by this section.

601  
 602 In performing the responsibilities of this subparagraph and  
 603 subparagraph 5., the commission may engage outside consultants  
 604 or counsel. All expenses associated with such services shall be  
 605 included as part of financing costs and included in the nuclear  
 606 asset-recovery charge.

607 3. A financing order issued to an electric utility may  
 608 provide that creation of the electric utility's nuclear asset-  
 609 recovery property pursuant to sub-subparagraph 2.e. is

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610 conditioned upon, and simultaneous with, the sale or other  
 611 transfer of the nuclear asset-recovery property to an assignee  
 612 and the pledge of the nuclear asset-recovery property to secure  
 613 nuclear asset-recovery bonds.

614 4. If the commission issues a financing order and nuclear  
 615 asset-recovery bonds are issued, the electric utility or  
 616 assignee must file with the commission at least biannually a  
 617 petition or a letter applying the formula-based true-up  
 618 mechanism pursuant to sub-subparagraph 2.d. and, based on  
 619 estimates of consumption for each rate class and other  
 620 mathematical factors, requesting administrative approval to make  
 621 the adjustments described in sub-subparagraph 2.d. The review of  
 622 such a request is limited to determining whether there is any  
 623 mathematical error in the application of the formula-based  
 624 mechanism relating to the amount of any overcollection or  
 625 undercollection of nuclear asset-recovery charges and the amount  
 626 of any adjustment. Such adjustments shall ensure the recovery of  
 627 revenues sufficient to provide for the timely payment of  
 628 principal, interest, acquisition, defeasance, financing costs,  
 629 or redemption premium and other fees, costs, and charges  
 630 relating to nuclear asset-recovery bonds approved under the  
 631 financing order. Within 60 days after receiving an electric  
 632 utility's request pursuant to this paragraph, the commission  
 633 must approve the request or inform the electric utility of any  
 634 mathematical errors in its calculation. If the commission  
 635 informs the utility of mathematical errors in its calculation,  
 636 the utility may correct its error and refile its request. The  
 637 timeframes previously described in this paragraph apply to a  
 638 refiled request.

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639 5. Within 120 days after the issuance of nuclear asset-  
 640 recovery bonds, the electric utility shall file with the  
 641 commission information on the actual costs of the nuclear asset-  
 642 recovery bonds issuance. The commission shall review, on a  
 643 reasonably comparable basis, such information to determine if  
 644 such costs incurred in the issuance of the bonds resulted in the  
 645 lowest overall costs that were reasonably consistent with market  
 646 conditions at the time of the issuance and the terms of the  
 647 financing order. The commission may disallow all incremental  
 648 issuance costs in excess of the lowest overall costs by  
 649 requiring the electric utility to make a credit to the capacity  
 650 cost recovery clause in an amount equal to the excess of actual  
 651 issuance costs incurred, and paid for out of nuclear asset-  
 652 recovery bonds proceeds, and the lowest overall issuance costs  
 653 as determined by the commission. The commission may not make  
 654 adjustments to the nuclear asset-recovery charges for any such  
 655 excess issuance costs.

656 6. Subsequent to the transfer of nuclear asset-recovery  
 657 property to an assignee or the issuance of nuclear asset-  
 658 recovery bonds authorized thereby, whichever is earlier, a  
 659 financing order is irrevocable and, except as provided in  
 660 subparagraph 4. and paragraph (d), the commission may not amend,  
 661 modify, or terminate the financing order by any subsequent  
 662 action or reduce, impair, postpone, terminate, or otherwise  
 663 adjust nuclear asset-recovery charges approved in the financing  
 664 order. After the issuance of a financing order, the electric  
 665 utility retains sole discretion regarding whether to assign,  
 666 sell, or otherwise transfer nuclear asset-recovery property or  
 667 to cause nuclear asset-recovery bonds to be issued, including

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668 the right to defer or postpone such assignment, sale, transfer,  
 669 or issuance. If the electric utility decides not to cause  
 670 nuclear asset-recovery bonds to be issued, the electric utility  
 671 may not recover financing costs as defined in paragraph (1) (e)  
 672 from customers.

673 (d) At the request of an electric utility, the commission  
 674 may commence a proceeding and issue a subsequent financing order  
 675 that provides for refinancing, retiring, or refunding nuclear  
 676 asset-recovery bonds issued pursuant to the original financing  
 677 order if the commission finds that the subsequent financing  
 678 order satisfies all of the criteria specified in paragraph (c).  
 679 Effective upon retirement of the refunded nuclear asset-recovery  
 680 bonds and the issuance of new nuclear asset-recovery bonds, the  
 681 commission shall adjust the related nuclear asset-recovery  
 682 charges accordingly.

683 (e) Within 30 days after the commission issues a financing  
 684 order or a decision denying a request for reconsideration or, if  
 685 the request for reconsideration is granted, within 30 days after  
 686 the commission issues its decision on reconsideration, an  
 687 adversely affected party may petition for judicial review in the  
 688 Florida Supreme Court. The petition for review must be served  
 689 upon the executive director of the commission personally or by  
 690 service at the office of the commission. Review on appeal shall  
 691 be based solely on the record before the commission and briefs  
 692 to the court and is limited to determining whether the financing  
 693 order, or the order on reconsideration, conforms to the state  
 694 constitution and laws of this state and federal law and is  
 695 within the authority of the commission under this section.  
 696 Inasmuch as delay in the determination of the appeal of a

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697 financing order will delay the issuance of nuclear asset-  
 698 recovery bonds, thereby diminishing savings to customers which  
 699 might be achieved if such nuclear asset-recovery bonds were  
 700 issued as contemplated by a financing order, the Florida Supreme  
 701 Court shall proceed to hear and determine the action as  
 702 expeditiously as practicable and give the action precedence over  
 703 other matters not accorded similar precedence by law.

704 (f)1. A financing order remains in effect and all such  
 705 nuclear asset-recovery property continues to exist until nuclear  
 706 asset-recovery bonds issued pursuant to the financing order have  
 707 been paid in full and all commission-approved financing costs of  
 708 such nuclear asset-recovery bonds have been recovered in full.

709 2. A financing order issued to an electric utility remains  
 710 in effect and unabated notwithstanding the reorganization,  
 711 bankruptcy, or other insolvency proceedings, or merger, or sale  
 712 of the electric utility or its successors or assignees.

713 (3) EXCEPTIONS TO COMMISSION JURISDICTION.-

714 (a) If the commission issues a financing order to an  
 715 electric utility pursuant to this section, the commission may  
 716 not, in exercising its powers and carrying out its duties  
 717 regarding any matter within its authority pursuant to this  
 718 chapter, consider the nuclear asset-recovery bonds issued  
 719 pursuant to the financing order to be the debt of the electric  
 720 utility other than for federal income tax purposes, consider the  
 721 nuclear asset-recovery charges paid under the financing order to  
 722 be the revenue of the electric utility for any purpose, or  
 723 consider the nuclear asset-recovery costs or financing costs  
 724 specified in the financing order to be the costs of the electric  
 725 utility, nor may the commission determine any action taken by an

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726 electric utility which is consistent with the financing order to  
 727 be unjust or unreasonable.

728 (b) The commission may not order or otherwise directly or  
 729 indirectly require an electric utility to use nuclear asset-  
 730 recovery bonds to finance any project, addition, plant,  
 731 facility, extension, capital improvement, equipment, or any  
 732 other expenditure, unless that expenditure is a nuclear asset-  
 733 recovery cost and the electric utility has filed a petition  
 734 pursuant to paragraph (2) (a) to finance such expenditure using  
 735 nuclear asset-recovery bonds. The commission may not refuse to  
 736 allow an electric utility to recover nuclear asset-recovery  
 737 costs in an otherwise permissible fashion, or refuse or  
 738 condition authorization or approval pursuant to s. 366.04 of the  
 739 issuance and sale by an electric utility of securities or the  
 740 assumption by it of liabilities or obligations, solely because  
 741 of the potential availability of nuclear asset-recovery cost  
 742 financing.

743 (4) ELECTRIC UTILITY DUTIES.-The electric bills of an  
 744 electric utility that has obtained a financing order and caused  
 745 nuclear asset-recovery bonds to be issued must:

746 (a) Explicitly reflect that a portion of the charges on  
 747 such bill represents nuclear asset-recovery charges approved in  
 748 a financing order issued to the electric utility and, if the  
 749 nuclear asset-recovery property has been transferred to an  
 750 assignee, must include a statement to the effect that the  
 751 assignee is the owner of the rights to nuclear asset-recovery  
 752 charges and that the electric utility or other entity, if  
 753 applicable, is acting as a collection agent or servicer for the  
 754 assignee. The tariff applicable to customers must indicate the

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755 nuclear asset-recovery charge and the ownership of that charge.

756 (b) Include the nuclear asset-recovery charge on each  
 757 customer's bill as a separate line item titled "Asset  
 758 Securitization Charge" and include both the rate and the amount  
 759 of the charge on each bill.

760  
 761 The failure of an electric utility to comply with this  
 762 subsection does not invalidate, impair, or affect any financing  
 763 order, nuclear asset-recovery property, nuclear asset-recovery  
 764 charge, or nuclear asset-recovery bonds, but does subject the  
 765 electric utility to penalties under s. 366.095.

766 (5) NUCLEAR ASSET-RECOVERY PROPERTY.—

767 (a)1. All nuclear asset-recovery property that is specified  
 768 in a financing order constitutes an existing, present property  
 769 right or interest therein, notwithstanding that the imposition  
 770 and collection of nuclear asset-recovery charges depends on the  
 771 electric utility, to which the financing order is issued,  
 772 performing its servicing functions relating to the collection of  
 773 nuclear asset-recovery charges and on future electricity  
 774 consumption. Such property exists whether or not the revenues or  
 775 proceeds arising from the property have been billed, have  
 776 accrued, or have been collected and notwithstanding the fact  
 777 that the value or amount of the property is dependent on the  
 778 future provision of service to customers by the electric utility  
 779 or its successors or assignees.

780 2. Nuclear asset-recovery property specified in a financing  
 781 order exists until nuclear asset-recovery bonds issued pursuant  
 782 to the financing order are paid in full and all financing costs  
 783 and other costs of such nuclear asset-recovery bonds have been

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784 recovered in full.

785 3. All or any portion of nuclear asset-recovery property  
 786 specified in a financing order issued to an electric utility may  
 787 be transferred, sold, conveyed, or assigned to a successor or  
 788 assignee, that is wholly owned, directly or indirectly, by the  
 789 electric utility, created for the limited purpose of acquiring,  
 790 owning, or administering nuclear asset-recovery property or  
 791 issuing nuclear asset-recovery bonds under the financing order.  
 792 All or any portion of nuclear asset-recovery property may be  
 793 pledged to secure nuclear asset-recovery bonds issued pursuant  
 794 to the financing order, amounts payable to financing parties and  
 795 to counterparties under any ancillary agreements, and other  
 796 financing costs. Each such transfer, sale, conveyance,  
 797 assignment, or pledge by an electric utility or affiliate of an  
 798 electric utility is considered to be a transaction in the  
 799 ordinary course of business.

800 4. If an electric utility defaults on any required payment  
 801 of charges arising from nuclear asset-recovery property  
 802 specified in a financing order, a court, upon application by an  
 803 interested party, and without limiting any other remedies  
 804 available to the applying party, shall order the sequestration  
 805 and payment of the revenues arising from the nuclear asset-  
 806 recovery property to the financing parties. Any such financing  
 807 order remains in full force and effect notwithstanding any  
 808 reorganization, bankruptcy, or other insolvency proceedings with  
 809 respect to the electric utility or its successors or assignees.

810 5. The interest of a transferee, purchaser, acquirer,  
 811 assignee, or pledgee in nuclear asset-recovery property  
 812 specified in a financing order issued to an electric utility,

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813 and in the revenue and collections arising from that property,  
 814 is not subject to setoff, counterclaim, surcharge, or defense by  
 815 the electric utility or any other person or in connection with  
 816 the reorganization, bankruptcy, or other insolvency of the  
 817 electric utility or any other entity.

818 6. Any successor to an electric utility, whether pursuant  
 819 to any reorganization, bankruptcy, or other insolvency  
 820 proceeding or whether pursuant to any merger or acquisition,  
 821 sale, or other business combination, or transfer by operation of  
 822 law, as a result of electric utility restructuring or otherwise,  
 823 must perform and satisfy all obligations of, and have the same  
 824 rights under a financing order as, the electric utility under  
 825 the financing order in the same manner and to the same extent as  
 826 the electric utility, including collecting and paying to the  
 827 person entitled to receive the revenues, collections, payments,  
 828 or proceeds of the nuclear asset-recovery property.

829 (b)1. Except as provided in this section, the Uniform  
 830 Commercial Code does not apply to nuclear asset-recovery  
 831 property or any right, title, or interest of an electric utility  
 832 or assignee described in subparagraph (1)(l)1., whether before  
 833 or after the issuance of the financing order. In addition, such  
 834 right, title, or interest pertaining to a financing order,  
 835 including, but not limited to, the associated nuclear asset-  
 836 recovery property and any revenues, collections, claims, rights  
 837 to payment, payments, money, or proceeds of or arising from  
 838 nuclear asset-recovery charges pursuant to such order, is not  
 839 deemed proceeds of any right or interest other than in the  
 840 financing order and the nuclear asset-recovery property arising  
 841 from the order.

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842 2. The creation, attachment, granting, perfection,  
 843 priority, and enforcement of liens and security interests in  
 844 nuclear asset-recovery property to secure nuclear asset-recovery  
 845 bonds is governed solely by this section and, except to the  
 846 extent provided in this section, not by the Uniform Commercial  
 847 Code.

848 3. A valid, enforceable, and attached lien and security  
 849 interest in nuclear asset-recovery property may be created only  
 850 upon the later of:

851 a. The issuance of a financing order;

852 b. The execution and delivery of a security agreement with  
 853 a financing party in connection with the issuance of nuclear  
 854 asset-recovery bonds; or

855 c. The receipt of value for nuclear asset-recovery bonds.  
 856

857 A valid, enforceable, and attached security interest is  
 858 perfected against third parties as of the date of filing of a  
 859 financing statement in the Florida Secured Transaction Registry,  
 860 as defined in s. 679.527, in accordance with subparagraph 4.,  
 861 and is thereafter a continuously perfected lien; and such  
 862 security interest in the nuclear asset-recovery property and all  
 863 proceeds of such nuclear asset-recovery property, whether or not  
 864 billed, accrued, or collected, and whether or not deposited into  
 865 a deposit account and however evidenced, has priority in  
 866 accordance with subparagraph 8. and takes precedence over any  
 867 subsequent judicial or other lien creditor. A continuation  
 868 statement does not need to be filed to maintain such perfection.

869 4. Financing statements required to be filed pursuant to  
 870 this section must be filed, maintained, and indexed in the same

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871 manner and in the same system of records maintained for the  
 872 filing of financing statements in the Florida Secured  
 873 Transaction Registry, as defined in s. 679.527. The filing of  
 874 such a financing statement is the only method of perfecting a  
 875 lien or security interest on nuclear asset-recovery property.  
 876 5. The priority of a lien and security interest perfected  
 877 under this paragraph is not impaired by any later modification  
 878 of the financing order or nuclear asset-recovery property or by  
 879 the commingling of funds arising from nuclear asset-recovery  
 880 property with other funds, and any other security interest that  
 881 may apply to those funds is terminated as to all funds  
 882 transferred to a segregated account for the benefit of an  
 883 assignee or a financing party or to an assignee or financing  
 884 party directly.  
 885 6. If a default or termination occurs under the terms of  
 886 the nuclear asset-recovery bonds, the financing parties or their  
 887 representatives may foreclose on or otherwise enforce their lien  
 888 and security interest in any nuclear asset-recovery property as  
 889 if they were a secured party under Art. 9 of the Uniform  
 890 Commercial Code; and a court may order that amounts arising from  
 891 nuclear asset-recovery property be transferred to a separate  
 892 account for the financing parties' benefit, to which their lien  
 893 and security interest applies. Upon application by or on behalf  
 894 of the financing parties to a circuit court of this state, the  
 895 court shall order the sequestration and payment to the financing  
 896 parties of revenues arising from the nuclear asset-recovery  
 897 property.  
 898 7. The interest of a pledgee of an interest or any rights  
 899 in any nuclear asset-recovery property is not perfected until

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900 filing as provided in subparagraph 4.  
 901 8. The priority of the conflicting interests of pledgees in  
 902 the same interest or rights in any nuclear asset-recovery  
 903 property is determined as follows:  
 904 a. Conflicting perfected interests or rights of pledgees  
 905 rank according to priority in time of perfection. Priority dates  
 906 from the time a filing covering the interest or right is made in  
 907 accordance with this paragraph.  
 908 b. A perfected interest or right of a pledgee has priority  
 909 over a conflicting unperfected interest or right of a pledgee.  
 910 c. A perfected interest or right of a pledgee has priority  
 911 over a person who becomes a lien creditor after the perfection  
 912 of such pledgee's interest or right.  
 913 (c) The sale, assignment, or transfer of nuclear asset-  
 914 recovery property is governed by this paragraph. All of the  
 915 following apply to a sale, assignment, or transfer under this  
 916 paragraph:  
 917 1. The sale, conveyance, assignment, or other transfer of  
 918 nuclear asset-recovery property by an electric utility to an  
 919 assignee that the parties have in the governing documentation  
 920 expressly stated to be a sale or other absolute transfer is an  
 921 absolute transfer and true sale of, and not a pledge of or  
 922 secured transaction relating to, the transferor's right, title,  
 923 and interest in, to, and under the nuclear asset-recovery  
 924 property, other than for federal and state income and franchise  
 925 tax purposes. After such a transaction, the nuclear asset-  
 926 recovery property is not subject to any claims of the transferor  
 927 or the transferor's creditors, other than creditors holding a  
 928 prior security interest in the nuclear asset-recovery property

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929 perfected under paragraph (b).

930 2. The characterization of the sale, conveyance,  
 931 assignment, or other transfer as a true sale or other absolute  
 932 transfer under subparagraph 1. and the corresponding  
 933 characterization of the transferee's property interest are not  
 934 affected by:

935 a. Commingling of amounts arising with respect to the  
 936 nuclear asset-recovery property with other amounts;

937 b. The retention by the transferor of a partial or residual  
 938 interest, including an equity interest, in the nuclear asset-  
 939 recovery property, whether direct or indirect, or whether  
 940 subordinate or otherwise;

941 c. Any recourse that the transferee may have against the  
 942 transferor other than any such recourse created, contingent  
 943 upon, or otherwise occurring or resulting from one or more of  
 944 the transferor's customers' inability or failure to timely pay  
 945 all or a portion of the nuclear asset-recovery charge;

946 d. Any indemnifications, obligations, or repurchase rights  
 947 made or provided by the transferor, other than indemnity or  
 948 repurchase rights based solely upon a transferor's customers'  
 949 inability or failure to timely pay all or a portion of the  
 950 nuclear asset-recovery charge;

951 e. The responsibility of the transferor to collect nuclear  
 952 asset-recovery charges;

953 f. The treatment of the sale, conveyance, assignment, or  
 954 other transfer for tax, financial reporting, or other purposes;  
 955 or

956 g. The granting or providing to holders of nuclear asset-  
 957 recovery bonds a preferred right to the nuclear asset-recovery

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958 property or credit enhancement by the electric utility or its  
 959 affiliates with respect to such nuclear asset-recovery bonds.

960 3. Any right that an electric utility has in the nuclear  
 961 asset-recovery property before its pledge, sale, or transfer or  
 962 any other right created under this section or created in the  
 963 financing order and assignable under this section or assignable  
 964 pursuant to a financing order is property in the form of a  
 965 contract right. Transfer of an interest in nuclear asset-  
 966 recovery property to an assignee is enforceable only upon the  
 967 later of the issuance of a financing order, the execution and  
 968 delivery of transfer documents to the assignee in connection  
 969 with the issuance of nuclear asset-recovery bonds, and the  
 970 receipt of value. An enforceable transfer of an interest in  
 971 nuclear asset-recovery property to an assignee is perfected  
 972 against all third parties, including subsequent judicial or  
 973 other lien creditors, when a notice of that transfer has been  
 974 given by the filing of a financing statement in accordance with  
 975 subparagraph (b)4. The transfer is perfected against third  
 976 parties as of the date of filing.

977 4. Financing statements required to be filed under this  
 978 section must be maintained and indexed in the same manner and in  
 979 the same system of records maintained for the filing of  
 980 financing statements in the Florida Secured Transaction  
 981 Registry, as defined in s. 679.527. The filing of such a  
 982 financing statement is the only method of perfecting a transfer  
 983 of nuclear asset-recovery property.

984 5. The priority of a transfer perfected under this section  
 985 is not impaired by any later modification of the financing order  
 986 or nuclear asset-recovery property or by the commingling of

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987 funds arising from nuclear asset-recovery property with other  
 988 funds. Any other security interest that may apply to those  
 989 funds, other than a security interest perfected under paragraph  
 990 (b), is terminated when they are transferred to a segregated  
 991 account for the assignee or a financing party. If nuclear asset-  
 992 recovery property has been transferred to an assignee or  
 993 financing party, any proceeds of that property must be held in  
 994 trust for the assignee or financing party.

995 6. The priority of the conflicting interests of assignees  
 996 in the same interest or rights in any nuclear asset-recovery  
 997 property is determined as follows:

998 a. Conflicting perfected interests or rights of assignees  
 999 rank according to priority in time of perfection. Priority dates  
 1000 from the time a filing covering the transfer is made in  
 1001 accordance with subparagraph (b)4.

1002 b. A perfected interest or right of an assignee has  
 1003 priority over a conflicting unperfected interest or right of an  
 1004 assignee.

1005 c. A perfected interest or right of an assignee has  
 1006 priority over a person who becomes a lien creditor after the  
 1007 perfection of such assignee's interest or right.

1008 (6) DESCRIPTION OR INDICATION OF PROPERTY.—The description  
 1009 of nuclear asset-recovery property being transferred to an  
 1010 assignee in any sale agreement, purchase agreement, or other  
 1011 transfer agreement, granted or pledged to a pledgee in any  
 1012 security agreement, pledge agreement, or other security  
 1013 document, or indicated in any financing statement is only  
 1014 sufficient if such description or indication describes the  
 1015 financing order that created the nuclear asset-recovery property

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1016 and states that such agreement or financing statement covers all  
 1017 or part of such property described in such financing order. This  
 1018 subsection applies to all purported transfers of, and all  
 1019 purported grants or liens or security interests in, nuclear  
 1020 asset-recovery property, regardless of whether the related sale  
 1021 agreement, purchase agreement, other transfer agreement,  
 1022 security agreement, pledge agreement, or other security document  
 1023 was entered into, or any financing statement was filed, before  
 1024 or after the effective date of this section.

1025 (7) FINANCING STATEMENTS.—All financing statements  
 1026 referenced in this section are subject to Part V of Art. 9 of  
 1027 the Uniform Commercial Code, except that the requirement as to  
 1028 continuation statements does not apply.

1029 (8) CHOICE OF LAW.—The law governing the validity,  
 1030 enforceability, attachment, perfection, priority, and exercise  
 1031 of remedies with respect to the transfer of an interest or right  
 1032 or the pledge or creation of a security interest in any nuclear  
 1033 asset-recovery property shall be the laws of this state, and  
 1034 exclusively, the laws of this section.

1035 (9) NUCLEAR ASSET-RECOVERY BONDS NOT PUBLIC DEBT.—The state  
 1036 or its political subdivisions are not liable on any nuclear  
 1037 asset-recovery bonds, and the bonds are not a debt or a general  
 1038 obligation of the state or any of its political subdivisions,  
 1039 agencies, or instrumentalities. An issue of nuclear asset-  
 1040 recovery bonds does not, directly or indirectly or contingently,  
 1041 obligate the state or any agency, political subdivision, or  
 1042 instrumentality of the state to levy any tax or make any  
 1043 appropriation for payment of the nuclear asset-recovery bonds,  
 1044 other than in their capacity as consumers of electricity. This

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1045 subsection does not preclude bond guarantees or enhancements  
 1046 pursuant to this section. All nuclear asset-recovery bonds must  
 1047 contain on the face thereof a statement to the following effect:  
 1048 "Neither the full faith and credit nor the taxing power of the  
 1049 State of Florida is pledged to the payment of the principal of,  
 1050 or interest on, this bond."

1051 (10) NUCLEAR ASSET-RECOVERY BONDS AS LEGAL INVESTMENTS WITH  
 1052 RESPECT TO INVESTORS THAT REQUIRE STATUTORY AUTHORITY REGARDING  
 1053 LEGAL INVESTMENT.—All of the following entities may legally  
 1054 invest any sinking funds, moneys, or other funds belonging to  
 1055 them or under their control in nuclear asset-recovery bonds:

1056 (a) The state, the investment board, municipal  
 1057 corporations, political subdivisions, public bodies, and public  
 1058 officers, except for members of the commission.

1059 (b) Banks and bankers, savings and loan associations,  
 1060 credit unions, trust companies, savings banks and institutions,  
 1061 investment companies, insurance companies, insurance  
 1062 associations, and other persons carrying on a banking or  
 1063 insurance business.

1064 (c) Personal representatives, guardians, trustees, and  
 1065 other fiduciaries.

1066 (d) All other persons whatsoever who are now or may  
 1067 hereafter be authorized to invest in bonds or other obligations  
 1068 of a similar nature.

1069 (11) STATE PLEDGE.—

1070 (a) For purposes of this subsection, the term "bondholder"  
 1071 means a person who holds a nuclear asset-recovery bond.

1072 (b) The state pledges to and agrees with bondholders, the  
 1073 owners of the nuclear asset-recovery property, and other

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1074 financing parties that the state will not:

1075 1. Alter the provisions of this section which make the  
 1076 nuclear asset-recovery charges imposed by a financing order  
 1077 irrevocable, binding, and nonbypassable charges;

1078 2. Take or permit any action that impairs or would impair  
 1079 the value of nuclear asset-recovery property or revises the  
 1080 nuclear asset-recovery costs for which recovery is authorized;  
 1081 or

1082 3. Except as authorized under this section, reduce, alter,  
 1083 or impair nuclear asset-recovery charges that are to be imposed,  
 1084 collected, and remitted for the benefit of the bondholders and  
 1085 other financing parties until any and all principal, interest,  
 1086 premium, financing costs and other fees, expenses, or charges  
 1087 incurred, and any contracts to be performed, in connection with  
 1088 the related nuclear asset-recovery bonds have been paid and  
 1089 performed in full.

1090  
 1091 This paragraph does not preclude limitation or alteration if  
 1092 full compensation is made by law for the full protection of the  
 1093 nuclear asset-recovery charges collected pursuant to a financing  
 1094 order and of the holders of nuclear asset-recovery bonds and any  
 1095 assignee or financing party entering into a contract with the  
 1096 electric utility.

1097 (c) Any person or entity that issues nuclear asset-recovery  
 1098 bonds may include the pledge specified in paragraph (b) in the  
 1099 nuclear asset-recovery bonds and related documentation.

1100 (12) NOT AN ELECTRIC UTILITY.—An assignee or financing  
 1101 party is not an electric utility or person providing electric  
 1102 service by virtue of engaging in the transactions described in

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1103 this section.

1104 (13) CONFLICTS.—If there is a conflict between this section  
 1105 and any other law regarding the attachment, assignment, or  
 1106 perfection, or the effect of perfection, or priority of,  
 1107 assignment or transfer of, or security interest in nuclear  
 1108 asset-recovery property, this section governs.

1109 (14) EFFECT OF INVALIDITY ON ACTIONS.—Effective on the date  
 1110 that nuclear asset-recovery bonds are first issued under this  
 1111 section, if any provision of this section is held to be invalid  
 1112 or is invalidated, superseded, replaced, repealed, or expires  
 1113 for any reason, that occurrence does not affect the validity of  
 1114 any action allowed under this section which is taken by an  
 1115 electric utility, an assignee, a financing party, a collection  
 1116 agent, or a party to an ancillary agreement; and any such action  
 1117 remains in full force and effect with respect to all nuclear  
 1118 asset-recovery bonds issued or authorized in a financing order  
 1119 issued under this section before the date that such provision is  
 1120 held to be invalid or is invalidated, superseded, replaced, or  
 1121 repealed, or that expires for any reason.

1122 (15) PENALTIES.—A violation of this section or of a  
 1123 financing order issued under this section subjects the utility  
 1124 that obtained the order to penalties under s. 366.095 and to any  
 1125 other penalties or remedies that the commission determines are  
 1126 necessary to achieve the intent of this section and the intent  
 1127 and terms of the financing order and to prevent any increase in  
 1128 financial impact to the utility's customers above that set forth  
 1129 in the financing order. If the commission orders a penalty or a  
 1130 remedy for a violation, the monetary penalty or remedy and the  
 1131 costs of defending against the proposed penalty or remedy may

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1132 not be recovered from the customers. The commission may not make  
 1133 adjustments to nuclear asset-recovery charges for any such  
 1134 penalties or remedies.

1135 Section 9. For the purpose of incorporating the amendment  
 1136 made by this act to section 350.01, Florida Statutes, in a  
 1137 reference thereto, paragraph (a) of subsection (1) of section  
 1138 403.537, Florida Statutes, is reenacted to read:

1139 403.537 Determination of need for transmission line; powers  
 1140 and duties.—

1141 (1) (a) Upon request by an applicant or upon its own motion,  
 1142 the Florida Public Service Commission shall schedule a public  
 1143 hearing, after notice, to determine the need for a transmission  
 1144 line regulated by the Florida Electric Transmission Line Siting  
 1145 Act, ss. 403.52-403.5365. The notice shall be published at least  
 1146 21 days before the date set for the hearing and shall be  
 1147 published by the applicant in at least one-quarter page size  
 1148 notice in newspapers of general circulation, and by the  
 1149 commission in the manner specified in chapter 120, by giving  
 1150 notice to counties and regional planning councils in whose  
 1151 jurisdiction the transmission line could be placed, and by  
 1152 giving notice to any persons who have requested to be placed on  
 1153 the mailing list of the commission for this purpose. Within 21  
 1154 days after receipt of a request for determination by an  
 1155 applicant, the commission shall set a date for the hearing. The  
 1156 hearing shall be held pursuant to s. 350.01 within 45 days after  
 1157 the filing of the request, and a decision shall be rendered  
 1158 within 60 days after such filing.

1159 Section 10. For the purpose of incorporating the amendment  
 1160 made by this act to section 350.01, Florida Statutes, in a

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1161 reference thereto, paragraph (a) of subsection (1) of section  
1162 403.9422, Florida Statutes, is reenacted to read:

1163 403.9422 Determination of need for natural gas transmission  
1164 pipeline; powers and duties.—

1165 (1) (a) Upon request by an applicant or upon its own motion,  
1166 the commission shall schedule a public hearing, after notice, to  
1167 determine the need for a natural gas transmission pipeline  
1168 regulated by ss. 403.9401-403.9425. Such notice shall be  
1169 published at least 45 days before the date set for the hearing  
1170 and shall be published in at least one-quarter page size in  
1171 newspapers of general circulation and in the Florida  
1172 Administrative Register, by giving notice to counties and  
1173 regional planning councils in whose jurisdiction the natural gas  
1174 transmission pipeline could be placed, and by giving notice to  
1175 any persons who have requested to be placed on the mailing list  
1176 of the commission for this purpose. Within 21 days after receipt  
1177 of a request for determination by an applicant, the commission  
1178 shall set a date for the hearing. The hearing shall be held  
1179 pursuant to s. 350.01 within 75 days after the filing of the  
1180 request, and a decision shall be rendered within 90 days after  
1181 such filing.

1182 Section 11. For the purpose of incorporating the amendment  
1183 made by this act to sections 350.031, 350.041, and 350.042,  
1184 Florida Statutes, in a reference thereto, section 350.043,  
1185 Florida Statutes, is reenacted to read:

1186 350.043 Enforcement and interpretation.—Any violation of s.  
1187 350.031, s. 350.04, s. 350.041, s. 350.042, or s. 350.0605 by a  
1188 commissioner, former commissioner, former employee, or Public  
1189 Service Commission Nominating Council member shall be punishable

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1190 as provided in ss. 112.317 and 112.324. The Commission on Ethics  
1191 is hereby given the power and authority to investigate  
1192 complaints of violation of this chapter in the manner provided  
1193 in part III of chapter 112, as if this section were included in  
1194 that part. A commissioner may request an advisory opinion from  
1195 the Commission on Ethics as provided by s. 112.322(3)(a).

1196 Section 12. This act shall take effect July 1, 2015.

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**THE FLORIDA SENATE**

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Appropriations Subcommittee on  
Transportation, Tourism, and Economic  
Development, *Chair*  
Appropriations  
Commerce and Tourism  
Governmental Oversight and Accountability  
Regulated Industries  
Rules

**SENATOR JACK LATVALA**  
20th District

February 27, 2015

The Honorable Tom Lee, Chair  
Senate Committee on Appropriations  
201 The Capitol  
404 South Monroe Street  
Tallahassee, FL 32399-1100

SENATE APPROPRIATIONS  
RECEIVED  
15 FEB 19 PM 1:27  
SENT TO CHAIRMAN  
STAFF DIR. STAFF

Dear Chair Lee:

I respectfully request consideration of Senate Bill 288 regarding Utilities Regulation by the Senate Appropriations Committee. The bill was favorably referred by the Committee on Communications, Energy, and Public Utilities on February 17th.

This bill would establish tougher regulations for Florida investor-owned electric utility companies and more accountability for the Florida Public Service Commission (PSC).

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

Sincerely,

Jack Latvala  
State Senator  
District 20

Cc: Cindy Kynoch, Staff Director; Ann Roberts, Administrative Assistant

REPLY TO:  
 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799  
 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

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

**ANDY GARDINER**  
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)

4/16/15  
Meeting Date

288  
Bill Number (if applicable)

Topic utilities regulation

Amendment Barcode (if applicable)

Name Zayne Smith

Job Title ASD

Address 200 W. College Ave  
Street

Phone 850 577-5163

Jelly  
City

FL  
State

32301  
Zip

Email zsmith@arp.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing AARP

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

288  
Bill Number (if applicable)

Meeting Date \_\_\_\_\_

Topic FSL reform

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

Name Dobbie Harrison Rumberger

Job Title Legislative Liaison

Address 540 Berry Court

Phone 224-2545

Street  
Tallahassee FL 32301  
City State Zip

Email lawford@wv.org  
com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida League of Women Voters

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/16/2015

Meeting Date

Topic \_\_\_\_\_

Bill Number 288 (if applicable)

Name BRIAN PITTS

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

Job Title TRUSTEE

Phone 727-897-9291

Address 1119 NEWTON AVNUE SOUTH

E-mail JUSTICE2JESUS@YAHOO.COM

Street

SAINT PETERSBURG

FLORIDA

33705

City

State

Zip

Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

S-001 (10/20/11)

\_\_\_\_\_ of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4-16-2015

Meeting Date

288

Bill Number (if applicable)

Topic Utility Regulation

Amendment Barcode (if applicable)

Name Susan Glickman

Job Title Florida Director

Address PO Box 310

Phone 727.742.9003

Street

Indian Rocks Bch FL 33785

Email susan@cleanenergy.org

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Southern Alliance for Clean Energy

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 (10/14/14)

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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**BILL:** PCS/CS/SB 314 (510704)

**INTRODUCER:** Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Environmental Preservation and Conservation Committee; and Senator Simpson

**SUBJECT:** Petroleum Restoration Program

**DATE:** April 15, 2015

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gudeman</u>	<u>Uchino</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Howard</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Howard</u>	<u>Kynoch</u>	<u>AP</u>	<u>Pre-meeting</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/CS/SB 314 revises certain provisions of the Petroleum Restoration Program. Specifically, the bill:

- Expands the eligibility requirements of the Abandoned Tanks Restoration Program (ATRP);
- Removes the provision that a property owner must provide evidence that he or she had a complete understanding of the previous ownership and use of the property prior to acquiring the property;
- Removes the exclusion eligibility for sites which are owned by a person who had knowledge of the polluting condition when title was acquired;
- Changes the name of the low scored site initiative to the Low-Risk Site Initiative (LRSI) and revises the criteria that must be met to participate in the LRSI;
- Increases the amount of money that may be encumbered from the Inland Protection Trust Fund each year to fund the LRSI from \$10 million to \$15 million, and increases the funding limit per site from \$30,000 to \$35,000;
- Decreases the number of sites that may be bundled and eligible to compete for performance based contracts under the Advanced Cleanup Program (ACP) from 20 to 10;
- Increases the annual funding cap from \$15 million to \$25 million for the Advanced Cleanup Program (ACP); and

- Allows a property owner or responsible party to enter into a voluntary cost share agreement for bundling multiple sites and specifies the sites are not subject to the agency term contractor assignment pursuant to rule.

The amended eligibility requirements for the Abandoned Tank Restoration Program (ATRP) and the Petroleum Cleanup Participation Program (PCPP) is projected to have an increased recurring cost of \$6 million to the Inland Protection Trust Fund within the Department of Environmental Protection (DEP). In addition, the DEP estimates an additional cost of \$14 million to cover the potential backlog in the PCPP program. Senate Bill 2500, the Senate's Fiscal Year 2015-2016 General Appropriations Bill, provides \$110 million from the Inland Protection Trust Fund within the DEP for the Petroleum Tanks Cleanup program, in addition to base operational funding. The bill would increase program costs.

The bill provides an effective date of July 1, 2015.

## II. Present Situation:

### **Restoration of Petroleum Contaminated Sites**

The Division of Waste Management within the Department of Environmental Protection (DEP) regulates underground and aboveground storage tank systems. In 1983, Florida became one of the first states to pass legislation and adopt rules to regulate underground and aboveground storage tanks.<sup>1</sup> Leaking storage tanks pose a significant threat to groundwater quality, and Florida relies on groundwater for about 92 percent of its drinking water needs.<sup>2</sup>

As of February 25, 2015, 8,378 discharges have been closed since the program began in 1986. There are approximately 5,011 discharges undergoing some phase of remediation and 5,074 discharges that are waiting for remediation. Site rehabilitation funding is based on the available budget and the priority score. The score for each site ranges from five to 115, with five representing a very low potential threat to human health and the environment and 115 representing a substantial potential threat. The DEP is currently funding the remediation of discharges that score 30 or above. The total number of sites that are currently eligible for state funding varies as sites are closed out and new sites are added to the program.<sup>3</sup>

### ***State Underground Petroleum Environmental Response Act***

In 1986, the Legislature passed the State Underground Petroleum Environmental Response Act (SUPER Act) to address the problem of pollution from leaking underground petroleum storage systems. The SUPER Act authorized the DEP to establish criteria for the prioritization, assessment, cleanup, and reimbursement for cleanup of contaminated sites. The SUPER Act also created the Inland Protection Trust Fund, which is funded by a tax on petroleum products imported or produced in Florida, and serves as a repository for the various petroleum contamination cleanup programs. The SUPER Act established the Early Detection Incentive

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<sup>1</sup> See ch. 83-310, Laws of Fla.

<sup>2</sup> DEP, *Storage Tank Compliance*, <http://www.dep.state.fl.us/waste/categories/tanks/> (last visited Mar. 9, 2015).

<sup>3</sup> DEP, *Senate Bill 314 Agency Analysis*, 3, (Jan. 20, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

Program (EDI), which provided site owners with the option of conducting the cleanup themselves and then receiving reimbursement from the Inland Protection Trust Fund, or having the state conduct the cleanup in priority order.<sup>4</sup>

### ***Petroleum Liability Insurance Program***

In 1988, the Legislature created the Petroleum Liability Insurance Program (PLIP) to provide third-party liability insurance to qualified program participants. The PLIP provided up to \$1 million of liability insurance for each incident of petroleum contamination.<sup>5</sup> The program was revised in 1989 and renamed to the Petroleum Liability Insurance and Restoration Program (PLIRP). The PLIRP allowed eligible petroleum facilities to purchase \$1 million in pollution liability protection from a state contracted insurer and provided \$1 million worth of site restoration coverage through reimbursement or state-funded cleanup.<sup>6</sup>

### ***Abandoned Tank Restoration Program***

In 1990, the Legislature established the Abandoned Tank Restoration Program (ATRP). The ATRP was created to address the contamination at facilities that had out-of-service or abandoned tanks as of March 1990. The ATRP originally had a one-year application period, but the deadline was subsequently extended to 1992, then 1994. In 1996, the Legislature waived the deadline indefinitely for owners who are unable to pay for the closure of abandoned tanks. To be eligible for the ATRP, applicants must certify that the petroleum system has not stored petroleum products for consumption, use, or sale since March 1, 1990.<sup>7</sup> There are currently 4,084 eligible ATRP discharges and 2,078 discharges have been remediated.<sup>8</sup>

### ***The Reimbursement Program***

The Legislature began to phase out the state's role in the cleanup process in 1992 by shifting the cleanup of sites to the reimbursement program,<sup>9</sup> which was funded by increasing the excise tax on petroleum and petroleum products.<sup>10</sup> The reimbursement program proved costly, and within a few years the reimbursement amount exceeded the administrative capacity of the DEP and the financial resources of the Inland Protection Trust Fund. By 1996, over 18,000 petroleum sites had been identified as contaminated and the program had accumulated \$551.5 million in outstanding reimbursement claims.<sup>11</sup>

In 1995, the Legislature passed a temporary measure to address the large backlog of reimbursement applications and unpaid claims and required a review of the petroleum

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<sup>4</sup> Section 376.3071, F.S.

<sup>5</sup> Section 376.3072, F.S.

<sup>6</sup> Chapter 89-188, Laws of Fla.

<sup>7</sup> Section 376.305, F.S.

<sup>8</sup> DEP, *Senate Bill 314 Agency Analysis*, 3, (Jan. 20, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>9</sup> The term "cleanup sites" includes contaminated sites that are being remediated by the state or the property owner.

<sup>10</sup> Chapter 92-30, Laws of Fla.

<sup>11</sup> Comm. on Environmental Preservation and Conservation, the Florida Senate, *Underground Petroleum Storage Tank Cleanup Program*, (Interim Report 2005-153) (Nov. 2004).

underground storage tanks program. The measure only funded the remediation of sites that had received prior notice from the DEP.<sup>12</sup>

### ***Petroleum Preapproval Program***

The Petroleum Preapproval Program was implemented by the Legislature in 1996 in order to address the backlog of reimbursement applications and excessive costs to the Inland Protection Trust Fund (IPTF).<sup>13</sup> The program required state-funded cleanup of sites to be done on a preapproved basis, in priority order, and within the current fiscal year's budget. The program also required the DEP to use risk-based correction action (RBCA) principles in the cleanup criteria rule. The DEP preapproved all cleanup costs for performance based contracts using competitive bid procedures or negotiated contracts.

### ***Advanced Cleanup Program***

The Advanced Cleanup Program (ACP) was also created in 1996 to allow property owners or responsible parties the opportunity to pay a portion of the cleanup costs in order to bypass the priority ranking list. The ACP requires applicants to provide at least 25 percent of the total cleanup costs and requires the property owner to prepare limited scope assessments at their expense.<sup>14</sup>

Section 376.30713(4), F.S., authorizes the DEP to enter into advanced cleanup contracts for up to \$15 million each fiscal year and limits the amount a facility may receive to \$5 million per year. A facility includes multiple site facilities such as airports, ports, or terminal facilities.<sup>15</sup> Applications are submitted to the DEP twice a year (between May 1 and June 30 and between November 1 and December 31). The applications are ranked based on the percentage of cost-sharing commitment proposed by the applicant, with the highest ranking given to the applicant that proposes the highest percentage of its share of costs.<sup>16</sup>

### ***Petroleum Cleanup Participation Program***

The Petroleum Cleanup Participation Program (PCPP) was also created in 1996 for sites that had missed the opportunity for state funding assistance but had reported contamination before 1995. Responsible parties in the PCPP cost share in the cleanup and prepare a limited scope assessment at their expense. Sites that qualify for this program are eligible for \$400,000 in rehabilitation funding and the owner, operator, or responsible party is required to pay 25 percent of the costs. The copayment amount may be reduced depending on the financial ability of the owner, operator, or responsible party.<sup>17</sup> There are currently 1,727 PCPP eligible discharges.<sup>18</sup>

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<sup>12</sup> Chapter 95-2, Laws of Fla.

<sup>13</sup> Chapter 96-277, s. 6, Laws of Fla.

<sup>14</sup> Section 376.30713, F.S.

<sup>15</sup> Section 376.30713(4), F.S.

<sup>16</sup> Section 376.30713(2), F.S.

<sup>17</sup> Section 376.3071(13), F.S.

<sup>18</sup> DEP, *Senate Bill 314 Agency Analysis*, 3, (Jan. 20, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

### ***Revisions to the Petroleum Restoration Program***

The Petroleum Restoration Program was amended in 1999 by HB 2151 to provide up to \$5 million in funding for certain source removal activities in advance of the priority ranking. The DEP was directed to select five low-scoring sites in the petroleum preapproval program for an innovative pilot program. The measure also extended the ACP beyond October 1, 1999.

Section 376.30714, F.S., was created in HB 2151 to address contamination on a site with eligible discharges (reported by December 31, 1998) and ineligible discharges (reported on or after January 1, 1999). Discharges that are reported on or after January 1, 1998, are not only ineligible for state funding, but are also not eligible for the PLIRP. The inability to scientifically distinguish old discharges from new discharges results in eligible and ineligible discharges at a single location. The measure authorizes the DEP to address such instances through negotiated site rehabilitation agreements. The site rehabilitation agreements include a Limited Contamination Assessment Report; the allocation of funding between the state and the responsible party, owner, or operator; the proof of financial responsibility of the owner, operator, or responsible party; and the establishment of the cleanup priority of the site. Any discharges reported by December 31, 1998, remain subject to the program requirements for which it is eligible.

The Legislature substantially amended the Petroleum Restoration Program in 2005 to require:

- All of Florida's underground petroleum storage tanks be upgraded prior to January 1, 2010;
- The DEP to establish a process to uniformly encumber funds appropriated for the petroleum preapproval program throughout a fiscal year;
- The DEP to establish priorities based on a scoring system;
- Funding for limited, interim soil-source removals for sites that become inaccessible for future remediation due to road infrastructure and right-of-way restrictions resulting from pending Department of Transportation (DOT) projects;
- Funding for limited, interim soil-source removals associated with the underground petroleum storage system upgrade that are conducted in advance of the site's priority ranking for cleanup;
- Limited funding to ten sites per fiscal year per owner for source removal associated with the underground petroleum storage system upgrade;
- Limited funding for interim source removal activities at the DOT projects to up to ten percent of the total source removal costs and funds may only be used for soil assessment, soil screening, soil removal, backfill material, treatment or disposal of contaminated soil, and dewatering;
- Limited funding of \$1 million per fiscal year for the DOT projects, and \$10 million per fiscal year for underground petroleum storage system upgrade projects;
- Repeal of funding provisions by June 30, 2008;
- Availability of the Preapproved Advanced Cleanup Participation Program for discharges that are eligible for restoration funding under the PCPP provided the applicants includes a cost-sharing commitment in addition to the 25 percent copayment requirement for the PCPP; and

- An extension of the life of the Inland Protection Financing Corporation from 2011 to 2025, and that the corporation issue notes and bonds, and pay for large-scale cleanups such as ports, airports, and terminal facilities that are eligible for state funding.<sup>19</sup>

### *Low-Scored Site Initiative*

The Low-Scored Site Initiative (LSSI) was created in 2010 to allow property owners with low scoring sites to voluntarily participate the Petroleum Restoration program. To qualify for the LSSI, the following site conditions are required:

- A priority score of 29 or less;
- Excessively contaminated soil from petroleum products is not present;
- Six months of groundwater monitoring that demonstrate the plume is shrinking or stable;
- Adjacent surface water, including its effects on human health and the environment, is not affected;
- The area containing the contamination must be less than one-quarter acre and confined to the source property boundaries; and
- Soil contamination subject to human exposure at the surface and two feet below the land surface meets the appropriate cleanup target levels.

A property that qualifies for state funding may receive up to \$30,000 to conduct a site assessment and six months of groundwater monitoring. Funding for the LSSI is limited to \$10 million for a fiscal year and is made available on a first come, first served basis. A property owner that chooses to participate in the LSSI is limited to ten sites per fiscal year.

Once the LSSI criteria in s. 376.3071(12)(b)1., F.S., is confirmed for a site, the DEP must issue either a No Further Action, indicating the contamination is minimal and of no risk, or a site rehabilitation completion order, indicating there is no contamination remaining.

In 2013, the Legislature amended s. 376.30711, F.S., to require all task assignments, work orders, and contracts for providers under the preapproval program be procured through competitive bidding pursuant to ss. 287.056, 287.057, and 287.059, F.S., after June 30, 2014.<sup>20</sup>

The Fiscal Year 2013-2014 General Appropriations Act (GAA) appropriated \$125 million to the DEP for the rehabilitation of eligible petroleum contaminated sites. The GAA directed that up to \$50 million be appropriated to fund petroleum rehabilitation task assignments, work orders, and contracts entered into prior to June 30, 2013. The remaining \$75 million was placed in reserve and was contingent upon submission of a plan for consideration by the Legislative Budget Commission (LBC) detailing how the DEP would improve the effectiveness and efficiency of the Petroleum Restoration program. In addition, no funds could be released after January 1, 2014, unless the DEP adopted rules to implement ss. 376.3071, 376.30711, and 376.30713, F.S.

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<sup>19</sup> Sections 376.3071, 376.30713, 376.3075, and 376.30715, F.S.

<sup>20</sup> Chapter 2013-41, s. 29, Laws of Fla.

The DEP's plan was approved by the LBC on September 12, 2013, and rules were adopted on December 27, 2013.<sup>21</sup> The remaining \$75 million in appropriation was released in March 2014.<sup>22</sup>

In 2014, the Legislature passed CS/HB 7093 to substantially amend the Petroleum Restoration program by repealing the Petroleum Preapproval program in s. 376.30711, F.S., deleting obsolete provisions related to the reimbursement program, requiring competitive procurement procedures for clean-up contracts, and revising clean-up contractor qualifications.

Section s. 376.3071, F.S., was amended to include the following:

- State-funded cleanup sites are funded pursuant to the provisions of the Petroleum Restoration program in ss. 376.3071, F.S., 376.305(6), 376.3072, and 376.3070, F.S.;
- A facility owner must abate the source of discharge for a release that occurred after March 29, 1995, and notify the DEP if free product is present;
- Clean-up contracts for contamination sites in the Petroleum Rehabilitation program must be procured pursuant to the competitive procurement requirements in chapter 287, F.S., or the rules adopted under ss. 376.3071 and 287.0595, F.S., and invoices must be paid pursuant to s. 215.422, F.S.;
- Site assessment and remediation contractors must certify to the DEP that they:
  - Comply with applicable Occupational Safety and Health Administration regulations;
  - Maintain workers compensation insurance;
  - Maintain comprehensive general liability and comprehensive automobile liability insurance;
  - Maintain professional liability insurance;
  - Have the capacity to perform or directly supervise the majority of the rehabilitation work pursuant to s. 489.113(9), F.S.
- The rules implementing s. 376.3071, F.S., must:
  - Specify that only qualified contractors may submit responses on competitive solicitation;
  - Include procedures for rejection of vendors that do not meet the minimum qualifications; and
  - Include the requirements from the vendor to maintain its qualification.
- A site owner or operator, or its designee, is prohibited from receiving remuneration in cash or in kind, directly or indirectly from a contractor performing site cleanup activities; and
- Allows the DEP to seek recovery of overpayment as a result of the findings of an audit.

Section 376.30713, F.S., was amended to allow an applicant to participate in the advanced cleanup program under a performance-based contract for the cleanup of at least 20 sites. The applicant must commit to pay 25 percent or more of the costs of cleanup. In order to meet the requirements of the cost-share agreement, the applicant may commit to pay, demonstrate a cost savings to the state, or use a combination of the two. The percentage of cost savings must be included in the application and compared to the cost of cleanup of the same sites using the

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<sup>21</sup> The Statement of Estimated Regulatory Cost (SERC) prepared by the DEP to implement Rules 62-772.300 and 62-772.400, F.A.C determined the rules required ratification by the legislature. The majority of the cost requirements outlined by the DEP in the SERC were costs already incurred by contractors as the cost to conduct business. However, the existing requirements were being restated in rule, thereby requiring legislative ratification during the 2014 Legislative Session (ch. 2014-149, Laws of Fla).

<sup>22</sup> Chapter 2013-40, Laws of Fla.

current rates provided to the DEP by the agency term contractor. The DEP must determine if the cost savings demonstration is acceptable, which is not subject to ch. 120, F.S.

### ***Competitive Solicitation of Contractual Services***

Prior to 2014, the DEP did not regularly use competitive bid procedures or negotiated contract procedures under ch. 287, F.S., even though the DEP was authorized to use them.

State agencies that competitively solicit contractual services are subject to the provisions in s. 287.057, F.S., which include:

- For contractual services that exceed \$35,000, the competitive solicitation must:
  - Be available to all vendors;
  - Include the time and date for the receipt of bids, proposals, or replies, and of the public opening;
  - Include the contractual terms and conditions applicable to the procurement and the criteria used to determine acceptability and merit of the bid;
  - Be subject to the invitation to bid process when the agency is able to define the scope of work and establish the specifications of the services needed;
  - Be subject to the request for proposal process when the purpose of the services needed can be defined and the agency can identify the deliverables; and
  - Be subject to the invitation to negotiate process when the agency must determine the best method for achieving the specific goal and more than one vendor is able to provide the services.
- Requiring contractual services that exceed the \$35,000 threshold to be procured through competitive sealed bids, competitive sealed proposals, or competitive sealed replies, unless:
  - The agency head determines there is an immediate danger to public health, safety, or welfare; and
  - The agency purchases the services from a state procured contract that was contracted by another agency pursuant to s. 287.057(1), F.S.<sup>23</sup>

### ***Agency Term Contracts***

Rule 62-772, F.A.C., directs the DEP to enter into multiple agency term contracts to retain contractors to conduct petroleum site rehabilitation services for a specific task assignment.<sup>24</sup> The agency term contract specifies that all site rehabilitation activities that cost more than \$195,000 will be procured by quotes from all eligible agency term contractors in the region where the site is located. For site rehabilitation activities that cost less than \$195,000, the DEP will directly assign the task to an agency term contractor using the Relative Capacity Index (RCI) algorithm. The RCI provides an unbiased, cost effective mechanism for assigning tasks to the agency term contractors.<sup>25</sup> As of March 2014, the DEP has competitively procured 70 agency term contractors that are divided into three regions around the state.

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<sup>23</sup> See s. 287.057, F.S.

<sup>24</sup> Chapter 62-772.200(b), F.A.C., defines an agency “term contract” as “an agreement between the DEP and a vendor whereby the vendor agrees to provide an indefinite quantity of commodities or contractual services, on an indefinite delivery schedule, over a specified period of time.”

<sup>25</sup> The DEP, Agency Term Contractor Selection Process, *RCI flow chart*, available at [http://www.dep.state.fl.us/waste/quick\\_topics/publications/pss/pcp/RCI\\_final\\_19Dec14.pdf](http://www.dep.state.fl.us/waste/quick_topics/publications/pss/pcp/RCI_final_19Dec14.pdf) (Mar. 9, 2015).

### ***Performance Based Contracts***

The DEP may issue performance based contracts to approved agency term contracts for sites that may be remediated in an aggressive, cost effective, efficient manner. Performance based contracts are negotiated based on quotes for the total cost of cleanup, technology and design, remediation milestones, site closure options, time to complete remediation, and the total cost paid for the completion of each milestone. Performance based contracts are considered for:

- Sites procured through RCI assignment in which the current agency term contractor would like to continue through a performance based contracts;
- Sites that are unassigned or require RCI assignment;
- Sites that have been in natural attenuation monitoring for over four years that show minimal progress toward closure;
- Bundled sites based on phase and/or location; and
- Sites with a restrictive funding cap amount.<sup>26</sup>

### **Risk Based Corrective Action (RBCA)**

Section 376.3071, F.S., was amended in 1996 to require the DEP to adopt rules for RBCA principles for the rehabilitation of contaminated petroleum sites. The RBCA process uses a tiered approach that couples site assessment and response actions with human health, public safety, and environmental risk assessment to determine the extent and urgency of corrective action used in remediating contaminated sites. Alternative cleanup target levels,<sup>27</sup> institutional<sup>28</sup> and engineering controls,<sup>29</sup> and remediation by natural attenuation<sup>30</sup> are RBCA strategies used on a case-by-case basis and allow the DEP to use cost-effective and effective remediation measures in lieu of conventional cleanup technologies. RBCA is endorsed by the U.S. Environmental Protection Agency and is implemented in all 50 states for the remediation of contaminated sites.<sup>31</sup>

The use of RBCA has expanded to the state's dry cleaning site remediation program under s. 376.3078, F.S., the brownfields program under s. 376.81, F.S., and all other contaminated sites under s. 376.30701 F.S. The RBCA provisions in s. 376.30701, F.S., do not include the

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<sup>26</sup> The DEP, Performance Based Cleanup-General Information, *available at* [http://www.dep.state.fl.us/waste/quick\\_topics/publications/pss/pcp/announcements/NOIPP-PBC-Info-Sheet.docx](http://www.dep.state.fl.us/waste/quick_topics/publications/pss/pcp/announcements/NOIPP-PBC-Info-Sheet.docx) (last visited Mar. 9, 2015).

<sup>27</sup> Section 37.301(7), F.S., defines "cleanup target levels" as "the concentration for each contaminant identified by an applicable analytical test method, in the medium of concern, at which a site rehabilitation program is deemed complete."

<sup>28</sup> Section 376.301(21), F.S., defines "institutional control" as "the restriction on use or access to a site to eliminate or minimize exposure to petroleum products' chemical of concern, dry cleaning solvents, or other contaminants. Such restrictions may include, but are not limited to, deed restrictions, restrictive covenants, or conservation easements."

<sup>29</sup> Section 376.301(16), F.S., defines "engineering controls" as "modifications to a site to reduce or eliminate the potential for exposure to petroleum products' chemicals of concern, dry cleaning solvents, or other contaminants. Such modifications may include, but are not limited to, physical or hydraulic control measures, capping, point of use treatments, or slurry walls."

<sup>30</sup> Section 376.301(24), F.S., defines "natural attenuation" as a "verifiable approach to site rehabilitation that allows natural processes to contain the spread of contamination and reduce the concentrations of contaminants in contaminated groundwater and soil. Natural attenuation processes may include the following: sorption, biodegradation, chemical reactions with subsurface materials, diffusion, dispersion, and volatilization."

<sup>31</sup> EPA, *Use of Risk-Based Decision-Making in UST Corrective Action Programs*, OSWER Directive 9610.17 (Mar., 1995) <http://epa.gov/swerust1/directiv/od961017.htm> (last visited Mar. 9, 2015).

petroleum restoration, brownfields, and dry cleaning programs because they are subject to their own RBCA provisions in statute.

The Florida RBCA process includes the following components:

- The one in one million cancer risk for carcinogenic constituents;
- A hazard index of one for non-carcinogenic constituents in the development of cleanup target levels for groundwater, surface water, and soil;
- Relocating a compliance point away from the contamination source area to the edge of the plume or property boundary to allow for natural attenuation; and
- Eliminating or minimizing human exposure to the contamination site by using institutional and engineering controls.

### **Funding and Improvements to the Petroleum Restoration Program**

The Petroleum Restoration program was appropriated \$110 million for the 2014-2015 fiscal year. The DEP reports that as of March 9, 2015, approximately \$30 million has been invoiced and the balance remaining is approximately \$80 million. The DEP expects to invoice approximately \$30 million by the end of the current fiscal year and \$50 million will be certified forward to 2015-2016 fiscal year.

The state has realized an overall costs savings since the Petroleum Restoration program was transitioned to the competitive procurement requirements in ch. 287, F.S., or the rules adopted under ss. 376.3071 and 287.0595, F.S. The site assessment and engineering design costs are 10 percent less, the groundwater monitoring costs are 19 percent less, and operation and maintenance costs of remedial systems are 11 percent less. The average cost savings for the remediation of discharges in the Advanced Cleanup Program is 32.7 percent.

The DEP reports that 99.9 percent of high risk exposure facilities are in active remediation or assessment, and 100 percent of facilities in the moderate risk category are in active remediation or assessment. The DEP also reports that the average procurement time under the new system is three to five weeks, which is comparable to processing time prior to the system overhaul.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 376.305, F.S., to expand the Abandoned Tank Restoration Program (ATRP) program by removing the reporting deadline, which currently separates eligible from ineligible sites. The expansion of the program will provide state funding eligibility for remediation of a large but indeterminate number of discharges.

The bill removes the provision that a property owner of a site in the ATRP must provide evidence that he or she had a complete understanding of the use of the property prior to acquisition.

The bill removes the exclusion eligibility for sites which are owned by a person who had knowledge of the polluting condition when title was acquired, unless the person acquired title to the site after issuance of a notice of site eligibility by the DEP.

**Section 2** amends 376.3071, F.S., changing the name of the low scored site initiative to the Low-Risk Site Initiative (LRSI). The bill requires a property owner or a responsible party who wishes to participate in the LRSI to provide evidence of authorization from the property owner. To participate in the LRSI, the bill requires a property owner or responsible party to submit a “No Further Action” proposal that demonstrates the required criteria are met and revises the criteria in the following manner:

- Removes the requirement that a contaminated site must have a priority ranking score of 29 points or less;
- Provides a more specific standard for the prohibition on the presence of excessively contaminated soil on the site. Specifically, soil saturated with petroleum or petroleum products, or soil that causes a total corrected hydrocarbon measurement of 500 parts per million (ppm) or higher for the Gasoline Analytical Group or 50 ppm or higher for the Kerosene Analytical Group, as defined by the Department of Environmental Protection (DEP) rule 62-780.900, F.A.C., must not exist onsite as a result of a release of petroleum products;
- Specifies that the requirement that contamination remaining at the site does not adversely affect adjacent surface waters includes the effects of those waters on human health and the environment;
- Removes the requirement that the area of groundwater contamination is less than one-quarter acre;
- Allows the presence of groundwater containing petroleum products’ chemicals of concern that is not confined to the source property boundaries if it only migrates to a transportation facility of the Florida Department of Transportation; and
- Adds a requirement that the groundwater contamination containing the petroleum products’ chemicals of concern is not a threat to any permitted potable water supply well.

If the DEP determines that the property owner or responsible party has demonstrated that these conditions are met, the DEP must issue a site rehabilitation completion order that incorporates the “No Further Action” proposal. This determination acknowledges that minimal contamination exists onsite and that such contamination is not a threat to the public health, safety, or welfare, water resources, or the environment. If the DEP determines that a discharge for which a site rehabilitation completion order was issued may pose a threat to the public health, safety, or welfare, water resources, or the environment, the issuance of the site rehabilitation completion order does not alter eligibility for state-funded rehabilitation that would otherwise apply.

The bill authorizes the DEP to approve the cost of a limited remediation plan, in addition to the cost of the assessment authorized in current law, submitted by a property owner or responsible party if the DEP determines that the assessment and limited remediation will likely result in a no further action determination. The approval may be provided in one or more task assignments or modifications. The total amount authorized for a particular site may not exceed the threshold amount specified in chapter 287, F.S., for a Category Two purchasing category, which is currently \$35,000. This is an increase from the current LRSI funding limit of \$30,000. The bill authorizes the DEP to pay the costs associated with a professional land survey or specific purpose survey, if needed, and costs associated with obtaining a title report and recording fees.

The bill increases the amount of time within which assessment work must be completed from six months to nine months; however, if groundwater monitoring is required following the

assessment in order to satisfy the LRSI conditions, the DEP may authorize an additional six months to complete the monitoring.

The bill also increases the annual amount of money that may be encumbered from the Inland Protection Trust Fund to fund LRSI from \$10 million to \$15 million.

**Section 3** amends s. 376.30713, F.S., to revise the provisions of the Advanced Cleanup program. The bill allows more owners, operators, or responsible parties to participate in the Advanced Cleanup program by decreasing the number of sites that may be bundled and eligible to compete for performance based contracts from 20 to 10. To account for the additional participation in the program, the annual allocation is increased from \$15 million to \$25 million.

The bill allows a property owner or responsible party to enter into a voluntary cost share agreement for bundling multiple sites and to provide a list of the sites to be included in future bundles. The sites that will be included in a future bundle are not subject to agency term contractor assignment pursuant to rule. The DEP may terminate the voluntary cost share agreement if the application to bundle multiple sites is not submitted during the open application period. This provision will extend the period of time listed sites will be remediated because they are not subject to the agency term contractor assignment.

**Section 4** provides an effective date of July 1, 2015.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

PCS/CS/SB 314 appears to have an indeterminate positive fiscal impact on the private sector because more rehabilitation contracts may be awarded as a result of increasing the total funding limits for Advanced Cleanup and the Low-Risk Site Initiative (LRSI).

**C. Government Sector Impact:**

The amended eligibility requirements for the Abandoned Tank Restoration Program (ATRP) and the Petroleum Clean Participation Program (PCPP) is estimated to have an increased recurring cost of \$6 million to the Inland Protection Trust Fund within the Department of Environmental Protection (DEP). In addition, the DEP estimates an additional cost of \$14 million to cover the potential backlog in the PCPP program.

The fiscal impact on the DEP is indeterminate as a result of reducing the number of sites that must be bundled to be eligible to compete for performance-based contracts for the Advanced Cleanup Program from 20 to 10. However, the decreased bundled site requirement, together with the increased amount of available funds, should result in more sites being cleaned up sooner that could result in cost savings over time.

The bill increases the amount of funding that may be encumbered from the Inland Protection Trust Fund for the LRSI contracts from \$10 million to \$15 million and increases the annual allocation for the Advanced Cleanup Program contracts from \$15 million to \$25 million. However, these changes may not increase the DEP's overall annual appropriation for the Petroleum Restoration Program, but rather revise how much of the annual appropriation may be expended within these programs.

Senate Bill 2500, the Senate's General Appropriations Bill for Fiscal Year 2015-2016, provides \$110 million from the Inland Protection Trust Fund within the DEP for the Petroleum Tanks Cleanup program, in addition to base operational funding. The bill increases costs for the program.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 376.305, 376.3071, and 376.30713.

**IX. Additional Information:**

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

**Recommended CS/CS by Appropriations Subcommittee on General Government on April 8, 2015:**

The committee substitute:

- Removes the provision from CS/SB 314 that allows a property owner to approve the use of risk-based corrective action (RBCA) principles in remediating a discharge;
- Removes the requirement from CS/SB 314 that site owners or the responsible party must approve conditional site closures, site closures with institutional or engineering controls, or work stoppages;
- Removes the requirement from CS/SB 314 that the DEP establish in rule a procedure to process invoices that are less than \$500,000 per task;
- Removes the provision from CS/SB 314 allowing the DEP to negotiate a contract based on the best available rate from a pool of three agency term contractors selected by the site owner or operator;
- Removes the requirement from CS/SB 314 that the agency term contractor and the property owner or responsible party must submit a sworn affidavit to the DEP that neither party has solicited, offered, accepted, paid, or received any compensation, remuneration, or gift of any kind in exchange for selection of the agency term contractor;
- Removes the requirement from CS/SB 314 that the agency term contractor must disclose a conflict of interest or potential conflict of interest to the DEP;
- Removes the provision from CS/SB 314 that specifies that only agency term contractors may participate in the LSSI;
- Authorizes the DEP to approve the costs for limited remediation and up to six months of groundwater monitoring in one or more task assignment not to exceed the category two funding limiting in s. 287.017, F.S.;
- Authorizes the DEP to approve limited remediation for LRSI sites following an approved initial site assessment, not to exceed the category two funding limiting in s. 287.017, F.S.;
- Authorizes an additional six months of groundwater monitoring for LRSI sites if the DEP determines that additional groundwater monitoring is warranted;
- Maintains the \$400,000 funding cap in current law for the Petroleum Cleanup Participation Program (PCPP);
- Maintains the discharge date in current law of January 1, 1995 for the PCPP discharges;
- Changes the name of the low scored site initiative to the Low-Risk Site Initiative (LRSI);
- Requires the property owner or responsible party participating in the LRSI to submit a “No Further Action” proposal to the DEP;
- Revises the criteria for participating in LRSI, including removing the requirement that a site must have a priority ranking score of 29 or less;
- Revises the criteria to issue a site rehabilitation order with a No Further Action proposal to include:
  - Soil saturated with petroleum or petroleum products, or soil that causes a total corrected hydrocarbon measurement of 500 parts per million (ppm) or higher for the Gasoline Analytical Group or 50 ppm or higher for the Kerosene Analytical Group, as defined by the Department of Environmental Protection (DEP) rule, must not exist onsite as a result of a release of petroleum products;
  - Contamination remaining at the site must not adversely affect adjacent surface waters includes the effects of those waters on human health and the environment;

- The area of groundwater contamination to be confined to the source property or migrated to a Department of Transportation Facility; and
- The groundwater contamination containing the petroleum products' chemicals of concern is not a threat to any permitted potable water supply well.
- Specifies the issuance of a Site Rehabilitation Completion Order (SRCO) acknowledges that minimal contamination exists onsite and the contamination is not a threat to human health, safety, or welfare, water resources, or the environment; and
- Specifies a site is still eligible for state-funded rehabilitation if the DEP determines the discharge may pose a threat after the SRCO is issue.

**CS by Environmental Preservation and Conservation on March 11, 2015:**

Expands the Abandoned Tank Restoration Program (ATRP) by removing the June 30, 1996, reporting deadline;

- Removes the provision that a property owner of a site in the ATRP must provide evidence that he or she had a complete understanding of ownership and use of the property prior to acquisition;
- Deletes the requirement for the Department of Environmental Protection (DEP) to establish standards and criteria for benzene in specific situations;
- Allows a property owner to approve the use of Risk-Based Correction Action (RBCA) principles in remediating a discharge;
- Requires a site owner to approve work stoppages;
- Deletes the requirement for current and future operations and management of remediation systems to be performance based contracts;
- Allows the DEP to negotiate a contract based on the best available rate from a pool of three agency term contractors selected by the property owner or responsible party;
- Deletes the provision that allows a property owner to select a contractor if the amount of the cost share and the discount off the normal rate totals at least five percent of the value of the contract;
- Requires the agency term contractor and the property owner or responsible party to submit a sworn affidavit to the DEP that neither party has solicited, offered, accepted, paid, or received any compensation, remuneration, or gift of any kind in exchange for selection of the agency term contractor;
- Requires the agency term contractor to disclose any conflict of interest to the DEP and allows the DEP to terminate a contract if the DEP determines there is a potential conflict of interest;
- Allows a site to qualify for the low-scored site initiative (LSSI) if the source boundary is greater than one-quarter acre and located below a state road or a state road's right-of-way;
- Increases the funding for the site assessment and six months of groundwater monitoring for a site in the LSSI from \$30,000 to \$35,000;
- Authorizes the DEP to approve an additional \$35,000 for interim source removal of a site in the LSSI in order to achieve No Further Action status or receive a site rehabilitation completion order;
- Authorizes the DEP to approve an additional \$35,000 for a supplemental site assessment for sites assessed before July 1, 2015, in order to achieve No Further Action status or receive a site rehabilitation completion order;

- Specifies that only agency term contractors may participate in the LSSI;
- Requires that sites completed in the LSSI must be granted priority two scoring status for ongoing assessment or remedial activity;
- Requires that all work in the LSSI must be completed nine months after the DEP approval;
- Allows the DEP to authorize an additional six months of groundwater monitoring if the supplemental site assessment determines it is warranted;
- Removes the requirement that a discharge must have occurred before January 1, 1999, to qualify for the (Petroleum Cleanup Participation Program (PCPP));
- Allows a property owner or responsible party to enter into a voluntary cost share agreement for bundling multiple sites and to provide a list of the sites to be included in future bundles;
- Specifies sites that are to be included in a future Advanced Cleanup Program bundle are not subject to the agency term contractor assignment pursuant to rule; and
- Allows the DEP to terminate the voluntary cost share agreement if the application to bundle multiple sites is not submitted during the open application period.

**B. Amendments:**

None.



753040

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
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The Committee on Appropriations (Latvala) recommended the following:

**Senate Amendment**

Delete line 46  
and insert:  
programs pursuant to ~~s. 376.3071~~ or s. 376.3072.

4. The site is not otherwise eligible for the Petroleum Cleanup Participation Program under s. 376.3071(13) based on any discharge reporting form received by the department before January 1, 1995, or a written report of contamination submitted to the department on or before December 31, 1998.



282746

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
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The Committee on Appropriations (Latvala) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 247 - 249  
and insert:  
application of the owner for all purposes. ~~Sites reported to the  
department after December 31, 1998, are not eligible for the  
program.~~

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

And the title is amended as follows:



11           Between lines 12 and 13  
12 insert:  
13           revising the eligibility requirements for receiving  
14           rehabilitation funding;



866006

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/16/2015	.	
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The Committee on Appropriations (Latvala) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 393 and 394

insert:

Section 4. Paragraph (a) of subsection (1) of section 377.37, Florida Statutes, is amended to read:

377.37 Penalties.—

(1) (a) Any person who violates any provision of this law or any rule, regulation, or order of the division made under this chapter or who violates the terms of any permit to drill for or



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11 produce oil, gas, or other petroleum products referred to in s.  
12 377.242(1) or to store gas in a natural gas storage facility, or  
13 any lessee, permitholder, or operator of equipment or facilities  
14 used in the exploration for, drilling for, or production of oil,  
15 gas, or other petroleum products, or storage of gas in a natural  
16 gas storage facility, who refuses inspection by the division as  
17 provided in this chapter, is liable to the state for any damage  
18 caused to the air, waters, or property, including animal, plant,  
19 or aquatic life, of the state and for reasonable costs and  
20 expenses of the state in tracing the source of the discharge, in  
21 controlling and abating the source and the pollutants, and in  
22 restoring the air, waters, and property, including animal,  
23 plant, and aquatic life, of the state. Furthermore, such person,  
24 lessee, permitholder, or operator is subject to the judicial  
25 imposition of a civil penalty in an amount of not more than  
26 \$25,000 ~~\$10,000~~ for each offense. However, the court may receive  
27 evidence in mitigation. Each day during any portion of which  
28 such violation occurs constitutes a separate offense. Nothing  
29 herein shall give the department the right to bring an action on  
30 behalf of any private person.

31  
32 ===== T I T L E A M E N D M E N T =====

33 And the title is amended as follows:

34 Delete line 19

35 and insert:

36 agreements under certain circumstances; amending s.  
37 377.37, F.S.; increasing the maximum amount for civil  
38 penalties; providing an



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Proposed Committee Substitute by the Committee on Appropriations  
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to the Petroleum Restoration Program;  
amending s. 376.305, F.S.; revising the eligibility  
requirements of the Abandoned Tank Restoration  
Program; deleting provisions prohibiting the relief of  
liability for persons who acquired title after a  
certain date; amending s. 376.3071, F.S.; renaming the  
low-scored site initiative the low-risk site  
initiative; revising the conditions for eligibility  
and methods for payment of costs for the low-risk site  
initiative; clarifying that a change in ownership does  
not preclude a site from entering into the program;  
amending s. 376.30713, F.S.; reducing the number of  
sites that may be proposed for certain advanced  
cleanup applications; increasing the total amount for  
which the department may contract for advanced cleanup  
work in a fiscal year; authorizing property owners and  
responsible parties to enter into voluntary cost-share  
agreements under certain circumstances; providing an  
effective date.

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

Section 1. Subsection (6) of section 376.305, Florida  
Statutes, is amended to read:

376.305 Removal of prohibited discharges.—

(6) The Legislature created the Abandoned Tank Restoration



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Program in response to the need to provide financial assistance  
for cleanup of sites that have abandoned petroleum storage  
systems. For purposes of this subsection, the term "abandoned  
petroleum storage system" means a petroleum storage system that  
has not stored petroleum products for consumption, use, or sale  
since March 1, 1990. The department shall establish the  
Abandoned Tank Restoration Program to facilitate the restoration  
of sites contaminated by abandoned petroleum storage systems.

(a) To be included in the program:

1. An application must be submitted to the department ~~by~~  
~~June 30, 1996,~~ certifying that the system has not stored  
petroleum products for consumption, use, or sale at the facility  
since March 1, 1990.

2. The owner or operator of the petroleum storage system  
when it was in service must have ceased conducting business  
involving consumption, use, or sale of petroleum products at  
that facility on or before March 1, 1990.

3. The site is not otherwise eligible for the cleanup  
programs pursuant to s. 376.3071 or s. 376.3072.

(b) In order to be eligible for the program, petroleum  
storage systems from which a discharge occurred must be closed  
pursuant to department rules before an eligibility  
determination. However, if the department determines that the  
owner of the facility cannot financially comply with the  
department's petroleum storage system closure requirements and  
all other eligibility requirements are met, the petroleum  
storage system closure requirements shall be waived. The  
department shall take into consideration the owner's net worth  
and the economic impact on the owner in making the determination



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57 of the owner's financial ability. ~~The June 30, 1996, application~~  
58 ~~deadline shall be waived for owners who cannot financially~~  
59 ~~comply.~~

60 (c) Sites accepted in the program are eligible for site  
61 rehabilitation funding as provided in s. 376.3071.

62 (d) The following sites are excluded from eligibility:

- 63 1. Sites on property of the Federal Government;
- 64 2. Sites contaminated by pollutants that are not petroleum  
65 products; or
- 66 3. Sites where the department has been denied site access;  
67 ~~or~~
- 68 4. ~~Sites which are owned by a person who had knowledge of~~  
69 ~~the polluting condition when title was acquired unless the~~  
70 ~~person acquired title to the site after issuance of a notice of~~  
71 ~~site eligibility by the department.~~

72 (e) Participating sites are subject to a deductible as  
73 determined by rule, not to exceed \$10,000.

74 ~~This subsection does not relieve a person who has acquired title~~  
75 ~~after July 1, 1992, from the duty to establish by a~~  
76 ~~preponderance of the evidence that he or she undertook, at the~~  
77 ~~time of acquisition, all appropriate inquiry into the previous~~  
78 ~~ownership and use of the property consistent with good~~  
79 ~~commercial or customary practice in an effort to minimize~~  
80 ~~liability, as required by s. 376.308(1)(c).~~

81 Section 2. Paragraph (b) of subsection (12), and subsection  
82 (13) of section 376.3071, Florida Statutes, are amended, and  
83 paragraph (c) is added to subsection (12) of that section, to  
84 read:  
85



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86 376.3071 Inland Protection Trust Fund; creation; purposes;  
87 funding.-

88 (12) SITE CLEANUP.-

89 (b) ~~Low-risk Low-scored site initiative.~~Notwithstanding  
90 subsections (5) and (6), a site ~~with a priority ranking score of~~  
91 ~~29 points or less~~ may voluntarily participate in the low-risk  
92 ~~low-scored~~ site initiative regardless of whether the site is  
93 eligible for state restoration funding.

94 1. To participate in the low-risk low-scored site  
95 initiative, the ~~responsible party or~~ property owner, or a  
96 responsible party that provides evidence of authorization from  
97 the property owner, must submit a "No Further Action" proposal  
98 and affirmatively demonstrate that the following conditions of  
99 paragraph (c) are met.+

100 a. ~~Upon reassessment pursuant to department rule, the site~~  
101 ~~retains a priority ranking score of 29 points or less.~~

102 b. ~~Excessively contaminated soil, as defined by department~~  
103 ~~rule, does not exist onsite as a result of a release of~~  
104 ~~petroleum products.~~

105 c. ~~A minimum of 6 months of groundwater monitoring~~  
106 ~~indicates that the plume is shrinking or stable.~~

107 d. ~~The release of petroleum products at the site does not~~  
108 ~~adversely affect adjacent surface waters, including their~~  
109 ~~effects on human health and the environment.~~

110 e. ~~The area of groundwater containing the petroleum~~  
111 ~~products' chemicals of concern is less than one quarter acre and~~  
112 ~~is confined to the source property boundaries of the real~~  
113 ~~property on which the discharge originated.~~

114 f. ~~Soils onsite that are subject to human exposure found~~



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115 ~~between land surface and 2 feet below land surface meet the soil~~  
116 ~~cleanup target levels established by department rule or human~~  
117 ~~exposure is limited by appropriate institutional or engineering~~  
118 ~~controls.~~

119 2. Upon affirmative demonstration that ~~of~~ the conditions  
120 under paragraph (c) are met ~~subparagraph 1.~~, the department  
121 shall issue a site rehabilitation completion order incorporating  
122 the determination of "No Further Action-" proposal submitted by  
123 the property owner or the responsible party that provides  
124 evidence of the authorization from the property owner. ~~Such~~  
125 ~~determination acknowledges that minimal contamination exists~~  
126 ~~onsite and that such contamination is not a threat to the public~~  
127 ~~health, safety, or welfare, water resources, or the environment.~~  
128 If no contamination is detected, the department may issue a site  
129 rehabilitation completion order.

130 3. Sites that are eligible for state restoration funding  
131 may receive payment of costs for the low-risk low-severed site  
132 initiative as follows:

133 a. A ~~responsible party or~~ property party, or responsible  
134 party that provides evidence of authorization from the property  
135 owner, may submit an assessment and limited remediation plan  
136 designed to affirmatively demonstrate that the site meets the  
137 conditions under paragraph (c) subparagraph 1. Notwithstanding  
138 the priority ranking score of the site, the department may  
139 approve the cost of the assessment and limited remediation,  
140 including up to 6 months of groundwater monitoring, in one or  
141 more task assignments, or modifications thereof, not to exceed  
142 the threshold amount provided in s. 287.017 for CATEGORY TWO,  
143 ~~\$30,000~~ for each site where the department has determined that



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144 the assessment and limited remediation, if applicable, will  
145 likely result in a determination of "No Further Action". The  
146 department may not pay the costs associated with the  
147 establishment of institutional or engineering controls, with the  
148 exception of the costs associated with a professional land  
149 survey or specific purpose survey, if needed, and costs  
150 associated with obtaining a title report and recording fees.

151 b. Following approval of initial site assessment results  
152 provided pursuant to state funding under sub-subparagraph a.,  
153 the department may approve up to an additional amount not to  
154 exceed the threshold amount provided in s. 287.017 for CATEGORY  
155 TWO, for limited remediation, where needed to achieve a  
156 determination of "No Further Action".

157 c.~~b.~~ The assessment and limited remediation work shall be  
158 completed no later than 9 6 months after the department  
159 authorizes the start of a state funded low-risk site initiative  
160 ~~task issues its approval.~~ If groundwater monitoring is required  
161 after the assessment and limited remediation in order to satisfy  
162 the conditions of paragraph (c), the department may authorize an  
163 additional 6 months to complete the monitoring.

164 d.~~e.~~ No more than \$15 ~~\$10~~ million for the low-risk low-  
165 ~~severed~~ site initiative may be encumbered from the fund in any  
166 fiscal year. Funds shall be made available on a first-come,  
167 first-served basis and shall be limited to 10 sites in each  
168 fiscal year for each ~~responsible party or~~ property owner or each  
169 responsible party that provides evidence of authorization from  
170 the property owner.

171 e.~~d.~~ Program deductibles, copayments, and the limited  
172 contamination assessment report requirements under paragraph



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173 (13) (c) do not apply to expenditures under this paragraph.  
174 (c) The department shall issue a site rehabilitation  
175 completion order incorporating the "No Further Action Proposal"  
176 submitted by a property owner or a responsible party that  
177 provides evidence of authorization from the property owner upon  
178 affirmative demonstration that all of the following conditions  
179 are met:  
180 1. Soil saturated with petroleum or petroleum products, or  
181 soil that causes a total corrected hydrocarbon measurement of  
182 500 parts per million or higher for Gasoline Analytical Group or  
183 50 parts per million or higher for Kerosene Analytical Group, as  
184 defined by department rule, does not exist onsite as a result of  
185 a release of petroleum products.  
186 2. A minimum of 6 months of groundwater monitoring  
187 indicates that the plume is shrinking or stable.  
188 3. The release of petroleum products at the site does not  
189 adversely affect adjacent surface waters, including their  
190 effects on human health and the environment.  
191 4. The area of groundwater containing the petroleum  
192 products' chemicals of concern is confined to the source  
193 property boundaries of the real property on which the discharge  
194 originated, or has migrated from the source property only to a  
195 transportation facility of the Department of Transportation.  
196 5. The groundwater contamination containing the petroleum  
197 products chemicals of concern is not a threat to any permitted  
198 potable water supply well.  
199 6. Soils onsite that are subject to human exposure found  
200 between land surface and 2 feet below land surface meet the soil  
201 cleanup target levels established pursuant to s.



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202 376.3071(5)(b)9., or human exposure is limited by appropriate  
203 institutional or engineering controls.  
204  
205 Issuance of a site rehabilitation completion order under this  
206 paragraph acknowledges that minimal contamination exists onsite  
207 and that such contamination is not a threat to the public  
208 health, safety, or welfare, water resources, or the environment.  
209 If the department determines that a discharge for which a site  
210 rehabilitation completion order was issued pursuant to this  
211 subsection may pose a threat to the public health, safety, or  
212 welfare, water resources, or the environment, the issuance of  
213 the site rehabilitation completion order, with or without  
214 conditions, does not alter eligibility for state-funded  
215 rehabilitation that would otherwise be applicable under this  
216 section.  
217 (13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage  
218 detection, reporting, and cleanup of contamination caused by  
219 discharges of petroleum or petroleum products, the department  
220 shall, within the guidelines established in this subsection,  
221 implement a cost-sharing cleanup program to provide  
222 rehabilitation funding assistance for all property contaminated  
223 by discharges of petroleum or petroleum products from a  
224 petroleum storage system occurring before January 1, 1995,  
225 subject to a copayment provided for in a Petroleum Cleanup  
226 Participation Program site rehabilitation agreement. Eligibility  
227 is subject to an annual appropriation from the fund.  
228 Additionally, funding for eligible sites is contingent upon  
229 annual appropriation in subsequent years. Such continued state  
230 funding is not an entitlement or a vested right under this



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231 subsection. Eligibility shall be determined in the program,  
232 notwithstanding any other provision of law, consent order,  
233 order, judgment, or ordinance to the contrary.

234 (a)1. The department shall accept any discharge reporting  
235 form received before January 1, 1995, as an application for this  
236 program, and the facility owner or operator need not reapply.

237 2. Owners or operators of property, regardless of whether  
238 ownership has changed, which is contaminated by petroleum or  
239 petroleum products from a petroleum storage system may apply for  
240 such program by filing a written report of the contamination  
241 incident, including evidence that such incident occurred before  
242 January 1, 1995, with the department. Incidents of petroleum  
243 contamination discovered after December 31, 1994, at sites which  
244 have not stored petroleum or petroleum products for consumption,  
245 use, or sale after such date shall be presumed to have occurred  
246 before January 1, 1995. An operator's filed report shall be an  
247 application of the owner for all purposes. Sites reported to the  
248 department after December 31, 1998, are not eligible for the  
249 program.

250 (b) Subject to annual appropriation from the fund, sites  
251 meeting the criteria of this subsection are eligible for up to  
252 \$400,000 of site rehabilitation funding assistance in priority  
253 order pursuant to subsections (5) and (6). Sites meeting the  
254 criteria of this subsection for which a site rehabilitation  
255 completion order was issued before June 1, 2008, do not qualify  
256 for the 2008 increase in site rehabilitation funding assistance  
257 and are bound by the pre-June 1, 2008, limits. Sites meeting the  
258 criteria of this subsection for which a site rehabilitation  
259 completion order was not issued before June 1, 2008, regardless



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260 of whether they have previously transitioned to nonstate-funded  
261 cleanup status, may continue state-funded cleanup pursuant to  
262 this section until a site rehabilitation completion order is  
263 issued or the increased site rehabilitation funding assistance  
264 limit is reached, whichever occurs first. The department may not  
265 pay expenses incurred beyond the scope of an approved contract.

266 (c) Upon notification by the department that rehabilitation  
267 funding assistance is available for the site pursuant to  
268 subsections (5) and (6), the owner, operator, or person  
269 otherwise responsible for site rehabilitation shall provide the  
270 department with a limited contamination assessment report and  
271 shall enter into a Petroleum Cleanup Participation Program site  
272 rehabilitation agreement with the department. The agreement must  
273 provide for a 25-percent copayment by the owner, operator, or  
274 person otherwise responsible for conducting site rehabilitation.  
275 The owner, operator, or person otherwise responsible for  
276 conducting site rehabilitation shall adequately demonstrate the  
277 ability to meet the copayment obligation. The limited  
278 contamination assessment report and the copayment costs may be  
279 reduced or eliminated if the owner and all operators responsible  
280 for restoration under s. 376.308 demonstrate that they cannot  
281 financially comply with the copayment and limited contamination  
282 assessment report requirements. The department shall take into  
283 consideration the owner's and operator's net worth in making the  
284 determination of financial ability. In the event the department  
285 and the owner, operator, or person otherwise responsible for  
286 site rehabilitation cannot complete negotiation of the cost-  
287 sharing agreement within 120 days after beginning negotiations,  
288 the department shall terminate negotiations and the site shall



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289 be ineligible for state funding under this subsection and all  
290 liability protections provided for in this subsection shall be  
291 revoked.

292 (d) A report of a discharge made to the department by a  
293 person pursuant to this subsection or any rules adopted pursuant  
294 to this subsection may not be used directly as evidence of  
295 liability for such discharge in any civil or criminal trial  
296 arising out of the discharge.

297 (e) This subsection does not preclude the department from  
298 pursuing penalties under s. 403.141 for violations of any law or  
299 any rule, order, permit, registration, or certification adopted  
300 or issued by the department pursuant to its lawful authority.

301 (f) Upon the filing of a discharge reporting form under  
302 paragraph (a), the department or local government may not pursue  
303 any judicial or enforcement action to compel rehabilitation of  
304 the discharge. This paragraph does not prevent any such action  
305 with respect to discharges determined ineligible under this  
306 subsection or to sites for which rehabilitation funding  
307 assistance is available pursuant to subsections (5) and (6).

308 (g) The following are excluded from participation in the  
309 program:

310 1. Sites at which the department has been denied reasonable  
311 site access to implement this section.

312 2. Sites that were active facilities when owned or operated  
313 by the Federal Government.

314 3. Sites that are identified by the United States  
315 Environmental Protection Agency to be on, or which qualify for  
316 listing on, the National Priorities List under Superfund. This  
317 exception does not apply to those sites for which eligibility



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318 has been requested or granted as of the effective date of this  
319 act under the Early Detection Incentive Program established  
320 pursuant to s. 15, chapter 86-159, Laws of Florida.

321 4. Sites for which contamination is covered under the Early  
322 Detection Incentive Program, the Abandoned Tank Restoration  
323 Program, or the Petroleum Liability and Restoration Insurance  
324 Program, in which case site rehabilitation funding assistance  
325 shall continue under the respective program.

326 Section 3. Paragraph (a) of subsection (2) and subsection  
327 (4) of section 376.30713, Florida Statutes, are amended to read:  
328 376.30713 Advanced cleanup.—

329 (2) The department may approve an application for advanced  
330 cleanup at eligible sites, before funding based on the site's  
331 priority ranking established pursuant to s. 376.3071(5) (a),  
332 pursuant to this section. Only the facility owner or operator or  
333 the person otherwise responsible for site rehabilitation  
334 qualifies as an applicant under this section.

335 (a) Advanced cleanup applications may be submitted between  
336 May 1 and June 30 and between November 1 and December 31 of each  
337 fiscal year. Applications submitted between May 1 and June 30  
338 shall be for the fiscal year beginning July 1. An application  
339 must consist of:

340 1. A commitment to pay 25 percent or more of the total  
341 cleanup cost deemed recoverable under this section along with  
342 proof of the ability to pay the cost share. An application  
343 proposing that the department enter into a performance-based  
344 contract for the cleanup of 10 ~~20~~ or more sites may use a  
345 commitment to pay, a demonstrated cost savings to the  
346 department, or both to meet the cost-share requirement. For an



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347 application relying on a demonstrated cost savings to the  
348 department, the applicant shall, in conjunction with the  
349 proposed agency term contractor, establish and provide in the  
350 application the percentage of cost savings in the aggregate that  
351 is being provided to the department for cleanup of the sites  
352 under the application compared to the cost of cleanup of those  
353 same sites using the current rates provided to the department by  
354 the proposed agency term contractor. The department shall  
355 determine whether the cost savings demonstration is acceptable.  
356 Such determination is not subject to chapter 120.

357 2. A nonrefundable review fee of \$250 to cover the  
358 administrative costs associated with the department's review of  
359 the application.

360 3. A limited contamination assessment report.

361 4. A proposed course of action.

362

363 The limited contamination assessment report must be sufficient  
364 to support the proposed course of action and to estimate the  
365 cost of the proposed course of action. Costs incurred related to  
366 conducting the limited contamination assessment report are not  
367 refundable from the Inland Protection Trust Fund. Site  
368 eligibility under this subsection or any other provision of this  
369 section is not an entitlement to advanced cleanup or continued  
370 restoration funding. The applicant shall certify to the  
371 department that the applicant has the prerequisite authority to  
372 enter into an advanced cleanup contract with the department. The  
373 certification must be submitted with the application.

374 (4) The department may enter into contracts for a total of  
375 up to \$25 ~~\$15~~ million of advanced cleanup work in each fiscal



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376 year. However, a facility or an applicant who bundles multiple  
377 sites as specified in subparagraph (2)(a)1. may not be approved  
378 for more than \$5 million of cleanup activity in each fiscal  
379 year. A property owner or responsible party may enter into a  
380 voluntary cost-share agreement in which the property owner or  
381 responsible party commits to bundle multiple sites and lists the  
382 facilities that will be included in those future bundles. The  
383 facilities listed are not subject to agency term contractor  
384 assignment pursuant to department rule. The department reserves  
385 the right to terminate the voluntary cost-share agreement if the  
386 property owner or responsible party fails to submit an  
387 application to bundle multiple sites within an open application  
388 period in which it is eligible to participate. For the purposes  
389 of this section, the term "facility" includes, but is not  
390 limited to, multiple site facilities such as airports, port  
391 facilities, and terminal facilities even though such enterprises  
392 may be treated as separate facilities for other purposes under  
393 this chapter.

394 Section 4. This act shall take effect July 1, 2015.

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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**BILL:** CS/CS/SB 314

**INTRODUCER:** Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Environmental Preservation and Conservation Committee; and Senator Simpson

**SUBJECT:** Petroleum Restoration Program

**DATE:** April 20, 2015

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gudeman</u>	<u>Uchino</u>	<u>EP</u>	<b>Fav/CS</b>
2.	<u>Howard</u>	<u>DeLoach</u>	<u>AGG</u>	<b>Recommend: Fav/CS</b>
3.	<u>Howard</u>	<u>Kynoch</u>	<u>AP</u>	<b>Fav/CS</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 314 revises certain provisions of the Petroleum Restoration Program. Specifically, the bill:

- Expands the eligibility requirements of the Abandoned Tanks Restoration Program (ATRP);
- Specifies that sites participating in the Petroleum Cleanup Participation Program (PCPP) are not eligible for the ATRP;
- Removes the provision that a property owner must provide evidence that he or she had a complete understanding of the previous ownership and use of the property prior to acquiring the property;
- Removes the exclusion eligibility for sites which are owned by a person who had knowledge of the polluting condition when title was acquired;
- Changes the name of the “low-scored site initiative” (LSSI) to the “low-risk site initiative” (LRSI) and revises the criteria that must be met to participate in the LRSI;
- Increases the amount of money that may be encumbered from the Inland Protection Trust Fund each year to fund the LRSI from \$10 million to \$15 million, and increases the funding limit per site from \$30,000 to \$35,000;
- Removes the reporting deadline for sites to participate in the PCPP;
- Decreases the number of sites that may be bundled and eligible to compete for performance based contracts under the Advanced Cleanup Program from 20 to 10;

- Increases the annual funding cap from \$15 million to \$25 million for the Advanced Cleanup Program; and
- Allows a property owner or responsible party to enter into a voluntary cost share agreement for bundling multiple sites and specifies the sites are not subject to the agency term contractor assignment pursuant to rule.

The amended eligibility requirements for the ATRP and the PCPP are projected to have an increased recurring cost of \$6 million and a \$14 million nonrecurring cost to the Inland Protection Trust Fund within the Department of Environmental Protection (DEP). Senate Bill 2500, the Senate's Fiscal Year 2015-2016 General Appropriations Bill, provides \$110 million from the Inland Protection Trust Fund within the DEP for the Petroleum Tanks Cleanup Program, in addition to base operational funding. The bill would increase program costs.

The bill provides an effective date of July 1, 2015.

## II. Present Situation:

### **Restoration of Petroleum Contaminated Sites**

The Division of Waste Management within the Department of Environmental Protection (DEP) regulates underground and aboveground storage tank systems. In 1983, Florida became one of the first states to pass legislation and adopt rules to regulate underground and aboveground storage tanks.<sup>1</sup> Leaking storage tanks pose a significant threat to groundwater quality, and Florida relies on groundwater for about 92 percent of its drinking water needs.<sup>2</sup>

As of February 25, 2015, 8,378 discharges have been closed since the program began in 1986. There are approximately 5,011 discharges undergoing some phase of remediation and 5,074 discharges that are waiting for remediation. Site rehabilitation funding is based on the available budget and the priority score. The score for each site ranges from five to 115, with five representing a very low potential threat to human health and the environment and 115 representing a substantial potential threat. The DEP is currently funding the remediation of discharges that score 30 or above. The total number of sites that are currently eligible for state funding varies as sites are closed out and new sites are added to the program.<sup>3</sup>

### ***State Underground Petroleum Environmental Response Act***

In 1986, the Legislature passed the State Underground Petroleum Environmental Response Act (SUPER Act) to address the problem of pollution from leaking underground petroleum storage systems. The SUPER Act authorized the DEP to establish criteria for the prioritization, assessment, cleanup, and reimbursement for cleanup of contaminated sites. The SUPER Act also created the Inland Protection Trust Fund, which is funded by a tax on petroleum products imported or produced in Florida, and serves as a repository for the various petroleum contamination cleanup programs. The SUPER Act established the Early Detection Incentive

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<sup>1</sup> See ch. 83-310, Laws of Fla.

<sup>2</sup> DEP, *Storage Tank Compliance*, <http://www.dep.state.fl.us/waste/categories/tanks/> (last visited Mar. 9, 2015).

<sup>3</sup> DEP, *Senate Bill 314 Agency Analysis*, 3, (Jan. 20, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

Program, which provided site owners with the option of conducting the cleanup themselves and then receiving reimbursement from the Inland Protection Trust Fund, or having the state conduct the cleanup in priority order.<sup>4</sup>

### ***Petroleum Liability Insurance Program***

In 1988, the Legislature created the Petroleum Liability Insurance Program (PLIP) to provide third-party liability insurance to qualified program participants. The PLIP provided up to \$1 million of liability insurance for each incident of petroleum contamination.<sup>5</sup> The program was revised in 1989 and renamed to the Petroleum Liability Insurance and Restoration Program (PLIRP). The PLIRP allowed eligible petroleum facilities to purchase \$1 million in pollution liability protection from a state contracted insurer and provided \$1 million worth of site restoration coverage through reimbursement or state-funded cleanup.<sup>6</sup>

### ***Abandoned Tank Restoration Program***

In 1990, the Legislature established the Abandoned Tank Restoration Program (ATRP). The ATRP was created to address the contamination at facilities that had out-of-service or abandoned tanks as of March 1990. The ATRP originally had a one-year application period, but the deadline was subsequently extended to 1992, then 1994. In 1996, the Legislature waived the deadline indefinitely for owners who are unable to pay for the closure of abandoned tanks. To be eligible for the ATRP, applicants must certify that the petroleum system has not stored petroleum products for consumption, use, or sale since March 1, 1990.<sup>7</sup> There are currently 4,084 eligible ATRP discharges and 2,078 discharges have been remediated.<sup>8</sup>

### ***The Reimbursement Program***

The Legislature began to phase out the state's role in the cleanup process in 1992 by shifting the cleanup of sites to the reimbursement program,<sup>9</sup> which was funded by increasing the excise tax on petroleum and petroleum products.<sup>10</sup> The reimbursement program proved costly, and within a few years the reimbursement amount exceeded the administrative capacity of the DEP and the financial resources of the Inland Protection Trust Fund. By 1996, over 18,000 petroleum sites had been identified as contaminated and the program had accumulated \$551.5 million in outstanding reimbursement claims.<sup>11</sup>

In 1995, the Legislature passed a temporary measure to address the large backlog of reimbursement applications and unpaid claims and required a review of the petroleum

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<sup>4</sup> Section 376.3071, F.S.

<sup>5</sup> Section 376.3072, F.S.

<sup>6</sup> Chapter 89-188, Laws of Fla.

<sup>7</sup> Section 376.305, F.S.

<sup>8</sup> DEP, *Senate Bill 314 Agency Analysis*, 3, (Jan. 20, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>9</sup> The term "cleanup sites" includes contaminated sites that are being remediated by the state or the property owner.

<sup>10</sup> Chapter 92-30, Laws of Fla.

<sup>11</sup> Comm. on Environmental Preservation and Conservation, the Florida Senate, *Underground Petroleum Storage Tank Cleanup Program*, (Interim Report 2005-153) (Nov. 2004).

underground storage tanks program. The measure only funded the remediation of sites that had received prior notice from the DEP.<sup>12</sup>

### ***Petroleum Preapproval Program***

The Petroleum Preapproval Program was implemented by the Legislature in 1996 in order to address the backlog of reimbursement applications and excessive costs to the Inland Protection Trust Fund.<sup>13</sup> The program required state-funded cleanup of sites to be done on a preapproved basis, in priority order, and within the current fiscal year's budget. The program also required the DEP to use risk-based correction action (RBCA, pronounced "Rebecca") principles in the cleanup criteria rule. The DEP preapproved all cleanup costs for performance based contracts using competitive bid procedures or negotiated contracts.

### ***Advanced Cleanup Program***

The Advanced Cleanup Program (ACP) was also created in 1996 to allow property owners or responsible parties the opportunity to pay a portion of the cleanup costs in order to bypass the priority ranking list. The ACP requires applicants to provide at least 25 percent of the total cleanup costs and requires the property owner to prepare limited scope assessments at their expense.<sup>14</sup>

Section 376.30713(4), F.S., authorizes the DEP to enter into advanced cleanup contracts for up to \$15 million each fiscal year and limits the amount a facility may receive to \$5 million per year. A facility includes multiple site facilities such as airports, ports, or terminal facilities.<sup>15</sup> Applications are submitted to the DEP twice a year (between May 1 and June 30 and between November 1 and December 31). The applications are ranked based on the percentage of cost-sharing commitment proposed by the applicant, with the highest ranking given to the applicant that proposes the highest percentage of its share of costs.<sup>16</sup>

### ***Petroleum Cleanup Participation Program***

The Petroleum Cleanup Participation Program (PCPP) was also created in 1996 for sites that had missed the opportunity for state funding assistance but had reported contamination before 1995. Responsible parties in the PCPP cost share in the cleanup and prepare a limited scope assessment at their expense. Sites that qualify for this program are eligible for \$400,000 in rehabilitation funding and the owner, operator, or responsible party is required to pay 25 percent of the costs. The copayment amount may be reduced depending on the financial ability of the owner, operator, or responsible party.<sup>17</sup> There are currently 1,727 PCPP eligible discharges.<sup>18</sup>

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<sup>12</sup> Chapter 95-2, Laws of Fla.

<sup>13</sup> Chapter 96-277, s. 6, Laws of Fla.

<sup>14</sup> Section 376.30713, F.S.

<sup>15</sup> Section 376.30713(4), F.S.

<sup>16</sup> Section 376.30713(2), F.S.

<sup>17</sup> Section 376.3071(13), F.S.

<sup>18</sup> DEP, *Senate Bill 314 Agency Analysis*, 3, (Jan. 20, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

### ***Revisions to the Petroleum Restoration Program***

The Petroleum Restoration Program was amended in 1999 by HB 2151 to provide up to \$5 million in funding for certain source removal activities in advance of the priority ranking. The DEP was directed to select five low-scoring sites in the petroleum preapproval program for an innovative pilot program. The measure also extended the ACP beyond October 1, 1999.

Section 376.30714, F.S., was created in HB 2151 to address contamination on a site with eligible discharges (reported by December 31, 1998) and ineligible discharges (reported on or after January 1, 1999). Discharges that are reported on or after January 1, 1998, are not only ineligible for state funding, but are also not eligible for PLIRP. The inability to scientifically distinguish old discharges from new discharges results in eligible and ineligible discharges at a single location. The measure authorizes the DEP to address such instances through negotiated site rehabilitation agreements. The site rehabilitation agreements include a Limited Contamination Assessment Report; the allocation of funding between the state and the responsible party, owner, or operator; the proof of financial responsibility of the owner, operator, or responsible party; and the establishment of the cleanup priority of the site. Any discharges reported by December 31, 1998, remain subject to the program requirements for which it is eligible.

The Legislature substantially amended the Petroleum Restoration Program in 2005 to require:

- All of Florida's underground petroleum storage tanks be upgraded prior to January 1, 2010;
- The DEP to establish a process to uniformly encumber funds appropriated for the petroleum preapproval program throughout a fiscal year;
- The DEP to establish priorities based on a scoring system;
- Funding for limited, interim soil-source removals for sites that become inaccessible for future remediation due to road infrastructure and right-of-way restrictions resulting from pending Florida Department of Transportation (FDOT) projects;
- Funding for limited, interim soil-source removals associated with the underground petroleum storage system upgrade that are conducted in advance of the site's priority ranking for cleanup;
- Limited funding to ten sites per fiscal year per owner for source removal associated with the underground petroleum storage system upgrade;
- Limited funding for interim source removal activities at the FDOT projects to up to ten percent of the total source removal costs and funds may only be used for soil assessment, soil screening, soil removal, backfill material, treatment or disposal of contaminated soil, and dewatering;
- Limited funding of \$1 million per fiscal year for the FDOT projects, and \$10 million per fiscal year for underground petroleum storage system upgrade projects;
- Repeal of funding provisions by June 30, 2008;
- Availability of the Preapproved Advanced Cleanup Participation Program for discharges that are eligible for restoration funding under the PCPP provided the applicants includes a cost-sharing commitment in addition to the 25 percent copayment requirement for the PCPP; and
- An extension of the life of the Inland Protection Financing Corporation from 2011 to 2025, and that the corporation issue notes and bonds, and pay for large-scale cleanups such as ports, airports, and terminal facilities that are eligible for state funding.<sup>19</sup>

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<sup>19</sup> Sections 376.3071, 376.30713, 376.3075, and 376.30715, F.S.

### *Low-Scored Site Initiative*

The low-scored site initiative (LSSI) was created in 2010 to allow property owners with low scoring sites to voluntarily participate the Petroleum Restoration program. To qualify for the LSSI, the following site conditions are required:

- A priority score of 29 or less;
- Excessively contaminated soil from petroleum products is not present;
- Six months of groundwater monitoring that demonstrate the plume is shrinking or stable;
- Adjacent surface water, including its effects on human health and the environment, is not affected;
- The area containing the contamination must be less than one-quarter acre and confined to the source property boundaries; and
- Soil contamination subject to human exposure at the surface and two feet below the land surface meets the appropriate cleanup target levels.

A property that qualifies for state funding may receive up to \$30,000 to conduct a site assessment and six months of groundwater monitoring. Funding for the LSSI is limited to \$10 million for a fiscal year and is made available on a first come, first served basis. A property owner that chooses to participate in the LSSI is limited to ten sites per fiscal year.

Once the LSSI criteria in s. 376.3071(12)(b)1., F.S., is confirmed for a site, the DEP must issue either a No Further Action, indicating the contamination is minimal and of no risk, or a site rehabilitation completion order, indicating there is no contamination remaining.

In 2013, the Legislature amended s. 376.30711, F.S., to require all task assignments, work orders, and contracts for providers under the preapproval program be procured through competitive bidding pursuant to ss. 287.056, 287.057, and 287.059, F.S., after June 30, 2014.<sup>20</sup>

The Fiscal Year 2013-2014 General Appropriations Act appropriated \$125 million to the DEP for the rehabilitation of eligible petroleum contaminated sites. The act directed that up to \$50 million be appropriated to fund petroleum rehabilitation task assignments, work orders, and contracts entered into prior to June 30, 2013. The remaining \$75 million was placed in reserve and was contingent upon submission of a plan for consideration by the Legislative Budget Commission (LBC) detailing how the DEP would improve the effectiveness and efficiency of the Petroleum Restoration program. In addition, no funds could be released after January 1, 2014, unless the DEP adopted rules to implement ss. 376.3071, 376.30711, and 376.30713, F.S. The DEP's plan was approved by the LBC on September 12, 2013, and rules were adopted on December 27, 2013.<sup>21</sup> The remaining \$75 million in appropriation was released in March 2014.<sup>22</sup>

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<sup>20</sup> Chapter 2013-41, s. 29, Laws of Fla.

<sup>21</sup> The Statement of Estimated Regulatory Cost (SERC) prepared by the DEP to implement Rules 62-772.300 and 62-772.400, F.A.C determined the rules required ratification by the legislature. The majority of the cost requirements outlined by the DEP in the SERC were costs already incurred by contractors as the cost to conduct business. However, the existing requirements were being restated in rule, thereby requiring legislative ratification during the 2014 Legislative Session (ch. 2014-149, Laws of Fla).

<sup>22</sup> Chapter 2013-40, Laws of Fla.

In 2014, the Legislature passed CS/HB 7093 to substantially amend the Petroleum Restoration program by repealing the Petroleum Preapproval program in s. 376.30711, F.S., deleting obsolete provisions related to the reimbursement program, requiring competitive procurement procedures for clean-up contracts, and revising clean-up contractor qualifications.

Section s. 376.3071, F.S., was amended to include the following:

- State-funded cleanup sites are funded pursuant to the provisions of the Petroleum Restoration program in ss. 376.3071, F.S., 376.305(6), 376.3072, and 376.3070, F.S.;
- A facility owner must abate the source of discharge for a release that occurred after March 29, 1995, and notify the DEP if free product is present;
- Clean-up contracts for contamination sites in the Petroleum Rehabilitation program must be procured pursuant to the competitive procurement requirements in chapter 287, F.S., or the rules adopted under ss. 376.3071 and 287.0595, F.S., and invoices must be paid pursuant to s. 215.422, F.S.;
- Site assessment and remediation contractors must certify to the DEP that they:
  - Comply with applicable Occupational Safety and Health Administration regulations;
  - Maintain workers compensation insurance;
  - Maintain comprehensive general liability and comprehensive automobile liability insurance;
  - Maintain professional liability insurance;
  - Have the capacity to perform or directly supervise the majority of the rehabilitation work pursuant to s. 489.113(9), F.S.
- The rules implementing s. 376.3071, F.S., must:
  - Specify that only qualified contractors may submit responses on competitive solicitation;
  - Include procedures for rejection of vendors that do not meet the minimum qualifications; and
  - Include the requirements from the vendor to maintain its qualification.
- A site owner or operator, or its designee, is prohibited from receiving remuneration in cash or in kind, directly or indirectly from a contractor performing site cleanup activities; and
- Allows the DEP to seek recovery of overpayment as a result of the findings of an audit.

Section 376.30713, F.S., was amended to allow an applicant to participate in the ACP under a performance-based contract for the cleanup of at least 20 sites. The applicant must commit to pay 25 percent or more of the costs of cleanup. In order to meet the requirements of the cost-share agreement, the applicant may commit to pay, demonstrate a cost savings to the state, or use a combination of the two. The percentage of cost savings must be included in the application and compared to the cost of cleanup of the same sites using the current rates provided to the DEP by the agency term contractor. The DEP must determine if the cost savings demonstration is acceptable, which is not subject to ch. 120, F.S.

### ***Competitive Solicitation of Contractual Services***

Prior to 2014, the DEP did not regularly use competitive bid procedures or negotiated contract procedures under ch. 287, F.S., even though the DEP was authorized to use them.

State agencies that competitively solicit contractual services are subject to the provisions in s. 287.057, F.S., which include:

- For contractual services that exceed \$35,000, the competitive solicitation must:
  - Be available to all vendors;
  - Include the time and date for the receipt of bids, proposals, or replies, and of the public opening;
  - Include the contractual terms and conditions applicable to the procurement and the criteria used to determine acceptability and merit of the bid;
  - Be subject to the invitation to bid process when the agency is able to define the scope of work and establish the specifications of the services needed;
  - Be subject to the request for proposal process when the purpose of the services needed can be defined and the agency can identify the deliverables; and
  - Be subject to the invitation to negotiate process when the agency must determine the best method for achieving the specific goal and more than one vendor is able to provide the services.
- Requiring contractual services that exceed the \$35,000 threshold to be procured through competitive sealed bids, competitive sealed proposals, or competitive sealed replies, unless:
  - The agency head determines there is an immediate danger to public health, safety, or welfare; and
  - The agency purchases the services from a state procured contract that was contracted by another agency pursuant to s. 287.057(1), F.S.<sup>23</sup>

### ***Agency Term Contracts***

Rule 62-772, F.A.C., directs the DEP to enter into multiple agency term contracts to retain contractors to conduct petroleum site rehabilitation services for a specific task assignment.<sup>24</sup> The agency term contract specifies that all site rehabilitation activities that cost more than \$195,000 will be procured by quotes from all eligible agency term contractors in the region where the site is located. For site rehabilitation activities that cost less than \$195,000, the DEP will directly assign the task to an agency term contractor using the Relative Capacity Index (RCI) algorithm. The RCI provides an unbiased, cost effective mechanism for assigning tasks to the agency term contractors.<sup>25</sup> As of March 2014, the DEP has competitively procured 70 agency term contractors that are divided into three regions around the state.

### ***Performance Based Contracts***

The DEP may issue performance based contracts to approved agency term contracts for sites that may be remediated in an aggressive, cost effective, efficient manner. Performance based contracts are negotiated based on quotes for the total cost of cleanup, technology and design, remediation milestones, site closure options, time to complete remediation, and the total cost paid for the completion of each milestone. Performance based contracts are considered for:

- Sites procured through RCI assignment in which the current agency term contractor would like to continue through a performance based contracts;
- Sites that are unassigned or require RCI assignment;

<sup>23</sup> See s. 287.057, F.S.

<sup>24</sup> Chapter 62-772.200(b), F.A.C., defines an agency “term contract” as “an agreement between the DEP and a vendor whereby the vendor agrees to provide an indefinite quantity of commodities or contractual services, on an indefinite delivery schedule, over a specified period of time.”

<sup>25</sup> The DEP, Agency Term Contractor Selection Process, *RCI flow chart*, available at [http://www.dep.state.fl.us/waste/quick\\_topics/publications/pss/pcp/RCI\\_final\\_19Dec14.pdf](http://www.dep.state.fl.us/waste/quick_topics/publications/pss/pcp/RCI_final_19Dec14.pdf) (Mar. 9, 2015).

- Sites that have been in natural attenuation monitoring for over four years that show minimal progress toward closure;
- Bundled sites based on phase and/or location; and
- Sites with a restrictive funding cap amount.<sup>26</sup>

### **Risk-Based Corrective Action**

Section 376.3071, F.S., was amended in 1996 to require the DEP to adopt rules for risk-based corrective action (RBCA) principles for the rehabilitation of contaminated petroleum sites. The RBCA process uses a tiered approach that couples site assessment and response actions with human health, public safety, and environmental risk assessment to determine the extent and urgency of corrective action used in remediating contaminated sites. Alternative cleanup target levels,<sup>27</sup> institutional<sup>28</sup> and engineering controls,<sup>29</sup> and remediation by natural attenuation<sup>30</sup> are RBCA strategies used on a case-by-case basis and allow the DEP to use cost-effective and effective remediation measures in lieu of conventional cleanup technologies. RBCA is endorsed by the U.S. Environmental Protection Agency and is implemented in all 50 states for the remediation of contaminated sites.<sup>31</sup>

The use of RBCA has expanded to the state's dry cleaning site remediation program under s. 376.3078, F.S., the brownfields program under s. 376.81, F.S., and all other contaminated sites under s. 376.30701 F.S. The RBCA provisions in s. 376.30701, F.S., do not include the petroleum restoration, brownfields, and dry cleaning programs because they are subject to their own RBCA provisions in statute.

The Florida RBCA process includes the following components:

- The one in one million cancer risk for carcinogenic constituents;
- A hazard index of one for non-carcinogenic constituents in the development of cleanup target levels for groundwater, surface water, and soil;
- Relocating a compliance point away from the contamination source area to the edge of the plume or property boundary to allow for natural attenuation; and

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<sup>26</sup> The DEP, Performance Based Cleanup-General Information, *available at* [http://www.dep.state.fl.us/waste/quick\\_topics/publications/pss/pcp/announcements/NOIPP-PBC-Info-Sheet.docx](http://www.dep.state.fl.us/waste/quick_topics/publications/pss/pcp/announcements/NOIPP-PBC-Info-Sheet.docx) (last visited Mar. 9, 2015).

<sup>27</sup> Section 37.301(7), F.S., defines "cleanup target levels" as "the concentration for each contaminant identified by an applicable analytical test method, in the medium of concern, at which a site rehabilitation program is deemed complete."

<sup>28</sup> Section 376.301(21), F.S., defines "institutional control" as "the restriction on use or access to a site to eliminate or minimize exposure to petroleum products' chemical of concern, dry cleaning solvents, or other contaminants. Such restrictions may include, but are not limited to, deed restrictions, restrictive covenants, or conservation easements."

<sup>29</sup> Section 376.301(16), F.S., defines "engineering controls" as "modifications to a site to reduce or eliminate the potential for exposure to petroleum products' chemicals of concern, dry cleaning solvents, or other contaminants. Such modifications may include, but are not limited to, physical or hydraulic control measures, capping, point of use treatments, or slurry walls."

<sup>30</sup> Section 376.301(24), F.S., defines "natural attenuation" as a "verifiable approach to site rehabilitation that allows natural processes to contain the spread of contamination and reduce the concentrations of contaminants in contaminated groundwater and soil. Natural attenuation processes may include the following: sorption, biodegradation, chemical reactions with subsurface materials, diffusion, dispersion, and volatilization."

<sup>31</sup> EPA, *Use of Risk-Based Decision-Making in UST Corrective Action Programs*, OSWER Directive 9610.17 (Mar., 1995) <http://epa.gov/swerust1/directiv/od961017.htm> (last visited Mar. 9, 2015).

- Eliminating or minimizing human exposure to the contamination site by using institutional and engineering controls.

### **Funding and Improvements to the Petroleum Restoration Program**

The Petroleum Restoration program was appropriated \$110 million for the 2014-2015 fiscal year. The DEP reports that as of March 9, 2015, approximately \$30 million has been invoiced and the balance remaining is approximately \$80 million. The DEP expects to invoice approximately \$30 million by the end of the current fiscal year and \$50 million will be certified forward to 2015-2016 fiscal year.

The state has realized an overall costs savings since the Petroleum Restoration program was transitioned to the competitive procurement requirements in ch. 287, F.S., or the rules adopted under ss. 376.3071 and 287.0595, F.S. The site assessment and engineering design costs are 10 percent less, the groundwater monitoring costs are 19 percent less, and operation and maintenance costs of remedial systems are 11 percent less. The average cost savings for the remediation of discharges in the Advanced Cleanup Program is 32.7 percent.

The DEP reports that 99.9 percent of high risk exposure facilities are in active remediation or assessment, and 100 percent of facilities in the moderate risk category are in active remediation or assessment. The DEP also reports that the average procurement time under the new system is three to five weeks, which is comparable to processing time prior to the system overhaul.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 376.305, F.S., to expand the Abandoned Tank Restoration Program (ATRP) program by removing the reporting deadline, which currently separates eligible from ineligible sites. The expansion of the program will provide state funding eligibility for remediation of a large but indeterminate number of discharges.

The bill specifies that a site in the Petroleum Cleanup Participation Program (PCPP) may not participate in the ATRP.

The bill removes the provision that a property owner of a site in the ATRP must provide evidence that he or she had a complete understanding of the use of the property prior to acquisition.

The bill removes the exclusion eligibility for sites which are owned by a person who had knowledge of the polluting condition when title was acquired, unless the person acquired title to the site after issuance of a notice of site eligibility by the Department of Environmental Protection (DEP).

**Section 2** amends 376.3071, F.S., changing the name of the “low scored site initiative” to the “low-risk site initiative” (LRSI). The bill requires a property owner or a responsible party who wishes to participate in the LRSI to provide evidence of authorization from the property owner.

To participate in the LRSI, the bill requires a property owner or responsible party to submit a “No Further Action” proposal that demonstrates the required criteria are met and revises the criteria in the following manner:

- Removes the requirement that a contaminated site must have a priority ranking score of 29 points or less;
- Provides a more specific standard for the prohibition on the presence of excessively contaminated soil on the site. Specifically, soil saturated with petroleum or petroleum products, or soil that causes a total corrected hydrocarbon measurement of 500 parts per million (ppm) or higher for the Gasoline Analytical Group or 50 ppm or higher for the Kerosene Analytical Group, as defined by the DEP rule 62-780.900, F.A.C., must not exist onsite as a result of a release of petroleum products;
- Specifies that the requirement that contamination remaining at the site does not adversely affect adjacent surface waters includes the effects of those waters on human health and the environment;
- Removes the requirement that the area of groundwater contamination is less than one-quarter acre;
- Allows the presence of groundwater containing petroleum products’ chemicals of concern that is not confined to the source property boundaries if it only migrates to a transportation facility of the FDOT; and
- Adds a requirement that the groundwater contamination containing the petroleum products’ chemicals of concern is not a threat to any permitted potable water supply well.

If the DEP determines that the property owner or responsible party has demonstrated that these conditions are met, the DEP must issue a site rehabilitation completion order that incorporates the “No Further Action” proposal. This determination acknowledges that minimal contamination exists onsite and that such contamination is not a threat to the public health, safety, or welfare, water resources, or the environment. If the DEP determines that a discharge for which a site rehabilitation completion order was issued may pose a threat to the public health, safety, or welfare, water resources, or the environment, the issuance of the site rehabilitation completion order does not alter eligibility for state-funded rehabilitation that would otherwise apply.

The bill authorizes the DEP to approve the cost of a limited remediation plan, in addition to the cost of the assessment authorized in current law, submitted by a property owner or responsible party if the DEP determines that the assessment and limited remediation will likely result in a no further action determination. The approval may be provided in one or more task assignments or modifications. The total amount authorized for a particular site may not exceed the threshold amount specified in chapter 287, F.S., for a Category Two purchasing category, which is currently \$35,000. This is an increase from the current LRSI funding limit of \$30,000. The bill authorizes the DEP to pay the costs associated with a professional land survey or specific purpose survey, if needed, and costs associated with obtaining a title report and recording fees.

The bill increases the amount of time within which assessment work must be completed from six months to nine months; however, if groundwater monitoring is required following the assessment in order to satisfy the LRSI conditions, the DEP may authorize an additional six months to complete the monitoring.

The bill also increases the annual amount of money that may be encumbered from the Inland Protection Trust Fund to fund LRSI from \$10 million to \$15 million.

The bill eliminates the December 31, 1998, reporting deadline for sites to participate in the PCPP.

**Section 3** amends s. 376.30713, F.S., to revise the provisions of the Advanced Cleanup Program. The bill allows more owners, operators, or responsible parties to participate in the program by decreasing the number of sites that may be bundled and eligible to compete for performance based contracts from 20 to 10. To account for the additional participation in the program, the annual allocation is increased from \$15 million to \$25 million.

The bill allows a property owner or responsible party to enter into a voluntary cost share agreement for bundling multiple sites and to provide a list of the sites to be included in future bundles. The sites that will be included in a future bundle are not subject to agency term contractor assignment pursuant to rule. The DEP may terminate the voluntary cost share agreement if the application to bundle multiple sites is not submitted during the open application period. This provision will extend the period of time listed sites will be remediated because they are not subject to the agency term contractor assignment.

**Section 4** provides an effective date of July 1, 2015.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/CS/SB 314 appears to have an indeterminate positive fiscal impact on the private sector because more rehabilitation contracts may be awarded as a result of increasing the total funding limits for Advanced Cleanup and the Low-Risk Site Initiative (LRSI).

**C. Government Sector Impact:**

The amended eligibility requirements for the Abandoned Tank Restoration Program (ATRP) and the Petroleum Clean Participation Program (PCPP) is estimated to have an increased recurring cost of \$6 million to the Inland Protection Trust Fund within the Department of Environmental Protection (DEP).

The fiscal impact on the DEP is indeterminate as a result of reducing the number of sites that must be bundled to be eligible to compete for performance-based contracts for the Advanced Cleanup Program from 20 to 10. However, the decreased bundled site requirement, together with the increased amount of available funds, should result in more sites being cleaned up sooner that could result in cost savings over time.

The bill increases the amount of funding that may be encumbered from the Inland Protection Trust Fund for the LRSI contracts from \$10 million to \$15 million and increases the annual allocation for the Advanced Cleanup Program contracts from \$15 million to \$25 million. However, these changes may not increase the DEP's overall annual appropriation for the Petroleum Restoration Program, but rather revise how much of the annual appropriation may be expended within these programs.

The DEP estimates the elimination of the reporting deadline for the PCPP to have a fiscal impact of approximately \$932,000 per year. The estimate assumes four sites per year will apply for the program with an average cost to remediate a site \$233,000. The DEP also estimates the cost to remediate the sites that did not participate in the program from 1999 to 2014 to be \$13,980,000. This estimate assumes that 60 sites may qualify for the program at a cost of \$233,000 to remediate each site.<sup>32</sup>

Senate Bill 2500, the Senate's General Appropriations Bill for Fiscal Year 2015-2016, provides \$110 million from the Inland Protection Trust Fund within the DEP for the Petroleum Tanks Cleanup program, in addition to base operational funding. The bill increases costs for the program.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 376.305, 376.3071, and 376.30713.

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<sup>32</sup> DEP, *Petroleum Restoration Fiscal Overview, Potential Fiscal Impact with Application Date Removal* (on file with the Senate Committee on Environmental Preservation and Conservation).

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Appropriations on April 16, 2015:**

The committee substitute:

- Eliminates the December 31, 1998, reporting deadline for sites to participate in the PCPP.
- Specifies that sites currently in the Petroleum Cleanup Participation Program (PCPP) are not eligible for the Abandoned Tanks Restoration Program (ATRP).
- Removes the provision from CS/SB 314 that allows a property owner to approve the use of risk-based corrective action (RBCA) principles in remediating a discharge;
- Removes the requirement from CS/SB 314 that site owners or the responsible party must approve conditional site closures, site closures with institutional or engineering controls, or work stoppages;
- Removes the requirement from CS/SB 314 that the DEP establish in rule a procedure to process invoices that are less than \$500,000 per task;
- Removes the provision from CS/SB 314 allowing the DEP to negotiate a contract based on the best available rate from a pool of three agency term contractors selected by the site owner or operator;
- Removes the requirement from CS/SB 314 that the agency term contractor and the property owner or responsible party must submit a sworn affidavit to the DEP that neither party has solicited, offered, accepted, paid, or received any compensation, remuneration, or gift of any kind in exchange for selection of the agency term contractor;
- Removes the requirement from CS/SB 314 that the agency term contractor must disclose a conflict of interest or potential conflict of interest to the DEP;
- Removes the provision from CS/SB 314 that specifies that only agency term contractors may participate in the low-scored site initiative (LSSI);
- Authorizes the DEP to approve the costs for limited remediation and up to six months of groundwater monitoring in one or more task assignment not to exceed the category two funding limiting in s. 287.017, F.S.;
- Authorizes the DEP to approve limited remediation for LRSI sites following an approved initial site assessment, not to exceed the category two funding limiting in s. 287.017, F.S.;
- Authorizes an additional six months of groundwater monitoring for LRSI sites if the DEP determines that additional groundwater monitoring is warranted;
- Maintains the \$400,000 funding cap in current law for the PCPP;
- Maintains the discharge date in current law of January 1, 1995 for the PCPP discharges;
- Changes the name of the “low scored site initiative” to “the low-risk site initiative”;
- Requires the property owner or responsible party participating in the LRSI to submit a “No Further Action” proposal to the DEP;
- Revises the criteria for participating in LRSI, including removing the requirement that a site must have a priority ranking score of 29 or less;

- Revises the criteria to issue a site rehabilitation order with a No Further Action proposal to include:
  - Soil saturated with petroleum or petroleum products, or soil that causes a total corrected hydrocarbon measurement of 500 parts per million (ppm) or higher for the Gasoline Analytical Group or 50 ppm or higher for the Kerosene Analytical Group, as defined by the DEP rule, must not exist onsite as a result of a release of petroleum products;
  - Contamination remaining at the site must not adversely affect adjacent surface waters includes the effects of those waters on human health and the environment;
  - The area of groundwater contamination to be confined to the source property or migrated to a FDOT facility; and
  - The groundwater contamination containing the petroleum products' chemicals of concern is not a threat to any permitted potable water supply well.
- Specifies the issuance of a Site Rehabilitation Completion Order acknowledges that minimal contamination exists onsite and the contamination is not a threat to human health, safety, or welfare, water resources, or the environment; and
- Specifies a site is still eligible for state-funded rehabilitation if the DEP determines the discharge may pose a threat after the Site Rehabilitation Completion Order is issued.

**CS by Environmental Preservation and Conservation on March 11, 2015:**

- Expands the Abandoned Tank Restoration Program (ATRP) by removing the June 30, 1996, reporting deadline;
- Removes the provision that a property owner of a site in the ATRP must provide evidence that he or she had a complete understanding of ownership and use of the property prior to acquisition;
- Deletes the requirement for the Department of Environmental Protection (DEP) to establish standards and criteria for benzene in specific situations;
- Allows a property owner to approve the use of Risk-Based Correction Action (RBCA) principles in remediating a discharge;
- Requires a site owner to approve work stoppages;
- Deletes the requirement for current and future operations and management of remediation systems to be performance based contracts;
- Allows the DEP to negotiate a contract based on the best available rate from a pool of three agency term contractors selected by the property owner or responsible party;
- Deletes the provision that allows a property owner to select a contractor if the amount of the cost share and the discount off the normal rate totals at least five percent of the value of the contract;
- Requires the agency term contractor and the property owner or responsible party to submit a sworn affidavit to the DEP that neither party has solicited, offered, accepted, paid, or received any compensation, remuneration, or gift of any kind in exchange for selection of the agency term contractor;
- Requires the agency term contractor to disclose any conflict of interest to the DEP and allows the DEP to terminate a contract if the DEP determines there is a potential conflict of interest;

- Allows a site to qualify for the low-scored site initiative (LSSI) if the source boundary is greater than one-quarter acre and located below a state road or a state road's right-of-way;
- Increases the funding for the site assessment and six months of groundwater monitoring for a site in the LSSI from \$30,000 to \$35,000;
- Authorizes the DEP to approve an additional \$35,000 for interim source removal of a site in the LSSI in order to achieve No Further Action status or receive a site rehabilitation completion order;
- Authorizes the DEP to approve an additional \$35,000 for a supplemental site assessment for sites assessed before July 1, 2015, in order to achieve No Further Action status or receive a site rehabilitation completion order;
- Specifies that only agency term contractors may participate in the LSSI;
- Requires that sites completed in the LSSI must be granted priority two scoring status for ongoing assessment or remedial activity;
- Requires that all work in the LSSI must be completed nine months after the DEP approval;
- Allows the DEP to authorize an additional six months of groundwater monitoring if the supplemental site assessment determines it is warranted;
- Removes the requirement that a discharge must have occurred before January 1, 1999, to qualify for the (Petroleum Cleanup Participation Program (PCPP));
- Allows a property owner or responsible party to enter into a voluntary cost share agreement for bundling multiple sites and to provide a list of the sites to be included in future bundles;
- Specifies sites that are to be included in a future Advanced Cleanup Program bundle are not subject to the agency term contractor assignment pursuant to rule; and
- Allows the DEP to terminate the voluntary cost share agreement if the application to bundle multiple sites is not submitted during the open application period.

**B. Amendments:**

None.

By the Committee on Environmental Preservation and Conservation;  
and Senator Simpson

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1 A bill to be entitled  
2 An act relating to the Petroleum Restoration Program;  
3 amending s. 376.305, F.S.; removing the requirement  
4 that applications for the Abandoned Tank Restoration  
5 Program must have been submitted to the Department of  
6 Environmental Protection by a certain time; deleting  
7 provisions relieving certain persons from liability;  
8 amending s. 376.3071, F.S.; prohibiting the department  
9 from incorporating risk-based corrective actions  
10 principles not approved by the property owner;  
11 prohibiting site rehabilitation from being implemented  
12 on certain sites without the approval of the property  
13 owner; requiring the department to establish a  
14 procedure by rule for the processing of certain  
15 invoices and the direct assignment of tasks by a  
16 certain date; authorizing site owners and operators to  
17 select agency term contractors from which the  
18 department must select from under certain  
19 circumstances; requiring the property owner or  
20 responsible party selecting the agency term contractor  
21 and the selected agency term contractor to execute a  
22 sworn affidavit testifying to certain terms; requiring  
23 agency term contractors to disclose any conflict of  
24 interest to the department; revising the conditions  
25 for eligibility and methods for payment of costs for  
26 the low-scored site initiative; clarifying that a  
27 change in ownership does not preclude a site from  
28 entering into the program; revising the eligibility  
29 requirements for receiving rehabilitation funding

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30 assistance; increasing the amount of funding  
31 assistance available; amending s. 376.30713, F.S.;  
32 revising the number of sites for certain advanced  
33 cleanup applications; increasing the total amount for  
34 which the department may contract for advanced cleanup  
35 work in a fiscal year; authorizing property owners and  
36 responsible parties to enter into voluntary cost-share  
37 agreements under certain circumstances; providing an  
38 effective date.

39  
40 Be It Enacted by the Legislature of the State of Florida:

41  
42 Section 1. Subsection (6) of section 376.305, Florida  
43 Statutes, is amended to read:

44 376.305 Removal of prohibited discharges.—

45 (6) The Legislature created the Abandoned Tank Restoration  
46 Program in response to the need to provide financial assistance  
47 for cleanup of sites that have abandoned petroleum storage  
48 systems. For purposes of this subsection, the term "abandoned  
49 petroleum storage system" means a petroleum storage system that  
50 has not stored petroleum products for consumption, use, or sale  
51 since March 1, 1990. The department shall establish the  
52 Abandoned Tank Restoration Program to facilitate the restoration  
53 of sites contaminated by abandoned petroleum storage systems.

54 (a) To be included in the program:

55 1. An application must be submitted to the department ~~by~~  
56 ~~June 30, 1996,~~ certifying that the system has not stored  
57 petroleum products for consumption, use, or sale at the facility  
58 since March 1, 1990.

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59 2. The owner or operator of the petroleum storage system  
60 when it was in service must have ceased conducting business  
61 involving consumption, use, or sale of petroleum products at  
62 that facility on or before March 1, 1990.

63 3. The site is not otherwise eligible for the cleanup  
64 programs pursuant to s. 376.3071 or s. 376.3072.

65 (b) In order to be eligible for the program, petroleum  
66 storage systems from which a discharge occurred must be closed  
67 pursuant to department rules before an eligibility  
68 determination. However, if the department determines that the  
69 owner of the facility cannot financially comply with the  
70 department's petroleum storage system closure requirements and  
71 all other eligibility requirements are met, the petroleum  
72 storage system closure requirements shall be waived. The  
73 department shall take into consideration the owner's net worth  
74 and the economic impact on the owner in making the determination  
75 of the owner's financial ability. ~~The June 30, 1996, application~~  
76 ~~deadline shall be waived for owners who cannot financially~~  
77 ~~comply.~~

78 (c) Sites accepted in the program are eligible for site  
79 rehabilitation funding as provided in s. 376.3071.

80 (d) The following sites are excluded from eligibility:

- 81 1. Sites on property of the Federal Government;
- 82 2. Sites contaminated by pollutants that are not petroleum  
83 products;
- 84 3. Sites where the department has been denied site access;  
85 or
- 86 4. Sites which are owned by a person who had knowledge of  
87 the polluting condition when title was acquired unless the

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88 person acquired title to the site after issuance of a notice of  
89 site eligibility by the department.

90 (e) Participating sites are subject to a deductible as  
91 determined by rule, not to exceed \$10,000.

92  
93 ~~This subsection does not relieve a person who has acquired title~~  
94 ~~after July 1, 1992, from the duty to establish by a~~  
95 ~~preponderance of the evidence that he or she undertook, at the~~  
96 ~~time of acquisition, all appropriate inquiry into the previous~~  
97 ~~ownership and use of the property consistent with good~~  
98 ~~commercial or customary practice in an effort to minimize~~  
99 ~~liability, as required by s. 376.308(1)(c).~~

100 Section 2. Paragraph (b) of subsection (5), paragraph (d)  
101 of subsection (6), paragraph (b) of subsection (12), and  
102 subsection (13) of section 376.3071, Florida Statutes, are  
103 amended, and paragraphs (n) and (o) are added to subsection (6)  
104 of that section, to read:

105 376.3071 Inland Protection Trust Fund; creation; purposes;  
106 funding.—

107 (5) SITE SELECTION AND CLEANUP CRITERIA.—

108 (b) It is the intent of the Legislature to protect the  
109 health of all people under actual circumstances of exposure. The  
110 secretary shall establish criteria by rule for the purpose of  
111 determining, on a site-specific basis, the rehabilitation  
112 program tasks that comprise a site rehabilitation program and  
113 the level at which a rehabilitation program task and a site  
114 rehabilitation program are completed. In establishing the rule,  
115 the department shall incorporate, ~~to the maximum extent~~  
116 ~~feasible,~~ risk-based corrective action principles approved by

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117 the property owner to achieve protection of the public health,  
 118 safety, and welfare, water resources, and the environment in a  
 119 cost-effective manner as provided in this subsection. Criteria  
 120 for determining what constitutes a rehabilitation program task  
 121 or completion of site rehabilitation program tasks and site  
 122 rehabilitation programs shall be based upon the factors set  
 123 forth in paragraph (a) and the following additional factors:

124 1. The current exposure and potential risk of exposure to  
 125 humans and the environment including multiple pathways of  
 126 exposure.

127 2. The appropriate point of compliance with cleanup target  
 128 levels for petroleum products' chemicals of concern. The point  
 129 of compliance shall be at the source of the petroleum  
 130 contamination. However, the department may temporarily move the  
 131 point of compliance to the boundary of the property, or to the  
 132 edge of the plume when the plume is within the property  
 133 boundary, while cleanup, including cleanup through natural  
 134 attenuation processes in conjunction with appropriate  
 135 monitoring, is proceeding. The department may also, pursuant to  
 136 criteria provided for in this paragraph, temporarily extend the  
 137 point of compliance beyond the property boundary with  
 138 appropriate monitoring, if such extension is needed to  
 139 facilitate natural attenuation or to address the current  
 140 conditions of the plume, if the public health, safety, and  
 141 welfare, water resources, and the environment are adequately  
 142 protected. Temporary extension of the point of compliance beyond  
 143 the property boundary, as provided in this subparagraph, must  
 144 include notice to local governments and owners of any property  
 145 into which the point of compliance is allowed to extend.

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146 3. The appropriate site-specific cleanup goal. The site-  
 147 specific cleanup goal shall be that all petroleum contamination  
 148 sites ultimately achieve the applicable cleanup target levels  
 149 provided in this paragraph. However, the department may allow  
 150 concentrations of the petroleum products' chemicals of concern  
 151 to temporarily exceed the applicable cleanup target levels while  
 152 cleanup, including cleanup through natural attenuation processes  
 153 in conjunction with appropriate monitoring, is proceeding, if  
 154 the public health, safety, and welfare, water resources, and the  
 155 environment are adequately protected.

156 4. The appropriateness of using institutional or  
 157 engineering controls. Site rehabilitation programs may include  
 158 the use of institutional or engineering controls to eliminate  
 159 the potential exposure to petroleum products' chemicals of  
 160 concern to humans or the environment. Use of such controls must  
 161 have prior department approval and may not be acquired with  
 162 moneys from the fund. When institutional or engineering controls  
 163 are implemented to control exposure, the removal of such  
 164 controls must have prior department approval and must be  
 165 accompanied immediately by the resumption of active cleanup or  
 166 other approved controls unless cleanup target levels pursuant to  
 167 this paragraph have been achieved. Beginning July 1, 2013, site  
 168 rehabilitation for a site that qualifies for a conditional  
 169 closure or closure with institutional or engineering controls  
 170 that require deed restrictions or a work stoppage not due to  
 171 insufficient funds may be implemented only with the approval of  
 172 the property owner.

173 5. The additive effects of the petroleum products'  
 174 chemicals of concern. The synergistic effects of petroleum

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175 products' chemicals of concern must also be considered when the  
176 scientific data becomes available.

177 6. Individual site characteristics which must include, but  
178 not be limited to, the current and projected use of the affected  
179 groundwater in the vicinity of the site, current and projected  
180 land uses of the area affected by the contamination, the exposed  
181 population, the degree and extent of contamination, the rate of  
182 contaminant migration, the apparent or potential rate of  
183 contaminant degradation through natural attenuation processes,  
184 the location of the plume, and the potential for further  
185 migration in relation to site property boundaries.

186 7. Applicable state water quality standards.

187 a. Cleanup target levels for petroleum products' chemicals  
188 of concern found in groundwater shall be the applicable state  
189 water quality standards. Where such standards do not exist, the  
190 cleanup target levels for groundwater shall be based on the  
191 minimum criteria specified in department rule. The department  
192 shall consider the following, as appropriate, in establishing  
193 the applicable minimum criteria: calculations using a lifetime  
194 cancer risk level of 1.0E-6; a hazard index of 1 or less; the  
195 best achievable detection limit; the naturally occurring  
196 background concentration; or nuisance, organoleptic, and  
197 aesthetic considerations.

198 b. Where surface waters are exposed to petroleum  
199 contaminated groundwater, the cleanup target levels for the  
200 petroleum products' chemicals of concern shall be based on the  
201 surface water standards as established by department rule. The  
202 point of measuring compliance with the surface water standards  
203 shall be in the groundwater immediately adjacent to the surface

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204 water body.

205 8. Whether deviation from state water quality standards or  
206 from established criteria is appropriate. The department may  
207 issue a "No Further Action Order" based upon the degree to which  
208 the desired cleanup target level is achievable and can be  
209 reasonably and cost-effectively implemented within available  
210 technologies or engineering and institutional control  
211 strategies. Where a state water quality standard is applicable,  
212 a deviation may not result in the application of cleanup target  
213 levels more stringent than the standard. In determining whether  
214 it is appropriate to establish alternate cleanup target levels  
215 at a site, the department may consider the effectiveness of  
216 source removal that has been completed at the site and the  
217 practical likelihood of the use of low yield or poor quality  
218 groundwater; the use of groundwater near marine surface water  
219 bodies; the current and projected use of the affected  
220 groundwater in the vicinity of the site; or the use of  
221 groundwater in the immediate vicinity of the storage tank area,  
222 where it has been demonstrated that the groundwater  
223 contamination is not migrating away from such localized source,  
224 if the public health, safety, and welfare, water resources, and  
225 the environment are adequately protected.

226 9. Appropriate cleanup target levels for soils.

227 a. In establishing soil cleanup target levels for human  
228 exposure to petroleum products' chemicals of concern found in  
229 soils from the land surface to 2 feet below land surface, the  
230 department shall consider the following, as appropriate:  
231 calculations using a lifetime cancer risk level of 1.0E-6; a  
232 hazard index of 1 or less; the best achievable detection limit;

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233 or the naturally occurring background concentration.

234       b. Leachability-based soil target levels shall be based on  
 235 protection of the groundwater cleanup target levels or the  
 236 alternate cleanup target levels for groundwater established  
 237 pursuant to this paragraph, as appropriate. Source removal and  
 238 other cost-effective alternatives that are technologically  
 239 feasible shall be considered in achieving the leachability soil  
 240 target levels established by the department. The leachability  
 241 goals do not apply if the department determines, based upon  
 242 individual site characteristics, that petroleum products'  
 243 chemicals of concern will not leach into the groundwater at  
 244 levels which pose a threat to public health, safety, and  
 245 welfare, water resources, or the environment.

247 This paragraph does not restrict the department from temporarily  
 248 postponing completion of any site rehabilitation program for  
 249 which funds are being expended whenever such postponement is  
 250 necessary in order to make funds available for rehabilitation of  
 251 a contamination site with a higher priority status.

252       (6) CONTRACTING AND CONTRACTOR SELECTION REQUIREMENTS.—

253       (d) The department rules implementing this section must:

254       1. Specify that only qualified vendors may submit responses  
 255 on a competitive solicitation. ~~The department rules must also~~

256       2. Include procedures for the rejection of vendors not  
 257 meeting the minimum qualifications on the opening of a  
 258 competitive solicitation. ~~and~~

259       3. Include requirements for a vendor to maintain its  
 260 qualifications in order to enter contracts or perform  
 261 rehabilitation work.

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262       4. Establish a procedure by October 1, 2015, for the  
 263 processing of invoices and the direct assignment of tasks that  
 264 are less than \$500,000. This procedure may not involve the use  
 265 of MyFloridaMarketPlace. Invoices and assignment of tasks may be  
 266 processed pursuant to chapter 287.

267       (n) For sites that are within the priority scoring range  
 268 eligible for funding, excluding sites that are within a cost-  
 269 share program, a site owner or operator may select three agency  
 270 term contractors. The department will then select one of the  
 271 three agency term contractors based on the best value to be  
 272 determined by a combination of the agency term contractor's  
 273 Invitation to Negotiate ranking and Schedule E rates.

274       (o)1. Both the selected agency term contractor and the  
 275 property owner, or responsible party, who selects the agency  
 276 term contractor must execute a sworn affidavit testifying that  
 277 neither party has solicited, offered, accepted, paid, or  
 278 received any compensation, remuneration, or gift of any kind,  
 279 directly or indirectly, in exchange for the selection of the  
 280 agency term contractor in connection with the cleanup of the  
 281 petroleum contaminated property, except for the compensation  
 282 paid by the department to the agency term contractor pursuant to  
 283 the agency term contractor's contract with the department. If  
 284 the department subsequently determines that remuneration did  
 285 occur, the department may seek recovery of the costs of cleanup  
 286 of specific properties from all parties responsible for the  
 287 property contamination, and the property is ineligible for  
 288 participation in any cleanup program.

289       2. Pursuant to the terms and conditions of the agency term  
 290 contractor's contract with the department, the agency term

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291 contractor must disclose any conflict of interest to the  
 292 department. The agency term contractor shall be conclusively  
 293 determined to have a conflict of interest with regard to any  
 294 site if it has given or offered remuneration, in cash or in  
 295 kind, directly or indirectly, to the property owner or  
 296 responsible party, or the owner's or responsible party's  
 297 designee, to obtain work associated with such property. The  
 298 department retains the right to investigate and determine if an  
 299 agency term contractor has a conflict of interest with regard to  
 300 any property. The department may terminate the agency term  
 301 contractor's contract with the department or may terminate the  
 302 agency term contractor's work assignment to a particular  
 303 property based upon the department's assessment of the potential  
 304 conflict of interest.

305 (12) SITE CLEANUP.—

306 (b) *Low-scored site initiative.*—Notwithstanding subsections  
 307 (5) and (6), a site with a priority ranking score of 29 points  
 308 or less may voluntarily participate in the low-scored site  
 309 initiative regardless of whether the site is eligible for state  
 310 restoration funding.

311 1. To participate in the low-scored site initiative, the  
 312 responsible party or property owner must affirmatively  
 313 demonstrate that the following conditions are met:

314 a. Upon reassessment pursuant to department rule, the site  
 315 retains a priority ranking score of 29 points or less.

316 b. Excessively contaminated soil, as defined by department  
 317 rule, does not exist onsite as a result of a release of  
 318 petroleum products.

319 c. A minimum of 6 months of groundwater monitoring

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320 indicates that the plume is shrinking or stable.

321 d. The release of petroleum products at the site does not  
 322 adversely affect adjacent surface waters, including their  
 323 effects on human health and the environment.

324 e. The area of groundwater containing the petroleum  
 325 products' chemicals of concern ~~is less than one-quarter acre and~~  
 326 is confined to the source property boundaries of the real  
 327 property on which the discharge originated or is located below a  
 328 state road or a state road's right-of-way.

329 f. Soils onsite that are subject to human exposure found  
 330 between land surface and 2 feet below land surface meet the soil  
 331 cleanup target levels established by department rule or human  
 332 exposure is limited by appropriate institutional or engineering  
 333 controls.

334 2. Upon affirmative demonstration of the conditions under  
 335 subparagraph 1., the department shall issue a determination of  
 336 "No Further Action." Such determination acknowledges that  
 337 minimal contamination exists onsite and that such contamination  
 338 is not a threat to the public health, safety, or welfare, water  
 339 resources, or the environment. If no contamination is detected,  
 340 the department may issue a site rehabilitation completion order.

341 3. Sites that are eligible for state restoration funding  
 342 may receive payment of costs for the low-scored site initiative  
 343 as follows:

344 a. A responsible party or property owner may submit an  
 345 assessment plan designed to affirmatively demonstrate that the  
 346 site meets the conditions under subparagraph 1. Notwithstanding  
 347 the priority ranking score of the site, the department may  
 348 approve the cost of the assessment, including 6 months of

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349 groundwater monitoring, not to exceed \$35,000 ~~\$30,000~~ for each  
 350 site. The department may not pay the costs associated with the  
 351 establishment of institutional or engineering controls.

352 b. Following the assessment, the department may approve up  
 353 to an additional \$35,000 for interim source removal pursuant to  
 354 department rule to achieve a "No Further Action" order or a site  
 355 rehabilitation completion order pursuant to subparagraph 2.

356 c. For low-scored site initiative sites that were completed  
 357 before July 1, 2015, the department may approve up to an  
 358 additional \$35,000 for supplemental site assessment pursuant to  
 359 department rule or to achieve a "No Further Action" order or a  
 360 site rehabilitation completion order pursuant to subparagraph 2.

361 d. To provide pricing levels on the best terms to the  
 362 department, only an agency term contractor may participate in  
 363 the low-scored site initiative.

364 e. Completed low-scored site initiative sites shall be  
 365 granted priority 2 scoring status for ongoing assessment or  
 366 remedial activity pursuant to department rule.

367 f. ~~b.~~ All ~~The assessment~~ work shall be completed no later  
 368 than 9 ~~6~~ months after the department issues its approval. If  
 369 groundwater monitoring is required after the assessment in order  
 370 to satisfy the conditions of sub-subparagraph 1.c., the  
 371 department may authorize an additional 6 months to complete the  
 372 monitoring.

373 g. ~~e.~~ No more than \$10 million for the low-scored site  
 374 initiative may be encumbered from the fund in any fiscal year.  
 375 Funds shall be made available on a first-come, first-served  
 376 basis and shall be limited to 10 sites in each fiscal year for  
 377 each responsible party or property owner.

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378 ~~h. ~~d.~~~~ Program deductibles, copayments, and the limited  
 379 contamination assessment report requirements under paragraph  
 380 (13) (c) do not apply to expenditures under this paragraph.

381 (13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage  
 382 detection, reporting, and cleanup of contamination caused by  
 383 discharges of petroleum or petroleum products, the department  
 384 shall, within the guidelines established in this subsection,  
 385 implement a cost-sharing cleanup program to provide  
 386 rehabilitation funding assistance for all property contaminated  
 387 by discharges of petroleum or petroleum products from a  
 388 petroleum storage system occurring before January 1, 1995,  
 389 subject to a copayment provided for in a Petroleum Cleanup  
 390 Participation Program site rehabilitation agreement. Eligibility  
 391 is subject to an annual appropriation from the fund.  
 392 Additionally, funding for eligible sites is contingent upon  
 393 annual appropriation in subsequent years. Such continued state  
 394 funding is not an entitlement or a vested right under this  
 395 subsection. Eligibility shall be determined in the program,  
 396 notwithstanding any other provision of law, consent order,  
 397 order, judgment, or ordinance to the contrary.

398 (a)1. The department shall accept any discharge reporting  
 399 form received before January 1, 1995, as an application for this  
 400 program, and the facility owner or operator need not reapply.

401 2. Owners or operators of property, regardless of whether  
 402 ownership has changed, which is contaminated by petroleum or  
 403 petroleum products from a petroleum storage system may apply for  
 404 such program by filing a written report of the contamination  
 405 incident, including evidence that such incident occurred before  
 406 January 1, 1995, with the department. Incidents of petroleum

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407 contamination discovered after December 31, 1994, at sites which  
 408 have not stored petroleum or petroleum products for consumption,  
 409 use, or sale after such date shall be presumed to have occurred  
 410 before January 1, 1995. An operator's filed report shall be an  
 411 application of the owner for all purposes. ~~Sites reported to the~~  
 412 ~~department after December 31, 1998, are not eligible for the~~  
 413 ~~program.~~

414 (b) Subject to annual appropriation from the fund, sites  
 415 meeting the criteria of this subsection are eligible for up to  
 416 \$1 million ~~\$400,000~~ of site rehabilitation funding assistance in  
 417 priority order pursuant to subsections (5) and (6). Sites  
 418 meeting the criteria of this subsection for which a site  
 419 rehabilitation completion order was issued before June 1, 2008,  
 420 do not qualify for the 2008 increase in site rehabilitation  
 421 funding assistance and are bound by the pre-June 1, 2008,  
 422 limits. Sites meeting the criteria of this subsection for which  
 423 a site rehabilitation completion order was not issued before  
 424 June 1, 2008, regardless of whether they have previously  
 425 transitioned to nonstate-funded cleanup status, may continue  
 426 state-funded cleanup pursuant to this section until a site  
 427 rehabilitation completion order is issued or the increased site  
 428 rehabilitation funding assistance limit is reached, whichever  
 429 occurs first. The department may not pay expenses incurred  
 430 beyond the scope of an approved contract.

431 (c) Upon notification by the department that rehabilitation  
 432 funding assistance is available for the site pursuant to  
 433 subsections (5) and (6), the owner, operator, or person  
 434 otherwise responsible for site rehabilitation shall provide the  
 435 department with a limited contamination assessment report and

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436 shall enter into a Petroleum Cleanup Participation Program site  
 437 rehabilitation agreement with the department. The agreement must  
 438 provide for a 25-percent copayment by the owner, operator, or  
 439 person otherwise responsible for conducting site rehabilitation.  
 440 The owner, operator, or person otherwise responsible for  
 441 conducting site rehabilitation shall adequately demonstrate the  
 442 ability to meet the copayment obligation. The limited  
 443 contamination assessment report and the copayment costs may be  
 444 reduced or eliminated if the owner and all operators responsible  
 445 for restoration under s. 376.308 demonstrate that they cannot  
 446 financially comply with the copayment and limited contamination  
 447 assessment report requirements. The department shall take into  
 448 consideration the owner's and operator's net worth in making the  
 449 determination of financial ability. In the event the department  
 450 and the owner, operator, or person otherwise responsible for  
 451 site rehabilitation cannot complete negotiation of the cost-  
 452 sharing agreement within 120 days after beginning negotiations,  
 453 the department shall terminate negotiations and the site shall  
 454 be ineligible for state funding under this subsection and all  
 455 liability protections provided for in this subsection shall be  
 456 revoked.

457 (d) A report of a discharge made to the department by a  
 458 person pursuant to this subsection or any rules adopted pursuant  
 459 to this subsection may not be used directly as evidence of  
 460 liability for such discharge in any civil or criminal trial  
 461 arising out of the discharge.

462 (e) This subsection does not preclude the department from  
 463 pursuing penalties under s. 403.141 for violations of any law or  
 464 any rule, order, permit, registration, or certification adopted

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465 or issued by the department pursuant to its lawful authority.

466 (f) Upon the filing of a discharge reporting form under  
467 paragraph (a), the department or local government may not pursue  
468 any judicial or enforcement action to compel rehabilitation of  
469 the discharge. This paragraph does not prevent any such action  
470 with respect to discharges determined ineligible under this  
471 subsection or to sites for which rehabilitation funding  
472 assistance is available pursuant to subsections (5) and (6).

473 (g) The following are excluded from participation in the  
474 program:

475 1. Sites at which the department has been denied reasonable  
476 site access to implement this section.

477 2. Sites that were active facilities when owned or operated  
478 by the Federal Government.

479 3. Sites that are identified by the United States  
480 Environmental Protection Agency to be on, or which qualify for  
481 listing on, the National Priorities List under Superfund. This  
482 exception does not apply to those sites for which eligibility  
483 has been requested or granted as of the effective date of this  
484 act under the Early Detection Incentive Program established  
485 pursuant to s. 15, chapter 86-159, Laws of Florida.

486 4. Sites for which contamination is covered under the Early  
487 Detection Incentive Program, the Abandoned Tank Restoration  
488 Program, or the Petroleum Liability and Restoration Insurance  
489 Program, in which case site rehabilitation funding assistance  
490 shall continue under the respective program.

491 Section 3. Paragraph (a) of subsection (2) and subsection  
492 (4) of section 376.30713, Florida Statutes, are amended to read:  
493 376.30713 Advanced cleanup.—

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494 (2) The department may approve an application for advanced  
495 cleanup at eligible sites, before funding based on the site's  
496 priority ranking established pursuant to s. 376.3071(5) (a),  
497 pursuant to this section. Only the facility owner or operator or  
498 the person otherwise responsible for site rehabilitation  
499 qualifies as an applicant under this section.

500 (a) Advanced cleanup applications may be submitted between  
501 May 1 and June 30 and between November 1 and December 31 of each  
502 fiscal year. Applications submitted between May 1 and June 30  
503 shall be for the fiscal year beginning July 1. An application  
504 must consist of:

505 1. A commitment to pay 25 percent or more of the total  
506 cleanup cost deemed recoverable under this section along with  
507 proof of the ability to pay the cost share. An application  
508 proposing that the department enter into a performance-based  
509 contract for the cleanup of 10 ~~20~~ or more sites may use a  
510 commitment to pay, a demonstrated cost savings to the  
511 department, or both to meet the cost-share requirement. For an  
512 application relying on a demonstrated cost savings to the  
513 department, the applicant shall, in conjunction with the  
514 proposed agency term contractor, establish and provide in the  
515 application the percentage of cost savings in the aggregate that  
516 is being provided to the department for cleanup of the sites  
517 under the application compared to the cost of cleanup of those  
518 same sites using the current rates provided to the department by  
519 the proposed agency term contractor. The department shall  
520 determine whether the cost savings demonstration is acceptable.  
521 Such determination is not subject to chapter 120.

522 2. A nonrefundable review fee of \$250 to cover the

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523 administrative costs associated with the department's review of  
 524 the application.

525 3. A limited contamination assessment report.

526 4. A proposed course of action.

527

528 The limited contamination assessment report must be sufficient  
 529 to support the proposed course of action and to estimate the  
 530 cost of the proposed course of action. Costs incurred related to  
 531 conducting the limited contamination assessment report are not  
 532 refundable from the Inland Protection Trust Fund. Site  
 533 eligibility under this subsection or any other provision of this  
 534 section is not an entitlement to advanced cleanup or continued  
 535 restoration funding. The applicant shall certify to the  
 536 department that the applicant has the prerequisite authority to  
 537 enter into an advanced cleanup contract with the department. The  
 538 certification must be submitted with the application.

539 (4) The department may enter into contracts for a total of  
 540 up to ~~\$25~~ ~~\$15~~ million of advanced cleanup work in each fiscal  
 541 year. However, a facility or an applicant who bundles multiple  
 542 sites as specified in subparagraph (2)(a)1. may not be approved  
 543 for more than \$5 million of cleanup activity in each fiscal  
 544 year. A property owner or responsible party may enter into a  
 545 voluntary cost-share agreement in which the property owner or  
 546 responsible party commits to bundle multiple sites and lists the  
 547 facilities that will be included in those future bundles. The  
 548 facilities listed are not subject to agency term contractor  
 549 assignment pursuant to department rule. The department reserves  
 550 the right to terminate the voluntary cost-share agreement if the  
 551 property owner or responsible party fails to submit an

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552 application to bundle multiple sites within an open application  
 553 period in which it is eligible to participate. For the purposes  
 554 of this section, the term "facility" includes, but is not  
 555 limited to, multiple site facilities such as airports, port  
 556 facilities, and terminal facilities even though such enterprises  
 557 may be treated as separate facilities for other purposes under  
 558 this chapter.

559 Section 4. This act shall take effect July 1, 2015.

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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)

9/16/2015

Meeting Date

Topic \_\_\_\_\_

Bill Number 31Y  
*(if applicable)*

Name BRIAN PITTS

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

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

*Street*

SAINT PETERSBURG

FLORIDA

33705

E-mail JUSTICE2JESUS@YAHOO.COM

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/16/15  
Meeting Date

SB 314  
Bill Number (if applicable)

Topic PETROLEUM RESTORATION PROGRAM

Amendment Barcode (if applicable)

Name RANDY MILLER

Job Title EX. VICE PRESIDENT

Address 227 S. ADAMS ST  
Street

Phone 850-222-4082

TALLAHASSEE, FL 32304  
City State Zip

Email RMILLER@FRF.ORG

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FLORIDA RETAIL FEDERATION / FLORIDA PETROLEUM MARKETERS ASSOC.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/CS/SB 382

INTRODUCER: Appropriations Committee; Health Policy Committee; and Senators Sobel and Gaetz

SUBJECT: Assisted Living Facilities

DATE: April 20, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	<b>Fav/CS</b>
2.	<u>Brown</u>	<u>Pigott</u>	<u>AHS</u>	<b>Favorable</b>
3.	<u>Brown</u>	<u>Kynoch</u>	<u>AP</u>	<b>Fav/CS</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 382 strengthens the enforcement of current regulations for assisted living facilities (ALFs) by revising fines imposed for licensure violations, clarifying existing enforcement tools, and requiring an additional inspection for ALFs having significant violations. Among other provisions, the bill:

- Clarifies the criteria under which the Agency for Health Care Administration (AHCA) must revoke or deny a facility's license;
- Adds certain responsible parties and AHCA personnel to the list of people who must report abuse or neglect to the Department of Children and Families' (DCF) central abuse hotline; and
- Requires the AHCA to implement a consumer information website with specified information about ALFs by November 1, 2015, to help consumers select an ALF.

The bill has an indeterminate fiscal impact.

The bill provides an effective date of July 1, 2015.

**II. Present Situation:**

An assisted living facility (ALF) is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period

exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.<sup>1</sup> A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.<sup>2</sup> Activities of daily living include ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.<sup>3</sup>

An ALF is required to provide care and services appropriate to the needs of the residents accepted for admission to the facility.<sup>4</sup> The owner or facility administrator determines whether an individual is appropriate for admission to the facility based on a number of criteria.<sup>5</sup> If, as determined by the facility administrator or health care provider, a resident no longer meets the criteria for continued residency or the facility is unable to meet the resident's needs, the resident must be discharged in accordance with the Resident Bill of Rights.<sup>6</sup>

As of December 1, 2014, there were 3,027 licensed ALFs in Florida having a total of 88,306 beds.<sup>7</sup> An ALF must have a standard license issued by the Agency for Health Care Administration (AHCA) under part I of ch. 429, F.S., and part II of ch. 408, F.S. In addition to a standard license, an ALF may have one or more specialty licenses that allow an ALF to provide additional care. These specialty licenses include limited nursing services (LNS),<sup>8</sup> limited mental health services (LMH),<sup>9</sup> and extended congregate care services (ECC).<sup>10</sup> There are 826 ALFs with LNS specialty licenses, 260 with ECC licenses, and 955 with LMH specialty licenses.<sup>11</sup>

### **Limited Nursing Services Specialty License**

An LNS specialty license enables an ALF to provide, directly or through contract, a select number of nursing services in addition to the personal services that are authorized under the standard license. The nursing services are limited to acts specified in administrative rules, may only be provided as authorized by a health care provider's order, and must be conducted and supervised in accordance with ch. 464, F.S., relating to nursing and the prevailing standard of practice in the nursing community.

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<sup>1</sup> Section 429.02(5), F.S. An ALF does not include an adult family-care home or a non-transient public lodging establishment.

<sup>2</sup> Section 429.02(16), F.S.

<sup>3</sup> Section 429.02(1), F.S.

<sup>4</sup> For specific minimum standards see Fla. Admin. Code R 58A-5.0182.

<sup>5</sup> Section 429.26, F.S., and Fla. Admin. Code R 58A-5.0181.

<sup>6</sup> Section 429.28, F.S.

<sup>7</sup> Agency for Health Care Administration, *Assisted Living Facility Directory* (December 1, 2014),

[http://ahca.myflorida.com/MCHO/Health\\_Facility\\_Regulation/Assisted\\_Living/docs/alf/Directory\\_ALF.pdf](http://ahca.myflorida.com/MCHO/Health_Facility_Regulation/Assisted_Living/docs/alf/Directory_ALF.pdf) (last visited Jan. 26, 2015).

<sup>8</sup> Section 429.07(3)(c), F.S.

<sup>9</sup> Section 429.075, F.S.

<sup>10</sup> Section 429.07(3)(b), F.S.

<sup>11</sup> See Agency for Health Care Administration, *Assisted Living Facility*,

[http://ahca.myflorida.com/MCHO/Health\\_Facility\\_Regulation/Assisted\\_Living/alf.shtml](http://ahca.myflorida.com/MCHO/Health_Facility_Regulation/Assisted_Living/alf.shtml) (follow the hyperlinks for the ALF directories found under the "Notices/Updates" heading) (last visited Jan. 26, 2015).

### **Extended Congregate Care Specialty License**

An ECC specialty license enables an ALF to provide, directly or through contract, services performed by licensed nurses and supportive services<sup>12</sup> to persons who otherwise would be disqualified from continued residence in an ALF.<sup>13</sup> The primary purpose of ECC services is to allow residents to remain in a familiar setting as they become more impaired with physical or mental limitations. An ALF licensed to provide ECC services may also admit an individual who exceeds the admission criteria for an ALF having a standard license, if the individual is determined appropriate for admission to the ECC facility. A licensed facility must adopt its own requirements within guidelines for continued residency set forth by rule. However, an ALF with an ECC license still may not serve residents who require 24-hour nursing supervision.<sup>14</sup>

### **Limited Mental Health Specialty License**

An ALF that serves three or more mental health residents must obtain an LMH specialty license.<sup>15</sup> A mental health resident is an individual who receives social security disability income (SSDI) or supplemental security income (SSI) due to a mental disorder and who receives optional state supplementation (OSS).<sup>16</sup>

The administrator of an LMH facility must consult with a mental health resident and the resident's case manager to develop and help execute a community living support plan for the resident detailing the specific needs and services the resident requires.<sup>17</sup> The LMH licensee must also execute a cooperative agreement with the mental health care services provider. The cooperative agreement specifies, among other things, directions for the ALF accessing emergency and after-hours care for the mental health resident.

### **ALF Staff Training**

#### *Administrators and Managers*

Administrators and other ALF staff must meet minimum training and education requirements established in rule by the Department of Elder Affairs (DOEA),<sup>18</sup> that are intended to assist

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<sup>12</sup> Supportive services include social service needs, counseling, emotional support, networking, assistance with securing social and leisure services, shopping service, escort service, companionship, family support, information and referral, assistance in developing and implementing self-directed activities, and volunteer services. Fla. Admin. Code R. 58A-5.030(8)(a).

<sup>13</sup> An ECC program must provide additional services as required by the resident's service plan including: total help with bathing, dressing, grooming, and toileting; nursing assessments conducted more frequently than monthly; measuring and recording basic vital functions and weight; dietary management; assisting with self-administered medications or administering medications and treatments pursuant to a health care provider's order; supervising residents with dementia and cognitive impairments; health education, counseling, and implementing health-promoting programs; rehabilitative services; and escort services related to health-related appointments. Section 429.07(3)(b), F.S., and Fla. Admin. Code R. 58A-5.030.

<sup>14</sup> Section 429.07(3)(b), F.S.

<sup>15</sup> Section 429.075, F.S.

<sup>16</sup> Section 429.02(15), F.S. Optional State Supplementation is a cash assistance program. Its purpose is to supplement a person's income to help pay for costs in an assisted living facility, mental health residential treatment facility, or adult family care home, but it is not a Medicaid program. Department of Elder Affairs, *Florida Affordable Assisted Living: Optional State Supplementation (OSS)*, <http://elderaffairs.state.fl.us/faal/statesupp.php> (last visited Jan. 26, 2015).

<sup>17</sup> Fla. Admin. Code R. 58A-5.029(2)(c)3.

<sup>18</sup> Fla. Admin. Code R. 58A-5.0191.

ALFs in appropriately responding to the needs of residents, maintaining resident care and facility standards, and meeting licensure requirements.<sup>19</sup>

The current ALF core training requirements established by the DOEA consist of a minimum of 26 hours of training and passing a competency test. Administrators and managers must successfully complete the core training requirements within three months after becoming an ALF administrator or manager. The minimum passing score for the competency test is 75 percent.<sup>20</sup>

Administrators and managers must participate in 12 hours of continuing education in topics related to assisted living every two years.<sup>21</sup> A newly-hired administrator or manager, who has successfully completed the ALF core training and continuing education requirements, is not required to retake the core training. An administrator or manager who has successfully completed the core training but has not maintained the continuing education requirements, must retake the ALF core training and retake the competency test.<sup>22</sup>

### ***Staff with Direct Care Responsibilities***

Facility administrators or managers are required to provide or arrange for six hours of in-service training for facility staff who provide direct care to residents.<sup>23</sup> Staff training requirements must generally be met within 30 days after staff begin employment at the facility; however, staff must have at least one hour of infection control training before providing direct care to residents. Nurses, certified nursing assistants, and home health aides who are on staff with an ALF are exempt from many of the training requirements. In addition to the standard six hours of in-service training, staff must complete one hour of elopement training and one hour of training on “do not resuscitate” orders. The staff may be required to complete training on special topics such as self-administration of medication and Alzheimer’s disease, if applicable.

### ***ECC Specific Training***

The administrator and the ECC supervisor, if different from the administrator, must complete four hours of initial training in extended congregate care, either prior to the facility receiving its ECC license or within three months after beginning employment in the facility as an administrator or ECC supervisor. The administrator and ECC supervisor must also complete a minimum of four hours of continuing education every two years in topics relating to the physical, psychological, or social needs of frail elderly and disabled persons, or persons having Alzheimer’s disease or related disorders.<sup>24</sup>

All direct-care staff providing care to residents in an ECC program must complete at least two hours of in-service training, provided by the facility administrator or ECC supervisor, within six months after beginning employment in the facility. The training must address ECC concepts

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<sup>19</sup> Section 429.52(1), F.S.

<sup>20</sup> Administrators who have attended core training prior to July 1, 1997, and managers who attended the core training program prior to April 20, 1998, are not required to take the competency test. Administrators licensed as nursing home administrators in accordance with part II of chapter 468, F.S., are exempt from this requirement.

<sup>21</sup> Fla. Admin. Code R. 58A-5.0191(1)(c).

<sup>22</sup> Fla. Admin. Code R. 58A-5.0191.

<sup>23</sup> *Id*

<sup>24</sup> Fla. Admin. Code R. 58A-5.0191(7)(a) and (b).

and requirements, including statutory and rule requirements, and the delivery of personal care and supportive services in an ECC facility.<sup>25</sup>

### ***LMH Specific Training***

Administrators, managers, and staff who have direct contact with mental health residents in a licensed LMH facility must receive a minimum of six hours of specialized training in working with individuals having mental health diagnoses and a minimum of three hours of continuing education dealing with mental health diagnoses or mental health treatment every two years.<sup>26</sup>

### **Inspections and Surveys**

The AHCA is required to conduct a survey, investigation, or monitoring visit of an ALF:

- Prior to the issuance of a license;
- Prior to biennial renewal of a license;
- When there is a change of ownership;
- To monitor ALFs licensed to provide LNS or ECC services;
- To monitor ALFs cited in the previous year for a class I or class II violation or for four or more uncorrected class III violations;<sup>27</sup>
- Upon receipt of an oral or written complaint of practices that threaten the health, safety, or welfare of residents;
- If the AHCA has reason to believe an ALF is violating a provision of part III of ch. 429, F.S., relating to adult day care centers or an administrative rule;
- To determine if cited deficiencies have been corrected; or
- To determine if an ALF is operating without a license.<sup>28</sup>

### ***Abbreviated Surveys***

An applicant for licensure renewal is eligible for an abbreviated biennial survey by the AHCA if the applicant does not have any:

- Class I, class II, or uncorrected class III violations;
- Confirmed complaints from the long-term care ombudsman council which were reported to the AHCA by the council; or
- Confirmed licensing complaints within the two licensing periods immediately preceding the current renewal date.<sup>29</sup>

An abbreviated survey allows for a quicker and less intrusive survey by narrowing the range of items the AHCA must inspect.<sup>30</sup> The AHCA must expand an abbreviated survey or conduct a full survey if violations that threaten or potentially threaten the health, safety, or security of residents are identified during an abbreviated survey.<sup>31</sup>

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<sup>25</sup> Fla. Admin. Code R. 58A-5.0191(7)(c).

<sup>26</sup> Section 429.075(1), F.S. and Fla. Admin. Code R. 58A-5.0191(8).

<sup>27</sup> See “Violations and Penalties” subheading below for a description of the violations.

<sup>28</sup> Section 429.34, F.S.

<sup>29</sup> Fla. Admin. Code R. 58A-5.033(1)(a).

<sup>30</sup> Fla. Admin. Code R. 58A-5.033(1)(b).

<sup>31</sup> Fla. Admin. Code R. 58A-5.033(1)(c).

### ***Monitoring Visits***

ALFs with LNS or ECC licenses are subject to monitoring visits in which the AHCA inspects the facility for compliance with the requirements of the specialty license. An LNS licensee is subject to monitoring inspections at least twice a year. At least one registered nurse must be included in the inspection team to monitor residents receiving services and to determine if the facility is complying with applicable regulatory requirements.<sup>32</sup> An ECC licensee is subject to quarterly monitoring inspections. At least one registered nurse must be included in the inspection team. The AHCA may waive one of the required yearly monitoring visits for an ECC facility that has been licensed for at least 24 months, if the registered nurse who participated in the monitoring inspections determines that the ECC services are being provided appropriately and there are no serious violations or substantiated complaints about the quality of service or care.<sup>33</sup>

### **Violations and Penalties**

Part II of ch. 408, F.S., provides general licensure standards for all ALFs regulated by the AHCA. Under s. 408.813, F.S., ALFs may be subject to administrative fines imposed by the AHCA for certain types of violations. Violations are categorized into four classes according to the nature of the violation and the gravity of its probable effect on residents:

- **Class I violations** are those conditions that the AHCA determines present an imminent danger to residents or a substantial probability of death or serious physical or emotional harm.
  - Examples include resident death due to medical neglect, risk of resident death due to inability to exit in an emergency, and the suicide of a mental health resident in an ALF licensed for limited mental health.
  - The AHCA must fine an ALF between \$5,000 and \$10,000 for each class I violation.
  - During fiscal years 2011-2012 and 2012-2013, the AHCA entered 115 final orders for class I violations with an average fine amount of \$6,585 for ALFs having fewer than 100 beds and \$7,454 for ALFs having 100 or more beds.<sup>34</sup>
- **Class II violations** are those conditions that the AHCA determines directly threaten the physical or emotional health, safety, or security of the clients.
  - Examples include no qualified staff in the facility, the failure to call 911 in a timely manner for a resident in a semi-comatose state, and vermin in a food storage area.
  - The AHCA must fine an ALF between \$1,000 and \$5,000 for each violation.
  - During fiscal years 2011-2012 and 2012-2013, the AHCA entered 749 final orders for class II violations with an average fine amount of \$1,542 for ALFs having fewer than 100 beds and \$1,843 for ALFs having 100 or more beds.
- **Class III violations** are those conditions that the AHCA determines indirectly or potentially threaten the physical or emotional health, safety, or security of clients.
  - Examples include missing or incomplete resident assessments, erroneous documentation of medication administration, and failure to correct unsatisfactory DOH food service inspection findings in a timely manner.

<sup>32</sup> Section 429.07(3)(c)2., F.S.

<sup>33</sup> Section 429.07(3)(b)2., F.S.

<sup>34</sup> Agency for Health Care Administration, *Senate Bill 248 Analysis* (Nov. 26, 2013) (on file with the Senate Committee on Health Policy).

- The AHCA must fine an ALF between \$500 and \$1,000 for each violation, but no fine may be imposed if the facility corrects the violation.
- During fiscal years 2011-2012 and 2012-2013, the AHCA entered 507 final orders for uncorrected class III violations with an average fine amount of \$766 for ALFs having fewer than 100 beds and \$614 for ALFs having 100 or more beds.
- **Class IV violations** are those conditions that do not have the potential of negatively affecting clients.
  - Examples include failure to file an adverse incident report, incorrect phone numbers posted for advocacy resources, and failure to post current menus.
  - The AHCA may fine an ALF between \$100 and \$200 for each violation but only if the problem is not corrected.
  - During fiscal years 2011-2012 and 2012-2013, the AHCA entered 18 final orders for uncorrected class IV violations with an average fine amount of \$165 for ALFs having fewer than 100 beds and \$100 for ALFs having 100 or more beds.<sup>35,36,37</sup>

In addition to financial penalties, the AHCA can take other actions against an ALF. The AHCA may deny, revoke, and suspend any license for any of the actions listed in s. 429.14(1)(a)-(k), F.S. The AHCA is required to deny or revoke the license of an ALF that has two or more class I violations that are similar to violations identified during a survey, inspection, monitoring visit, or complaint investigation occurring within the two previous years.<sup>38</sup> The AHCA may also impose an immediate moratorium or emergency suspension on any provider if it finds any condition that presents a threat to the health, safety, or welfare of a client.<sup>39</sup> The AHCA is required to publicly post notification of a license suspension, revocation, or denial of a license renewal, at the facility.<sup>40</sup> Finally, ch. 825, F.S., Florida's Criminal Code, provides criminal penalties for the abuse, neglect, and exploitation of elderly persons<sup>41</sup> and disabled adults.<sup>42</sup>

### Central Abuse Hotline

The Department of Children and Families (DCF) is required under s. 415.103, F.S., to establish and maintain a central abuse hotline to receive reports, in writing or through a single statewide toll-free telephone number, of known or suspected abuse, neglect, or exploitation of a vulnerable

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<sup>35</sup> When fixing the amount of the fine, AHCA must consider the following factors: the gravity of the violation and the extent to which any laws or rules were violated, actions taken to correct the violations, any previous violations, the financial benefit of committing or continuing the violation, and the licensed capacity of the facility. Section 429.19(3), F.S.

<sup>36</sup> Section 429.19(2), F.S.

<sup>37</sup> Agency for Health Care Administration, *Senate Bill 248 Analysis* (Nov. 26, 2013) (on file with the Senate Committee on Health Policy)

<sup>38</sup> Section 429.14(4), F.S.

<sup>39</sup> Section 408.814, F.S.

<sup>40</sup> Section 429.14(7), F.S.

<sup>41</sup> "Elderly person" means a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunction, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired. Section 825.101(5), F.S. It does not constitute a defense to a prosecution for any violation of this chapter that the accused did not know the age of the victim. Section 825.104, F.S.

<sup>42</sup> "Disabled adult" means a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living. Section 825.101(4), F.S.

adult<sup>43</sup> at any hour of the day or night, any day of the week.<sup>44</sup> Persons listed in s. 415.1034, F.S., who know, or have reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited are required to immediately report such knowledge or suspicion to the central abuse hotline.<sup>45</sup>

### **Florida's Long-Term Care Ombudsman Program**

The federal Older Americans Act (OAA) requires each state to create a Long-Term Care Ombudsman Program to be eligible to receive funding associated with programs under the OAA.<sup>46</sup> In Florida, the program is a statewide, volunteer-based system of district councils that protect, defend, and advocate on behalf of long-term care facility residents, including residents of nursing homes, ALFs, and adult family-care homes. The ombudsman program is administratively housed in the DOEA and is headed by the State Long-Term Care Ombudsman, who is appointed by the DOEA Secretary.<sup>47</sup>

The ombudsman program is required to establish a statewide toll-free telephone number for receiving complaints concerning matters adversely affecting the health, safety, welfare, or rights of residents of ALFs, nursing homes, and adult family care homes. Every resident or representative of a resident must receive, upon admission to a long-term care facility, information regarding the program and the statewide toll-free telephone number for receiving complaints.<sup>48</sup> The names and identities of the complainants or residents involved in a complaint, including any problem identified by an ombudsman council as a result of an investigation, are confidential and exempt from Florida's public records laws, unless the complainant or resident, or the legal representative of the complainant or resident, consents to the disclosure, or the disclosure is required by court order.<sup>49</sup> In addition to investigating and resolving complaints, ombudsmen conduct unannounced visits to assess the quality of care in ALFs, referred to as administrative assessments.

### **Consumer Information**

Section 400.191, F.S., requires the AHCA to provide information to the public about all licensed nursing homes in the state. The information must be provided in a consumer-friendly, electronic format to assist consumers and their families in comparing and evaluating nursing homes. Under s. 400.191(2), F.S., the AHCA must provide an Internet site that includes information such as a list of names and addresses of all nursing homes in the state, the total number of beds in each

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<sup>43</sup> "Vulnerable adult" means a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging. Section 415.102(27), F.S.

<sup>44</sup> The central abuse hotline is operated by the DCF to accept reports for investigation when there is a reasonable cause to suspect that a vulnerable adult has been or is being abused, neglected, or exploited; determine whether the allegations require an immediate, 24-hour, or next-working-day response priority; when appropriate, refer calls that do not allege the abuse, neglect, or exploitation of a vulnerable adult to other organizations that might better resolve the reporter's concerns; and immediately identify and locate prior reports of abuse, neglect, or exploitation through the central abuse hotline. Section 415.103(1), F.S.

<sup>45</sup> Section 415.1034, F.S.

<sup>46</sup> 42 U.S.C. 3058, et. seq. *See also* s. 400.0061(1), F.S.

<sup>47</sup> Section 400.0063, F.S.

<sup>48</sup> Section 400.0078(2), F.S.

<sup>49</sup> Section 400.0077(1)(b), F.S.

nursing home, and survey and deficiency information. Additional information that the AHCA may provide on the site includes the licensure status history, the rating history, and the regulatory history of each nursing home.

There is no similar requirement in law to provide certain consumer information to the public on licensed ALFs in the state.

### ***The Miami Herald* Articles and the Governor’s Assisted Living Workgroup**

Beginning on April 30, 2011, *The Miami Herald* published a four-part series, entitled “Neglected to Death,” which detailed abuses occurring in ALFs and the state regulatory responses to such cases. The newspaper spent a year examining thousands of state inspections, police reports, court cases, autopsy files, emails, and death certificates and conducted dozens of interviews with operators and residents throughout Florida. The series detailed examples of abuses, neglect, and deaths that took place in ALFs.<sup>50</sup> The series also examined the state’s regulatory and law enforcement agencies’ responses to the problems. The newspaper concluded that the state’s agencies, and in particular the AHCA, failed to enforce existing laws designed to protect Florida’s citizens who reside in ALFs.<sup>51</sup>

Soon after *The Miami Herald* series, Governor Rick Scott vetoed HB 4045,<sup>52</sup> which reduced regulatory requirements on ALFs. The Governor then directed the AHCA to form a task force for the purpose of examining current assisted living regulations and oversight. The task force, referred to as the Assisted Living Workgroup, held meetings and produced two reports, one in August of 2011 and another in October of 2012. In addition to public testimony and presentations, the Assisted Living Workgroup focused on assisted living regulation, consumer information and choice, and long term care services and access. The workgroup made numerous recommendations in its two reports.<sup>53</sup>

## **III. Effect of Proposed Changes:**

### **Limited Mental Health License**

The bill amends s. 394.4574, F.S., to clarify that a Medicaid managed care plan is responsible for state-supported mental health residents of assisted living facilities (ALFs) who are enrolled in the managed care plan and that managing entities<sup>54</sup> under contract with the Department of Children

<sup>50</sup> Rob Barry, Michael Sallah and Carol Marbin Miller, *Neglected to Death, Parts 1-3*, THE MIAMI HERALD, April 30, 2011 available at <http://www.miamiherald.com/2011/04/30/2194842/once-pride-of-florida-now-scenes.html> and <http://www.miamiherald.com/2011/05/03/2199747/key-medical-logs-doctored-missing.html> (see left side of article to access web links to the three-part series) (Last visited on Jan. 27, 2015).

<sup>51</sup> *Id.*

<sup>52</sup> House Bill 4045 (2011) repealed a requirement for the annual dissemination of a list of ALFs that had been sanctioned or fined, a requirement for an ALF to report monthly any liability claims filed against it, a requirement to disseminate the results of the inspection of each ALF, provisions concerning rule promulgation for ALFs by the DOEA, provisions concerning the collection of information regarding the cost of care in ALFs, and the authority for local governments or organizations to contribute to the cost of care of local facility residents.

<sup>53</sup> Agency for Health Care Administration, *Assisted Living Workgroup*, found at <http://ahca.myflorida.com/SCHS/ALWG/wgmembers.shtml> (last visited Jan. 27, 2015).

<sup>54</sup> See s. 394.9082, F.S. A managing entity is a not-for-profit corporation organized in Florida which is under contract with the DCF on a regional basis to manage the day-to-day operational delivery of behavioral health services through an organized

and Families (DCF) are responsible for such residents who are not enrolled with a Medicaid managed care plan. The bill requires a mental health resident and his or her mental health case manager to complete the mental health resident's community living support plan and provide it to the administrator of the ALF within 30 days of admitting a mental health resident. The plan must be updated when there is a significant change to the resident's behavioral health status. The resident's case manager must keep a two-year record of any face-to-face interaction with the resident and make the records available for inspection.

The bill makes the case manager responsible for a mental health resident to ensure that there is adequate and consistent monitoring of the community living support plan and to report any concerns about a regulated provider failing to provide services or otherwise acting in a manner with the potential to cause harm to the resident.

The bill amends s. 429.075, F.S., to require facilities with one or more, instead of three or more, mental health residents to obtain a limited mental health (LMH) license. It also permits an ALF with a LMH license, if it does not have a copy of the resident's community living support plan and cooperative agreement, to provide written evidence that it requested the plan and agreement from the Medicaid managed care plan or the managing entity within 72 hours of the resident's admission.

### **Long-Term Care Ombudsman Program**

#### ***Administrative Assessment***

The bill amends s. 400.0074, F.S., to require any administrative assessment of an ALF performed by the Long-Term Care Ombudsman to be comprehensive. The bill further requires the local ombudsman to conduct an exit consultation with the long-term care facility administrator to discuss issues and concerns affecting residents and make recommendations for improvement, if necessary.

#### ***Resident Grievances***

The bill amends s. 400.0078, F.S., to require that ALFs inform new residents upon admission to the facility that retaliatory action cannot be taken against a resident for presenting grievances or for exercising any other resident right.

### **Extended Congregate Care License**

The bill amends s. 429.07, F.S., to make changes to improve the regulation of facilities with extended congregate care services (ECC) and limited nursing services (LNS) specialty licenses. These changes include:

- The requirement that an ALF be licensed for two or more years before being issued an ECC license that is not provisional in nature;
- Clarification of the circumstances under which the Agency for Health Care Administration (AHCA) may deny or revoke an ALF's ECC license;

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system of care and a network of providers who are contracted with the managing entity to provide a comprehensive array of emergency, acute care, residential, outpatient, recovery support, and consumer support services related to behavioral health.

- Creation of a provisional ECC license for ALFs that have been licensed for less than two years;
- A six-month duration for a provisional license;
- The requirement for an ALF to inform the AHCA when it has admitted one or more residents requiring ECC services;
- The requirement for the AHCA to inspect an ALF for compliance with the requirements of its ECC license after the ALF admits one or more ECC residents;
- The requirement for the AHCA to grant an ECC license if an ALF with a provisional license demonstrates compliance with the pertinent requirements of an ECC license;
- The requirement for an ALF with a provisional ECC license to immediately suspend ECC services and to surrender its provisional ECC license if the ALF fails to demonstrate compliance with the requirements of an ECC license or fails to admit an ECC resident within three months;
- The authorization for the AHCA to extend a provisional ECC license for one month in order to complete a follow-up visit;
- A reduction in the frequency of monitoring visits for ALFs with ECC licenses from every quarter to twice a year and for facilities with LNS licenses from twice a year to once a year; and
- Clarification of the circumstances under which the AHCA may waive one of the required monitoring visits for facilities with ECC licenses and to also allow the AHCA to waive the required monitoring visit for an ALF with an LNS license.

### **Violations and Penalties**

The bill amends s. 429.14, F.S., to:

- Require the AHCA to impose an immediate moratorium on an ALF that fails to provide the AHCA with access to its facility or prohibits a regulatory inspection;
- Prohibit a licensee from restricting AHCA staff from having access to records or prohibiting the confidential interview of ALF staff or residents;
- Exempt an ALF from the 45-day notice requirement in s. 429.28(k), F.S., if that ALF is required to relocate all or some of its residents due to action by the AHCA; and
- Add additional criteria under which the AHCA must deny or revoke an ALF's license.

The bill amends s. 429.19, F.S., to require that any fine imposed by the AHCA for a class I or class II violation must be doubled if the AHCA finds that the violation has not been corrected within six months of the citation being issued. The bill also requires the AHCA to impose an administrative fine of \$500 if an ALF is found to be not in compliance with the background screening requirements of s. 408.809, F.S.

### **Assistance with Self-Administration of Medication**

The bill amends s. 429.256, F.S., to allow all ALF staff who received the required training to provide several additional services in assisting with self-administration of medication. The additional duties are:

- Taking a prefilled insulin syringe from its place of storage and bringing it to a resident;

- Removing the cap of a nebulizer, opening the unit dose of nebulizer solution, and pouring the pre-measured dose of medication into the dispensing cup of the nebulizer;
- Assisting a resident in using a nebulizer;
- Using a glucometer to perform blood glucose checks;
- Assisting with anti-embolism stockings;
- Assisting with applying and removing an oxygen cannula;
- Assisting with the use of a continuous positive airway pressure device;
- Assisting with the measuring of vital signs; and
- Assisting with the use of colostomy bags.

### **Personal Property of Residents**

The bill amends s. 429.27(3), F.S., to increase the amount of cash that an ALF may provide sake-keeping of for a resident from \$200 to \$500.

### **Resident Bill of Rights**

The bill amends s. 429.28, F.S., to require that the telephone number of Disability Rights Florida<sup>55</sup> (DRF) must be included in the posted notice of a resident's rights, obligations, and prohibitions, and that the ALF ensure each resident has access to a telephone to call DRF. The notice must also specify that complaints made to the ombudsman program, as well as the names and identities of the complainant and any residents involved in the complaint, are confidential and that retaliatory action cannot be taken against a resident for presenting a grievance or exercising a right. The bill creates a fine of \$2,500 which is imposed if an ALF cannot show good cause in state court for terminating the residency of an individual who has exercised an enumerated right.

### **Right of Entry and Inspection**

The bill amends s. 429.34, F.S., to require certain state officials, such as Medicaid Fraud investigators and state or local fire marshals, to report to the DCF central abuse hotline any knowledge or reasonable suspicion that a vulnerable adult has been or is being abused, neglected, or exploited.

The bill requires AHCA to inspect each licensed ALF at least once every 24 months to determine compliance with statute and rules. The bill provides that an ALF having one or more class I violations, three or more class II violations arising from separate surveys within a 60-day period, or three or more unrelated class II violations cited during one survey, be subject to an additional inspection within six months.

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<sup>55</sup> Disability Rights Florida is the designated protection and advocacy agency required as a condition of certain federal funding under 42 U.S.C. 15041-15045 and 45 C.F.R. 1386.20. The protection and advocacy designation is made by gubernatorial executive order.

### **Staffing and Training Requirements**

The bill amends s. 429.41, F.S., to clarify that ALF staffing requirements for a continuing care facility or retirement community apply only to residents who receive personal limited nursing services or extended congregate care services. The ALF must keep a log of the names and unit numbers of residents receiving such services and make the log available to surveyors upon request.

The bill amends s. 429.52, F.S., to require facilities to provide a two-hour pre-service orientation for all new facility employees who have not previously completed core training. The pre-service orientation must cover topics that help employees provide responsible care and respond to the needs of the residents. A new employee and the ALF's administrator must sign a statement that the employee has completed the pre-service orientation. The signed statement must be kept in that staff member's file. The bill clarifies that the pre-service orientation can be provided by the ALF instead of a trainer registered with the Department of Elder Affairs (DOEA).

### **Consumer Information Resources**

The bill creates s. 429.55, F.S., which provides legislative findings that consumers need additional information in order to select an ALF. To facilitate this, the bill requires the AHCA to create a consumer guide website which contains information on each licensed ALF. By November 1, 2015, the website must include:

- The name and address of the ALF;
- The name of the owner or operator of the ALF;
- The number and type of licensed beds in the ALF;
- The types of licenses held by the ALF;
- The ALF's license expiration date and status;
- The total number of clients that the ALF is licensed to serve and the most recent occupancy levels;
- The number of private and semi-private rooms offered;
- The bed-hold policy;
- The religious affiliation, if any, of the ALF;
- The languages spoken by the staff;
- Availability of nurses;
- Forms of payment accepted;
- Identification of whether the licensee is operating under bankruptcy protection;
- Recreational and other programs available;
- Special care units or programs offered;
- Whether the ALF is part of a retirement community that offers other services;
- Links to the State Long-Term Care Ombudsman Program website and the program's statewide toll-free telephone number;
- Links to the internet websites of the providers;
- Other relevant information currently collected by the AHCA;
- Links to inspection reports on file with the AHCA; and
- Survey and violation information including a list of the ALF's violations committed during the previous 60 months, which must be updated monthly and include for each violation:

- A summary of the violation, with all licensure, revisit, and complaint survey information;
- Any sanctions imposed by final order; and
- The date the corrective action was confirmed by AHCA.

The bill provides an effective date of July 1, 2015.

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

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

None.

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

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

CS/CS/SB 382 provides for the following changes to fines that may be imposed on ALFs:

- A \$2,500 fine if an ALF removes a resident without cause, as determined by a state court;
- A doubling of fines for class I or II violations if the AHCA finds that the violation has not been corrected within six months of the citation being issued; and
- A \$500 fine against an ALF that does not comply with the background screening requirements of s. 408.809, F.S.

ALFs with specialty licenses that meet licensure standards will have fewer monitoring visits from the AHCA. This will positively impact the ALFs as they will have less interruption of staff time due to such visits.

The bill requires ALFs to provide all new employees who have not already gone through the ALF core training program with a two-hour, pre-service training session before they work with residents. Additionally, the bill increases the training requirements for staff who assist residents with medication from four to six hours. The cost of both of these training requirements is not expected to be significant.

**C. Government Sector Impact:**

The bill's provisions for new fines created under the bill and for the doubling of fines issued for class I or class II violations that are not corrected within six months, are likely to generate an indeterminate amount of additional revenue for the AHCA's Health Care Trust Fund.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Section 17 of the bill requires the Agency for Health Care Administration to create website content for consumer information on each licensed assisted living facility. The information must include "links to the websites of the providers." It is not clear which providers are being referenced.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 394.4574, 400.0074, 400.0078, 409.212, 429.02, 429.07, 429.075, 429.14, 429.178, 429.19, 429.256, 429.27, 429.28, 429.34, 429.41, 429.52, and 429.55.

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

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

**CS/CS by Appropriations on April 16, 2015:**

The committee substitute:

- Removes many of the underlying bill's provisions relating to the revision of fines for class I, class II, class III, and class IV violations and replaces those provisions with the doubling of a class I or class II violation if the Agency for Health Care Administration (AHCA) finds that the violation has not been corrected within six months of the citation being issued;
- Provides for a \$500 fine if an ALF is found to not be in compliance with the background screening requirements provided under s. 408.809, F.S.;
- Removes from the bill the provision that an ALF must pay a fee for the cost of an additional inspection required if an ALF is cited for one or more class I violations or two or more class II violations arising from separate surveys within a 60-day period or due to unrelated circumstances during the same survey;
- Removes from the bill the requirement for the AHCA to implement a rating system for ALFs and to adopt rules for the rating system;
- Authorizes the AHCA to adopt rules to administer the consumer information website required under the bill; and
- Removes from the bill the appropriation of funds to the AHCA from the Health Care Trust Fund for the purpose of implementing the regulatory provisions of the bill.

**CS by Health Policy on February 3, 2015:**

The CS amends SB 382 to remove the requirement that the Office of Program Policy Analysis and Governmental Accountability conduct a study of ALF inter-surveyor reliability and to remove the requirement that the AHCA create a monitored ALF public comment page as well as the appropriations required to create and maintain the comment page.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
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The Committee on Appropriations (Garcia) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 394.4574, Florida Statutes, is amended  
to read:

394.4574 ~~Department~~ Responsibilities for coordination of  
services for a mental health resident who resides in an assisted  
living facility that holds a limited mental health license.—

(1) As used in this section, the term "mental health



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11 resident," ~~for purposes of this section,~~ means an individual who  
12 receives social security disability income due to a mental  
13 disorder as determined by the Social Security Administration or  
14 receives supplemental security income due to a mental disorder  
15 as determined by the Social Security Administration and receives  
16 optional state supplementation.

17 (2) Medicaid managed care plans are responsible for  
18 Medicaid-enrolled mental health residents, and managing entities  
19 under contract with the department are responsible for mental  
20 health residents who are not enrolled in a Medicaid health plan.

21 A Medicaid managed care plan or a managing entity shall ~~The~~  
22 ~~department must~~ ensure that:

23 (a) A mental health resident has been assessed by a  
24 psychiatrist, clinical psychologist, clinical social worker, or  
25 psychiatric nurse, or an individual who is supervised by one of  
26 these professionals, and determined to be appropriate to reside  
27 in an assisted living facility. The documentation must be  
28 provided to the administrator of the facility within 30 days  
29 after the mental health resident has been admitted to the  
30 facility. An evaluation completed upon discharge from a state  
31 mental hospital meets the requirements of this subsection  
32 related to appropriateness for placement as a mental health  
33 resident if it was completed within 90 days before ~~prior to~~  
34 admission to the facility.

35 (b) A cooperative agreement, as required in s. 429.075, is  
36 developed by ~~between~~ the mental health care services provider  
37 that serves a mental health resident and the administrator of  
38 the assisted living facility with a limited mental health  
39 license in which the mental health resident is living. ~~Any~~



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40 ~~entity that provides Medicaid prepaid health plan services shall~~  
41 ~~ensure the appropriate coordination of health care services with~~  
42 ~~an assisted living facility in cases where a Medicaid recipient~~  
43 ~~is both a member of the entity's prepaid health plan and a~~  
44 ~~resident of the assisted living facility. If the entity is at~~  
45 ~~risk for Medicaid targeted case management and behavioral health~~  
46 ~~services, the entity shall inform the assisted living facility~~  
47 ~~of the procedures to follow should an emergent condition arise.~~

48 (c) The community living support plan, as defined in s.  
49 429.02, has been prepared by a mental health resident and his or  
50 her a mental health case manager ~~of that resident~~ in  
51 consultation with the administrator of the facility or the  
52 administrator's designee. The plan must be completed and  
53 provided to the administrator of the assisted living facility  
54 with a limited mental health license in which the mental health  
55 resident lives upon the resident's admission. The support plan  
56 and the agreement may be in one document. The agency may not  
57 cite an assisted living facility for not possessing a resident's  
58 community living support plan if the facility can document that  
59 it has requested the plan for that resident.

60 (d) The assisted living facility with a limited mental  
61 health license is provided with documentation that the  
62 individual meets the definition of a mental health resident.

63 (e) The mental health services provider assigns a case  
64 manager to each mental health resident for whom the entity is  
65 responsible ~~who lives in an assisted living facility with a~~  
66 ~~limited mental health license.~~ The case manager shall coordinate  
67 ~~is responsible for coordinating~~ the development ~~of~~ and  
68 implementation of the community living support plan defined in



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69 s. 429.02. The plan must be updated at least annually, or when  
70 there is a significant change in the resident's behavioral  
71 health status, such as an inpatient admission or a change in  
72 medication, level of service, or residence. Each case manager  
73 shall keep a record of the date and time of any face-to-face  
74 interaction with the resident and make the record available to  
75 the responsible entity for inspection. The record must be  
76 retained for at least 2 years after the date of the most recent  
77 interaction.

78 (f) Adequate and consistent monitoring and enforcement of  
79 community living support plans and cooperative agreements are  
80 conducted by the resident's case manager.

81 (g) Concerns are reported to the appropriate regulatory  
82 oversight organization if a regulated provider fails to deliver  
83 appropriate services or otherwise acts in a manner that has the  
84 potential to result in harm to the resident.

85 (3) The Secretary of Children and Families, in consultation  
86 with the Agency for Health Care Administration, shall ~~annually~~  
87 require each district administrator to develop, with community  
88 input, a detailed annual plan that demonstrates ~~detailed plans~~  
89 ~~that demonstrate~~ how the district will ensure the provision of  
90 state-funded mental health and substance abuse treatment  
91 services to residents of assisted living facilities that hold a  
92 limited mental health license. This plan ~~These plans~~ must be  
93 consistent with the substance abuse and mental health district  
94 plan developed pursuant to s. 394.75 and must address case  
95 management services; access to consumer-operated drop-in  
96 centers; access to services during evenings, weekends, and  
97 holidays; supervision of the clinical needs of the residents;



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98 and access to emergency psychiatric care.

99 Section 2. Subsection (1) of section 400.0074, Florida  
100 Statutes, is amended, and paragraph (h) is added to subsection  
101 (2) of that section, to read:

102 400.0074 Local ombudsman council onsite administrative  
103 assessments.—

104 (1) In addition to any specific investigation conducted  
105 pursuant to a complaint, the local council shall conduct, at  
106 least annually, an onsite administrative assessment of each  
107 nursing home, assisted living facility, and adult family-care  
108 home within its jurisdiction. This administrative assessment  
109 must be comprehensive in nature and must ~~shall~~ focus on factors  
110 affecting residents' the rights, health, safety, and welfare of  
111 the residents. Each local council is encouraged to conduct a  
112 similar onsite administrative assessment of each additional  
113 long-term care facility within its jurisdiction.

114 (2) An onsite administrative assessment conducted by a  
115 local council shall be subject to the following conditions:

116 (h) Upon completion of an administrative assessment, the  
117 local council shall conduct an exit consultation with the  
118 facility administrator or administrator's designee to discuss  
119 issues and concerns in areas affecting residents' rights,  
120 health, safety, and welfare and, if needed, make recommendations  
121 for improvement.

122 Section 3. Subsection (2) of section 400.0078, Florida  
123 Statutes, is amended to read:

124 400.0078 Citizen access to State Long-Term Care Ombudsman  
125 Program services.—

126 (2) ~~Every resident or representative of a resident shall~~



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127 ~~receive,~~ Upon admission to a long-term care facility, each  
128 resident or representative of a resident must receive  
129 information regarding the purpose of the State Long-Term Care  
130 Ombudsman Program, the statewide toll-free telephone number for  
131 receiving complaints, information that retaliatory action cannot  
132 be taken against a resident for presenting grievances or for  
133 exercising any other resident right, and other relevant  
134 information regarding how to contact the program. Each resident  
135 or his or her representative ~~Residents or their representatives~~  
136 must be furnished additional copies of this information upon  
137 request.

138 Section 4. Paragraph (c) of subsection (4) of section  
139 409.212, Florida Statutes, is amended to read:

140 409.212 Optional supplementation.—

141 (4) In addition to the amount of optional supplementation  
142 provided by the state, a person may receive additional  
143 supplementation from third parties to contribute to his or her  
144 cost of care. Additional supplementation may be provided under  
145 the following conditions:

146 (c) The additional supplementation shall not exceed four  
147 ~~two~~ times the provider rate recognized under the optional state  
148 supplementation program.

149 Section 5. Subsection (13) of section 429.02, Florida  
150 Statutes, is amended to read:

151 429.02 Definitions.—When used in this part, the term:

152 (13) "Limited nursing services" means acts that may be  
153 performed by a person licensed under ~~pursuant to part I of~~  
154 ~~chapter 464 by persons licensed thereunder while carrying out~~  
155 ~~their professional duties but limited to those acts which the~~



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156 ~~department specifies by rule. Acts which may be specified by~~  
157 ~~rule as allowable~~ Limited nursing services shall be for persons  
158 who meet the admission criteria established by the department  
159 for assisted living facilities and shall not be complex enough  
160 to require 24-hour nursing supervision and may include such  
161 services as the application and care of routine dressings, and  
162 care of casts, braces, and splints.

163 Section 6. Paragraphs (b) and (c) of subsection (3) of  
164 section 429.07, Florida Statutes, are amended to read:

165 429.07 License required; fee.—

166 (3) In addition to the requirements of s. 408.806, each  
167 license granted by the agency must state the type of care for  
168 which the license is granted. Licenses shall be issued for one  
169 or more of the following categories of care: standard, extended  
170 congregate care, limited nursing services, or limited mental  
171 health.

172 (b) An extended congregate care license shall be issued to  
173 each facility that has been licensed as an assisted living  
174 facility for 2 or more years and that provides services  
175 ~~facilities providing~~, directly or through contract, ~~services~~  
176 beyond those authorized in paragraph (a), including services  
177 performed by persons licensed under part I of chapter 464 and  
178 supportive services, as defined by rule, to persons who would  
179 otherwise be disqualified from continued residence in a facility  
180 licensed under this part. An extended congregate care license  
181 may be issued to a facility that has a provisional extended  
182 congregate care license and meets the requirements for licensure  
183 under subparagraph 2. The primary purpose of extended congregate  
184 care services is to allow residents the option of remaining in a



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185 familiar setting from which they would otherwise be disqualified  
186 for continued residency as they become more impaired. A facility  
187 licensed to provide extended congregate care services may also  
188 admit an individual who exceeds the admission criteria for a  
189 facility with a standard license if the individual is determined  
190 appropriate for admission to the extended congregate care  
191 facility.

192       1. In order for extended congregate care services to be  
193 provided, the agency must first determine that all requirements  
194 established in law and rule are met and must specifically  
195 designate, on the facility's license, that such services may be  
196 provided and whether the designation applies to all or part of  
197 the facility. This ~~Such~~ designation may be made at the time of  
198 initial licensure or licensure renewal ~~relicensure~~, or upon  
199 request in writing by a licensee under this part and part II of  
200 chapter 408. The notification of approval or the denial of the  
201 request shall be made in accordance with part II of chapter 408.  
202 Each existing facility that qualifies ~~facilities qualifying~~ to  
203 provide extended congregate care services must have maintained a  
204 standard license and may not have been subject to administrative  
205 sanctions during the previous 2 years, or since initial  
206 licensure if the facility has been licensed for less than 2  
207 years, for any of the following reasons:

- 208       a. A class I or class II violation;
- 209       b. Three or more repeat or recurring class III violations  
210 of identical or similar resident care standards from which a  
211 pattern of noncompliance is found by the agency;
- 212       c. Three or more class III violations that were not  
213 corrected in accordance with the corrective action plan approved



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214 by the agency;

215 d. Violation of resident care standards which results in  
216 requiring the facility to employ the services of a consultant  
217 pharmacist or consultant dietitian;

218 e. Denial, suspension, or revocation of a license for  
219 another facility licensed under this part in which the applicant  
220 for an extended congregate care license has at least 25 percent  
221 ownership interest; or

222 f. Imposition of a moratorium pursuant to this part or part  
223 II of chapter 408 or initiation of injunctive proceedings.

224

225 The agency may deny or revoke a facility's extended congregate  
226 care license if it fails to meet the criteria for an extended  
227 congregate care license as provided in this subparagraph.

228 2. If an assisted living facility has been licensed for  
229 less than 2 years, the initial extended congregate care license  
230 must be provisional and may not exceed 6 months. The licensee  
231 shall notify the agency, in writing, when it admits at least one  
232 extended congregate care resident, after which an unannounced  
233 inspection shall be made to determine compliance with  
234 requirements of an extended congregate care license. A licensee  
235 that has a provisional extended congregate care license which  
236 demonstrates compliance with all of the requirements of an  
237 extended congregate care license during the inspection shall be  
238 issued an extended congregate care license. In addition to  
239 sanctions authorized under this part, if violations are found  
240 during the inspection and the licensee fails to demonstrate  
241 compliance with all assisted living requirements during a  
242 followup inspection, the licensee shall immediately suspend



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243 extended congregate care services, and the provisional extended  
244 congregate care license expires. The agency may extend the  
245 provisional license for not more than 1 month in order to  
246 complete a followup visit.

247 3.2- A facility that is licensed to provide extended  
248 congregate care services shall maintain a written progress  
249 report on each person who receives services which describes the  
250 type, amount, duration, scope, and outcome of services that are  
251 rendered and the general status of the resident's health. A  
252 registered nurse, or appropriate designee, representing the  
253 agency shall visit the facility at least twice a year ~~quarterly~~  
254 to monitor residents who are receiving extended congregate care  
255 services and to determine if the facility is in compliance with  
256 this part, part II of chapter 408, and relevant rules. One of  
257 the visits may be in conjunction with the regular survey. The  
258 monitoring visits may be provided through contractual  
259 arrangements with appropriate community agencies. A registered  
260 nurse shall serve as part of the team that inspects the  
261 facility. The agency may waive one of the required yearly  
262 monitoring visits for a facility that has:

263 a. Held an extended congregate care license for at least 24  
264 months; ~~been licensed for at least 24 months to provide extended~~  
265 ~~congregate care services, if, during the inspection, the~~  
266 ~~registered nurse determines that extended congregate care~~  
267 ~~services are being provided appropriately, and if the facility~~  
268 ~~has~~

269 b. No class I or class II violations and no uncorrected  
270 class III violations; and-

271 c. No ombudsman council complaints that resulted in a



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272 citation for licensure ~~The agency must first consult with the~~  
273 ~~long-term care ombudsman council for the area in which the~~  
274 ~~facility is located to determine if any complaints have been~~  
275 ~~made and substantiated about the quality of services or care.~~  
276 ~~The agency may not waive one of the required yearly monitoring~~  
277 ~~visits if complaints have been made and substantiated.~~

278 4.3. A facility that is licensed to provide extended  
279 congregate care services must:

280 a. Demonstrate the capability to meet unanticipated  
281 resident service needs.

282 b. Offer a physical environment that promotes a homelike  
283 setting, provides for resident privacy, promotes resident  
284 independence, and allows sufficient congregate space as defined  
285 by rule.

286 c. Have sufficient staff available, taking into account the  
287 physical plant and firesafety features of the building, to  
288 assist with the evacuation of residents in an emergency.

289 d. Adopt and follow policies and procedures that maximize  
290 resident independence, dignity, choice, and decisionmaking to  
291 permit residents to age in place, so that moves due to changes  
292 in functional status are minimized or avoided.

293 e. Allow residents or, if applicable, a resident's  
294 representative, designee, surrogate, guardian, or attorney in  
295 fact to make a variety of personal choices, participate in  
296 developing service plans, and share responsibility in  
297 decisionmaking.

298 f. Implement the concept of managed risk.

299 g. Provide, directly or through contract, the services of a  
300 person licensed under part I of chapter 464.



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301           h. In addition to the training mandated in s. 429.52,  
302 provide specialized training as defined by rule for facility  
303 staff.

304           ~~5.4.~~ A facility that is licensed to provide extended  
305 congregate care services is exempt from the criteria for  
306 continued residency set forth in rules adopted under s. 429.41.  
307 A licensed facility must adopt its own requirements within  
308 guidelines for continued residency set forth by rule. However,  
309 the facility may not serve residents who require 24-hour nursing  
310 supervision. A licensed facility that provides extended  
311 congregate care services must also provide each resident with a  
312 written copy of facility policies governing admission and  
313 retention.

314           ~~5. The primary purpose of extended congregate care services~~  
315 ~~is to allow residents, as they become more impaired, the option~~  
316 ~~of remaining in a familiar setting from which they would~~  
317 ~~otherwise be disqualified for continued residency. A facility~~  
318 ~~licensed to provide extended congregate care services may also~~  
319 ~~admit an individual who exceeds the admission criteria for a~~  
320 ~~facility with a standard license, if the individual is~~  
321 ~~determined appropriate for admission to the extended congregate~~  
322 ~~care facility.~~

323           6. Before the admission of an individual to a facility  
324 licensed to provide extended congregate care services, the  
325 individual must undergo a medical examination as provided in s.  
326 429.26(4) and the facility must develop a preliminary service  
327 plan for the individual.

328           7. If ~~When~~ a facility can no longer provide or arrange for  
329 services in accordance with the resident's service plan and



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330 needs and the facility's policy, the facility must ~~shall~~ make  
331 arrangements for relocating the person in accordance with s.  
332 429.28(1)(k).

333 ~~8. Failure to provide extended congregate care services may~~  
334 ~~result in denial of extended congregate care license renewal.~~

335 (c) A limited nursing services license shall be issued to a  
336 facility that provides services beyond those authorized in  
337 paragraph (a) and as specified in this paragraph.

338 1. In order for limited nursing services to be provided in  
339 a facility licensed under this part, the agency must first  
340 determine that all requirements established in law and rule are  
341 met and must specifically designate, on the facility's license,  
342 that such services may be provided. This ~~Such~~ designation may be  
343 made at the time of initial licensure or licensure renewal  
344 ~~relicensure~~, or upon request in writing by a licensee under this  
345 part and part II of chapter 408. Notification of approval or  
346 denial of such request shall be made in accordance with part II  
347 of chapter 408. An existing facility that qualifies ~~facilities~~  
348 ~~qualifying~~ to provide limited nursing services must ~~shall~~ have  
349 maintained a standard license and may not have been subject to  
350 administrative sanctions that affect the health, safety, and  
351 welfare of residents for the previous 2 years or since initial  
352 licensure if the facility has been licensed for less than 2  
353 years.

354 2. A facility ~~Facilities~~ that is ~~are~~ licensed to provide  
355 limited nursing services shall maintain a written progress  
356 report on each person who receives such nursing services. The  
357 ~~which~~ report must describe ~~describes~~ the type, amount, duration,  
358 scope, and outcome of services that are rendered and the general



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359 status of the resident's health. A registered nurse representing  
360 the agency shall visit the facility ~~such facilities~~ at least  
361 annually ~~twice a year~~ to monitor residents who are receiving  
362 limited nursing services and to determine if the facility is in  
363 compliance with applicable provisions of this part, part II of  
364 chapter 408, and related rules. The monitoring visits may be  
365 provided through contractual arrangements with appropriate  
366 community agencies. A registered nurse shall also serve as part  
367 of the team that inspects such facility. Visits may be in  
368 conjunction with other agency inspections. The agency may waive  
369 the required yearly monitoring visit for a facility that has:

370 a. Had a limited nursing services license for at least 24  
371 months;

372 b. No class I or class II violations and no uncorrected  
373 class III violations; and

374 c. No ombudsman council complaints that resulted in a  
375 citation for licensure.

376 3. A person who receives limited nursing services under  
377 this part must meet the admission criteria established by the  
378 agency for assisted living facilities. When a resident no longer  
379 meets the admission criteria for a facility licensed under this  
380 part, arrangements for relocating the person shall be made in  
381 accordance with s. 429.28(1)(k), unless the facility is licensed  
382 to provide extended congregate care services.

383 Section 7. Section 429.075, Florida Statutes, is amended to  
384 read:

385 429.075 Limited mental health license.—An assisted living  
386 facility that serves one ~~three~~ or more mental health residents  
387 must obtain a limited mental health license.



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388 (1) To obtain a limited mental health license, a facility  
389 must hold a standard license as an assisted living facility,  
390 must not have any current uncorrected ~~deficiencies or~~  
391 violations, and must ensure that, within 6 months after  
392 receiving a limited mental health license, the facility  
393 administrator and the staff of the facility who are in direct  
394 contact with mental health residents must complete training of  
395 no less than 6 hours related to their duties. This ~~Such~~  
396 designation may be made at the time of initial licensure or  
397 licensure renewal ~~relicensure~~ or upon request in writing by a  
398 licensee under this part and part II of chapter 408.  
399 Notification of approval or denial of such request shall be made  
400 in accordance with this part, part II of chapter 408, and  
401 applicable rules. This training must ~~will~~ be provided by or  
402 approved by the Department of Children and Families.

403 (2) A facility that is ~~Facilities~~ licensed to provide  
404 services to mental health residents must ~~shall~~ provide  
405 appropriate supervision and staffing to provide for the health,  
406 safety, and welfare of such residents.

407 (3) A facility that has a limited mental health license  
408 must:

409 (a) Have a copy of each mental health resident's community  
410 living support plan and the cooperative agreement with the  
411 mental health care services provider or provide written evidence  
412 that a request for the community living support plan and the  
413 cooperative agreement was sent to the Medicaid managed care plan  
414 or managing entity under contract with the Department of  
415 Children and Families within 72 hours after admission. The  
416 support plan and the agreement may be combined.



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417 (b) Have documentation ~~that is~~ provided by the Department  
418 of Children and Families that each mental health resident has  
419 been assessed and determined to be able to live in the community  
420 in an assisted living facility that has ~~with~~ a limited mental  
421 health license or provide written evidence that a request for  
422 documentation was sent to the department within 72 hours after  
423 admission.

424 (c) Make the community living support plan available for  
425 inspection by the resident, the resident's legal guardian or  
426 ~~the resident's~~ health care surrogate, and other individuals who  
427 have a lawful basis for reviewing this document.

428 (d) Assist the mental health resident in carrying out the  
429 activities identified in the resident's ~~individual's~~ community  
430 living support plan.

431 (4) A facility that has ~~with~~ a limited mental health  
432 license may enter into a cooperative agreement with a private  
433 mental health provider. For purposes of the limited mental  
434 health license, the private mental health provider may act as  
435 the case manager.

436 Section 8. Section 429.14, Florida Statutes, is amended to  
437 read:

438 429.14 Administrative penalties.—

439 (1) In addition to the requirements of part II of chapter  
440 408, the agency may deny, revoke, and suspend any license issued  
441 under this part and impose an administrative fine in the manner  
442 provided in chapter 120 against a licensee for a violation of  
443 ~~any provision of~~ this part, part II of chapter 408, or  
444 applicable rules, or for any of the following actions by a  
445 licensee, ~~for the actions of~~ any person subject to level 2



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446 background screening under s. 408.809, or ~~for the actions of~~ any  
447 facility staff ~~employee~~:

448 (a) An intentional or negligent act seriously affecting the  
449 health, safety, or welfare of a resident of the facility.

450 (b) A ~~The~~ determination by the agency that the owner lacks  
451 the financial ability to provide continuing adequate care to  
452 residents.

453 (c) Misappropriation or conversion of the property of a  
454 resident of the facility.

455 (d) Failure to follow the criteria and procedures provided  
456 under part I of chapter 394 relating to the transportation,  
457 voluntary admission, and involuntary examination of a facility  
458 resident.

459 (e) A citation for ~~of~~ any of the following violations  
460 ~~deficiencies~~ as specified in s. 429.19:

- 461 1. One or more cited class I violations ~~deficiencies~~.  
462 2. Three or more cited class II violations ~~deficiencies~~.  
463 3. Five or more cited class III violations ~~deficiencies~~  
464 that have been cited on a single survey and have not been  
465 corrected within the times specified.

466 (f) Failure to comply with the background screening  
467 standards of this part, s. 408.809(1), or chapter 435.

468 (g) Violation of a moratorium.

469 (h) Failure of the license applicant, the licensee during  
470 licensure renewal ~~relicensure~~, or a licensee that holds a  
471 provisional license to meet the minimum license requirements of  
472 this part, or related rules, at the time of license application  
473 or renewal.

474 (i) An intentional or negligent life-threatening act in



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475 violation of the uniform firesafety standards for assisted  
476 living facilities or other firesafety standards which ~~that~~  
477 threatens the health, safety, or welfare of a resident of a  
478 facility, as communicated to the agency by the local authority  
479 having jurisdiction or the State Fire Marshal.

480 (j) Knowingly operating any unlicensed facility or  
481 providing without a license any service that must be licensed  
482 under this chapter or chapter 400.

483 (k) Any act constituting a ground upon which application  
484 for a license may be denied.

485 (2) Upon notification by the local authority having  
486 jurisdiction or by the State Fire Marshal, the agency may deny  
487 or revoke the license of an assisted living facility that fails  
488 to correct cited fire code violations that affect or threaten  
489 the health, safety, or welfare of a resident of a facility.

490 (3) The agency may deny or revoke a license of an ~~to any~~  
491 applicant or controlling interest as defined in part II of  
492 chapter 408 which has or had a 25 percent ~~25-percent~~ or greater  
493 financial or ownership interest in any other facility that is  
494 licensed under this part, or in any entity licensed by this  
495 state or another state to provide health or residential care, if  
496 that ~~which~~ facility or entity during the 5 years before ~~prior to~~  
497 the application for a license closed due to financial inability  
498 to operate; had a receiver appointed or a license denied,  
499 suspended, or revoked; was subject to a moratorium; or had an  
500 injunctive proceeding initiated against it.

501 (4) The agency shall deny or revoke the license of an  
502 assisted living facility if any of the following apply:

503 (a) There are two moratoria, issued pursuant to this part



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504 or part II of chapter 408, within a 2-year period which are  
505 imposed by final order.

506 (b) The facility is cited for two or more class I  
507 violations arising from unrelated circumstances during the same  
508 survey or investigation.

509 (c) The facility is cited for two or more class I  
510 violations arising from separate surveys or investigations  
511 within a 2-year period ~~that has two or more class I violations~~  
512 ~~that are similar or identical to violations identified by the~~  
513 ~~agency during a survey, inspection, monitoring visit, or~~  
514 ~~complaint investigation occurring within the previous 2 years.~~

515 (5) An action taken by the agency to suspend, deny, or  
516 revoke a facility's license under this part or part II of  
517 chapter 408, in which the agency claims that the facility owner  
518 or an employee of the facility has threatened the health,  
519 safety, or welfare of a resident of the facility, shall be heard  
520 by the Division of Administrative Hearings of the Department of  
521 Management Services within 120 days after receipt of the  
522 facility's request for a hearing, unless that time limitation is  
523 waived by both parties. The administrative law judge shall ~~must~~  
524 render a decision within 30 days after receipt of a proposed  
525 recommended order.

526 (6) As provided under s. 408.814, the agency shall impose  
527 an immediate moratorium on an assisted living facility that  
528 fails to provide the agency access to the facility or prohibits  
529 the agency from conducting a regulatory inspection. The licensee  
530 may not restrict agency staff in accessing and copying records  
531 or in conducting confidential interviews with facility staff or  
532 any individual who receives services from the facility. If



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533 requested by the facility, the agency must reimburse the  
534 facility for all reasonable costs related to the accessing and  
535 copying of records required under this subsection ~~provide to the~~  
536 ~~Division of Hotels and Restaurants of the Department of Business~~  
537 ~~and Professional Regulation, on a monthly basis, a list of those~~  
538 ~~assisted living facilities that have had their licenses denied,~~  
539 ~~suspended, or revoked or that are involved in an appellate~~  
540 ~~proceeding pursuant to s. 120.60 related to the denial,~~  
541 ~~suspension, or revocation of a license.~~

542 (7) Agency notification of a license suspension or  
543 revocation, or denial of a license renewal, shall be posted and  
544 visible to the public at the facility.

545 (8) If a facility is required to relocate some or all of  
546 its residents due to agency action, that facility is exempt from  
547 the 45 days' notice requirement imposed under s. 429.28(1)(k).  
548 This subsection does not exempt the facility from any deadline  
549 for corrective action set by the agency.

550 Section 9. Paragraphs (a) and (b) of subsection (2) of  
551 section 429.178, Florida Statutes, are amended to read:

552 429.178 Special care for persons with Alzheimer's disease  
553 or other related disorders.—

554 (2) (a) An individual who is employed by a facility that  
555 provides special care for residents who have ~~with~~ Alzheimer's  
556 disease or other related disorders, and who has regular contact  
557 with such residents, must complete up to 4 hours of initial  
558 dementia-specific training developed or approved by the  
559 department. The training must ~~shall~~ be completed within 3 months  
560 after beginning employment and ~~shall~~ satisfy the core training  
561 requirements of s. 429.52(3)(g) ~~s. 429.52(2)(g)~~.



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562 (b) A direct caregiver who is employed by a facility that  
563 provides special care for residents who have ~~with~~ Alzheimer's  
564 disease or other related disorders, and who provides direct care  
565 to such residents, must complete the required initial training  
566 and 4 additional hours of training developed or approved by the  
567 department. The training must ~~shall~~ be completed within 9 months  
568 after beginning employment and ~~shall~~ satisfy the core training  
569 requirements of s. 429.52(3)(g) ~~s. 429.52(2)(g)~~.

570 Section 10. Paragraphs (e) and (f) are added to subsection  
571 (2) of section 429.19, Florida Statutes, to read:

572 429.19 Violations; imposition of administrative fines;  
573 grounds.—

574 (2) Each violation of this part and adopted rules shall be  
575 classified according to the nature of the violation and the  
576 gravity of its probable effect on facility residents. The agency  
577 shall indicate the classification on the written notice of the  
578 violation as follows:

579 (e) Any fine imposed by the agency for a cited class I or  
580 class II violation must be doubled if the agency finds that such  
581 violation has not been corrected within six months of the  
582 citation being issued.

583 (f) Regardless of the class of violation cited, instead of  
584 the fine amounts listed in paragraphs (a)-(d), the agency shall  
585 impose an administrative fine of \$500 if a facility is found not  
586 to be in compliance with the background screening requirements  
587 as provided in s. 408.809.

588 Section 11. Subsection (3) and paragraph (c) of subsection  
589 (4) of section 429.256, Florida Statutes, are amended to read:

590 429.256 Assistance with self-administration of medication.—



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591 (3) Assistance with self-administration of medication  
592 includes:

593 (a) Taking the medication, in its previously dispensed,  
594 properly labeled container, including an insulin syringe that is  
595 prefilled with the proper dosage by a pharmacist and an insulin  
596 pen that is prefilled by the manufacturer, from where it is  
597 stored, and bringing it to the resident.

598 (b) In the presence of the resident, reading the label,  
599 opening the container, removing a prescribed amount of  
600 medication from the container, and closing the container.

601 (c) Placing an oral dosage in the resident's hand or  
602 placing the dosage in another container and helping the resident  
603 by lifting the container to his or her mouth.

604 (d) Applying topical medications.

605 (e) Returning the medication container to proper storage.

606 (f) Keeping a record of when a resident receives assistance  
607 with self-administration under this section.

608 (g) Assisting with the use of a nebulizer, including  
609 removing the cap of a nebulizer, opening the unit dose of  
610 nebulizer solution, and pouring the prescribed premeasured dose  
611 of medication into the dispensing cup of the nebulizer.

612 (h) Using a glucometer to perform blood-glucose level  
613 checks.

614 (i) Assisting with putting on and taking off antiembolism  
615 stockings.

616 (j) Assisting with applying and removing an oxygen cannula,  
617 but not with titrating the prescribed oxygen settings.

618 (k) Assisting with the use of a continuous positive airway  
619 pressure (CPAP) device, but not with titrating the prescribed



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620 setting of the device.

621 (l) Assisting with measuring vital signs.

622 (m) Assisting with colostomy bags.

623 (4) Assistance with self-administration does not include:

624 ~~(c) Administration of medications through intermittent~~  
625 ~~positive pressure breathing machines or a nebulizer.~~

626 Section 12. Subsection (3) of section 429.27, Florida  
627 Statutes, is amended to read:

628 429.27 Property and personal affairs of residents.—

629 (3) A facility, upon mutual consent with the resident,  
630 shall provide for the safekeeping in the facility of personal  
631 effects not in excess of \$500 and funds of the resident not in  
632 excess of \$500 ~~\$200~~ cash, and shall keep complete and accurate  
633 records of all such funds and personal effects received. If a  
634 resident is absent from a facility for 24 hours or more, the  
635 facility may provide for the safekeeping of the resident's  
636 personal effects in excess of \$500.

637 Section 13. Subsections (2), (5), and (6) of section  
638 429.28, Florida Statutes, are amended to read:

639 429.28 Resident bill of rights.—

640 (2) The administrator of a facility shall ensure that a  
641 written notice of the rights, obligations, and prohibitions set  
642 forth in this part is posted in a prominent place in each  
643 facility and read or explained to residents who cannot read. The  
644 ~~This~~ notice must ~~shall~~ include the name, address, and telephone  
645 numbers of the local ombudsman council, the ~~and~~ central abuse  
646 hotline, and, if ~~when~~ applicable, Disability Rights Florida ~~the~~  
647 ~~Advocacy Center for Persons with Disabilities, Inc., and the~~  
648 ~~Florida local advocacy council~~, where complaints may be lodged.



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649 The notice must state that a complaint made to the Office of  
650 State Long-Term Care Ombudsman or a local long-term care  
651 ombudsman council, the names and identities of the residents  
652 involved in the complaint, and the identity of complainants are  
653 kept confidential pursuant to s. 400.0077 and that retaliatory  
654 action cannot be taken against a resident for presenting  
655 grievances or for exercising any other resident right. The  
656 facility must ensure a resident's access to a telephone to call  
657 the local ombudsman council, central abuse hotline, and  
658 Disability Rights Florida Advocacy Center for Persons with  
659 Disabilities, Inc., and the Florida local advocacy council.

660 (5) A ~~No~~ facility or employee of a facility may not serve  
661 notice upon a resident to leave the premises or take any other  
662 retaliatory action against any person who:

663 (a) Exercises any right set forth in this section.

664 (b) Appears as a witness in any hearing, inside or outside  
665 the facility.

666 (c) Files a civil action alleging a violation of the  
667 provisions of this part or notifies a state attorney or the  
668 Attorney General of a possible violation of such provisions.

669 (6) A ~~Any~~ facility that ~~which~~ terminates the residency of  
670 an individual who participated in activities specified in  
671 subsection (5) must ~~shall~~ show good cause in a court of  
672 competent jurisdiction. If good cause is not shown, the agency  
673 shall impose a fine of \$2,500 in addition to any other penalty  
674 assessed against the facility.

675 Section 14. Section 429.34, Florida Statutes, is amended to  
676 read:

677 429.34 Right of entry and inspection.-



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678           (1) In addition to the requirements of s. 408.811, any duly  
679 designated officer or employee of the department, the Department  
680 of Children and Families, the Medicaid Fraud Control Unit of the  
681 Office of the Attorney General, the state or local fire marshal,  
682 or a member of the state or local long-term care ombudsman  
683 council has ~~shall have~~ the right to enter unannounced upon and  
684 into the premises of any facility licensed pursuant to this part  
685 in order to determine the state of compliance with ~~the~~  
686 ~~provisions of~~ this part, part II of chapter 408, and applicable  
687 rules. Data collected by the state or local long-term care  
688 ombudsman councils or the state or local advocacy councils may  
689 be used by the agency in investigations involving violations of  
690 regulatory standards. A person specified in this section who  
691 knows or has reasonable cause to suspect that a vulnerable adult  
692 has been or is being abused, neglected, or exploited shall  
693 immediately report such knowledge or suspicion to the central  
694 abuse hotline pursuant to chapter 415.

695           (2) The agency shall inspect each licensed assisted living  
696 facility at least once every 24 months to determine compliance  
697 with this chapter and related rules. If an assisted living  
698 facility is cited for one or more class I violations or two or  
699 more class II violations arising from separate surveys within a  
700 60-day period or due to unrelated circumstances during the same  
701 survey, the agency must conduct an additional licensure  
702 inspection within 6 months.

703           Section 15. Subsection (2) of section 429.41, Florida  
704 Statutes, is amended to read:

705           429.41 Rules establishing standards.—

706           (2) In adopting any rules pursuant to this part, the



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707 department, in conjunction with the agency, shall make distinct  
708 standards for facilities based upon facility size; the types of  
709 care provided; the physical and mental capabilities and needs of  
710 residents; the type, frequency, and amount of services and care  
711 offered; and the staffing characteristics of the facility. Rules  
712 developed pursuant to this section may ~~shall~~ not restrict the  
713 use of shared staffing and shared programming in facilities that  
714 are part of retirement communities that provide multiple levels  
715 of care and otherwise meet the requirements of law and rule. If  
716 a continuing care facility licensed under chapter 651 or a  
717 retirement community offering multiple levels of care obtains a  
718 license pursuant to this chapter for a building or part of a  
719 building designated for independent living, staffing  
720 requirements established in rule apply only to residents who  
721 receive personal services, limited nursing services, or extended  
722 congregate care services under this part. Such facilities shall  
723 retain a log listing the names and unit number for residents  
724 receiving these services. The log must be available to surveyors  
725 upon request. Except for uniform firesafety standards, the  
726 department shall adopt by rule separate and distinct standards  
727 for facilities with 16 or fewer beds and for facilities with 17  
728 or more beds. The standards for facilities with 16 or fewer beds  
729 must ~~shall~~ be appropriate for a noninstitutional residential  
730 environment; however, provided that the structure may not be ~~is~~  
731 ~~no~~ more than two stories in height and all persons who cannot  
732 exit the facility unassisted in an emergency must reside on the  
733 first floor. The department, in conjunction with the agency, may  
734 make other distinctions among types of facilities as necessary  
735 to enforce the provisions of this part. Where appropriate, the



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736 agency shall offer alternate solutions for complying with  
737 established standards, based on distinctions made by the  
738 department and the agency relative to the physical  
739 characteristics of facilities and the types of care offered  
740 therein.

741 Section 16. Present subsections (1) through (11) of section  
742 429.52, Florida Statutes, are redesignated as subsections (2)  
743 through (12), respectively, a new subsection (1) is added to  
744 that section, and present subsections (5) and (9) of that  
745 section are amended, to read:

746 429.52 Staff training and educational programs; core  
747 educational requirement.—

748 (1) Effective October 1, 2015, each new assisted living  
749 facility employee who has not previously completed core training  
750 must attend a preservice orientation provided by the facility  
751 before interacting with residents. The preservice orientation  
752 must be at least 2 hours in duration and cover topics that help  
753 the employee provide responsible care and respond to the needs  
754 of facility residents. Upon completion, the employee and the  
755 administrator of the facility must sign a statement that the  
756 employee completed the required preservice orientation. The  
757 facility must keep the signed statement in the employee's  
758 personnel record.

759 (6)-(5) Staff involved with the management of medications  
760 and assisting with the self-administration of medications under  
761 s. 429.256 must complete a minimum of 6 4 additional hours of  
762 training provided by a registered nurse, licensed pharmacist, or  
763 department staff. The department shall establish by rule the  
764 minimum requirements of this additional training.



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765            (10)~~(9)~~ The training required by this section other than  
766 the preservice orientation must ~~shall~~ be conducted by persons  
767 registered with the department as having the requisite  
768 experience and credentials to conduct the training. A person  
769 seeking to register as a trainer must provide the department  
770 with proof of completion of the minimum core training education  
771 requirements, successful passage of the competency test  
772 established under this section, and proof of compliance with the  
773 continuing education requirement in subsection (5)~~(4)~~.

774            Section 17. Section 429.55, Florida Statutes, is created to  
775 read:

776            429.55 Consumer information website.—The Legislature finds  
777 that consumers need additional information on the quality of  
778 care and service in assisted living facilities in order to  
779 select the best facility for themselves or their loved ones.  
780 Therefore, the Agency for Health Care Administration shall  
781 create content that is easily accessible through the home page  
782 of the agency's website either directly or indirectly through  
783 links to one or more other established websites of the agency's  
784 choosing. The website must be searchable by facility name,  
785 license type, city, or zip code. By November 1, 2015, the agency  
786 shall include all content in its possession on the website and  
787 add content when received from facilities. At a minimum, the  
788 content must include:

789            (1) Information on each licensed assisted living facility,  
790 including, but not limited to:

791            (a) The name and address of the facility.

792            (b) The name of the owner or operator of the facility.

793            (c) The number and type of licensed beds in the facility.



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- 794        (d) The types of licenses held by the facility.
- 795        (e) The facility's license expiration date and status.
- 796        (f) The total number of clients that the facility is  
797 licensed to serve and the most recently available occupancy  
798 levels.
- 799        (g) The number of private and semiprivate rooms offered.
- 800        (h) The bed-hold policy.
- 801        (i) The religious affiliation, if any, of the assisted  
802 living facility.
- 803        (j) The languages spoken by the staff.
- 804        (k) Availability of nurses.
- 805        (l) Forms of payment accepted, including, but not limited  
806 to, Medicaid, Medicaid long-term managed care, private  
807 insurance, health maintenance organization, United States  
808 Department of Veterans Affairs, CHAMPUS program, or workers'  
809 compensation coverage.
- 810        (m) Indication if the licensee is operating under  
811 bankruptcy protection.
- 812        (n) Recreational and other programs available.
- 813        (o) Special care units or programs offered.
- 814        (p) Whether the facility is a part of a retirement  
815 community that offers other services pursuant to this part or  
816 part III of this chapter, part II or part III of chapter 400, or  
817 chapter 651.
- 818        (q) Links to the State Long-Term Care Ombudsman Program  
819 website and the program's statewide toll-free telephone number.
- 820        (r) Links to the websites of the providers.
- 821        (s) Other relevant information that the agency currently  
822 collects.



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823       (2) Survey and violation information for the facility,  
824 including a list of the facility's violations committed during  
825 the previous 60 months, which on July 1, 2015, may include  
826 violations committed on or after July 1, 2010. The list shall be  
827 updated monthly and include for each violation:

828       (a) A summary of the violation, including all licensure,  
829 revisit, and complaint survey information, presented in a manner  
830 understandable by the general public.

831       (b) Any sanctions imposed by final order.

832       (c) The date the corrective action was confirmed by the  
833 agency.

834       (3) Links to inspection reports that the agency has on  
835 file.

836       (4) The agency may adopt rules to administer this section.  
837 Section 18. This act shall take effect July 1, 2015.

838  
839 ===== T I T L E   A M E N D M E N T =====

840 And the title is amended as follows:

841       Delete everything before the enacting clause  
842 and insert:

843                       A bill to be entitled  
844       An act relating to assisted living facilities;  
845       amending s. 394.4574, F.S.; providing that Medicaid  
846       managed care plans are responsible for enrolled mental  
847       health residents; providing that managing entities  
848       under contract with the Department of Children and  
849       Families are responsible for mental health residents  
850       who are not enrolled with a Medicaid managed care  
851       plan; requiring that a community living support plan



852 be completed and provided to the administrator of a  
853 facility within a specified period after the  
854 resident's admission; restricting the agency from  
855 imposing a fine if the facility has requested the  
856 community living support plan; requiring that the  
857 community living support plan be updated when there is  
858 a significant change to the mental health resident's  
859 behavioral health; requiring a mental health resident  
860 case manager to keep certain records of interactions  
861 with the resident and to make the records available  
862 for inspection; requiring retention of the records for  
863 a specified period; requiring the responsible entity  
864 to ensure monitoring and implementation of community  
865 living support plans and cooperative agreements;  
866 amending s. 400.0074, F.S.; requiring a local  
867 ombudsman council to conduct comprehensive onsite  
868 administrative assessments; requiring a local council  
869 to conduct an exit consultation with the facility  
870 administrator or administrator designee; amending s.  
871 400.0078, F.S.; requiring that a long-term care  
872 resident or resident representative be informed of  
873 resident immunity from retaliatory action for  
874 presenting grievances or exercising resident rights;  
875 amending s. 409.212, F.S.; increasing the cap on  
876 additional supplementation that a person may receive  
877 under certain conditions; amending s. 429.02, F.S.;  
878 revising the definition of the term "limited nursing  
879 services"; amending s. 429.07, F.S.; requiring that an  
880 extended congregate care license be issued to certain



881 facilities licensed as assisted living facilities  
882 under certain circumstances and authorizing the  
883 issuance of such license if a specified condition is  
884 met; providing that the initial extended congregate  
885 care license is provisional under certain  
886 circumstances; requiring a licensee to notify the  
887 agency of acceptance of a resident who qualifies for  
888 extended congregate care services; requiring the  
889 agency to inspect the facility for compliance with  
890 license requirements; requiring the licensee to  
891 suspend extended congregate care services under  
892 certain circumstances; revising the frequency of  
893 monitoring visits to a facility by a registered nurse  
894 representing the agency; authorizing the agency to  
895 waive a required yearly monitoring visit under certain  
896 circumstances; authorizing the agency to deny or  
897 revoke a facility's extended congregate care license;  
898 authorizing the agency to waive the required yearly  
899 monitoring visit for a facility that is licensed to  
900 provide limited nursing services under certain  
901 circumstances; amending s. 429.075, F.S.; requiring an  
902 assisted living facility that serves mental health  
903 residents to obtain a limited mental health license;  
904 requiring a limited mental health facility to provide  
905 written evidence that certain documentation was sent  
906 to the department within a specified period; amending  
907 s. 429.14, F.S.; requiring the agency to deny or  
908 revoke the license of an assisted living facility  
909 under certain circumstances; requiring the agency to



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910 impose an immediate moratorium on the license of an  
911 assisted living facility under certain circumstances;  
912 deleting a requirement that the agency provide a list  
913 of facilities with denied, suspended, or revoked  
914 licenses to the Department of Business and  
915 Professional Regulation; exempting a facility from the  
916 45-day notice requirement if it is required to  
917 relocate residents; amending s. 429.178, F.S.;  
918 conforming cross-references; amending s. 429.19, F.S.;  
919 requiring the agency to levy a fine for violations  
920 that are corrected before an inspection if  
921 noncompliance occurred within a specified period of  
922 time; requiring the agency to double fine amounts  
923 under certain circumstances; amending s. 429.256,  
924 F.S.; revising the term "assistance with self-  
925 administration of medication" as it relates to the  
926 Assisted Living Facilities Act; amending s. 429.27,  
927 F.S.; revising the amount of cash for which a facility  
928 may provide safekeeping for a resident; amending s.  
929 429.28, F.S.; providing notice requirements regarding  
930 confidentiality of resident identity in a complaint  
931 made to the State Long-Term Care Ombudsman Program or  
932 a local long-term care ombudsman council and immunity  
933 from retaliatory action for presenting grievances or  
934 exercising resident rights; requiring the agency to  
935 adopt rules; providing a fine if a facility terminates  
936 an individual's residency after the filing of a  
937 complaint if good cause is not shown for the  
938 termination; amending s. 429.34, F.S.; requiring



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939 certain persons to report elder abuse in assisted  
940 living facilities; requiring the agency to regularly  
941 inspect a licensed assisted living facility; requiring  
942 the agency to conduct periodic inspections; amending  
943 s. 429.41, F.S.; providing that certain staffing  
944 requirements apply only to residents in continuing  
945 care facilities who are receiving certain services;  
946 amending s. 429.52, F.S.; requiring each newly hired  
947 employee of an assisted living facility to attend a  
948 preservice orientation; requiring the employee and  
949 administrator to sign a statement of completion and  
950 keep the statement in the employee's personnel record;  
951 requiring additional hours of training for assistance  
952 with medication; creating s. 429.55, F.S.; directing  
953 the agency to create an assisted living facility  
954 consumer information website; providing criteria for  
955 webpage content; providing content requirements;  
956 authorizing the agency to adopt rules; providing an  
957 effective date.

By the Committee on Health Policy; and Senators Sobel and Gaetz

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1 A bill to be entitled  
 2 An act relating to assisted living facilities;  
 3 amending s. 394.4574, F.S.; providing that Medicaid  
 4 managed care plans are responsible for mental health  
 5 residents enrolled in Medicaid; specifying that  
 6 managing entities under contract with the Department  
 7 of Children and Families are responsible for mental  
 8 health residents who are not enrolled in a Medicaid  
 9 managed care plan; deleting a provision to conform to  
 10 changes made by the act; requiring that the community  
 11 living support plan be completed and provided to the  
 12 administrator of a facility upon the mental health  
 13 resident's admission; requiring the community living  
 14 support plan to be updated when there is a significant  
 15 change to the mental health resident's behavioral  
 16 health status; requiring the case manager assigned to  
 17 a mental health resident for whom the mental health  
 18 services provider is responsible to keep a record of  
 19 the date and time of face-to-face interactions with  
 20 the resident and to make the record available to the  
 21 entity responsible for inspection; requiring that the  
 22 record be maintained for a specified time; requiring  
 23 the responsible entity to ensure that there is  
 24 adequate and consistent monitoring and enforcement of  
 25 community living support plans and cooperative  
 26 agreements and that concerns are reported to the  
 27 appropriate regulatory oversight organization under  
 28 certain circumstances; amending s. 400.0074, F.S.;

29 requiring that an administrative assessment conducted

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30 by a local council be comprehensive in nature;  
 31 requiring a local council to conduct an exit  
 32 consultation with the facility administrator or  
 33 administrator designee to discuss issues and concerns  
 34 in areas affecting residents' rights, health, safety,  
 35 and welfare and make recommendations for any needed  
 36 improvements; amending s. 400.0078, F.S.; requiring  
 37 that a resident of a long-term care facility, or his  
 38 or her representative, be informed that retaliatory  
 39 action cannot be taken against a resident for  
 40 presenting grievances or for exercising any other  
 41 resident right; amending s. 429.07, F.S.; revising the  
 42 requirement that an extended congregate care license  
 43 be issued to certain facilities that have been  
 44 licensed as assisted living facilities under certain  
 45 circumstances and authorizing the issuance of such  
 46 license if a specified condition is met; providing the  
 47 purpose of an extended congregate care license;  
 48 specifying that the initial extended congregate care  
 49 license of an assisted living facility is provisional  
 50 under certain circumstances; requiring a licensee to  
 51 notify the Agency for Health Care Administration if it  
 52 accepts a resident who qualifies for extended  
 53 congregate care services; requiring the agency to  
 54 inspect the facility for compliance with the  
 55 requirements of an extended congregate care license;  
 56 requiring the issuance of an extended congregate care  
 57 license under certain circumstances; requiring the  
 58 licensee to immediately suspend extended congregate

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59 care services under certain circumstances; requiring a  
 60 registered nurse representing the agency to visit the  
 61 facility at least twice a year, rather than quarterly,  
 62 to monitor residents who are receiving extended  
 63 congregate care services; authorizing the agency to  
 64 waive one of the required yearly monitoring visits  
 65 under certain circumstances; authorizing the agency to  
 66 deny or revoke a facility's extended congregate care  
 67 license; requiring a registered nurse representing the  
 68 agency to visit the facility at least annually, rather  
 69 than twice a year, to monitor residents who are  
 70 receiving limited nursing services; providing that  
 71 such monitoring visits may be conducted in conjunction  
 72 with other inspections by the agency; authorizing the  
 73 agency to waive the required yearly monitoring visit  
 74 for a facility that is licensed to provide limited  
 75 nursing services under certain circumstances; amending  
 76 s. 429.075, F.S.; requiring that an assisted living  
 77 facility that serves one or more mental health  
 78 residents, rather than three or more such residents,  
 79 obtain a limited mental health license; amending s.  
 80 429.14, F.S.; revising the circumstances under which  
 81 the agency may deny, revoke, or suspend the license of  
 82 an assisted living facility and impose an  
 83 administrative fine; requiring the agency to deny or  
 84 revoke the license of an assisted living facility  
 85 under certain circumstances; requiring the agency to  
 86 impose an immediate moratorium on the license of an  
 87 assisted living facility under certain circumstances;

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88 prohibiting a licensee from restricting agency staff  
 89 from accessing and copying certain records or  
 90 conducting certain interviews; deleting a provision  
 91 requiring the agency to provide a list of facilities  
 92 with denied, suspended, or revoked licenses to the  
 93 Department of Business and Professional Regulation;  
 94 exempting a facility from the 45-day notice  
 95 requirement if it is required to relocate some or all  
 96 of its residents; specifying that the exemption does  
 97 not exempt a facility from any deadlines for  
 98 corrective action set by the agency; amending s.  
 99 429.178, F.S.; conforming cross-references; amending  
 100 s. 429.19, F.S.; revising the amounts and uses of  
 101 administrative fines; requiring the agency to levy a  
 102 fine for violations that are corrected before an  
 103 inspection if noncompliance occurred within a  
 104 specified period of time; deleting factors that the  
 105 agency is required to consider in determining  
 106 penalties and fines; amending s. 429.256, F.S.;  
 107 revising the term "assistance with self-administration  
 108 of medication" as it relates to the Assisted Living  
 109 Facilities Act; amending s. 429.28, F.S.; providing  
 110 notice requirements for informing facility residents  
 111 that the name and identity of the resident and  
 112 complainant in any complaint made to the State Long-  
 113 Term Care Ombudsman Program or a local long-term care  
 114 ombudsman council is confidential and that retaliatory  
 115 action may not be taken against a resident for  
 116 presenting grievances or for exercising any other

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117 resident right; requiring that a facility that  
 118 terminates an individual's residency after the filing  
 119 of a complaint be fined if good cause is not shown for  
 120 the termination; amending s. 429.34, F.S.; requiring  
 121 certain persons to report elder abuse in assisted  
 122 living facilities; requiring the agency to regularly  
 123 inspect each licensed assisted living facility;  
 124 requiring the agency to conduct more frequent  
 125 inspections under certain circumstances; requiring the  
 126 licensee to pay a fee for the cost of additional  
 127 inspections; requiring the agency to annually adjust  
 128 the fee; amending s. 429.41, F.S.; providing that  
 129 certain staffing requirements apply only to residents  
 130 in continuing care facilities who are receiving  
 131 relevant services; amending s. 429.52, F.S.; requiring  
 132 each newly hired employee of an assisted living  
 133 facility to attend a preservice orientation provided  
 134 by the assisted living facility; requiring the  
 135 employee and administrator to sign a statement that  
 136 the employee completed the required preservice  
 137 orientation and keep the signed statement in the  
 138 employee's personnel record; requiring 2 additional  
 139 hours of training for assistance with medication;  
 140 conforming a cross-reference; requiring the agency to  
 141 implement a rating system for assisted living  
 142 facilities by a specified date, adopt rules, and  
 143 create content for the agency's website by a specified  
 144 date which provides consumers information regarding  
 145 assisted living facilities; providing criteria for the

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146 content; providing appropriations; providing an  
 147 effective date.

148  
 149 Be It Enacted by the Legislature of the State of Florida:

150  
 151 Section 1. Section 394.4574, Florida Statutes, is amended  
 152 to read:

153 394.4574 ~~Department~~ Responsibilities for coordination of  
 154 services for a mental health resident who resides in an assisted  
 155 living facility that holds a limited mental health license.-

156 (1) As used in this section, the term "mental health  
 157 resident" ~~"mental health resident,"~~ for purposes of this  
 158 section, means an individual who receives social security  
 159 disability income due to a mental disorder as determined by the  
 160 Social Security Administration or receives supplemental security  
 161 income due to a mental disorder as determined by the Social  
 162 Security Administration and receives optional state  
 163 supplementation.

164 (2) Medicaid managed care plans are responsible for  
 165 Medicaid-enrolled mental health residents, and managing entities  
 166 under contract with the department are responsible for mental  
 167 health residents who are not enrolled in a Medicaid health plan.  
 168 A Medicaid managed care plan or a managing entity, as  
 169 appropriate, shall ~~The department must~~ ensure that:

170 (a) A mental health resident has been assessed by a  
 171 psychiatrist, clinical psychologist, clinical social worker, or  
 172 psychiatric nurse, or an individual who is supervised by one of  
 173 these professionals, and determined to be appropriate to reside  
 174 in an assisted living facility. The documentation must be

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175 provided to the administrator of the facility within 30 days  
 176 after the mental health resident has been admitted to the  
 177 facility. An evaluation completed upon discharge from a state  
 178 mental hospital meets the requirements of this subsection  
 179 related to appropriateness for placement as a mental health  
 180 resident if it was completed within 90 days before ~~prior to~~  
 181 admission to the facility.

182 (b) A cooperative agreement, as required in s. 429.075, is  
 183 developed by ~~between~~ the mental health care services provider  
 184 that serves a mental health resident and the administrator of  
 185 the assisted living facility with a limited mental health  
 186 license in which the mental health resident is living. ~~Any~~  
 187 ~~entity that provides Medicaid prepaid health plan services shall~~  
 188 ~~ensure the appropriate coordination of health care services with~~  
 189 ~~an assisted living facility in cases where a Medicaid recipient~~  
 190 ~~is both a member of the entity's prepaid health plan and a~~  
 191 ~~resident of the assisted living facility. If the entity is at~~  
 192 ~~risk for Medicaid targeted case management and behavioral health~~  
 193 ~~services, the entity shall inform the assisted living facility~~  
 194 ~~of the procedures to follow should an emergent condition arise.~~

195 (c) The community living support plan, as defined in s.  
 196 429.02, has been prepared by a mental health resident and his or  
 197 ~~her~~ a mental health case manager ~~of that resident~~ in  
 198 consultation with the administrator of the facility or the  
 199 administrator's designee. The plan must be completed and  
 200 provided to the administrator of the assisted living facility  
 201 with a limited mental health license in which the mental health  
 202 resident lives upon the resident's admission. The support plan  
 203 and the agreement may be in one document.

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204 (d) The assisted living facility with a limited mental  
 205 health license is provided with documentation that the  
 206 individual meets the definition of a mental health resident.

207 (e) The mental health services provider assigns a case  
 208 manager to each mental health resident for whom the entity is  
 209 responsible who lives in an assisted living facility with a  
 210 limited mental health license. The case manager shall coordinate  
 211 ~~is responsible for coordinating~~ the development ~~of~~ and  
 212 implementation of the community living support plan defined in  
 213 s. 429.02. The plan must be updated at least annually, or when  
 214 there is a significant change in the resident's behavioral  
 215 health status, such as an inpatient admission or a change in  
 216 medication, level of service, or residence. Each case manager  
 217 shall keep a record of the date and time of any face-to-face  
 218 interaction with the resident and make the record available to  
 219 the responsible entity for inspection. The record must be  
 220 retained for at least 2 years after the date of the most recent  
 221 interaction.

222 (f) Adequate and consistent monitoring and enforcement of  
 223 community living support plans and cooperative agreements are  
 224 conducted by the resident's case manager.

225 (g) Concerns are reported to the appropriate regulatory  
 226 oversight organization if a regulated provider fails to deliver  
 227 appropriate services or otherwise acts in a manner that has the  
 228 potential to result in harm to the resident.

229 (3) The Secretary of Children and Families, in consultation  
 230 with the Agency for Health Care Administration, shall ~~annually~~  
 231 require each district administrator to develop, with community  
 232 input, a detailed annual plan that demonstrates detailed plans

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233 ~~that demonstrate~~ how the district will ensure the provision of  
 234 state-funded mental health and substance abuse treatment  
 235 services to residents of assisted living facilities that hold a  
 236 limited mental health license. This plan ~~These plans~~ must be  
 237 consistent with the substance abuse and mental health district  
 238 plan developed pursuant to s. 394.75 and must address case  
 239 management services; access to consumer-operated drop-in  
 240 centers; access to services during evenings, weekends, and  
 241 holidays; supervision of the clinical needs of the residents;  
 242 and access to emergency psychiatric care.

243 Section 2. Subsection (1) of section 400.0074, Florida  
 244 Statutes, is amended, and paragraph (h) is added to subsection  
 245 (2) of that section, to read:

246 400.0074 Local ombudsman council onsite administrative  
 247 assessments.—

248 (1) In addition to any specific investigation conducted  
 249 pursuant to a complaint, the local council shall conduct, at  
 250 least annually, an onsite administrative assessment of each  
 251 nursing home, assisted living facility, and adult family-care  
 252 home within its jurisdiction. This administrative assessment  
 253 must be comprehensive in nature and must shall focus on factors  
 254 affecting residents' ~~the~~ rights, health, safety, and welfare of  
 255 ~~the residents~~. Each local council is encouraged to conduct a  
 256 similar onsite administrative assessment of each additional  
 257 long-term care facility within its jurisdiction.

258 (2) An onsite administrative assessment conducted by a  
 259 local council shall be subject to the following conditions:

260 (h) The local council shall conduct an exit consultation  
 261 with the facility administrator or administrator's designee to

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262 discuss issues and concerns in areas affecting residents'  
 263 rights, health, safety, and welfare and, if needed, make  
 264 recommendations for improvement.

265 Section 3. Subsection (2) of section 400.0078, Florida  
 266 Statutes, is amended to read:

267 400.0078 Citizen access to State Long-Term Care Ombudsman  
 268 Program services.—

269 (2) ~~Every resident or representative of a resident shall~~  
 270 ~~receive~~, Upon admission to a long-term care facility, each  
 271 resident or representative of a resident must receive  
 272 information regarding the purpose of the State Long-Term Care  
 273 Ombudsman Program, the statewide toll-free telephone number for  
 274 receiving complaints, information that retaliatory action cannot  
 275 be taken against a resident for presenting grievances or for  
 276 exercising any other resident right, and other relevant  
 277 information regarding how to contact the program. Each resident  
 278 or his or her representative ~~Residents or their representatives~~  
 279 must be furnished additional copies of this information upon  
 280 request.

281 Section 4. Paragraphs (b) and (c) of subsection (3) of  
 282 section 429.07, Florida Statutes, are amended to read:

283 429.07 License required; fee.—

284 (3) In addition to the requirements of s. 408.806, each  
 285 license granted by the agency must state the type of care for  
 286 which the license is granted. Licenses shall be issued for one  
 287 or more of the following categories of care: standard, extended  
 288 congregate care, limited nursing services, or limited mental  
 289 health.

290 (b) An extended congregate care license shall be issued to

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291 each facility that has been licensed as an assisted living  
 292 facility for 2 or more years and that provides services  
 293 ~~facilities providing~~, directly or through contract, ~~services~~  
 294 beyond those authorized in paragraph (a), including services  
 295 performed by persons licensed under part I of chapter 464 and  
 296 supportive services, as defined by rule, to persons who would  
 297 otherwise be disqualified from continued residence in a facility  
 298 licensed under this part. An extended congregate care license  
 299 may be issued to a facility that has a provisional extended  
 300 congregate care license and meets the requirements for licensure  
 301 under subparagraph 2. The primary purpose of extended congregate  
 302 care services is to allow residents the option of remaining in a  
 303 familiar setting from which they would otherwise be disqualified  
 304 for continued residency as they become more impaired. A facility  
 305 licensed to provide extended congregate care services may also  
 306 admit an individual who exceeds the admission criteria for a  
 307 facility with a standard license if the individual is determined  
 308 appropriate for admission to the extended congregate care  
 309 facility.

310 1. In order for extended congregate care services to be  
 311 provided, the agency must first determine that all requirements  
 312 established in law and rule are met and must specifically  
 313 designate, on the facility's license, that such services may be  
 314 provided and whether the designation applies to all or part of  
 315 the facility. ~~This Such~~ designation may be made at the time of  
 316 initial licensure or licensure renewal ~~relicensure~~, or upon  
 317 request in writing by a licensee under this part and part II of  
 318 chapter 408. The notification of approval or the denial of the  
 319 request shall be made in accordance with part II of chapter 408.

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320 Each existing facility that qualifies ~~facilities qualifying~~ to  
 321 provide extended congregate care services must have maintained a  
 322 standard license and may not have been subject to administrative  
 323 sanctions during the previous 2 years, or since initial  
 324 licensure if the facility has been licensed for less than 2  
 325 years, for any of the following reasons:  
 326 a. A class I or class II violation;  
 327 b. Three or more repeat or recurring class III violations  
 328 of identical or similar resident care standards from which a  
 329 pattern of noncompliance is found by the agency;  
 330 c. Three or more class III violations that were not  
 331 corrected in accordance with the corrective action plan approved  
 332 by the agency;  
 333 d. Violation of resident care standards which results in  
 334 requiring the facility to employ the services of a consultant  
 335 pharmacist or consultant dietitian;  
 336 e. Denial, suspension, or revocation of a license for  
 337 another facility licensed under this part in which the applicant  
 338 for an extended congregate care license has at least 25 percent  
 339 ownership interest; or  
 340 f. Imposition of a moratorium pursuant to this part or part  
 341 II of chapter 408 or initiation of injunctive proceedings.

342  
 343 The agency may deny or revoke a facility's extended congregate  
 344 care license if it fails to meet the criteria for an extended  
 345 congregate care license as provided in this subparagraph.

346 2. If an assisted living facility has been licensed for  
 347 less than 2 years, the initial extended congregate care license  
 348 must be provisional and may not exceed 6 months. Within the

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349 first 3 months after the provisional license is issued, the  
 350 licensee shall notify the agency, in writing, when it admits at  
 351 least one extended congregate care resident, after which an  
 352 unannounced inspection shall be made to determine compliance  
 353 with requirements of an extended congregate care license.  
 354 Failure to admit an extended congregate care resident within the  
 355 first 3 months renders the extended congregate care license  
 356 void. A licensee that has a provisional extended congregate care  
 357 license which demonstrates compliance with all of the  
 358 requirements of an extended congregate care license during the  
 359 inspection shall be issued an extended congregate care license.  
 360 In addition to sanctions authorized under this part, if  
 361 violations are found during the inspection and the licensee  
 362 fails to demonstrate compliance with all assisted living  
 363 requirements during a followup inspection, the licensee shall  
 364 immediately suspend extended congregate care services, and the  
 365 provisional extended congregate care license expires. The agency  
 366 may extend the provisional license for not more than 1 month in  
 367 order to complete a followup visit.

368 3.2- A facility that is licensed to provide extended  
 369 congregate care services shall maintain a written progress  
 370 report on each person who receives services which describes the  
 371 type, amount, duration, scope, and outcome of services that are  
 372 rendered and the general status of the resident's health. A  
 373 registered nurse, or appropriate designee, representing the  
 374 agency shall visit the facility at least twice a year ~~quarterly~~  
 375 to monitor residents who are receiving extended congregate care  
 376 services and to determine if the facility is in compliance with  
 377 this part, part II of chapter 408, and relevant rules. One of

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378 the visits may be in conjunction with the regular survey. The  
 379 monitoring visits may be provided through contractual  
 380 arrangements with appropriate community agencies. A registered  
 381 nurse shall serve as part of the team that inspects the  
 382 facility. The agency may waive one of the required yearly  
 383 monitoring visits for a facility that has:

384 a. Held an extended congregate care license for at least 24  
 385 months; been licensed for at least 24 months to provide extended  
 386 congregate care services, if, during the inspection, the  
 387 registered nurse determines that extended congregate care  
 388 services are being provided appropriately, and if the facility  
 389 has

390 b. No class I or class II violations and no uncorrected  
 391 class III violations; and-

392 c. No ombudsman council complaints that resulted in a  
 393 citation for licensure ~~The agency must first consult with the~~  
 394 ~~long-term care ombudsman council for the area in which the~~  
 395 ~~facility is located to determine if any complaints have been~~  
 396 ~~made and substantiated about the quality of services or care.~~  
 397 ~~The agency may not waive one of the required yearly monitoring~~  
 398 ~~visits if complaints have been made and substantiated.~~

399 4.3- A facility that is licensed to provide extended  
 400 congregate care services must:

401 a. Demonstrate the capability to meet unanticipated  
 402 resident service needs.

403 b. Offer a physical environment that promotes a homelike  
 404 setting, provides for resident privacy, promotes resident  
 405 independence, and allows sufficient congregate space as defined  
 406 by rule.

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407 c. Have sufficient staff available, taking into account the  
408 physical plant and firesafety features of the building, to  
409 assist with the evacuation of residents in an emergency.

410 d. Adopt and follow policies and procedures that maximize  
411 resident independence, dignity, choice, and decisionmaking to  
412 permit residents to age in place, so that moves due to changes  
413 in functional status are minimized or avoided.

414 e. Allow residents or, if applicable, a resident's  
415 representative, designee, surrogate, guardian, or attorney in  
416 fact to make a variety of personal choices, participate in  
417 developing service plans, and share responsibility in  
418 decisionmaking.

419 f. Implement the concept of managed risk.

420 g. Provide, directly or through contract, the services of a  
421 person licensed under part I of chapter 464.

422 h. In addition to the training mandated in s. 429.52,  
423 provide specialized training as defined by rule for facility  
424 staff.

425 5.4- A facility that is licensed to provide extended  
426 congregate care services is exempt from the criteria for  
427 continued residency set forth in rules adopted under s. 429.41.  
428 A licensed facility must adopt its own requirements within  
429 guidelines for continued residency set forth by rule. However,  
430 the facility may not serve residents who require 24-hour nursing  
431 supervision. A licensed facility that provides extended  
432 congregate care services must also provide each resident with a  
433 written copy of facility policies governing admission and  
434 retention.

435 ~~5. The primary purpose of extended congregate care services~~

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436 ~~is to allow residents, as they become more impaired, the option~~  
437 ~~of remaining in a familiar setting from which they would~~  
438 ~~otherwise be disqualified for continued residency. A facility~~  
439 ~~licensed to provide extended congregate care services may also~~  
440 ~~admit an individual who exceeds the admission criteria for a~~  
441 ~~facility with a standard license, if the individual is~~  
442 ~~determined appropriate for admission to the extended congregate~~  
443 ~~care facility.~~

444 6. Before the admission of an individual to a facility  
445 licensed to provide extended congregate care services, the  
446 individual must undergo a medical examination as provided in s.  
447 429.26(4) and the facility must develop a preliminary service  
448 plan for the individual.

449 7. If ~~when~~ a facility can no longer provide or arrange for  
450 services in accordance with the resident's service plan and  
451 needs and the facility's policy, the facility must ~~shall~~ make  
452 arrangements for relocating the person in accordance with s.  
453 429.28(1)(k).

454 ~~8. Failure to provide extended congregate care services may~~  
455 ~~result in denial of extended congregate care license renewal.~~

456 (c) A limited nursing services license shall be issued to a  
457 facility that provides services beyond those authorized in  
458 paragraph (a) and as specified in this paragraph.

459 1. In order for limited nursing services to be provided in  
460 a facility licensed under this part, the agency must first  
461 determine that all requirements established in law and rule are  
462 met and must specifically designate, on the facility's license,  
463 that such services may be provided. This ~~Such~~ designation may be  
464 made at the time of initial licensure or licensure renewal

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465 ~~relicensure~~, or upon request in writing by a licensee under this  
 466 part and part II of chapter 408. Notification of approval or  
 467 denial of such request shall be made in accordance with part II  
 468 of chapter 408. An existing facility that qualifies facilities  
 469 ~~qualifying~~ to provide limited nursing services ~~must shall~~ have  
 470 maintained a standard license and may not have been subject to  
 471 administrative sanctions that affect the health, safety, and  
 472 welfare of residents for the previous 2 years or since initial  
 473 licensure if the facility has been licensed for less than 2  
 474 years.

475 2. A facility Facilities that is are licensed to provide  
 476 limited nursing services shall maintain a written progress  
 477 report on each person who receives such nursing services. ~~The~~  
 478 ~~which~~ report must describe describes the type, amount, duration,  
 479 scope, and outcome of services that are rendered and the general  
 480 status of the resident's health. A registered nurse representing  
 481 the agency shall visit the facility such facilities at least  
 482 annually twice a year to monitor residents who are receiving  
 483 limited nursing services and to determine if the facility is in  
 484 compliance with applicable provisions of this part, part II of  
 485 chapter 408, and related rules. The monitoring visits may be  
 486 provided through contractual arrangements with appropriate  
 487 community agencies. A registered nurse shall also serve as part  
 488 of the team that inspects such facility. Visits may be in  
 489 conjunction with other agency inspections. The agency may waive  
 490 the required yearly monitoring visit for a facility that has:

- 491 a. Had a limited nursing services license for at least 24  
 492 months;  
 493 b. No class I or class II violations and no uncorrected

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494 class III violations; and

495 c. No ombudsman council complaints that resulted in a  
 496 citation for licensure.

497 3. A person who receives limited nursing services under  
 498 this part must meet the admission criteria established by the  
 499 agency for assisted living facilities. When a resident no longer  
 500 meets the admission criteria for a facility licensed under this  
 501 part, arrangements for relocating the person shall be made in  
 502 accordance with s. 429.28(1)(k), unless the facility is licensed  
 503 to provide extended congregate care services.

504 Section 5. Section 429.075, Florida Statutes, is amended to  
 505 read:

506 429.075 Limited mental health license.—An assisted living  
 507 facility that serves one three or more mental health residents  
 508 must obtain a limited mental health license.

509 (1) To obtain a limited mental health license, a facility  
 510 must hold a standard license as an assisted living facility,  
 511 must not have any current uncorrected ~~deficiencies or~~  
 512 violations, and must ensure that, within 6 months after  
 513 receiving a limited mental health license, the facility  
 514 administrator and the staff of the facility who are in direct  
 515 contact with mental health residents must complete training of  
 516 no less than 6 hours related to their duties. ~~This Such~~  
 517 designation may be made at the time of initial licensure or  
 518 licensure renewal relicensure or upon request in writing by a  
 519 licensee under this part and part II of chapter 408.  
 520 Notification of approval or denial of such request shall be made  
 521 in accordance with this part, part II of chapter 408, and  
 522 applicable rules. This training ~~must will~~ be provided by or

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523 approved by the Department of Children and Families.

524 (2) A facility that is ~~Facilities~~ licensed to provide  
525 services to mental health residents ~~must shall~~ provide  
526 appropriate supervision and staffing to provide for the health,  
527 safety, and welfare of such residents.

528 (3) A facility that has a limited mental health license  
529 must:

530 (a) Have a copy of each mental health resident's community  
531 living support plan and the cooperative agreement with the  
532 mental health care services provider. The support plan and the  
533 agreement may be combined.

534 (b) Have documentation ~~that is~~ provided by the Department  
535 of Children and Families that each mental health resident has  
536 been assessed and determined to be able to live in the community  
537 in an assisted living facility that has ~~with~~ a limited mental  
538 health license.

539 (c) Make the community living support plan available for  
540 inspection by the resident, the resident's legal guardian or  
541 ~~the resident's~~ health care surrogate, and other individuals who  
542 have a lawful basis for reviewing this document.

543 (d) Assist the mental health resident in carrying out the  
544 activities identified in the individual's community living  
545 support plan.

546 (4) A facility that has ~~with~~ a limited mental health  
547 license may enter into a cooperative agreement with a private  
548 mental health provider. For purposes of the limited mental  
549 health license, the private mental health provider may act as  
550 the case manager.

551 Section 6. Section 429.14, Florida Statutes, is amended to

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552 read:

553 429.14 Administrative penalties.—

554 (1) In addition to the requirements of part II of chapter  
555 408, the agency may deny, revoke, and suspend any license issued  
556 under this part and impose an administrative fine in the manner  
557 provided in chapter 120 against a licensee for a violation of  
558 ~~any provision of~~ this part, part II of chapter 408, or  
559 applicable rules, or for any of the following actions by a  
560 licensee, ~~for the actions of~~ any person subject to level 2  
561 background screening under s. 408.809, or ~~for the actions of~~ any  
562 facility staff employee:

563 (a) An intentional or negligent act seriously affecting the  
564 health, safety, or welfare of a resident of the facility.

565 (b) A ~~The~~ determination by the agency that the owner lacks  
566 the financial ability to provide continuing adequate care to  
567 residents.

568 (c) Misappropriation or conversion of the property of a  
569 resident of the facility.

570 (d) Failure to follow the criteria and procedures provided  
571 under part I of chapter 394 relating to the transportation,  
572 voluntary admission, and involuntary examination of a facility  
573 resident.

574 (e) A citation ~~for of~~ any of the following violations  
575 ~~deficiencies~~ as specified in s. 429.19:

- 576 1. One or more cited class I violations ~~deficiencies~~.
  - 577 2. Three or more cited class II violations ~~deficiencies~~.
  - 578 3. Five or more cited class III violations ~~deficiencies~~
- 579 that have been cited on a single survey and have not been  
580 corrected within the times specified.

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581 (f) Failure to comply with the background screening  
 582 standards of this part, s. 408.809(1), or chapter 435.

583 (g) Violation of a moratorium.

584 (h) Failure of the license applicant, the licensee during  
 585 licensure renewal ~~relicensure~~, or a licensee that holds a  
 586 provisional license to meet the minimum license requirements of  
 587 this part, or related rules, at the time of license application  
 588 or renewal.

589 (i) An intentional or negligent life-threatening act in  
 590 violation of the uniform firesafety standards for assisted  
 591 living facilities or other firesafety standards which that  
 592 threatens the health, safety, or welfare of a resident of a  
 593 facility, as communicated to the agency by the local authority  
 594 having jurisdiction or the State Fire Marshal.

595 (j) Knowingly operating any unlicensed facility or  
 596 providing without a license any service that must be licensed  
 597 under this chapter or chapter 400.

598 (k) Any act constituting a ground upon which application  
 599 for a license may be denied.

600 (2) Upon notification by the local authority having  
 601 jurisdiction or by the State Fire Marshal, the agency may deny  
 602 or revoke the license of an assisted living facility that fails  
 603 to correct cited fire code violations that affect or threaten  
 604 the health, safety, or welfare of a resident of a facility.

605 (3) The agency may deny or revoke a license of an ~~to any~~  
 606 applicant or controlling interest as defined in part II of  
 607 chapter 408 which has or had a 25 percent ~~25 percent~~ or greater  
 608 financial or ownership interest in any other facility that is  
 609 licensed under this part, or in any entity licensed by this

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610 state or another state to provide health or residential care, if  
 611 ~~that which~~ facility or entity during the 5 years before ~~prior to~~  
 612 the application for a license closed due to financial inability  
 613 to operate; had a receiver appointed or a license denied,  
 614 suspended, or revoked; was subject to a moratorium; or had an  
 615 injunctive proceeding initiated against it.

616 (4) The agency shall deny or revoke the license of an  
 617 assisted living facility if any of the following apply:

618 (a) There are two moratoria, issued pursuant to this part  
 619 or part II of chapter 408, within a 2-year period which are  
 620 imposed by final order.

621 (b) The facility is cited for two or more class I  
 622 violations arising from unrelated circumstances during the same  
 623 survey or investigation.

624 (c) The facility is cited for two or more class I  
 625 violations arising from separate surveys or investigations  
 626 within a 2-year period that has two or more class I violations  
 627 that are similar or identical to violations identified by the  
 628 agency during a survey, inspection, monitoring visit, or  
 629 complaint investigation occurring within the previous 2 years.

630 (5) An action taken by the agency to suspend, deny, or  
 631 revoke a facility's license under this part or part II of  
 632 chapter 408, in which the agency claims that the facility owner  
 633 or an employee of the facility has threatened the health,  
 634 safety, or welfare of a resident of the facility, shall be heard  
 635 by the Division of Administrative Hearings of the Department of  
 636 Management Services within 120 days after receipt of the  
 637 facility's request for a hearing, unless that time limitation is  
 638 waived by both parties. The administrative law judge shall ~~must~~

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639 render a decision within 30 days after receipt of a proposed  
640 recommended order.

641 (6) As provided under s. 408.814, the agency shall impose  
642 an immediate moratorium on an assisted living facility that  
643 fails to provide the agency access to the facility or prohibits  
644 the agency from conducting a regulatory inspection. The licensee  
645 may not restrict agency staff in accessing and copying records  
646 or in conducting confidential interviews with facility staff or  
647 any individual who receives services from the facility provide  
648 to the Division of Hotels and Restaurants of the Department of  
649 Business and Professional Regulation, on a monthly basis, a list  
650 of those assisted living facilities that have had their licenses  
651 denied, suspended, or revoked or that are involved in an  
652 appellate proceeding pursuant to s. 120.60 related to the  
653 denial, suspension, or revocation of a license.

654 (7) Agency notification of a license suspension or  
655 revocation, or denial of a license renewal, shall be posted and  
656 visible to the public at the facility.

657 (8) If a facility is required to relocate some or all of  
658 its residents due to agency action, that facility is exempt from  
659 the 45 days' notice requirement imposed under s. 429.28(1)(k).  
660 This subsection does not exempt the facility from any deadline  
661 for corrective action set by the agency.

662 Section 7. Paragraphs (a) and (b) of subsection (2) of  
663 section 429.178, Florida Statutes, are amended to read:

664 429.178 Special care for persons with Alzheimer's disease  
665 or other related disorders.—

666 (2) (a) An individual who is employed by a facility that  
667 provides special care for residents who have with Alzheimer's

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668 disease or other related disorders, and who has regular contact  
669 with such residents, must complete up to 4 hours of initial  
670 dementia-specific training developed or approved by the  
671 department. The training ~~must~~ shall be completed within 3 months  
672 after beginning employment and ~~shall~~ satisfy the core training  
673 requirements of s. 429.52(3)(g) ~~s. 429.52(2)(g)~~.

674 (b) A direct caregiver who is employed by a facility that  
675 provides special care for residents who have with Alzheimer's  
676 disease or other related disorders, and who provides direct care  
677 to such residents, must complete the required initial training  
678 and 4 additional hours of training developed or approved by the  
679 department. The training ~~must~~ shall be completed within 9 months  
680 after beginning employment and ~~shall~~ satisfy the core training  
681 requirements of s. 429.52(3)(g) ~~s. 429.52(2)(g)~~.

682 Section 8. Section 429.19, Florida Statutes, is amended to  
683 read:

684 429.19 Violations; imposition of administrative fines;  
685 grounds.—

686 (1) In addition to the requirements of part II of chapter  
687 408, the agency shall impose an administrative fine in the  
688 manner provided in chapter 120 for the violation of any  
689 provision of this part, part II of chapter 408, and applicable  
690 rules by an assisted living facility, for the actions of any  
691 person subject to level 2 background screening under s. 408.809,  
692 for the actions of any facility employee, or for an intentional  
693 or negligent act seriously affecting the health, safety, or  
694 welfare of a resident of the facility.

695 (2) Each violation of this part and adopted rules shall be  
696 classified according to the nature of the violation and the

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697 gravity of its probable effect on facility residents.

698 (a) The agency shall indicate the classification on the  
699 written notice of the violation as follows:

700 1.~~(a)~~ Class "I" violations are defined in s. 408.813. The  
701 agency shall impose an administrative fine of \$7,500 for each a  
702 cited class I violation in a facility that is licensed for fewer  
703 than 100 beds at the time of the in an amount not less than  
704 \$5,000 and not exceeding \$10,000 for each violation. The agency  
705 shall impose an administrative fine of \$11,250 for each cited  
706 class I violation in a facility that is licensed for 100 or more  
707 beds at the time of the violation. If the agency has knowledge  
708 of a class I violation that occurred within 12 months before an  
709 inspection, a fine must be levied for that violation regardless  
710 of whether the noncompliance was corrected before the  
711 inspection.

712 2.~~(b)~~ Class "II" violations are defined in s. 408.813. The  
713 agency shall impose an administrative fine of \$3,000 for each a  
714 cited class II violation in a facility that is licensed for  
715 fewer than 100 beds at the time of the in an amount not less  
716 than \$1,000 and not exceeding \$5,000 for each violation. The  
717 agency shall impose an administrative fine of \$4,500 for each  
718 cited class II violation in a facility that is licensed for 100  
719 or more beds at the time of the violation.

720 3.~~(c)~~ Class "III" violations are defined in s. 408.813. The  
721 agency shall impose an administrative fine of \$750 for each a  
722 cited class III violation in a facility that is licensed for  
723 fewer than 100 beds at the time of the in an amount not less  
724 than \$500 and not exceeding \$1,000 for each violation. The  
725 agency shall impose an administrative fine of \$1,125 for each

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726 cited class III violation in a facility that is licensed for 100  
727 or more beds at the time of the violation.

728 4.~~(d)~~ Class "IV" violations are defined in s. 408.813. The  
729 agency shall impose an administrative fine of \$150 for each a  
730 cited class IV violation in a facility that is licensed for  
731 fewer than 100 beds at the time of the in an amount not less  
732 than \$100 and not exceeding \$200 for each violation. The agency  
733 shall impose an administrative fine of \$225 for each cited class  
734 IV violation in a facility that is licensed for 100 or more beds  
735 at the time of the violation.

736 (b) Any fine imposed for a class I violation or a class II  
737 violation must be doubled if a facility was previously cited for  
738 one or more class I or class II violations during the agency's  
739 last licensure inspection or any inspection or complaint  
740 investigation since the last licensure inspection.

741 (c) Notwithstanding s. 408.813(2)(c) and (d) and s.  
742 408.832, a fine must be imposed for each class III or class IV  
743 violation, regardless of correction, if a facility was  
744 previously cited for one or more class III or class IV  
745 violations during the agency's last licensure inspection or any  
746 inspection or complaint investigation since the last licensure  
747 inspection for the same regulatory violation. A fine imposed for  
748 a class III or a class IV violation must be doubled if a  
749 facility was previously cited for one or more class III or class  
750 IV violations during the agency's last two licensure inspections  
751 for the same regulatory violation.

752 (d) Regardless of the class of violation cited, instead of  
753 the fine amounts listed in subparagraphs (a)1.-4., the agency  
754 shall impose an administrative fine of \$500 if a facility is

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755 found not to be in compliance with the background screening  
 756 requirements as provided in s. 408.809.

757 ~~(3) For purposes of this section, in determining if a~~  
 758 ~~penalty is to be imposed and in fixing the amount of the fine,~~  
 759 ~~the agency shall consider the following factors:~~

760 ~~(a) The gravity of the violation, including the probability~~  
 761 ~~that death or serious physical or emotional harm to a resident~~  
 762 ~~will result or has resulted, the severity of the action or~~  
 763 ~~potential harm, and the extent to which the provisions of the~~  
 764 ~~applicable laws or rules were violated.~~

765 ~~(b) Actions taken by the owner or administrator to correct~~  
 766 ~~violations.~~

767 ~~(c) Any previous violations.~~

768 ~~(d) The financial benefit to the facility of committing or~~  
 769 ~~continuing the violation.~~

770 ~~(e) The licensed capacity of the facility.~~

771 (3)(4) Each day of continuing violation after the date  
 772 established by the agency ~~fixed for correction~~ ~~termination~~ of  
 773 the violation, ~~as ordered by the agency,~~ constitutes an  
 774 additional, separate, and distinct violation.

775 ~~(4)(5)~~ Any action taken to correct a violation shall be  
 776 documented in writing by the owner or administrator of the  
 777 facility and verified through followup visits by agency  
 778 personnel. The agency may impose a fine and, in the case of an  
 779 owner-operated facility, revoke or deny a facility's license  
 780 when a facility administrator fraudulently misrepresents action  
 781 taken to correct a violation.

782 ~~(5)(6)~~ A Any facility whose owner fails to apply for a  
 783 change-of-ownership license in accordance with part II of

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784 chapter 408 and operates the facility under the new ownership is  
 785 subject to a fine of \$5,000.

786 ~~(6)(7)~~ In addition to any administrative fines imposed, the  
 787 agency may assess a survey fee, equal to the lesser of one half  
 788 of the facility's biennial license and bed fee or \$500, to cover  
 789 the cost of conducting initial complaint investigations that  
 790 result in the finding of a violation that was the subject of the  
 791 complaint or monitoring visits conducted under s. 429.28(3)(c)  
 792 to verify the correction of the violations.

793 ~~(7)(8)~~ During an inspection, the agency shall make a  
 794 reasonable attempt to discuss each violation with the owner or  
 795 administrator of the facility, before ~~prior to~~ written  
 796 notification.

797 ~~(8)(9)~~ The agency shall develop and disseminate an annual  
 798 list of all facilities sanctioned or fined for violations of  
 799 state standards, the number and class of violations involved,  
 800 the penalties imposed, and the current status of cases. The list  
 801 shall be disseminated, at no charge, to the Department of  
 802 Elderly Affairs, the Department of Health, the Department of  
 803 Children and Families, the Agency for Persons with Disabilities,  
 804 the area agencies on aging, the Florida Statewide Advocacy  
 805 Council, and the state and local ombudsman councils. The  
 806 Department of Children and Families shall disseminate the list  
 807 to service providers under contract to the department who are  
 808 responsible for referring persons to a facility for residency.  
 809 The agency may charge a fee commensurate with the cost of  
 810 printing and postage to other interested parties requesting a  
 811 copy of this list. This information may be provided  
 812 electronically or through the agency's website ~~Internet site~~.

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813 Section 9. Subsection (3) and paragraph (c) of subsection  
 814 (4) of section 429.256, Florida Statutes, are amended to read:  
 815 429.256 Assistance with self-administration of medication.—  
 816 (3) Assistance with self-administration of medication  
 817 includes:  
 818 (a) Taking the medication, in its previously dispensed,  
 819 properly labeled container, including an insulin syringe that is  
 820 prefilled with the proper dosage by a pharmacist and an insulin  
 821 pen that is prefilled by the manufacturer, from where it is  
 822 stored, and bringing it to the resident.  
 823 (b) In the presence of the resident, reading the label,  
 824 opening the container, removing a prescribed amount of  
 825 medication from the container, and closing the container.  
 826 (c) Placing an oral dosage in the resident's hand or  
 827 placing the dosage in another container and helping the resident  
 828 by lifting the container to his or her mouth.  
 829 (d) Applying topical medications.  
 830 (e) Returning the medication container to proper storage.  
 831 (f) Keeping a record of when a resident receives assistance  
 832 with self-administration under this section.  
 833 (g) Assisting with the use of a nebulizer, including  
 834 removing the cap of a nebulizer, opening the unit dose of  
 835 nebulizer solution, and pouring the prescribed premeasured dose  
 836 of medication into the dispensing cup of the nebulizer.  
 837 (h) Using a glucometer to perform blood-glucose level  
 838 checks.  
 839 (i) Assisting with putting on and taking off antiembolism  
 840 stockings.  
 841 (j) Assisting with applying and removing an oxygen cannula,

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842 but not with titrating the prescribed oxygen settings.  
 843 (k) Assisting with the use of a continuous positive airway  
 844 pressure (CPAP) device, but not with titrating the prescribed  
 845 setting of the device.  
 846 (l) Assisting with measuring vital signs.  
 847 (m) Assisting with colostomy bags.  
 848 (4) Assistance with self-administration does not include:  
 849 ~~(c) Administration of medications through intermittent~~  
 850 ~~positive pressure breathing machines or a nebulizer.~~  
 851 Section 10. Subsections (2), (5), and (6) of section  
 852 429.28, Florida Statutes, are amended to read:  
 853 429.28 Resident bill of rights.—  
 854 (2) The administrator of a facility shall ensure that a  
 855 written notice of the rights, obligations, and prohibitions set  
 856 forth in this part is posted in a prominent place in each  
 857 facility and read or explained to residents who cannot read. The  
 858 notice must ~~shall~~ include the name, address, and telephone  
 859 numbers of the local ombudsman council, the ~~and~~ central abuse  
 860 hotline, and, if when ~~when~~ applicable, Disability Rights Florida the  
 861 Advocacy Center for Persons with Disabilities, Inc., and the  
 862 Florida local advocacy council, where complaints may be lodged.  
 863 The notice must state that a complaint made to the Office of  
 864 State Long-Term Care Ombudsman or a local long-term care  
 865 ombudsman council, the names and identities of the residents  
 866 involved in the complaint, and the identity of complainants are  
 867 kept confidential pursuant to s. 400.0077 and that retaliatory  
 868 action cannot be taken against a resident for presenting  
 869 grievances or for exercising any other resident right. The  
 870 facility must ensure a resident's access to a telephone to call

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871 the local ombudsman council, central abuse hotline, and  
 872 Disability Rights Florida Advocacy Center for Persons with  
 873 Disabilities, Inc., and the Florida local advocacy council.

874 (5) ~~A~~ No facility or employee of a facility may not serve  
 875 notice upon a resident to leave the premises or take any other  
 876 retaliatory action against any person who:

877 (a) Exercises any right set forth in this section.

878 (b) Appears as a witness in any hearing, inside or outside  
 879 the facility.

880 (c) Files a civil action alleging a violation of the  
 881 provisions of this part or notifies a state attorney or the  
 882 Attorney General of a possible violation of such provisions.

883 (6) ~~A~~ Any facility that ~~which~~ terminates the residency of  
 884 an individual who participated in activities specified in  
 885 subsection (5) must ~~shall~~ show good cause in a court of  
 886 competent jurisdiction. If good cause is not shown, the agency  
 887 shall impose a fine of \$2,500 in addition to any other penalty  
 888 assessed against the facility.

889 Section 11. Section 429.34, Florida Statutes, is amended to  
 890 read:

891 429.34 Right of entry and inspection.—

892 (1) In addition to the requirements of s. 408.811, any duly  
 893 designated officer or employee of the department, the Department  
 894 of Children and Families, the Medicaid Fraud Control Unit of the  
 895 Office of the Attorney General, the state or local fire marshal,  
 896 or a member of the state or local long-term care ombudsman  
 897 council has ~~shall have~~ the right to enter unannounced upon and  
 898 into the premises of any facility licensed pursuant to this part  
 899 in order to determine the state of compliance with ~~the~~

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900 ~~provisions of~~ this part, part II of chapter 408, and applicable  
 901 rules. Data collected by the state or local long-term care  
 902 ombudsman councils or the state or local advocacy councils may  
 903 be used by the agency in investigations involving violations of  
 904 regulatory standards. A person specified in this section who  
 905 knows or has reasonable cause to suspect that a vulnerable adult  
 906 has been or is being abused, neglected, or exploited shall  
 907 immediately report such knowledge or suspicion to the central  
 908 abuse hotline pursuant to chapter 415.

909 (2) The agency shall inspect each licensed assisted living  
 910 facility at least once every 24 months to determine compliance  
 911 with this chapter and related rules. If an assisted living  
 912 facility is cited for one or more class I violations or two or  
 913 more class II violations arising from separate surveys within a  
 914 60-day period or due to unrelated circumstances during the same  
 915 survey, the agency must conduct an additional licensure  
 916 inspection within 6 months. In addition to any fine imposed on  
 917 the facility under s. 429.19, the licensee shall pay a fee for  
 918 the cost of the additional inspection equivalent to the standard  
 919 assisted living facility license and per-bed fees, without  
 920 exception for beds designated for recipients of optional state  
 921 supplementation. The agency shall adjust the fee in accordance  
 922 with s. 408.805.

923 Section 12. Subsection (2) of section 429.41, Florida  
 924 Statutes, is amended to read:

925 429.41 Rules establishing standards.—

926 (2) In adopting any rules pursuant to this part, the  
 927 department, in conjunction with the agency, shall make distinct  
 928 standards for facilities based upon facility size; the types of

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929 care provided; the physical and mental capabilities and needs of  
 930 residents; the type, frequency, and amount of services and care  
 931 offered; and the staffing characteristics of the facility. Rules  
 932 developed pursuant to this section ~~may shall~~ not restrict the  
 933 use of shared staffing and shared programming in facilities that  
 934 are part of retirement communities that provide multiple levels  
 935 of care and otherwise meet the requirements of law and rule. If  
 936 a continuing care facility licensed under chapter 651 or a  
 937 retirement community offering multiple levels of care obtains a  
 938 license pursuant to this chapter for a building or part of a  
 939 building designated for independent living, staffing  
 940 requirements established in rule apply only to residents who  
 941 receive personal services, limited nursing services, or extended  
 942 congregate care services under this part. Such facilities shall  
 943 retain a log listing the names and unit number for residents  
 944 receiving these services. The log must be available to surveyors  
 945 upon request. Except for uniform firesafety standards, the  
 946 department shall adopt by rule separate and distinct standards  
 947 for facilities with 16 or fewer beds and for facilities with 17  
 948 or more beds. The standards for facilities with 16 or fewer beds  
 949 must shall be appropriate for a noninstitutional residential  
 950 environment; ~~however, provided that~~ the structure may not be ~~is~~  
 951 ~~is~~ more than two stories in height and all persons who cannot  
 952 exit the facility unassisted in an emergency must reside on the  
 953 first floor. The department, in conjunction with the agency, may  
 954 make other distinctions among types of facilities as necessary  
 955 to enforce the provisions of this part. Where appropriate, the  
 956 agency shall offer alternate solutions for complying with  
 957 established standards, based on distinctions made by the

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958 department and the agency relative to the physical  
 959 characteristics of facilities and the types of care offered  
 960 ~~therein.~~

961 Section 13. Present subsections (1) through (11) of section  
 962 429.52, Florida Statutes, are redesignated as subsections (2)  
 963 through (12), respectively, a new subsection (1) is added to  
 964 that section, and present subsections (5) and (9) of that  
 965 section are amended, to read:

966 429.52 Staff training and educational programs; core  
 967 educational requirement.—

968 (1) Effective October 1, 2015, each new assisted living  
 969 facility employee who has not previously completed core training  
 970 must attend a preservice orientation provided by the facility  
 971 before interacting with residents. The preservice orientation  
 972 must be at least 2 hours in duration and cover topics that help  
 973 the employee provide responsible care and respond to the needs  
 974 of facility residents. Upon completion, the employee and the  
 975 administrator of the facility must sign a statement that the  
 976 employee completed the required preservice orientation. The  
 977 facility must keep the signed statement in the employee's  
 978 personnel record.

979 ~~(6)-(5)~~ Staff involved with the management of medications  
 980 and assisting with the self-administration of medications under  
 981 s. 429.256 must complete a minimum of 6 4 additional hours of  
 982 training provided by a registered nurse, licensed pharmacist, or  
 983 department staff. The department shall establish by rule the  
 984 minimum requirements of this additional training.

985 (10)(9) The training required by this section other than  
 986 the preservice orientation must shall be conducted by persons

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987 registered with the department as having the requisite  
 988 experience and credentials to conduct the training. A person  
 989 seeking to register as a trainer must provide the department  
 990 with proof of completion of the minimum core training education  
 991 requirements, successful passage of the competency test  
 992 established under this section, and proof of compliance with the  
 993 continuing education requirement in subsection ~~(5)~~(4).

994 Section 14. The Legislature finds that consumers need  
 995 additional information on the quality of care and service in  
 996 assisted living facilities in order to select the best facility  
 997 for themselves or their loved ones. Therefore, the Agency for  
 998 Health Care Administration shall:

999 (1) Implement a rating system for assisted living  
 1000 facilities by March 1, 2016. The agency shall adopt rules to  
 1001 administer this subsection.

1002 (2) By November 1, 2015, create content that is easily  
 1003 accessible through the front page of the agency's website. At a  
 1004 minimum, the content must include:

1005 (a) Information on each licensed assisted living facility,  
 1006 including, but not limited to:

- 1007 1. The name and address of the facility.
- 1008 2. The number and type of licensed beds in the facility.
- 1009 3. The types of licenses held by the facility.
- 1010 4. The facility's license expiration date and status.
- 1011 5. Other relevant information that the agency currently  
 1012 collects.

1013 (b) A list of the facility's violations, including, for  
 1014 each violation:

- 1015 1. A summary of the violation which is presented in a

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1016 manner understandable by the general public;

1017 2. Any sanctions imposed by final order; and

1018 3. The date the corrective action was confirmed by the  
 1019 agency.

1020 (c) Links to inspection reports that the agency has on  
 1021 file.

1022 Section 15. For the 2015-2016 fiscal year, the sums of  
 1023 \$156,943 in recurring funds and \$7,546 in nonrecurring funds are  
 1024 appropriated from the Health Care Trust Fund and two full-time  
 1025 equivalent senior attorney positions with associated salary rate  
 1026 of 103,652 are authorized in the Agency for Health Care  
 1027 Administration for the purpose of implementing the regulatory  
 1028 provisions of this act.

1029 Section 16. This act shall take effect July 1, 2015.

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Children, Families, and Elder Affairs, *Chair*  
Health Policy, *Vice Chair*  
Agriculture  
Education Pre-K-12  
Appropriations Subcommittee on Health  
and Human Services

## SENATOR ELEANOR SOBEL

33rd District

April 7, 2015

Senator Tom Lee  
Chair of Appropriations Committee  
[418 Senate Office Building](#)  
[404 South Monroe Street](#)  
[Tallahassee, Florida 32399](#)

Dear Chair Lee,

This letter is to request that **SB 382** relating to **Assisted Living Facilities** be placed on the agenda of the next scheduled meeting of the Appropriations Committee.

Thank you for your consideration of this request.

Respectfully,



Eleanor Sobel  
State Senator, 33rd District

Cc: Alicia Weiss, Cindy Kynoch

REPLY TO:

- The "Old" Library, First Floor, 2600 Hollywood Blvd., Hollywood, Florida 33020 (954) 924-3693 FAX: (954) 924-3695
- 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

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

**ANDY GARDINER**  
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)

4/16

Meeting Date

382

Bill Number (if applicable)

377856

Amendment Barcode (if applicable)

Garcia D.E.

Topic Assisted Living Facilities

Name Cynthia Henderson

Job Title

Address 100 E Jefferson Ave Suite A

Street

Tallahassee

City

FL 32301

State

Zip

Phone 850 559 0855

Email cyhenderson@me.com

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

Waive Speaking: [X] In Support [ ] Against (The Chair will read this information into the record.)

Representing Atua Senior Living

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

Lobbyist registered with Legislature: [X] Yes [ ] No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-16-15

Meeting Date

CS/SB 382

Bill Number (if applicable)

377856

Amendment Barcode (if applicable)

Topic Assisted Living Facilities

Name Susan Anderson

Job Title VP Public Policy

Address 2583 Halleck Ln. Street

Phone 850-708-4971

Tallahassee FL 32312 City State Zip

Email sanderson@flafla.org

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

Waive Speaking: [X] In Support [ ] Against (The Chair will read this information into the record.)

Representing FL ALFA

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

Lobbyist registered with Legislature: [X] Yes [ ] No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

9/16/2015

Meeting Date

Topic \_\_\_\_\_ Bill Number 382

(if applicable)

Name BRIAN PITTS Amendment Barcode \_\_\_\_\_

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/16/15

Meeting Date

382

Bill Number (if applicable)

Topic Assisted Living Facilities

Amendment Barcode (if applicable)

Name Zayne Smith

Job Title ASD

Address 200 W. College Ave.

Phone 850 577-5163

Street

Tally

City

FL

State

32301

Zip

Email zsmith@aarfp.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing AARFP

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 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4-16-15  
Meeting Date

SB-382  
Bill Number (if applicable)

Topic ASSISTED LIVING FACILITIES

Amendment Barcode (if applicable)

Name ROBBY BERNAL

Job Title DIR. BUSINESS DEVELOPMENT

Address 1812 Riggins Road  
Street

Phone 850 671-5700

Tallahassee FL 32308  
City State Zip

Email RBERNAL@LEADINGAGEFLORIDA.ORG

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing LEADING AGE FLORIDA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

---

Prepared By: The Professional Staff of the Committee on Appropriations

---

BILL: SB 434

INTRODUCER: Senator Detert

SUBJECT: Public Libraries

DATE: April 15, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	<u>Favorable</u>
2.	<u>Sneed</u>	<u>Miller</u>	<u>ATD</u>	<u>Favorable</u>
3.	<u>Sneed</u>	<u>Kynoch</u>	<u>AP</u>	<u>Favorable</u>

---

**I. Summary:**

SB 434 revises the powers and duties of the Department of State’s Division of Library and Information Services (Division). The bill adds definitions of the terms “depository library” and “state publication.” The duties and composition of the State Library Council are revised. Also, the duties of the Division’s State Publications Program are revised. Specified state entities are required to designate a state publications liaison with corresponding responsibilities.

The bill is projected to result in minimal cost savings for the Department of State. The bill will also enable state agencies to reduce their costs to print, copy, and mail public documents to the Division.

The bill provides an effective date of July 1, 2015.

**II. Present Situation:**

Florida’s State Documents Depository Program was established in 1967. This program was formed to meet the need of researchers and the general public around the state to access information by and about Florida government. By placing state documents in depository libraries throughout Florida, the Program makes state documents from all agencies readily available to Floridians in a cost-effective and timely manner.

The collection of state documents at the State Library is the most comprehensive collection of publications by Florida state agencies, dating from territorial days to the present. The documents published by state agencies and provided to the State Library are listed in the State Library's online catalog, which provides author, title, subject, and keyword access.

The State Library keeps at least two paper copies of these documents for its collections and distributes the others to geographically diverse libraries throughout the state in order to ensure Florida's citizens free and equal access to state government information. State entities issue about

22.5 percent of the publications as born-digital<sup>1</sup> documents, and the State Library of Florida makes the full text of the born-digital publications available via the online library catalog.

In 1970, the State Library Council (Council) was created. The duties of the Council are to advise and assist the Division on its programs and activities.<sup>2</sup> The Council consists of nine members who are appointed by the Secretary of State for 4-year terms.<sup>3</sup> The composition of the Council includes:<sup>4</sup>

- At least one member who represents a Florida library professional association;
- At least one member who represents a Florida archive professional association;
- At least one member who represents a Florida records management professional association; and
- At least one member who is not, and has never been, employed in a library or in teaching library science courses.

The Division provides library services to blind and physically handicapped persons in Florida.<sup>5</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 257.015, F.S., to define the terms “depository library” and “state publication” and reorder the definitions in alphabetical order.

**Section 2** amends s. 257.02, F.S., to revise the duties and composition of the State Library Council. The Council’s duties are revised to specifically include advising and assisting the Division with planning, policy, and priorities related to the development of statewide information services.

The Council’s membership must include:

- Three members who represent Florida public libraries;
- Two members who represent the Florida Academic Library Services Cooperative;
- One member who represents a multi-type library cooperative;
- One member who represents a school library media center; and
- One member who represents the Independent Colleges and Universities of Florida.

**Section 3** amends s. 257.04, F.S., to clarify the powers and duties of the Division. The Division is required to coordinate with the Division of Blind Services of the Department of Education in the provision of library services.

The Division is authorized to issue electronic information. State agencies, other governmental bodies and the depositories themselves are making the transition from print publication to e-documents. State agencies currently upload full-text publications to the State Library. E-documents allow better access to this information via the Internet.

---

<sup>1</sup> The term “born-digital” is a new term that refers to materials that originate in a digital format rather than a traditional one. E-books and digital music are examples of media that is considered to be born-digital.

<sup>2</sup> Section 257.02(1), F.S.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Section 257.04(5), F.S.

**Section 4** amends s. 257.05, F.S., to recognize in law the State Publications Program.

Each state official, department, court or agency is required to designate a state publications liaison with contact information. The state publications liaison is required to maintain a list of their respective entity's state publications and to furnish an updated list to the Division by December 31 of each year. This will foster better communication between state agencies and the Division regarding publications.

The definition of the term "public document" is deleted from s. 257.05(1), F.S. State agencies are no longer required to submit 35 copies of each state publication.

As more e-documents are published, there is less need for designating the number of print copies of a publication an entity must send to the State Library. Designating the number of print copies in rule will enable the State Library to change the number when it is needed or eventually eliminate print copies altogether.

Depository libraries are permitted to maintain state publications in a convenient and accessible format for the public.

**Section 5** amends s. 257.36, F.S., to delete the statutory requirement that the Division of Library and Information Services provide a centralized program for microfilming documents.

**Section 6** amends s. 257.105, F.S., to make conforming edits in regards to state publications.

**Section 7** amends s. 283.31, F.S., to make conforming edits in regards to records of executive agency publications.

**Section 8** amends s. 286.001, F.S., to make conforming edits in regards to statutorily required reports.

**Section 9** provides an effective date of July 1, 2015.

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

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

None.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The impact of SB 434 is minimal. The Division will save about \$1,000 in postage and staff time for Florida's State Documents Depository Program. State agencies will also see a savings in postage and shipping costs, along with savings in staff time.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 257.015, 257.02, 257.04, 257.05, 257.36, 257.105, 283.31, and 286.001.

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

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

None.

**B. Amendments:**

None.

By Senator Detert

28-00600-15

2015434\_\_

1 A bill to be entitled  
 2 An act relating to public libraries; amending s.  
 3 257.015, F.S.; defining the terms "depository library"  
 4 and "state publication"; amending s. 257.02, F.S.;  
 5 revising the composition and duties of the State  
 6 Library Council; amending s. 257.04, F.S.; revising  
 7 the powers and duties of the Division of Library and  
 8 Information Services of the Department of State;  
 9 requiring the division to coordinate with the Division  
 10 of Blind Services of the Department of Education to  
 11 provide certain services; authorizing the division to  
 12 issue electronic information; amending s. 257.05,  
 13 F.S.; providing legislative findings; revising  
 14 provisions regarding the delivery and distribution of  
 15 publications; requiring specified entities in state  
 16 government to designate a state publications liaison;  
 17 removing the definition of the term "public document";  
 18 revising the duties of the division with respect to  
 19 the management of the State Publications Program;  
 20 amending s. 257.36, F.S.; removing a provision  
 21 requiring the division to provide a centralized  
 22 microfilming program for state agencies; amending ss.  
 23 257.105, 283.31, and 286.001, F.S.; conforming  
 24 provisions to changes made by the act; providing an  
 25 effective date.  
 26  
 27 Be It Enacted by the Legislature of the State of Florida:  
 28  
 29 Section 1. Section 257.015, Florida Statutes, is amended to

Page 1 of 11

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

28-00600-15

2015434\_\_

30 read:  
 31 257.015 Definitions.—As used in this chapter, the term:  
 32 (1) "Department" means the Department of State.  
 33 (2) "Depository library" means a library that has been  
 34 designated as a depository for receiving state publications in  
 35 accordance with s. 257.05(3).  
 36 ~~(3)(2)~~ "Division" means the Division of Library and  
 37 Information Services of the Department of State.  
 38 ~~(4)(3)~~ "Secretary" means the Secretary of State.  
 39 ~~(5)(4)~~ "State Librarian" means the person appointed by the  
 40 secretary as the director of the Division of Library and  
 41 Information Services pursuant to s. 257.031.  
 42 (6) "State publication" means a publication created under  
 43 the authority of or at the total or partial expense of a state  
 44 official, state department, state board, state court, or state  
 45 agency, or that is required to be publicly distributed pursuant  
 46 to state law. The term includes a publication containing  
 47 information about the state and its government which is  
 48 culturally and historically significant to researchers and the  
 49 general public. The term does not include a publication that is  
 50 created only for internal use of a state official, state  
 51 department, state board, state court, or state agency.  
 52 Section 2. Section 257.02, Florida Statutes, is amended to  
 53 read:  
 54 257.02 State Library Council.—  
 55 (1) There shall be a State Library Council to advise and  
 56 assist the division with planning, policy, and priorities  
 57 related to the development of statewide information services of  
 58 Library and Information Services on its programs and activities.

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59 The council shall consist of nine members who shall be appointed  
 60 by the Secretary of State. Of the nine members, three members  
 61 must represent Florida public libraries, two members must  
 62 represent the Florida Academic Library Services Cooperative, one  
 63 member must represent a multitype library cooperative, one  
 64 member must represent a school library media center, one member  
 65 must represent the Independent Colleges and Universities of  
 66 Florida, and at least one member must represent a Florida  
 67 library professional association, ~~at least one must represent a~~  
 68 ~~Florida archive professional association, at least one must~~  
 69 ~~represent a Florida records management professional association,~~  
 70 ~~and at least one must be a person who is not, and has never~~  
 71 ~~been, employed in a library or in teaching library science~~  
 72 ~~courses.~~ Members shall be appointed for 4-year terms. A vacancy  
 73 on the council shall be filled for the period of the unexpired  
 74 term. ~~A~~ No person may not be appointed to serve more than two  
 75 consecutive terms as a member of the council. The secretary ~~of~~  
 76 ~~State~~ may remove from office any council member for malfeasance,  
 77 misfeasance, neglect of duty, incompetence, permanent inability  
 78 to perform official duties, or pleading guilty or nolo  
 79 contendere to, or being found guilty of, a felony.

80 (2) Members of the council shall serve without compensation  
 81 or honorarium but ~~are shall be~~ entitled to receive reimbursement  
 82 for per diem and travel expenses as provided in s. 112.061. The  
 83 council shall meet at the call of its chair, at the request of a  
 84 majority of its membership, at the request of the division, or  
 85 at such times as may be prescribed by its rules.

86 ~~(3) The Secretary of State may, in making appointments,~~  
 87 ~~consult Florida's library, archival, or records management~~

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88 ~~community and related statewide associations and organizations~~  
 89 ~~for suggestions as to persons having special knowledge and~~  
 90 ~~interest concerning libraries.~~

91 ~~(3)(4)~~ The officers of the State Library Council shall be a  
 92 chair, elected from the members thereof, and the State  
 93 Librarian, who shall serve without voting rights as secretary of  
 94 the council.

95 Section 3. Section 257.04, Florida Statutes, is amended to  
 96 read:

97 257.04 Publications, pictures, and other documents received  
 98 to constitute part of State Library; powers and duties of  
 99 Division of Library and Information Services.-

100 (1) All books, pictures, documents, publications, and  
 101 manuscripts received through gifts, purchase, or exchange, or on  
 102 deposit from any source for the use of the state, shall  
 103 constitute a part of the State Library and shall be placed  
 104 therein for the use of the public under the control of the  
 105 division ~~of Library and Information Services of the Department~~  
 106 ~~of State.~~ The division may receive gifts of money, books, or  
 107 other property which may be used or held for the ~~purpose or~~  
 108 purposes given; and it may purchase books, periodicals,  
 109 furniture, and equipment as ~~it deems~~ necessary to promote the  
 110 efficient operation of the service it is expected to render to  
 111 state officials, employees, and the public.

112 (2) The division may, upon request, give aid and  
 113 assistance, financial, advisory, or otherwise, to all school,  
 114 state institutional, academic, free, and public libraries, and  
 115 to all communities in the state which may propose to establish  
 116 libraries, as to the best means of establishing and

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117 administering libraries, selecting and cataloging books, and  
118 other facets of library management.

119 (3) The division shall maintain a library for state  
120 officials and employees, especially of informational material  
121 pertaining to ~~the phases of their work, and provide for them~~  
122 ~~material for general reading and study.~~

123 (4) The division shall maintain and provide research and  
124 information services for ~~all~~ state agencies.

125 (5) The division shall make all necessary arrangements to  
126 coordinate with the Division of Blind Services of the Department  
127 of Education to provide library services to the blind and  
128 physically handicapped persons of the state.

129 (6) The division may issue printed material and electronic  
130 information, such as lists and circulars of information, and in  
131 the publication thereof may cooperate with state library  
132 commissions and libraries of other states in order to secure the  
133 more economical administration of the work for which it is  
134 formed. The division ~~It~~ may conduct courses of library  
135 instruction and hold librarians' institutes in various parts of  
136 the state.

137 (7) The division shall perform such other services and  
138 engage in any other activity, not contrary to law, ~~that it may~~  
139 ~~think~~ appropriate in the development of library service to state  
140 government, to the libraries and library profession of the  
141 state, and to the citizens of the state.

142 Section 4. Section 257.05, Florida Statutes, is amended to  
143 read:

144 257.05 State Publications Program ~~Public documents;~~  
145 ~~delivery to, and distribution by, division.-~~

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146 (1) The Legislature finds that the State Publications  
147 Program increases accessibility to culturally and historically  
148 significant information about the state and its government for  
149 researchers and the general public through the distribution of  
150 state publications to depository libraries throughout the state.

151 (2) Each state official, state department, state board,  
152 state court, or state agency:

153 (a) Shall furnish its state publications to the division  
154 for distribution to depository libraries throughout the state  
155 upon the publication's release in accordance with division rule.

156 (b) Shall designate a state publications liaison. Upon  
157 designation of a liaison, a state official, state department,  
158 state board, state court, or state agency shall provide the  
159 division with the liaison's name and contact information. Each  
160 state publications liaison shall maintain a list of his or her  
161 respective entity's state publications and furnish the list to  
162 the division as updated or by December 31 of each year ~~The term~~  
163 ~~"public document" as used in this section means any document,~~  
164 ~~report, directory, bibliography, rule, newsletter, pamphlet,~~  
165 ~~brochure, periodical, or other publication, whether in print or~~  
166 ~~nonprint format, that is paid for in whole or in part by funds~~  
167 ~~appropriated by the Legislature and may be subject to~~  
168 ~~distribution to the public; however, the term excludes~~  
169 ~~publications for internal use by an executive agency as defined~~  
170 ~~in s. 283.30.~~

171 ~~(2)(a) Each state official, state department, state board,~~  
172 ~~state court, or state agency issuing public documents shall~~  
173 ~~furnish the Division of Library and Information Services of the~~  
174 ~~Department of State 35 copies of each of those public documents,~~

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175 ~~as issued, for deposit in and distribution by the division.~~  
 176 ~~However, if the division so requests, as many as 15 additional~~  
 177 ~~copies of each public document shall be supplied to it.~~

178 ~~(b) If any state official, state department, state board,~~  
 179 ~~state court, or state agency has fewer than 40 copies of any~~  
 180 ~~public document, it shall supply the division with 2 copies of~~  
 181 ~~each such public document for deposit in the State Library.~~

182 ~~(c) By December 31 of each year, any state official, state~~  
 183 ~~department, state board, state court, or state agency issuing~~  
 184 ~~public documents shall furnish to the division a list of all~~  
 185 ~~public documents, including each publication that is on the~~  
 186 ~~agency's website, issued by the official, department, board,~~  
 187 ~~court, or agency during that calendar year.~~

188 ~~(c)(d) Shall, if having charge of their distribution,~~  
 189 ~~furnish the division with As issued, daily journals and bound~~  
 190 ~~journals of each house of the Legislature, as issued; slip laws~~  
 191 ~~and bound session laws, both general and special; and Florida~~  
 192 ~~Statutes and supplements thereto shall be furnished to the~~  
 193 ~~division by the state official, department, or agency having~~  
 194 ~~charge of their distribution. The number of copies furnished~~  
 195 ~~shall be determined by requests of the division, which number in~~  
 196 ~~no case may exceed 35 copies of the particular publication.~~

197 (3) It is the duty of the division to:

198 (a) Manage the State Publications Program.

199 (b) Designate university, college, and public libraries as  
 200 depository libraries for state publications ~~depositories for~~  
 201 ~~public documents and to designate certain of these depositories~~  
 202 ~~as regional centers for full collections of public documents. A~~  
 203 depository library must maintain state publications in a form

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204 that is convenient and accessible to the public. The division  
 205 shall be the official repository for state publications.

206 ~~(c)(b) Create a distribution~~ Provide a system to provide of  
 207 ~~distribution of the copies of state publications to depository~~  
 208 ~~libraries furnished to it under subsection (2) to such~~  
 209 ~~depositories.~~

210 ~~(d)(c) Create~~ Publish a periodic bibliography for the State  
 211 Publications Program of the publications of the state.

212  
 213 The division may exchange copies of state publications ~~public~~  
 214 ~~documents~~ for those of other states, territories, and countries.  
 215 ~~Depositories receiving public documents under this section shall~~  
 216 ~~keep them in a convenient form accessible to the public.~~

217 Section 5. Paragraph (h) of subsection (1) of section  
 218 257.36, Florida Statutes, is amended, and present paragraphs (i)  
 219 through (l) of subsection (1) are redesignated as paragraphs (h)  
 220 through (k), respectively, to read:

221 257.36 Records and information management.—

222 (1) There is created within the Division of Library and  
 223 Information Services of the Department of State a records and  
 224 information management program. It is the duty and  
 225 responsibility of the division to:

226 ~~(h) Provide a centralized program of microfilming for the~~  
 227 ~~benefit of all agencies.~~

228 Section 6. Section 257.105, Florida Statutes, is amended to  
 229 read:

230 257.105 State publications ~~Public documents;~~ copies to  
 231 Library of Congress.—Any state official or state agency, board,  
 232 commission, or institution having charge of state publications

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233 hereinafter named is authorized and directed to furnish the  
 234 Library of Congress in Washington, D.C., upon requisition from  
 235 the Library of Congress, up to three copies of the journals of  
 236 both houses of the Legislature; volumes of the Supreme Court  
 237 Reports; volumes of periodic reports of Cabinet officers; and  
 238 copies of reports, studies, maps, or other publications by  
 239 official boards or institutions of the state, from time to time,  
 240 as such are published and are available for public distribution.

241 Section 7. Section 283.31, Florida Statutes, is amended to  
 242 read:

243 283.31 Records of executive agency publications.—Each  
 244 agency shall maintain a record of any state publication, as  
 245 defined in s. 257.05, the printing of which costs in excess of  
 246 the threshold amount provided in s. 287.017 for CATEGORY THREE,  
 247 at least part of which is paid for by state funds appropriated  
 248 by the Legislature. Such record shall also contain the  
 249 following: written justification of the need for such  
 250 publication, purpose of such publication, legislative or  
 251 administrative authority, sources of funding, frequency and  
 252 number of issues, and reasons for deciding to have the  
 253 publication printed in-house, by another agency or the  
 254 Legislature, or purchased on bid. In addition, such record shall  
 255 contain the comparative costs of alternative printing methods  
 256 when such costs were a factor in deciding upon a method. The  
 257 record of the corporation operating the correctional industry  
 258 printing program shall include the cost of materials used, the  
 259 cost of labor, the cost of overhead, the amount of profit made  
 260 by the corporation for such printing, and whether the state  
 261 agencies that contract with the corporation for printing are

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262 prudently determining the price paid for such printing.

263 Section 8. Subsections (2) and (4) of section 286.001,  
 264 Florida Statutes, are amended to read:

265 286.001 Reports statutorily required; filing, maintenance,  
 266 retrieval, and provision of copies.—

267 (2) With respect to reports statutorily required of  
 268 agencies or officers within the executive, legislative, or  
 269 judicial branches of state government, the State Board of  
 270 Education, the Board of Governors of the State University  
 271 System, or the Public Service Commission, it is the duty of the  
 272 division, in addition to its duties under s. 257.05, to:

273 (a) Regularly compile and update bibliographic information  
 274 on such reports for distribution as provided in paragraph (b).  
 275 Such bibliographic information may be included in the  
 276 bibliographies prepared by the division pursuant to s. 257.05(3)  
 277 ~~s. 257.05(3)(e)~~.

278 (b) Provide for at least quarterly distribution of  
 279 bibliographic information on reports to:

- 280 1. Agencies and officers within the executive, legislative,  
 281 and judicial branches of state government, the State Board of  
 282 Education, the Board of Governors of the State University  
 283 System, and the Public Service Commission, free of charge; and
- 284 2. Other interested parties upon request properly made and  
 285 upon payment of the actual cost of duplication pursuant to s.  
 286 119.07(1).

287 (4) ~~Nothing in~~ This section may not shall be construed to  
 288 waive or modify the requirement in s. 257.05(2) pertaining to  
 289 the provision of copies of state publications ~~public documents~~  
 290 to the division.

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291

Section 9. This act shall take effect July 1, 2015.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/16/15  
Meeting Date

SB 434  
Bill Number (if applicable)

Topic Public Libraries

Amendment Barcode (if applicable)

Name Christie Burrus

Job Title Legislative Affairs Director

Address 500 S Bronough St.  
Street

Phone 245-6512

Tallahassee FL 32399  
City State Zip

Email Christie.burrus@flsmyflorida.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FL Dept. of State

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

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Prepared By: The Professional Staff of the Committee on Appropriations

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**BILL:** CS/CS/CS/SB 496

**INTRODUCER:** Appropriations Committee; Judiciary Committee; Children, Families, and Elder Affairs Committee; and Senator Detert

**SUBJECT:** Guardians

**DATE:** April 20, 2015

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	Fav/CS
2.	C. Brown	Cibula	JU	Fav/CS
3.	A. Brown	Kynoch	AP	Fav/CS

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/SB 496 addresses a gap that can exist between the time that children with developmental disabilities or who lack capacity age out of the foster care system at 18 years old and are appointed a guardian. This bill provides for guardianship proceedings to begin in advance of a child's 18th birthday when the child is pre-determined by the Department of Children and Families to need a guardian when the child becomes an adult.

The bill creates no significant fiscal impact.

The bill provides an effective date of July 1, 2015.

**II. Present Situation:**

Dependency courts operate primarily under ch. 39, F.S., and handle cases dealing with the abandonment, abuse, and neglect of children. Chapters 731 through 735, 744, and 747, F.S., govern wills, trusts, estates, guardianships, conservatorships, and other property and succession matters.

## **Types of Guardians**

A guardian is defined as a person appointed by the court to act on behalf of a ward's person, property, or both.<sup>1</sup> The law recognizes various types of guardians.

### ***Natural Guardians***

Parents are considered natural guardians of their biological and adopted children, up until the time that their children cease to be minors.<sup>2,3</sup>

### ***Limited Guardians***

Limited guardians are guardians who have been appointed by the court to exercise legal rights and powers specifically designated in a court order. These guardians have limited authority in that the ward is able to either provide some self-care or the ward has voluntarily petitioned the court for a guardian.<sup>4</sup>

### ***Plenary Guardians***

A plenary guardian is appointed by the court to exercise all delegable legal rights and powers of the ward after the court has found that the ward lacks the capacity to provide any self-care.<sup>5</sup>

### ***Guardian Advocates***

Guardian advocates are appointed by the court for persons with developmental disabilities.<sup>6</sup>

## **Oversight for Children in Foster Care**

### ***Updated Case Plans***

The dependency court is required to hold periodic hearings to review the cases of children in care. In addition to hearings held earlier, the court must hold a judicial review hearing within 90 days after the 17th birthday of a child in care.<sup>7</sup> At this hearing, the Department of Children and Families (DCF) must provide the court with an updated case plan. The updated case plan must address the independent living skills that the child has acquired since the age of 13 or the date the child came into foster care, whichever is later.<sup>8</sup> At the last review hearing before the child turns 18 years of age, the court must consider whether the child plans to remain in foster care. At this hearing, the court must ensure that the child has been informed of the right to continued support and services from the DCF.<sup>9</sup>

---

<sup>1</sup> Section 744.102(9), F.S.

<sup>2</sup> Section 744.301(1), F.S.

<sup>3</sup> Section 1.01(13), F.S., defines a minor as any person who has not reached the age of 18 years.

<sup>4</sup> Section 744.102(9)(a), F.S.

<sup>5</sup> Section 744.102(9)(b), F.S.

<sup>6</sup> Section 744.102(11), F.S.

<sup>7</sup> Section 39.701(3)(a), F.S.

<sup>8</sup> Section 39.701(3)(b), F.S.

<sup>9</sup> Section 39.701(3)(d), F.S.

### ***Court Review of Young Adults Who Remain in Care***

The term “young adult” is defined as a person who has reached 18 years of age but not 21 years of age.<sup>10</sup> Young adults may stay in foster care until the age of 21 years old. In 2013, the Florida Legislature enacted a law to enable the dependency court to retain jurisdiction over young adults with disabilities and allow them to remain in foster care until the age of 22.<sup>11</sup> An average of 60 young adults with developmental disabilities reach 18 years of age annually while in licensed foster care.<sup>12</sup> Some of these young adults reside in supportive housing provided by the Agency for Persons with Disabilities (APD). Unless a court adjudicates the young adult incapacitated and appoints a guardian, the young adult is able to leave APD-licensed housing.<sup>13</sup>

### **Guardianship**

A wide range of options are available to provide decision-making assistance to those with developmental disabilities or who lack capacity which are not as restrictive as guardianships.<sup>14</sup>

Guardianships that place decision-making authority for a ward’s property and person with a guardian require an examining committee to determine that the alleged incapacitated adult lacks capacity. Only then may a judge enter a finding of an adjudication of incapacity.<sup>15</sup> This form of guardianship is considered the most restrictive and should be a last resort, as it removes fundamental and civil rights of an individual.

Before a guardian can be appointed for an adult, Florida law requires appointed counsel, the presence of the adult at the hearing, and an adjudication of incapacity based on the recommendation of an examining committee.<sup>16</sup> For guardianship of a minor, none of the following are required: counsel, the minor’s presence at the hearing, or an adjudication of incapacity.<sup>17</sup> These due-process protections for minors are waived under current law because the minor is not an adult and the guardianship of a minor terminates by law when the minor reaches 18 years of age.

The probate court does not assume jurisdiction in guardianship determinations until a child turns 18. Probate court proceedings often take six months or longer before a final order is entered.<sup>18</sup> This results in a gap between the time the child turns 18 and when a guardian is appointed. During this gap, a person in need of a guardian is considered an adult but is unable to adequately make decisions on his or her own.

---

<sup>10</sup> Section 39.6251(1), F.S.

<sup>11</sup> The Independent Living Act took effect January 2014 (ch. 2013-178, Laws of Fla.)

<sup>12</sup> Department of Children and Families, *2015 Agency Legislative Bill Analysis of SB 496* (on file with the Senate Committee on Judiciary).

<sup>13</sup> *Id.*

<sup>14</sup> The Florida Developmental Disabilities Council, *Lighting the Way to Guardianships and Other Decision-Making Alternatives: A Manual for Individuals and Families. 2010: Florida Developmental Disabilities Council, Inc.* (2010), pg. 19-20.

<sup>15</sup> Section 744.331(5) and (6), F.S.

<sup>16</sup> Section 744.331, F.S.

<sup>17</sup> Sections 744.3021 and 744.342, F.S.

<sup>18</sup> *Id.*

Two separate issues create this gap. The first is the lack of a procedure within the dependency system to identify adults willing to serve as guardians or guardian advocates for these minors as they reach the age of 18 years of age. The second issue is jurisdictional in that probate courts only exercise jurisdiction and begin guardianship proceedings after the child reaches 18 years of age.

### **III. Effect of Proposed Changes:**

The bill provides that the act may be cited as “The Regis Little Act to Protect Children with Special Needs.”

The bill addresses the gap that exists between the times that children with developmental disabilities or who lack capacity age out of the foster care system at 18 years old and are appointed a guardian. The bill addresses the gap in several ways by:

- Creating a process for the Department of Children and Families (DCF) to identify, through updated case plans and multidisciplinary reports, the need for guardians and guardian advocates for children with developmental disabilities, or those who lack capacity, in advance of the child’s 18th birthday;
- Authorizing the court to initiate proceedings for the minor;
- Providing the same due-process rights guaranteed to adults; and
- Allowing the child’s parents to be considered natural guardians unless the parents’ rights have been terminated or the dependency or probate court determines it is not in the child’s best interest to remain under the parents’ guardianship.

#### **Court Review of Young Adults who Remain in Care**

The bill provides that if a guardian or guardian advocate has been appointed to the young adult, the court must review at the permanency review hearing the necessity of continuing the guardianship and whether the court needs to hold guardianship proceedings when the young adult reaches 22 years of age.

For young adults who have guardians, authorizing the court to review guardianship at a hearing that is separate from a chapter 39, F.S., review hearing, provides additional oversight of the young adult.

#### **Updated Case Plans**

The bill requires the DCF, for children who are being considered for guardians as adults, to develop updated case plans in a face-to-face conference with the child, the child’s attorney, guardian ad litem, temporary custodian, and the parent if the parent’s rights have not been terminated.

If the dependency court determines at the first judicial review hearing after the child’s 17th birthday that the child qualifies for an appointment of a guardian or guardian advocate and there is no less-restrictive decision making assistance to meet the needs of the child, the DCF must:

- Complete a multidisciplinary report, including a psychosocial evaluation if one has not been completed within the previous two years;

- Identify one or more individuals willing to serve as the guardian advocate, plenary guardian, or limited guardian, and the child's parents may not be considered unless the court issues a written order finding such an appointment is in the child's best interest; and
- Initiate proceedings within 180 days after the child's 17th birthday for the appointment of a guardian advocate, plenary guardian, or limited guardian for the child in the court of proper jurisdiction.

If another interested party initiates proceedings for the appointment of a guardian advocate, plenary guardian, or limited guardian, the bill requires the DCF to provide all necessary documentation and information to the petitioner within 45 days after the first judicial review hearing after the child's 17th birthday. The bill also specifies that any proceeding seeking appointment of a guardian advocate, plenary guardian, or limited guardian be conducted in a court hearing separate from dependency court.

### **Jurisdiction of Probate Court**

This bill authorizes the probate court to assume jurisdiction of a minor in need of a guardianship determination and to initiate guardianship proceedings once the minor reaches the age of 17 years and 6 months, or anytime thereafter. This provision will ensure that a child in need of a guardian who is approaching the age of 18 will be eligible for guardianship when the child turns 18 years old.

### **Natural Guardians**

This bill clarifies that parents can be a guardian or a natural guardian of a minor child who is the subject of a ch. 39, F.S., proceeding, unless the court has terminated parental rights or finds that having the parents be the guardian or natural guardian is not in the child's best interest.

### **Parity in Due Process Rights for Minors in Adult Guardianship Proceedings**

The bill provides that the same due-process rights given to adults in guardianship proceedings apply to minors aged 17 years and 6 months or older who are the subject of proceedings under ch. 39, F.S. The court may issue an order of adjudication of incapacity and letters of limited or plenary guardianship upon the minor's 18th birthday or as soon thereafter as possible.

The bill provides an effective date of July 1, 2015.

## **IV. Constitutional Issues:**

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

None.

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

None.

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Agency for Persons with Disabilities reports that CS/CS/CS/SB 496 has no fiscal impact. The Department of Children and Families (DCF) does not anticipate handling the guardianship proceedings under the bill and therefore estimates no fiscal impact. If an attorney is not available to handle a proceeding, there could be a cost to the DCF, but those costs are indeterminate.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 39.6251, 39.701, 393.12, 744.301, and 744.3021.

IX. **Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

**CS/CS/CS by Appropriations on April 16, 2015:**

The committee substitute provides that the act may be cited as “The Regis Little Act to Protect Children with Special Needs.”

**CS/CS by Judiciary Committee on March 10, 2015:**

The CS:

- Requires a guardianship determination to be made in a separate proceeding for guardianship and not during a judicial review of a young adult in continuing care in a dependency court under ch. 39, F.S. This change enables parties other than the

Department of Children and Families (DCF), such as a guardian ad litem or an attorney for the young adult, to initiate a petition; and

- Removes references to court rules.

**CS by Children, Families, and Elder Affairs Committee on February 19, 2015:**

The CS:

- Amends s. 39.6251, F.S., to provide that for a youth in continuing care who has been appointed a guardian or guardian advocate, the court, at the annual permanency review hearing, determine whether it is necessary to continue the guardianship and whether restoration of guardianship proceedings are needed when the child reaches age 22 years of age; and
- Amends s. 39.701, F.S., to provide that for a child who may meet the requirements for an appointment of a guardian or guardian advocate, the DCF is to develop an updated case plan in a face-to-face conference with a child, if appropriate, and include certain individuals at the conference. At the judicial review, if the court determines, pursuant to ch. 744, F.S., and the Florida Probate Rules, that there is a good faith basis to believe the child qualifies for the appointment of a guardian or guardian advocate, the DCF must complete certain reports and identify one or more individuals who are willing to serve as the guardian advocate or as the plenary guardian or limited guardian.

**B. Amendments:**

None.



694176

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
	.	
	.	
	.	

---

The Committee on Appropriations (Simmons) recommended the following:

**Senate Amendment (with title amendment)**

Before line 52

insert:

Section 1. This act may be cited as "The Regis Little Act to Protect Children with Special Needs."

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

And the title is amended as follows:

Delete line 2



694176

11 and insert:

12       An act relating to guardians; providing a short title;  
13       amending s. 39.6251,



514250

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/16/2015	.	
	.	
	.	
	.	

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The Committee on Appropriations (Simmons) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 137 and 138

insert:

Section 3. Paragraph (b) of subsection (5) of section 393.065, Florida Statutes, is amended to read:

393.065 Application and eligibility determination.—

(5) Except as otherwise directed by law, beginning July 1, 2010, the agency shall assign and provide priority to clients waiting for waiver services in the following order:



514250

11           (b) 1. Category 2, which includes individuals ~~children~~ on  
12 the wait list ~~who are from the child welfare system~~ with an open  
13 case in the Department of Children and Families' statewide  
14 automated child welfare information system ~~who are~~:-

15           a. Transitioning out of the child welfare system at the  
16 finalization of an adoption, a reunification with family  
17 members, a permanent placement with a relative, or a  
18 guardianship with a nonrelative;

19           b. Between 18 and 22 years of age who need both waiver  
20 services and extended foster care services; or

21           c. Between 18 and 22 years of age who withdraw consent  
22 pursuant to s. 39.6251(5)(c) to remain in the extended foster  
23 care system.

24           2. For individuals dually served by the waiver services and  
25 the child welfare system, the agency shall provide waiver  
26 services that include residential habilitation. The department  
27 shall provide foster parent room and board as provided in s.  
28 409.145(4), case management, and other related services as  
29 defined in s. 409.986. Individuals may receive waiver services  
30 and services under s. 39.6251. Services provided by the agency  
31 or the department must not duplicate services that are available  
32 through the Medicaid state plan.

33  
34 Within categories 3, 4, 5, 6, and 7, the agency shall maintain a  
35 wait list of clients placed in the order of the date that the  
36 client is determined eligible for waiver services.

37  
38 ===== T I T L E   A M E N D M E N T =====

39 And the title is amended as follows:



514250

40           Delete line 20  
41 and insert:  
42           department to show cause; amending s. 393.065, F.S.;  
43           revising the eligibility determinations for waiver  
44           services for category 2; requiring the Agency for  
45           Persons with Disabilities and the Department of  
46           Children and Families to provide certain services  
47           under specified conditions; prohibiting certain  
48           services from duplicating services available through  
49           Medicaid; amending s. 393.12, F.S.;

By the Committees on Judiciary; and Children, Families, and Elder Affairs; and Senator Detert

590-02146-15

2015496c2

1 A bill to be entitled  
 2 An act relating to guardians; amending s. 39.6251,  
 3 F.S.; requiring the court at the permanency review  
 4 hearing to review the necessity of the guardianship  
 5 and whether restoration of guardianship proceedings  
 6 are needed when the young adult reaches a certain age  
 7 under certain circumstances; amending s. 39.701, F.S.;  
 8 requiring that, for a child meeting certain  
 9 requirements, the updated case plan be developed in a  
 10 face-to-face conference with specified persons  
 11 present; requiring the Department of Children and  
 12 Families to take specified actions at the judicial  
 13 review hearing if the court makes certain  
 14 determinations; requiring the department to provide  
 15 documentation and information to a petitioner under  
 16 certain circumstances; requiring certain proceedings  
 17 to be conducted separately; expanding the  
 18 circumstances under which a court, after making  
 19 certain findings, may issue an order directing the  
 20 department to show cause; amending s. 393.12, F.S.;  
 21 providing that the guardianship court has jurisdiction  
 22 over proceedings for appointment of a guardian  
 23 advocate if petitions are filed for certain minors who  
 24 are subject to ch. 39, F.S., proceedings if such  
 25 minors have attained a specified age; providing that  
 26 such minor has the same due process rights as certain  
 27 adults; providing requirements for when an order  
 28 appointing a guardian advocate must be issued;  
 29 providing that proceedings seeking appointment of a

Page 1 of 7

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

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30 guardian advocate for certain minors be conducted in  
 31 separate proceedings; amending s. 744.301, F.S.;  
 32 providing that if a child is subject to proceedings  
 33 under ch. 39, F.S., the parents may act as natural  
 34 guardians unless the dependency or probate court finds  
 35 that it is not in the child's best interests or their  
 36 parental rights have been terminated; amending s.  
 37 744.3021, F.S.; requiring the guardianship court to  
 38 initiate proceedings for appointment of guardians for  
 39 certain minors who are subject to ch. 39, F.S.,  
 40 proceedings if petitions are filed and if such minors  
 41 have reached a specified age; providing that such  
 42 minor has the same due process rights as certain  
 43 adults; providing requirements for when an order of  
 44 adjudication and letters of limited or plenary  
 45 guardianship must be issued; providing that  
 46 proceedings seeking appointment of a guardian advocate  
 47 for certain minors be conducted in separate  
 48 proceedings; providing an effective date.

49  
 50 Be It Enacted by the Legislature of the State of Florida:

51  
 52 Section 1. Subsection (8) of section 39.6251, Florida  
 53 Statutes, is amended to read:  
 54 39.6251 Continuing care for young adults.—  
 55 (8) During the time that a young adult is in care, the  
 56 court shall maintain jurisdiction to ensure that the department  
 57 and the lead agencies are providing services and coordinate  
 58 with, and maintain oversight of, other agencies involved in

Page 2 of 7

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

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59 implementing the young adult's case plan, individual education  
 60 plan, and transition plan. The court shall review the status of  
 61 the young adult at least every 6 months and hold a permanency  
 62 review hearing at least annually. If the young adult has been  
 63 appointed a guardian under chapter 744 or a guardian advocate  
 64 under s. 393.12, the court shall review at the permanency review  
 65 hearing the necessity of continuing the guardianship and whether  
 66 restoration of guardianship proceedings are needed when the  
 67 young adult reaches 22 years of age. The court may appoint a  
 68 guardian ad litem or continue the appointment of a guardian ad  
 69 litem with the young adult's consent. The young adult or any  
 70 other party to the dependency case may request an additional  
 71 hearing or review.

72 Section 2. Paragraphs (b) and (c) of subsection (3) of  
 73 section 39.701, Florida Statutes, are amended to read:

74 39.701 Judicial review.—

75 (3) REVIEW HEARINGS FOR CHILDREN 17 YEARS OF AGE.—

76 (b) At the first judicial review hearing held subsequent to  
 77 the child's 17th birthday, the department shall provide the  
 78 court with an updated case plan that includes specific  
 79 information related to the independent living skills that the  
 80 child has acquired since the child's 13th birthday, or since the  
 81 date the child came into foster care, whichever came later.

82 1. For any child that may meet the requirements for  
 83 appointment of a guardian pursuant to chapter 744 or a guardian  
 84 advocate pursuant to s. 393.12, the updated case plan must be  
 85 developed in a face-to-face conference with the child, if  
 86 appropriate; the child's attorney; any court-appointed guardian  
 87 ad litem; the temporary custodian of the child; and the parent,

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88 if the parent's rights have not been terminated.

89 2. At the judicial review hearing, if the court determines  
 90 pursuant to the requirements of chapter 744 that there is a good  
 91 faith basis to believe that the child qualifies for appointment  
 92 of a guardian advocate, limited guardian, or plenary guardian  
 93 and that no less restrictive decisionmaking assistance will meet  
 94 the child's needs:

95 a. The department shall complete a multidisciplinary report  
 96 which must include, but is not limited to, a psychosocial  
 97 evaluation and educational report if such a report has not been  
 98 completed within the previous 2 years.

99 b. The department shall identify one or more individuals  
 100 who are willing to serve as the guardian advocate pursuant to s.  
 101 393.12 or as the plenary or limited guardian pursuant to chapter  
 102 744. Any other interested parties or participants may make  
 103 efforts to identify such a guardian advocate, limited guardian,  
 104 or plenary guardian. A child's biological or adoptive family  
 105 member, including the child's parent if the parent's rights have  
 106 not been terminated, may not be considered for service as the  
 107 plenary or limited guardian unless the court enters a written  
 108 order finding that such an appointment is in the child's best  
 109 interests.

110 c. Proceedings may be initiated within 6 months after the  
 111 child's 17th birthday for the appointment of a guardian  
 112 advocate, plenary guardian, or limited guardian for the child in  
 113 a separate proceeding in the division of the court with proper  
 114 jurisdiction over guardianship matters and pursuant to chapter  
 115 744. The Legislature encourages the use of pro bono  
 116 representation to initiate proceedings under this section.

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117 3. In the event another interested party or participant  
 118 initiates proceedings for the appointment of a guardian  
 119 advocate, plenary guardian, or limited guardian for the child,  
 120 the department shall provide all necessary documentation and  
 121 information to the petitioner to complete a petition under  
 122 chapter 393 or chapter 744 within 45 days after the first  
 123 judicial review hearing after the child's 17th birthday.

124 4. Any proceedings seeking appointment of a guardian  
 125 advocate or a determination of incapacity and the appointment of  
 126 a guardian must be conducted in a separate proceeding in the  
 127 division of the court with jurisdiction over guardianship  
 128 matters and pursuant to chapter 744.

129 (c) If the court finds at the judicial review hearing that  
 130 the department has not met its obligations to the child as  
 131 stated in this part, in the written case plan, or in the  
 132 provision of independent living services, the court may issue an  
 133 order directing the department to show cause as to why it has  
 134 not done so. If the department cannot justify its noncompliance,  
 135 the court may give the department 30 days within which to  
 136 comply. If the department fails to comply within 30 days, the  
 137 court may hold the department in contempt.

138 Section 3. Paragraph (c) is added to subsection (2) of  
 139 section 393.12, Florida Statutes, to read:

140 393.12 Capacity; appointment of guardian advocate.—

141 (2) APPOINTMENT OF A GUARDIAN ADVOCATE.—

142 (c) If a petition is filed pursuant to this section  
 143 requesting appointment of a guardian advocate for a minor who is  
 144 the subject of any proceeding under chapter 39, the division of  
 145 the court with jurisdiction over guardianship matters has

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146 jurisdiction over the proceedings pursuant to this section when  
 147 the minor reaches the age of 17 years and 6 months or anytime  
 148 thereafter. The minor shall be provided all the due process  
 149 rights conferred upon an alleged developmentally disabled adult  
 150 pursuant to this chapter. The order of appointment of a guardian  
 151 advocate under this section shall issue upon the minor's 18th  
 152 birthday or as soon thereafter as possible. Any proceeding  
 153 pursuant to this paragraph shall be conducted separately from  
 154 any other proceeding.

155 Section 4. Subsection (1) of section 744.301, Florida  
 156 Statutes, is amended to read:

157 744.301 Natural guardians.—

158 (1) The parents jointly are the natural guardians of their  
 159 own children and of their adopted children, during minority,  
 160 unless the parents' parental rights have been terminated  
 161 pursuant to chapter 39. If a child is the subject of any  
 162 proceeding under chapter 39, the parents may act as natural  
 163 guardians under this section unless the dependency or probate  
 164 court finds that it is not in the child's best interests. If one  
 165 parent dies, the surviving parent remains the sole natural  
 166 guardian even if he or she remarries. If the marriage between  
 167 the parents is dissolved, the natural guardianship belongs to  
 168 the parent to whom sole parental responsibility has been  
 169 granted, or if the parents have been granted shared parental  
 170 responsibility, both continue as natural guardians. If the  
 171 marriage is dissolved and neither parent is given parental  
 172 responsibility for the child, neither may act as natural  
 173 guardian of the child. The mother of a child born out of wedlock  
 174 is the natural guardian of the child and is entitled to primary

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175 residential care and custody of the child unless the court  
176 enters an order stating otherwise.

177 Section 5. Subsection (1) of section 744.3021, Florida  
178 Statutes, is amended, and subsection (4) is added to that  
179 section, to read:

180 744.3021 Guardians of minors.—

181 (1) Except as provided in subsection (4), upon petition of  
182 a parent, brother, sister, next of kin, or other person  
183 interested in the welfare of a minor, a guardian for a minor may  
184 be appointed by the court without the necessity of adjudication  
185 pursuant to s. 744.331. A guardian appointed for a minor,  
186 whether of the person or property, has the authority of a  
187 plenary guardian.

188 (4) If a petition is filed pursuant to this section  
189 requesting appointment of a guardian for a minor who is the  
190 subject of any proceeding under chapter 39 and who is aged 17  
191 years and 6 months or older, the division of the court with  
192 jurisdiction over guardianship matters has jurisdiction over the  
193 proceedings under s. 744.331. The alleged incapacitated minor  
194 under this subsection shall be provided all the due process  
195 rights conferred upon an alleged incapacitated adult pursuant to  
196 this chapter and applicable court rules. The order of  
197 adjudication under s. 744.331 and the letters of limited or  
198 plenary guardianship may issue upon the minor's 18th birthday or  
199 as soon thereafter as possible. Any proceeding pursuant to this  
200 subsection shall be conducted separately from any other  
201 proceeding.

202 Section 6. This act shall take effect July 1, 2015.



The Florida Senate

## Committee Agenda Request

**To:** Senator Tom Lee, Chair  
Committee on Appropriations

**Subject:** Committee Agenda Request

**Date:** March 11, 2015

---

I respectfully request that **Senate Bill #496**, relating to Guardians for Dependent Children who are Developmentally Disabled or Incapacitated, be placed on the:

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

A handwritten signature in cursive script that reads "Nancy C. Detert".

---

Senator Nancy C. Detert  
Florida Senate, District 28

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-16-15

Meeting Date

496

Bill Number (if applicable)

Topic GUARDIANS For Deprived children who are neglected Amendment Barcode (if applicable)

Name ALAN ABRAMOWITZ

Job Title Executive Director

Address 600 S. Calhoun Street

Phone 850 922-7205

Tallahassee FL 32399

Email Alan.ABRAMOWITZ@CAL.FL.GOV

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

Waive Speaking: [X] In Support [ ] Against (The Chair will read this information into the record.)

Representing GUARDIAN AD LITEM PROGRAM

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

Lobbyist registered with Legislature: [X] Yes [ ] No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/16/15  
Meeting Date

CS/CS/ SB 496  
Bill Number (if applicable)

Topic Guardian

Amendment Barcode (if applicable)

Name Carl Hill Galloway III

Job Title Full Time Father

Address 1950 King Arthur Circle  
Street

Phone 407-376-9339

Maitland Florida 32751  
City State Zip

Email chgalloway@cfl.mnco

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Celandine Life-Prep Academy

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

4-16-15  
Meeting Date

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

SB 496  
Bill Number (if applicable)

Topic Guardianship for individuals in foster care Amendment Barcode (if applicable)

Name Margaret S. Hooper

Job Title Public Policy Coordinator

Address 124 Merritt Dr. # 203

Phone 850-921-7263

Tallahassee FL 32301  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

4-16-15

*Meeting Date*

496

*Bill Number (if applicable)*

Topic Guardians

*Amendment Barcode (if applicable)*

Name Christina Spudeas

Job Title Executive Director

Address 1801 N. University Drive, Suite 3B

Phone 954-796-0860

*Street*

Coral Springs

FL

33071

Email Christina.Spudeas@floridaschildrenfirst.org

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
*(The Chair will read this information into the record.)*

Representing Florida's Children First

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 (10/14/14)

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

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

---

Prepared By: The Professional Staff of the Committee on Appropriations

---

**BILL:** CS/SB 510

**INTRODUCER:** Environmental Preservation and Conservation Committee and Senator Garcia

**SUBJECT:** Miami-Dade County Lake Belt Area

**DATE:** April 15, 2015      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gudeman	Uchino	EP	<b>Fav/CS</b>
2.	Stearns	Yeatman	CA	<b>Favorable</b>
3.	Howard	Kynoch	AP	<b>Favorable</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 510 specifies that amendments to local zoning and subdivision regulations must be compatible with limestone mining activities. It prohibits amending zoning and subdivision regulations that increase residential density in the vicinity of mining activities. The bill allows the proceeds from mitigation funds to be used for water quality monitoring, incrementally reduces the mitigation fee, and directs proceeds from the mitigation fee to be used for additional mitigation projects instead of solely for seepage mitigation projects. The bill also replaces the water treatment plant upgrade fee with a five cent per ton fee to be used for Miami-Dade County environmental programs. The proceeds from this fee are to be used to upgrade the water treatment plant if contamination is detected in the water supply as a result of mining activities. The bill repeals obsolete language, makes conforming changes, and reenacts provisions related to the Lake Belt Mitigation Trust Fund within the South Florida Water Management District (SFWMD).

There is a reduction in fee revenue related limerock and sand mitigation to the SFWMD due to projected costs to complete mitigation requirements by the permits issued for Lake Belt mining. Also, there is an elimination of a water treatment facility upgrade fee to Miami-Dade County that is no longer needed. The bill also creates a fee to purchase environmentally endangered lands in Miami-Dade County. (See Section V, Fiscal Impact Statement).

The bill provides an effective date of July 1, 2015.

## II. Present Situation:

### The Miami-Dade Lake Belt Area

The Miami-Dade Lake Belt Area (Lake Belt) in northern Miami-Dade County is an 89-square-mile area that has been actively mined since 1955. The region provides the largest source of high quality limestone in Florida, supplying 35 to 40 million tons of rock annually.<sup>1</sup> The limestone mined from the Lake Belt area provides the base material needed for concrete, asphalt, and road construction.<sup>2</sup> The term “Lake Belt” originates from the lakes that are formed in the limestone excavation pits as groundwater fills the void. The mining activities in the Lake Belt area have created approximately 40 quarry lakes encompassing 9,100 acres.<sup>3</sup>

The Lake Belt area is an environmentally sensitive region as the majority of the area consists of wetlands that were once part of the historical Everglades watershed. The area also overlays the Biscayne aquifer, which is designated as a sole source aquifer by the Environmental Protection Agency (EPA).<sup>4</sup> The EPA defines a “sole source aquifer” as, “an aquifer which is needed to supply 50 percent or more of the drinking water for a given aquifer service area for which there are no reasonably available alternative sources should the aquifer become contaminated.”<sup>5</sup>

### The Northwest Wellfield

The Miami-Dade Northwest Wellfield (NWWF) is located along the eastern edge of the Lake Belt area and has been in operation since 1984. The NWWF is comprised of 15 water supply wells that withdraw water from the Biscayne Aquifer and is classified as a public water supply in which the groundwater is not under the influence of surface water.<sup>6</sup> The NWWF is the major source of drinking water for Miami-Dade County, supplying approximately 40 percent of the county’s requirements. The NWWF Protection Area, established by the Miami-Dade County Department of Environmental Resource Management (DERM), is the delineated zone of protection around the NWWF and minimizes the potential for contamination of the drinking water supply.<sup>7</sup>

### Regulation of Mining Activities within the Lake Belt Area

In 1978, the U.S. Army Corps of Engineers (Corps) assumed jurisdiction over the limestone mining activities under the Clean Water Act of 1972. In 1979, the Corps issued the first rock

---

<sup>1</sup> Northwest Dade County Freshwater Lake Plan Implementation Committee, *Northwest Dade County Freshwater Lake Belt Plan, Making a Whole, Not Just Holes*, 1, 5 (1997), available at

[http://www.sfwmd.gov/portal/page/portal/xrepository/sfwmd\\_repository\\_pdf/phs1plan.pdf](http://www.sfwmd.gov/portal/page/portal/xrepository/sfwmd_repository_pdf/phs1plan.pdf) (last visited April 2, 2015).

<sup>2</sup> Miami-Dade County Lake Belt Plan Implementation Committee, *Phase II Plan*, 7 (2001), available at

[http://www.sfwmd.gov/portal/page/portal/xrepository/sfwmd\\_repository\\_pdf/phs2plan.pdf](http://www.sfwmd.gov/portal/page/portal/xrepository/sfwmd_repository_pdf/phs2plan.pdf) (last visited April 2, 2015).

<sup>3</sup> U.S. Army Corps of Engineers, *Draft Supplemental Environmental Impact Statement on Rock Mining in the Lake Belt Region of Miami-Dade County, FL*, 3–41 (2007) (on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>4</sup> *Id.* at 3–39.

<sup>5</sup> EPA, *Appendix A, Sole Source Aquifer Definitions*, available at <http://www.epa.gov/region02/water/aquifer/petition/app-a.htm> (last visited April 2, 2015).

<sup>6</sup> *Supra* note 2, at 5-7.

<sup>7</sup> *Supra* note 3, at 47.

mining permits for the region and Miami-Dade County issued zoning approvals for the mining activities.<sup>8</sup>

In 1984, the Legislature passed the Warren S. Henderson Wetlands Act, which was the first law to specifically protect and preserve the ecological functions of wetlands. The law required state authorization for dredge and fill activities beyond what was required by the federal government under the Clean Water Act.<sup>9</sup> Although the Legislature recognized the importance of protecting wetlands with the passage of the act, it also recognized the economic significance of the limestone mines and provided an exemption from state permitting for mining activities in the Lake Belt for 10 years.<sup>10</sup> The exemption was subsequently extended to October 1, 1997,<sup>11</sup> then to October 1, 2000.<sup>12</sup>

In 1992, the Legislature created the Northwest Dade County Freshwater Lake Plan Implementation Committee. The committee was responsible for developing a plan to:

- Enhance the water supply for Miami-Dade County and the Everglades;
- Provide appropriate groundwater protection measures;
- Maximize the efficient recovery of limestone while promoting the social and economic welfare of the community and protecting the environment; and
- Educate the public on the benefits of the committee's plan.<sup>13</sup>

In 1997, the Legislature renamed the committee to the Miami-Dade County Lake Belt Plan Implementation Committee and adopted the "Dade County Lake Plan." The committee was tasked with developing a Phase II Plan to further address the compatible land uses, opportunities, and potential conflicts of the Lake Belt area, provide additional NWWF protection, provide protective measures to prevent the reclassification of the NWWF as groundwater under the direct influence of surface water (GWUDI),<sup>14</sup> secure additional funding sources, and consider the need to establish a land use authority.<sup>15</sup>

Section 373.41492, F.S., was created in 1999 to implement a comprehensive mitigation plan to offset the impact of mining activity in the region. The law required a mitigation fee of 5 cents per ton, increasing 2.1 percentage points, plus a cost growth index, each year after January 2001, for limestone and sand extracted and sold from the Lake Belt area. The proceeds from the mitigation fee were used to purchase, enhance, restore, and manage wetlands, as well as purchase mitigation

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<sup>8</sup> Wallace Roberts and Todd, LLC, *Lake Belt Phase II Plan Companion Documents*, 7 (2001), available at [http://www.sfwmd.gov/portal/page/portal/xrepository/sfwmd\\_repository\\_pdf/comprops.pdf](http://www.sfwmd.gov/portal/page/portal/xrepository/sfwmd_repository_pdf/comprops.pdf) (last visited April 2, 2015).

<sup>9</sup> Chapter 84-79, Laws of Fla.

<sup>10</sup> South Florida Water Management District, *The 1980s-Water Quality and Natural Systems*, available at <https://www.sfwmd.state.fl.us/documents/publications/watermatters/oct-2011/4.html> (last visited April 2, 2015).

<sup>11</sup> Chapter 93-213, s. 30, Laws of Fla.

<sup>12</sup> Chapter 97-222, s. 5, Laws of Fla.

<sup>13</sup> Chapter 92-132, s. 21, Laws of Fla.

<sup>14</sup> "GWUDI" is defined in 40 CFR 141.2 as, "any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia* or *Cryptosporidium*, or significant and relatively rapid shifts in water characteristics such as turbidity, temperatures, conductivity, or pH, which closely correlate to climatological or surface water conditions. Direct influence must be determined for individual sources in accordance with criteria established by the State. The State determination of direct influence may be based on site-specific measurements of water quality and/or documentation of well construction characteristics and geology with field evaluation."

<sup>15</sup> Chapter 97-222, s. 10, Laws of Fla.

credits from a permitted mitigation bank or to fund structural modifications to the existing drainage systems of the Lake Belt area. Mitigation funds were also authorized to reimburse funds provided from other sources used to purchase lands for mitigation.

In 2006, s. 373.41492, F.S., was amended to incrementally increase the mitigation fee to 12 cents per ton in January 2007, 18 cents per ton in January 2008, and 24 cents per ton in January 2009. A water treatment plant facility upgrade fee of 15 cents per ton, beginning January 2007, was also established. The proceeds of the water treatment plant upgrade fee were to be used solely for the purpose of upgrading the water treatment plant that treats water from the NWWF. The law required the water treatment plant upgrade fee to be collected until the total amount necessary to design and construct the upgrade was achieved. Section 373.41492, F.S., was amended again in 2010 to increase the mitigation fee to 45 cents per ton starting in January 2011.

In 2012, s. 373.41492, F.S., was amended to allow proceeds from the water treatment plant upgrade fee to be used for seepage mitigation projects designed to improve wetland habitat. The law required that, beginning July 1, 2012, the proceeds of the water treatment plant upgrade fee be deposited into the Lake Belt Mitigation Trust Fund until it reached \$20 million, or pathogen sampling demonstrated that the water in any quarry lake in the vicinity of the NWWF is in need of additional treatment as required by the EPA Long Term 2 Enhanced Surface Water Treatment Rule.<sup>16</sup> Once either of these qualifications is triggered, the proceeds are to be diverted back to Miami-Dade County to be used solely for the purpose of upgrading the water treatment plant that treats water from the NWWF. The law also allows the mitigation fees to be used for modifications to the hydrology of the Everglades watershed.

### **Northwest Wellfield Water Quality Monitoring**

The permits issued by the Corps required a three-year water quality monitoring program from 2002 to 2005 to ensure the water quality in the NWWF was not degraded as a result of the mining activities. The water quality monitoring program required by the Corps and the continuous monitoring conducted by DERM have revealed no incidences of contamination as a result of mining activities. Additionally, surface water quality data for the Lake Belt area collected by the EPA and DERM reveal that the water quality in the lakes is not expected to adversely impact water quality in the aquifer and provides suitable conditions for wildlife.<sup>17</sup>

### **Lake Belt Mitigation Projects**

#### ***The Pennsuco Mitigation Area***

The Pennsuco wetland is a 13,000 acre wetland located immediately west of the Lake Belt area. The South Florida Water Management District (SFWMD) began purchasing parcels in the wetland in 1995 for mitigation purposes. The land was offered by the SFWMD to permit applicants to make mitigation contributions for the acquisition, enhancement, and long-term management of the wetland.<sup>18</sup> The Lake Belt area Phase I and Phase II plans identified the

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<sup>16</sup> 40 CFR 141-142.

<sup>17</sup> *Supra* note 3, at 68.

<sup>18</sup> SFWMD, *Mitigation Program, Regional Areas, Pennsuco Regional Mitigation Area, 1*, available at [http://www.sfwmd.gov/portal/page/portal/xrepository/sfwmd\\_repository\\_pdf/pennsuco\\_overview.pdf](http://www.sfwmd.gov/portal/page/portal/xrepository/sfwmd_repository_pdf/pennsuco_overview.pdf) (last visited April 2, 2015).

Pennsuco wetland as the primary location for off-site mitigation.<sup>19</sup> Land acquisition costs have varied from \$8,000 to \$13,000 per acre. The cost per mitigation credit is \$48,828, which is based on an average land price of \$10,000 per acre. The mitigation fee has funded the restoration of almost 8,000 acres in the Pennsuco wetland and the remaining available acreage only satisfies a portion of the Lake Belt mitigation requirements.<sup>20</sup>

### ***Everglades National Park Seepage Management***

The Everglades National Park (ENP) Seepage Management project is part of the Comprehensive Everglades Restoration Plan. The goal of the project is to restore wetland function in the ENP by reducing levee and groundwater seepage and increasing sheetflow.<sup>21</sup> The construction of phase I of the L-31 Seepage Management Project, which includes a two-mile seepage barrier to reduce groundwater flow out of the ENP, was completed in 2012 and cost \$52,000 per mitigation credit. The remaining three miles, scheduled for completion in 2016, will enhance the wetland over a much larger area in the ENP, therefore the mitigation cost per credit was reduced to \$22,400.<sup>22</sup>

### ***C-139 Annex Project***

The C-139 Annex project is a 15,000-acre project located in Hendry County, in the northern Everglades watershed. The project will restore a citrus grove to a transitional wet prairie, which is the native habitat for the area. The location provides greater ecological enhancement, according to Corps mitigation calculations, than what is required to offset the mining impacts in the Lake Belt area. The scale of the project, the degree of enhancement per acre, and the location of the restoration opportunity reduces the mitigation cost to \$15,248 per credit.<sup>23</sup>

### **Environmentally Endangered Lands Program**

Miami-Dade County's Environmentally Endangered Lands (EEL) Program was created in 1990 to protect and conserve endangered lands in Miami-Dade County. The program has purchased more than 20,700 acres of land and manages 2,800 acres of natural areas.<sup>24</sup>

## **III. Effect of Proposed Changes:**

**Section 1** amends s. 373.4149, F.S., to require amendments to local zoning and subdivision regulations located within one mile of the Lake Belt area be compatible with limestone mining activities. The bill prohibits amendments to local zoning and subdivision regulations that increase residential density within two miles of active mining. The bill enforces existing

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<sup>19</sup> *Supra* note 2, at 20.

<sup>20</sup> MacVicar Consulting Inc., *Lake Belt Wetland Mitigation Projects* (Mar. 3, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>21</sup> United States Army Corps of Engineers, *CERP L-31 North (L-30) Seepage Management Pilot Project: Integrated Pilot Project Design Report and Environmental Assessment – USACE Response to Independent External Peer Review* (July 15, 2009) (on file with the Senate Committee on Community Affairs).

<sup>22</sup> MacVicar Consulting Inc., *Lake Belt Wetland Mitigation Projects* (Mar. 3, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>23</sup> *Id.*

<sup>24</sup> Miami-Dade County, *Regulatory and Economic Resources, Environmentally Endangered Lands Program* <http://www.miamidade.gov/environment/endangered-lands.asp> (last visited April 2, 2015).

provisions that provide Miami-Dade County with the ability to manage growth while considering the impacts of mining activities to surrounding communities.

**Section 2** amends s. 373.41492, F.S., to allow the use of proceeds from the mitigation fees to be used for water quality monitoring, which is necessary to ensure water from the NWWF complies with groundwater quality criteria.

The bill incrementally reduces the mitigation fee from 45 cents per ton to 25 cents per ton beginning January 1, 2016; 15 cents per ton beginning January 1, 2017; and 5 cents per ton beginning January 1, 2018, and thereafter. The fee will be transferred from the seepage mitigation projects, which are nearing completion, to Miami-Dade County and used to reimburse the SFWMD for the C-139 Annex land purchase.<sup>25</sup> Funding at the current level is more than what is needed for the remaining mitigation expenses.<sup>26</sup>

The bill replaces the 15 cents per ton water treatment plant upgrade fee with a 5 cent per ton fee to be used for Miami-Dade County EEL programs. The bill makes conforming changes to replace the water treatment plant upgrade fee with the EEL fee. The bill specifies the EEL fee may only be used for the acquisition, preservation, enhancement, restoration, conservation, and maintenance of wetland and threatened forest communities in Miami-Dade County. The proceeds from this fee must be used for the water treatment plant upgrade if water quality sampling results reveal water from the NWWF needs additional treatment as required by the EPA Long Term 2 Enhanced Surface Water Treatment Rule.

The bill deletes s. 373.41492(8), F.S., which is an outdated provision specifying the mitigation fee must be suspended until revived by the Legislature if the Corps does not issue a permit for mining in the Lake Belt area by September 30, 2000.

**Section 3** reenacts s. 373.41495(1), (2), and (3), F.S., relating to the Lake Belt Mitigation Trust Fund within the South Florida Water Management District, to incorporate the amendments to s. 373.41492, F.S.

**Section 4** provides an effective date of July 1, 2015.

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

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

None.

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

None.

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<sup>25</sup> Lake Belt Mitigation Committee, Meeting Summary, 5 (Nov. 20, 2013), available at [http://www.sfwmd.gov/portal/page/portal/xrepository/sfwmd\\_repository\\_pdf/lbmc\\_meeting\\_summary\\_11\\_20\\_13.pdf](http://www.sfwmd.gov/portal/page/portal/xrepository/sfwmd_repository_pdf/lbmc_meeting_summary_11_20_13.pdf) (last visited April 2, 2015).

<sup>26</sup> DEP, *Senate Bill 510 Agency Analysis*, 5 (Feb. 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

CS/SB 510 incrementally reduces the mitigation fee related to limerock and sand sold from 45 cents per ton to 25 cents per ton beginning January 1, 2016; 15 cents per ton beginning January 1, 2017; and five cents per ton beginning January 1, 2018, and thereafter. The bill removes the 15 cent per ton water treatment facility upgrade fee and creates a five cent per ton fee to purchase environmentally endangered lands (EEL).

B. Private Sector Impact:

The reduction of the mitigation fee will have a positive fiscal impact on the private sector, including the construction industry and the mining industry.

C. Government Sector Impact:

The incremental reduction of the mitigation fee over the next three years from 45 cents per ton to 25 cents per ton beginning January 1, 2016; 15 cents per ton beginning January 1, 2017; and five cents per ton beginning January 1, 2018, and thereafter will reduce the annual revenue to the South Florida Water Management District (SFWMD) Lake Belt Mitigation Trust Fund from \$13.5 million to \$1.5 million. Account balances within the SFWMD Lake Belt Mitigation Trust Fund are sufficient to complete mitigation requirements by the permits issued for Lake Belt mining. The DEP estimates that by 2040, the revenue generated from the mitigation fee will be approximately \$64.5 million.<sup>27</sup>

The bill removes the water treatment facility upgrade fee which reduces approximately \$4.5 million per year of proceeds that were paid to Miami-Dade County for the facility upgrade<sup>28</sup>. After many years of groundwater quality monitoring, data has indicated that the upgrade of the treatment plant is no longer needed.

The bill creates a five cent per ton of limerock and sand sold fee to purchase environmentally endangered lands (EEL). The Department of Revenue estimates that \$1.5 million per year will be transferred to Miami-Dade County for the EEL program. In the event contamination is detected in the Miami-Dade Northwest Wellfield (NWWF), these proceeds must first be used for the water treatment plant upgrade.

The reduction in the mitigation fee related to limerock and sand sold within the Miami-Dade County Lake Belt Plan will result in reduced costs for limerock and sand; thus,

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 4.

reducing state and local expenditures on all state roads and construction requiring limestone products in the Lake Belt area.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill states that the proceeds of the EEL fee may be used for “threatened forest communities.” The DEP states that this is an unclear term when describing the proper uses for Miami-Dade County’s EEL fee.<sup>29</sup>

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 373.4149 and 373.41492.

This bill reenacts sections 373.41495(1), (2), and (3) of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Environmental Preservation and Conservation on March 24, 2015:**

Corrects a technical error regarding “water quality monitoring” to ensure the proceeds from the mitigation fee may be used for water quality monitoring. The bill also directs the EEL program fee to be used for the water treatment plant upgrade if quarterly water quality sampling results from the NWWF indicate mining activities directly or indirectly impact water quality. Additional treatment is needed as required by the EPA Long Term 2 Enhanced Surface Water Treatment Rule if the water supply gets contaminated.

- B. **Amendments:**

None.

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

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<sup>29</sup> *Id.* at 6.

By the Committee on Environmental Preservation and Conservation;  
and Senator Garcia

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1 A bill to be entitled  
2 An act relating to the Miami-Dade County Lake Belt  
3 Area; amending s. 373.4149, F.S.; requiring amendments  
4 to local zoning and subdivision regulations concerning  
5 properties located within a certain area to be  
6 compatible with limestone mining activities;  
7 prohibiting amendments to local zoning and subdivision  
8 regulations which would result in an increase in  
9 residential density for certain property until there  
10 is no mining activity within a certain distance;  
11 amending s. 373.41492, F.S.; conforming a cross-  
12 reference; including water quality monitoring as an  
13 environmental purpose for which the per-ton mitigation  
14 fee may be applied; decreasing the amount of the per-  
15 ton mitigation fee for limerock and sand sold after  
16 certain dates; imposing an environmentally endangered  
17 lands fee; rescinding the water treatment plant  
18 upgrade fee; requiring the Department of Revenue to  
19 administer, enforce, and collect the environmentally  
20 endangered lands fee; adding water quality monitoring  
21 to the required uses for mitigation fee proceeds;  
22 removing a requirement that such uses be approved by  
23 the Miami-Dade County Lake Belt Mitigation Committee;  
24 requiring the environmentally endangered lands fee to  
25 be used solely for purposes related to wetland and  
26 threatened forest communities located in Miami-Dade  
27 County after proceeds are used for water treatment  
28 plant upgrades under certain conditions; reenacting s.  
29 373.41495 (1), (2), and (3), F.S., relating to the

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30 Lake Belt Mitigation Trust Fund to incorporate the  
31 amendment made to s. 373.41492, F.S., in reference  
32 thereto; providing an effective date.  
33

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

35  
36 Section 1. Subsection (4) of section 373.4149, Florida  
37 Statutes, is amended to read:

38 373.4149 Miami-Dade County Lake Belt Plan.—

39 (4) The identification of the Miami-Dade County Lake Belt  
40 Area shall not preempt local land use jurisdiction, planning, or  
41 regulatory authority in regard to the use of land by private  
42 land owners. When amending local comprehensive plans, or  
43 implementing zoning regulations, development regulations, or  
44 other local regulations, Miami-Dade County shall strongly  
45 consider limestone mining activities and ancillary operations,  
46 such as lake excavation, including use of explosives, rock  
47 processing, cement, concrete and asphalt products manufacturing,  
48 and ancillary activities, within the rock mining supported and  
49 allowable areas of the Miami-Dade County Lake Plan adopted by  
50 subsection (1); provided, however, that limerock mining  
51 activities are consistent with wellfield protection. Rezonings,  
52 ~~or~~ amendments to local zoning and subdivision regulations, and  
53 amendments to local comprehensive plans concerning properties  
54 that are located within 1 mile of the Miami-Dade Lake Belt Area  
55 shall be compatible with limestone mining activities. No  
56 rezonings, variances, amendments to local zoning and subdivision  
57 regulations which would result in an increase in residential  
58 density, or amendments to local comprehensive plans for any

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59 residential purpose may be approved for any property located in  
60 sections 35 and 36 and the east one-half of sections 24 and 25,  
61 Township 53 South, Range 39 East until such time as there is no  
62 active mining within 2 miles of the property. This section does  
63 not preclude residential development that complies with current  
64 regulations.

65 Section 2. Section 373.41492, Florida Statutes, is amended  
66 to read:

67 373.41492 Miami-Dade County Lake Belt Mitigation Plan;  
68 mitigation for mining activities within the Miami-Dade County  
69 Lake Belt.-

70 (1) The Legislature finds that the impact of mining within  
71 the rock mining supported and allowable areas of the Miami-Dade  
72 County Lake Belt Plan adopted by s. 373.4149(1) can best be  
73 offset by the implementation of a comprehensive mitigation plan.  
74 The Lake Belt Mitigation Plan consists of those provisions  
75 contained in subsections (2)-(8) ~~(2)-(9)~~. The per-ton mitigation  
76 fee assessed on limestone sold from the Miami-Dade County Lake  
77 Belt Area and sections 10, 11, 13, 14, Township 52 South, Range  
78 39 East, and sections 24, 25, 35, and 36, Township 53 South,  
79 Range 39 East, shall be used for acquiring environmentally  
80 sensitive lands and for restoration, water quality monitoring,  
81 maintenance, and other environmental purposes. It is the intent  
82 of the Legislature that the per-ton mitigation fee not be a  
83 revenue source for purposes other than enumerated in this  
84 section. Further, the Legislature finds that the public benefit  
85 of a sustainable supply of limestone construction materials for  
86 public and private projects requires a coordinated approach to  
87 permitting activities on wetlands within Miami-Dade County in

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88 order to provide the certainty necessary to encourage  
89 substantial and continued investment in the limestone processing  
90 plant and equipment required to efficiently extract the  
91 limestone resource. It is the intent of the Legislature that the  
92 Lake Belt Mitigation Plan satisfy all local, state, and federal  
93 requirements for mining activity within the rock mining  
94 supported and allowable areas.

95 (2) To provide for the mitigation of wetland resources lost  
96 to mining activities within the Miami-Dade County Lake Belt  
97 Plan, effective October 1, 1999, a mitigation fee is imposed on  
98 each ton of limerock and sand extracted by any person who  
99 engages in the business of extracting limerock or sand from  
100 within the Miami-Dade County Lake Belt Area and the east one-  
101 half of sections 24 and 25 and all of sections 35 and 36,  
102 Township 53 South, Range 39 East. The mitigation fee is imposed  
103 for each ton of limerock and sand sold from within the  
104 properties where the fee applies in raw, processed, or  
105 manufactured form, including, but not limited to, sized  
106 aggregate, asphalt, cement, concrete, and other limerock and  
107 concrete products. The mitigation fee imposed by this subsection  
108 for each ton of limerock and sand sold shall be 25 ~~45~~ cents per  
109 ton, beginning on January 1, 2016; 15 cents per ton beginning on  
110 January 1, 2017; and 5 cents per ton beginning on January 1,  
111 2018, and thereafter. To pay for Miami-Dade County seepage  
112 mitigation projects, an environmentally endangered lands  
113 including groundwater and surface water management structures  
114 designed to improve wetland habitat and approved by the Lake  
115 Belt Mitigation Committee, and to upgrade a water treatment  
116 plant that treats water coming from the Northwest Wellfield in

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117 ~~Miami-Dade County, a water treatment plant upgrade fee is~~  
 118 ~~imposed within the same Lake Belt Area subject to the mitigation~~  
 119 ~~fee and upon the same kind of mined limerock and sand subject to~~  
 120 ~~the mitigation fee. The environmentally endangered lands water~~  
 121 ~~treatment plant upgrade fee imposed by this section subsection~~  
 122 ~~for each ton of limerock and sand sold shall be 5 ~~15~~ cents per~~  
 123 ~~ton, and the collection of this fee shall cease once the total~~  
 124 ~~amount of proceeds collected for this fee reaches the amount of~~  
 125 ~~the actual moneys necessary to design and construct the water~~  
 126 ~~treatment plant upgrade, as determined in an open, public~~  
 127 ~~solicitation process. Any limerock or sand that is used within~~  
 128 ~~the mine from which the limerock or sand is extracted is exempt~~  
 129 ~~from the fees. The amount of the mitigation fee and the~~  
 130 ~~environmentally endangered lands water treatment plant upgrade~~  
 131 ~~fee imposed under this section must be stated separately on the~~  
 132 ~~invoice provided to the purchaser of the limerock or sand~~  
 133 ~~product from the limerock or sand miner, or its subsidiary or~~  
 134 ~~affiliate, for which the fee or fees apply. The limerock or sand~~  
 135 ~~miner, or its subsidiary or affiliate, who sells the limerock or~~  
 136 ~~sand product shall collect the mitigation fee and the~~  
 137 ~~environmentally endangered lands water treatment plant upgrade~~  
 138 ~~fee and forward the proceeds of the fees to the Department of~~  
 139 ~~Revenue on or before the 20th day of the month following the~~  
 140 ~~calendar month in which the sale occurs. The proceeds of a fee~~  
 141 ~~imposed by this section include all funds collected and received~~  
 142 ~~by the Department of Revenue relating to the fee, including~~  
 143 ~~interest and penalties on a delinquent fee. The amount deducted~~  
 144 ~~for administrative costs may not exceed 3 percent of the total~~  
 145 ~~revenues collected under this section and may equal only those~~

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146 administrative costs reasonably attributable to the fee.  
 147 (3) The mitigation fee and the environmentally endangered  
 148 ~~lands water treatment plant upgrade~~ fee imposed by this section  
 149 must be reported to the Department of Revenue. Payment of the  
 150 mitigation and the environmentally endangered lands water  
 151 ~~treatment plant upgrade~~ fees must be accompanied by a form  
 152 prescribed by the Department of Revenue.  
 153 (a) The proceeds of the mitigation fee, less administrative  
 154 costs, must be transferred by the Department of Revenue to the  
 155 South Florida Water Management District and deposited into the  
 156 Lake Belt Mitigation Trust Fund.  
 157 (b) Beginning July 1, 2015 ~~2012~~, the ~~proceeds of the water~~  
 158 ~~treatment plant upgrade fee previously imposed by this section~~  
 159 ~~is rescinded and is no longer imposed on the sale of mined~~  
 160 ~~limerock and sand, less administrative costs, must be~~  
 161 ~~transferred by the Department of Revenue to the South Florida~~  
 162 ~~Water Management District and deposited into the Lake Belt~~  
 163 ~~Mitigation Trust Fund until:~~  
 164 1. ~~A total of \$20 million from the proceeds of the water~~  
 165 ~~treatment plant upgrade fee, less administrative costs, is~~  
 166 ~~deposited into the Lake Belt Mitigation Trust Fund; or~~  
 167 2. ~~The quarterly pathogen sampling conducted as a condition~~  
 168 ~~of the permits issued by the department for rock mining~~  
 169 ~~activities in the Miami-Dade County Lake Belt Area demonstrates~~  
 170 ~~that the water in any quarry lake in the vicinity of the~~  
 171 ~~Northwest Wellfield would be classified as being in Bin 2 or~~  
 172 ~~higher as defined in the Environmental Protection Agency's Long~~  
 173 ~~Term 2 Enhanced Surface Water Treatment Rule.~~  
 174 (c) The proceeds of the environmentally endangered lands

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175 ~~fee~~ Upon the earliest occurrence of the criterion under  
 176 ~~subparagraph (b)1. or subparagraph (b)2., the proceeds of the~~  
 177 ~~water treatment plant upgrade fee,~~ less administrative costs,  
 178 must be transferred by the Department of Revenue to a trust fund  
 179 established by Miami-Dade County, for the sole purpose  
 180 authorized by paragraph (6) (a).

181 (4) (a) The Department of Revenue shall administer, collect,  
 182 and enforce the mitigation and environmentally endangered lands  
 183 ~~treatment plant upgrade~~ fees authorized under this section in  
 184 accordance with the procedures used to administer, collect, and  
 185 enforce the general sales tax imposed under chapter 212. The  
 186 provisions of chapter 212 with respect to the authority of the  
 187 Department of Revenue to audit and make assessments, the keeping  
 188 of books and records, and the interest and penalties imposed on  
 189 delinquent fees apply to this section. The fees may not be  
 190 included in computing estimated taxes under s. 212.11, and the  
 191 dealer's credit for collecting taxes or fees provided for in s.  
 192 212.12 does not apply to the fees imposed by this section.

193 (b) In administering this section, the Department of  
 194 Revenue may employ persons and incur expenses for which funds  
 195 are appropriated by the Legislature. The Department of Revenue  
 196 shall adopt rules and prescribe and publish forms necessary to  
 197 administer this section. The Department of Revenue shall  
 198 establish audit procedures and may assess delinquent fees.

199 (5) Each January 1, beginning January 1, 2010, through  
 200 December 31, 2011, the per-ton mitigation fee shall be increased  
 201 by 2.1 percentage points, plus a cost growth index. The cost  
 202 growth index shall be the percentage change in the weighted  
 203 average of the Employment Cost Index for All Civilian Workers

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204 (ecu 10001I), issued by the United States Department of Labor  
 205 for the most recent 12-month period ending on September 30, and  
 206 the percentage change in the Producer Price Index for All  
 207 Commodities (WPU 00000000), issued by the United States  
 208 Department of Labor for the most recent 12-month period ending  
 209 on September 30, compared to the weighted average of these  
 210 indices for the previous year. The weighted average shall be  
 211 calculated as 0.6 times the percentage change in the Employment  
 212 Cost Index for All Civilian Workers (ecu 10001I), plus 0.4 times  
 213 the percentage change in the Producer Price Index for All  
 214 Commodities (WPU 00000000). If either index is discontinued, it  
 215 shall be replaced by its successor index, as identified by the  
 216 United States Department of Labor.

217 (6) (a) The proceeds of the mitigation fee must be used to  
 218 conduct mitigation activities that are appropriate to offset the  
 219 loss of the value and functions of wetlands as a result of  
 220 mining activities and to conduct water quality monitoring to  
 221 ensure the protection of water resources within the Lake Belt  
 222 Area and be approved by the Miami-Dade County Lake Belt  
 223 Mitigation Committee. Such mitigation may include the purchase,  
 224 enhancement, restoration, and management of wetlands and uplands  
 225 in the Everglades watershed, the purchase of mitigation credit  
 226 from a permitted mitigation bank, and any structural  
 227 modifications to the existing drainage system to enhance the  
 228 hydrology of the Miami-Dade County Lake Belt Area or the  
 229 Everglades watershed. Funds may also be used to reimburse other  
 230 funding sources, including the Save Our Rivers Land Acquisition  
 231 Program, the Internal Improvement Trust Fund, the South Florida  
 232 Water Management District, and Miami-Dade County, for the

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233 purchase of lands that were acquired in areas appropriate for  
 234 mitigation due to rock mining and to reimburse governmental  
 235 agencies that exchanged land under s. 373.4149 for mitigation  
 236 due to rock mining. ~~The proceeds of the water treatment plant~~  
 237 ~~upgrade fee deposited into the Lake Belt Mitigation Trust Fund~~  
 238 ~~shall be used solely to pay for seepage mitigation projects,~~  
 239 ~~including groundwater or surface water management structures~~  
 240 ~~designed to improve wetland habitat and approved by the Lake~~  
 241 ~~Belt Mitigation Committee.~~ The proceeds of the environmentally  
 242 endangered lands water treatment plant upgrade fee which are  
 243 transmitted to a trust fund established by Miami-Dade County  
 244 shall be used solely for the acquisition, preservation,  
 245 enhancement, restoration, conservation, and maintenance of  
 246 wetland and threatened forest communities located to upgrade a  
 247 water treatment plant that treats water coming from the  
 248 Northwest Wellfield in Miami-Dade County. However, the proceeds  
 249 of the environmentally endangered lands fee must first be used  
 250 to upgrade a water treatment plant that treats water coming from  
 251 the Northwest Wellfield in Miami-Dade County if, following a  
 252 formal determination by the department that, due to the direct  
 253 or indirect result of rock mining activities within the Lake  
 254 Belt Area, the quarterly pathogen sampling conducted as a  
 255 condition of the permits issued by the department for rock  
 256 mining activities in the Miami-Dade County Lake Belt Area  
 257 demonstrates that the water in any quarry lake monitored  
 258 pursuant to the monitoring plan would be classified as being in  
 259 Bin 2 or higher as defined in the United States Environmental  
 260 Protection Agency's Long Term 2 Enhanced Surface Water Treatment  
 261 Rule. As used in this section, the terms "upgrade a water

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262 ~~treatment plant" or "treatment plant upgrade" mean those works~~  
 263 ~~necessary to treat or filter a surface water source or supply or~~  
 264 ~~both.~~

265 (b) Expenditures of the mitigation fee must be approved by  
 266 an interagency committee consisting of representatives from each  
 267 of the following: the Miami-Dade County Department of  
 268 Environmental Resource Management, the Department of  
 269 Environmental Protection, the South Florida Water Management  
 270 District, and the Fish and Wildlife Conservation Commission. In  
 271 addition, the limerock mining industry shall select a  
 272 representative to serve as a nonvoting member of the interagency  
 273 committee. At the discretion of the committee, additional  
 274 members may be added to represent federal regulatory,  
 275 environmental, and fish and wildlife agencies.

276 (7) Payment of the mitigation fee imposed by this section  
 277 satisfies the mitigation requirements imposed under ss. 373.403-  
 278 373.439 and any applicable county ordinance for loss of the  
 279 value and functions from mining of the wetlands identified as  
 280 rock mining supported and allowable areas of the Miami-Dade  
 281 County Lake Plan adopted by s. 373.4149(1). In addition, it is  
 282 the intent of the Legislature that the payment of the mitigation  
 283 fee imposed by this section satisfy all federal mitigation  
 284 requirements for the wetlands mined.

285 ~~(8) If a general permit by the United States Army Corps of~~  
 286 ~~Engineers, or an appropriate long-term permit for mining,~~  
 287 ~~consistent with the Miami-Dade County Lake Belt Plan, this~~  
 288 ~~section, and ss. 373.4149, 373.4415, and 378.4115 is not issued~~  
 289 ~~on or before September 30, 2000, the fee imposed by this section~~  
 290 ~~is suspended until revived by the Legislature.~~

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

592-02827-15

2015510c1

291 (8)~~(9)~~(a) The interagency committee established in this  
292 section shall annually prepare and submit to the governing board  
293 of the South Florida Water Management District a report  
294 evaluating the mitigation costs and revenues generated by the  
295 mitigation fee.

296 (b) No sooner than January 31, 2010, and no more frequently  
297 than every 2 years thereafter, the interagency committee shall  
298 submit to the Legislature a report recommending any needed  
299 adjustments to the mitigation fee, including the annual  
300 escalator provided for in subsection (5), to ensure that the  
301 revenue generated reflects the actual costs of the mitigation.

302 Section 3. For the purpose of incorporating the amendment  
303 made by this act to section 373.41492, Florida Statutes, in a  
304 reference thereto, subsections (1), (2), and (3) of section  
305 373.41495, Florida Statutes, are reenacted to read:

306 373.41495 Lake Belt Mitigation Trust Fund; bonds.—

307 (1) The Lake Belt Mitigation Trust Fund is hereby created,  
308 to be administered by the South Florida Water Management  
309 District. Funds shall be credited to the trust fund as provided  
310 in s. 373.41492, to be used for the purposes set forth therein.

311 (2) The South Florida Water Management District may issue  
312 revenue bonds pursuant to s. 373.584, payable from revenues from  
313 the Lake Belt Mitigation fee imposed under s. 373.41492.

314 (3) Net proceeds from the Lake Belt Mitigation fee and any  
315 revenue bonds issued under subsection (2) shall be deposited  
316 into the trust fund and, together with any interest earned on  
317 such moneys, shall be applied to Lake Belt mitigation projects  
318 as provided in s. 373.41492.

319 Section 4. This act shall take effect July 1, 2015.

**The Florida Senate**  
State Senator René García  
38<sup>th</sup> District

**Please reply to:**

**District Office:**

1490 West 68 Street  
Suite # 201  
Hialeah, FL. 33014  
Phone# (305) 364-3100

April 13, 2015

The Honorable Senator Tom Lee  
Chair, Appropriations  
201 The Capitol  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Lee:

This letter should serve as a request to have my bill *SB 510: Miami- Dade County Lake Belt Area* heard at the next possible committee meeting. If there is any other information needed please do not hesitate to contact me. Thank you.

Sincerely,



State Senator René García  
District 38  
RG:JT

CC: Cindy Kynoch, Staff Director

**Chair: Appropriations Subcommittee on Health & Human Services**  
**Committees:** Appropriations, Children, Families, and Elderly Affairs, Health Policy, Agriculture, Education Pre-K – 12, Joint Legislative Budget Committee and Communications, Energy and Public Utilities.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4-16-15

Meeting Date

510

Bill Number (if applicable)

Topic Lake Belt

Amendment Barcode (if applicable)

Name Ernie Barnett

Job Title Director

Address 432 Gun Club Rd #201

Phone 850 284-6178

Street

West Palm Bch FL

33415

Email barnett@flwal.com

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Miami Pade LimeRock Products Assn.

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 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

510

Bill Number (if applicable)

Meeting Date

Topic Rock Mining

Amendment Barcode (if applicable)

Name Lester Sola

Job Title Department Director Miami-Dade Water + Sewer

Address 111 NW 1st

Phone 786-552-8200

Street

Miami FL 33128

City

State

Zip

Email SOLA@MiamiDade.gov

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

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.

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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)

APR. 16

Meeting Date

510

Bill Number (if applicable)

Topic MIAMI-DADE LAKEBELT

Amendment Barcode (if applicable)

Name MIKE MURTHA

Job Title PRESIDENT

Address 6353 LEE VISTA BLVD

Phone 407-895-9333

ORLANDO FL 32822

Email mmurtha@fcpa.org

City State Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FL CONCRETE + PRODUCTS ASSOC.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

---

Prepared By: The Professional Staff of the Committee on Appropriations

---

BILL: CS/SB 574

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Montford

SUBJECT: Electronic Auction Services

DATE: April 15, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<u>Favorable</u>
3.	<u>Sikes</u>	<u>Kynoch</u>	<u>AP</u>	<u>Favorable</u>

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 574 authorizes district school boards to adopt rules regarding procurement practices, including the use of online procurement and electronic auction services. The term “electronic auction services” is defined. The bill also authorizes district school boards and district schools to use electronic auction services and other efficient procurement tools for specified purchases.

The bill has an indeterminate fiscal impact. Procurement through electronic auction services or other efficient procurement tools may result in costs savings for district school boards, but the extent of those potential cost savings is not known.

The bill provides an effective date of July 1, 2015.

**II. Present Situation:**

Chapter 287, F.S., regulates state agency<sup>1</sup> procurement of personal property and services.<sup>2</sup> Agencies may use a variety of procurement methods, depending on the cost and characteristics

---

<sup>1</sup> As defined in s. 287.012(1), F.S., “agency” means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. “Agency” does not include the university and college boards of trustees or the state universities and colleges.

<sup>2</sup> Local governments are not subject to the provisions of ch. 287, F.S. Local governmental units may look to the chapter for guidance in the procurement of goods and services, but many have local policies or ordinances to address competitive solicitations.

of the needed good or service, the complexity of the procurement, and the number of available vendors. These include the following:

- "Single source contracts," which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- "Invitations to bid (ITB)," which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- "Requests for proposals (RFP)," which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- "Invitations to negotiate (ITN)," which are used when negotiations are determined to be necessary to obtain the best value and involve a request for high complexity, customized, mission-critical services, by an agency dealing with a limited number of vendors.<sup>3</sup>

Contracts for commodities or contractual services in excess of \$35,000 must be procured utilizing a competitive solicitation process.<sup>4</sup> However, specified contractual services and commodities are not subject to competitive-solicitation requirements.<sup>5</sup>

The chapter establishes a process by which a person may file an action protesting a decision or intended decision pertaining to contracts administered by the Department of Management Services (DMS), a water management district, or state agencies.<sup>6</sup>

### **Online Procurement of Commodities and Contractual Services**

Pursuant to s. 287.057(22), F.S., the DMS is required to maintain a program for online procurement of commodities and contractual services in consultation with the Chief Financial Officer (Department of Financial Services) and the Agency for State Technology (AST). The DMS has authority to contract for equipment and services to develop and implement online procurement in consultation with the AST and in compliance with standards of AST.<sup>7</sup> The DMS is required to adopt rules for the administration of the program for online procurement.<sup>8</sup> The DMS may also impose and collect fees for use of the online procurement system.<sup>9</sup>

The DMS's online procurement program is MyFloridaMarketPlace (MFMP). MFMP is used by the Division of State Purchasing for formal solicitations (ITB, RFP, and ITN) and by state

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<sup>3</sup> See ss. 287.012(6) and 287.057, F.S.

<sup>4</sup> Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid. As defined in s. 287.012(6), F.S., "competitive solicitation" means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

<sup>5</sup> See s. 287.057(3)(e), F.S.

<sup>6</sup> See ss. 287.042(2)(c) and 120.57(3), F.S.

<sup>7</sup> Section 287.057(22)(a), F.S. Also, see s. 282.0051(4), F.S. (AST has responsibility to perform project oversight on all state agency information technology project costs of \$10 million or more that are funded in the General Appropriations Act or other law.)

<sup>8</sup> Section 287.057(22)(b), F.S. See Rules 60A-1.030-1.033, F.A.C.

<sup>9</sup> Section 287.057(22)(c), F.S.

agencies for informal quotes and electronic invoicing.<sup>10</sup> MFMP has been in operation for more than ten years.<sup>11</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 1001.42(12), F.S., to authorize district school boards to adopt rules regarding procurement practices, including the use of online procurement and electronic auction services. The term “electronic auction services” is defined as a competitive procurement conducted on a centralized website using third-party software, jointly managed by an approved vendor and the district school board, for the purpose of obtaining competitive prices in an auction environment.

**Section 2** amends s. 1006.27(1), F.S., by authorizing district school boards to use electronic auction services or other efficient procurement tools for purchasing buses, equipment and supplies. District schools are also authorized to use electronic auction services or other efficient procurement tools for such purchases.

**Section 3** provides an effective date of July 1, 2015.

### IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 574 has an indeterminate fiscal impact on the private sector.

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<sup>10</sup> Analysis from the DMS dated February 3, 2015, on file with the Committee on Governmental Oversight and Accountability.

<sup>11</sup> See [http://www.dms.myflorida.com/business\\_operations/state\\_purchasing](http://www.dms.myflorida.com/business_operations/state_purchasing).

C. **Government Sector Impact:**

The bill has an indeterminate fiscal impact. Procurement through electronic auction services or other efficient procurement tools may result in costs savings for district school boards, but the extent of those potential cost savings is not known.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 1001.42 and 1006.27.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Changes:**

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

**CS by Governmental Oversight and Accountability on March 10, 2015:**

The committee substitute amends s. 1001.42(12), F.S., to revise the powers and duties of district school boards to authorize the adoption of rules regarding procurement practices, including the use of online procurement and electronic auction services. Also, the term “electronic auction services” is defined. Additionally, the committee substitute amends s. 1006.27(1), F.S., to authorize the Department of Education and district school boards to use electronic auction services and other efficient procurement tools for specified purchases.

B. **Amendments:**

None.

By the Committee on Governmental Oversight and Accountability;  
and Senator Montford

585-02128-15

2015574c1

1 A bill to be entitled  
2 An act relating to electronic auction services;  
3 amending s. 1001.42, F.S.; revising the powers and  
4 duties of the district school board to authorize the  
5 adoption of rules regarding procurement practices;  
6 defining the term "electronic auction services";  
7 amending s. 1006.27, F.S.; authorizing a district  
8 school board's use of electronic auction services in  
9 conjunction with bid pooling for school buses and  
10 related purchases; providing an effective date.

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

12 Section 1. Paragraph (i) of subsection (12) of section  
13 1001.42, Florida Statutes, is amended to read:

14 1001.42 Powers and duties of district school board.—The  
15 district school board, acting as a board, shall exercise all  
16 powers and perform all duties listed below:

17 (12) FINANCE.—Take steps to assure students adequate  
18 educational facilities through the financial procedure  
19 authorized in chapters 1010 and 1011 and as prescribed below:

20 (i) *Contracts for materials, supplies, and services.*—  
21 Contract for materials, supplies, and services needed for the  
22 district school system. No contract for supplying these needs  
23 shall be made with any member of the district school board, with  
24 the district school superintendent, or with any business  
25 organization in which any district school board member or the  
26 district school superintendent has any financial interest  
27 whatsoever. The district school board may adopt rules to  
28  
29

Page 1 of 3

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585-02128-15

2015574c1

30 facilitate the efficient and effective procurement of materials,  
31 supplies, and services, including the use of online procurement  
32 and electronic auction services. For purposes of this paragraph,  
33 the term "electronic auction services" means a competitive  
34 procurement conducted on a centralized website using third-party  
35 software, jointly managed by an approved vendor and the district  
36 school board, for the purpose of obtaining competitive prices in  
37 an auction environment.

38 Section 2. Subsection (1) of section 1006.27, Florida  
39 Statutes, is amended to read:

40 1006.27 Pooling of school buses and related purchases by  
41 district school boards; transportation services contracts.—

42 (1) The department shall assist district school boards in  
43 securing school buses, contractual needs, equipment, and  
44 supplies at as reasonable prices as possible by providing a plan  
45 under which district school boards may voluntarily pool their  
46 bids for such purchases. The department shall prepare bid forms  
47 and specifications, obtain quotations of prices and make such  
48 information available to district school boards in order to  
49 facilitate this service and use electronic auction services, as  
50 defined in s. 1001.42(12)(i), or other efficient procurement  
51 tools. District schools may also use electronic auction services  
52 or other efficient procurement tools for such purchases.

53 District school boards from time to time, as prescribed by State  
54 Board of Education rule, shall furnish the department with  
55 information concerning the prices paid for such items and the  
56 department shall furnish to district school boards periodic  
57 information concerning the lowest prices at which school buses,  
58 equipment, and related supplies are available based upon

Page 2 of 3

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

585-02128-15

2015574c1

59 comparable specifications.

60 Section 3. This act shall take effect July 1, 2015.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Agriculture, *Chair*  
Appropriations Subcommittee on Education, *Vice Chair*  
Appropriations  
Banking and Insurance  
Education Pre-K - 12  
Rules

**SENATOR BILL MONTFORD**

3rd District

April 09, 2015

Senator Tom Lee,  
Chair  
Senate Committee on Appropriations  
201 Capitol  
Tallahassee, Florida 32399-1100

Dear Senator Lee:

I respectfully request that the following bills be scheduled for a hearing before the Senate Committee on Appropriations.

SB 574 Electronic Auction Services  
SB 622 Higher Education Facilities Financing

Your assistance and favorable consideration of my request is greatly appreciated.

Sincerely,

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

William "Bill" Montford  
Senate District 3

WM/md

Cc: Cindy Kynoch, Staff Director

REPLY TO:

- 214 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
- 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

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

**ANDY GARDINER**  
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)

4/16/2015

Meeting Date

Topic \_\_\_\_\_ Bill Number 574  
*(if applicable)*

Name BRIAN PITTS Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291  
*Street*

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM  
*City State Zip*

Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

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

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

*part of the public record for this meeting.*

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/16  
Meeting Date

574  
Bill Number (if applicable)

Topic Procurement

Amendment Barcode (if applicable)

Name Cynthia Henderson

Job Title \_\_\_\_\_

Address 100 E. Jefferson Ste-A

Phone 850 559 0855

allahassee FL 32301  
City State Zip

Email cjhenderson@me.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Questions Only

Representing Crowne

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

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Prepared By: The Professional Staff of the Committee on Appropriations

---

BILL: SB 622

INTRODUCER: Senators Montford and Bean

SUBJECT: Higher Education Facilities Financing

DATE: April 15, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bailey</u>	<u>Klebacha</u>	<u>HE</u>	<b>Favorable</b>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<b>Favorable</b>
3.	<u>Sikes</u>	<u>Kynoch</u>	<u>AP</u>	<b>Favorable</b>

---

**I. Summary:**

SB 622 expands the types of projects that the Higher Education Facilities Financing Authority (HEFFA) may finance for higher education colleges and universities. Specifically, the bill expands the definition of authorized projects that may be used by participating institutions to include projects such as: dining halls, research facilities, athletic facilities, healthcare facilities, utility facilities, and other structures useful for the instruction of students, conducting research, or the operation of an educational institution, including equipment and machinery.

Because it is not possible to predict how many additional facilities may be financed by the HEFFA due to the broadened definition of “project” included in this bill, the fiscal impact is indeterminate.

The bill takes effect July 1, 2015.

**II. Present Situation:**

**Higher Educational Facilities Financing Authority**

The Higher Educational Facilities Financing Authority (HEFFA) was created as a public instrumentality by the Legislature with the purpose of assisting institutions of higher education in undertaking constructing, financing, and refinancing projects. The HEFFA has numerous powers, including the ability to issue revenue bonds to finance the costs of a project for a participating institution.

### ***Creation and Background***

The HEFFA was established in 2001 in Chapter 243, Florida Statutes, as a “public body corporate and politic.”<sup>1</sup> The HEFFA is constituted as a “public instrumentality” and the exercise by the HEFFA of its conferred powers is “considered to be the performance of an essential public function.”<sup>2</sup> Members of the HEFFA are appointed by the Governor, subject to confirmation by the Senate.<sup>3</sup> Chapters 119 (public records) and 286 (open meetings) apply to the HEFFA.<sup>4</sup>

### ***Purpose and Powers***

The purpose of the HEFFA is to assist institutions of higher education<sup>5</sup> in undertaking constructing, financing, and refinancing projects.<sup>6</sup> For this purpose, the HEFFA may:<sup>7</sup>

- Exercise general business authority.
  - Exercise all powers granted to corporations under the Florida Business Corporation Act, chapter 607, F.S.
  - Have perpetual succession as a body politic and corporate and adopt bylaws for the regulation of its affairs and the conduct of its business.
  - Adopt an official seal.
  - Maintain an office at any place in the state.
  - Sue and be sued.
  - Employ consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers, and other employees and agents as necessary.
  - Charge to and equitably apportion among participating institutions its administrative costs and expenses incurred in the exercise of the powers and duties.
  - Contract with an entity as its agent to assist the HEFFA in screening applications of institutions of higher education for loans.
  - Do all things necessary or convenient to carry out the purposes of ss. 243.50-243.77, F.S.
- Implement financing arrangements.
  - Make and execute financing arrangements, leases, contracts, deeds, and other instruments necessary or convenient in the exercise of the powers and functions of its authority.

<sup>1</sup> Section 243.53(1), F.S., s. 4, Ch. 2001-79, L.O.F. The term “public body corporate and politic” is not specifically defined in state law; although, Section 1.01(8), F.S., defines “public body,” “body politic,” or “political subdivision” to include “counties, cities, town, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state.” See *O’Malley v. Florida Insurance Guaranty Association*, 257 So.2d 9, 11 (Fla. 1971)(The business of a public corporation is ordinarily “stipulated by the Legislature to fill a public need without private profit to any organizers or stockholders. Their function is to promote the public welfare and often they implement government regulations within the state’s police power. In a word, they are organized for the benefit of the public.”); see *Forbes Pioneer Boat Line v. Board of Commissioners*, 82 So.2d 346, 350 (Fla. 1919)(Public corporations or public quasi-corporations and the governing bodies thereof possess only such powers as are expressly granted by statute or necessarily implied in order to carry the expressly granted powers into effect.).

<sup>2</sup> Section 243.53(1), F.S.

<sup>3</sup> Section 245.53(2), F.S.

<sup>4</sup> *Id.*

<sup>5</sup> Section 243.52(6), F.S. An “institution of higher education” means “an independent nonprofit college or university which is located in and chartered by the state; which is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools which grants baccalaureate degrees; and which is not a state university or state community college.” *Id.*

<sup>6</sup> Section 243.54, F.S.

<sup>7</sup> *Id.*

- Mortgage any project and the site thereof for the benefit of the holders of revenue bonds issued to finance projects or those providing credit for that purpose.
- Engage in the sale-leaseback, lease-purchase, lease-leaseback, or other undertakings and provide for the sale of certificates of participation incident thereto.
- Issue bonds and manage loans.
  - Issue bonds; bond anticipation notes, and other obligations for any of its corporate purposes.
  - Receive and accept from any public agency loans or grants for or in aid of the construction of a project.
  - Make loans to any participating institution for the cost of the project, including a loan in anticipation of tuition revenues.
  - Make loans to a participating institution to refund outstanding obligations, mortgages, or advances issued, made, or given by the participating institution for the cost of a project.
- Manage and Delegate Project Responsibilities.
  - Determine the location and character of any project to be financed; construct, reconstruct, maintain, repair, and lease the project as lessee or lessor; enter into contract for these purposes.
  - Designate the participating institution as the agent of the HEFFA for these purposes.
- Provide Accountability and Transparency.
  - Establish rules for the use of a project, and designate a participating institution as its agent to establish rules for the use of the project undertaken by the participating institution.
  - Transfer free and clear title to the participating institution when principal and interest on revenue bonds have been paid (or adequate provision has been made to pay any bonds), all other conditions securing the bonds have been satisfied, and the lien has been released.<sup>8</sup>
  - Submit a report to the Governor, President of the Senate, and Speaker of the House of Representatives at the end of each fiscal year.<sup>9</sup> The report must include numerous provisions, including but not limited to expenditures, assets, liabilities, and the outstanding bond schedule.<sup>10</sup>

### ***Authorized Projects and Costs***

A “project” is defined as “a dormitory, student service facility, parking facility, administration building, academic building, or library and includes a loan in anticipation of tuition revenues by an institution of higher education....”<sup>11</sup>

The HEFFA may finance “costs” to include items such as: construction and land acquisition; structures; demolition, including the cost of purchasing the lands which the buildings may be removed; machinery and equipment; working capital, reserves for principal, interest, and rebate;

---

<sup>8</sup> Section 243.57, F.S.

<sup>9</sup> Section 243.73, F.S.

<sup>10</sup> *Id.*

<sup>11</sup> Section 243.52(3), F.S.

additions and improvements; engineering, financial, and legal services; plans and surveys; and other expenses.<sup>12</sup>

The participating institution may fix, revise, charge, and collect rates, rents, fees, and charges for the use of and for the services furnished to or to be furnished by each project and may contract with any person, partnership, association, corporation, or other body, public or private, in respect thereof. The rates, rents, fees, and charges must be fixed and adjusted in respect of the aggregate of rates, rents, fees, and charges from the project to as to provide funds sufficient with other revenues to pay the cost of maintenance, repairs, operations, and principal and interest on outstanding revenue bonds.<sup>13</sup>

### ***Bonds and Tax Exempt Status***

Revenue bonds issued by the HEFFA are not a debt or liability of the HEFFA, any municipality, the state, or any political subdivision thereof.<sup>14</sup> Thus, the bonds are not secured by the full faith and credit of the state, and do not constitute an obligation, either general or special, of the state.<sup>15</sup> However, the bonds may be secured by mortgage or the full faith and credit of a participating institution of higher education or any other lawfully pledged security of a participating institution of higher education.<sup>16</sup>

Because the operation and maintenance of a project by the HEFFA or a participating institution constitutes the performance of an essential public function, neither the HEFFA nor a participating institution is required to pay any taxes or assessments upon or in respect of a project or any property acquired or used by the HEFFA or a participating institution.<sup>17</sup>

### ***Participating Institutions***

A “participating institution” means “an institution of higher education, as defined in s. 243.52(6) that undertakes the financing and construction or acquisition of a project or undertakes the refunding or refinancing of obligations or of a mortgage or of advances as provided in an permitted by ss. 243.50-243.77.”<sup>18</sup> Thus, to become a “participating institution” an “institution of higher education” must essentially utilize the HEFFA as provided by law.

The participating institution may fix, revise, charge, and collect rates, rents, fees, and charges for the use of and for the services furnished to or to be furnished by each project and may contract with any person, partnership, association, corporation, or other body, public or private, in respect thereof. The rates, rents, fees, and charges must be fixed and adjusted in respect of the aggregate

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<sup>12</sup> Section 243.52(4), F.S. In the case of a loan in anticipation of tuition revenues, the term “cost” means “the amount of the loan in anticipation of revenues which does not exceed the amount of tuition revenues anticipated to be received by the borrowing institution of higher education in the 1-year period following the date of the loan, plus costs related to the issuance of the loan, or the amount of the bonds, the proceeds of which the fund loans and any related cost of debt service, reserve funds, and rebate associated therewith.” *Id.*

<sup>13</sup> Section 243.67, F.S. Note that any holder of revenue bonds may take legal action to enforce and compel performance of all duties, including the fixing, charging, and collecting of the rates, rents, fees, and charges. Section 243.69, F.S.

<sup>14</sup> Section 243.66, F.S.

<sup>15</sup> Section 243.64, F.S.

<sup>16</sup> Section 243.52(5), F.S.

<sup>17</sup> Section 243.70, F.S.

<sup>18</sup> Section 243.52(7), F.S.

of rates, rents, fees, and charges from the project to as to provide funds sufficient with other revenues to pay the cost of maintenance, repairs, operations, and principal and interest on outstanding revenue bonds.<sup>19</sup>

### ***County Educational Facilities Authority***

As early as 1969, the Legislature created in each county, a “public body corporate and politic” to be known as the “\_\_\_\_\_ County Educational Facilities Authority (CEFA).”<sup>20</sup> The CEFA’s were constituted as a public instrumentality and the exercise of the authority and powers conferred are deemed to be the performance of an essential public function.<sup>21</sup> The purpose of the CEFA’s is to assist institutions for higher education in the construction, financing, and refinancing of projects.<sup>22</sup> The definition of “project” for CEFA’s means:<sup>23</sup>

- A structure suitable for use as a:
  - Dormitory or other housing facility.
  - Dining hall.
  - Student union.
  - Administration building.
  - Academic building.
  - Library.
  - Laboratory.
  - Research facility.
  - Classroom.
  - Athletic facility.
  - Health care facility.
  - Maintenance, storage or utility facility.
- Other structures or facilities related to, required or useful for the:
  - Instruction of students.
  - Conducting of research.
  - Operation of an institution of educational institution, including:
    - Parking.
    - Other facilities or structures, essential or convenient for the orderly conduct of such institution of higher education, including:
      - Equipment.
      - Machinery.
      - Other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which its use is intended, but excluding items such as books, fuel, supplies, and other items that are customarily deemed to result in a current operating charge.
- A loan in anticipation of tuition revenues by a private institution of higher education.

<sup>19</sup> Section 243.67, F.S. Note that any holder of revenue bonds may take legal action to enforce and compel performance of all duties, including the fixing, charging, and collecting of the rates, rents, fees, and charges. Section 243.69, F.S.

<sup>20</sup> Section 243.21(1), F.S. *Compare* the definition of “projects” for CEFA’s and the HEFFA. The CEFA’s have historically had a more extensive list of projects that may be financed.

<sup>21</sup> *Id.*

<sup>22</sup> Section 243.22, F.S.

<sup>23</sup> Section 243.20(5), F.S.

As previously noted, the HEFFA was created in 2001, well after creation of the CEFAs. It appears the HEFFA was created as a response to the problems experienced by the CEFAs with projects for constructions as well as operations.<sup>24</sup> Despite legislative attempts to increase authority for the CEFAs in 1999, little activity resulted and nonpublic institutions for higher education were denied loans based on tuition income to pay operational costs.<sup>25</sup>

### III. Effect of Proposed Changes:

The bill expands the types of projects that the Higher Education Facilities Financing Authority (HEFFA) may finance for higher education colleges and universities. Specifically, the bill expands the definition of authorized projects that may be used by participating institutions to include projects such as:

- A structure suitable for use as a:
  - Dormitory or other housing facility.
  - Dining hall.
  - Student union.
  - Administration building.
  - Academic building.
  - Library.
  - Laboratory.
  - Research facility.
  - Classroom.
  - Athletic facility.
  - Health care facility.
  - Maintenance, storage or utility facility.
- Related structures or facilities related to, required, or useful to the:
  - Instruction of students.
  - Conducting of research.
  - Operation of an institution of higher education, including:
    - Parking.
    - Other facilities or structures, essential or convenient for the orderly conduct of such institution of higher education including:
      - Equipment.
      - Machinery.
      - Other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which its use is intended, but excluding items such as books, fuel, supplies, and other items that are customarily deemed to result in a current operating charge.

The bill provides an effective date of July 1, 2015.

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<sup>24</sup> See Staff of the Florida Senate, *Legislative Bill Analysis for CS/SB 302* (2001).

<sup>25</sup> *Id.*

**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:

Because it is not possible to predict how many additional facilities may be financed by the HEFFA due to the broadened definition of “project” included in SB 622, the fiscal impact is indeterminate.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 243.52 of the Florida Statutes.

**IX. Additional Information:**

## A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

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By Senator Montford

3-00289-15

2015622\_\_

1 A bill to be entitled  
2 An act relating to higher education facilities  
3 financing; amending s. 243.52, F.S.; expanding the  
4 definition of the term "project" as it relates to the  
5 Higher Educational Facilities Financing Act; providing  
6 an effective date.

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

10 Section 1. Subsection (3) of section 243.52, Florida  
11 Statutes, is amended to read:

12 243.52 Definitions.—As used in ss. 243.50-243.77, the term:

13 (3) "Project" means a structure suitable for use as a  
14 dormitory or other housing facility; a dining hall; a student  
15 union; an administration building or academic building; a  
16 library; a laboratory; a research facility; a classroom; an  
17 athletic facility; a health care facility; or a maintenance,  
18 storage, or utility facility. The term also includes related  
19 structures or facilities; those structures or facilities useful  
20 for the instruction of students, the conducting of research, or  
21 the operation of an institution of higher education, including  
22 parking and other facilities or structures for the orderly  
23 conduct of such institution of higher education; equipment,  
24 machinery, and other similar items necessary or convenient for  
25 the operation of a particular structure or facility, but not  
26 items such as books, fuel, supplies, or those that are  
27 customarily deemed to result in a current operating charge; and  
28 dormitory, student service facility, parking facility,  
29 administration building, academic building, or library and

Page 1 of 2

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

3-00289-15

2015622\_\_

30 ~~includes~~ a loan in anticipation of tuition revenues by an  
31 institution of higher education, ~~as defined in subsection (6).~~  
32 Section 2. This act shall take effect July 1, 2015.

Page 2 of 2

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Agriculture, *Chair*  
Appropriations Subcommittee on Education, *Vice Chair*  
Appropriations  
Banking and Insurance  
Education Pre-K - 12  
Rules

**SENATOR BILL MONTFORD**

3rd District

April 09, 2015

Senator Tom Lee,  
Chair  
Senate Committee on Appropriations  
201 Capitol  
Tallahassee, Florida 32399-1100

Dear Senator Lee:

I respectfully request that the following bills be scheduled for a hearing before the Senate Committee on Appropriations.

SB 574 Electronic Auction Services  
SB 622 Higher Education Facilities Financing

Your assistance and favorable consideration of my request is greatly appreciated.

Sincerely,

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

William "Bill" Montford  
Senate District 3

WM/md

Cc: Cindy Kynoch, Staff Director

REPLY TO:

- 214 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
- 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

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

**ANDY GARDINER**  
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)

4/16/2015

*Meeting Date*

Topic \_\_\_\_\_ Bill Number 622  
*(if applicable)*

Name BRIAN PITTS Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291

*Street*

SAINT PETERSBURG FLORIDA 33705

*City*

*State*

*Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

*Public record for this meeting.*

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4-16-15

Meeting Date

SB 622

Bill Number (if applicable)

Topic HIGHER EDUCATION FACILITIES FINANCING

Amendment Barcode (if applicable)

Name BOB BOYD

Job Title GENERAL COUNSEL - ICUF

Address 660 E. JEFFERSON AVE  
Street

Phone 850-412-0306

TALL FL 32301  
City State Zip

Email bboyd@ssc/lawfirm.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing ICUF (INDEP. COLLEGES + UNIVERSITIES OF FLORIDA)

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: SB 662

INTRODUCER: Senator Latvala

SUBJECT: Mobile Homes

DATE: April 15, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<b>Favorable</b>
2.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	<b>Favorable</b>
3.	<u>Davis</u>	<u>Kynoch</u>	<u>AP</u>	<b>Favorable</b>

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**I. Summary:**

SB 662 relates to the Florida Mobile Home Act (act), which regulates residential tenancies in which a mobile home is placed on a rented or leased lot in a mobile home park with ten or more lots. The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (department) enforces the act. The bill provides that:

- The division is required to provide training and educational programs for mobile home owners' associations;
- Mobile home owners must comply with all building permit and construction requirements. A mobile home owner is responsible for fines imposed for violating any local codes;
- A mobile home owner's right to notice of a rental increase or change in services may not be waived;
- A homeowners' committee must make a written request for a meeting with the park owner to discuss a proposed rental increase or change in services or rules;
- Automatically renewable leases are assumable by the homeowner's spouse; however, this right of assumption may only be exercised once during the term of the lease;
- A member of the board of directors of the Florida Mobile Home Relocation Corporation must be removed immediately upon written request for removal from the association that originally nominated that member;
- A homeowners' association's bylaws must include specific provisions related to meetings, voting requirements, proxies, amending the articles of incorporation and bylaws, duties of officers and directors, vacancies on the board, and recall of directors;
- The division must promulgate rules to provide binding arbitration or recall election disputes;
- Board members must either certify that they have read the association's organizing documents, rules, and regulations and that they will faithfully discharge their fiduciary responsibility, or complete the division's educational program within one year of taking office; and

- The homeowners' association is required to retain and make available certain official records to the members of the association, but may not disclose specified information.

The department estimates that the creation of a mobile home arbitration program will have a fiscal impact of \$160,695 in Fiscal Year 2015-2016 and \$149,925 annually thereafter and can be handled within existing resources.

The bill provides an effective date of July 1, 2015.

## II. Present Situation:

### Mobile Home Act

Chapter 723, F.S., is known as the “Florida Mobile Home Act” (act) and provides for the regulation of mobile homes by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (department).

The Florida Mobile Home Act was enacted in 1984.<sup>1</sup> The act was created to address the unique relationship between a mobile home owner and a mobile home park owner. The act provides in part that:

Once occupancy has commenced, unique factors can affect the bargaining position of the parties and can affect the operation of market forces. Because of those unique factors, there exist inherently real and substantial differences in the relationship which distinguish it from other landlord-tenant relationships. The Legislature recognizes that mobile home owners have basic property and other rights which must be protected. The Legislature further recognizes that the mobile home park owner has a legitimate business interest in the operation of the mobile home park as part of the housing market and has basic property and other rights which must be protected.<sup>2</sup>

The provisions in ch. 723, F.S., apply to residential tenancies where a mobile home is placed upon a lot that is rented or leased from a mobile home park that has 10 or more lots offered for rent or lease.<sup>3</sup>

Section 723.003(6), F.S., defines the term “mobile home park” or “park” to mean:

... a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes and in which the primary use of the park is residential.

Section 723.003(8), F.S., defines the term “mobile home subdivision” to mean:

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<sup>1</sup> Chapter 84-80, L.O.F. Formerly ch. 720, F.S.

<sup>2</sup> Section 723.004(1), F.S.; *see also Mobile Home Relocation*, Interim Report No. 2007-106, Florida Senate Committee on Community Affairs, October 2006.

<sup>3</sup> Section 723.002(1), F.S.

...a subdivision of mobile homes where individual lots are owned by owners and where a portion of the subdivision or the amenities exclusively serving the subdivision are retained by the subdivision developer.

The terms “mobile home park,” “park,” and “mobile home subdivision” have remained unchanged since the enactment of the Florida Mobile Home Act in 1984.<sup>4</sup>

### **Prospectus or Offering Circular**

The prospectus in a mobile home park is the document that governs the landlord-tenant relationship between the park owner and the mobile home owner. The prospectus or offering circular, together with its attached exhibits, is a disclosure document intended to afford protection to the homeowners and prospective homeowners in the mobile home park. The purpose of the document is to disclose the representations of the mobile home park owner concerning the operations of the mobile home park.<sup>5</sup>

In a mobile home park containing 26 or more lots, the park owner must file a prospectus with the division for approval. Prior to entering into an enforceable rental agreement for a mobile home lot, the park owner must deliver to the homeowner a prospectus that has been approved by the division.<sup>6</sup> The division maintains copies of each prospectus and all amendments to each prospectus that it has approved. The division must also provide copies of documents within 10 days of receipt of a written request.<sup>7</sup>

The park owner must furnish a copy of the prospectus with all the attached exhibits to each prospective lessee prior to the execution of the lot rental agreement or at the time of occupancy, whichever occurs first. Upon delivery of a prospectus to a prospective lessee, the lot rental agreement is voidable by the lessee for a period of 15 days.<sup>8</sup>

If a prospectus is not provided to the prospective lessee before the execution of a lot agreement or prior to occupancy, the rental agreement is voidable by the lessee until 15 days after the lessee receives the prospectus.<sup>9</sup> If the homeowner cancels the rental agreement, he or she is entitled to a refund of any deposit together with relocation costs for the mobile home, or the market value thereof including any appurtenances thereto paid for by the mobile home owner, from the park owner.<sup>10</sup>

The prospectus distributed to a home owner or prospective home owner is binding for the length of the tenancy, including any assumptions of that tenancy, and may not be changed except in the specified circumstances.<sup>11</sup>

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<sup>4</sup> See ch. 84-80, L.O.F. The definitions in s. 723.003, F.S., were formerly in s. 720.103, F.S. (1984).

<sup>5</sup> Section 723.011(3), F.S.

<sup>6</sup> Section 723.011(1)(a), F.S.

<sup>7</sup> Section 723.011(1)(d), F.S.

<sup>8</sup> Section 723.011(2), F.S.

<sup>9</sup> Section 723.014(1), F.S.

<sup>10</sup> Section 723.014(2), F.S.

<sup>11</sup> See rule 61B-31.001, F.A.C.

### **Written Notification in the Absence of a Prospectus**

Section 723.013, F.S., provides that when a park owner does not give a prospectus prior to the execution of a rental agreement or prior to the purchaser's occupancy, the park owner must give written notification of specified information prior to the purchaser's occupancy, including zoning information, the name and address of the mobile home park owner or a person authorized to receive notices and demands on his or her behalf, and all fees and charges, assessments, or other financial obligations not included in the rental agreement and a copy of the rules and regulations in effect.

This provision only applies to mobile home parks containing at least ten lots but no more than 25 lots. Section 723.011, F.S., requires mobile home park owners to provide a prospectus to all prospective lessees in mobile home parks containing 26 lots or more.

### **Mobile Home Park Rent Increases**

The mobile home park owner has the right to increase rents "in an amount deemed appropriate by the mobile home park owner." The park owner must give affected mobile home owners and the board of directors of the homeowners' association, if one has been formed, at least 90-day notice of a lot rental increase.<sup>12</sup>

A committee of up to five people, designated by a majority of the owners or by the board of directors, and the park owner must meet within 30 days of the notice of change to discuss the reasons for the changes.<sup>13</sup> At the meeting, the park owner or subdivision developer must in good faith disclose and explain all material factors resulting in the decision to increase the lot rental amount, reduce services or utilities, or change rules and regulations, including how those factors justify the specific change proposed.<sup>14</sup>

If the meeting does not resolve the issue, then additional meetings may be requested. If subsequent meetings are unsuccessful, within 30 days of the last scheduled meeting, the homeowners may petition the division to initiate mediation.<sup>15</sup> If the mediation does not successfully resolve the dispute, then the parties may file an action in circuit court to challenge the rental increase as unreasonable.<sup>16</sup>

Unreasonable lot rental agreements and unreasonable rent increases are unenforceable.<sup>17</sup> A lot rental amount that exceeds market rent shall be considered unreasonable.<sup>18</sup> Market rent is defined as rent which would result from market forces absent an unequal bargaining position between mobile home park owners and mobile home owners.<sup>19</sup>

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<sup>12</sup> Section 723.037(1), F.S.

<sup>13</sup> Section 723.037(4)(a), F.S.

<sup>14</sup> Section 723.037(4)(b), F.S.

<sup>15</sup> Section 723.037(5)(a), F.S.

<sup>16</sup> Section 723.0381, F.S.

<sup>17</sup> Section 723.033(1), F.S.

<sup>18</sup> Section 723.033(5), F.S.

<sup>19</sup> Section 723.033(4), F.S.

In determining market rent, the court may consider “rents charged by comparable mobile home parks in its competitive area. To be comparable, a mobile home park must offer similar facilities, services, amenities, and management.”<sup>20</sup> In determining whether a rent increase or resulting lot rental amount is unreasonable, the court may consider “economic or other factors, including, but not limited to, increases or decreases in the consumer price index, published by the Bureau of Labor Statistics of the Department of Labor; increases or decreases in operating costs or taxes; and prior disclosures.”<sup>21</sup> These same standards are to be employed by the arbitrator or mediator in any arbitration or mediation under ch. 723, F.S.<sup>22</sup>

## **Homeowners’ Associations**

### ***Training and Educational Programs***

The division is required to provide training and educational programs for condominium and cooperative association board members and owners.<sup>23</sup> The training may include web-based electronic media, and live training and seminars in various locations throughout the state. The division may also approve education and training programs and maintain a list of approved programs and providers and make such list available to board members and unit owners in a reasonable and cost-effective manner. Chapter 723, F.S., does not provide a comparable provision for mobile home homeowners’ associations and mobile homeowners.

### ***Mobile Home Owner's General Obligations***

Section 723.023, F.S., requires a mobile home owner to comply with all building, housing, and health codes; to keep the mobile home lot clean and sanitary; to comply with park rules and regulations and require others on the premises to comply with the rules and regulations; and to conduct themselves in a manner that does not unreasonably disturb other residents of the park.

### ***Rights of Purchasers - Assumption of the Lease***

Section 723.059(5), F.S., provides that lifetime leases to mobile home lots entered into after July 1, 1986, are not assumable unless allowed by the lot rental agreement or unless the transferee is the homeowner's spouse. Automatically renewable leases are not assumable unless provided for in the lease agreement.

## **Florida Mobile Home Relocation Corporation**

Section 723.0611, F.S., creates the Florida Mobile Home Relocation Corporation (corporation) to provide compensation to homeowners in mobile home parks who receive an eviction notice due to a change in land use of the mobile home park. The corporation provides compensation for relocation of the mobile home or its abandonment.<sup>24</sup> The corporation is administered by a board of directors made up of six members, three of whom are appointed by the Secretary of Business and Professional Regulation (secretary of the department) from a list of nominees submitted by

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<sup>20</sup> Section 723.033(5), F.S.

<sup>21</sup> Section 723.033(6), F.S.

<sup>22</sup> Section 723.033(7), F.S.

<sup>23</sup> Sections 718.501(1)(j), and 719.501(1)(k), F.S.

<sup>24</sup> Section 723.0612, F.S.; Florida Mobile Home Relocation Corporation Website, <http://www.fmhrc.org/> (last visited Mar. 17, 2015).

the largest nonprofit association representing mobile home owners in Florida, and three of whom are appointed by the secretary of the department from a list of nominees submitted by the largest nonprofit association representing the manufactured housing industry in Florida.<sup>25</sup>

### **Homeowners' Association Bylaws – Required Provisions**

Section 723.078, F.S., provides that in order for a mobile home owners' association to exercise its right to purchase the mobile home park pursuant to s. 723.071, F.S., the association's bylaws must contain a number of statutory provisions.

#### ***Administration***

Section 723.078(2)(a), F.S., provides that a board of directors of a homeowners' association must have a president, secretary, and treasurer. It does not specify how those positions are to be filled. The board of directors may appoint and designate other officers. The Condominium Act and the Cooperative Act contain similarly worded provisions.<sup>26</sup>

#### ***Quorum; Voting Requirements; and Proxies***

Section 723.078(2)(b)1., F.S., provides that a majority of the association's members constitutes a quorum.

Section 723.078(2)(b)1., F.S., also provides that the association's bylaws must provide for the use of a proxy. Any proxy given must be effective only for the specific meeting for which originally given. A proxy may be valid for up to 120 days after the date of the first meeting for which it was given. Every proxy must also be revocable at any time.

#### ***Board of Directors' and Committee Meetings***

Section 723.078(c), F.S., requires that meetings of the board of directors must be open to members, and notice of meetings must be posted in a conspicuous place on park property at least 48 hours in advance, except in an emergency. Notice of any meeting in which assessments are to be considered must contain a statement that assessments will be considered and the nature of such assessments.

Chapter 723, F.S., does not provide a procedure to fill vacancies on the association's board of directors.

#### ***Officer and Director Duties***

Section 723.078(2)(i), F.S., provides that the officers and directors of a mobile homeowners' association have a fiduciary relationship to the members.

#### ***Member Meetings***

Section 723.078(2)(d), F.S., requires annual member meetings during which members of the board of the directors are elected. The association's bylaws may not restrict any member desiring

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<sup>25</sup> Section 723.0611(1), F.S.

<sup>26</sup> Sections 718.112(2)(a)1. and 719.106(1)(a)1., F.S.

to be a candidate for board membership from being nominated. Written notice of all meetings must be provided at least 14 days in advance of the meeting. Unless waived, the notice of the annual meeting must be sent by mail to each member.

#### ***Minutes of Meetings***

Section 723.078(2)(e), F.S., requires the minutes of all meetings of members and of the board of directors to be maintained, available for inspection, and retained for at least seven years.

#### ***Amendment of Articles of Incorporation and Bylaws***

Section 723.078(2)(h), F.S., requires that the bylaws of associations provide a method of amendment. If the bylaws do not provide a method of amendment, they may be amended by the board of directors and approved by a majority of the membership.

#### ***Recall of Board Members***

Section 723.08(2), F.S., provides a limited procedure for the recall of members of a mobile homeowners' association board of directors. Any member of the board of directors may be recalled and removed from office by the vote or written agreement of a majority of all members.

The division provides nonbinding arbitration of recall election disputes in condominium and cooperative associations.<sup>27</sup>

#### ***Board Member Training Programs***

Chapter 723, F.S., does not require board members to attend training related to the association's organizing documents, rules, and statutes.

#### ***Maintenance of Records***

Section 723.079(4), F.S., requires mobile homeowners' associations to maintain and make available for inspection basic accounting records, such as records of all receipts and expenditures and records of assessments and payments by each member.

### **III. Effect of Proposed Changes:**

#### **Definitions**

The bill amends s. 73.072, F.S., relating to compensation for permanent improvements by mobile homeowners, to correct the cross-reference to the definition of "mobile home park" in s. 723.003, F.S.

The bill amends s. 723.003, F.S., to define the terms "electronic transmission," "homeowners' association," and "mediation."

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<sup>27</sup> See s. 718.1255, F.S., for the division's dispute resolution authority; and ss. 718.112(2)(j) and 719.106(1)(f), F.S., for the arbitration of recall election disputes in condominium and cooperative associations, respectively.

The bill defines the term "homeowners' committee" as a committee, not to exceed five persons, that is designated by the majority of affected homeowners in a mobile home park for the purpose of meeting with the park owner or subdivision developer to discuss rental increases, reduction in services or utilities, or changes in rules and regulations and other matters authorized by the association. The committee is also authorized to enter into a binding agreement with the park owner, or a subdivision developer, on behalf of the association, its members, and all other mobile homeowners in the mobile home park.

The bill amends s. 723.003(9), F.S., to define the term "mobile home lot" to mean a lot described by a park owner pursuant to the requirements of s. 723.012, F.S., or in a disclosure statement pursuant to s. 723.013, F.S., as a lot intended for the placement of a mobile home.

The bill defines the term "offering circular" as having the same meaning as the term "prospectus."

The bill defines "mobile home owner" to include "mobile homeowner" and "homeowner."

### **Education and Training of HOA Board Members and Homeowners - Providers**

The bill creates s. 723.006(12), F.S., to require the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (department) to approve training and education programs for board members and mobile homeowners. The training may include web-based electronic media and live training and seminars in various locations throughout the state.

The bill creates s. 723.006(13), F.S., to require the division to maintain a list of currently approved providers and programs. It requires that the cost of the training and educational programs must be borne by the providers of the programs. The bill requires that the division establish a fee structure for the training programs sufficient to recover any costs incurred by the division in operating the program.

These education and training provisions for mobile homeowners are comparable to the training and education program offered to homeowners' associations and homeowners in condominium and cooperative associations under ss. 718.501(1)(j), and 719.501(1)(k), F.S., respectively.

The bill creates s. 723.006(14), F.S., to specify the information that must be included in the required education curriculum for mobile home owners and associations. The bill provides that the required information provided to board member and home owners must include the provider of the training programs, including the price, physical location if not web-based, dates, and curriculum for the programs. The curriculum must provide information about statutory and regulatory matters relating to the board of directors of the homeowners' association and their responsibilities. The educational programs may not contain editorial comments. The bill provides that the division has the right to approve and require changes to the education and training programs.

### **Mobile Home Owners' General Obligations**

The bill amends s. 723.023, F.S., to provide additional obligations for mobile home owners. It provides that they must comply with all building permit and construction requirements and keep the mobile home lot neat and maintained in compliance with all local codes. It provides that the homeowner is responsible for all fines imposed by the local government for noncompliance with any local codes.

The bill also requires that other persons on the premises with the mobile home owner's consent must conduct themselves, and other persons on the premises with his or her consent, in a manner which does not reasonably disturb other residents or constitute a breach of the peace.

### **Lot Rental Increases and Homeowners' Committee Negotiations**

The bill amends s. 723.037(1), F.S., to provide that a mobile home owner's right to the 90-day notice may not be waived or precluded by agreement with the park owner. It amends s. 723.037(4)(a), F.S., to require that the homeowners' committee and the park owner must meet no later than 60 days before the effective date of the change rather than within 30 days after receipt of the notice of change as currently required. The bill requires that the homeowners' committee must also make a written request for a meeting with the park owner to discuss the matters in the 90-day notice and may include in the request a list of any other issues the committee intends to discuss at the meeting.

The bill creates s. 723.037(7), F.S., to define term "parties" for the purposes of mediation pursuant to ss. 723.037, F.S., to mean a park owner and the homeowners' committee.

### **Rights of Purchasers - Assumption of the Lease**

The bill amends s. 723.059(5), F.S., to provide that automatically renewable leases are not assumable unless the transferee is the homeowner's spouse. The right to assume the lease by a spouse may only be exercised once during the term of the lease.

The bill deletes the provision that lifetime leases to mobile home lots entered into after July 1, 1986, are not assumable unless allowed by the lot rental agreement or unless the transferee is the homeowner's spouse, and are not assumable unless provided for in the lease agreement.

### **Florida Mobile Home Relocation Corporation - Removal of Members**

The bill amends s. 723.0611, F.S., to provide that a member of the board of directors must be removed by the Secretary of Business and Professional Regulation (secretary of the department), with or without cause, immediately after a written request for removal from the association that originally nominated that board member. The nominating entity must include nominees for replacement with the request for removal and the secretary of the department must immediately fill the vacancy created by the removal. This removal process may not occur more than once in a calendar year.

## **Homeowners' Association Bylaws**

### ***Required Bylaw Provisions***

The bill amends s. 723.078, F.S., to remove the requirement that the bylaws contain the enumerated provisions for the association in order to exercise its right to purchase a mobile home park.

### ***Administration***

The bill amends s. 723.078(2)(a), F.S., to provide that the board of directors must elect a president, secretary, and treasurer, and that the board of directors may elect and designate other officers.

### ***Quorum; Voting Requirements; and Proxies***

The bill amends s. 723.078(2)(b)1., F.S., to provide that, unless otherwise provided in the bylaws, 30 percent of the total membership is required to constitute a quorum.

The bill amends s. 723.078(2)(b)1., F.S., to reduce the number of days a proxy may be valid from 120 days to 90 days. The bill also incorporates a number of proxy provisions found in chs. 718 and 719, F.S., relating to condominiums and cooperatives, respectively.<sup>28</sup> The bill provides that:

- A member may not vote by general proxy;
- A member of the association may only vote by limited proxies that conform to a limited proxy form adopted by the division;
- Limited proxies and general proxies may be used to establish a quorum; and
- Limited proxies may be used for votes taken to amend the articles of incorporation or bylaws, and any other matters that ch. 723, F.S., requires or permits a vote of members, except that no proxy may be used in the election of board members.

The bill also provides that a member of the board of directors or a committee may submit in writing his or her agreement or disagreement with any action taken at a meeting that the member did not attend. However, a written agreement or disagreement may not be used as a vote for or against an action or to establish a quorum.

### ***Board of Directors' and Committee Meetings***

The bill creates s. 723.078(c)1., F.S., to provide that the requirement that board and committee meetings must be open to the members does not apply to meetings held for the purpose of discussing personnel matters or meetings with the association's attorney with respect to seeking or rendering legal advice and where the contents of the discussion would be governed by the attorney-client privilege.

The bill creates s. 723.078(c)2., F.S., to provide that members of the board of directors may participate in a meeting via telephone, real-time videoconferencing, or similar communication

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<sup>28</sup> Sections 718.112(2)(a)1. and 719.106(1)(a)1., F.S. See *Sample Limited Proxy Form*, DBPR Form CO 6000-7, Rule 61B-23.002, F.A.C.

and that such participation may count towards a quorum. A member who participates electronically may vote as if physically present. A speaker must be used so that the board or committee members and association members attending in person may hear the person who is participating electronically.

The bill creates s. 723.078(c)3., F.S., to provide that the board of directors may use email as a means of communication. However, members of the board may not cast a vote on an association matter via email.

The bill creates s. 723.078(c)4., F.S., to provide that the right to attend meetings of the board and its committees includes the right to speak at such meetings. It provides that the association may adopt reasonable written rules governing members' statements. Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one of the members of the board. Such emergency action must be noticed and ratified at the next regular meeting of the board. Any member may tape record or videotape meetings, and the division must adopt rules governing the tape recording and videotaping of meetings.

These provisions relating to quorum, voting and the administration of meetings are comparable to the board and committee meeting requirements for condominium, cooperative, and homeowners' associations.<sup>29</sup>

The bill creates ss. 723.078(2)(c)5., F.S., to provide a procedure to fill vacancies on the association's board of directors. It provides that except in cases of a recall vote, a vacancy occurring on the board of directors may be filled by:

- The affirmative vote of the majority of the remaining directors, even though the remaining directors constitute less than a quorum;
- By the sole remaining director;
- If no director remains, by the members; or
- By the circuit court of the county in which the registered office of the corporation is located.

The bill creates s. 723.078(2)(c)6., F.S., to provide that the term of a director elected or appointed to fill a vacancy expires at the next annual meeting at which directors are elected. A directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors, but only for the term of office continuing until the next election of directors by the members.

The bill creates s. 723.078(2)(c)7., F.S., to provide that a vacancy that will occur at a specific later date, by reason of a resignation effective at a later date, may be filled before the vacancy occurs. However, the new director may not take office until the vacancy occurs.

### ***Officer and Director Duties***

The bill creates s. 723.078(2)(c)8., F.S., to expand the duties of officers and directors. In addition to providing that the officers and directors of a mobile homeowners' association have a fiduciary relationship to the members, as provided in current law, the bill requires a director and

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<sup>29</sup> See ss. 718.112(2)(b) and (c), 719.106(1)(c), and 720.303(2), F.S.

committee member to discharge his or her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the best interests of the corporation.

The bill creates s. 723.078(2)(c)9., F.S., to provide that, in discharging his or her duties, a director may rely on information, opinions, reports, statements, or if prepared by officers, employees, and any other professional, such as legal counsel or accountants, who the director reasonably believes to be reliable and competent in the matters presented.

The bill creates s. 723.078(2)(c)10., F.S., to provide that a director is not acting in good faith if he or she has knowledge concerning the matter in question that makes such reliance unwarranted.

The bill creates s. 723.078(2)(c)11., F.S., to provide that, if a director has performed the duties of his or her office in compliance with this provision, he or she is not liable for any action taken as a director, or any failure to take any action.

These provisions are comparable to the fiduciary responsibilities for boards and committees in condominium associations and cooperative associations.<sup>30</sup>

### ***Member Meetings***

The bill amends s. 723.078(2)(d), F.S., to provide that all nominations must be made from the floor at a meeting of the members held at least 30 days before the annual meeting. It permits the notice of the annual meeting to be mailed, hand delivered, or electronically transmitted. These provisions are comparable requirements for delivery of the notice of the annual meeting for condominium associations and cooperative associations.<sup>31</sup>

### ***Minutes of Meetings***

The bill amends s. 723.078(2)(e), F.S., to require that the minutes of all meetings of members of the association, the board of directors, and a committee must be maintained in written form and approved by the members, board, or committee, as applicable. It also requires that a vote or abstention from voting on each matter voted upon for each director present at a board meeting must be recorded in the minutes. These provisions are comparable to the vote recording requirements for boards in condominium, cooperative, and homeowners' associations.<sup>32</sup>

### ***Amendment of Articles of Incorporation and Bylaws***

The bill amends s. 723.078(2)(h), F.S., to require that the articles of incorporation as well as the bylaws must provide a method of amendment. The bill provides that, if the bylaws do not provide a method of amendment, they may be amended by the board of directors and approved by a majority of members at a meeting at which a quorum is present rather than a majority of the membership as is currently required. It provides that, notwithstanding any other provision of s. 723.078, F.S., if an amendment to the articles of incorporation or the bylaws is required by any

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<sup>30</sup> See ss. 718.111(1)(d), F.S., and 719.104(8), F.S.

<sup>31</sup> See ss. 718.112(2)(c) and 719.106(1)(c), F.S.

<sup>32</sup> See ss. 718.111(1)(b), 719.104(8)(b), 720.303(5), F.S.

federal, state, or local governmental authority or agency, or any law, ordinance, or rule, the board of directors may, by a majority vote, amend the articles of incorporation or bylaws without a vote of the membership.

These provisions are not comparable to the amendment of articles of incorporation and bylaws in condominium associations and cooperative associations.<sup>33</sup>

### **Recall of Board Members**

The bill amends s. 723.078(2)(i), F.S., to provide for the recall of elected board members. The bill prohibits the use of electronic transmission as a method of giving notice of a meeting called in whole or in part for a recall vote.

The bill requires that a recall may be approved by a majority vote of all members at a meeting or by a written agreement by a majority of all members. If a recall is approved by the members, the board must duly notice and hold a board meeting within five full business days after the adjournment of the member meeting to determine whether to certify the recall. If the board does not certify a recall, the members may file a petition for binding arbitration with the division. The bill also provides a process for recall using a written agreement signed by a majority of all members.

The bill requires that a board member who has been recalled must return all records and property of the association in his or her possession within five business days. A board member who has been recalled may file a petition for binding arbitration with the division to challenge the validity of the recall. The petition must be filed within 60 days after the recall.

The bill provides that if a board fails to hold a meeting to certify a recall vote within five days after a meeting of the members or after a written agreement, the member's representative may file a petition with the division, as provided in s. 723.1255, F.S., which requires the division to provide binding arbitration of recall disputes. The petition must be filed within 60 days of the expiration of the five-day period.

The bill requires that a vacancy on a board due to a recall may be filled by a vote of a majority of the remaining directors. If a vacancy occurs on a board due to a recall and a majority of the board members are removed, the vacancies will be filled in accordance with rules to be adopted by the division.

These provisions are comparable to the recall requirements in condominium associations and cooperative associations.<sup>34</sup>

The bill creates s. 723.1255, F.S., to require the division to adopt rules of procedure that will govern binding recall arbitration proceedings.

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<sup>33</sup> See ss. 718.110 and 719.1055(4)(a), F.S.

<sup>34</sup> Sections 718.112(2)(j) and 719.106(1)(f), F.S.

### **Board Member Training Programs**

The bill creates s. 723.0781, F.S., to provide a post-election certification requirement for newly elected board members. Within 90 days after being elected or appointed, a new board member must certify that he or she:

- Has read the association's articles of incorporation, bylaws, and the mobile home park's prospectus, rental agreement, rules, regulations, and written policies;
- Will work to uphold such documents and policies to the best of his or her ability; and
- Will faithfully discharge his or her fiduciary responsibility to the association's members.

As an alternative to a written certification, the newly elected or appointed director may submit a certificate of satisfactory completion of the educational curriculum within one year before the election or 90 days after the election or appointment.<sup>35</sup> The curriculum must be administered by a condominium education provider approved by the division.<sup>36</sup> A certification is valid and does not have to be resubmitted as long as the director continuously serves on the board.

A board member is suspended from service on the board until he or she files the written certification or submits a certificate of completion of the educational curriculum.<sup>37</sup> If a suspension occurs, the board may temporarily fill the vacancy during the period of suspension. The secretary of the association must keep the written certification or educational certificate for inspection by the members for five years after a director's election or appointment. The validity of any action by the condominium board is not affected by the association's failure to have the certification on file.

The training requirement is comparable to training and certification required for board members of condominium, cooperative, and homeowners' associations.<sup>38</sup>

### **Maintenance of Records**

The bill amends s. 723.079(4), F.S., to require an association to retain and make available specified records. The records that must be retained include articles of incorporation, bylaws and rules, meeting minutes, current roster of members, insurance policies, contracts, tax documents, and financial statements. The records must be retained for at least seven years within the state and be available for inspection or photocopying. The email addresses and numbers of members who elect not to receive electronic transmission of notices must have email addresses and numbers removed from the association records.

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<sup>35</sup> *Id.* The department's Internet site provides a listing of approved educational providers for condominium associations under ch. 718, F.S., and homeowners' associations under ch. 720, F.S. See Division of Florida Condominiums, Timeshares, and Mobile Homes, *Approved Education Providers*, available at <http://www.myfloridalicense.com/dbpr/lsc/condominiums/ApprovedEducationProviders.html> (Last visited March 17, 2015).

<sup>36</sup> Section 718.112(2)(d)3.b., F.S.

<sup>37</sup> *Id.*

<sup>38</sup> See ss. 718.112(2)(d)4.b., 719.106(1)(d)1.b., and 720.3033(1), F.S.

The bill specifies the information that must be included in the association's financial records, which must be accurate, itemized, and detailed records of all receipts and expenditures and reflect the current assessment due from the members.

If the association has a photocopy machine available where the records are maintained, it must provide homeowners with copies on request during the inspection if the entire request is limited to no more than 25 pages. The association may impose fees to cover the cost of providing copies of the official records, including, without limitation, the cost of copying. The association may also charge any reasonable costs involving personnel fees and charges at an hourly rate to cover the association's or vendors administrative costs.

If the association fails to provide a member an opportunity to inspect the records within 10 days after a request to inspect the records, the association may be assessed a fine of \$10 per day up to 10 days. The association may develop reasonable rules related to the inspection of documents, including charging fees for copies, and may not allow inspection of documents that is protected by lawyer-client privilege or would reveal personal identifying information other than a person's name and address.

The bill also specifies the information that are not accessible to members or homeowners, including records protected by attorney-client privilege, electronic mailing addresses, telephone numbers, facsimile numbers, emergency contact information, any addresses for a homeowner other than that provided for association notice requirements, other person identifying information of any person, electronic security measures, and software and operating systems.

The bill requires that the outgoing board establish a system for relinquishing control of the records within five days after an election or removal.

This official records provision is comparable to that required for condominium, cooperative, and homeowners' associations.<sup>39</sup>

#### **Effective Date**

The bill provides an effective date of July 1, 2015.

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

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

None.

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

None.

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<sup>39</sup> Sections 718.111(12), 719.104(2), and 720.303(5), F.S.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under SB 662, members of a board of directors of a mobile home owners' association who choose to complete the required educational training in lieu of certifying that they have read the association's organizing documents, rules, and regulations may incur costs for such training. The cost for similar educational requirements in the newly elected members of the board of a condominium or cooperative association ranges from no fee to \$200.<sup>40</sup>

C. Government Sector Impact:

The Department of Business and Professional Regulation (department) estimates that the creation of the mobile home arbitration program will necessitate the need for additional OPS staff and have a fiscal impact of approximately \$160,695 in Fiscal Year 2015-2016 and \$149,925 annually thereafter.<sup>41</sup> However, the department can absorb these costs within existing resources.<sup>42</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 73.072, 723.003, 723.006, 723.023, 723.031, 723.037, 723.059, 723.0611, 723.078, and 723.079.

The bill creates the following section of the Florida Statutes: 723.1255 and 723.0781.

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<sup>40</sup> List of division approved educational curriculums, Division of Florida Condominiums, Timeshares, and Mobile Homes, Florida Department of Business and Professional Regulation (April 24, 2014) (available at <http://www.myfloridalicense.com/dbpr/lsc/condominiums/BoardMemberEducation.html> (last visited March 17, 2015)).

<sup>41</sup> Email from department staff on April 8, 2015.

<sup>42</sup> Telephone conversation with department staff on April 9, 2015.

**IX. Additional Information:**

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

None.

- B. **Amendments:**

None.

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

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By Senator Latvala

20-00653-15

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1 A bill to be entitled  
 2 An act relating to mobile homes; amending s. 73.072,  
 3 F.S.; conforming a cross-reference; amending s.  
 4 723.003, F.S.; providing definitions; amending s.  
 5 723.006, F.S.; requiring the Division of Florida  
 6 Condominiums, Timeshares, and Mobile Homes to approve  
 7 training and educational programs for board members of  
 8 mobile home owners' associations; providing duties of  
 9 the division; providing requirements for education  
 10 curriculum information for board member and mobile  
 11 home owner training; amending s. 723.023, F.S.;  
 12 revising mobile home owner's general obligations;  
 13 amending s. 723.031, F.S.; conforming a cross-  
 14 reference; amending s. 723.037, F.S.; providing and  
 15 revising requirements for lot rental increases;  
 16 amending s. 723.059, F.S.; revising provisions  
 17 relating to rights of purchasers of lifetime leases;  
 18 amending s. 723.0611, F.S.; providing for the removal  
 19 of a member of the board of directors under certain  
 20 conditions; amending s. 723.078, F.S.; revising  
 21 provisions with respect to the bylaws of homeowners'  
 22 associations; revising quorum and voting requirements;  
 23 revising provisions relating to board of directors,  
 24 committee, and member meetings; providing requirements  
 25 for meeting minutes; revising requirements for the  
 26 amendment of articles of incorporation and bylaws;  
 27 revising requirements for the recall of board members;  
 28 creating s. 723.1255, F.S.; providing requirements for  
 29 the alternative resolution of recall disputes;

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

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30 creating s. 723.0781, F.S.; specifying certification  
 31 or educational requirements for a newly elected or  
 32 appointed board member; amending s. 723.079, F.S.;  
 33 revising and providing requirements relating to the  
 34 official records of the association; conforming cross-  
 35 references; providing an effective date.  
 36  
 37 Be It Enacted by the Legislature of the State of Florida:  
 38  
 39 Section 1. Subsection (1) of section 73.072, Florida  
 40 Statutes, is amended to read:  
 41 73.072 Mobile home parks; compensation for permanent  
 42 improvements by mobile home owners.-  
 43 (1) When all or a portion of a mobile home park as defined  
 44 in s. 723.003 ~~723.003(6)~~ is appropriated under this chapter, the  
 45 condemning authority shall separately determine the compensation  
 46 for any permanent improvements made to each site. This  
 47 compensation shall be awarded to the mobile home owner leasing  
 48 the site if:  
 49 (a) The effect of the taking includes a requirement that  
 50 the mobile home owner remove or relocate his or her mobile home  
 51 from the site;  
 52 (b) The mobile home owner currently leasing the site has  
 53 paid for the permanent improvements to the site; and  
 54 (c) The value of the permanent improvements on the site  
 55 exceeds \$1,000 as of the date of taking.  
 56 Section 2. Section 723.003, Florida Statutes, is reordered  
 57 and amended to read:  
 58 723.003 Definitions.-As used in this chapter, the term

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59 following words and terms have the following meanings unless  
60 clearly indicated otherwise:

61 ~~(2)(1) The term "Division" means the Division of Florida~~  
62 ~~Condominiums, Timeshares, and Mobile Homes of the Department of~~  
63 ~~Business and Professional Regulation.~~

64 (3) "Electronic transmission" means a form of  
65 communication, not directly involving the physical transmission  
66 or transfer of paper, that creates a record that may be  
67 retained, retrieved, and reviewed by a recipient and that may be  
68 directly reproduced in a comprehensible and legible paper form  
69 by the recipient through an automated process, such as a printer  
70 or copy machine. Examples of electronic transmission include,  
71 but are not limited to, telegrams, facsimile transmission of  
72 images, and text that is sent via e-mail between computers.  
73 Electronic transmission does not include oral communication by  
74 telephone.

75 (4) "Homeowners' association" means a corporation for  
76 profit or not for profit, which is formed and operates in  
77 compliance with ss. 723.075-723.079; or, in a subdivision, the  
78 homeowners' association authorized in the subdivision documents  
79 in which all home owners must be members as a condition of  
80 ownership.

81 (5) "Homeowners' committee" means a committee, not to  
82 exceed five persons in number, designated by a majority of the  
83 affected homeowners in a mobile home park or a subdivision; or,  
84 if a homeowners' association has been formed, designated by the  
85 board of directors of the association. The homeowners' committee  
86 is designated for the purpose of meeting with the park owner or  
87 park developer to discuss lot rental increases, reduction in

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88 services or utilities, or changes in rules and regulations and  
89 any other matter authorized by the homeowners' association, or  
90 the majority of the affected home owners, and who are authorized  
91 to enter into a binding agreement with the park owner or  
92 subdivision developer, or a binding mediation agreement, on  
93 behalf of the association, its members, and all other mobile  
94 home owners in the mobile home park.

95 ~~(6)(2) The term "Lot rental amount" means all financial~~  
96 ~~obligations, except user fees, which are required as a condition~~  
97 ~~of the tenancy.~~

98 (7) (a) "Mediation" means a process whereby a mediator  
99 appointed by the Division of Florida Condominiums, Timeshares,  
100 and Mobile Homes or mutually selected by the parties acts to  
101 encourage and facilitate the resolution of a dispute. It is an  
102 informal and nonadversarial process with the objective of  
103 helping the disputing parties reach a mutually acceptable  
104 agreement.

105 (b) For purposes of mediation, under s. 723.037 and s.  
106 723.038, the term "parties" means a park owner as defined by s.  
107 723.003(13) and a homeowners' committee selected pursuant to s.  
108 723.037.

109 ~~(8)(3) The term "Mobile home" means a residential~~  
110 ~~structure, transportable in one or more sections, which is 8~~  
111 ~~body feet or more in width, over 35 body feet in length with the~~  
112 ~~hitch, built on an integral chassis, designed to be used as a~~  
113 ~~dwelling when connected to the required utilities, and not~~  
114 ~~originally sold as a recreational vehicle, and includes the~~  
115 ~~plumbing, heating, air-conditioning, and electrical systems~~  
116 ~~contained therein.~~

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117 (9) "Mobile home lot" means a lot described by a park owner  
 118 pursuant to the requirements of s. 723.012, or in a disclosure  
 119 statement pursuant to s. 723.013, as a lot intended for the  
 120 placement of a mobile home.

121 ~~(10)(4) The term~~ "Mobile home lot rental agreement" or  
 122 "rental agreement" means any mutual understanding or lease,  
 123 whether oral or written, between a mobile home owner and a  
 124 mobile home park owner in which the mobile home owner is  
 125 entitled to place his or her mobile home on a mobile home lot  
 126 for either direct or indirect remuneration of the mobile home  
 127 park owner.

128 ~~(11)(5) The term~~ "Mobile home owner," "mobile homeowner,"  
 129 ~~or~~ "home owner," or "homeowner" means a person who owns a mobile  
 130 home and rents or leases a lot within a mobile home park for  
 131 residential use.

132 ~~(12)(6) The term~~ "Mobile home park" or "park" means a use  
 133 of land in which lots or spaces are offered for rent or lease  
 134 for the placement of mobile homes and in which the primary use  
 135 of the park is residential.

136 ~~(13)(7) The term~~ "Mobile home park owner" or "park owner"  
 137 means an owner or operator of a mobile home park.

138 ~~(14)(8) The term~~ "Mobile home subdivision" means a  
 139 subdivision of mobile homes where individual lots are owned by  
 140 owners and where a portion of the subdivision or the amenities  
 141 exclusively serving the subdivision are retained by the  
 142 subdivision developer.

143 (15) "Offering circular" has the same meaning as the term  
 144 "prospectus" as it is used in this chapter.

145 ~~(16)(9) The term~~ "Operator of a mobile home park" means

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146 either a person who establishes a mobile home park on land that  
 147 ~~which~~ is leased from another person or a person who has been  
 148 delegated the authority to act as the park owner in matters  
 149 relating to the administration and management of the mobile home  
 150 park, including, but not limited to, authority to make decisions  
 151 relating to the mobile home park.

152 ~~(17)(10) The term~~ "Pass-through charge" means the mobile  
 153 home owner's proportionate share of the necessary and actual  
 154 direct costs and impact or hookup fees for a governmentally  
 155 mandated capital improvement, which may include the necessary  
 156 and actual direct costs and impact or hookup fees incurred for  
 157 capital improvements required for public or private regulated  
 158 utilities.

159 ~~(18)(11) The term~~ "Proportionate share" as used in  
 160 subsection ~~(17)~~ ~~(10)~~ means an amount calculated by dividing  
 161 equally among the affected developed lots in the park the total  
 162 costs for the necessary and actual direct costs and impact or  
 163 hookup fees incurred for governmentally mandated capital  
 164 improvements serving the recreational and common areas and all  
 165 affected developed lots in the park.

166 ~~(20)(12) The term~~ "Unreasonable" means arbitrary,  
 167 capricious, or inconsistent with this chapter.

168 ~~(21)(13) The term~~ "User fees" means those amounts charged  
 169 in addition to the lot rental amount for nonessential optional  
 170 services provided by or through the park owner to the mobile  
 171 home owner under a separate written agreement between the mobile  
 172 home owner and the person furnishing the optional service or  
 173 services.

174 ~~(1)(14) The term~~ "Discrimination" or "discriminatory" means

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175 that a homeowner is being treated differently as to the rent  
 176 charged, the services rendered, or an action for possession or  
 177 other civil action being taken by the park owner, without a  
 178 reasonable basis for the different treatment.

179 ~~(19)-(15) The term~~ "Resale agreement" means a contract in  
 180 which a mobile home owner authorizes the mobile home park owner,  
 181 or the park owner's designee, to act as exclusive agent for the  
 182 sale of the homeowner's mobile home for a commission or fee.

183 Section 3. Subsections (12), (13), and (14) are added to  
 184 section 723.006, Florida Statutes, to read:

185 723.006 Powers and duties of division.—In performing its  
 186 duties, the division has the following powers and duties:

187 (12) The division shall approve training and educational  
 188 programs for board members of mobile home owners' associations  
 189 formed and operated pursuant to s. 723.075(1) and mobile home  
 190 owners. The training may, at the division's discretion, include  
 191 web-based electronic media and live training and seminars in  
 192 various locations throughout the state.

193 (13) The division may review and approve educational  
 194 curriculum and training programs for board members and mobile  
 195 home owners to be offered by providers and shall maintain a  
 196 current list of approved programs and providers, and make such  
 197 list available to board members in a reasonable and cost-  
 198 effective manner. The cost of such programs shall be borne by  
 199 the providers of the programs. The division shall establish a  
 200 fee structure for the approved training programs sufficient to  
 201 recover any cost incurred by the division in operating this  
 202 program.

203 (14) Required education curriculum information for board

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204 member and mobile home owner training shall include:

205 (a) The provider of the training programs, which shall  
 206 include the following information regarding its training and  
 207 educational programs:

208 1. A price list, if any, for the programs and copies of all  
 209 materials.

210 2. The physical location where programs will be available,  
 211 if not web-based.

212 3. Dates when programs will be offered.

213 4. The curriculum of the program to be offered.

214 (b) The programs shall provide information about statutory  
 215 and regulatory matters relating to the board of directors of the  
 216 homeowners' association and their responsibilities to the  
 217 association and to the mobile home owners in the mobile home  
 218 park.

219 (c) Programs and materials may not contain editorial  
 220 comments.

221 (d) The division has the right to approve and require  
 222 changes to such education and training programs.

223 Section 4. Section 723.023, Florida Statutes, is amended to  
 224 read:

225 723.023 Mobile home owner's general obligations.—A mobile  
 226 home owner shall at all times:

227 (1) Comply with all obligations imposed on mobile home  
 228 owners by applicable provisions of building, housing, and health  
 229 codes, including compliance with all building permits and  
 230 construction requirements for construction on the mobile home  
 231 and lot. The home owner is responsible for all fines imposed by  
 232 the local government for noncompliance with any local code.

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233 (2) Keep the mobile home lot which he or she occupies  
 234 clean, neat, and sanitary, and maintained in compliance with all  
 235 local codes.

236 (3) Comply with properly promulgated park rules and  
 237 regulations and require other persons on the premises with his  
 238 or her consent to comply with such rules therewith and to  
 239 conduct themselves, and other persons on the premises with his  
 240 or her consent, in a manner that does not unreasonably disturb  
 241 other residents of the park or constitute a breach of the peace.

242 Section 5. Paragraph (b) of subsection (5) of section  
 243 723.031, Florida Statutes, is amended to read:

244 723.031 Mobile home lot rental agreements.—

245 (5) The rental agreement shall contain the lot rental  
 246 amount and services included. An increase in lot rental amount  
 247 upon expiration of the term of the lot rental agreement shall be  
 248 in accordance with ss. 723.033 and 723.037 or s. 723.059(4),  
 249 whichever is applicable, provided that, pursuant to s.  
 250 723.059(4), the amount of the lot rental increase is disclosed  
 251 and agreed to by the purchaser, in writing. An increase in lot  
 252 rental amount shall not be arbitrary or discriminatory between  
 253 similarly situated tenants in the park. No lot rental amount may  
 254 be increased during the term of the lot rental agreement,  
 255 except:

256 (b) For pass-through charges as defined in s. 723.003  
 257 ~~723.003(10)~~.

258 Section 6. Subsection (1) and paragraph (a) of subsection  
 259 (4) of section 723.037, Florida Statutes, are amended, and  
 260 subsection (7) is added to that section, to read:

261 723.037 Lot rental increases; reduction in services or

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262 utilities; change in rules and regulations; mediation.—

263 (1) A park owner shall give written notice to each affected  
 264 mobile home owner and the board of directors of the homeowners'  
 265 association, if one has been formed, at least 90 days before  
 266 ~~prior to~~ any increase in lot rental amount or reduction in  
 267 services or utilities provided by the park owner or change in  
 268 rules and regulations. The notice shall identify all other  
 269 affected homeowners, which may be by lot number, name, group, or  
 270 phase. If the affected homeowners are not identified by name,  
 271 the park owner shall make the names and addresses available upon  
 272 request. The home owner's right to the 90-day notice may not be  
 273 waived or precluded by a home owner, or the homeowners'  
 274 committee, in an agreement with the park owner. Rules adopted as  
 275 a result of restrictions imposed by governmental entities and  
 276 required to protect the public health, safety, and welfare may  
 277 be enforced prior to the expiration of the 90-day period but are  
 278 not otherwise exempt from the requirements of this chapter.  
 279 Pass-through charges must be separately listed as to the amount  
 280 of the charge, the name of the governmental entity mandating the  
 281 capital improvement, and the nature or type of the pass-through  
 282 charge being levied. Notices of increase in the lot rental  
 283 amount due to a pass-through charge shall state the additional  
 284 payment and starting and ending dates of each pass-through  
 285 charge. The homeowners' association shall have no standing to  
 286 challenge the increase in lot rental amount, reduction in  
 287 services or utilities, or change of rules and regulations unless  
 288 a majority of the affected homeowners agree, in writing, to such  
 289 representation.

290 (4) (a) A committee, not to exceed five in number,

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291 designated by a majority of the affected mobile home owners or  
 292 by the board of directors of the homeowners' association, if  
 293 applicable, and the park owner shall meet, at a mutually  
 294 convenient time and place no later than 60 days before the  
 295 effective date of the change within 30 days after receipt by the  
 296 homeowners of the notice of change, to discuss the reasons for  
 297 the increase in lot rental amount, reduction in services or  
 298 utilities, or change in rules and regulations. The negotiating  
 299 committee shall make a written request for a meeting with the  
 300 park owner or subdivision developer to discuss those matters  
 301 addressed in the 90-day notice, and may include in the request a  
 302 listing of any other issue, with supporting documentation, that  
 303 the committee intends to raise and discuss at the meeting.

304  
 305 This subsection is not intended to be enforced by civil or  
 306 administrative action. Rather, the meetings and discussions are  
 307 intended to be in the nature of settlement discussions prior to  
 308 the parties proceeding to mediation of any dispute.

309 (7) The term "parties," for purposes of mediation under  
 310 this section and s. 723.038, means a park owner and a  
 311 homeowners' committee selected pursuant to this section.

312 Section 7. Subsection (5) of section 723.059, Florida  
 313 Statutes, is amended to read:

314 723.059 Rights of purchaser.—

315 (5) Lifetime leases and the renewal provisions in  
 316 automatically renewable leases, both those existing and those  
 317 entered into after July 1, 1986, are not assumable shall be  
 318 nonassumable unless otherwise provided in the mobile home lot  
 319 rental agreement or unless the transferee is the home owner's

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320 spouse. The right to an assumption of the lease by a spouse may  
 321 be exercised only one time during the term of that lease ~~The~~  
 322 ~~renewal provisions in automatically renewable leases, both those~~  
 323 ~~existing and those entered into after July 1, 1986, are not~~  
 324 ~~assumable unless otherwise provided in the lease agreement.~~

325 Section 8. Subsection (1) of section 723.0611, Florida  
 326 Statutes, is amended to read:

327 723.0611 Florida Mobile Home Relocation Corporation.—

328 (1) (a) There is created the Florida Mobile Home Relocation  
 329 Corporation. The corporation shall be administered by a board of  
 330 directors made up of six members, three of whom shall be  
 331 appointed by the Secretary of Business and Professional  
 332 Regulation from a list of nominees submitted by the largest  
 333 nonprofit association representing mobile home owners in this  
 334 state, and three of whom shall be appointed by the Secretary of  
 335 Business and Professional Regulation from a list of nominees  
 336 submitted by the largest nonprofit association representing the  
 337 manufactured housing industry in this state. All members of the  
 338 board of directors, including the chair, shall be appointed to  
 339 serve for staggered 3-year terms.

340 (b) A member of the board of directors shall be removed  
 341 from the board by the Secretary of Business and Professional  
 342 Regulation, with or without cause, immediately after the written  
 343 request for removal from the association in paragraph (a) that  
 344 originally nominated that board member. The nominating entity  
 345 must include nominees for replacement with the request for  
 346 removal and the secretary must immediately fill the vacancy  
 347 created by the removal. The removal process may not occur more  
 348 than once in a calendar year.

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349 Section 9. Section 723.078, Florida Statutes, is amended to  
350 read:

351 723.078 Bylaws of homeowners' associations. ~~In order for a~~  
352 ~~homeowners' association to exercise the rights provided in s.~~  
353 ~~723.071, the bylaws of the association shall provide for the~~  
354 ~~following:~~

355 (1) The directors of the association and the operation  
356 shall be governed by the bylaws.

357 (2) The bylaws shall provide and, if they do not, shall be  
358 deemed to include, the following provisions:

359 (a) ~~Administration.~~The form of administration of the  
360 association shall be described, providing for the titles of the  
361 officers and for a board of directors and specifying the powers,  
362 duties, manner of selection and removal, and compensation, if  
363 any, of officers and board members. Unless otherwise provided in  
364 the bylaws, the board of directors shall be composed of five  
365 members. The board of directors shall elect ~~have~~ a president,  
366 secretary, and treasurer who shall perform the duties of those  
367 offices customarily performed by officers of corporations, and  
368 these officers shall serve without compensation and at the  
369 pleasure of the board of directors. The board of directors may  
370 elect ~~appoint~~ and designate other officers and grant them those  
371 duties it deems appropriate.

372 (b) Quorum; voting requirements; proxies.

373 1. Unless otherwise provided in the bylaws, 30 percent of  
374 the total membership is required to constitute a quorum ~~A~~  
375 ~~majority of the members shall constitute a quorum.~~ Decisions  
376 shall be made by a majority of members represented at a meeting  
377 at which a quorum is present. ~~In addition, provision shall be~~

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378 ~~made in the bylaws for definition and use of proxy. Any proxy~~  
379 ~~given shall be effective only for the specific meeting for which~~  
380 ~~originally given and any lawfully adjourned meetings thereof. In~~  
381 ~~no event shall any proxy be valid for a period longer than 120~~  
382 ~~days after the date of the first meeting for which it was given.~~  
383 ~~Every proxy shall be revocable at any time at the pleasure of~~  
384 ~~the member executing it.~~

385 2. A member may not vote by general proxy but may vote by  
386 limited proxies substantially conforming to a limited proxy form  
387 adopted by the division. Limited proxies and general proxies may  
388 be used to establish a quorum. Limited proxies may be used for  
389 votes taken to amend the articles of incorporation or bylaws  
390 pursuant to this section, and any other matters for which this  
391 chapter requires or permits a vote of members, except that no  
392 proxy, limited or general, may be used in the election of board  
393 members. Notwithstanding the provisions of this section, members  
394 may vote in person at member meetings.

395 3. A proxy is effective only for the specific meeting for  
396 which originally given and any lawfully adjourned meetings  
397 thereof. In no event shall any proxy be valid for a period  
398 longer than 90 days after the date of the first meeting for  
399 which it was given. Every proxy shall be revocable at any time  
400 at the pleasure of the member executing it.

401 4. A member of the board of directors or a committee may  
402 submit in writing his or her agreement or disagreement with any  
403 action taken at a meeting that the member did not attend. This  
404 agreement or disagreement may not be used as a vote for or  
405 against the action taken and may not be used for the purposes of  
406 creating a quorum.

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407 (c) Board of directors and committee meetings.—  
 408 1. Meetings of the board of directors and meetings of its  
 409 committees at which a quorum is present shall be open to all  
 410 members. Notwithstanding any other provision of law, the  
 411 requirement that board meetings and committee meetings be open  
 412 to the members does not apply to board or committee meetings  
 413 held for the purpose of discussing personnel matters or meetings  
 414 between the board or a committee and the association's attorney,  
 415 with respect to potential or pending litigation, where the  
 416 meeting is held for the purpose of seeking or rendering legal  
 417 advice, and where the contents of the discussion would otherwise  
 418 be governed by the attorney-client privilege.—~~and~~ Notice of  
 419 meetings shall be posted in a conspicuous place upon the park  
 420 property at least 48 hours in advance, except in an emergency.  
 421 Notice of any meeting in which assessments against members are  
 422 to be considered for any reason shall specifically contain a  
 423 statement that assessments will be considered and the nature of  
 424 such assessments.  
 425 2. A board or committee member's participation in a meeting  
 426 via telephone, real-time videoconferencing, or similar real-time  
 427 telephonic, electronic, or video communication counts toward a  
 428 quorum, and such member may vote as if physically present. A  
 429 speaker shall be used so that the conversation of those board or  
 430 committee members attending by telephone may be heard by the  
 431 board or committee members attending in person, as well as by  
 432 members present at a meeting.  
 433 3. Members of the board of directors may use e-mail as a  
 434 means of communication but may not cast a vote on an association  
 435 matter via e-mail.

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436 4. The right to attend meetings of the board of directors  
 437 and its committees includes the right to speak at such meetings  
 438 with reference to all designated agenda items. The association  
 439 may adopt reasonable written rules governing the frequency,  
 440 duration, and manner of members' statements. Any item not  
 441 included on the notice may be taken up on an emergency basis by  
 442 at least a majority plus one of the members of the board. Such  
 443 emergency action shall be noticed and ratified at the next  
 444 regular meeting of the board. Any member may tape record or  
 445 videotape meetings of the board of directors and its committees.  
 446 The division shall adopt reasonable rules governing the tape  
 447 recording and videotaping of the meeting.  
 448 5. Except as provided in paragraph (i), a vacancy occurring  
 449 on the board of directors may be filled by the affirmative vote  
 450 of the majority of the remaining directors, even though the  
 451 remaining directors constitute less than a quorum; by the sole  
 452 remaining director; if the vacancy is not so filled or if no  
 453 director remains, by the members; or, on the application of any  
 454 person, by the circuit court of the county in which the  
 455 registered office of the corporation is located.  
 456 6. The term of a director elected or appointed to fill a  
 457 vacancy expires at the next annual meeting at which directors  
 458 are elected. A directorship to be filled by reason of an  
 459 increase in the number of directors may be filled by the board  
 460 of directors, but only for the term of office continuing until  
 461 the next election of directors by the members.  
 462 7. A vacancy that will occur at a specific later date, by  
 463 reason of a resignation effective at a later date, may be filled  
 464 before the vacancy occurs. However, the new director may not

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465 take office until the vacancy occurs.

466 8.a. The officers and directors of the association have a  
 467 fiduciary relationship to the members.

468 b. A director and committee member shall discharge his or  
 469 her duties in good faith, with the care an ordinarily prudent  
 470 person in a like position would exercise under similar  
 471 circumstances, and in a manner he or she reasonably believes to  
 472 be in the best interests of the corporation.

473 9. In discharging his or her duties, a director may rely on  
 474 information, opinions, reports, or statements, including  
 475 financial statements and other financial data, if prepared or  
 476 presented by:

477 a. One or more officers or employees of the corporation who  
 478 the director reasonably believes to be reliable and competent in  
 479 the matters presented;

480 b. Legal counsel, public accountants, or other persons as  
 481 to matters the director reasonably believes are within the  
 482 persons' professional or expert competence; or

483 c. A committee of the board of directors of which he or she  
 484 is not a member if the director reasonably believes the  
 485 committee merits confidence.

486 10. A director is not acting in good faith if he or she has  
 487 knowledge concerning the matter in question that makes reliance  
 488 otherwise permitted by subparagraph 9. unwarranted.

489 11. A director is not liable for any action taken as a  
 490 director, or any failure to take any action, if he or she  
 491 performed the duties of his or her office in compliance with  
 492 this section.

493 (d) Member meetings.—Members shall meet at least once each

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494 calendar year, and the meeting shall be the annual meeting. All  
 495 members of the board of directors shall be elected at the annual  
 496 meeting unless the bylaws provide for staggered election terms  
 497 or for their election at another meeting. The bylaws shall not  
 498 restrict any member desiring to be a candidate for board  
 499 membership from being nominated from the floor. All nominations  
 500 from the floor must be made at a duly noticed meeting of the  
 501 members held at least 30 days before the annual meeting. The  
 502 bylaws shall provide the method for calling the meetings of the  
 503 members, including annual meetings. The method shall provide at  
 504 least 14 days' written notice to each member in advance of the  
 505 meeting and require the posting in a conspicuous place on the  
 506 park property of a notice of the meeting at least 14 days prior  
 507 to the meeting. The right to receive written notice of  
 508 membership meetings may be waived in writing by a member. Unless  
 509 waived, the notice of the annual meeting shall be mailed, hand  
 510 delivered, or electronically transmitted ~~sent by mail~~ to each  
 511 member, and shall constitute ~~the mailing constitutes~~ notice. An  
 512 officer of the association shall provide an affidavit affirming  
 513 that the notices were mailed or hand delivered in accordance  
 514 with the provisions of this section to each member at the  
 515 address last furnished to the corporation. These meeting  
 516 requirements do not prevent members from waiving notice of  
 517 meetings or from acting by written agreement without meetings,  
 518 if allowed by the bylaws.

519 (e) Minutes of meetings.—

520 1. Minutes of all meetings of members of an association,  
 521 the board of directors, and a committee must be maintained in  
 522 written form and approved by the members, board, or committee,

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523 as applicable. A vote or abstention from voting on each matter  
 524 voted upon for each director present at a board meeting must be  
 525 recorded in the minutes.

526 2. All approved minutes of all meetings of members,  
 527 committees, and of the board of directors shall be kept in a  
 528 businesslike manner and shall be available for inspection by  
 529 members, or their authorized representatives, and board members  
 530 at reasonable times. The association shall retain these minutes  
 531 for a period of at least ~~not less than~~ 7 years.

532 (f) Manner of sharing assessments.—The share or percentage  
 533 of, and manner of sharing, assessments and expenses for each  
 534 member shall be stated.

535 (g) Annual budget.—If the bylaws provide for adoption of an  
 536 annual budget by the members, the board of directors shall mail  
 537 a meeting notice and copies of the proposed annual budget of  
 538 expenses to the members at least ~~not less than~~ 30 days before  
 539 prior to the meeting at which the budget will be considered. If  
 540 the bylaws provide that the budget may be adopted by the board  
 541 of directors, the members shall be given written notice of the  
 542 time and place at which the meeting of the board of directors to  
 543 consider the budget will be held. The meeting shall be open to  
 544 the members. If the bylaws do not provide for adoption of an  
 545 annual budget, this paragraph shall not apply.

546 (h) Amendment of articles of incorporation and bylaws.—

547 1. The method by which the articles of incorporation and  
 548 bylaws may be amended consistent with the provisions of this  
 549 chapter shall be stated. If the bylaws fail to provide a method  
 550 of amendment, the bylaws may be amended by the board of  
 551 directors and approved by a majority of members at a meeting at

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552 which a quorum is present of the membership. No bylaw shall be  
 553 revised or amended by reference to its title or number only.

554 2. Notwithstanding any other provision of this section, if  
 555 an amendment to the articles of incorporation or the bylaws is  
 556 required by any action of any federal, state, or local  
 557 governmental authority or agency, or any law, ordinance, or rule  
 558 thereof, the board of directors may, by a majority vote of the  
 559 board, at a duly noticed meeting of the board, amend the  
 560 articles of incorporation or bylaws without a vote of the  
 561 membership.

562 (i) ~~The officers and directors of the association have a~~  
 563 ~~fiduciary relationship to the members.~~

564 ~~(j) Recall of board members.~~—Any member of the board of  
 565 directors may be recalled and removed from office with or  
 566 without cause by the vote of or agreement in writing by a  
 567 majority of all members. A special meeting of the members to  
 568 recall a member or members of the board of directors may be  
 569 called by 10 percent of the members giving notice of the meeting  
 570 as required for a meeting of members, and the notice shall state  
 571 the purpose of the meeting. Electronic transmission may not be  
 572 used as a method of giving notice of a meeting called in whole  
 573 or in part for this purpose.

574 1. If the recall is approved by a majority of all members  
 575 by a vote at a meeting, the recall is effective as provided in  
 576 this paragraph. The board shall duly notice and hold a board  
 577 meeting within 5 full business days after the adjournment of the  
 578 member meeting to recall one or more board members. At the  
 579 meeting, the board shall either certify the recall, in which  
 580 case such member or members shall be recalled effective

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581 immediately and shall turn over to the board within 5 full  
 582 business days any and all records and property of the  
 583 association in their possession, or shall proceed under  
 584 subparagraph 3.

585 2. If the proposed recall is by an agreement in writing by  
 586 a majority of all members, the agreement in writing or a copy  
 587 thereof shall be served on the association by certified mail or  
 588 by personal service in the manner authorized by chapter 48 and  
 589 the Florida Rules of Civil Procedure. The board of directors  
 590 shall duly notice and hold a meeting of the board within 5 full  
 591 business days after receipt of the agreement in writing. At the  
 592 meeting, the board shall either certify the written agreement to  
 593 recall members of the board, in which case such members shall be  
 594 recalled effective immediately and shall turn over to the board,  
 595 within 5 full business days, any and all records and property of  
 596 the association in their possession, or shall proceed as  
 597 described in subparagraph 3.

598 3. If the board determines not to certify the written  
 599 agreement to recall members of the board, or does not certify  
 600 the recall by a vote at a meeting, the board shall, within 5  
 601 full business days after the board meeting, file with the  
 602 division a petition for binding arbitration pursuant to the  
 603 procedures of s. 723.1255. For purposes of this paragraph, the  
 604 members who voted at the meeting or who executed the agreement  
 605 in writing shall constitute one party under the petition for  
 606 arbitration. If the arbitrator certifies the recall of a member  
 607 of the board, the recall shall be effective upon mailing of the  
 608 final order of arbitration to the association. If the  
 609 association fails to comply with the order of the arbitrator,

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610 the division may take action under s. 723.006. A member so  
 611 recalled shall deliver to the board any and all records and  
 612 property of the association in the member's possession within 5  
 613 full business days after the effective date of the recall.

614 4. If the board fails to duly notice and hold a board  
 615 meeting within 5 full business days after service of an  
 616 agreement in writing or within 5 full business days after the  
 617 adjournment of the members' recall meeting, the recall shall be  
 618 deemed effective and the board members so recalled shall  
 619 immediately turn over to the board all records and property of  
 620 the association.

621 5. If the board fails to duly notice and hold the required  
 622 meeting or fails to file the required petition, the member's  
 623 representative may file a petition pursuant to s. 723.1255  
 624 challenging the board's failure to act. The petition must be  
 625 filed within 60 days after expiration of the applicable 5-full-  
 626 business-day period. The review of a petition under this  
 627 subparagraph is limited to the sufficiency of service on the  
 628 board and the facial validity of the written agreement or  
 629 ballots filed.

630 6. If a vacancy occurs on the board as a result of a recall  
 631 and less than a majority of the board members are removed, the  
 632 vacancy may be filled by the affirmative vote of a majority of  
 633 the remaining directors, notwithstanding any other provision of  
 634 this chapter. If vacancies occur on the board as a result of a  
 635 recall and a majority or more of the board members are removed,  
 636 the vacancies shall be filled in accordance with procedural  
 637 rules to be adopted by the division, which rules need not be  
 638 consistent with this chapter. The rules must provide procedures

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639 governing the conduct of the recall election as well as the  
 640 operation of the association during the period after a recall  
 641 but before the recall election.

642 7. A board member who has been recalled may file a petition  
 643 pursuant to s. 723.1255 challenging the validity of the recall.  
 644 The petition must be filed within 60 days after the recall is  
 645 deemed certified. The association and the member's  
 646 representative shall be named as the respondents.

647 8. The division may not accept for filing a recall  
 648 petition, whether or not filed pursuant to this subsection, and  
 649 regardless of whether the recall was certified, when there are  
 650 60 or fewer days until the scheduled reelection of the board  
 651 member sought to be recalled or when 60 or fewer days have not  
 652 elapsed since the election of the board member sought to be  
 653 recalled.

654 (3) The bylaws may provide the following:

655 (a) A method of adopting and of amending administrative  
 656 rules and regulations governing the details of the operation and  
 657 use of the park property.

658 (b) Restrictions on, and requirements respecting, the use  
 659 and maintenance of mobile homes located within the park, and the  
 660 use of the park property, which restrictions and requirements  
 661 are not inconsistent with the articles of incorporation.

662 (c) Other provisions not inconsistent with this chapter or  
 663 with other documents governing the park property or mobile homes  
 664 located therein.

665 (d) The board of directors may, in any event, propose a  
 666 budget to the members at a meeting of members or in writing,  
 667 and, if the budget or proposed budget is approved by the members

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668 at the meeting or by a majority of their whole number in  
 669 writing, that budget shall be adopted.

670 (e) The manner of collecting from the members their shares  
 671 of the expenses for maintenance of the park property shall be  
 672 stated. Assessments shall be made against members not less  
 673 frequently than quarterly, in amounts no less than are required  
 674 to provide funds in advance for payments of all of the  
 675 anticipated current operating expenses and for all of the unpaid  
 676 operating expense previously incurred.

677 (4) No amendment may change the proportion or percentage by  
 678 which members share in the assessments and expenses as initially  
 679 established unless all the members affected by such change  
 680 approve the amendment.

681 (5) Upon purchase of the mobile home park, the association  
 682 organized under this chapter may convert to a condominium,  
 683 cooperative, or subdivision. The directors shall have the  
 684 authority to amend and restate the articles of incorporation and  
 685 bylaws in order to comply with the requirements of chapter 718,  
 686 chapter 719, or other applicable sections of the Florida  
 687 Statutes.

688 (6) Notwithstanding the provisions of s. 723.075(1), upon  
 689 purchase of the park by the association, and conversion of the  
 690 association to a condominium, cooperative, or subdivision, the  
 691 mobile home owners who were members of the association prior to  
 692 the conversion and who no longer meet the requirements for  
 693 membership, as established by the amended or restated articles  
 694 of incorporation and bylaws, shall no longer be members of the  
 695 converted association. Mobile home owners, as defined in this  
 696 chapter, who no longer are eligible for membership in the

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697 converted association may form an association pursuant to s.  
698 723.075.

699 Section 10. Section 723.1255, Florida Statutes, is created  
700 to read:

701 723.1255 Alternative resolution of recall disputes.—The  
702 Division of Florida Condominiums, Timeshares, and Mobile Homes  
703 of the Department of Business and Professional Regulation shall  
704 adopt rules of procedure to govern binding recall arbitration  
705 proceedings.

706 Section 11. Section 723.0781, Florida Statutes, is created  
707 to read:

708 723.0781 Board member training programs.—Within 90 days  
709 after being elected or appointed to the board, a newly elected  
710 or appointed director shall certify by an affidavit in writing  
711 to the secretary of the association that he or she has read the  
712 association's current articles of incorporation, bylaws, and the  
713 mobile home park's prospectus, rental agreement, rules,  
714 regulations, and written policies; that he or she will work to  
715 uphold such documents and policies to the best of his or her  
716 ability; and that he or she will faithfully discharge his or her  
717 fiduciary responsibility to the association's members. In lieu  
718 of this written certification, within 90 days after being  
719 elected or appointed to the board, the newly elected or  
720 appointed director may submit a certificate of having  
721 satisfactorily completed the educational curriculum approved by  
722 the division within 1 year before or 90 days after the date of  
723 election or appointment. The educational certificate is valid  
724 and does not have to be resubmitted as long as the director  
725 serves on the board without interruption. A director who fails

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726 to timely file the written certification or educational  
727 certificate is suspended from service on the board until he or  
728 she complies with this section. The board may temporarily fill  
729 the vacancy during the period of suspension. The secretary of  
730 the association shall retain a director's written certification  
731 or educational certificate for inspection by the members for 5  
732 years after the director's election or the duration of the  
733 director's uninterrupted tenure, whichever is longer. Failure to  
734 have such written certification or educational certificate on  
735 file does not affect the validity of any board action.

736 Section 12. Section 723.079, Florida Statutes, is amended  
737 to read:

738 723.079 Powers and duties of homeowners' association.—

739 (1) An association may contract, sue, or be sued with  
740 respect to the exercise or nonexercise of its powers. For these  
741 purposes, the powers of the association include, but are not  
742 limited to, the maintenance, management, and operation of the  
743 park property.

744 (2) The powers and duties of an association include those  
745 set forth in this section and ss. 723.075 and 723.077 and those  
746 set forth in the articles of incorporation and bylaws and any  
747 recorded declarations or restrictions encumbering the park  
748 property, if not inconsistent with this chapter.

749 (3) An association has the power to make, levy, and collect  
750 assessments and to lease, maintain, repair, and replace the  
751 common areas upon purchase of the mobile home park.

752 (4) The association shall maintain the following items,  
753 when applicable, which constitute the official records of the  
754 association:

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- 755 (a) A copy of the association's articles of incorporation  
 756 and each amendment to the articles of incorporation.
- 757 (b) A copy of the bylaws of the association and each  
 758 amendment to the bylaws.
- 759 (c) A copy of the written rules or policies of the  
 760 association and each amendment to the written rules or policies.
- 761 (d) The approved minutes of all meetings of the members,  
 762 the board of directors, and committees of the board, which  
 763 minutes must be retained within the state for at least 7 years.
- 764 (e) A current roster of all members and their mailing  
 765 addresses and lot identifications. The association shall also  
 766 maintain the e-mail addresses and the numbers designated by  
 767 members for receiving notice sent by electronic transmission of  
 768 those members consenting to receive notice by electronic  
 769 transmission. The e-mail addresses and numbers provided by  
 770 members to receive notice by electronic transmission shall be  
 771 removed from association records when consent to receive notice  
 772 by electronic transmission is revoked. However, the association  
 773 is not liable for an erroneous disclosure of the e-mail address  
 774 or the number for receiving electronic transmission of notices.
- 775 (f) All of the association's insurance policies or copies  
 776 thereof, which must be retained for at least 7 years.
- 777 (g) A copy of all contracts or agreements to which the  
 778 association is a party, including, without limitation, any  
 779 written agreements with the park owner, lease, or other  
 780 agreements or contracts under which the association or its  
 781 members have any obligation or responsibility, which must be  
 782 retained for at least 7 years.
- 783 (h) The financial and accounting records of the

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- 784 association, kept according to good accounting practices. All  
 785 financial and accounting records must be maintained for a period  
 786 of at least 7 years. The financial and accounting records must  
 787 include:
- 788 1. Accurate, itemized, and detailed records of all receipts  
 789 and expenditures.
- 790 2. A current account and a periodic statement of the  
 791 account for each member, designating the name and current  
 792 address of each member who is obligated to pay dues or  
 793 assessments, the due date and amount of each assessment or other  
 794 charge against the member, the date and amount of each payment  
 795 on the account, and the balance due.
- 796 3. All tax returns, financial statements, and financial  
 797 reports of the association.
- 798 4. Any other records that identify, measure, record, or  
 799 communicate financial information.
- 800 (i) All other written records of the association not  
 801 specifically included in the foregoing which are related to the  
 802 operation of the association.
- 803 (5) The official records shall be maintained within the  
 804 state for at least 7 years and shall be made available to a  
 805 member for inspection or photocopying within 10 business days  
 806 after receipt by the board or its designee of a written request  
 807 submitted by certified mail, return receipt requested. The  
 808 requirements of this subsection are satisfied by having a copy  
 809 of the official records available for inspection or copying at  
 810 the park or, at the option of the association, by making the  
 811 records available to a member electronically via the Internet or  
 812 by allowing the records to be viewed in electronic format on a

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813 computer screen and printed upon request. If the association has  
 814 a photocopy machine available where the records are maintained,  
 815 it must provide a member with copies on request during the  
 816 inspection if the entire request is no more than 25 pages. An  
 817 association shall allow a member or his or her authorized  
 818 representative to use a portable device, including a smartphone,  
 819 tablet, portable scanner, or any other technology capable of  
 820 scanning or taking photographs, to make an electronic copy of  
 821 the official records in lieu of the association's providing the  
 822 member or his or her authorized representative with a copy of  
 823 such records. The association may not charge a fee to a member  
 824 or his or her authorized representative for the use of a  
 825 portable device.

826 (a) The failure of an association to provide access to the  
 827 records within 10 business days after receipt of a written  
 828 request submitted by certified mail, return receipt requested,  
 829 creates a rebuttable presumption that the association willfully  
 830 failed to comply with this subsection.

831 (b) A member who is denied access to official records is  
 832 entitled to the actual damages or minimum damages for the  
 833 association's willful failure to comply with this subsection.  
 834 The minimum damages are to be \$10 per calendar day up to 10  
 835 days, the calculation to begin on the 11th business day after  
 836 receipt of the written request, submitted by certified mail,  
 837 return receipt requested.

838 (c) The association may adopt reasonable written rules  
 839 governing the frequency, time, location, notice, records to be  
 840 inspected, and manner of inspections, but may not require a  
 841 member to demonstrate a proper purpose for the inspection, state

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842 a reason for the inspection, or limit a member's right to  
 843 inspect records to less than 1 business day per month. The  
 844 association may impose fees to cover the costs of providing  
 845 copies of the official records, including the costs of copying  
 846 and for personnel to retrieve and copy the records if the time  
 847 spent retrieving and copying the records exceeds 30 minutes and  
 848 if the personnel costs do not exceed \$20 per hour. Personnel  
 849 costs may not be charged for records requests that result in the  
 850 copying of 25 or fewer pages. The association may charge up to  
 851 25 cents per page for copies made on the association's  
 852 photocopier. If the association does not have a photocopy  
 853 machine available where the records are kept, or if the records  
 854 requested to be copied exceed 25 pages in length, the  
 855 association may have copies made by an outside duplicating  
 856 service and may charge the actual cost of copying, as supported  
 857 by the vendor invoice. The association shall maintain an  
 858 adequate number of copies of the recorded governing documents,  
 859 to ensure their availability to members and prospective members.  
 860 Notwithstanding this paragraph, the following records are not  
 861 accessible to members or home owners:

862 1. A record protected by the lawyer-client privilege as  
 863 described in s. 90.502 and a record protected by the work-  
 864 product privilege, including, but not limited to, a record  
 865 prepared by an association attorney or prepared at the  
 866 attorney's express direction which reflects a mental impression,  
 867 conclusion, litigation strategy, or legal theory of the attorney  
 868 or the association and which was prepared exclusively for civil  
 869 or criminal litigation, for adversarial administrative  
 870 proceedings, or in anticipation of such litigation or

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871 proceedings until the conclusion of the litigation or  
 872 proceedings.

873 2. E-mail addresses, telephone numbers, facsimile numbers,  
 874 emergency contact information, any addresses for a home owner  
 875 other than as provided for association notice requirements, and  
 876 other personal identifying information of any person, excluding  
 877 the person's name, lot designation, mailing address, and  
 878 property address. Notwithstanding the restrictions in this  
 879 subparagraph, an association may print and distribute to home  
 880 owners a directory containing the name, park address, and  
 881 telephone number of each home owner. However, a home owner may  
 882 exclude his or her telephone number from the directory by so  
 883 requesting in writing to the association. The association is not  
 884 liable for the disclosure of information that is protected under  
 885 this subparagraph if the information is included in an official  
 886 record of the association and is voluntarily provided by a home  
 887 owner and not requested by the association.

888 3. An electronic security measure that is used by the  
 889 association to safeguard data, including passwords.

890 4. The software and operating system used by the  
 891 association which allows the manipulation of data, even if the  
 892 home owner owns a copy of the same software used by the  
 893 association. The data is part of the official records of the  
 894 association.

895 (6) An outgoing board or committee member must relinquish  
 896 all official records and property of the association in his or  
 897 her possession or under his or her control to the incoming board  
 898 within 5 days after the election or removal. An association shall  
 899 maintain accounting records in the county where the property is

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900 ~~located, according to good accounting practices. The records~~  
 901 ~~shall be open to inspection by association members or their~~  
 902 ~~authorized representatives at reasonable times, and written~~  
 903 ~~summaries of such records shall be supplied at least annually to~~  
 904 ~~such members or their authorized representatives. The failure of~~  
 905 ~~the association to permit inspection of its accounting records~~  
 906 ~~by members or their authorized representatives entitles any~~  
 907 ~~person prevailing in an enforcement action to recover reasonable~~  
 908 ~~attorney's fees from the person in control of the books and~~  
 909 ~~records who, directly or indirectly, knowingly denied access to~~  
 910 ~~the books and records for inspection. The records shall include,~~  
 911 ~~but shall not be limited to:~~

912 ~~(a) A record of all receipts and expenditures.~~

913 ~~(b) An account for each member, designating the name and~~  
 914 ~~current mailing address of the member, the amount of each~~  
 915 ~~assessment, the dates on which and amounts in which the~~  
 916 ~~assessments come due, the amount paid upon the account, and the~~  
 917 ~~balance due.~~

918 ~~(7)(5) An association has the power to purchase lots in the~~  
 919 ~~park and to acquire, hold, lease, mortgage, and convey them.~~

920 ~~(8)(6) An association shall use its best efforts to obtain~~  
 921 ~~and maintain adequate insurance to protect the association and~~  
 922 ~~the park property upon purchase of the mobile home park. A copy~~  
 923 ~~of each policy of insurance in effect shall be made available~~  
 924 ~~for inspection by owners at reasonable times.~~

925 ~~(9)(7) An association has the authority, without the~~  
 926 ~~joinder of any home owner, to modify, move, or create any~~  
 927 ~~easement for ingress and egress or for the purpose of utilities~~  
 928 ~~if the easement constitutes part of or crosses the park property~~

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929 upon purchase of the mobile home park. This subsection does not  
 930 authorize the association to modify or move any easement created  
 931 in whole or in part for the use or benefit of anyone other than  
 932 the members, or crossing the property of anyone other than the  
 933 members, without his or her consent or approval as required by  
 934 law or the instrument creating the easement. Nothing in this  
 935 subsection affects the rights of ingress or egress of any member  
 936 of the association.

937 ~~(10)(8)~~ Any mobile home owners' association or group of  
 938 residents of a mobile home park as defined in this chapter may  
 939 conduct bingo games as provided in s. 849.0931.

940 ~~(11)(9)~~ An association organized under this chapter may  
 941 offer subscriptions, for the purpose of raising the necessary  
 942 funds to purchase, acquire, and operate the mobile home park, to  
 943 its members or other owners of mobile homes within the park.  
 944 Subscription funds collected for the purpose of purchasing the  
 945 park shall be placed in an association or other escrow account  
 946 prior to purchase, which funds shall be held according to the  
 947 terms of the subscription agreement. The directors shall  
 948 maintain accounting records according to generally accepted  
 949 accounting practices and shall, upon written request by a  
 950 subscriber, furnish an accounting of the subscription fund  
 951 escrow account within 60 days of the purchase of the park or the  
 952 ending date as provided in the subscription agreement, whichever  
 953 occurs first.

954 ~~(12)(10)~~ For a period of 180 days after the date of a  
 955 purchase of a mobile home park by the association, the  
 956 association shall not be required to comply with the provisions  
 957 of part V of chapter 718, ~~or~~ part V of chapter 719, or part II

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958 of chapter 720, as to mobile home owners or persons who have  
 959 executed contracts to purchase mobile homes in the park.

960 ~~(13)(11)~~ The provisions of subsections ~~subsection~~ (4) and  
 961 (7) shall not apply to records relating to subscription funds  
 962 collected pursuant to subsection (11) ~~(9)~~.

963 Section 13. This act shall take effect July 1, 2015.

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# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Appropriations Subcommittee on  
Transportation, Tourism, and Economic  
Development, *Chair*  
Appropriations  
Commerce and Tourism  
Governmental Oversight and Accountability  
Regulated Industries  
Rules

**SENATOR JACK LATVALA**  
20th District

March 24, 2015

The Honorable Tom Lee, Chair  
Senate Committee on Appropriations  
201 The Capitol  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chair Lee:

I respectfully request consideration of Senate Bill 662 regarding Mobile Homes by the Senate Committee on Appropriations as soon as possible. The bill was referred favorably by the Committee on Community Affairs on March 23.

This bill will help protect the rights of mobile home park residents by providing for educational programs for board members, revising the requirements of lot rental increases, and clarifying the statutes regarding board members and meetings.

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

Sincerely,

Jack Latvala  
State Senator  
District 20

Cc: Cindy Kynoch, Staff Director; Alicia Weiss, Administrative Assistant

REPLY TO:  
 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799  
 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

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

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

SENATE APPROPRIATIONS  
RECEIVED  
15 MAR 25 AM 10:14  
SENATE CHAIRMAN  
STAFF DIR. STAFF

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/16/15  
Meeting Date

SB 662  
Bill Number (if applicable)

Topic mobile home owners

Amendment Barcode (if applicable)

Name Nancy Stewart

Job Title

Address 1535 Killearn Center Blvd

Phone 850-385-7805

Tallahassee FL 32309

Email

Street

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Federation of Manufactured Home Owners 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.

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

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

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

---

Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: PCS/CS/SB 680 (556478)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Environmental Preservation and Conservation Committee; and Senator Dean

SUBJECT: Fish and Wildlife Conservation Commission

DATE: April 15, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hinton</u>	<u>Uchino</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Betta</u>	<u>Kynoch</u>	<u>AP</u>	<u>Pre-meeting</u>

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

COMMITTEE SUBSTITUTE - Technical Changes

---

**I. Summary:**

PCS/CS/SB 680 amends provisions relating to the Fish and Wildlife Conservation Commission (FWC). Specifically, the bill:

- Removes specific labeling requirements for personal floatation devices (PFDs) and allows the use of PFDs labeled in accordance with the U.S. Coast Guard (Coast Guard) rules concerning an upcoming new labeling system;
- Revises the effective dates for tarpon tags from July 1 through June 30 to the calendar year;
- Removes a requirement for tax collectors to submit forms relating to the number of unissued Convention on the International Trade of Endangered Species (CITES) tags every year;
- Removes reporting requirements for tarpon landings;
- Corrects the scientific name for tarpon from *megalops atlantica* to the correct name, *Megalops atlanticus*;
- Removes statutory qualifying requirements to receive a Restricted Species Endorsement on a Saltwater Products License;
- Removes rulemaking authority to implement an alligator management and trapping program;
- Ensures all uncured alligator hides are identified as originally intended;
- Removes reporting and shipping details for dealers and buyers of alligator hides;
- Clarifies that a person may not take or possess an alligator or alligator eggs without an alligator license, rather than a “trapping license”;

- Rephrases “Alligator Management and Trapping Program” to “Alligator Management Program”;
- Removes statutory rulemaking authority to limit the number of participants engaged in the taking of alligators or their eggs from the wild;
- Provides exemptions to fee requirements related to hunting alligators;
- Removes statutory requirements to provide the Department of Agriculture and Consumer Services with funds from certain activities related to alligators and makes the transfer of such funds dependent on an annual appropriation;
- Removes rulemaking authority to establish appropriate qualifications for permitting alligator collectors;
- Removes a requirement to use certain funds for alligator husbandry research;
- Removes a requirement to attach CITES tags to the hide of any alligator taken from the wild;
- Removes a requirement to limit the number of CITES tags to the estimated safe yield of alligators in the state;
- Changes penalties for feeding wildlife and freshwater fish;
- Removes definitions of “alligator,” “process or processing,” and “alligator hatchling”;
- Removes a provision relating to alligator study requirements;
- Removes provisions relating to penalties for unlawfully selling certain alligator products;
- Removes a provision relating to penalties for using the words “alligator” and “gator” in certain situations; and
- Reenacts certain sections of statute to incorporate changes made in the bill.

The bill has an estimated negative fiscal impact of \$27,500 relating to the changes in alligator trapping and trapping agent licenses.

The bill provides that it takes effect upon becoming law.

## **II. Present Situation:**

### **Personal Floatation Devices (PFD)**

The Coast Guard labels personal floatation devices (PFDs) five different ways based on their intended use:

- Type I PFDs are off-shore life jackets that are good for all waters, including rough seas and remote water, where rescue might be slow to arrive;
- Type II PFDs are near-shore buoyant vests for general boating. They are good for calm, inland waters, or where there is a good chance of a quick rescue;
- Type III PFDs are for general boating or some specialized activity that is marked on the PFD for activities such as water skiing, hunting, fishing, canoeing, kayaking, etc. They are designed to complement the activity they are used for;
- Type IV PFDs include throwable devices such as ring buoys and boat cushions; and
- Type V PFDs are only for special uses or conditions.<sup>1</sup>

---

<sup>1</sup> U. S. Coast Guard, *PFD Selection, Use, Wear & Care*, <http://www.uscg.mil/hq/cg5/cg5214/PFDselection.asp#recreational> (last visited Mar. 16, 2015).

Florida law requires PFDs to be either on hand or worn depending on the situation. Each situation has different requirements:

- All vessels are required to have wearable Coast Guard-approved PFDs for each person onboard. They must be the appropriate size for the people on the vessel, be in serviceable condition, and within easy access;
- Vessels 16 feet in length or longer must also have at least one Coast Guard-approved throwable Type IV PFD that is immediately available in case someone falls overboard;
- Children under the age of six must wear a Coast Guard-approved Type I, II, or III Coast Guard approved PFD while onboard vessels less than 26 feet in length while the vessel is underway; and
- Anyone who is water skiing; parasailing; aquaplaning; operating, riding on, or being towed behind a personal watercraft; or some similar activity, must wear a non-inflatable Coast Guard-approved Type I, II, III, or V PFD.<sup>2</sup>

Currently, the Coast Guard is working to revise the classification and labeling of PFDs. When the process is completed, the intent is to have labels for PFDs that are easier to understand.

According to the final regulation promulgated by the Coast Guard, removing the type code system from regulations “will facilitate future incorporation by reference of new industry consensus standards for PFD labeling that more effectively convey safety information and is a step toward harmonization of our regulations with PFD requirements in Canada and other countries.”<sup>3</sup>

The Coast Guard has indicated that there will be a transition period until the end of 2016 to allow manufacturers time to come into compliance with the new standards and to allow states the time to modify their laws.<sup>4</sup>

### **Tarpon Tags**

In June 2013, the FWC approved a series of changes to the state’s tarpon tag rules. In particular, the FWC voted to manage tarpon as a catch-and-release only species.<sup>5</sup> However, the FWC does allow the use of tarpon tags to harvest tarpon while in pursuit of an International Game Fish Association record. In conjunction with designating tarpon as a catch-and-release only species, the former recreational bag limit of two was eliminated and harvest and unnecessary destruction of the fish was prohibited.<sup>6</sup>

In addition to these changes, Rule 68B-32.004, F.A.C., now provides that “a person may temporarily possess a tarpon within or without Florida waters only for the purposes of photography, measuring length and girth, and taking a scientific sample.” The rule provides that tarpon of a certain length may not be removed from the water.<sup>7</sup> Additional changes to rule that

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<sup>2</sup> FWC, *Boating Regulations*, <http://myfwc.com/boating/regulations/#nogo> (last visited Mar. 16, 2015).

<sup>3</sup> Personal Flotation Devices Labeling and Standards, 79 Fed. Reg. 56491 (Oct. 22, 2014).

<sup>4</sup> FWC, *Senate Bill 680 Agency Analysis*, 7, (Feb. 2, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>5</sup> Rule 68B-32.001, F.A.C.

<sup>6</sup> *Supra* note 4, at 17.

<sup>7</sup> Rule 68B-32.004(3), F.A.C.

need to be addressed in Florida Statutes include eliminating the reporting requirements for the tarpon tag,<sup>8</sup> and modifying the dates tags are issued from July 1 to June 30 to the calendar year to coincide with the height of the tarpon fishing season.<sup>9</sup>

Tax collectors are required to return all unused tarpon tags to the FWC by August 15 each year. Since tarpon tags have the effective date printed on them, they cannot be used outside of the tag year. The FWC reports that there is no need recover any unused tags.

Lastly, s. 379.357, F.S., refers to the tarpon scientifically as the *megalops atlantica*. The correct scientific name of the tarpon is *Megalops atlanticus*.

**Commercial Fishing Licensing**

In Florida, a Saltwater Products License (SPL) is required to commercially harvest or sell all saltwater products, harvest over the recreational bag limit, harvest over 100 pounds or two saltwater fish per person per day (whichever is greater) for species that do not have an established bag limit, or use certain gear or equipment as specified by law. Saltwater products harvested under an SPL may only be sold to a licensed Florida wholesale dealer.<sup>10</sup>

Florida offers three types of SPLs:<sup>11</sup>

- An individual SPL authorizes one person to engage in commercial fishing activities from the shore or a vessel. The individual SPL is not tied to any one vessel and is issued in the individual’s name;
- A crew SPL is also issued in an individual’s name and authorizes the named individual to engage in commercial fishing activities from shore or a vessel. It also authorizes each person who is fishing with the named individual aboard a vessel to engage in such activities. This means the license holder can take a crew out on any vessel to harvest saltwater fish and the SPL covers the crew as well; and
- A vessel SPL is issued to a valid commercial vessel registration number and authorizes each person aboard that registered vessel to engage in commercial saltwater fishing activities. Unlike the first two SPLs, the vessel SPL is tied to a vessel rather than a person.<sup>12</sup>

The cost for each license is:<sup>13</sup>

SPL Type	Florida Resident	Non-resident	Alien
Individual	\$50	\$200	\$300
Crew	\$150	\$600	\$900
Vessel	\$100	\$400	\$600

<sup>8</sup> *Supra* note 4, at 17.

<sup>9</sup> *Supra* note 4, at 17.

<sup>10</sup> FWC, *Commercial Saltwater Product Licenses – Introduction*, <http://www.myfwc.com/license/saltwater/commercial-fishing/new-applicants/#spl> (last visited Mar. 15, 2015).

<sup>11</sup> Section 379.361(2)(e)1.-3., F.S.

<sup>12</sup> Section 379.361(2)(e), F.S.

<sup>13</sup> FWC, *Commercial Saltwater products License Fees*, <http://myfwc.com/license/saltwater/commercial-fishing/csl-fees/> (last visited Mar. 15, 2015).

Requirements for other commercial licenses vary depending on what species are being harvested. In particular, the Restricted Species Endorsement (RS) is required to commercially harvest and sell species designated as “restricted” by the FWC.<sup>14</sup>

The RS was created by the Legislature in 1987 when marine fisheries management was under the legislatively created Marine Fisheries Commission, a predecessor agency to the FWC. The primary purpose of the RS is to help ensure the sustainability of Florida’s most important commercially harvested species. Prior to the creation of the RS, some of the state’s recreational fishermen were purchasing commercial licenses to enable them to harvest commercial quantities of their favorite species and then keep them for their own personal use, thus circumventing the recreational bag limits.<sup>15</sup>

The species currently designated as restricted species are: several species of amberjack, bluefish, cobia, dolphin, drum (black), several species of flounder, several species of grouper, hogfish, almaco jack, Spanish and king mackerel, several species of mullet, permit, Florida and African pompano, red porgy, banded rudderfish, several species of sea bass, spotted seatrout, sheepshead, several species of snapper, tripletail, golden tilefish, wahoo, blue crab, stone crab, spiny lobster, and several species of shrimp.<sup>16</sup>

To qualify for an RS on an SPL, a person must:

- Be 16 years of age or older; and either
- Have over 25 percent or \$5,000 of income attributable to the sale of saltwater products under an SPL; or
- Be a charter boat operator with at least 50 percent of income attributable to charter fishing, at least \$2,500 must be attributable to the sale of saltwater products under an SPL.

The income requirements must apply to at least one of the previous three years, and marine aquaculture producers with an SPL can apply income from the sale of marine aquaculture products.<sup>17</sup>

Exceptions to these requirements are:

- A permanent RS is available to those who are 62 or older who have qualified for an RS for at least three of the last five years;
- The income requirement for those who are 62 or older is reduced to \$2,500;
- Active military duty time will not be counted against the time required to qualify;
- The purchaser of a commercial vessel associated with an RS will have a complete license year after the purchase to qualify for an RS;
- An immediate family member wishing to carry on the fishing operation of an individual who has died or become permanently disabled will have one complete license year to qualify for an RS;

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<sup>14</sup> FWC, *Qualifying for the Restricted Species Endorsement*, <http://www.myfwc.com/license/saltwater/commercial-fishing/qualifying-for-rs/> (last visited Mar. 14, 2015).

<sup>15</sup> *Supra* note 4, at 18.

<sup>16</sup> FWC, *Restricted Species List*, <http://www.myfwc.com/license/saltwater/commercial-fishing/restricted-species/> (last visited Mar. 14, 2015).

<sup>17</sup> *Supra* note 14.

- The income requirement is waived for residents holding an SPL for three of the previous five years before a disability, if the individual is certified totally and permanently disabled by the U.S. Department of Veterans Affairs, any branch of the U.S. Armed Services, or the Railroad Board, or an individual who is certified disabled by the Social Security Administration or a licensed physician;
- An honorably discharged resident military veteran who is certified to be permanently disabled with a rating of at least 10 percent has one full license year to qualify for an RS, in addition to an income requirement of \$2,500; and
- An honorably discharged resident military veteran who applies for an RS within 48 months after discharge has one full license year to qualify for an RS.<sup>18</sup>

The creation of the RS was supported by Florida's commercial fishing industry, which coordinated with the legislatively created Marine Fisheries Commission, a predecessor agency to the FWC, in developing the endorsement. It is meant to ensure that fish harvested under Florida's commercial licenses, with the higher bag limits typically associated with the commercial fishery, are being harvested for commercial purposes and ultimately ending up in the seafood market.<sup>19</sup>

Qualifying requirements for the RS are currently in statute, but, since all aspects of the RS program fall under the FWC's constitutional authority, the requirements have been incorporated into FWC rule, allowing it to respond to stakeholder needs or requests for changes. According to the FWC, some of the existing statutory requirements are confusing and out of date.<sup>20</sup>

### Alligators

The American alligator may be found in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, and Texas.<sup>21</sup> They prefer freshwater lakes and slow-moving rivers and their associated wetlands, but they also can be found in brackish water habitats as well. There are approximately 1.3 million alligators throughout Florida.<sup>22</sup>

Due to concerns over declining populations, legal alligator harvesting was halted in 1962. The American alligator was included on the first list of endangered species under the law that preceded the Endangered Species Act in 1967.<sup>23</sup> By the mid-1970s, indications were that the Florida population was recovering rapidly. In 1977, Florida's alligator population was reclassified from endangered to threatened by the U.S. Fish and Wildlife Service. This allowed

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<sup>18</sup> *Supra* note 14.

<sup>19</sup> *Supra* note 4, at 18.

<sup>20</sup> *Supra* note 4, at 18

<sup>21</sup> U.S. Fish and Wildlife Service, *Environmental Conservation Online System, American alligator (Alligator mississippiensis)*, <http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=C000#recovery> (last visited Mar. 3, 2015).

<sup>22</sup> FWC, *Statewide Nuisance Alligator Program*, <http://myfwc.com/wildlifehabitats/managed/alligator/nuisance/> (last visited Mar. 3, 2015).

<sup>23</sup> U.S. Fish and Wildlife Service, *American Alligator: Alligator mississippiensis* (Feb. 2008), available at <http://www.fws.gov/endangered/esa-library/pdf/alligator.pdf> (last visited Mar. 3, 2015).

for management of the growing nuisance alligator problem through harvest, which continues today under the Statewide Nuisance Alligator Program.<sup>24</sup>

Despite its recovery, the Florida alligator is still federally listed. However, since 1979, its status has been “Similarity of Appearance (Threatened).”<sup>25</sup> This provides safeguards to other imperiled crocodylians, such as the American crocodile, which may be found in south Florida, and the black caiman, which occurs in South America. The listing allows for state-approved management and control programs.<sup>26</sup>

Currently, the FWC implements three programs that provide for harvesting non-hatchling alligators from the wild. They are the:

- Statewide Alligator Harvest Program;
- Private Lands Alligator Management Program; and
- Statewide Nuisance Alligator Program.

### ***Statewide Alligator Harvest Program***

Each year, the FWC establishes alligator management units based on surveys to establish appropriate harvest quotas to provide recreational opportunities for the public to harvest alligators. Anyone may participate, but the number of harvest permits awarded are typically much fewer than the number of people applying for them. According to the FWC, in 2014, 18,000 applications were received for 6,000 permits.<sup>27</sup>

Through a three-phase program, harvest permits are made available to individuals through a random selection process. Awarded permits that are not purchased in Phase I by the appointed deadline will be made available in Phase II. The second phase of the program is only open to people who were not issued a harvest permit during Phase I. All permits that are not purchased in Phase II by the appointed deadline are sold on a first-come, first-served basis during Phase III. Phase III is open to anyone, including those who already have a harvest permit from either of the two preceding phases. Those who are selected to receive a permit must purchase an Alligator Trapping License. Each permit authorizes taking two alligators, specifies where the alligators may be taken, and comes with two hide validation tags, referred to as CITES tags.<sup>28</sup>

Another option for participating in the Alligator Harvest Program is to purchase an Alligator Trapping Agent License, which allows those individuals to assist someone who was selected for a harvest permit and has an Alligator Trapping License.

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<sup>24</sup> *Supra* note 6. (FWC ANALYSIS – REMOVE IN FINAL) POINT TO PAGE 7 agency analysis

<sup>25</sup> U.S. Fish and Wildlife Service, *Environmental Conservation Online System, American alligator (Alligator mississippiensis)*, <http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=C000#recovery> (last visited Mar. 3, 2015).

<sup>26</sup> *Supra* note 4, at 8.

<sup>27</sup> *Supra* note 4, at 9.

<sup>28</sup> FWC, *Statewide Alligator Hunt Permit: General Information*, <http://myfwc.com/license/limited-entry-hunts/general-info/alligator-hunt-permit/> (last visited Mar. 17, 2015).

### ***Private Lands Alligator Management Program***

The Private Lands Alligator Management Program was established as a mechanism for landowners to sustainably harvest alligators on their properties. To participate in the program, applicants must own or lease a parcel that contains an alligator habitat. Public lands, other than sovereignty submerged lands, for which a governmental entity can demonstrate an ownership or leasehold interest and with approval of the governmental entity that owns the property are also eligible for inclusion in the program.<sup>29</sup>

Once the FWC evaluates the property for the sustainable yield of alligators, it issues the required permits and CITES tags up to the sustainable yield. Unlike the Statewide Alligator Harvest Program, participants in this program may take alligators year round, rather than during designated seasons.<sup>30</sup> The person permitted to harvest on private lands may be absent when someone with either an Alligator Trapping License or an Alligator Trapping Agent License harvests alligators on the parcel.<sup>31</sup>

### ***Statewide Nuisance Alligator Program***

Generally, an alligator may be deemed a nuisance if it is at least four feet long and the person reporting the alligator believes it poses a threat to people, pets, or property. The state does not allow for the relocation of nuisance alligators.<sup>32</sup> According to the FWC, they tend to return to where they were initially captured. Smaller alligators, however, are usually relocated to nearby wetland habitats.<sup>33</sup>

The FWC contracts with nuisance alligator trappers to remove problem alligators.<sup>34</sup> Nuisance alligator trappers must purchase an Alligator Trapping License.<sup>35</sup> When a nuisance alligator is reported, the FWC issues a permit to the trapper authorizing the removal of the specific alligator. The public may not hire or provide authorization to a nuisance alligator trapper to remove a nuisance alligator. They may only be handled by FWC-contracted nuisance alligator trappers. Trappers are issued CITES tags at the beginning of each year which are attached to each trapped alligator. Nuisance alligator trappers receive \$30 per captured alligator, until all funds are expended. According to the FWC, there is a recurring annual allocation in the FWC's budget of \$210,000 to pay trappers for capturing nuisance alligators.<sup>36</sup>

Contract trappers are allowed to use designated agents who can operate independently of them, but the agent must be in possession of the harvest permit and tags issued to the nuisance alligator trapper under contract. Trappers are ultimately responsible for their agents, and the trappers' agents must possess either an Alligator Trapping or Alligator Trapping Agent License.<sup>37</sup>

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<sup>29</sup> FWC, *Private Lands Alligator Program*, <http://myfwc.com/wildlifehabitats/managed/alligator/private-lands/> (last visited Mar. 3, 2015).

<sup>30</sup> *Supra* note 4, at 11.

<sup>31</sup> *Supra* note 4, at 11.

<sup>32</sup> *Supra* note 22.

<sup>33</sup> *Supra* note 4, at 12.

<sup>34</sup> FWC, *How to be a Nuisance Alligator Trapper*, <http://myfwc.com/wildlifehabitats/managed/alligator/nuisance/trapper/> (last visited Mar. 3, 2015).

<sup>35</sup> *Supra* note 4, at 13.

<sup>36</sup> *Supra* note 4, at 13.

<sup>37</sup> *Supra* note 4, at 13.

### ***Alligator Trapping Guides***

Alligator trapping guides sell packaged hunts to people who would like to hunt an alligator. They must be properly licensed and permitted under one of the FWC's three programs. The guides solicit clients and provide assistance and equipment to any unskilled participants they are accompanying who have been issued their own harvest permits. The guide may operate with an Alligator Trapping Agent License when guiding a person with an Alligator Trapping License or may operate with the Alligator Trapping License with clients who have either type of license.<sup>38</sup>

### ***Public Waters Alligator Egg Collection Program***

The Public Waters Alligator Egg Collection Program permits the collection of alligator eggs from public waters by up to 30 licensed and permitted alligator farmers in order to provide a consistent source of rearing stock. The number of farms is restricted due to the limited availability of eggs in the wild.<sup>39</sup>

Areas are established annually by the Alligator Management Program staff. Staff members assess the area and set a quota of 25 to 100 percent of non-depredated, non-flooded nests. Collections are conducted under the direct supervision of FWC biologists. Those eggs are then transferred to the 30 farmers who incubate and hatch the eggs or transfer them to other persons permitted to receive alligator eggs from the wild. The FWC issues an alligator egg collection permit before eggs can be collected under the program. The fee for the permit is limited to \$5 per egg.<sup>40</sup>

### ***Alligator Farming***

Alligator farming has been performed in Florida since the 1970s. Despite fluctuations in the market for alligator hides in the last decade, the number of alligator farms has remained fairly constant since 2002 with about 60 farms. Inventories have stayed above 80,000 animals with almost 20,000 alligators harvested annually for their hides and meat. Alligator farmers must obtain an Alligator Farming License. They may employ assistants who must obtain an Alligator Farming Agent's License.<sup>41</sup>

### ***Hide and Fur Dealers***

Alligator hide dealers solicit, broker, or otherwise buy unpreserved lawfully acquired and tagged alligator hides for the purpose of selling the hides to commercial tanneries or manufacturers of alligator hide products. Under the required Fur and Hide Dealer's License, they do not harvest any part of the alligator. They instead play a role in the final disposition of alligator hides. They must abide by record keeping requirements set by the FWC.<sup>42</sup>

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<sup>38</sup> *Supra* note 4, at 14.

<sup>39</sup> Rule 68A-25.004, F.A.C. See also *supra* note 6. POINTS TO PAGE 14 agency analysis

<sup>40</sup> *Supra* note 4, at 14.

<sup>41</sup> *Supra* note 4, at 14.

<sup>42</sup> Rule 68A-25.004, F.A.C.

**Alligator Meat Processors**

Alligator meat processors are issued a no-cost Alligator Meat Processing Facility Permit by the FWC after being inspected and approved by the Department of Agriculture and Consumer Services (DACS). They must also purchase an Alligator Processor’s License, if the processor is not already in possession of an Alligator Farming License or an Alligator Trapping License.<sup>43</sup> The processors buy carcasses from other alligator meat processors, alligator farmers, and program participants permitted to take alligators from the wild. In addition, they import lawfully acquired alligator meat from out of state for reprocessing and repackaging for wholesale and retail sale.<sup>44</sup>

**Alligator Marketing and Education – The Department of Agriculture and Consumer Services**

Under a contract executed in 1993, \$5 for every CITES tag attached to an alligator taken from the wild through the private lands and nuisance alligator harvest programs is transferred to the DACS.<sup>45</sup> Also, \$1 for every alligator egg taken from public waters is transferred to the DACS. The transfers are in support of alligator marketing and education activities overseen by the Division of Marketing, Bureau of Seafood and Aquaculture, within the DACS.

Alligator Related Licenses and Fees for the 2014 Season<sup>46</sup>

<b>License</b>	<b>Fee</b>
Resident Alligator Trapping License	\$250
Non-Resident Alligator Trapping License	\$1,000
Alligator Trapping Agent’s License (resident and non-resident)	\$50
Alligator Hide Validation (CITES) Tag	Up to \$30 per tag
Resident Fur and Hide Dealer’s License	\$100
Non-Resident Fur and Hide Dealer’s License	\$500
Egg Permit	Up to \$5 per egg
Alligator Farming License (resident and non-resident)	\$250
Alligator Farming Agent’s License (resident and non-resident)	\$50
Alligator Processor’s License (resident and non-resident)	\$250

Violations of alligator management strategies include:

- The unlawful sale, possession, or transporting of alligators or alligator skins;<sup>47</sup>
- Prima facie evidence of intent to violate laws protecting alligators (use of firearms and light at night where alligators might be known to be present);<sup>48</sup>
- Unlawfully selling alligator products;<sup>49</sup>
- Using the words “alligator” or “gator” in certain sales;<sup>50</sup>

<sup>43</sup> *Supra* note 4, at 15.

<sup>44</sup> *Supra* note 4, at 15.

<sup>45</sup> *Supra* note 4, at 15.

<sup>46</sup> See generally Part VII of ch. 379, F.S., for alligator licenses and fees.

<sup>47</sup> Section 379.3014, F.S.

<sup>48</sup> Section 379.3015, F.S.

<sup>49</sup> Section 379.3016, F.S.

<sup>50</sup> Section 379.3017, F.S.

- Not possessing a Fur and Hide Dealer’s License, when necessary;<sup>51</sup>
- Taking and possessing alligators without a trapping license;<sup>52</sup>
- Not tagging alligators and hides when required;<sup>53</sup>
- Violating rules or orders of the FWC;<sup>54</sup> and
- Illegally killing, possessing, or capturing alligators, other crocodylian, or eggs.<sup>55</sup>

Additionally, the Wildlife Violator Compact Act authorizes reciprocal license suspensions in participating states.<sup>56</sup>

**Wildlife Feeding Rules**

The FWC has adopted rules that prohibit feeding certain species of wildlife. Those rules, along with types of feeding that are common for the species for which feeding is prohibited, are:

Species	Rule	Common Types of Feeding
Bear, Fox, and Raccoon	Intentionally placing food or garbage, allowing the placement of food or garbage, or offering food or garbage in such a manner that it attracts black bears, foxes, or raccoons and in a manner that is likely to create or creates a public nuisance is prohibited. <sup>57</sup>	Garbage, pet or livestock food, birdseed, or other foods left unsecured outside or placed out intentionally for these wildlife
Pelican	The intentional feeding or the placement of food that attracts pelicans and modifies the natural behavior of the pelican so as to be detrimental to the survival or health of a local population is prohibited. <sup>58</sup>	Fish and food scraps handed out or dumped in ways that allow the animals to feed on that material
Sandhill Crane	The intentional feeding of sandhill cranes is prohibited. <sup>59</sup>	Bird feeders or bread or corn that people leave out, whether for cranes or for other wildlife
Bald Eagle	No person shall take, feed, disturb, possess, sell, purchase or barter, or attempt to engage in any such conduct, any bald eagle or parts thereof, or their nests or eggs, except when authorized	Food scraps handed out or dumped in ways that allow the animals to feed on that material

<sup>51</sup> Section 379.364, F.S.

<sup>52</sup> Section 379.3751, F.S.

<sup>53</sup> Section 379.3752, F.S.

<sup>54</sup> Section 379.401, F.S.

<sup>55</sup> Section 379.409, F.S.

<sup>56</sup> Section 379.2255, F.S.

<sup>57</sup> Rule 68A-4.001(3), F.A.C.

<sup>58</sup> Rule 68A-4.001(4), F.A.C.

<sup>59</sup> Rule 68A-4.001(5), F.A.C.

	by permit or consistent with FWC Eagle Management Guidelines. <sup>60</sup>	
Alligator and Crocodile	No person shall intentionally feed, or entice with feed, any crocodylian unless held in captivity under a permit issued by the FWC or otherwise provided. <sup>61</sup>	Food scraps handed out or dumped in ways that allow the animals to feed on that material

The purpose of the rules is to protect both the species and the public. All wild animals have a natural fear of people, but when wild animals are fed by people, animals’ natural fear is diminished. This results in wildlife having more frequent and closer contact with people. Feeding wildlife also results in nuisance and aggressive behavior by the animals, which can pose a risk to public safety, danger to pets and small livestock, and property damage. Wildlife fed by humans also spend more time in developed areas, which exposes them to increased risks of being hit by vehicles, sickness from disrupted natural diets and behaviors, killing by the public, and euthanization by the FWC in order to protect public safety.<sup>62</sup>

Bear Related Incidences from 2007 to 2013<sup>63</sup>

Year	2007	2008	2009	2010	2011	2012	2013
Reports from public listing “Bear in Garbage”	848	916	1,347	1,626	1,329	2,064	2,363
Percent of total public reports listing “Bear in Garbage”	30%	33%	40%	39%	33%	33%	33%
Bears euthanized due to conflicts	15	14	19	14	13	22	25
Number of euthanizations that were food related (from intentional or unintentional feeding)	10	11	11	9	10	21	23
Percent of euthanizations that were food related	67%	79%	58%	64%	77%	95%	92%
Feeding rule warnings issued	6	7	10	25	29	22	28
Feeding rule citations issued	7	1	6	4	8	6	4

A first violation of the feeding prohibition rules listed above is a Level II offense, which is a second-degree misdemeanor resulting in punishment of up to 60 days in jail and/or up to a \$500 fine.

<sup>60</sup> Rule 68A-16.002, F.A.C.

<sup>61</sup> Rule 68A-25.001, F.A.C.

<sup>62</sup> In Dec. 2014, a woman in Lake Mary was attacked by a bear in her driveway. The event was widely reported and the attack resulted in the euthanization of several bears in the area. The attack and the events that followed resulted in significant exposure to the problem of bears in residential communities and the harm they can cause.

<sup>63</sup> *Supra* note 4, at 21.

A person convicted of a Level II violation within three years after a previous conviction of a Level II or higher violation commits a first-degree misdemeanor, punishable by imprisonment of up to a year and/or a fine of up to \$1,000, with a mandatory minimum fine of \$250.

A person convicted of a Level II violation within five years of two previous Level II or higher violation commits a first-degree misdemeanor, punishable by imprisonment of up to a year and/or a fine of up to \$1,000, with a mandatory minimum fine of \$500 and suspension of all recreational licenses for a year.

A person convicted of a Level II violation within 10 years of three previous convictions of a Level II or higher violation commits a first-degree misdemeanor, punishable by imprisonment of up to a year and/or a fine of up to \$1,000, with a minimum mandatory fine of \$750 and suspension of all recreational licenses for three years.<sup>64</sup>

According to the FWC, when FWC officers issue citations for violations of feeding rules, assistant state attorneys reject 28 percent of them and 25 percent of those charged have their adjudications withheld (meaning that there is no criminal misdemeanor, however, fines are assessed).

FWC officers' experiences, as well as adjudication results of citations issued for feeding prohibition rules, reveal that there are varying degrees of severity and willfulness in feeding violations despite the single criminal penalty of a second-degree misdemeanor. Discussions with assistant state attorneys have revealed that some believe a second-degree misdemeanor is too severe a penalty for some initial violations of animal feeding rules, and this may be the reason for the reluctance to prosecute some violations. On the other hand, some citations are prosecuted and violators have been issued significant sentences.

Since 2007, the FWC has recorded the highest levels of human-wildlife conflict in 2012 and 2013. Incidents of human injuries caused by bears and alligators have also been more prevalent. In 2013 and 2014, the FWC documented the most serious human injuries caused by bears since records have been kept, which began in 1976. Many of these human-wildlife interactions result from violations of the animal feeding rules. Since many violations of these rules are not prosecuted, the penalty may have little deterrent effect.

### III. Effect of Proposed Changes:

**Sections 1 through 3** amend ss. 327.37, 327.39, and 327.50, F.S., respectively, to remove current Personal Flotation Device (PFD) type codes and provide that when water skiing, parasailing, aquaplaning, operating a personal watercraft, and for every person under six years of age on board a vessel less than 26 feet, all of which require wearing a PFD, the PFD must be approved by the Coast Guard and used in accordance with the Coast Guard approval label.

**Section 4** amends s. 379.357, F.S., to correct the scientific name of tarpon in the statute from the incorrect *megalops atlantica* to the correct name, which is *Megalops atlanticus*.

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<sup>64</sup> Section 379.401(2)(b)1.-4., F.S.

The bill changes the dates tarpon tags are valid from July 1 through June 30 to January 1 through December 31. Currently tarpon tags may have to be purchased twice during the height of the tarpon fishing season if they have not been used by July 1.

The bill repeals a requirement for tax collectors to submit any unissued tags for the previous fiscal year along with a written audit report as to the numbers of unissued tags.

The bill also repeals reporting requirements for tarpon landings.

**Section 5** amends s. 379.361, F.S., to repeal all statutory references to the qualifying requirements for acquiring a Restricted Species Endorsement (RS). Current requirements are found in Rule 68B-2.006, F.A.C.

**Section 6** amends s. 379.3012, F.S., to rephrase “Alligator Management and Trapping Program” to “Alligator Management Program”, which is the only place the phrase “Alligator Management and Trapping Program” is used in statute or rule.

The bill removes statutory rulemaking authority to implement an alligator management and trapping program. The Fish and Wildlife Conservation Commission (FWC) reports that provisions are no longer needed and removing them will not impact program participants, stakeholders, resource protection, or program implementation. Rule 68A-25.032, F.A.C., governs regulations concerning the establishment of alligator programs. Rule 68A-25.042, F.A.C., governs regulations concerning statewide alligator trapping, permitting, taking, and sale.

The bill also clarifies the word “hereunder” by replacing it with the phrase “alligator management program,” in reference to the existing provision that precludes the FWC’s alligator management program from superseding the regulatory authority or responsibilities of the Department of Agriculture and Consumer Services (DACS), the Department of Health, or any local governmental entity regarding the processing or handling of food products.

**Section 7** amends s. 379.364, F.S., to clarify that it is unlawful for a person to engage in the business of dealing or buying green or dried alligator hides, as opposed to alligator skins, to ensure all uncured alligator hides are identified as originally intended, according to the FWC.

The bill also removes reporting and shipping requirements for dealers and buyers for fur and hide dealers because they are found in Rule 68A-24.004, F.A.C.

**Section 8** amends s. 379.3751, F.S., to clarify that a person may not take or possess an alligator or alligator eggs without an “alligator license” rather than a “trapping license”

The bill removes statutory rulemaking authority to limit the number of participants engaged in the taking of alligators or alligator eggs because the provision is already incorporated in Rule 68A-25.002, F.A.C.

It deletes a mandatory requirement to transfer \$1 to the DACS for any alligator egg collected and retained, whether or not a fee is assessed for the egg. It makes the transfer of \$1 per egg contingent on an annual appropriation for alligator marketing and education activities.

It removes redundant rulemaking authority to establish appropriate qualifications for permitting alligator collectors.

It requires a person who assists a contracted nuisance alligator trapper to possess an alligator trapping agent's license.

The bill also provides the following exemptions:

- Contracted nuisance alligator trappers are not required to obtain an alligator trapping license;
- Children under 16 years of age taking an alligator under an alligator harvest program implemented by FWC rule are not required to obtain an alligator trapping agent license;
- People taking an alligator pursuant to an event permit issued under s. 379.353(2)(q), F.S., which contains exemptions for certain veterans, are not required to obtain an alligator trapping or trapping agent license;
- People who meet the disability requirements under s. 379.353(1), F.S., are not required to pay any fee for an alligator trapping or trapping agent license; and
- People engaged in taking an alligator under an FWC permit are not required to pay for an additional wildlife management area permit when hunting alligators under an FWC permit in such an area.

**Section 9** amends s. 379.3752, F.S., to reenact the section and remove a requirement for the FWC to use one-third of the revenue from issuing the alligator hatchling tag for alligator husbandry research. The FWC reports that the policy is obsolete and no longer needed to aid in the regulation or management of alligators.

The bill also removes a permissive requirement that CITES tags be attached to the hide of any alligator taken from the wild and that the hide must be possessed, purchased, sold, offered for sale, or transported in accordance with FWC rule. The FWC reports that it is redundant with Rule 68A-25.042, F.A.C.

The bill removes a mandatory transfer of \$5 for any validated hide to the General Inspection Trust Fund, to be used by DACS for the purpose of marketing and education services with respect to alligator products produced in the state. The bill makes the transfer contingent upon an annual appropriation for alligator marketing and education activities.

The bill removes a requirement to limit the number of CITES tags to what the FWC deems to be the safe yield of alligators in the state. The FWC reports that it is redundant with Rule 68A-25.032, F.A.C.

**Section 10** amends s. 379.401, F.S., to remove violations involving rules or orders of the FWC relating to the feeding of wildlife, freshwater fish, or feeding or enticement of alligators or crocodiles from the list of Level II violations. These violations are addressed in s. 379.412, which is created in section 11 of the bill.

**Section 11** creates s. 379.412, F.S., to provide penalties for feeding wildlife and freshwater fish.

The penalties apply to:

- Feeding wildlife or freshwater fish with food or garbage;
- Attracting or enticing wildlife or freshwater fish with food or garbage; or
- Allowing the placement of food or garbage in a manner that attracts or entices wildlife or freshwater fish.

The penalties do not apply to rules or orders of the FWC that:

- Relate to animals that are held in captivity;
- Restrict the taking or hunting of species over bait or other intentionally placed or deposited food; or
- Restrict the taking or hunting of species in proximity to feeding stations.

A first violation is a noncriminal infraction, punishable by a civil penalty of \$100 and anyone cited for a first violation is subject to the following requirements:

- A person cited for a violation must sign and accept a citation to appear before the county court. The issuing officer may indicate on the citation the time and location of the scheduled hearing and must indicate the applicable civil penalty;
- If a person chooses to pay the civil penalty within 30 days, the person is deemed to have admitted to committing the violation and to have waived his or her right to a hearing before the county court. The admission may not be used as evidence in any other proceedings except to determine the appropriate fine for any subsequent violations;
- If a person refuses to accept the citation, fails to pay the civil penalty, or fails to appear before the county court commits a second-degree misdemeanor; and
- If a person chooses or is required to appear before the county court, that person is deemed to have waived the \$100 civil penalty limitation. If the county court determines a violation has occurred, the court may impose a civil penalty of at least \$100. If a person has been found guilty of committing a violation, he or she may appeal to the circuit court. The bill provides that the commission of a violation must be proved by the legal standard of beyond a reasonable doubt.

A second or any subsequent violations, if all violations are related to freshwater fish or wildlife other than bears, alligators, or other crocodilians, is a second-degree misdemeanor.

Further violations, if all violations involve bears, alligators, or other crocodilians, are classified as second-degree misdemeanors for second violations, first-degree misdemeanors for third violations, and third-degree felonies for any fourth or subsequent violations

The bill defines “violations” as any judicial disposition other than acquittal or dismissal.

**Section 12** repeals s. 379.3011, F.S., which relates to alligator trapping program definitions. The FWC reports that the definitions of “alligator” and “process or processing” are unnecessary in aiding the regulation and management of alligator resources. The definition of “alligator hatchling” is in Rule 68A-1.004, F.A.C.

**Section 13** repeals s. 379.3013, F.S., which relates to alligator study requirements. It is incorporated in Rule 68A-25.042, F.A.C.

**Section 14** repeals s. 379.3016, F.S., which relates to penalties for unlawfully selling alligator products. The prohibition on selling any alligator product manufactured in the form of a stuffed baby alligator or other baby crocodilia, and the prohibition on selling any alligator product manufactured from an endangered species are now found in Rule 68A-25.002, F.A.C. Section 379.3016(3), F.S., provides that a violation of those two provisions is a first-degree misdemeanor. This will make those violations Level II violations, which reduces these violations to second-degree misdemeanors.

**Section 15** repeals s. 379.3017, F.S., which relates to a prohibition on the use of the word “alligator” or “gator” when used in connection with the sale of products made from some other crocodilian. This provision has been incorporated in Rule 68A-25.002, F.A.C.

**Sections 16 through 18** reenact sections of the Florida Statutes for the purpose of incorporating amendments made in the bill.

**Section 19** provides that the act will take effect upon becoming a law.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under PCS/CS/SB 680, children under the age of 16 who wish to hunt alligators will save \$50 per year under the exemption for an Alligator Trapping Agent License.

Current members of the military and “wounded warriors” taking alligators as part of a FWC sanctioned event will save either the \$250 or \$50 normally required for an Alligator Trapping License or an Alligator Trapping Agent License, respectively. In addition, permanently disabled participants who wish to hunt alligators will experience similar savings.

Contracted nuisance alligator trappers will save \$250 annually because they no longer have to pay \$250 for the Alligator Trapping License when trapping nuisance alligators under contract with the FWC. This will not apply if a nuisance alligator trapper is hunting alligators recreationally or on private lands.

Modified penalties for violations of wildlife feeding rules may have a fiscal impact but it is indeterminate whether it will be negative or positive since initial violations will incur a lower fine but further violations will incur higher fines. Also, state attorneys may be more willing to prosecute violations leading to additional fines.

**C. Government Sector Impact:**

Fines assessed for convictions of violations of wildlife feeding rules are deposited in the Clerk of the Circuit Court Fine and Forfeiture Fund. The bill lowers the maximum fine from \$500 to \$100. The fiscal impact is indeterminate, and given the number of citations issued in Fiscal Year 2013-2014 (12 for a total of \$1,623), it is likely to be minimal.

Fines imposed when adjudication is withheld for violations of wildlife feeding rules are remitted to the Department of Revenue for deposit in the General Revenue Fund. For the 2013-2014 fiscal year, \$270 was deposited. The fiscal impact is indeterminate and likely to be minimal.

The FWC estimates that it will experience a negative fiscal impact related to the exemptions on alligator trapping and trapping agent licenses of approximately \$27,500.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 327.37, 327.39, 327.50, 379.357, 379.361, 379.3012, 379.364, 379.3751, 379.3752, and 379.401.

This bill creates section 379.412 of the Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 379.3011, 379.3013, 379.3016, and 379.3017.

This bill reenacts the following sections of the Florida Statutes: 327.73, 327.375, and 327.54.

**IX. Additional Information:**

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

**Recommended CS/CS by Appropriations Subcommittee on General Government on April 2, 2015:**

The committee substitute makes a technical change to statute reenactments.

**CS by Environmental Preservation and Conservation on March 19, 2015:**

The CS makes a technical change.

- B. **Amendments:**

None.



261850

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
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The Committee on Appropriations (Hukill) recommended the following:

**Senate Amendment**

Delete line 70  
and insert:  
personal flotation device currently approved by the United States Coast

Delete line 79  
and insert:  
flotation device, other than an inflatable device, currently approved by



261850

11 Delete lines 95 - 97  
12 and insert:  
13 under 6 years of age on board the vessel is wearing a ~~type I,~~  
14 ~~type II, or type II Coast Guard approved~~ personal flotation  
15 device currently approved by the United States Coast Guard and  
16 used in accordance with the United



425562

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
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The Committee on Appropriations (Hukill) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 355 - 397

and insert:

Section 8. Paragraph (b) of subsection (1) of section 379.223, Florida Statutes, is amended to read:

379.223 Citizen support organizations; use of state property; audit.—

(1) The Fish and Wildlife Conservation Commission may authorize the establishment of citizen support organizations to



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11 provide assistance, funding, and promotional support for the  
12 programs of the commission. For purposes of this section, the  
13 term "citizen support organization" means an organization which:

14 (b) Is organized and operated to conduct programs and  
15 activities; raise funds; request and receive grants, gifts, and  
16 bequests of money; acquire, receive, hold, invest, and  
17 administer in its own name securities, funds, or real or  
18 personal property; and make expenditures for the benefit of the  
19 commission or an individual program unit of the commission;  
20 except that such organization may not receive funds from the  
21 commission or the Fish and Wildlife Research Institute by grant  
22 or, gift, or contract unless specifically authorized by the  
23 Legislature. If the citizen support organization by contract  
24 provides fiscal and administrative services to the commission on  
25 a grant or program that benefits the commission, the  
26 organization may be reimbursed or compensated for such services  
27 by the commission, provided the services are a direct benefit to  
28 the commission.

29 Section 9. Subsections (1), (4), and (5) of section  
30 379.3751, Florida Statutes, are amended to read:

31 379.3751 Taking and possession of alligators; trapping  
32 licenses; fees.—

33 (1) (a) A ~~No~~ person may not ~~shall~~ take or possess an ~~any~~  
34 alligator or the eggs thereof without having first been issued  
35 an alligator license under ~~obtained from the commission a~~  
36 ~~trapping license and paid the fee provided in~~ this section. Such  
37 license shall be dated when issued and remain valid for 12  
38 months after the date of issuance and authorizes ~~shall authorize~~  
39 the person to whom it is issued to take or possess alligators



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40 and their eggs, and to sell, possess, and process alligators and  
41 their hides and meat, in accordance with law and commission  
42 rules. Such license is ~~shall~~ not ~~be~~ transferable and is ~~shall~~  
43 not ~~be~~ valid unless it bears on its face in indelible ink the  
44 name of the person to whom it is issued. Such license shall be  
45 in the personal possession of the licensee while such person is  
46 taking alligators or their eggs or is selling, possessing, or  
47 processing alligators or their eggs, hides, or meat. The failure  
48 of the licensee to exhibit such license to a the commission law  
49 enforcement officer ~~or its wildlife officers~~, when such person  
50 is found taking alligators or their eggs or is found selling,  
51 possessing, or processing alligators or their eggs, hides, or  
52 meat, is ~~shall be~~ a violation of law.

53 ~~(b) In order to assure the optimal utilization of the~~  
54 ~~estimated available alligator resource and to ensure adequate~~  
55 ~~control of the alligator management and harvest program, the~~  
56 ~~commission may by rule limit the number of participants engaged~~  
57 ~~in the taking of alligators or their eggs from the wild.~~

58 ~~(b)(e)~~ A ~~no~~ person who has been convicted of any violation  
59 of s. 379.3015 or s. 379.409 or the rules of the commission  
60 relating to the illegal taking of crocodilian species may not  
61 ~~shall be~~ issued ~~eligible for issuance of~~ a license for a period  
62 of 5 years subsequent to such conviction. In the event such  
63 violation involves the unauthorized taking of an endangered  
64 crocodilian species, a ~~no~~ license may not ~~shall~~ be issued for 10  
65 years subsequent to the conviction.

66 (c) A person taking a nuisance alligator pursuant to  
67 contract with the commission is not required to obtain an  
68 alligator trapping license. A person assisting a contracted



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69 nuisance alligator trapper, unless otherwise exempt under  
70 paragraph (d), paragraph (e), or paragraph (f), is required to  
71 possess an alligator trapping license or an alligator trapping  
72 agent's license as provided in

73

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

75 And the title is amended as follows:

76       Between lines 24 and 25

77 insert:

78       amending s. 379.223, F.S.; authorizing citizen support  
79       organizations to receive funds from the commission if  
80       the organizations provide services by contract under  
81       certain circumstances;



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Proposed Committee Substitute by the Committee on Appropriations  
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to the Fish and Wildlife Conservation Commission; amending ss. 327.37, 327.39, and 327.50, F.S.; requiring that personal flotation devices be used in accordance with the United States Coast Guard approval label; reenacting s. 327.50(1)(a), F.S., relating to vessel safety equipment, to incorporate changes to federal regulations; amending s. 379.357, F.S.; revising the dates for tarpon tag validity; deleting the requirement that tax collectors submit forms annually relating to the number of unissued tags; deleting the requirement for submitting forms relating to tarpon landed; amending s. 379.361, F.S.; removing the income requirement for a restricted species endorsement on a saltwater products license; amending s. 379.3012, F.S.; revising the rulemaking authority of the commission relating to the alligator management and trapping program; amending s. 379.364, F.S.; requiring resident dealers to pay a certain fee per annum; removing the requirement for dealers and buyers to forward reports relating to the number and kinds of hide bought; removing the requirement that common carriers only ship, transport, or receive hides or furs marked with certain identifying information; amending s. 379.3751, F.S.; removing the rulemaking authority of the commission to limit the number of participants engaged in the taking of alligators or



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28 their eggs from the wild and to establish appropriate  
29 qualifications for certain alligator collectors;  
30 providing exemptions for alligator trapping licenses;  
31 requiring certain licenses to be issued without fee to  
32 residents who meet the requirements for disability;  
33 clarifying that a management area permit is not  
34 required for a person engaged in the taking of an  
35 alligator under a permit that authorizes the taking of  
36 alligators; providing that the transfer of fees for  
37 marketing and education services is contingent upon  
38 annual appropriation; amending s. 379.3752, F.S.;  
39 removing the requirement that the commission expend  
40 one-third of the revenue from the issuance of  
41 alligator hatchling tags for alligator husbandry  
42 research; providing that the transfer of fees for  
43 marketing and education services is contingent upon  
44 annual appropriation; deleting the requirement that  
45 the number of tags pursuant to a collection permit be  
46 equal to a safe yield of alligators; amending s.  
47 379.401, F.S.; conforming provisions to changes made  
48 by the act; creating s. 379.412, F.S.; establishing  
49 penalties for the unlawful feeding of wildlife and  
50 freshwater fish; providing an exception; repealing s.  
51 379.3011, F.S., relating to the alligator trapping  
52 program; repealing s. 379.3013, F.S., relating to  
53 alligator study requirements; repealing s. 379.3016,  
54 F.S., relating to the prohibition against the sale of  
55 alligator products and associated penalties; repealing  
56 s. 379.3017, F.S., relating to the restricted use of



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57 the terms "alligator" or "gator" in certain sales;  
58 providing an effective date.

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

61 Section 1. Paragraph (b) of subsection (2) of section  
62 327.37, Florida Statutes, is amended to read:

64 327.37 Water skis, parasails, aquaplanes, kiteboarding,  
65 kitesurfing, and moored ballooning regulated.—

66 (2)

67 (b) A person may not engage in water skiing, parasailing,  
68 aquaplaning, or any similar activity unless such person is  
69 wearing a noninflatable ~~type I, type II, type III, or type V~~  
70 personal flotation device approved by the United States Coast  
71 Guard and used in accordance with the United States Coast Guard  
72 approval label.

73 Section 2. Subsection (1) of section 327.39, Florida  
74 Statutes, is amended to read:

75 327.39 Personal watercraft regulated.—

76 (1) A person may not operate a personal watercraft unless  
77 each person riding on or being towed behind such vessel is  
78 wearing a ~~type I, type II, type III, or type V~~ personal  
79 flotation device, other than an inflatable device, approved by  
80 the United States Coast Guard and used in accordance with the  
81 United States Coast Guard approval label.

82 Section 3. Paragraph (b) of subsection (1) of section  
83 327.50, Florida Statutes, is amended, and paragraph (a) of that  
84 subsection is reenacted, to read:

85 327.50 Vessel safety regulations; equipment and lighting



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86 requirements.—

87 (1) (a) The owner and operator of every vessel on the waters  
88 of this state shall carry, store, maintain, and use safety  
89 equipment in accordance with current United States Coast Guard  
90 safety equipment requirements as specified in the Code of  
91 Federal Regulations, unless expressly exempted by the  
92 department.

93 (b) ~~A~~ ~~no~~ person may not ~~shall~~ operate a vessel less than 26  
94 feet in length on the waters of this state unless every person  
95 under 6 years of age on board the vessel is wearing a United  
96 States type I, type II, or type III Coast Guard approved  
97 personal flotation device, used in accordance with the United  
98 States Coast Guard approval label, while such vessel is  
99 underway. For the purpose of this section, the term "underway"  
100 means shall mean at all times except when a vessel is anchored,  
101 moored, made fast to the shore, or aground.

102 Section 4. Subsections (1) and (3) of section 379.357,  
103 Florida Statutes, are amended to read:

104 379.357 Fish and Wildlife Conservation Commission license  
105 program for tarpon; fees; penalties.—

106 (1) The commission shall establish a license program for  
107 the purpose of issuing tags to individuals desiring to harvest  
108 tarpon (Megalops atlanticus) ~~(megalops atlantica)~~ from the  
109 waters of the state. The tags shall be nontransferable, except  
110 that the commission may allow for a limited number of tags to be  
111 purchased by professional fishing guides for transfer to  
112 individuals, and issued by the commission in order of receipt of  
113 a properly completed application for a nonrefundable fee of \$50  
114 per tag. The commission and any tax collector may sell the tags



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115 and collect the fees therefor. Tarpon tags are valid from  
116 ~~January July 1 through December 31 June 30. Before August 15 of~~  
117 ~~each year, each tax collector shall submit to the commission all~~  
118 ~~unissued tags for the previous fiscal year along with a written~~  
119 ~~audit report, on forms prescribed or approved by the commission,~~  
120 ~~as to the numbers of the unissued tags.~~ To defray the cost of  
121 issuing any tag, the issuing tax collector shall collect and  
122 retain as his or her costs, in addition to the tag fee  
123 collected, the amount allowed under s. 379.352(6) for the  
124 issuance of licenses.

125 (3) ~~An~~ ~~no~~ individual ~~may not shall~~ take, kill, or possess  
126 any fish of the species Megalops atlanticus megalops atlantica,  
127 commonly known as tarpon, unless such individual has purchased a  
128 tarpon tag and securely attached it through the lower jaw of the  
129 fish. ~~Said individual shall within 5 days after the landing of~~  
130 ~~the fish submit a form to the commission which indicates the~~  
131 ~~length, weight, and physical condition of the tarpon when~~  
132 ~~caught; the date and location of where the fish was caught; and~~  
133 ~~any other pertinent information which may be required by the~~  
134 ~~commission. The commission may refuse to issue new tags to~~  
135 ~~individuals or guides who fail to provide the required~~  
136 ~~information.~~

137 Section 5. Paragraph (b) of subsection (2) of section  
138 379.361, Florida Statutes, is amended to read:

139 379.361 Licenses.—

140 (2) SALTWATER PRODUCTS LICENSE.—

141 (b) ~~1-~~ A restricted species endorsement on the saltwater  
142 products license is required to sell to a licensed wholesale  
143 dealer those species which the state, by law or rule, has



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144 designated as "restricted species." ~~This endorsement may be~~  
145 ~~issued only to a person who is at least 16 years of age, or to a~~  
146 ~~firm certifying that over 25 percent of its income or \$5,000 of~~  
147 ~~its income, whichever is less, is attributable to the sale of~~  
148 ~~saltwater products pursuant to a saltwater products license~~  
149 ~~issued under this paragraph or a similar license from another~~  
150 ~~state. This endorsement may also be issued to a for-profit~~  
151 ~~corporation if it certifies that at least \$5,000 of its income~~  
152 ~~is attributable to the sale of saltwater products pursuant to a~~  
153 ~~saltwater products license issued under this paragraph or a~~  
154 ~~similar license from another state. However, if at least 50~~  
155 ~~percent of the annual income of a person, firm, or for-profit~~  
156 ~~corporation is derived from charter fishing, the person, firm,~~  
157 ~~or for-profit corporation must certify that at least \$2,500 of~~  
158 ~~the income of the person, firm, or corporation is attributable~~  
159 ~~to the sale of saltwater products pursuant to a saltwater~~  
160 ~~products license issued under this paragraph or a similar~~  
161 ~~license from another state, in order to be issued the~~  
162 ~~endorsement. Such income attribution must apply to at least 1 of~~  
163 ~~the last 3 years. For the purpose of this section, "income"~~  
164 ~~means that income that is attributable to work, employment,~~  
165 ~~entrepreneurship, pensions, retirement benefits, and social~~  
166 ~~security benefits.~~

167 ~~2. To renew an existing restricted species endorsement, a~~  
168 ~~marine aquaculture producer possessing a valid saltwater~~  
169 ~~products license with a restricted species endorsement may apply~~  
170 ~~income from the sale of marine aquaculture products to licensed~~  
171 ~~wholesale dealers.~~

172 ~~3. The commission may require verification of such income~~



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173 ~~for all restricted species endorsements issued pursuant to this~~  
174 ~~paragraph. Acceptable proof of income earned from the sale of~~  
175 ~~saltwater products shall be:~~

176 ~~a. Copies of trip ticket records generated pursuant to this~~  
177 ~~subsection (marine fisheries information system), documenting~~  
178 ~~qualifying sale of saltwater products;~~

179 ~~b. Copies of sales records from locales other than Florida~~  
180 ~~documenting qualifying sale of saltwater products;~~

181 ~~c. A copy of the applicable federal income tax return,~~  
182 ~~including Form 1099 attachments, verifying income earned from~~  
183 ~~the sale of saltwater products;~~

184 ~~d. Crew share statements verifying income earned from the~~  
185 ~~sale of saltwater products; or~~

186 ~~e. A certified public accountant's notarized statement~~  
187 ~~attesting to qualifying source and amount of income.~~

188 ~~4. Notwithstanding any other provision of law, any person~~  
189 ~~who owns a retail seafood market or restaurant at a fixed~~  
190 ~~location for at least 3 years, who has had an occupational~~  
191 ~~license for 3 years before January 1, 1990, who harvests~~  
192 ~~saltwater products to supply his or her retail store, and who~~  
193 ~~has had a saltwater products license for 1 of the past 3 license~~  
194 ~~years before January 1, 1990, may provide proof of his or her~~  
195 ~~verification of income and sales value at the person's retail~~  
196 ~~seafood market or restaurant and in his or her saltwater~~  
197 ~~products enterprise by affidavit and shall thereupon be issued a~~  
198 ~~restricted species endorsement.~~

199 ~~5. Exceptions from income requirements shall be as follows:~~

200 ~~a. A permanent restricted species endorsement shall be~~  
201 ~~available to those persons age 62 and older who have qualified~~



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202 ~~for such endorsement for at least 3 of the last 5 years.~~

203 ~~b. Active military duty time shall be excluded from~~  
204 ~~consideration of time necessary to qualify and shall not be~~  
205 ~~counted against the applicant for purposes of qualifying.~~

206 ~~c. Upon the sale of a used commercial fishing vessel owned~~  
207 ~~by a person, firm, or corporation possessing or eligible for a~~  
208 ~~restricted species endorsement, the purchaser of such vessel~~  
209 ~~shall be exempted from the qualifying income requirement for the~~  
210 ~~purpose of obtaining a restricted species endorsement for a~~  
211 ~~complete license year after purchase of the vessel.~~

212 ~~d. Upon the death or permanent disablement of a person~~  
213 ~~possessing a restricted species endorsement, an immediate family~~  
214 ~~member wishing to carry on the fishing operation shall be~~  
215 ~~exempted from the qualifying income requirement for the purpose~~  
216 ~~of obtaining a restricted species endorsement for a complete~~  
217 ~~license year after the death or disablement.~~

218 ~~e. A restricted species endorsement may be issued on an~~  
219 ~~individual saltwater products license to a person age 62 or~~  
220 ~~older who documents that at least \$2,500 of such person's income~~  
221 ~~is attributable to the sale of saltwater products.~~

222 ~~f. A permanent restricted species endorsement may also be~~  
223 ~~issued on an individual saltwater products license to a person~~  
224 ~~age 70 or older who has held a saltwater products license for at~~  
225 ~~least 3 of the last 5 license years.~~

226 ~~g. Any resident who is certified to be totally and~~  
227 ~~permanently disabled by the Railroad Retirement Board, by the~~  
228 ~~United States Department of Veterans Affairs or its predecessor,~~  
229 ~~or by any branch of the United States Armed Forces, or who holds~~  
230 ~~a valid identification card issued by the Department of~~



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231 ~~Veterans' Affairs pursuant to s. 295.17, upon proof of the same,~~  
232 ~~or any resident certified to be disabled by the United States~~  
233 ~~Social Security Administration or a licensed physician, upon~~  
234 ~~proof of the same, shall be exempted from the income~~  
235 ~~requirements if he or she also has held a saltwater products~~  
236 ~~license for at least 3 of the last 5 license years before the~~  
237 ~~date of the disability. A restricted species endorsement issued~~  
238 ~~under this paragraph may be issued only on an individual~~  
239 ~~saltwater products license.~~

240 ~~h. An honorably discharged, resident military veteran~~  
241 ~~certified by the United States Department of Veterans Affairs or~~  
242 ~~its predecessor or by any branch of the United States Armed~~  
243 ~~Forces to have a service-connected permanent disability rating~~  
244 ~~of 10 percent or higher, upon providing proof of such disability~~  
245 ~~rating, is not required to provide documentation for the income~~  
246 ~~requirement with his or her initial application for a restricted~~  
247 ~~species endorsement. Documentation for the income requirement is~~  
248 ~~required beginning with the renewal of the restricted species~~  
249 ~~endorsement after such veteran has possessed a valid restricted~~  
250 ~~species endorsement for a complete license year. This exemption~~  
251 ~~applies only to issuance of the endorsement on an individual~~  
252 ~~saltwater products license and is a one-time exemption. In order~~  
253 ~~to renew the restricted species endorsement on an individual~~  
254 ~~saltwater products license, the veteran must document that at~~  
255 ~~least \$2,500 of his or her income is attributable to the sale of~~  
256 ~~saltwater products.~~

257 ~~i. Beginning July 1, 2014, a resident military veteran who~~  
258 ~~applies to the commission within 48 months after receiving an~~  
259 ~~honorable discharge from any branch of the United States Armed~~



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260 ~~Forces, the United States Coast Guard, the military reserves,~~  
261 ~~the Florida National Guard, or the United States Coast Guard~~  
262 ~~Reserve is not required to provide documentation for the income~~  
263 ~~requirement with his or her initial application for a restricted~~  
264 ~~species endorsement. Documentation for the income requirement is~~  
265 ~~required beginning with the renewal of the restricted species~~  
266 ~~endorsement after such veteran has possessed a valid restricted~~  
267 ~~species endorsement for a complete license year. This exemption~~  
268 ~~applies only to issuance of the endorsement on an individual~~  
269 ~~saltwater products license and may only be applied one time per~~  
270 ~~military enlistment.~~

271 ~~j. Until June 30, 2014, a resident military veteran who~~  
272 ~~applies to the commission and who received an honorable~~  
273 ~~discharge from any branch of the United States Armed Forces, the~~  
274 ~~United States Coast Guard, the military reserves, the Florida~~  
275 ~~National Guard, or the United States Coast Guard Reserve between~~  
276 ~~September 11, 2001, and June 30, 2014, is not required to~~  
277 ~~provide documentation for the income requirement with his or her~~  
278 ~~initial application for a restricted species endorsement.~~  
279 ~~Documentation for the income requirement is required beginning~~  
280 ~~with the renewal of the restricted species endorsement after~~  
281 ~~such veteran has possessed a valid restricted species~~  
282 ~~endorsement for a complete license year. This exemption applies~~  
283 ~~only to issuance of the endorsement on an individual saltwater~~  
284 ~~products license.~~

285 ~~Section 6. Section 379.3012, Florida Statutes, is amended~~  
286 ~~to read:~~

287 ~~379.3012 Alligator management and trapping program~~  
288 ~~implementation; commission authority.-~~



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289 ~~(1) In any alligator management and trapping program that~~  
290 ~~the Fish and Wildlife Conservation Commission shall establish,~~  
291 ~~the commission shall have the authority to adopt all rules~~  
292 ~~necessary for full and complete implementation of such alligator~~  
293 ~~management and trapping program, and, in order to ensure its~~  
294 ~~lawful, safe, and efficient operation in accordance therewith,~~  
295 ~~may:~~

296 ~~(a) Regulate the marketing and sale of alligators, their~~  
297 ~~hides, eggs, meat, and byproducts, including the development and~~  
298 ~~maintenance of a state-sanctioned sale.~~

299 ~~(b) Regulate the handling and processing of alligators,~~  
300 ~~their eggs, hides, meat, and byproducts, for the lawful, safe,~~  
301 ~~and sanitary handling and processing of same.~~

302 ~~(c) Regulate commercial alligator farming facilities and~~  
303 ~~operations for the captive propagation and rearing of alligators~~  
304 ~~and their eggs.~~

305 ~~(d) Provide hide grading services by two or more~~  
306 ~~individuals pursuant to state sanctioned sales if rules are~~  
307 ~~first promulgated by the commission governing:~~

308 ~~1. All grading related services to be provided pursuant to~~  
309 ~~this section;~~

310 ~~2. Criteria for qualifications of persons to serve as hide-~~  
311 ~~graders for grading services to be provided pursuant to this~~  
312 ~~section; and~~

313 ~~3. The certification process by which hide-graders~~  
314 ~~providing services pursuant to this section will be certified.~~

315 ~~(e) Provide sales-related services by contract pursuant to~~  
316 ~~state-sanctioned sales if rules governing such services are~~  
317 ~~first promulgated by the commission.~~



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318 ~~(2) All contractors of the commission for the grading,~~  
319 ~~marketing, and sale of alligators and their hides, eggs, meat,~~  
320 ~~and byproducts shall not engage in any act constituting a~~  
321 ~~conflict of interest under part III of chapter 112.~~

322 ~~(3) The powers and duties of the commission to implement~~  
323 ~~the alligator management program may hereunder shall not be~~  
324 ~~construed so as to supersede the regulatory authority or lawful~~  
325 ~~responsibility of the Department of Agriculture and Consumer~~  
326 ~~Services, the Department of Health, or any local governmental~~  
327 ~~entity regarding the processing or handling of food products,~~  
328 ~~but is shall be deemed supplemental thereto.~~

329 Section 7. Section 379.364, Florida Statutes, is amended to  
330 read:

331 379.364 License required for fur and hide dealers.-

332 (1) It is unlawful for a any person to engage in the  
333 business of a dealer or buyer in green or dried alligator hides  
334 skins or green or dried furs in the state or purchase such hides  
335 or furs skins within the state until such person has been  
336 licensed as herein provided.

337 (2) A person ~~Any resident dealer or buyer~~ who solicits  
338 business through the mails, or by advertising, or who travels to  
339 buy or employs or has other agents or buyers, shall be deemed a  
340 ~~resident state dealer and must pay a license fee of \$100 per~~  
341 ~~annum.~~

342 (3) A resident dealer must pay a license fee of \$100 per  
343 annum. A nonresident dealer ~~or buyer~~ must pay a license fee of  
344 \$500 per annum.

345 ~~(4) All dealers and buyers shall forward to the Fish and~~  
346 ~~Wildlife Conservation Commission each 2 weeks during open season~~



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347 ~~a report showing number and kind of hides bought and name of~~  
348 ~~trapper from whom bought and the trapper's license number, or if~~  
349 ~~trapper is exempt from license under any of the provisions of~~  
350 ~~this chapter, such report shall show the nature of such~~  
351 ~~exemption. A common carrier may not knowingly ship or transport~~  
352 ~~or receive for transportation any hides or furs unless such~~  
353 ~~shipments have marked thereon name of shipper and the number of~~  
354 ~~her or his fur animal license or fur dealer's license.~~

355 Section 8. Subsections (1), (4), and (5) of section  
356 379.3751, Florida Statutes, are amended to read:

357 379.3751 Taking and possession of alligators; trapping  
358 licenses; fees.—

359 (1) (a) A ~~Ne~~ person may not ~~shall~~ take or possess an any  
360 alligator or the eggs thereof without having first been issued  
361 an alligator license under ~~obtained from the commission a~~  
362 trapping license and paid the fee provided in this section. Such  
363 license shall be dated when issued and remain valid for 12  
364 months after the date of issuance and authorizes ~~shall authorize~~  
365 the person to whom it is issued to take or possess alligators  
366 and their eggs, and to sell, possess, and process alligators and  
367 their hides and meat, in accordance with law and commission  
368 rules. Such license is ~~shall~~ not be transferable and is ~~shall~~  
369 not be valid unless it bears on its face in indelible ink the  
370 name of the person to whom it is issued. Such license shall be  
371 in the personal possession of the licensee while such person is  
372 taking alligators or their eggs or is selling, possessing, or  
373 processing alligators or their eggs, hides, or meat. The failure  
374 of the licensee to exhibit such license to a ~~the~~ commission law  
375 enforcement officer ~~or its wildlife officers,~~ when such person



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376 is found taking alligators or their eggs or is found selling,  
377 possessing, or processing alligators or their eggs, hides, or  
378 meat, is ~~shall~~ be a violation of law.

379 ~~(b) In order to assure the optimal utilization of the~~  
380 ~~estimated available alligator resource and to ensure adequate~~  
381 ~~control of the alligator management and harvest program, the~~  
382 ~~commission may by rule limit the number of participants engaged~~  
383 ~~in the taking of alligators or their eggs from the wild.~~

384 (b)(e) A ~~Ne~~ person who has been convicted of any violation  
385 of s. 379.3015 or s. 379.409 or the rules of the commission  
386 relating to the illegal taking of crocodylian species ~~may not~~  
387 shall be issued eligible for issuance of a license for a period  
388 of 5 years subsequent to such conviction. In the event such  
389 violation involves the unauthorized taking of an endangered  
390 crocodylian species, a ~~ne~~ license may not ~~shall~~ be issued for 10  
391 years subsequent to the conviction.

392 (c) A person taking a nuisance alligator pursuant to  
393 contract with the commission is not required to obtain an  
394 alligator trapping license. A person assisting a contracted  
395 nuisance alligator trapper, unless otherwise exempt under  
396 paragraph (d), paragraph (e), or paragraph (f), is required to  
397 possess an alligator trapping agent's license as provided in  
398 subsection (2).

399 (d) A child under 16 years of age taking an alligator under  
400 an alligator harvest program implemented by commission rule is  
401 not required to obtain an alligator trapping agent license.

402 (e) A person taking an alligator pursuant to an event  
403 permit issued under s. 379.353(2)(g) is not required to obtain  
404 an alligator trapping license or an alligator trapping agent



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405 license.

406 (f) An alligator trapping license or alligator trapping  
407 agent license must be issued without fee to any resident who  
408 meets the requirements for disability under s. 379.353(1).

409 (g) A management area permit under s. 379.354(8) is not  
410 required for a person engaged in the taking of an alligator  
411 under a permit issued by the commission that authorizes the  
412 taking of alligators.

413 (4) ~~A~~ ~~Ne~~ person may not ~~shall~~ take any alligator egg  
414 occurring in the wild or possess any such egg unless he or she  
415 ~~such person~~ has obtained, or is a licensed agent of another  
416 person who has obtained, an alligator egg collection permit. The  
417 alligator egg collection permit ~~is~~ shall be required in addition  
418 to the alligator farming license provided in paragraph (2)(d).  
419 The commission ~~may is authorized to~~ assess a fee for issuance of  
420 the alligator egg collection permit of up to \$5 per egg  
421 authorized to be taken or possessed pursuant to such permit.  
422 Contingent upon an annual appropriation for alligator marketing  
423 and education activities Irrespective of whether a fee is  
424 assessed, \$1 per egg collected and retained, excluding eggs  
425 collected on private wetland management areas, shall be  
426 transferred from the alligator management program to the General  
427 Inspection Trust Fund, to be administered by the Department of  
428 Agriculture and Consumer Services for the purpose of providing  
429 marketing and education services with respect to alligator  
430 products produced in this state, notwithstanding other  
431 provisions in this chapter.

432 ~~(5) The commission shall adopt criteria by rule to~~  
433 ~~establish appropriate qualifications for alligator collectors~~



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434 ~~who may receive permits pursuant to this section.~~

435 Section 9. Section 379.3752, Florida Statutes, is amended  
436 to read:

437 379.3752 Required tagging of alligators and hides; fees;  
438 revenues.—The tags provided in this section shall be required in  
439 addition to any license required under s. 379.3751.

440 (1) ~~A~~ ~~Ne~~ person may not ~~shall~~ take any alligator occurring  
441 in the wild or possess any such alligator unless such alligator  
442 is subsequently tagged in the manner required by commission  
443 rule. For the tag required for an alligator hatchling, the  
444 commission ~~may is authorized to~~ assess a fee of up to not more  
445 than \$15 for each alligator hatchling tag issued. ~~The commission~~  
446 ~~shall expend one-third of the revenue generated from the~~  
447 ~~issuance of the alligator hatchling tag for alligator husbandry~~  
448 ~~research.~~

449 (2) ~~The commission may require that an alligator hide~~  
450 ~~validation tag (CITES tag) be affixed to the hide of any~~  
451 ~~alligator taken from the wild and that such hide be possessed,~~  
452 ~~purchased, sold, offered for sale, or transported in accordance~~  
453 ~~with commission rule.~~ The commission may is authorized to assess  
454 a fee of up to \$30 for each alligator hide validation tag (CITES  
455 tag) issued. Contingent upon an annual appropriation for  
456 alligator marketing and education activities Irrespective of  
457 whether a fee is assessed, \$5 per validated hide, excluding  
458 those validated from public hunt programs and alligator farms,  
459 shall be transferred from the alligator management program to  
460 the General Inspection Trust Fund, to be administered by the  
461 Department of Agriculture and Consumer Services for the purpose  
462 of providing marketing and education services with respect to



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463 alligator products produced in this state, notwithstanding other  
464 provisions in this chapter.

465 ~~(3) The number of tags available for alligators taken~~  
466 ~~pursuant to a collection permit shall be limited to the number~~  
467 ~~of tags determined by the commission to equal the safe yield of~~  
468 ~~alligators as determined pursuant to s. 379.3013.~~

469 Section 10. Paragraph (a) of subsection (2) of section  
470 379.401, Florida Statutes, is amended to read:

471 379.401 Penalties and violations; civil penalties for  
472 noncriminal infractions; criminal penalties; suspension and  
473 forfeiture of licenses and permits.—

474 (2) (a) LEVEL TWO VIOLATIONS.—A person commits a Level Two  
475 violation if he or she violates any of the following provisions:

476 1. Rules or orders of the commission relating to seasons or  
477 time periods for the taking of wildlife, freshwater fish, or  
478 saltwater fish.

479 2. Rules or orders of the commission establishing bag,  
480 possession, or size limits or restricting methods of taking  
481 wildlife, freshwater fish, or saltwater fish.

482 3. Rules or orders of the commission prohibiting access or  
483 otherwise relating to access to wildlife management areas or  
484 other areas managed by the commission.

485 4. Rules or orders of the commission relating to the  
486 feeding of ~~wildlife, freshwater fish, or~~ saltwater fish.

487 5. Rules or orders of the commission relating to landing  
488 requirements for freshwater fish or saltwater fish.

489 6. Rules or orders of the commission relating to restricted  
490 hunting areas, critical wildlife areas, or bird sanctuaries.

491 7. Rules or orders of the commission relating to tagging



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492 requirements for wildlife and fur-bearing animals.

493 8. Rules or orders of the commission relating to the use of  
494 dogs for the taking of wildlife.

495 9. Rules or orders of the commission which are not  
496 otherwise classified.

497 10. Rules or orders of the commission prohibiting the  
498 unlawful use of finfish traps.

499 11. All prohibitions in this chapter which are not  
500 otherwise classified.

501 12. Section 379.33, prohibiting the violation of or  
502 noncompliance with commission rules.

503 13. Section 379.407(7), prohibiting the sale, purchase,  
504 harvest, or attempted harvest of any saltwater product with  
505 intent to sell.

506 14. Section 379.2421, prohibiting the obstruction of  
507 waterways with net gear.

508 15. Section 379.413, prohibiting the unlawful taking of  
509 bonefish.

510 16. Section 379.365(2) (a) and (b), prohibiting the  
511 possession or use of stone crab traps without trap tags and  
512 theft of trap contents or gear.

513 17. Section 379.366(4) (b), prohibiting the theft of blue  
514 crab trap contents or trap gear.

515 18. Section 379.3671(2) (c), prohibiting the possession or  
516 use of spiny lobster traps without trap tags or certificates and  
517 theft of trap contents or trap gear.

518 19. Section 379.357, prohibiting the possession of tarpon  
519 without purchasing a tarpon tag.

520 ~~20. Rules or orders of the commission prohibiting the~~



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521 ~~feeding or enticement of alligators or crocodiles.~~

522 ~~20.21.~~ Section 379.105, prohibiting the intentional  
523 harassment of hunters, fishers, or trappers.

524 Section 11. Section 379.412, Florida Statutes, is created  
525 to read:

526 379.412 Penalties for feeding wildlife and freshwater  
527 fish.-

528 (1) The penalties in this section apply to a violation of  
529 rules or orders of the commission which prohibit or restrict the  
530 following: feeding wildlife or freshwater fish with food or  
531 garbage, attracting or enticing wildlife or freshwater fish with  
532 food or garbage, or allowing the placement of food or garbage in  
533 a manner that attracts or entices wildlife or freshwater fish.

534 This section does not apply to rules or orders of the commission  
535 which relate to animals that are held in captivity, restrict the  
536 taking or hunting of species over bait or other intentionally  
537 placed or deposited food, or restrict the taking or hunting of  
538 species in proximity to feeding stations.

539 (2) Any person who violates a prohibition or restriction  
540 identified in subsection (1):

541 (a) For a first violation, commits a noncriminal  
542 infraction, punishable by a civil penalty of \$100.

543 1. A person cited for a violation under this paragraph must  
544 sign and accept a citation to appear before the county court.  
545 The issuing officer may indicate on the citation the time and  
546 location of the scheduled hearing and must indicate the  
547 applicable civil penalty.

548 2. A person cited for a violation under this paragraph may  
549 pay the civil penalty by mail or in person within 30 days after



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550 receipt of the citation. If the civil penalty is paid, the  
551 person shall be deemed to have admitted committing the violation  
552 and to have waived his or her right to a hearing before the  
553 county court. Such admission may not be used as evidence in any  
554 other proceedings except to determine the appropriate fine for  
555 any subsequent violations.

556 3. A person who refuses to accept a citation, who fails to  
557 pay the civil penalty for a violation, or who fails to appear  
558 before a county court as required commits a misdemeanor of the  
559 second degree, punishable as provided in s. 775.082 or s.  
560 775.083.

561 4. A person who elects or is required to appear before the  
562 county court is deemed to have waived the limitation on civil  
563 penalties provided under this paragraph. After a hearing, the  
564 county court shall determine whether a violation has been  
565 committed, and if so, may impose a civil penalty of at least  
566 \$100. A person found guilty of committing a violation may appeal  
567 that finding to the circuit court. The commission of a violation  
568 must be proved beyond a reasonable doubt.

569 (b) For second and subsequent violations, if all violations  
570 are related to freshwater fish or wildlife other than bears,  
571 alligators, or other crocodilians, commits a misdemeanor of the  
572 second degree, punishable as provided in s. 775.082 or s.  
573 775.083.

574 (c) For a second violation, if each violation is related to  
575 bears, alligators, or other crocodilians, commits a misdemeanor  
576 of the second degree, punishable as provided in s. 775.082 or s.  
577 775.083.

578 (d) For a third violation, if all violations are related to



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579 bears, alligators, or other crocodilians, commits a misdemeanor  
580 of the first degree, punishable as provided in s. 775.082 or s.  
581 775.083.

582 (e) For a fourth or subsequent violation, if all violations  
583 are related to bears, alligators, or other crocodilians, commits  
584 a felony of the third degree, punishable as provided in s.  
585 775.082, s. 775.083, or s. 775.084.

586 (3) As used in this section, the term "violation" means any  
587 judicial disposition other than acquittal or dismissal.

588 Section 12. Section 379.3011, Florida Statutes, is  
589 repealed.

590 Section 13. Section 379.3013, Florida Statutes, is  
591 repealed.

592 Section 14. Section 379.3016, Florida Statutes, is  
593 repealed.

594 Section 15. Section 379.3017, Florida Statutes, is  
595 repealed.

596 Section 16. This act shall take effect upon becoming a law.

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/CS/SB 680

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Environmental Preservation and Conservation Committee; and Senator Dean

SUBJECT: Fish and Wildlife Conservation Commission

DATE: April 20, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hinton</u>	<u>Uchino</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Betta</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 680 amends provisions relating to the Fish and Wildlife Conservation Commission (FWC). Specifically, the bill:

- Removes specific labeling requirements for personal floatation devices (PFDs) and allows the use of PFDs labeled in accordance with the U.S. Coast Guard (Coast Guard) rules concerning an upcoming new labeling system;
- Revises the effective dates for tarpon tags from July 1 through June 30 to the calendar year;
- Removes a requirement for tax collectors to submit forms relating to the number of unissued Convention on the International Trade of Endangered Species (CITES) tags every year;
- Removes reporting requirements for tarpon landings;
- Corrects the scientific name for tarpon from *megalops atlantica* to the correct name, *Megalops atlanticus*;
- Removes statutory qualifying requirements to receive a Restricted Species Endorsement on a Saltwater Products License;
- Authorizes the FWC to reimburse and compensate a citizen support organization for providing fiscal and administrative services to the commission;
- Removes rulemaking authority to implement an alligator management and trapping program;
- Ensures all uncured alligator hides are identified as originally intended;
- Removes reporting and shipping details for dealers and buyers of alligator hides;

- Clarifies that a person may not take or possess an alligator or alligator eggs without an alligator license, rather than a “trapping license”;
- Rephrases “Alligator Management and Trapping Program” to “Alligator Management Program”;
- Removes statutory rulemaking authority to limit the number of participants engaged in the taking of alligators or their eggs from the wild;
- Provides exemptions to fee requirements related to hunting alligators;
- Removes statutory requirements to provide the Department of Agriculture and Consumer Services with funds from certain activities related to alligators and makes the transfer of such funds dependent on an annual appropriation;
- Removes rulemaking authority to establish appropriate qualifications for permitting alligator collectors;
- Removes a requirement to use certain funds for alligator husbandry research;
- Removes a requirement to attach CITES tags to the hide of any alligator taken from the wild;
- Removes a requirement to limit the number of CITES tags to the estimated safe yield of alligators in the state;
- Changes penalties for feeding wildlife and freshwater fish;
- Removes definitions of “alligator,” “process or processing,” and “alligator hatchling”;
- Removes a provision relating to alligator study requirements;
- Removes provisions relating to penalties for unlawfully selling certain alligator products;
- Removes a provision relating to penalties for using the words “alligator” and “gator” in certain situations; and
- Reenacts certain sections of statute to incorporate changes made in the bill.

The bill has an estimated negative fiscal impact of \$27,500 relating to the changes in alligator trapping and trapping agent licenses.

The bill provides that it takes effect upon becoming law.

## **II. Present Situation:**

### **Personal Floatation Devices (PFD)**

The Coast Guard labels personal floatation devices (PFDs) five different ways based on their intended use:

- Type I PFDs are off-shore life jackets that are good for all waters, including rough seas and remote water, where rescue might be slow to arrive;
- Type II PFDs are near-shore buoyant vests for general boating. They are good for calm, inland waters, or where there is a good chance of a quick rescue;
- Type III PFDs are for general boating or some specialized activity that is marked on the PFD for activities such as water skiing, hunting, fishing, canoeing, kayaking, etc. They are designed to complement the activity they are used for;
- Type IV PFDs include throwable devices such as ring buoys and boat cushions; and

- Type V PFDs are only for special uses or conditions.<sup>1</sup>

Florida law requires PFDs to be either on hand or worn depending on the situation. Each situation has different requirements:

- All vessels are required to have wearable Coast Guard-approved PFDs for each person onboard. They must be the appropriate size for the people on the vessel, be in serviceable condition, and within easy access;
- Vessels 16 feet in length or longer must also have at least one Coast Guard-approved throwable Type IV PFD that is immediately available in case someone falls overboard;
- Children under the age of six must wear a Coast Guard-approved Type I, II, or III Coast Guard approved PFD while onboard vessels less than 26 feet in length while the vessel is underway; and
- Anyone who is water skiing; parasailing; aquaplaning; operating, riding on, or being towed behind a personal watercraft; or some similar activity, must wear a non-inflatable Coast Guard-approved Type I, II, III, or V PFD.<sup>2</sup>

Currently, the Coast Guard is working to revise the classification and labeling of PFDs. When the process is completed, the intent is to have labels for PFDs that are easier to understand.

According to the final regulation promulgated by the Coast Guard, removing the type code system from regulations “will facilitate future incorporation by reference of new industry consensus standards for PFD labeling that more effectively convey safety information and is a step toward harmonization of our regulations with PFD requirements in Canada and other countries.”<sup>3</sup>

The Coast Guard has indicated that there will be a transition period until the end of 2016 to allow manufacturers time to come into compliance with the new standards and to allow states the time to modify their laws.<sup>4</sup>

### **Tarpon Tags**

In June 2013, the FWC approved a series of changes to the state’s tarpon tag rules. In particular, the FWC voted to manage tarpon as a catch-and-release only species.<sup>5</sup> However, the FWC does allow the use of tarpon tags to harvest tarpon while in pursuit of an International Game Fish Association record. In conjunction with designating tarpon as a catch-and-release only species, the former recreational bag limit of two was eliminated and harvest and unnecessary destruction of the fish was prohibited.<sup>6</sup>

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<sup>1</sup> U. S. Coast Guard, *PFD Selection, Use, Wear & Care*, <http://www.uscg.mil/hq/cg5/cg5214/PFDselection.asp#recreational> (last visited Mar. 16, 2015).

<sup>2</sup> FWC, *Boating Regulations*, <http://myfwc.com/boating/regulations/#nogo> (last visited Mar. 16, 2015).

<sup>3</sup> Personal Flotation Devices Labeling and Standards, 79 Fed. Reg. 56491 (Oct. 22, 2014).

<sup>4</sup> FWC, *Senate Bill 680 Agency Analysis*, 7, (Feb. 2, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>5</sup> Rule 68B-32.001, F.A.C.

<sup>6</sup> *Supra* note 4, at 17.

In addition to these changes, Rule 68B-32.004, F.A.C., now provides that “a person may temporarily possess a tarpon within or without Florida waters only for the purposes of photography, measuring length and girth, and taking a scientific sample.” The rule provides that tarpon of a certain length may not be removed from the water.<sup>7</sup> Additional changes to rule that need to be addressed in Florida Statutes include eliminating the reporting requirements for the tarpon tag,<sup>8</sup> and modifying the dates tags are issued from July 1 to June 30 to the calendar year to coincide with the height of the tarpon fishing season.<sup>9</sup>

Tax collectors are required to return all unused tarpon tags to the FWC by August 15 each year. Since tarpon tags have the effective date printed on them, they cannot be used outside of the tag year. The FWC reports that there is no need recover any unused tags.

Lastly, s. 379.357, F.S., refers to the tarpon scientifically as the *megalops atlantica*. The correct scientific name of the tarpon is *Megalops atlanticus*.

### **Commercial Fishing Licensing**

In Florida, a Saltwater Products License (SPL) is required to commercially harvest or sell all saltwater products, harvest over the recreational bag limit, harvest over 100 pounds or two saltwater fish per person per day (whichever is greater) for species that do not have an established bag limit, or use certain gear or equipment as specified by law. Saltwater products harvested under an SPL may only be sold to a licensed Florida wholesale dealer.<sup>10</sup>

Florida offers three types of SPLs:<sup>11</sup>

- An individual SPL authorizes one person to engage in commercial fishing activities from the shore or a vessel. The individual SPL is not tied to any one vessel and is issued in the individual’s name;
- A crew SPL is also issued in an individual’s name and authorizes the named individual to engage in commercial fishing activities from shore or a vessel. It also authorizes each person who is fishing with the named individual aboard a vessel to engage in such activities. This means the license holder can take a crew out on any vessel to harvest saltwater fish and the SPL covers the crew as well; and
- A vessel SPL is issued to a valid commercial vessel registration number and authorizes each person aboard that registered vessel to engage in commercial saltwater fishing activities. Unlike the first two SPLs, the vessel SPL is tied to a vessel rather than a person.<sup>12</sup>

The cost for each license is:<sup>13</sup>

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<sup>7</sup> Rule 68B-32.004(3), F.A.C.

<sup>8</sup> *Supra* note 4, at 17.

<sup>9</sup> *Supra* note 4, at 17.

<sup>10</sup> FWC, *Commercial Saltwater Product Licenses – Introduction*, <http://www.myfwc.com/license/saltwater/commercial-fishing/new-applicants/#spl> (last visited Mar. 15, 2015).

<sup>11</sup> Section 379.361(2)(e)1.-3., F.S.

<sup>12</sup> Section 379.361(2)(e), F.S.

<sup>13</sup> FWC, *Commercial Saltwater products License Fees*, <http://myfwc.com/license/saltwater/commercial-fishing/csl-fees/> (last visited Mar. 15, 2015).

<b>SPL Type</b>	<b>Florida Resident</b>	<b>Non-resident</b>	<b>Alien</b>
Individual	\$50	\$200	\$300
Crew	\$150	\$600	\$900
Vessel	\$100	\$400	\$600

Requirements for other commercial licenses vary depending on what species are being harvested. In particular, the Restricted Species Endorsement (RS) is required to commercially harvest and sell species designated as “restricted” by the FWC.<sup>14</sup>

The RS was created by the Legislature in 1987 when marine fisheries management was under the legislatively created Marine Fisheries Commission, a predecessor agency to the FWC. The primary purpose of the RS is to help ensure the sustainability of Florida’s most important commercially harvested species. Prior to the creation of the RS, some of the state’s recreational fishermen were purchasing commercial licenses to enable them to harvest commercial quantities of their favorite species and then keep them for their own personal use, thus circumventing the recreational bag limits.<sup>15</sup>

The species currently designated as restricted species are: several species of amberjack, bluefish, cobia, dolphin, drum (black), several species of flounder, several species of grouper, hogfish, almaco jack, Spanish and king mackerel, several species of mullet, permit, Florida and African pompano, red porgy, banded rudderfish, several species of sea bass, spotted seatrout, sheepshead, several species of snapper, tripletail, golden tilefish, wahoo, blue crab, stone crab, spiny lobster, and several species of shrimp.<sup>16</sup>

To qualify for an RS on an SPL, a person must:

- Be 16 years of age or older; and either
- Have over 25 percent or \$5,000 of income attributable to the sale of saltwater products under an SPL; or
- Be a charter boat operator with at least 50 percent of income attributable to charter fishing, at least \$2,500 must be attributable to the sale of saltwater products under an SPL.

The income requirements must apply to at least one of the previous three years, and marine aquaculture producers with an SPL can apply income from the sale of marine aquaculture products.<sup>17</sup>

Exceptions to these requirements are:

- A permanent RS is available to those who are 62 or older who have qualified for an RS for at least three of the last five years;
- The income requirement for those who are 62 or older is reduced to \$2,500;
- Active military duty time will not be counted against the time required to qualify;

<sup>14</sup> FWC, *Qualifying for the Restricted Species Endorsement*, <http://www.myfwc.com/license/saltwater/commercial-fishing/qualifying-for-rs/> (last visited Mar. 14, 2015).

<sup>15</sup> *Supra* note 4, at 18.

<sup>16</sup> FWC, *Restricted Species List*, <http://www.myfwc.com/license/saltwater/commercial-fishing/restricted-species/> (last visited Mar. 14, 2015).

<sup>17</sup> *Supra* note 14.

- The purchaser of a commercial vessel associated with an RS will have a complete license year after the purchase to qualify for an RS;
- An immediate family member wishing to carry on the fishing operation of an individual who has died or become permanently disabled will have one complete license year to qualify for an RS;
- The income requirement is waived for residents holding an SPL for three of the previous five years before a disability, if the individual is certified totally and permanently disabled by the U.S. Department of Veterans Affairs, any branch of the U.S. Armed Services, or the Railroad Board, or an individual who is certified disabled by the Social Security Administration or a licensed physician;
- An honorably discharged resident military veteran who is certified to be permanently disabled with a rating of at least 10 percent has one full license year to qualify for an RS, in addition to an income requirement of \$2,500; and
- An honorably discharged resident military veteran who applies for an RS within 48 months after discharge has one full license year to qualify for an RS.<sup>18</sup>

The creation of the RS was supported by Florida's commercial fishing industry, which coordinated with the legislatively created Marine Fisheries Commission, a predecessor agency to the FWC, in developing the endorsement. It is meant to ensure that fish harvested under Florida's commercial licenses, with the higher bag limits typically associated with the commercial fishery, are being harvested for commercial purposes and ultimately ending up in the seafood market.<sup>19</sup>

Qualifying requirements for the RS are currently in statute, but, since all aspects of the RS program fall under the FWC's constitutional authority, the requirements have been incorporated into FWC rule, allowing it to respond to stakeholder needs or requests for changes. According to the FWC, some of the existing statutory requirements are confusing and out of date.<sup>20</sup>

### Alligators

The American alligator may be found in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, and Texas.<sup>21</sup> They prefer freshwater lakes and slow-moving rivers and their associated wetlands, but they also can be found in brackish water habitats as well. There are approximately 1.3 million alligators throughout Florida.<sup>22</sup>

Due to concerns over declining populations, legal alligator harvesting was halted in 1962. The American alligator was included on the first list of endangered species under the law that

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<sup>18</sup> *Supra* note 14.

<sup>19</sup> *Supra* note 4, at 18.

<sup>20</sup> *Supra* note 4, at 18

<sup>21</sup> U.S. Fish and Wildlife Service, *Environmental Conservation Online System, American alligator (Alligator mississippiensis)*, <http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=C000#recovery> (last visited Mar. 3, 2015).

<sup>22</sup> FWC, *Statewide Nuisance Alligator Program*, <http://myfwc.com/wildlifehabitats/managed/alligator/nuisance/> (last visited Mar. 3, 2015).

preceded the Endangered Species Act in 1967.<sup>23</sup> By the mid-1970s, indications were that the Florida population was recovering rapidly. In 1977, Florida's alligator population was reclassified from endangered to threatened by the U.S. Fish and Wildlife Service. This allowed for management of the growing nuisance alligator problem through harvest, which continues today under the Statewide Nuisance Alligator Program.<sup>24</sup>

Despite its recovery, the Florida alligator is still federally listed. However, since 1979, its status has been "Similarity of Appearance (Threatened)."<sup>25</sup> This provides safeguards to other imperiled crocodylians, such as the American crocodile, which may be found in south Florida, and the black caiman, which occurs in South America. The listing allows for state-approved management and control programs.<sup>26</sup>

Currently, the FWC implements three programs that provide for harvesting non-hatchling alligators from the wild. They are the:

- Statewide Alligator Harvest Program;
- Private Lands Alligator Management Program; and
- Statewide Nuisance Alligator Program.

#### ***Statewide Alligator Harvest Program***

Each year, the FWC establishes alligator management units based on surveys to establish appropriate harvest quotas to provide recreational opportunities for the public to harvest alligators. Anyone may participate, but the number of harvest permits awarded are typically much fewer than the number of people applying for them. According to the FWC, in 2014, 18,000 applications were received for 6,000 permits.<sup>27</sup>

Through a three-phase program, harvest permits are made available to individuals through a random selection process. Awarded permits that are not purchased in Phase I by the appointed deadline will be made available in Phase II. The second phase of the program is only open to people who were not issued a harvest permit during Phase I. All permits that are not purchased in Phase II by the appointed deadline are sold on a first-come, first-served basis during Phase III. Phase III is open to anyone, including those who already have a harvest permit from either of the two preceding phases. Those who are selected to receive a permit must purchase an Alligator Trapping License. Each permit authorizes taking two alligators, specifies where the alligators may be taken, and comes with two hide validation tags, referred to as CITES tags.<sup>28</sup>

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<sup>23</sup> U.S. Fish and Wildlife Service, *American Alligator: Alligator mississippiensis* (Feb. 2008), available at <http://www.fws.gov/endangered/esa-library/pdf/alligator.pdf> (last visited Mar. 3, 2015).

<sup>24</sup> *Supra* note 6. (FWC ANALYSIS – REMOVE IN FINAL) POINT TO PAGE 7 agency analysis

<sup>25</sup> U.S. Fish and Wildlife Service, *Environmental Conservation Online System, American alligator (Alligator mississippiensis)*, <http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=C000#recovery> (last visited Mar. 3, 2015).

<sup>26</sup> *Supra* note 4, at 8.

<sup>27</sup> *Supra* note 4, at 9.

<sup>28</sup> FWC, *Statewide Alligator Hunt Permit: General Information*, <http://myfwc.com/license/limited-entry-hunts/general-info/alligator-hunt-permit/> (last visited Mar. 17, 2015).

Another option for participating in the Alligator Harvest Program is to purchase an Alligator Trapping Agent License, which allows those individuals to assist someone who was selected for a harvest permit and has an Alligator Trapping License.

### ***Private Lands Alligator Management Program***

The Private Lands Alligator Management Program was established as a mechanism for landowners to sustainably harvest alligators on their properties. To participate in the program, applicants must own or lease a parcel that contains an alligator habitat. Public lands, other than sovereignty submerged lands, for which a governmental entity can demonstrate an ownership or leasehold interest and with approval of the governmental entity that owns the property are also eligible for inclusion in the program.<sup>29</sup>

Once the FWC evaluates the property for the sustainable yield of alligators, it issues the required permits and CITES tags up to the sustainable yield. Unlike the Statewide Alligator Harvest Program, participants in this program may take alligators year round, rather than during designated seasons.<sup>30</sup> The person permitted to harvest on private lands may be absent when someone with either an Alligator Trapping License or an Alligator Trapping Agent License harvests alligators on the parcel.<sup>31</sup>

### ***Statewide Nuisance Alligator Program***

Generally, an alligator may be deemed a nuisance if it is at least four feet long and the person reporting the alligator believes it poses a threat to people, pets, or property. The state does not allow for the relocation of nuisance alligators.<sup>32</sup> According to the FWC, they tend to return to where they were initially captured. Smaller alligators, however, are usually relocated to nearby wetland habitats.<sup>33</sup>

The FWC contracts with nuisance alligator trappers to remove problem alligators.<sup>34</sup> Nuisance alligator trappers must purchase an Alligator Trapping License.<sup>35</sup> When a nuisance alligator is reported, the FWC issues a permit to the trapper authorizing the removal of the specific alligator. The public may not hire or provide authorization to a nuisance alligator trapper to remove a nuisance alligator. They may only be handled by FWC-contracted nuisance alligator trappers. Trappers are issued CITES tags at the beginning of each year which are attached to each trapped alligator. Nuisance alligator trappers receive \$30 per captured alligator, until all funds are expended. According to the FWC, there is a recurring annual allocation in the FWC's budget of \$210,000 to pay trappers for capturing nuisance alligators.<sup>36</sup>

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<sup>29</sup> FWC, *Private Lands Alligator Program*, <http://myfwc.com/wildlifehabitats/managed/alligator/private-lands/> (last visited Mar. 3, 2015).

<sup>30</sup> *Supra* note 4, at 11.

<sup>31</sup> *Supra* note 4, at 11.

<sup>32</sup> *Supra* note 22.

<sup>33</sup> *Supra* note 4, at 12.

<sup>34</sup> FWC, *How to be a Nuisance Alligator Trapper*, <http://myfwc.com/wildlifehabitats/managed/alligator/nuisance/trapper/> (last visited Mar. 3, 2015).

<sup>35</sup> *Supra* note 4, at 13.

<sup>36</sup> *Supra* note 4, at 13.

Contract trappers are allowed to use designated agents who can operate independently of them, but the agent must be in possession of the harvest permit and tags issued to the nuisance alligator trapper under contract. Trappers are ultimately responsible for their agents, and the trappers' agents must possess either an Alligator Trapping or Alligator Trapping Agent License.<sup>37</sup>

### ***Alligator Trapping Guides***

Alligator trapping guides sell packaged hunts to people who would like to hunt an alligator. They must be properly licensed and permitted under one of the FWC's three programs. The guides solicit clients and provide assistance and equipment to any unskilled participants they are accompanying who have been issued their own harvest permits. The guide may operate with an Alligator Trapping Agent License when guiding a person with an Alligator Trapping License or may operate with the Alligator Trapping License with clients who have either type of license.<sup>38</sup>

### ***Public Waters Alligator Egg Collection Program***

The Public Waters Alligator Egg Collection Program permits the collection of alligator eggs from public waters by up to 30 licensed and permitted alligator farmers in order to provide a consistent source of rearing stock. The number of farms is restricted due to the limited availability of eggs in the wild.<sup>39</sup>

Areas are established annually by the Alligator Management Program staff. Staff members assess the area and set a quota of 25 to 100 percent of non-depredated, non-flooded nests. Collections are conducted under the direct supervision of FWC biologists. Those eggs are then transferred to the 30 farmers who incubate and hatch the eggs or transfer them to other persons permitted to receive alligator eggs from the wild. The FWC issues an alligator egg collection permit before eggs can be collected under the program. The fee for the permit is limited to \$5 per egg.<sup>40</sup>

### ***Alligator Farming***

Alligator farming has been performed in Florida since the 1970s. Despite fluctuations in the market for alligator hides in the last decade, the number of alligator farms has remained fairly constant since 2002 with about 60 farms. Inventories have stayed above 80,000 animals with almost 20,000 alligators harvested annually for their hides and meat. Alligator farmers must obtain an Alligator Farming License. They may employ assistants who must obtain an Alligator Farming Agent's License.<sup>41</sup>

### ***Hide and Fur Dealers***

Alligator hide dealers solicit, broker, or otherwise buy unpreserved lawfully acquired and tagged alligator hides for the purpose of selling the hides to commercial tanneries or manufacturers of alligator hide products. Under the required Fur and Hide Dealer's License, they do not harvest

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<sup>37</sup> *Supra* note 4, at 13.

<sup>38</sup> *Supra* note 4, at 14.

<sup>39</sup> Rule 68A-25.004, F.A.C. See also *supra* note 6. POINTS TO PAGE 14 agency analysis

<sup>40</sup> *Supra* note 4, at 14.

<sup>41</sup> *Supra* note 4, at 14.

any part of the alligator. They instead play a role in the final disposition of alligator hides. They must abide by record keeping requirements set by the FWC.<sup>42</sup>

**Alligator Meat Processors**

Alligator meat processors are issued a no-cost Alligator Meat Processing Facility Permit by the FWC after being inspected and approved by the Department of Agriculture and Consumer Services (DACs). They must also purchase an Alligator Processor’s License, if the processor is not already in possession of an Alligator Farming License or an Alligator Trapping License.<sup>43</sup> The processors buy carcasses from other alligator meat processors, alligator farmers, and program participants permitted to take alligators from the wild. In addition, they import lawfully acquired alligator meat from out of state for reprocessing and repackaging for wholesale and retail sale.<sup>44</sup>

**Alligator Marketing and Education – The Department of Agriculture and Consumer Services**

Under a contract executed in 1993, \$5 for every CITES tag attached to an alligator taken from the wild through the private lands and nuisance alligator harvest programs is transferred to the DACs.<sup>45</sup> Also, \$1 for every alligator egg taken from public waters is transferred to the DACs. The transfers are in support of alligator marketing and education activities overseen by the Division of Marketing, Bureau of Seafood and Aquaculture, within the DACs.

Alligator Related Licenses and Fees for the 2014 Season<sup>46</sup>

License	Fee
Resident Alligator Trapping License	\$250
Non-Resident Alligator Trapping License	\$1,000
Alligator Trapping Agent’s License (resident and non-resident)	\$50
Alligator Hide Validation (CITES) Tag	Up to \$30 per tag
Resident Fur and Hide Dealer’s License	\$100
Non-Resident Fur and Hide Dealer’s License	\$500
Egg Permit	Up to \$5 per egg
Alligator Farming License (resident and non-resident)	\$250
Alligator Farming Agent’s License (resident and non-resident)	\$50
Alligator Processor’s License (resident and non-resident)	\$250

Violations of alligator management strategies include:

- The unlawful sale, possession, or transporting of alligators or alligator skins;<sup>47</sup>
- Prima facie evidence of intent to violate laws protecting alligators (use of firearms and light at night where alligators might be known to be present);<sup>48</sup>

<sup>42</sup> Rule 68A-25.004, F.A.C.

<sup>43</sup> *Supra* note 4, at 15.

<sup>44</sup> *Supra* note 4, at 15.

<sup>45</sup> *Supra* note 4, at 15.

<sup>46</sup> See generally Part VII of ch. 379, F.S., for alligator licenses and fees.

<sup>47</sup> Section 379.3014, F.S.

<sup>48</sup> Section 379.3015, F.S.

- Unlawfully selling alligator products;<sup>49</sup>
- Using the words “alligator” or “gator” in certain sales;<sup>50</sup>
- Not possessing a Fur and Hide Dealer’s License, when necessary;<sup>51</sup>
- Taking and possessing alligators without a trapping license;<sup>52</sup>
- Not tagging alligators and hides when required;<sup>53</sup>
- Violating rules or orders of the FWC;<sup>54</sup> and
- Illegally killing, possessing, or capturing alligators, other crocodylian, or eggs.<sup>55</sup>

Additionally, the Wildlife Violator Compact Act authorizes reciprocal license suspensions in participating states.<sup>56</sup>

**Wildlife Feeding Rules**

The FWC has adopted rules that prohibit feeding certain species of wildlife. Those rules, along with types of feeding that are common for the species for which feeding is prohibited, are:

Species	Rule	Common Types of Feeding
Bear, Fox, and Raccoon	Intentionally placing food or garbage, allowing the placement of food or garbage, or offering food or garbage in such a manner that it attracts black bears, foxes, or raccoons and in a manner that is likely to create or creates a public nuisance is prohibited. <sup>57</sup>	Garbage, pet or livestock food, birdseed, or other foods left unsecured outside or placed out intentionally for these wildlife
Pelican	The intentional feeding or the placement of food that attracts pelicans and modifies the natural behavior of the pelican so as to be detrimental to the survival or health of a local population is prohibited. <sup>58</sup>	Fish and food scraps handed out or dumped in ways that allow the animals to feed on that material
Sandhill Crane	The intentional feeding of sandhill cranes is prohibited. <sup>59</sup>	Bird feeders or bread or corn that people leave out, whether for cranes or for other wildlife
Bald Eagle	No person shall take, feed, disturb, possess, sell, purchase or barter, or attempt to engage in any such conduct,	Food scraps handed out or dumped in ways that allow the animals to feed on that material

<sup>49</sup> Section 379.3016, F.S.

<sup>50</sup> Section 379.3017, F.S.

<sup>51</sup> Section 379.364, F.S.

<sup>52</sup> Section 379.3751, F.S.

<sup>53</sup> Section 379.3752, F.S.

<sup>54</sup> Section 379.401, F.S.

<sup>55</sup> Section 379.409, F.S.

<sup>56</sup> Section 379.2255, F.S.

<sup>57</sup> Rule 68A-4.001(3), F.A.C.

<sup>58</sup> Rule 68A-4.001(4), F.A.C.

<sup>59</sup> Rule 68A-4.001(5), F.A.C.

	any bald eagle or parts thereof, or their nests or eggs, except when authorized by permit or consistent with FWC Eagle Management Guidelines. <sup>60</sup>	
Alligator and Crocodile	No person shall intentionally feed, or entice with feed, any crocodylian unless held in captivity under a permit issued by the FWC or otherwise provided. <sup>61</sup>	Food scraps handed out or dumped in ways that allow the animals to feed on that material

The purpose of the rules is to protect both the species and the public. All wild animals have a natural fear of people, but when wild animals are fed by people, animals’ natural fear is diminished. This results in wildlife having more frequent and closer contact with people. Feeding wildlife also results in nuisance and aggressive behavior by the animals, which can pose a risk to public safety, danger to pets and small livestock, and property damage. Wildlife fed by humans also spend more time in developed areas, which exposes them to increased risks of being hit by vehicles, sickness from disrupted natural diets and behaviors, killing by the public, and euthanization by the FWC in order to protect public safety.<sup>62</sup>

Bear Related Incidences from 2007 to 2013<sup>63</sup>

Year	2007	2008	2009	2010	2011	2012	2013
Reports from public listing “Bear in Garbage”	848	916	1,347	1,626	1,329	2,064	2,363
Percent of total public reports listing “Bear in Garbage”	30%	33%	40%	39%	33%	33%	33%
Bears euthanized due to conflicts	15	14	19	14	13	22	25
Number of euthanizations that were food related (from intentional or unintentional feeding)	10	11	11	9	10	21	23
Percent of euthanizations that were food related	67%	79%	58%	64%	77%	95%	92%
Feeding rule warnings issued	6	7	10	25	29	22	28
Feeding rule citations issued	7	1	6	4	8	6	4

A first violation of the feeding prohibition rules listed above is a Level II offense, which is a second-degree misdemeanor resulting in punishment of up to 60 days in jail and/or up to a \$500 fine.

<sup>60</sup> Rule 68A-16.002, F.A.C.

<sup>61</sup> Rule 68A-25.001, F.A.C.

<sup>62</sup> In Dec. 2014, a woman in Lake Mary was attacked by a bear in her driveway. The event was widely reported and the attack resulted in the euthanization of several bears in the area. The attack and the events that followed resulted in significant exposure to the problem of bears in residential communities and the harm they can cause.

<sup>63</sup> *Supra* note 4, at 21.

A person convicted of a Level II violation within three years after a previous conviction of a Level II or higher violation commits a first-degree misdemeanor, punishable by imprisonment of up to a year and/or a fine of up to \$1,000, with a mandatory minimum fine of \$250.

A person convicted of a Level II violation within five years of two previous Level II or higher violation commits a first-degree misdemeanor, punishable by imprisonment of up to a year and/or a fine of up to \$1,000, with a mandatory minimum fine of \$500 and suspension of all recreational licenses for a year.

A person convicted of a Level II violation within 10 years of three previous convictions of a Level II or higher violation commits a first-degree misdemeanor, punishable by imprisonment of up to a year and/or a fine of up to \$1,000, with a minimum mandatory fine of \$750 and suspension of all recreational licenses for three years.<sup>64</sup>

According to the FWC, when FWC officers issue citations for violations of feeding rules, assistant state attorneys reject 28 percent of them and 25 percent of those charged have their adjudications withheld (meaning that there is no criminal misdemeanor, however, fines are assessed).

FWC officers' experiences, as well as adjudication results of citations issued for feeding prohibition rules, reveal that there are varying degrees of severity and willfulness in feeding violations despite the single criminal penalty of a second-degree misdemeanor. Discussions with assistant state attorneys have revealed that some believe a second-degree misdemeanor is too severe a penalty for some initial violations of animal feeding rules, and this may be the reason for the reluctance to prosecute some violations. On the other hand, some citations are prosecuted and violators have been issued significant sentences.

Since 2007, the FWC has recorded the highest levels of human-wildlife conflict in 2012 and 2013. Incidents of human injuries caused by bears and alligators have also been more prevalent. In 2013 and 2014, the FWC documented the most serious human injuries caused by bears since records have been kept, which began in 1976. Many of these human-wildlife interactions result from violations of the animal feeding rules. Since many violations of these rules are not prosecuted, the penalty may have little deterrent effect.

### **Citizen Support Organizations**

Section 379.223, F.S., authorizes the FWC to establish Citizen Support Organizations (CSO) to provide assistance, funding, and promotional support for the programs of the FWC. A CSO must be:

- A not-for-profit corporation incorporated pursuant to the provisions of ch. 617, F.S., and approved by the Department of State;
- Organized and operated to:
  - Conduct programs and activities;
  - Raise funds;
  - Invest and administer securities, funds, or real or personal property in its own name; and

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<sup>64</sup> Section 379.401(2)(b)1.-4., F.S.

- Make expenditures for the benefit of the FWC or an individual program unit of the FWC, except that it may not receive funds from the FWC or the Fish and Wildlife Research Institute by grant, gift, or contract unless specifically authorized by the Legislature;
- Determined by the FWC to act in a manner that is consistent with the goals of the FWC and in the best interest of the state; and
- Approved by the FWC to operate for the benefit of the FWC.

It is not clear whether a CSO may provide a direct benefit to the FWC by serving as a fiscal and administrative agent. Currently, CSOs serve this function.<sup>65</sup>

### III. Effect of Proposed Changes:

**Sections 1 through 3** amend ss. 327.37, 327.39, and 327.50, F.S., respectively, to remove current Personal Flotation Device (PFD) type codes and provide that when water skiing, parasailing, aquaplaning, operating a personal watercraft, and for every person under six years of age on board a vessel less than 26 feet, all of which require wearing a PFD, the PFD must be approved by the Coast Guard and used in accordance with the Coast Guard approval label.

**Section 4** amends s. 379.223, F.S., to authorize the FWC to reimburse or compensate a citizen support organization (CSO) for fiscal and administrative services. Such services are allowed provided there is a contract for the CSO to provide such services to the commission.

**Section 5** amends s. 379.357, F.S., to correct the scientific name of tarpon in the statute from the incorrect *megalops atlantica* to the correct name, which is *Megalops atlanticus*.

The bill changes the dates tarpon tags are valid from July 1 through June 30 to January 1 through December 31. Currently tarpon tags may have to be purchased twice during the height of the tarpon fishing season if they have not been used by July 1.

The bill repeals a requirement for tax collectors to submit any unissued tags for the previous fiscal year along with a written audit report as to the numbers of unissued tags.

The bill also repeals reporting requirements for tarpon landings.

**Section 6** amends s. 379.361, F.S., to repeal all statutory references to the qualifying requirements for acquiring a Restricted Species Endorsement (RS). Current requirements are found in Rule 68B-2.006, F.A.C.

**Section 7** amends s. 379.3012, F.S., to rephrase “Alligator Management and Trapping Program” to “Alligator Management Program”, which is the only place the phrase “Alligator Management and Trapping Program” is used in statute or rule.

The bill removes statutory rulemaking authority to implement an alligator management and trapping program. The Fish and Wildlife Conservation Commission (FWC) reports that

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<sup>65</sup> FWC, *Senate Bill 680 Amendment Analysis* (Mar. 15, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

provisions are no longer needed and removing them will not impact program participants, stakeholders, resource protection, or program implementation. Rule 68A-25.032, F.A.C., governs regulations concerning the establishment of alligator programs. Rule 68A-25.042, F.A.C., governs regulations concerning statewide alligator trapping, permitting, taking, and sale.

The bill also clarifies the word “hereunder” by replacing it with the phrase “alligator management program,” in reference to the existing provision that precludes the FWC’s alligator management program from superseding the regulatory authority or responsibilities of the Department of Agriculture and Consumer Services (DACS), the Department of Health, or any local governmental entity regarding the processing or handling of food products.

**Section 8** amends s. 379.364, F.S., to clarify that it is unlawful for a person to engage in the business of dealing or buying green or dried alligator hides, as opposed to alligator skins, to ensure all uncured alligator hides are identified as originally intended, according to the FWC.

The bill also removes reporting and shipping requirements for dealers and buyers for fur and hide dealers because they are found in Rule 68A-24.004, F.A.C.

**Section 9** amends s. 379.3751, F.S., to clarify that a person may not take or possess an alligator or alligator eggs without an “alligator license” rather than a “trapping license”

The bill removes statutory rulemaking authority to limit the number of participants engaged in the taking of alligators or alligator eggs because the provision is already incorporated in Rule 68A-25.002, F.A.C.

It deletes a mandatory requirement to transfer \$1 to the DACS for any alligator egg collected and retained, whether or not a fee is assessed for the egg. It makes the transfer of \$1 per egg contingent on an annual appropriation for alligator marketing and education activities.

It removes redundant rulemaking authority to establish appropriate qualifications for permitting alligator collectors.

It requires a person who assists a contracted nuisance alligator trapper to possess an alligator trapping agent’s license.

The bill also provides the following exemptions:

- Contracted nuisance alligator trappers are not required to obtain an alligator trapping license;
- Children under 16 years of age taking an alligator under an alligator harvest program implemented by FWC rule are not required to obtain an alligator trapping agent license;
- People taking an alligator pursuant to an event permit issued under s. 379.353(2)(q), F.S., which contains exemptions for certain veterans, are not required to obtain an alligator trapping or trapping agent license;
- People who meet the disability requirements under s. 379.353(1), F.S., are not required to pay any fee for an alligator trapping or trapping agent license; and
- People engaged in taking an alligator under an FWC permit are not required to pay for an additional wildlife management area permit when hunting alligators under an FWC permit in such an area.

**Section 10** amends s. 379.3752, F.S., to reenact the section and remove a requirement for the FWC to use one-third of the revenue from issuing the alligator hatchling tag for alligator husbandry research. The FWC reports that the policy is obsolete and no longer needed to aid in the regulation or management of alligators.

The bill also removes a permissive requirement that CITES tags be attached to the hide of any alligator taken from the wild and that the hide must be possessed, purchased, sold, offered for sale, or transported in accordance with FWC rule. The FWC reports that it is redundant with Rule 68A-25.042, F.A.C.

The bill removes a mandatory transfer of \$5 for any validated hide to the General Inspection Trust Fund, to be used by DACS for the purpose of marketing and education services with respect to alligator products produced in the state. The bill makes the transfer contingent upon an annual appropriation for alligator marketing and education activities.

The bill removes a requirement to limit the number of CITES tags to what the FWC deems to be the safe yield of alligators in the state. The FWC reports that it is redundant with Rule 68A-25.032, F.A.C.

**Section 11** amends s. 379.401, F.S., to remove violations involving rules or orders of the FWC relating to the feeding of wildlife, freshwater fish, or feeding or enticement of alligators or crocodiles from the list of Level II violations. These violations are addressed in s. 379.412, which is created in section 11 of the bill.

**Section 12** creates s. 379.412, F.S., to provide penalties for feeding wildlife and freshwater fish.

The penalties apply to:

- Feeding wildlife or freshwater fish with food or garbage;
- Attracting or enticing wildlife or freshwater fish with food or garbage; or
- Allowing the placement of food or garbage in a manner that attracts or entices wildlife or freshwater fish.

The penalties do not apply to rules or orders of the FWC that:

- Relate to animals that are held in captivity;
- Restrict the taking or hunting of species over bait or other intentionally placed or deposited food; or
- Restrict the taking or hunting of species in proximity to feeding stations.

A first violation is a noncriminal infraction, punishable by a civil penalty of \$100 and anyone cited for a first violation is subject to the following requirements:

- A person cited for a violation must sign and accept a citation to appear before the county court. The issuing officer may indicate on the citation the time and location of the scheduled hearing and must indicate the applicable civil penalty;
- If a person chooses to pay the civil penalty within 30 days, the person is deemed to have admitted to committing the violation and to have waived his or her right to a hearing before

the county court. The admission may not be used as evidence in any other proceedings except to determine the appropriate fine for any subsequent violations;

- If a person refuses to accept the citation, fails to pay the civil penalty, or fails to appear before the county court commits a second-degree misdemeanor; and
- If a person chooses or is required to appear before the county court, that person is deemed to have waived the \$100 civil penalty limitation. If the county court determines a violation has occurred, the court may impose a civil penalty of at least \$100. If a person has been found guilty of committing a violation, he or she may appeal to the circuit court. The bill provides that the commission of a violation must be proved by the legal standard of beyond a reasonable doubt.

A second or any subsequent violations, if all violations are related to freshwater fish or wildlife other than bears, alligators, or other crocodilians, is a second-degree misdemeanor.

Further violations, if all violations involve bears, alligators, or other crocodilians, are classified as second-degree misdemeanors for second violations, first-degree misdemeanors for third violations, and third-degree felonies for any fourth or subsequent violations

The bill defines “violations” as any judicial disposition other than acquittal or dismissal.

**Section 13** repeals s. 379.3011, F.S., which relates to alligator trapping program definitions. The FWC reports that the definitions of “alligator” and “process or processing” are unnecessary in aiding the regulation and management of alligator resources. The definition of “alligator hatchling” is in Rule 68A-1.004, F.A.C.

**Section 14** repeals s. 379.3013, F.S., which relates to alligator study requirements. It is incorporated in Rule 68A-25.042, F.A.C.

**Section 15** repeals s. 379.3016, F.S., which relates to penalties for unlawfully selling alligator products. The prohibition on selling any alligator product manufactured in the form of a stuffed baby alligator or other baby crocodilia, and the prohibition on selling any alligator product manufactured from an endangered species are now found in Rule 68A-25.002, F.A.C. Section 379.3016(3), F.S., provides that a violation of those two provisions is a first-degree misdemeanor. This will make those violations Level II violations, which reduces these violations to second-degree misdemeanors.

**Section 16** repeals s. 379.3017, F.S., which relates to a prohibition on the use of the word “alligator” or “gator” when used in connection with the sale of products made from some other crocodilian. This provision has been incorporated in Rule 68A-25.002, F.A.C.

**Sections 17 through 19** reenact sections of the Florida Statutes for the purpose of incorporating amendments made in the bill.

**Section 20** provides that the act will take effect upon becoming a law.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

Under CS/CS/SB 680, children under the age of 16 who wish to hunt alligators will save \$50 per year under the exemption for an Alligator Trapping Agent License.

Current members of the military and “wounded warriors” taking alligators as part of a FWC sanctioned event will save either the \$250 or \$50 normally required for an Alligator Trapping License or an Alligator Trapping Agent License, respectively. In addition, permanently disabled participants who wish to hunt alligators will experience similar savings.

Contracted nuisance alligator trappers will save \$250 annually because they no longer have to pay \$250 for the Alligator Trapping License when trapping nuisance alligators under contract with the FWC. This will not apply if a nuisance alligator trapper is hunting alligators recreationally or on private lands.

Modified penalties for violations of wildlife feeding rules may have a fiscal impact but it is indeterminate whether it will be negative or positive since initial violations will incur a lower fine but further violations will incur higher fines. Also, state attorneys may be more willing to prosecute violations leading to additional fines.

**C. Government Sector Impact:**

Fines assessed for convictions of violations of wildlife feeding rules are deposited in the Clerk of the Circuit Court Fine and Forfeiture Fund. The bill lowers the maximum fine from \$500 to \$100. The fiscal impact is indeterminate, and given the number of citations issued in Fiscal Year 2013-2014 (12 for a total of \$1,623), it is likely to be minimal.

Fines imposed when adjudication is withheld for violations of wildlife feeding rules are remitted to the Department of Revenue for deposit in the General Revenue Fund. For the 2013-2014 fiscal year, \$270 was deposited. The fiscal impact is indeterminate and likely to be minimal.

The FWC estimates that it will experience a negative fiscal impact related to the exemptions on alligator trapping and trapping agent licenses of approximately \$27,500.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 327.37, 327.39, 327.50, 379.223, 379.357, 379.361, 379.3012, 379.364, 379.3751, 379.3752, and 379.401.

This bill creates section 379.412 of the Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 379.3011, 379.3013, 379.3016, and 379.3017.

This bill reenacts the following sections of the Florida Statutes: 327.73, 327.375, and 327.54.

**IX. Additional Information:**

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

**CS/CS by Appropriations on April 16, 2015:**

The committee substitute adopts in law the FWC's current practice of reimbursing or compensating a citizen support organization for providing fiscal and administrative services to the FWC through a contract. The committee substitute also makes technical changes relating to statutory reenactments and currently approved flotation devices.

**CS by Environmental Preservation and Conservation on March 19, 2015:**

The CS makes a technical change.

- B. **Amendments:**

None.

By the Committee on Environmental Preservation and Conservation;  
and Senator Dean

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1 A bill to be entitled  
2 An act relating to the Fish and Wildlife Conservation  
3 Commission; amending ss. 327.37, 327.39, and 327.50,  
4 F.S.; requiring personal flotation devices to be used  
5 in accordance with the United States Coast Guard  
6 approval labels; amending s. 379.357, F.S.; revising  
7 the dates for tarpon tag validity; deleting the  
8 requirement that tax collectors submit forms annually  
9 relating to the number of unissued tags; deleting the  
10 requirement for submitting forms relating to tarpon  
11 landed; amending s. 379.361, F.S.; removing the income  
12 requirement for a restricted species endorsement on a  
13 saltwater products license; amending s. 379.3012,  
14 F.S.; revising the rulemaking authority of the  
15 commission relating to the alligator management and  
16 trapping program; amending s. 379.364, F.S.; requiring  
17 resident dealers to pay a certain fee per annum;  
18 removing the requirement for dealers and buyers to  
19 forward reports relating to the number and kinds of  
20 hide bought; removing the requirement that common  
21 carriers only ship, transport, or receive hides or  
22 furs marked with certain identifying information;  
23 amending s. 379.3751, F.S.; removing the rulemaking  
24 authority of the commission to limit the number of  
25 participants engaged in the taking of alligators or  
26 their eggs from the wild and to establish appropriate  
27 qualifications for certain alligator collectors;  
28 providing exemptions for alligator trapping licenses;  
29 requiring certain licenses to be issued without fee to

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30 residents who meet the requirements for disability;  
31 clarifying that a management area permit is not  
32 required for a person engaged in the taking of an  
33 alligator under a permit that authorizes the taking of  
34 alligators; providing that the transfer of fees for  
35 marketing and education services is contingent upon  
36 annual appropriation; reenacting and amending s.  
37 379.3752, F.S.; removing the requirement that the  
38 commission expend one-third of the revenue from the  
39 issuance of alligator hatchling tags for alligator  
40 husbandry research; providing that the transfer of  
41 fees for marketing and education services is  
42 contingent upon annual appropriation; deleting the  
43 requirement that the number of tags pursuant to a  
44 collection permit be equal to a safe yield of  
45 alligators; amending s. 379.401, F.S.; conforming  
46 provisions to changes made by the act; creating s.  
47 379.412, F.S.; establishing penalties for the unlawful  
48 feeding of wildlife and freshwater fish; providing an  
49 exception; repealing s. 379.3011, F.S., relating to  
50 the alligator trapping program; repealing s. 379.3013,  
51 F.S., relating to alligator study requirements;  
52 repealing s. 379.3016, F.S., relating to the  
53 prohibition against the sale of alligator products and  
54 associated penalties; repealing s. 379.3017, F.S.,  
55 relating to the restricted use of the terms  
56 "alligator" or "gator" in certain sales; reenacting  
57 ss. 327.73(1)(i) and 327.375(1), F.S., to incorporate  
58 the amendment made by this act to s. 327.37, F.S., in

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59 references thereto; reenacting s. 327.73(1)(p), F.S.,  
 60 to incorporate the amendment made by this act to s.  
 61 327.39, F.S., in a reference thereto; reenacting ss.  
 62 327.54(1)(c) and 327.73(1)(m), F.S., to incorporate  
 63 the amendment made by this act to s. 327.50, F.S., in  
 64 references thereto; providing an effective date.

65  
 66 Be It Enacted by the Legislature of the State of Florida:

67 Section 1. Paragraph (b) of subsection (2) of section  
 68 327.37, Florida Statutes, is amended to read:

69 327.37 Water skis, parasails, aquaplanes, kiteboarding,  
 70 kitesurfing, and moored ballooning regulated.—

71 (2)

72 (b) A person may not engage in water skiing, parasailing,  
 73 aquaplaning, or any similar activity unless such person is  
 74 wearing a noninflatable ~~type I, type II, type III, or type V~~  
 75 personal flotation device approved by the United States Coast  
 76 Guard and used in accordance with the United States Coast Guard  
 77 approval label.

78  
 79 Section 2. Subsection (1) of section 327.39, Florida  
 80 Statutes, is amended to read:

81 327.39 Personal watercraft regulated.—

82 (1) A person may not operate a personal watercraft unless  
 83 each person riding on or being towed behind such vessel is  
 84 wearing a ~~type I, type II, type III, or type V~~ personal  
 85 flotation device, other than an inflatable device, approved by  
 86 the United States Coast Guard and used in accordance with the  
 87 United States Coast Guard approval label.

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88 Section 3. Paragraph (b) of subsection (1) of section  
 89 327.50, Florida Statutes, is amended to read:  
 90 327.50 Vessel safety regulations; equipment and lighting  
 91 requirements.—

92 (1)

93 (b) No person shall operate a vessel less than 26 feet in  
 94 length on the waters of this state unless every person under 6  
 95 years of age on board the vessel is wearing a United States type  
 96 I, type II, or type III Coast Guard approved personal flotation  
 97 device, used in accordance with the United States Coast Guard  
 98 approval label, while such vessel is underway. For the purpose  
 99 of this section, the term "underway" means shall mean at all  
 100 times except when a vessel is anchored, moored, made fast to the  
 101 shore, or aground.

102 Section 4. Subsections (1) and (3) of section 379.357,  
 103 Florida Statutes, are amended to read:

104 379.357 Fish and Wildlife Conservation Commission license  
 105 program for tarpon; fees; penalties.—

106 (1) The commission shall establish a license program for  
 107 the purpose of issuing tags to individuals desiring to harvest  
 108 tarpon (Megalops atlanticus) ~~(megalops atlantica)~~ from the  
 109 waters of the state. The tags shall be nontransferable, except  
 110 that the commission may allow for a limited number of tags to be  
 111 purchased by professional fishing guides for transfer to  
 112 individuals, and issued by the commission in order of receipt of  
 113 a properly completed application for a nonrefundable fee of \$50  
 114 per tag. The commission and any tax collector may sell the tags  
 115 and collect the fees therefor. Tarpon tags are valid from  
 116 January July 1 through December 31 ~~June 30. Before August 15 of~~

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117 each year, each tax collector shall submit to the commission all  
 118 unissued tags for the previous fiscal year along with a written  
 119 audit report, on forms prescribed or approved by the commission,  
 120 as to the numbers of the unissued tags. To defray the cost of  
 121 issuing any tag, the issuing tax collector shall collect and  
 122 retain as his or her costs, in addition to the tag fee  
 123 collected, the amount allowed under s. 379.352(6) for the  
 124 issuance of licenses.

125 (3) ~~An~~ No individual ~~may not~~ shall take, kill, or possess  
 126 any fish of the species Megalops atlanticus ~~megalops atlantica~~,  
 127 commonly known as tarpon, unless such individual has purchased a  
 128 tarpon tag and securely attached it through the lower jaw of the  
 129 fish. Said individual shall within 5 days after the landing of  
 130 the fish submit a form to the commission which indicates the  
 131 length, weight, and physical condition of the tarpon when  
 132 caught; the date and location of where the fish was caught; and  
 133 any other pertinent information which may be required by the  
 134 commission. The commission may refuse to issue new tags to  
 135 individuals or guides who fail to provide the required  
 136 information.

137 Section 5. Paragraph (b) of subsection (2) of section  
 138 379.361, Florida Statutes, is amended to read:

139 379.361 Licenses.—

140 (2) SALTWATER PRODUCTS LICENSE.—

141 (b) ~~1-~~ A restricted species endorsement on the saltwater  
 142 products license is required to sell to a licensed wholesale  
 143 dealer those species which the state, by law or rule, has  
 144 designated as "restricted species." ~~This endorsement may be~~  
 145 ~~issued only to a person who is at least 16 years of age, or to a~~

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146 firm certifying that over 25 percent of its income or \$5,000 of  
 147 its income, whichever is less, is attributable to the sale of  
 148 saltwater products pursuant to a saltwater products license  
 149 issued under this paragraph or a similar license from another  
 150 state. ~~This endorsement may also be issued to a for profit~~  
 151 ~~corporation if it certifies that at least \$5,000 of its income~~  
 152 ~~is attributable to the sale of saltwater products pursuant to a~~  
 153 ~~saltwater products license issued under this paragraph or a~~  
 154 ~~similar license from another state. However, if at least 50~~  
 155 ~~percent of the annual income of a person, firm, or for-profit~~  
 156 ~~corporation is derived from charter fishing, the person, firm,~~  
 157 ~~or for-profit corporation must certify that at least \$2,500 of~~  
 158 ~~the income of the person, firm, or corporation is attributable~~  
 159 ~~to the sale of saltwater products pursuant to a saltwater~~  
 160 ~~products license issued under this paragraph or a similar~~  
 161 ~~license from another state, in order to be issued the~~  
 162 ~~endorsement. Such income attribution must apply to at least 1 of~~  
 163 ~~the last 3 years. For the purpose of this section, "income"~~  
 164 ~~means that income that is attributable to work, employment,~~  
 165 ~~entrepreneurship, pensions, retirement benefits, and social~~  
 166 ~~security benefits.~~

167 ~~2. To renew an existing restricted species endorsement, a~~  
 168 ~~marine aquaculture producer possessing a valid saltwater~~  
 169 ~~products license with a restricted species endorsement may apply~~  
 170 ~~income from the sale of marine aquaculture products to licensed~~  
 171 ~~wholesale dealers.~~

172 ~~3. The commission may require verification of such income~~  
 173 ~~for all restricted species endorsements issued pursuant to this~~  
 174 ~~paragraph. Acceptable proof of income earned from the sale of~~

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175 ~~saltwater products shall be:~~

176     ~~a. Copies of trip ticket records generated pursuant to this~~

177 ~~subsection (marine fisheries information system), documenting~~

178 ~~qualifying sale of saltwater products;~~

179     ~~b. Copies of sales records from locales other than Florida~~

180 ~~documenting qualifying sale of saltwater products;~~

181     ~~c. A copy of the applicable federal income tax return,~~

182 ~~including Form 1099 attachments, verifying income earned from~~

183 ~~the sale of saltwater products;~~

184     ~~d. Crew share statements verifying income earned from the~~

185 ~~sale of saltwater products; or~~

186     ~~e. A certified public accountant's notarized statement~~

187 ~~attesting to qualifying source and amount of income.~~

188     ~~4. Notwithstanding any other provision of law, any person~~

189 ~~who owns a retail seafood market or restaurant at a fixed~~

190 ~~location for at least 3 years, who has had an occupational~~

191 ~~license for 3 years before January 1, 1990, who harvests~~

192 ~~saltwater products to supply his or her retail store, and who~~

193 ~~has had a saltwater products license for 1 of the past 3 license~~

194 ~~years before January 1, 1990, may provide proof of his or her~~

195 ~~verification of income and sales value at the person's retail~~

196 ~~seafood market or restaurant and in his or her saltwater~~

197 ~~products enterprise by affidavit and shall thereupon be issued a~~

198 ~~restricted species endorsement.~~

199     ~~5. Exceptions from income requirements shall be as follows:~~

200         ~~a. A permanent restricted species endorsement shall be~~

201 ~~available to those persons age 62 and older who have qualified~~

202 ~~for such endorsement for at least 3 of the last 5 years.~~

203         ~~b. Active military duty time shall be excluded from~~

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204 ~~consideration of time necessary to qualify and shall not be~~

205 ~~counted against the applicant for purposes of qualifying.~~

206     ~~e. Upon the sale of a used commercial fishing vessel owned~~

207 ~~by a person, firm, or corporation possessing or eligible for a~~

208 ~~restricted species endorsement, the purchaser of such vessel~~

209 ~~shall be exempted from the qualifying income requirement for the~~

210 ~~purpose of obtaining a restricted species endorsement for a~~

211 ~~complete license year after purchase of the vessel.~~

212     ~~d. Upon the death or permanent disablement of a person~~

213 ~~possessing a restricted species endorsement, an immediate family~~

214 ~~member wishing to carry on the fishing operation shall be~~

215 ~~exempted from the qualifying income requirement for the purpose~~

216 ~~of obtaining a restricted species endorsement for a complete~~

217 ~~license year after the death or disablement.~~

218     ~~e. A restricted species endorsement may be issued on an~~

219 ~~individual saltwater products license to a person age 62 or~~

220 ~~older who documents that at least \$2,500 of such person's income~~

221 ~~is attributable to the sale of saltwater products.~~

222     ~~f. A permanent restricted species endorsement may also be~~

223 ~~issued on an individual saltwater products license to a person~~

224 ~~age 70 or older who has held a saltwater products license for at~~

225 ~~least 3 of the last 5 license years.~~

226     ~~g. Any resident who is certified to be totally and~~

227 ~~permanently disabled by the Railroad Retirement Board, by the~~

228 ~~United States Department of Veterans Affairs or its predecessor,~~

229 ~~or by any branch of the United States Armed Forces, or who holds~~

230 ~~a valid identification card issued by the Department of~~

231 ~~Veterans' Affairs pursuant to s. 295.17, upon proof of the same,~~

232 ~~or any resident certified to be disabled by the United States~~

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233 ~~Social Security Administration or a licensed physician, upon~~  
 234 ~~proof of the same, shall be exempted from the income~~  
 235 ~~requirements if he or she also has held a saltwater products~~  
 236 ~~license for at least 3 of the last 5 license years before the~~  
 237 ~~date of the disability. A restricted species endorsement issued~~  
 238 ~~under this paragraph may be issued only on an individual~~  
 239 ~~saltwater products license.~~

240 ~~h. An honorably discharged, resident military veteran~~  
 241 ~~certified by the United States Department of Veterans Affairs or~~  
 242 ~~its predecessor or by any branch of the United States Armed~~  
 243 ~~Forces to have a service-connected permanent disability rating~~  
 244 ~~of 10 percent or higher, upon providing proof of such disability~~  
 245 ~~rating, is not required to provide documentation for the income~~  
 246 ~~requirement with his or her initial application for a restricted~~  
 247 ~~species endorsement. Documentation for the income requirement is~~  
 248 ~~required beginning with the renewal of the restricted species~~  
 249 ~~endorsement after such veteran has possessed a valid restricted~~  
 250 ~~species endorsement for a complete license year. This exemption~~  
 251 ~~applies only to issuance of the endorsement on an individual~~  
 252 ~~saltwater products license and is a one-time exemption. In order~~  
 253 ~~to renew the restricted species endorsement on an individual~~  
 254 ~~saltwater products license, the veteran must document that at~~  
 255 ~~least \$2,500 of his or her income is attributable to the sale of~~  
 256 ~~saltwater products.~~

257 ~~i. Beginning July 1, 2014, a resident military veteran who~~  
 258 ~~applies to the commission within 48 months after receiving an~~  
 259 ~~honorable discharge from any branch of the United States Armed~~  
 260 ~~Forces, the United States Coast Guard, the military reserves,~~  
 261 ~~the Florida National Guard, or the United States Coast Guard~~

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262 ~~Reserve is not required to provide documentation for the income~~  
 263 ~~requirement with his or her initial application for a restricted~~  
 264 ~~species endorsement. Documentation for the income requirement is~~  
 265 ~~required beginning with the renewal of the restricted species~~  
 266 ~~endorsement after such veteran has possessed a valid restricted~~  
 267 ~~species endorsement for a complete license year. This exemption~~  
 268 ~~applies only to issuance of the endorsement on an individual~~  
 269 ~~saltwater products license and may only be applied one time per~~  
 270 ~~military enlistment.~~

271 ~~j. Until June 30, 2014, a resident military veteran who~~  
 272 ~~applies to the commission and who received an honorable~~  
 273 ~~discharge from any branch of the United States Armed Forces, the~~  
 274 ~~United States Coast Guard, the military reserves, the Florida~~  
 275 ~~National Guard, or the United States Coast Guard Reserve between~~  
 276 ~~September 11, 2001, and June 30, 2014, is not required to~~  
 277 ~~provide documentation for the income requirement with his or her~~  
 278 ~~initial application for a restricted species endorsement.~~  
 279 ~~Documentation for the income requirement is required beginning~~  
 280 ~~with the renewal of the restricted species endorsement after~~  
 281 ~~such veteran has possessed a valid restricted species~~  
 282 ~~endorsement for a complete license year. This exemption applies~~  
 283 ~~only to issuance of the endorsement on an individual saltwater~~  
 284 ~~products license.~~

285 ~~Section 6. Section 379.3012, Florida Statutes, is amended~~  
 286 ~~to read:~~

287 ~~379.3012 Alligator management and trapping program~~  
 288 ~~implementation; commission authority.-~~

289 ~~(1) In any alligator management and trapping program that~~  
 290 ~~the Fish and Wildlife Conservation Commission shall establish,~~

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291 the commission shall have the authority to adopt all rules  
 292 necessary for full and complete implementation of such alligator  
 293 management and trapping program, and, in order to ensure its  
 294 lawful, safe, and efficient operation in accordance therewith,  
 295 ~~may:~~

296 ~~(a) Regulate the marketing and sale of alligators, their~~  
 297 ~~hides, eggs, meat, and byproducts, including the development and~~  
 298 ~~maintenance of a state-sanctioned sale.~~

299 ~~(b) Regulate the handling and processing of alligators,~~  
 300 ~~their eggs, hides, meat, and byproducts, for the lawful, safe,~~  
 301 ~~and sanitary handling and processing of same.~~

302 ~~(c) Regulate commercial alligator farming facilities and~~  
 303 ~~operations for the captive propagation and rearing of alligators~~  
 304 ~~and their eggs.~~

305 ~~(d) Provide hide-grading services by two or more~~  
 306 ~~individuals pursuant to state-sanctioned sales if rules are~~  
 307 ~~first promulgated by the commission governing:~~

308 ~~1. All grading-related services to be provided pursuant to~~  
 309 ~~this section;~~

310 ~~2. Criteria for qualifications of persons to serve as hide-~~  
 311 ~~graders for grading services to be provided pursuant to this~~  
 312 ~~section; and~~

313 ~~3. The certification process by which hide-graders~~  
 314 ~~providing services pursuant to this section will be certified.~~

315 ~~(e) Provide sales-related services by contract pursuant to~~  
 316 ~~state-sanctioned sales if rules governing such services are~~  
 317 ~~first promulgated by the commission.~~

318 ~~(2) All contractors of the commission for the grading,~~  
 319 ~~marketing, and sale of alligators and their hides, eggs, meat,~~

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320 and byproducts shall not engage in any act constituting a  
 321 conflict of interest under part III of chapter 112.

322 ~~(3) The powers and duties of the commission to implement~~  
 323 ~~the alligator management program may hereunder shall not be~~  
 324 ~~construed so as to supersede the regulatory authority or lawful~~  
 325 ~~responsibility of the Department of Agriculture and Consumer~~  
 326 ~~Services, the Department of Health, or any local governmental~~  
 327 ~~entity regarding the processing or handling of food products,~~  
 328 ~~but is shall be deemed supplemental thereto.~~

329 Section 7. Section 379.364, Florida Statutes, is amended to  
 330 read:

331 379.364 License required for fur and hide dealers.-

332 (1) It is unlawful for a any person to engage in the  
 333 business of a dealer or buyer in green or dried alligator hides  
 334 skins or green or dried furs in the state or purchase such hides  
 335 or furs skins within the state until such person has been  
 336 licensed as herein provided.

337 (2) A person Any resident dealer or buyer who solicits  
 338 business through the mails, or by advertising, or who travels to  
 339 buy or employs or has other agents or buyers, shall be deemed a  
 340 resident state dealer and must pay a license fee of \$100 per  
 341 annum.

342 (3) A resident dealer must pay a license fee of \$100 per  
 343 annum. A nonresident dealer ~~or buyer~~ must pay a license fee of  
 344 \$500 per annum.

345 ~~(4) All dealers and buyers shall forward to the Fish and~~  
 346 ~~Wildlife Conservation Commission each 2 weeks during open season~~  
 347 ~~a report showing number and kind of hides bought and name of~~  
 348 ~~trapper from whom bought and the trapper's license number, or if~~

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349 ~~trapper is exempt from license under any of the provisions of~~  
 350 ~~this chapter, such report shall show the nature of such~~  
 351 ~~exemption. A common carrier may not knowingly ship or transport~~  
 352 ~~or receive for transportation any hides or furs unless such~~  
 353 ~~shipments have marked thereon name of shipper and the number of~~  
 354 ~~her or his fur animal license or fur dealer's license.~~

355 Section 8. Subsections (1), (4), and (5) of section  
 356 379.3751, Florida Statutes, are amended to read:

357 379.3751 Taking and possession of alligators; trapping  
 358 licenses; fees.-

359 (1) (a) A ~~No~~ person may not ~~shall~~ take or possess an ~~any~~  
 360 alligator or the eggs thereof without having first been issued  
 361 an alligator license under obtained from the commission a  
 362 trapping license and paid the fee provided in this section. Such  
 363 license shall be dated when issued and remain valid for 12  
 364 months after the date of issuance and authorizes ~~shall authorize~~  
 365 the person to whom it is issued to take or possess alligators  
 366 and their eggs, and to sell, possess, and process alligators and  
 367 their hides and meat, in accordance with law and commission  
 368 rules. Such license is ~~shall~~ not be transferable and is ~~shall~~  
 369 not be valid unless it bears on its face in indelible ink the  
 370 name of the person to whom it is issued. Such license shall be  
 371 in the personal possession of the licensee while such person is  
 372 taking alligators or their eggs or is selling, possessing, or  
 373 processing alligators or their eggs, hides, or meat. The failure  
 374 of the licensee to exhibit such license to a the commission law  
 375 enforcement officer ~~or its wildlife officers~~, when such person  
 376 is found taking alligators or their eggs or is found selling,  
 377 possessing, or processing alligators or their eggs, hides, or

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378 meat, is ~~shall~~ be a violation of law.

379 ~~(b)~~ In order to assure the optimal utilization of the  
 380 estimated available alligator resource and to ensure adequate  
 381 control of the alligator management and harvest program, ~~the~~  
 382 ~~commission may by rule limit the number of participants engaged~~  
 383 ~~in the taking of alligators or their eggs from the wild.~~

384 ~~(b)(e)~~ A ~~No~~ person who has been convicted of any violation  
 385 of s. 379.3015 or s. 379.409 or the rules of the commission  
 386 relating to the illegal taking of crocodylian species may not  
 387 shall be issued eligible for issuance of a license for a period  
 388 of 5 years subsequent to such conviction. In the event such  
 389 violation involves the unauthorized taking of an endangered  
 390 crocodylian species, a ~~no~~ license may not ~~shall~~ be issued for 10  
 391 years subsequent to the conviction.

392 (c) A person taking a nuisance alligator pursuant to  
 393 contract with the commission is not required to obtain an  
 394 alligator trapping license. A person assisting a contracted  
 395 nuisance alligator trapper, unless otherwise exempt under  
 396 paragraph (d), paragraph (e), or paragraph (f), is required to  
 397 possess an alligator trapping agent's license as provided in  
 398 subsection (2).

399 (d) A child under 16 years of age taking an alligator under  
 400 an alligator harvest program implemented by commission rule is  
 401 not required to obtain an alligator trapping agent license.

402 (e) A person taking an alligator pursuant to an event  
 403 permit issued under s. 379.353(2)(g) is not required to obtain  
 404 an alligator trapping license or an alligator trapping agent  
 405 license.

406 (f) An alligator trapping license or alligator trapping

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407 agent license must be issued without fee to any resident who  
 408 meets the requirements for disability under s. 379.353(1).

409 (g) A management area permit under s. 379.354(8) is not  
 410 required for a person engaged in the taking of an alligator  
 411 under a permit issued by the commission that authorizes the  
 412 taking of alligators.

413 (4) ~~A No person may not shall~~ take any alligator egg  
 414 occurring in the wild or possess any such egg unless he or she  
 415 ~~such person~~ has obtained, or is a licensed agent of another  
 416 person who has obtained, an alligator egg collection permit. The  
 417 alligator egg collection permit is shall be required in addition  
 418 to the alligator farming license provided in paragraph (2)(d).  
 419 The commission ~~may is authorized to~~ assess a fee for issuance of  
 420 the alligator egg collection permit of up to \$5 per egg  
 421 authorized to be taken or possessed pursuant to such permit.  
 422 Contingent upon an annual appropriation for alligator marketing  
 423 and education activities Irrespective of whether a fee is  
 424 assessed, \$1 per egg collected and retained, excluding eggs  
 425 collected on private wetland management areas, shall be  
 426 transferred from the alligator management program to the General  
 427 Inspection Trust Fund, to be administered by the Department of  
 428 Agriculture and Consumer Services for the purpose of providing  
 429 marketing and education services with respect to alligator  
 430 products produced in this state, notwithstanding other  
 431 provisions in this chapter.

432 ~~(5) The commission shall adopt criteria by rule to~~  
 433 ~~establish appropriate qualifications for alligator collectors~~  
 434 ~~who may receive permits pursuant to this section.~~

435 Section 9. Section 379.3752, Florida Statutes, is reenacted

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436 and amended to read:

437 379.3752 Required tagging of alligators and hides; fees;  
 438 revenues.—The tags provided in this section shall be required in  
 439 addition to any license required under s. 379.3751.

440 (1) ~~A No person may not shall~~ take any alligator occurring  
 441 in the wild or possess any such alligator unless such alligator  
 442 is subsequently tagged in the manner required by commission  
 443 rule. For the tag required for an alligator hatchling, the  
 444 commission ~~may is authorized to~~ assess a fee of up to ~~not more~~  
 445 ~~than~~ \$15 for each alligator hatchling tag issued. ~~The commission~~  
 446 ~~shall expend one-third of the revenue generated from the~~  
 447 ~~issuance of the alligator hatchling tag for alligator husbandry~~  
 448 ~~research.~~

449 (2) ~~The commission may require that an alligator hide~~  
 450 ~~validation tag (CITES tag) be affixed to the hide of any~~  
 451 ~~alligator taken from the wild and that such hide be possessed,~~  
 452 ~~purchased, sold, offered for sale, or transported in accordance~~  
 453 ~~with commission rule.~~ The commission ~~may is authorized to~~ assess  
 454 a fee of up to \$30 for each alligator hide validation tag (CITES  
 455 tag) issued. Contingent upon an annual appropriation for  
 456 alligator marketing and education activities Irrespective of  
 457 whether a fee is assessed, \$5 per validated hide, excluding  
 458 those validated from public hunt programs and alligator farms,  
 459 shall be transferred from the alligator management program to  
 460 the General Inspection Trust Fund, to be administered by the  
 461 Department of Agriculture and Consumer Services for the purpose  
 462 of providing marketing and education services with respect to  
 463 alligator products produced in this state, notwithstanding other  
 464 provisions in this chapter.

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465 ~~(3) The number of tags available for alligators taken~~  
 466 ~~pursuant to a collection permit shall be limited to the number~~  
 467 ~~of tags determined by the commission to equal the safe yield of~~  
 468 ~~alligators as determined pursuant to s. 379.3013.~~

469 Section 10. Paragraph (a) of subsection (2) of section  
 470 379.401, Florida Statutes, is amended to read:

471 379.401 Penalties and violations; civil penalties for  
 472 noncriminal infractions; criminal penalties; suspension and  
 473 forfeiture of licenses and permits.—

474 (2) (a) LEVEL TWO VIOLATIONS.—A person commits a Level Two  
 475 violation if he or she violates any of the following provisions:

476 1. Rules or orders of the commission relating to seasons or  
 477 time periods for the taking of wildlife, freshwater fish, or  
 478 saltwater fish.

479 2. Rules or orders of the commission establishing bag,  
 480 possession, or size limits or restricting methods of taking  
 481 wildlife, freshwater fish, or saltwater fish.

482 3. Rules or orders of the commission prohibiting access or  
 483 otherwise relating to access to wildlife management areas or  
 484 other areas managed by the commission.

485 4. Rules or orders of the commission relating to the  
 486 feeding of ~~wildlife, freshwater fish, or~~ saltwater fish.

487 5. Rules or orders of the commission relating to landing  
 488 requirements for freshwater fish or saltwater fish.

489 6. Rules or orders of the commission relating to restricted  
 490 hunting areas, critical wildlife areas, or bird sanctuaries.

491 7. Rules or orders of the commission relating to tagging  
 492 requirements for wildlife and fur-bearing animals.

493 8. Rules or orders of the commission relating to the use of

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494 dogs for the taking of wildlife.

495 9. Rules or orders of the commission which are not  
 496 otherwise classified.

497 10. Rules or orders of the commission prohibiting the  
 498 unlawful use of finfish traps.

499 11. All prohibitions in this chapter which are not  
 500 otherwise classified.

501 12. Section 379.33, prohibiting the violation of or  
 502 noncompliance with commission rules.

503 13. Section 379.407(7), prohibiting the sale, purchase,  
 504 harvest, or attempted harvest of any saltwater product with  
 505 intent to sell.

506 14. Section 379.2421, prohibiting the obstruction of  
 507 waterways with net gear.

508 15. Section 379.413, prohibiting the unlawful taking of  
 509 bonefish.

510 16. Section 379.365(2) (a) and (b), prohibiting the  
 511 possession or use of stone crab traps without trap tags and  
 512 theft of trap contents or gear.

513 17. Section 379.366(4) (b), prohibiting the theft of blue  
 514 crab trap contents or trap gear.

515 18. Section 379.3671(2) (c), prohibiting the possession or  
 516 use of spiny lobster traps without trap tags or certificates and  
 517 theft of trap contents or trap gear.

518 19. Section 379.357, prohibiting the possession of tarpon  
 519 without purchasing a tarpon tag.

520 ~~20. Rules or orders of the commission prohibiting the~~  
 521 ~~feeding or enticement of alligators or crocodiles.~~

522 20.21. Section 379.105, prohibiting the intentional

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523 harassment of hunters, fishers, or trappers.

524 Section 11. Section 379.412, Florida Statutes, is created  
525 to read:

526 379.412 Penalties for feeding wildlife and freshwater  
527 fish.—

528 (1) The penalties in this section apply to a violation of  
529 rules or orders of the commission which prohibit or restrict the  
530 following: feeding wildlife or freshwater fish with food or  
531 garbage, attracting or enticing wildlife or freshwater fish with  
532 food or garbage, or allowing the placement of food or garbage in  
533 a manner that attracts or entices wildlife or freshwater fish.  
534 This section does not apply to rules or orders of the commission  
535 which relate to animals that are held in captivity, restrict the  
536 taking or hunting of species over bait or other intentionally  
537 placed or deposited food, or restrict the taking or hunting of  
538 species in proximity to feeding stations.

539 (2) Any person who violates a prohibition or restriction  
540 identified in subsection (1):

541 (a) For a first violation, commits a noncriminal  
542 infraction, punishable by a civil penalty of \$100.

543 1. A person cited for a violation under this paragraph must  
544 sign and accept a citation to appear before the county court.  
545 The issuing officer may indicate on the citation the time and  
546 location of the scheduled hearing and must indicate the  
547 applicable civil penalty.

548 2. A person cited for a violation under this paragraph may  
549 pay the civil penalty by mail or in person within 30 days after  
550 receipt of the citation. If the civil penalty is paid, the  
551 person shall be deemed to have admitted committing the violation

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552 and to have waived his or her right to a hearing before the  
553 county court. Such admission may not be used as evidence in any  
554 other proceedings except to determine the appropriate fine for  
555 any subsequent violations.

556 3. A person who refuses to accept a citation, who fails to  
557 pay the civil penalty for a violation, or who fails to appear  
558 before a county court as required commits a misdemeanor of the  
559 second degree, punishable as provided in s. 775.082 or s.  
560 775.083.

561 4. A person who elects or is required to appear before the  
562 county court is deemed to have waived the limitation on civil  
563 penalties provided under this paragraph. After a hearing, the  
564 county court shall determine whether a violation has been  
565 committed, and if so, may impose a civil penalty of at least  
566 \$100. A person found guilty of committing a violation may appeal  
567 that finding to the circuit court. The commission of a violation  
568 must be proved beyond a reasonable doubt.

569 (b) For second and subsequent violations, if all violations  
570 are related to freshwater fish or wildlife other than bears,  
571 alligators, or other crocodylians, commits a misdemeanor of the  
572 second degree, punishable as provided in s. 775.082 or s.  
573 775.083.

574 (c) For a second violation, if each violation is related to  
575 bears, alligators, or other crocodylians, commits a misdemeanor  
576 of the second degree, punishable as provided in s. 775.082 or s.  
577 775.083.

578 (d) For a third violation, if all violations are related to  
579 bears, alligators, or other crocodylians, commits a misdemeanor  
580 of the first degree, punishable as provided in s. 775.082 or s.

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581 775.083.

582 (e) For a fourth or subsequent violation, if all violations  
 583 are related to bears, alligators, or other crocodilians, commits  
 584 a felony of the third degree, punishable as provided in s.  
 585 775.082, s. 775.083, or s. 775.084.

586 (3) As used in this section, the term "violation" means any  
 587 judicial disposition other than acquittal or dismissal.

588 Section 12. Section 379.3011, Florida Statutes, is  
 589 repealed.

590 Section 13. Section 379.3013, Florida Statutes, is  
 591 repealed.

592 Section 14. Section 379.3016, Florida Statutes, is  
 593 repealed.

594 Section 15. Section 379.3017, Florida Statutes, is  
 595 repealed.

596 Section 16. Paragraph (i) of subsection (1) of s. 327.73,  
 597 Florida Statutes, and subsection (1) of s. 327.375, Florida  
 598 Statutes, are reenacted for the purpose of incorporating the  
 599 amendment made by this act to s. 327.37, Florida Statutes, in  
 600 references thereto.

601 Section 17. Paragraph (p) of subsection (1) of s. 327.73,  
 602 Florida Statutes, is reenacted for the purpose of incorporating  
 603 the amendment made by this act to s. 327.39, Florida Statutes,  
 604 in a reference thereto.

605 Section 18. Paragraph (c) of subsection (1) of s. 327.54,  
 606 Florida Statutes, and paragraph (m) of subsection (1) of s.  
 607 327.73, Florida Statutes, are reenacted for the purpose of  
 608 incorporating the amendment made by this act to s. 327.50,  
 609 Florida Statutes, in references thereto.

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610 Section 19. This act shall take effect upon becoming a law.

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**THE FLORIDA SENATE**

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Environmental Preservation and Conservation, *Chair*  
Agriculture, *Vice Chair*  
Appropriations Subcommittee on General Government  
Children, Families, and Elder Affairs  
Communications, Energy, and Public Utilities  
Community Affairs

**SENATOR CHARLES S. DEAN, SR.**

5th District

April 6, 2015

The Honorable Tom Lee  
418 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Lee,

I respectfully request you place Senate Bill 680, relating to the Fish and Wildlife Conservation Commission, on your Appropriations Committee agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

Charles S. Dean  
State Senator District 5

cc: Cindy Kynoch, Staff Director

SENATE APPROPRIATIONS  
RECEIVED  
15 APR -6 PM 4:43  
SEN. JIM CHAIRMAN  
STAFF DIR. \_\_\_\_\_ STAFF \_\_\_\_\_

**REPLY TO:**

- 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
- 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
- 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

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

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Environmental Preservation and Conservation, *Chair*  
Agriculture, *Vice Chair*  
Appropriations Subcommittee on General Government  
Children, Families, and Elder Affairs  
Communications, Energy, and Public Utilities  
Community Affairs

**SENATOR CHARLES S. DEAN, SR.**  
5th District

April 9, 2015

The Honorable Tom Lee  
418 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Lee,

I respectfully request you place Senate Bill 680, relating to the Fish and Wildlife Conservation Commission, on your Appropriations Committee agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

Charles S. Dean  
State Senator District 5

cc: Cindy Kynoch, Staff Director

SENATE APPROPRIATIONS  
RECEIVED  
15 APR -9 AM 9:26  
SENATE CLERK  
STAFF DIR STAFF

**REPLY TO:**

- 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
- 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
- 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

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

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

# APPEARANCE RECORD

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

April 16, 2015

Meeting Date

680

Bill Number (if applicable)

261850

Amendment Barcode (if applicable)

Topic FWC agency bill

Name Jackie Faulk

Job Title Legislative Affairs Director

Address 620 S. Meridian

Street

Tallahassee

City

FL

State

32399

Zip

Phone 487-3795

Email jackie.faulk@myfwc.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Fish & Wildlife Conservation Commission

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

April 16, 2015  
Meeting Date

680  
Bill Number (if applicable)

~~371~~ 425562  
Amendment Barcode (if applicable)

Topic FWC agency bill

Name Jackie Fauls

Job Title Legislative Affairs Director

Address 620 S. Meridian  
Street

Phone 487-3795

Tallahassee FL 32399  
City State Zip

Email jackie.fauls@myfwc.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

# APPEARANCE RECORD

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

April 16, 2015  
Meeting Date

680

Bill Number (if applicable)

Topic FWC bill - agency package

~~PCS 50478~~  
Amendment Barcode (if applicable)

Name Jackie Fauls

Job Title Leg. Affairs Director

Address 600 S. Meridian Street

Phone 487-3795

Tallahassee FL 32399  
City State Zip

Email jackie.fauls@myfwc.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Fish & Wildlife Conservation Commission

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

---

Prepared By: The Professional Staff of the Committee on Appropriations

---

BILL: CS/CS/SB 758

INTRODUCER: Appropriations Committee; Health Policy Committee; and Senator Evers

SUBJECT: Prescription and Use of Opioid Antagonists for Emergency Treatment of Opioid Overdoses

DATE: April 20, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Lloyd</u>	<u>Stovall</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Pigott</u>	<u>AHS</u>	<u>Favorable</u>
3.	<u>Brown</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/CS/SB 758 establishes the “Emergency Treatment and Recovery Act.” The bill encourages the prescription and administration of emergency opioid antagonists for the treatment of known or suspected opioid overdoses in an emergency when a health care practitioner is not available.

The bill authorizes health care practitioners to prescribe and dispense opioid antagonists to patients, caregivers, and first responders.

Pharmacists are authorized to dispense an appropriately labeled emergency opioid antagonist based on a prescription that has been issued in the name of a patient or caregiver. The patient or caregiver may store and possess a dispensed opioid antagonist for later administration to a person he or she believes in good faith to be experiencing an opioid overdose, regardless of whether that person has a prescription for an opioid antagonist.

Civil liability protection is extended to any person, including health care practitioners, pharmacists, and first responders, who prescribe, possess, administer, or store an approved opioid antagonist under the bill. A health care practitioner acting in good faith is not subject to discipline under the applicable professional licensure statute and is also immune from civil or criminal liability for prescribing or dispensing an opioid antagonist under the bill.

The bill has no fiscal impact.

The bill provides that it takes effect upon becoming law.

## II. Present Situation:

An opioid can be a prescription medication or an illegal drug, such as heroin, and is used to treat pain. Opioids work by binding to certain receptors in the brain, spinal cord, and gastrointestinal tract to minimize the body's perception of pain. A variety of effects can occur after a person ingests opioids, ranging from pleasure to nausea, vomiting, severe allergic reactions (anaphylaxis), and overdose, in which breathing and heartbeat slow or even stop.<sup>1</sup> Opioid antagonists have been developed to reverse the effects of opioid overdoses and have been available for decades.

### Opioid Deaths Nationwide

From 1999 through 2012, the age-adjusted drug-poisoning (drug overdose) death rate nationwide more than doubled, from 6.1 per 100,000 of the population in 1999 to 13.1 in 2012, while death from opioid analgesics alone more than tripled, from 1.4 per 100,000 to 5.1 during the same time period.<sup>2</sup> The 2012 total deaths due to drug poisoning was over 41,000, with opioid analgesics involved in 16,007 of that number and heroin involved in 5,925.<sup>3</sup> On January 12, 2015, the White House Office of National Drug Control Policy announced that drug deaths related to prescription opioids for 2013 had remained stable since 2012, with a one-percent increase in deaths, while deaths associated with heroin and cocaine had increased 39 percent and 12 percent, respectively.<sup>4</sup>

Drug poisoning deaths involving opioids for the time period of 2009-2010 nationally shows that the highest death rate occurs in the 35-to-54 age bracket at 9.9 deaths per 100,000 and was more prevalent in males at 8.1 compared to 5.1 for females and for white, non-Hispanic individuals.<sup>5</sup>

### Opioid Deaths in Florida

Drug overdose deaths in Florida rose 61 percent from 1,804 to 2,905 during 2003-2009, with especially large increases in deaths related to opioid pain relievers and benzodiazepine.<sup>6</sup> After implementing several laws and enforcement actions relating to prescription drugs and pain management clinics, death rates for prescription drugs decreased 16.7 percent from 3,201 to

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<sup>1</sup> U.S. Department of Health and Human Services, *SAMSHA Opioid Overdose Toolkit*, p. 4, [http://store.samhsa.gov/shin/content//SMA14-4742/Overdose\\_Toolkit.pdf](http://store.samhsa.gov/shin/content//SMA14-4742/Overdose_Toolkit.pdf) (last visited Feb. 28, 2015).

<sup>2</sup> Centers for Disease Control and Prevention, *Trends in Drug-Poisoning Deaths Involving Opioid Analgesics and Heroin: United States, 1999-2012* [http://www.cdc.gov/nchs/data/hestat/drug\\_poisoning/drug\\_poisoning\\_deaths\\_1999-2012.pdf](http://www.cdc.gov/nchs/data/hestat/drug_poisoning/drug_poisoning_deaths_1999-2012.pdf) (last visited Feb. 28, 2015).

<sup>3</sup> *Id.*

<sup>4</sup> Press Release, Centers for Disease Control and Prevention, *2013 Drug Overdose Mortality Data Announced*, (Jan. 20, 2015) <http://www.cdc.gov/media/releases/2015/p0114-drug-overdose.html> (last visited Feb. 28, 2015).

<sup>5</sup> U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, *Health, United States 2013 with Special Feature on Prescription Drugs*, p. 29, (on file with the Senate Committee on Health Policy).

<sup>6</sup> Centers for Disease Control and Prevention, *Decline in Drug Overdose Deaths After State Policy Changes - Florida 2010-2012* (July 4, 2014) <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6326a3.htm> (last visited Feb. 28, 2015).

2,666, representing a 16.7 percent decrease from 2010-2012.<sup>7</sup> However, reports of increasing deaths from heroin overdose, sometimes attributed to the crackdown on “pill mills” and the overprescribing of controlled substances for the treatment of pain, is being termed an epidemic.<sup>8</sup>

For Florida, the 2013 total year data from the U.S. Centers for Disease Control and Prevention (CDC), shows over 2,600 individuals died from a drug-induced cause. The CDC number is not limited to opioid deaths, but the partial-year data from the Florida Medical Examiners Commission indicate that prescription drugs such as opioids continue to be found more often than illicit drugs, both as the cause of death and present at death.<sup>9</sup> These drugs are often prescribed for medical conditions such as muscle relaxation, anxiety, insomnia, and panic attacks. Opioids include:

<b>Opioid Drug Occurrences in Florida: January-June 2013<sup>10</sup></b>			
<b>Opioid</b>	<b>Present at Death</b>	<b>Cause of Death</b>	<b>Total Occurrences</b>
Buprenorphine	10	7	17
Codeine	38	50	88
Fentanyl	85	52	137
Heroin	68	2	70
Hydrocodone	158	273	431
Hydromorphone	89	131	220
Meperidine	2	6	8
Methadone	221	103	324
Morphine	268	189	457
Oxycodone	279	262	541
Oxymorphone	24	100	124
Tramadol	51	177	228
<b>TOTAL:</b>	<b>1,293</b>	<b>1,352</b>	<b>2,645</b>

### **Naloxone: An Opioid Antagonist**

Naloxone injection is in a class of medications called opiate antagonists. It works by blocking the effects of opiates to relieve dangerous symptoms caused by high levels of opiates in the blood.<sup>11</sup> Naloxone displaces opiates from receptor sites in the brain and reverses respiratory depression

<sup>7</sup> *Id.*

<sup>8</sup> See for example: National Institute on Drug Abuse, *What Can We Do About the Heroin Overdose Epidemic?* (June 24, 2014) <http://www.drugabuse.gov/about-nida/noras-blog/2014/06/what-can-we-do-about-heroin-overdose-epidemic> (last visited Feb 28, 2015); National Institute on Drug Abuse, *Drug Abuse Patterns and Trends in Miami-Dade and Broward Counties, Florida—Update: January 2014* (February 2014) <http://www.drugabuse.gov/about-nida/organization/workgroups-interest-groups-consortia/community-epidemiology-work-group-cewg/meeting-reports/highlights-summaries-january-2014/miami> (last visited Feb. 28, 2015); Reuters, *Heroin Abuse at ‘Epidemic’ Level in South Florida – Drug Report*, (January 30, 2014) <http://www.reuters.com/article/2014/01/30/us-usa-florida-heroin-idUSBREA0T24D20140130> (last visited Feb. 28, 2015), and 8WFLA.com, *Heroin Deaths on the Rise in Tampa Bay* (February 10, 2015) <http://www.wfla.com/story/28073721/heroin-deaths-on-the-rise-in-tampa-bay> (last visited Feb. 28, 2015).

<sup>9</sup> Florida Department of Law Enforcement, *Drugs Identified in Deceased Persons by Florida Medical Examiners*, p. ii (Interim Report 2013) (May 2014) [http://www.fdle.state.fl.us/Content/getdoc/5de77741-a6bd-4a88-8000-ce9431321a6c/2013-Interim-Report-Final-\(1\).aspx](http://www.fdle.state.fl.us/Content/getdoc/5de77741-a6bd-4a88-8000-ce9431321a6c/2013-Interim-Report-Final-(1).aspx) (last visited Feb. 28, 2015).

<sup>10</sup> *Id.* at p. 3.

<sup>11</sup> *Supra* note 1.

that usually is the cause of overdose deaths. During the period of time when an overdose can become fatal, respiratory depression can be reversed by giving the individual naloxone.<sup>12</sup> Naloxone injection and naloxone pre-filled auto-injection devices are used along with emergency medical treatment to reverse the life-threatening effects of opiate overdose. Naloxone injection is also used after surgery to reverse the effects of opiates given during surgery and is given to newborns to decrease the effects of opiates received by the pregnant mother prior to delivery.<sup>13</sup>

Naloxone can be used when someone believes an individual is suffering either an opioid or a heroin overdose. Naloxone injection comes as a solution (liquid) to be injected intravenously (into a vein), intramuscularly (into a muscle), or subcutaneously (just under the skin) and as a pre-filled auto-injection device.<sup>14</sup> It is usually given as needed to treat opiate overdoses. However, it does not work on benzodiazepine overdoses.<sup>15,16</sup> Naloxone is also known by its brand names of Narcan or Evzio.

First responders have been regularly carrying the drug for 40 years and the CDC reports that many law enforcement agencies across the nation have also been equipped with naloxone.<sup>17</sup> The federal government has made a tool kit available through a Department of Justice grantee website on the use of naloxone that is geared toward the law enforcement community.<sup>18</sup> One version of the product comes with a trainer that talks the caregiver through the drug administration.

As of December 31, 2014, 24 states authorize health care practitioners to prescribe opioid antagonists to third parties.<sup>19</sup>

### **Regulatory Landscape**

Barriers may exist to the access to and the administration of the opioid antagonist where state health care practice laws prevent a non-patient from being issued a prescription as a caregiver or a friend and a dispenser from filling such a prescription, or where prescribers or dispensers have liability concerns.

The Florida Board of Medicine reviewed this issue at its December 5, 2014, meeting. A health care practitioner had raised the issue whether he could prescribe an opioid antagonist to his patient for administration by a third party at a later date and to teach overdose prevention and

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<sup>12</sup> *Supra* note, 1 at 5.

<sup>13</sup> Medline Plus, *Naloxone Injection* (May 15, 2014) <http://www.nlm.nih.gov/medlineplus/druginfo/meds/a612022.html> (last visited Feb. 28, 2015)

<sup>14</sup> *Id.*

<sup>15</sup> *Supra* note 12.

<sup>16</sup> Examples of benzodiazepines include: Valium, Xanax, or Klonopin.

<sup>17</sup> *Supra* note 4 and note 12.

<sup>18</sup> *Infra* note 29.

<sup>19</sup> These states are: California, Colorado, Georgia, Illinois, Kentucky, Massachusetts, Maryland, Maine, Michigan, North Carolina, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Virginia, Vermont, Washington, and Wisconsin. See Law Atlas, The Policy Surveillance Portal, Public Health law Research, Robert Wood Johnson Foundation, <http://lawatlas.org/query?dataset=laws-regulating-administration-of-naloxone> (last visited Feb. 28, 2015).

response education without violating certain provisions of the practice act.<sup>20</sup> The areas of concern covered by those provisions are:<sup>21</sup>

- Aiding or assisting an unlicensed person to practice medicine;
- Failing to perform any statutory or legal obligation placed on a licensed physician;
- Prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including a controlled substance, other than in the course of the physician's practice;
- Committing medical malpractice; and
- Delegating professional responsibilities to a person when the licensee delegating those responsibilities knows or has reason to know that such a person is not qualified to perform them.

The board granted the practitioner's request noting that its approval was specific only to his petition and suggested that a legislative change be sought.<sup>22</sup>

A pharmacist is subject to discipline for dispensing a drug pursuant to a prescription when the pharmacist knows or has reason to believe that the prescription is not based on a valid practitioner-patient relationship.<sup>23</sup>

The Florida Legislature and the federal government have already enacted legislation allowing third parties to receive prescriptions for the benefit of others relating to a variety of other health care services. For example:

- The Emergency Allergy Treatment Act authorizes a variety of entities – including individuals such as camp counselors, scout leaders, and tour guides – to possess and store epinephrine auto-injectors for later use on a person who is believed in good faith to be experiencing a severe allergic reaction.<sup>24</sup>
- Pharmacists may administer, in the event of an allergic reaction, epinephrine using an auto-injection delivery system within the framework of an established protocol with a physician when providing immunizations.<sup>25</sup>
- School personnel may purchase and maintain a supply of epinephrine auto-injectors in a secure, locked location on its premises for use if a student has an anaphylactic reaction.<sup>26</sup>

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<sup>20</sup> The specific practice acts include ss. 458.331(1)(f), (g), (q), (t) or (w), F.S., or any other rule of the board. See Florida Bd. of Medicine, Florida Dep't of Health, *Final Order on Petition for Declaratory Statement (p.144 of the Public Book Addendum)* (February 6, 2015)

[http://ww10.doh.state.fl.us/pub/medicine/Agenda\\_Info/Public\\_Information/Public\\_Books/2015/February/02062015\\_FBAddendum\\_PublicBook.pdf](http://ww10.doh.state.fl.us/pub/medicine/Agenda_Info/Public_Information/Public_Books/2015/February/02062015_FBAddendum_PublicBook.pdf) (last visited Feb. 27, 2015).

<sup>21</sup> Florida Bd. of Medicine, Florida Dep't of Health, *Final Order on Petition for Declaratory Statement (p.144 of the Public Book Addendum)* (February 6, 2015)

[http://ww10.doh.state.fl.us/pub/medicine/Agenda\\_Info/Public\\_Information/Public\\_Books/2015/February/02062015\\_FBAddendum\\_PublicBook.pdf](http://ww10.doh.state.fl.us/pub/medicine/Agenda_Info/Public_Information/Public_Books/2015/February/02062015_FBAddendum_PublicBook.pdf) (last visited Feb. 27, 2015).

<sup>22</sup> Florida Bd. of Medicine, Florida Dep't of Health, *Minutes for December 5, 2015 Meeting*, p. 20,

[http://ww10.doh.state.fl.us/pub/medicine/Agenda\\_Info/Public\\_Information/Public\\_Minutes/2015/February/02062015\\_FB\\_Minutes.pdf](http://ww10.doh.state.fl.us/pub/medicine/Agenda_Info/Public_Information/Public_Minutes/2015/February/02062015_FB_Minutes.pdf) (last visited Feb. 27, 2015).

<sup>23</sup> Section 465.016(1)(s), F.S.

<sup>24</sup> Chapter 2014-141, Laws of Fla.

<sup>25</sup> Chapter Law 2012-60, s. 1, Laws of Fla.

<sup>26</sup> Chapter Law 2013-63, ss. 1 and 3, Laws of Fla.

- The federal *School Access to Emergency Epinephrine Act* provides a financial incentive to schools to maintain a supply of the epinephrine medication and to permit trained personnel to administer it.<sup>27</sup>

The Emergency Allergy Treatment Act (EATA) also authorizes a health care practitioner to prescribe epinephrine auto-injectors in the name of an authorized entity and pharmacists to dispense epinephrine auto-injectors pursuant to a prescription issued in the name of an authorized entity. Under the EATA, immunity from liability is provided to persons, authorized entities, and health care practitioners when acting in accordance with authorizations in the act.

### **Good Samaritan Act**

Florida's Good Samaritan Act, found in s. 768.13, F.S., provides, in part:

(2)(a) Any person, including those licensed to practice medicine, who gratuitously and in good faith renders emergency care or treatment either in direct response to emergency situations related to and arising out of a public health emergency ..., a state of emergency ..., or at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment, without objection of the injured victim or victims thereof, shall not be held liable for any civil damages as a result of such care or treatment or as a result of any act or failure to act in providing or arranging further medical treatment where the person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.

### **III. Effect of Proposed Changes:**

The bill creates the "Emergency Treatment and Recovery Act" as s. 381.887, F.S., and provides definitions. The following definitions are created:

- Administer or administration means the introduction of an emergency opioid antagonist into the body of a person;
- Authorized health care practitioner means a Florida-licensed practitioner authorized to prescribe drugs;
- Caregiver means a family member, friend, or any other person who may assist a person at risk of an opioid overdose;
- Emergency opioid antagonist means naloxone hydrochloride or any similarly acting drug that blocks the effects of opioids that is administered from outside of the body and is approved by the United States Food and Drug Administration for treatment of opioid overdose; and
- Patient means a person at risk of experiencing an opioid overdose.

The bill authorizes the prescription of an emergency opioid antagonist to a patient or a caregiver and the administration of that antagonist for the emergency treatment of a known or suspected opioid overdose when a physician is not available.

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<sup>27</sup> Pub. Law 113-48, H.R. 2094, 113th Cong. (Nov. 13, 2013)

The bill authorizes health care practitioners to prescribe an emergency opioid antagonist to either a patient or a caregiver. A pharmacist is authorized to dispense an emergency opioid antagonist based on a prescription that is issued to a patient or caregiver. The bill requires the dispensed emergency opioid antagonist to be appropriately labeled with instructions for use.

The bill permits the patient or caregiver who has the dispensed emergency opioid antagonist to store and possess the drug. The patient or caregiver is also permitted to administer the drug to a person whom he or she believes in good faith may be experiencing an opioid overdose, regardless of whether that person has his or her own prescription for an opioid antagonist.

First responders are authorized to administer an emergency opioid antagonist as clinically indicated. First responders in this bill include, but are not limited to, law enforcement officers, paramedics, and emergency medical technicians.

Civil liability immunity protection is extended under the Good Samaritan Act to any person, including an authorized or dispensing health care practitioner, a pharmacist, or a first responder who prescribes, dispenses, possesses, administers, or stores an approved emergency opioid antagonist under the bill.

The bill also provides civil and criminal liability and protection from professional licensure action or other adverse action for an authorized health care practitioner or pharmacist, who, acting in good faith, prescribes or dispenses an opioid antagonist under the provisions of this bill.

The bill does not limit any immunities that currently exist for first responders and others that are provided under statute or rule.

The bill is effective upon becoming a law.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

Under CS/CS/SB 758, caregivers or other persons in a position to help someone at risk of an opioid overdose are eligible to acquire a prescription for an emergency opioid antagonist and would incur costs to acquire it.

**C. Government Sector Impact:**

The Bureau of Health Care Practitioner Regulation at the Department of Health reports no fiscal impact under the bill.<sup>28</sup>

The bill creates no fiscal impact on local governments; however, to the extent that local governments choose to stock a supply of opioid antagonists to address drug overdoses for their emergency medical services, police, fire departments, or other first responders, there could be a cost incurred to acquire the drugs.

According to the Bureau of Justice Assistance, the cost of a single rescue kit ranges from \$22 to \$60.<sup>29</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill contemplates that an authorized health care practitioner may dispense an emergency opioid antagonist to a patient or caregiver in the immunities provisions in ss. 381.887(5) and 381.887(6)(b), F.S., as created by the bill. However, the bill does not specifically authorize the health care practitioner to dispense an emergency opioid antagonist under s. 381.887(3), F.S., as created by the bill.

**VIII. Statutes Affected:**

This bill creates section 381.887 of the Florida Statutes.

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

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

**CS/CS by Appropriations on April 16, 2015:**

The committee substitute changes the name of the act, replaces the term “opioid antagonist” with “emergency opioid antagonist,” removes the provisions relating to

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<sup>28</sup> Department of Health, Bureau of Health Care Practitioner Regulation, *Senate Bill 758 Analysis*, p. 4 (Feb. 11, 2015) (on file with the Senate Committee on Health Policy).

<sup>29</sup> This information is provided by the Bureau of Justice Assistance, a contractor of the Office of Justice Programs, U.S. Department of Justice whose mission is to support state, local and tribal justice professionals to achieve safer communities. The Bureau has a Law Enforcement Naloxone Toolkit available at: <https://www.bjatraining.org/tools/naloxone/Naloxone%2BBackground> (last visited Feb. 26, 2015).

emergency overdose treatment information, and authorizes emergency responders to administer emergency opioid antagonists as clinically indicated rather than authorizing a health care practitioner to prescribe or dispense the drug directly or through standing orders to the emergency responders. The CS also removes the statement that the bill does not create a duty or standard of care for a person to prescribe or administer an opioid antagonist.

**CS by Health Policy on March 4, 2015:**

The committee substitute makes the prescribing health care practitioner or his or her agent responsible for providing the emergency overdose treatment information to the patient or caregiver receiving the opioid antagonist prescription rather a third party organization. The committee substitute also provides a statutory cross reference for the term “first responder.”

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
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The Committee on Appropriations (Grimsley) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. This act may be cited as the "Emergency  
Treatment and Recovery Act."

Section 2. Section 381.887, Florida Statutes, is created to  
read:

381.887 Emergency treatment for suspected opioid overdose.—

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



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11       (a) "Administer" or "administration" means to introduce an  
12 emergency opioid antagonist into the body of a person.

13       (b) "Authorized health care practitioner" means a licensed  
14 practitioner authorized by the laws of the state to prescribe  
15 drugs.

16       (c) "Caregiver" means a family member, friend, or person in  
17 a position to have recurring contact with a person at risk of  
18 experiencing an opioid overdose.

19       (d) "Emergency opioid antagonist" means naloxone  
20 hydrochloride or any similarly acting drug that blocks the  
21 effects of opioids administered from outside the body and that  
22 is approved by the United States Food and Drug Administration  
23 for the treatment of an opioid overdose.

24       (e) "Patient" means a person at risk of experiencing an  
25 opioid overdose.

26       (2) The purpose of this section is to provide for the  
27 prescription of an emergency opioid antagonist to patients and  
28 caregivers and to encourage the prescription of emergency opioid  
29 antagonists by authorized health care practitioners.

30       (3) An authorized health care practitioner may prescribe an  
31 emergency opioid antagonist to a patient or caregiver for use in  
32 accordance with this section, and pharmacists may dispense an  
33 emergency opioid antagonist pursuant to a prescription issued in  
34 the name of the patient or caregiver, appropriately labeled with  
35 instructions for use. Such patient or caregiver is authorized to  
36 store and possess approved emergency opioid antagonists and, in  
37 an emergency situation when a physician is not immediately  
38 available, administer the emergency opioid antagonist to a  
39 person believed in good faith to be experiencing an opioid



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40 overdose, regardless of whether that person has a prescription  
41 for an emergency opioid antagonist.

42 (4) Emergency responders, including, but not limited to,  
43 law enforcement officers, paramedics, and emergency medical  
44 technicians, are authorized to possess, store, and administer  
45 emergency opioid antagonists as clinically indicated.

46 (5) A person, including, but not limited to, an authorized  
47 health care practitioner, a dispensing health care practitioner,  
48 or a pharmacist, who possesses, administers, prescribes,  
49 dispenses, or stores an approved emergency opioid antagonist in  
50 compliance with this section and s. 768.13 is afforded the civil  
51 liability immunity protections provided under s. 768.13.

52 (6) (a) An authorized health care practitioner, acting in  
53 good faith, is not subject to discipline or other adverse action  
54 under any professional licensure statute or rule and is immune  
55 from any civil or criminal liability as a result of prescribing  
56 an opioid antagonist in accordance with this section.

57 (b) A dispensing health care practitioner or pharmacist,  
58 acting in good faith, is not subject to discipline or other  
59 adverse action under any professional licensure statute or rule  
60 and is immune from any civil or criminal liability as a result  
61 of dispensing an opioid antagonist in accordance with this  
62 section.

63 (7) This section does not limit any existing immunities for  
64 emergency responders or others provided under this chapter or  
65 any other applicable provision of law.

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

67  
68 ===== T I T L E A M E N D M E N T =====



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69 And the title is amended as follows:

70 Delete everything before the enacting clause  
71 and insert:

72 A bill to be entitled

73 An act relating to emergency treatment for opioid  
74 overdose; providing a short title; creating s.  
75 381.887, F.S.; providing definitions; providing  
76 purpose; authorizing certain health care practitioners  
77 to prescribe an emergency opioid antagonist to a  
78 patient or caregiver under certain conditions;  
79 authorizing pharmacists to dispense an emergency  
80 opioid antagonist under certain circumstances;  
81 authorizing storage, possession, and administration of  
82 an emergency opioid antagonist by such patient or  
83 caregiver and certain emergency responders; providing  
84 immunity from liability; providing immunity from  
85 professional sanction or disciplinary action for  
86 certain health care practitioners and pharmacists,  
87 under certain circumstances; providing applicability;  
88 providing an effective date.

By the Committee on Health Policy; and Senator Evers

588-01937-15

2015758c1

1 A bill to be entitled  
 2 An act relating to the prescription and use of opioid  
 3 antagonists for emergency treatment of opioid  
 4 overdoses; providing a short title; creating s.  
 5 381.887, F.S.; defining terms; providing the purposes  
 6 of the act; providing for the prescribing of opioid  
 7 antagonists to, and the use of them by, patients and  
 8 caregivers who have received emergency overdose  
 9 treatment information; providing for the prescribing  
 10 of opioid antagonists to, and the use of them by,  
 11 first responders; providing immunities from liability;  
 12 providing applicability; providing an effective date.  
 13  
 14 Be It Enacted by the Legislature of the State of Florida:  
 15  
 16 Section 1. This act may be cited as the "Florida Opioid  
 17 Overdose Prevention Act."  
 18 Section 2. Section 381.887, Florida Statutes, is created to  
 19 read:  
 20 381.887 Prescription for and dispensing of opioid  
 21 antagonists.—  
 22 (1) As used in this section, the term:  
 23 (a) "Administer" or "administration" means to introduce an  
 24 opioid antagonist into the body of a person by using a  
 25 formulation approved by the United States Food and Drug  
 26 Administration.  
 27 (b) "Authorized health care practitioner" means a licensed  
 28 practitioner authorized by the laws of this state to prescribe  
 29 drugs.

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

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30 (c) "Caregiver" means a family member, a friend, or any  
 31 other person in a position to assist a person at risk of  
 32 experiencing an opioid overdose.  
 33 (d) "Emergency overdose treatment information" means  
 34 information regarding issues that include, but are not limited  
 35 to, opioid overdose prevention and recognition, how to perform  
 36 rescue breathing, opioid antagonist dosage and administration,  
 37 the importance of calling 911 for assistance with an opioid  
 38 overdose, and care for an overdose victim after administration  
 39 of an opioid antagonist.  
 40 (e) "Opioid antagonist" means naloxone hydrochloride or any  
 41 similarly acting drug that blocks the effects of opioids that  
 42 have been administered from outside the body and that is  
 43 approved by the United States Food and Drug Administration for  
 44 the treatment of an opioid overdose.  
 45 (f) "Patient" means a person at risk of experiencing an  
 46 opioid overdose.  
 47 (2) The purpose of this section is to provide for the  
 48 prescription of an opioid antagonist to patients and caregivers  
 49 and to encourage the administration of opioid antagonists for  
 50 emergency treatment of known or suspected opioid overdoses when  
 51 a physician or other authorized health care practitioner is not  
 52 immediately available.  
 53 (3) An authorized health care practitioner may prescribe an  
 54 opioid antagonist for use in accordance with this section to a  
 55 patient or caregiver who has received emergency overdose  
 56 treatment information. A dispensing health care practitioner or  
 57 pharmacist may dispense an opioid antagonist, appropriately  
 58 labeled with instructions for use, pursuant to a prescription

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59 which has been issued in the name of a patient or caregiver. In  
 60 order to fulfill the requirement that a patient or caregiver  
 61 receive emergency overdose treatment information, such  
 62 information may be provided to a patient or caregiver by the  
 63 prescribing authorized health care practitioner or his or her  
 64 agent. The patient or caregiver who has an opioid antagonist  
 65 prescription may store and possess an approved opioid  
 66 antagonist. In an emergency situation when a physician or other  
 67 authorized health care practitioner is not immediately  
 68 available, any patient or caregiver who has received emergency  
 69 overdose treatment information may administer the opioid  
 70 antagonist to a person believed in good faith to be experiencing  
 71 an opioid overdose, regardless of whether that person has a  
 72 prescription for an opioid antagonist.

73 (4) An authorized health care practitioner may, directly or  
 74 by standing order, prescribe and dispense opioid antagonists to  
 75 first responders, as defined in s. 112.1815, and such first  
 76 responders may possess, store, and administer approved opioid  
 77 antagonists as prescribed and clinically indicated, and in  
 78 accordance with the policies of the employer of such first  
 79 responders.

80 (5) Any person, including an authorized health care  
 81 practitioner, a dispensing health care practitioner, a  
 82 pharmacist, or a first responder, as defined in s. 112.1815, who  
 83 possesses, administers, or stores an approved opioid antagonist  
 84 in compliance with this section and with s. 768.13 is afforded  
 85 the civil liability immunity protection provided under s.  
 86 768.13.

87 (6) Any authorized health care practitioner, acting in good

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88 faith and exercising reasonable care, is not subject to  
 89 discipline or other adverse action under any professional  
 90 licensure statute or rule and is immune from any civil or  
 91 criminal liability as a result of prescribing an opioid  
 92 antagonist in accordance with this section. Any dispensing  
 93 healthcare practitioner or pharmacist, acting in good faith and  
 94 exercising reasonable care, is not subject to discipline or  
 95 other adverse action under any professional licensure statute or  
 96 rule and is immune from any civil or criminal liability as a  
 97 result of dispensing an opioid antagonist in accordance with  
 98 this section.

99 (7) This section does not limit any existing immunities for  
 100 first responders and others provided under any other applicable  
 101 statute or rule. This section does not create a duty or standard  
 102 of care for a person to prescribe or administer an opioid  
 103 antagonist.

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



The Florida Senate

## Committee Agenda Request

**To:** Senator Lee  
Chair, Appropriations Committee

**Subject:** Committee Agenda Request

**Date:** April 2, 2015

Dear Senator,

I respectfully request that **Senate Bill 758**, regarding Prescription and Use of Opioid Antagonists for Emergency Treatment of Opioid Oversedose, be placed on the:

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

A handwritten signature in cursive script that reads "Greg Evers".

---

Senator Greg Evers  
Florida Senate, District 2

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

9/16/2015

Meeting Date

Topic \_\_\_\_\_ Bill Number 758  
*(if applicable)*

Name BRIAN PITTS Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291

*Street*  
SAINT PETERSBURG FLORIDA 33705  
*City State Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

758  
Bill Number (if applicable)

Meeting Date \_\_\_\_\_

Topic Use of Opioids

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

Name Beth LABASKY

Job Title Consultant

Address 1400 Village Sq Blvd

Phone 850 327 7335

Street

Teele

City

Ma 32312

State

Zip

Email bethlabasky@af.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Informed Families of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

# APPEARANCE RECORD

4-16-15

Meeting Date

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

758

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name BRIAN JOGERST

Job Title \_\_\_\_\_

Address 215 S. Monroe St, Suite 703

Phone 850-222-0191

Street

Tallahassee FL 32301

City

State

Zip

Email brian@bhandassociates.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Shatter proof

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.

# APPEARANCE RECORD

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

4-16-2015

Meeting Date

SB 758

Bill Number (if applicable)

Topic PRESCRIPTION AND USE OF OPIOID ANTAGONISTS FOR EMERGENCY

Amendment Barcode (if applicable)

Name STEPHEN R. WINN

Job Title EXECUTIVE DIRECTOR

Address 2544 BLAIRSTONE PINES DR

Phone 876-7364

Street

TALCAHASSEE

FL

32301

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking  In Support  Against  
(The Chair will read this information into the record.)

Representing FLORIDA OSTEOPATHIC MEDICAL ASSOCIATION

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: PCS/CS/SB 798 (275316)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Commerce and Tourism Committee; and Senator Lee

SUBJECT: Household Moving Services

DATE: April 15, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Blizzard</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Betta</u>	<u>Kynoch</u>	<u>AP</u>	<u>Pre-meeting</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/CS/SB 798 broadens protections for consumers who use intrastate moving services (shippers) by:

- Providing for a required insurance protection plan for shippers' moved goods;
- Requiring a binding estimate of the cost of services to be provided by the mover; and
- Clarifying what payment a mover can demand prior to returning the moved goods to the shipper.

The bill has an insignificant fiscal impact on state funds.

The bill provides an effective date of July 1, 2015.

**II. Present Situation:**

Chapter 507, F.S., governs the loading, transportation, shipment, unloading, and affiliated storage of household goods as part of intrastate household moves. The chapter applies to any mover or moving broker engaged in intrastate transportation or shipment of household goods originating and terminating in the state.<sup>1</sup> These regulations co-exist with federal law, which governs interstate moving of household goods.

---

<sup>1</sup> Section 507.02, F.S.

Section 507.01(9), F.S., defines “mover” as a person who, for compensation, contracts for or engages in the loading, transportation, shipment, or unloading of household goods as part of a household move.<sup>2</sup> A “moving broker” arranges for another person to load, transport, ship, or unload household goods as part of a household move or refers a shipper to a mover by telephone, postal, or electronic mail, website, or other means.<sup>3</sup>

Section 507.03, F.S., requires any mover or moving broker who wishes to do business in Florida to register annually with the Department of Agriculture and Consumer Services (DACS). As of March 2015, 1,037 movers and 12 moving brokers were registered.<sup>4</sup> In order to obtain a registration certificate, the mover or moving broker must file an application, pay a \$300 annual registration fee, and meet certain statutory qualifications, including proof of insurance coverage.<sup>5</sup>

### **Insurance Coverage and Liability Limitations**

Section 507.04, F.S., requires movers and moving brokers to maintain liability and motor vehicle insurance. A mover who operates more than two vehicles is required to maintain liability insurance of at least \$10,000 per shipment, and not less than 60 cents per pound, per article.<sup>6</sup> Movers who operate fewer than two vehicles are required only to carry either a performance bond or a \$25,000 certificate of deposit in lieu of liability insurance.<sup>7</sup>

Any contractual limitation to a mover’s liability for loss incurred to a shipper’s goods must be disclosed in writing to the shipper, along with the valuation rate, but a mover’s attempt to limit its liability beyond the minimum 60 cents per pound, per article rate is void under s. 507.04(4), F.S. The mover must inform the shipper of the opportunity to purchase valuation coverage, if the mover offers such additional insurance.<sup>8</sup>

### **Violations and Penalties**

Section 507.05, F.S., requires an intrastate mover to provide an estimate and contract to the shipper before commencing the move. Should a dispute arise over payment or costs, s. 507.06, F.S., provides that the mover may place the shipper’s goods in a storage unit until payment is tendered. Because of ambiguity regarding what payment may legally be demanded, some shippers have been taken advantage of by deceptive or fraudulent moving practices.<sup>9</sup> Often, moving fraud manifests as an increased fee assessed by the mover, who then refuses to relinquish the shipper’s goods until the inflated price has been paid in full.

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<sup>2</sup> Section 507.01(9), F.S.

<sup>3</sup> Section 507.01(10), F.S.

<sup>4</sup> DACS, *SB 798 Agency Analysis* (February 24, 2015), on file with the Senate Commerce and Tourism Committee; Interview with DACS staff, March 17, 2015.

<sup>5</sup> Section 507.03(1), F.S.

<sup>6</sup> Section 507.04(4), F.S.

<sup>7</sup> Section 507.04(1)(b), F.S.

<sup>8</sup> Section 507.04(4), F.S.

<sup>9</sup> According to the Federal Motor Carrier Safety Administration (FMCSA), Florida is a hot spot for moving fraud. See, e.g. Christina Hernandez, *3 South Florida Moving Companies Accused of Holding Customer Shipments Hostage* (November 26, 2013), available at <http://www.nbcmiami.com/news/local/3-South-Florida-Moving-Companies-Accused-of-Holding-Customer-Shipments-Hostage-233525971.html> (last accessed March 16, 2015).

While administrative, civil, and criminal penalties exist in ch. 507, F.S., for such fraudulent moving practices and other violations, the aggrieved shipper is not guaranteed the return of his or her goods until after such remedies have been finalized.

### **Local Ordinances and Regulations**

Municipalities and counties may adopt local ordinances or regulations relating to the moving of household goods in addition to the state regulations required by statute.<sup>10</sup> Broward, Miami-Dade, Palm Beach, Hillsborough, and Pinellas counties currently have such ordinances. Movers or moving brokers whose principal place of business is located in a county or municipality with such an ordinance are required to register under local and state laws. State law also allows for local taxes, fees, and bonding related to movers and moving brokers, so long as any local registration fees are reasonable and do not exceed the cost of administering the ordinance or regulation.<sup>11</sup>

## **III. Effect of Proposed Changes:**

### **Definitions and Legislative Intent**

**Section 1** defines terms used in the bill, deletes the definition of “estimate” (but provides for a binding estimate in later sections). Additionally, “personal laborers” who assist shippers exclusively with the loading or unloading of their household goods are excluded from the definition of “mover.”

**Section 2** provides that the bill is intended to provide consistency and transparency in moving practices.

### **Insurance Requirement**

**Section 3** clarifies that movers must maintain current and valid *cargo* liability insurance coverage. The bill also removes the 60 cents per pound, per article minimum liability insurance requirement for the loss or damage of household goods, but adds a requirement that a mover place valuation coverage<sup>12</sup> equal to the cost of repair or replacement of the shipper’s goods, unless such coverage is waived by the shipper. Valuation coverage can be more valuable to shippers than liability insurance in instances of loss of relatively light items, e.g., electronics, are lost or damaged during the move because they will be insured based on value rather than weight.

### **Before the Move**

**Section 6** requires a mover to provide a prospective shipper with an informational publication (see section 5) and a binding estimate (see section 4) prior to entering into any contract for moving services.

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<sup>10</sup> Section 507.09, F.S.

<sup>11</sup> Section 507.09, F.S.

<sup>12</sup> Valuation coverage will only cover loss caused by the mover’s fault, whereas moving coverage, available through an insurance agent, will cover loss caused by “acts of God.”

<https://www.protectyourmove.gov/consumer/awareness/valuation/valuation-insurance.htm>.

**Section 5** creates s. 507.054, F.S., which mandates the DACS to prepare a publication entitled “Your Rights and Responsibilities When You Move. Furnished by Your Mover, as Required by Florida Law.” This booklet, distributed by movers, must:

- Describe the shipper’s and mover’s rights and responsibilities, as well as available remedies;
- Bear an attestation signed by both parties signifying that they have read and understand the document as well as the criminal and administrative penalties for specific violations;
- Include a warning of the risks of shipping sentimental or family heirlooms;
- Be attached to the general contract for moving services as an integral part thereof; and
- Measure at least 36 square inches.

The shipper must acknowledge receipt of this publication by signed acknowledgement in the contract.

The binding estimate, described in **section 4** of the bill, must be based on the mover’s physical survey of the household goods to be moved. In addition, it must:

- Be provided to the shipper before the execution of a contract for services, and at least 48 hours before the move;
- Include at least an itemized total cost for the loading, transport or shipment, and unloading of household goods and accessorial services;
- Provide a table of measures used by the mover in preparing the estimate;
- Evince the date the estimate was prepared and the proposed date of the move;
- State that the estimate is binding on the mover and shipper;
- Identify accepted forms of payment; and
- Bear the signature of both parties.

A physical survey may only be waived if the goods are outside a 50-mile radius from the mover or if the shipper waives the right by signed writing. A binding estimate must be provided in every move performed by a mover, but the 48-hour period between provision of the binding estimate, and the move may be waived by a shipper’s signed or electronic acknowledgement in the contract.

The waiting period between the provision of a binding estimate and the move may be waived if the shipper contacts the mover within 48 hours of the move.

The binding estimate may not be amended by the mover within 48 hours of the move unless the shipper requests additional services or unless both parties agree to amend the estimate.

A mover and shipper must enter into a contract for services prior to the performance of any services. In accordance with **section 4** of the bill, the contract must include:

- Contact information of both parties;
- Date contract was prepared and date of the move;
- Where the goods will be stored, including in the case of a contract dispute;
- A copy of the binding estimate;
- Total cost to shipper that may be collected by the mover at delivery, and terms of the payment; and

- Acceptable forms of payment.

The mover must retain a copy of the binding estimate and the contract for one year after their preparation dates and keep a copy with him or her during the entire move, should a dispute over cost or payment arise.

### **Payment and Delivery of Goods**

**Sections 7 and 8** provide for notice requirements if the mover is unable to perform the requested services on the date reflected in the contract. Additionally, the bill requires a mover to relinquish a shipper's goods inside the location directed by the shipper in a timely manner, if the shipper has paid the exact amount of the binding estimate; paid any additional charges properly agreed to by both parties in writing, if applicable; and paid any charges related to impracticable operations, if applicable.

**Section 8** provides that a mover may require payment in excess of the binding estimate prior to his or her relinquishment of the household goods, if:

- Prior to beginning the move, the parties negotiate a revised binding estimate to reflect extra services requested by the shipper.
- The shipper, after at least a one-hour cool off period, consents by written contract addendum to the mover's performance of (and charging for) additional services that the mover has advised are essential to the move.
- After execution of the contract, the shipper requests additional services and the mover informs the shipper of associated charges in writing.
- Impracticable operations require additional services to be performed by the mover.

The mover cannot demand payment of any additional charges assessed under ch. 507, F.S., prior to relinquishing the shipper's household goods, but may collect payment by billing the shipper within 15 days after delivery of the goods. Payment for legitimate charges must be paid by the shipper within 30 days after receipt of the bill.

### **Violations and Penalties**

**Section 9** prohibits increasing the contracted cost of the move, if not in accordance with ch. 507, F.S., improperly withholding a shipper's goods, and otherwise failing to comply with chapter 507.

**Section 10** creates administrative penalties for violations of ch. 507, F.S., including the suspension of a mover's license if the company's officer or director is charged with a crime involving fraud, theft, larceny, embezzlement, or fraudulent conversion or misappropriation of property, or a crime arising from conduct during movement of household goods.

**Section 11** makes conforming changes.

**Section 12** creates criminal penalties for violations of ch. 507, F.S., including penalizing as a third degree felony any mover's refusal to relinquish a shipper's goods after a law enforcement officer determines that payment has been made in accordance with this chapter.

**Rulemaking Authority**

**Section 13** grants the DACS rulemaking authority to administer this bill.

**Effective Date**

**Section 14** creates an effective date of July 1, 2015.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

The public may see a faster resolution to moving disputes that arise due to the provisions in PCS/CS/SB 798.

**C. Government Sector Impact:**

The bill requires the DACS to prepare a publication that includes a summary of the rights and responsibilities of, and remedies available to, movers and shippers. The DACS indicates the cost of this publication can be absorbed within existing resources.

The Criminal Justice Impact Conference (CJIC) considered SB 798, which had the same criminal penalties as PCS/CS/SB 798, and determined that SB 798 would have a positive insignificant impact (less than 10 per year) on prison beds.<sup>13</sup>

**VI. Technical Deficiencies:**

None.

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<sup>13</sup> Florida Criminal Justice Impact Conference, *March 11, 2015 Results*, (March 11, 2015), available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/index.cfm> (last accessed March 19, 2015).

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 507.01, 507.02, 507.04, 507.05, 507.06, 507.07, 507.09, 507.10, and 507.11.

This bill creates the following sections of the Florida Statutes: 507.054, 507.055, 507.065, 507.066, and 507.14.

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

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

**Recommended CS/CS by Appropriations Subcommittee on General Government on April 8, 2015:**

The committee substitute:

- Defines “personal laborers” as individuals hired directly by shippers to assist in the moving of household goods, and removes them from the requirements of the bill;
- Requires movers to provide valuation coverage, equal to the cost of repair or replacement of the shipper’s goods, unless waived in writing by the shipper;
- Allows a shipper to waive the binding estimate by signed or electronic acknowledgement;
- Allows shippers to waive the 48-hour waiting period between provision of a binding estimate and the move, if the shipper initially contacts the mover within the 48-hour waiting period; and
- Deletes provisions relating to payment in case of partial or total loss of goods by the mover.

**CS by Commerce and Tourism on March 23, 2015:**

The committee substitute maintains the requirement that moving brokers provide proof of insurance to the DACS;

- Removes requirement that movers publish a tariff;
- Allows shippers to waive the 48-hour waiting period between provision of a binding estimate and the move; and
- Clarifies what costs may be collected by the mover upon delivery of the moved household goods.

**B. Amendments:**

None.



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Proposed Committee Substitute by the Committee on Appropriations  
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to household moving services; amending s. 507.01, F.S.; defining terms; amending s. 507.02, F.S.; clarifying intent; amending s. 507.04, F.S.; removing a prohibition that a mover may not limit its liability for the loss or damage of household goods to a specified valuation rate; removing a requirement that a mover disclose a liability limitation when the mover limits its liability for a shipper's goods; requiring a mover to offer valuation coverage to compensate a shipper for the loss or damage of the shipper's household goods that are lost or damaged during a household move; requiring the valuation coverage to indemnify the shipper for at least the cost of repair or replacement goods unless waived or amended by the shipper; authorizing the shipper to waive or amend the valuation coverage; requiring that the waiver be made in a signed acknowledgment in the contract; revising the time at which the mover must disclose the terms of the coverage to the shipper in writing, including any deductibles; revising the information that the disclosure must provide to the shipper; amending s. 507.05, F.S.; requiring a mover to conduct a physical survey and provide a binding estimate in certain circumstances unless waived by the shipper; requiring specified content for the binding estimate; authorizing a shipper to waive the binding



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estimate in certain circumstances; authorizing the mover to provide a maximum one-time fee for providing a binding estimate; requiring the mover and shipper to sign the estimate; requiring the mover to provide the shipper with a copy of the estimate at the time of signature; providing that a binding estimate may only be amended under certain circumstances; authorizing a mover to charge more than the binding estimate in certain circumstances; requiring a mover to allow a shipper to consider whether additional services are needed; requiring a mover to retain a copy of the binding estimate for a specified period; requiring a mover to provide a contract for service to the shipper before providing moving or accessorial services; requiring a driver to have possession of the contract before leaving the point of origin; requiring a mover to retain a contract of service for a specified period; creating s. 507.054, F.S.; requiring the department to prepare a publication that summarizes the rights and responsibilities of, and remedies available to, movers and shippers; requiring the publication to meet certain specifications; creating s. 507.055, F.S.; requiring a mover to provide certain disclosures to a prospective shipper; amending s. 507.06, F.S.; requiring a mover to tender household goods for delivery on the agreed upon delivery date or within a specified period unless waived by the shipper; requiring a mover to notify and provide certain information to a shipper if the mover is



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57 unable to perform delivery on the agreed upon date or  
58 during the specified period; creating s. 507.065,  
59 F.S.; providing a maximum amount that a mover may  
60 charge a shipper unless waived by the shipper;  
61 requiring a mover to bill a shipper for specified  
62 charges in certain circumstances; authorizing a mover  
63 to assess a late fee for any uncollected charges in  
64 certain circumstances; amending s. 507.07, F.S.;  
65 providing that it is a violation of ch. 507, F.S., to  
66 fail to comply with specified provisions; providing  
67 that it is a violation of ch. 507, F.S., to increase  
68 the contracted cost for moving services in certain  
69 circumstances; conforming provisions to changes made  
70 by this act; amending s. 507.09, F.S.; requiring the  
71 department, upon verification by certain entities, to  
72 immediately suspend a registration or the processing  
73 of an application for a registration in certain  
74 circumstances; amending s. 507.10, F.S.; conforming a  
75 provision to a change made by this act; amending s.  
76 507.11, F.S.; providing criminal penalties; creating  
77 s. 507.14, F.S.; requiring the department to adopt  
78 rules; providing an effective date.

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

81  
82 Section 1. Present subsections (2) through (5) of section  
83 507.01, Florida Statutes, are redesignated as subsections (3)  
84 through (6), respectively, present subsections (9), (10), and  
85 (11) of that section are redesignated as subsections (10), (11),



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86 and (12), respectively, present subsections (12) and (13) of  
87 that section are redesignated as subsections (14) and (15),  
88 respectively, new subsections (2), (9), and (13) are added to  
89 that section, and present subsections (6) and (9) are amended,  
90 to read:

91 507.01 Definitions.—As used in this chapter, the term:

92 (2) "Additional services" means any additional  
93 transportation of household goods which is performed by a mover,  
94 is not specifically included in a binding estimate or contract,  
95 and results in a charge to the shipper.

96 ~~(6) "Estimate" means a written document that sets forth the~~  
97 ~~total costs and describes the basis of those costs, relating to~~  
98 ~~a shipper's household move, including, but not limited to, the~~  
99 ~~loading, transportation or shipment, and unloading of household~~  
100 ~~goods and accessorial services.~~

101 (9) "Impracticable operations" means conditions arising  
102 after execution of a contract for household moving services  
103 which make it impractical for a mover to perform pickup or  
104 delivery services for a household move.

105 ~~(10)(9) "Mover" means a person who, for compensation,~~  
106 ~~contracts for or engages in the loading, transportation or~~  
107 ~~shipment, or unloading of household goods as part of a household~~  
108 ~~move. The term does not include a postal, courier, envelope, or~~  
109 ~~package service that, or a personal laborer who, does not~~  
110 ~~advertise itself as a mover or moving service.~~

111 (13) "Personal laborer" means an individual hired directly  
112 by the shipper to assist in the loading and unloading of the  
113 shipper's own household goods. The term does not include any  
114 individual who has contracted with or is compensated by a third-



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115 party or whose services are brokered as part of a household  
116 move.

117 Section 2. Subsection (3) of section 507.02, Florida  
118 Statutes, is amended to read:

119 507.02 Construction; intent; application.—

120 (3) This chapter is intended to provide consistency and  
121 transparency in moving practices and to secure the satisfaction  
122 and confidence of shippers and members of the public when using  
123 a mover.

124 Section 3. Subsections (1), (3), (4), and (5) of section  
125 507.04, Florida Statutes, are amended to read:

126 507.04 Required insurance coverages; liability limitations;  
127 valuation coverage.—

128 (1) CARGO LIABILITY INSURANCE.—

129 (a)1. Except as provided in paragraph (b), each mover  
130 operating in this state must maintain current and valid cargo  
131 liability insurance coverage of at least \$10,000 per shipment  
132 for the loss or damage of household goods resulting from the  
133 negligence of the mover or its employees or agents.

134 2. The mover must provide the department with evidence of  
135 liability insurance coverage before the mover is registered with  
136 the department under s. 507.03. All insurance coverage  
137 maintained by a mover must remain in effect throughout the  
138 mover's registration period. ~~A mover's failure to maintain~~  
139 ~~insurance coverage in accordance with this paragraph constitutes~~  
140 ~~an immediate threat to the public health, safety, and welfare.~~  
141 ~~If a mover fails to maintain insurance coverage, the department~~  
142 ~~may immediately suspend the mover's registration or eligibility~~  
143 ~~for registration, and the mover must immediately cease operating~~



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144 ~~as a mover in this state. In addition, and notwithstanding the~~  
145 ~~availability of any administrative relief pursuant to chapter~~  
146 ~~120, the department may seek from the appropriate circuit court~~  
147 ~~an immediate injunction prohibiting the mover from operating in~~  
148 ~~this state until the mover complies with this paragraph, a civil~~  
149 ~~penalty not to exceed \$5,000, and court costs.~~

150 (b) A mover that operates two or fewer vehicles, in lieu of  
151 maintaining the cargo liability insurance coverage required  
152 under paragraph (a), may, and each moving broker must, maintain  
153 one of the following alternative coverages:

154 1. A performance bond in the amount of \$25,000, for which  
155 the surety of the bond must be a surety company authorized to  
156 conduct business in this state; or

157 2. A certificate of deposit in a Florida banking  
158 institution in the amount of \$25,000.

159  
160 The original bond or certificate of deposit must be filed with  
161 the department and must designate the department as the sole  
162 beneficiary. The department must use the bond or certificate of  
163 deposit exclusively for the payment of claims to consumers who  
164 are injured by the fraud, misrepresentation, breach of contract,  
165 misfeasance, malfeasance, or financial failure of the mover or  
166 moving broker or by a violation of this chapter by the mover or  
167 broker. Liability for these injuries may be determined in an  
168 administrative proceeding of the department or through a civil  
169 action in a court of competent jurisdiction. However, claims  
170 against the bond or certificate of deposit must only be paid, in  
171 amounts not to exceed the determined liability for these  
172 injuries, by order of the department in an administrative



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173 proceeding. The bond or certificate of deposit is subject to  
174 successive claims, but the aggregate amount of these claims may  
175 not exceed the amount of the bond or certificate of deposit.

176 (3) INSURANCE COVERAGES.—The insurance coverages required  
177 under paragraph (1) (a) and subsection (2) must be issued by an  
178 insurance company or carrier licensed to transact business in  
179 this state under the Florida Insurance Code as designated in s.  
180 624.01. The department shall require a mover to present a  
181 certificate of insurance of the required coverages before  
182 issuance or renewal of a registration certificate under s.  
183 507.03. The department shall be named as a certificateholder in  
184 the certificate and must be notified at least 10 days before  
185 cancellation of insurance coverage. A mover's failure to  
186 maintain insurance coverage constitutes an immediate threat to  
187 the public health, safety, and welfare. If a mover fails to  
188 maintain insurance coverage, the department may immediately  
189 suspend the mover's registration or eligibility for  
190 registration, and the mover must immediately cease operating as  
191 a mover in this state. In addition, and notwithstanding the  
192 availability of any administrative relief pursuant to chapter  
193 120, the department may seek from the appropriate circuit court  
194 an immediate injunction prohibiting the mover from operating in  
195 this state until the mover complies with this paragraph. The  
196 mover may also be assessed a civil penalty not to exceed \$5,000  
197 and court costs.

198 (4) LIABILITY LIMITATIONS; VALUATION RATES. A mover may not  
199 limit its liability for the loss or damage of household goods to  
200 a valuation rate that is less than 60 cents per pound per  
201 article. A provision of a contract for moving services is void



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202 ~~if the provision limits a mover's liability to a valuation rate~~  
203 ~~that is less than the minimum rate under this subsection. If a~~  
204 ~~mover limits its liability for a shipper's goods, the mover must~~  
205 ~~disclose the limitation, including the valuation rate, to the~~  
206 ~~shipper in writing at the time that the estimate and contract~~  
207 ~~for services are executed and before any moving or accessorial~~  
208 ~~services are provided. The disclosure must also inform the~~  
209 ~~shipper of the opportunity to purchase valuation coverage if the~~  
210 ~~mover offers that coverage under subsection (5).~~

211 (5) VALUATION COVERAGE.—A mover shall may offer valuation  
212 coverage to compensate a shipper for the loss or damage of the  
213 shipper's household goods that are lost or damaged during a  
214 household move. ~~If a mover offers valuation coverage,~~ The  
215 coverage must indemnify the shipper for at least the cost of  
216 repair or replacement of the goods, unless waived or amended by  
217 the shipper. The shipper may waive or amend the valuation  
218 coverage, and the waiver must be made in a signed acknowledgment  
219 in the contract minimum valuation rate required under subsection  
220 ~~(4).~~ The mover must disclose the terms of the coverage to the  
221 shipper in writing, including any deductibles, in at the time  
222 ~~that the binding estimate and again when the contract for~~  
223 ~~services is are~~ executed and before any moving or accessorial  
224 services are provided. The disclosure must inform the shipper of  
225 the cost of the valuation coverage, if any the valuation rate of  
226 the coverage, and the opportunity to reject the coverage. If  
227 valuation coverage compensates a shipper for at least the  
228 minimum valuation rate required under subsection (4), the  
229 coverage satisfies the mover's liability for the minimum  
230 valuation rate.



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231 Section 4. Section 507.05, Florida Statutes, is amended to  
232 read:

233 507.05 Physical surveys, binding estimates, and contracts  
234 for service. ~~Before providing any moving or accessorial~~  
235 ~~services, a contract and estimate must be provided to a~~  
236 ~~prospective shipper in writing, must be signed and dated by the~~  
237 ~~shipper and the mover, and must include:~~

238 (1) PHYSICAL SURVEY.—A mover must conduct a physical survey  
239 of the household goods to be moved and provide the prospective  
240 shipper with a binding estimate of the cost of the move.

241 (2) WAIVER OF SURVEY.—A shipper may elect to waive the  
242 physical survey, and such waiver must be in writing and signed  
243 by the shipper before the household goods are loaded. The mover  
244 shall retain a copy of the waiver as an addendum to the contract  
245 for service.

246 (3) BINDING ESTIMATE.—Before executing a contract for  
247 service for a household move, and at least 48 hours before the  
248 scheduled time and date of a shipment of household goods, a  
249 mover must provide a binding estimate of the total charges,  
250 including, but not limited to, the loading, transportation or  
251 shipment, and unloading of household goods and accessorial  
252 services. The binding estimate shall be based on a physical  
253 survey conducted pursuant to subsection (1), unless waived  
254 pursuant to subsection (2).

255 (a) The shipper may waive the binding estimate if the  
256 waiver is made by signed or electronic acknowledgment before the  
257 commencement of the 48-hour period before the household goods  
258 are loaded. The mover shall retain a copy of the waiver as an  
259 addendum to the contract for services. To be enforceable, a



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260 waiver executed under this paragraph must, at a minimum, include  
261 a statement in uppercase type that is at least 5 points larger  
262 than, and clearly distinguishable from, the rest of the text of  
263 the waiver or release containing the statement. The exact  
264 statement to be included in a waiver of a binding estimate to be  
265 used by all movers shall be determined by the department in  
266 rulemaking and must include a delineation of the specific rights  
267 that a shipper may lose by waiving the binding estimate.

268 (b) The shipper may also waive the 48-hour period if the  
269 moving services requested commence within 48 hours of the  
270 shipper's initial contact with the mover contracted to perform  
271 the moving services.

272 (c) At a minimum, the binding estimate must include all of  
273 the following:

274 1. The table of measures used by the mover or the mover's  
275 agent in preparing the estimate.

276 2. The date the estimate was prepared and the proposed date  
277 of the move, if any.

278 3. An itemized breakdown and description of services, and  
279 the total cost to the shipper of loading, transporting or  
280 shipping, unloading, and accessorial services.

281 4. A statement that the estimate is binding on the mover  
282 and the shipper and that the charges shown apply only to those  
283 services specifically identified in the estimate.

284 5. Identification of acceptable forms of payment.

285 (d) A mover may charge a one-time fee, not to exceed \$100,  
286 for providing a binding estimate.

287 (e) The binding estimate must be signed by the mover and  
288 the shipper, and a copy must be provided to the shipper by the



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289 mover at the time that the estimate is signed.

290 (f) A binding estimate may only be amended by the mover  
291 before the scheduled loading of household goods for shipment  
292 when the shipper has requested additional services of the mover  
293 not previously disclosed in the original binding estimate, or  
294 upon mutual agreement of the mover and the shipper. Once a mover  
295 begins to load the household goods for a move, failure to  
296 execute a new binding estimate signifies the mover has  
297 reaffirmed the original binding estimate.

298 (g) A mover may not collect more than the amount of the  
299 binding estimate unless:

300 1. The shipper waives receipt of a binding estimate under  
301 this subsection.

302 2. The shipper tenders additional household goods, requests  
303 additional services, or requires services that are not  
304 specifically included in the binding estimate, in which case the  
305 mover is not required to honor the estimate. If, despite the  
306 addition of household goods or the need for additional services,  
307 the mover chooses to perform the move, it must, before loading  
308 the household goods, inform the shipper of the associated  
309 charges in writing. The mover may require full payment at the  
310 destination for the costs associated with the additional  
311 requested services and the full amount of the original binding  
312 estimate.

313 3. Upon issuance of the contract for services, the mover  
314 advises the shipper, in advance of performing additional  
315 services, including accessorial services, that such services are  
316 essential to properly performing the move. The mover must allow  
317 the shipper at least 1 hour to determine whether to authorize



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318 the additional services.

319 a. If the shipper agrees to pay for the additional  
320 services, the mover must execute a written addendum to the  
321 contract for services, which must be signed by the shipper. The  
322 addendum may be sent to the shipper by facsimile, e-mail,  
323 overnight courier, or certified mail, with return receipt  
324 requested. The mover must bill the shipper for the agreed upon  
325 additional services within 15 days after the delivery of those  
326 additional services pursuant to s. 507.06.

327 b. If the shipper does not agree to pay for the additional  
328 services, the mover may perform and, pursuant to s. 507.06, bill  
329 the shipper for those additional services necessary to complete  
330 the delivery.

331 (h) A mover shall retain a copy of the binding estimate for  
332 each move performed for at least 1 year after its preparation  
333 date as an attachment to the contract for service.

334 (4) CONTRACT FOR SERVICE.—Before providing any moving or  
335 accessorial services, a mover must provide a contract for  
336 service to the shipper, which the shipper must sign and date.

337 (a) At a minimum, the contract for service must include:

338 1.~~(1)~~ The name, telephone number, and physical address  
339 where the mover's employees are available during normal business  
340 hours.

341 2.~~(2)~~ The date the contract was ~~or estimate is~~ prepared and  
342 the ~~any~~ proposed date of the move, if any.

343 3.~~(3)~~ The name and address of the shipper, the addresses  
344 where the articles are to be picked up and delivered, and a  
345 telephone number where the shipper may be reached.

346 4.~~(4)~~ The name, telephone number, and physical address of



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347 any location where the household goods will be held pending  
348 further transportation, including situations in which where the  
349 mover retains possession of household goods pending resolution  
350 of a fee dispute with the shipper.

351 ~~5.(5) A binding estimate provided in accordance with~~  
352 ~~subsection (3) An itemized breakdown and description and total~~  
353 ~~of all costs and services for loading, transportation or~~  
354 ~~shipment, unloading, and accessorial services to be provided~~  
355 ~~during a household move or storage of household goods.~~

356 6. The total charges owed by the shipper based on the  
357 binding estimate and the terms and conditions for their payment,  
358 including any required minimum payment.

359 7. If the household goods are transported under an  
360 agreement to collect payment upon delivery, the maximum payment  
361 that the mover may demand at the time of delivery.

362 ~~8.(6) Acceptable forms of payment, which must be clearly~~  
363 ~~and conspicuously disclosed to the shipper on the binding~~  
364 ~~estimate and the contract for services. A mover must shall~~  
365 ~~accept at least a minimum of two of the three following forms of~~  
366 ~~payment:~~

367 ~~a.(a) Cash, cashier's check, money order, or traveler's~~  
368 ~~check;~~

369 ~~b.(b) Valid personal check, showing upon its face the name~~  
370 ~~and address of the shipper or authorized representative; or~~

371 ~~c.(c) Valid credit card, which shall include, but not be~~  
372 ~~limited to, Visa or MasterCard. A mover must clearly and~~  
373 ~~eonspiciuously disclose to the shipper in the estimate and~~  
374 ~~contract for services the forms of payments the mover will~~  
375 ~~accept, including the forms of payment described in paragraphs~~



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376 ~~(a)-(e).~~

377 (b) Each addendum to the contract for service is an  
378 integral part of the contract.

379 (c) A copy of the contract for service must accompany the  
380 household goods whenever they are in the mover's or the mover's  
381 agent's possession. Before a vehicle that is being used for the  
382 move leaves the point of origin, the driver responsible for the  
383 move must have the contract for service in his or her  
384 possession.

385 (d) A mover shall retain a contract for service for each  
386 move it performs for at least 1 year after the date the contract  
387 for service was signed.

388 Section 5. Section 507.054, Florida Statutes, is created to  
389 read:

390 507.054 Publication.-

391 (1) The department shall prepare a publication that  
392 includes a summary of the rights and responsibilities of, and  
393 remedies available to movers and shippers under this chapter.  
394 The publication must include a statement that a mover's failure  
395 to relinquish household goods as required by this chapter  
396 constitutes a felony of the third degree, punishable as provided  
397 in s. 775.082, s. 775.083, or s. 775.084, that any other  
398 violation of this chapter constitutes a misdemeanor of the first  
399 degree, punishable as provided in s. 775.082 or s. 775.083, and  
400 that any violation of this chapter constitutes a violation of  
401 the Florida Deceptive and Unfair Trade Practices Act. The  
402 publication must also include a notice to the shipper about the  
403 potential risks of shipping sentimental or family heirloom  
404 items.



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405 (2) A mover may provide exact copies of the department's  
406 publication to shippers or may customize the color, design, and  
407 dimension of the front and back covers of the standard  
408 department publication. If the mover customizes the publication,  
409 the customized publication must include the content specified in  
410 subsection (1) and meet the following requirements:

411 (a) The font size used must be at least 10 points, with the  
412 exception that the following must appear prominently on the  
413 front cover in at least 12-point boldface type: "Your Rights and  
414 Responsibilities When You Move. Furnished by Your Mover, as  
415 Required by Florida Law."

416 (b) The size of the booklet must be at least 36 square  
417 inches.

418 (3) The shipper must acknowledge receipt of the publication  
419 by signed acknowledgement in the contract.

420 Section 6. Section 507.055, Florida Statutes, is created to  
421 read:

422 507.055 Required disclosure and acknowledgment of rights  
423 and remedies.—Before executing a contract for service for a  
424 move, a mover must provide to a prospective shipper all of the  
425 following:

426 (1) The publication required under s. 507.054.

427 (2) A concise, easy-to-read, and accurate binding estimate  
428 required under s. 507.05(3).

429 Section 7. Subsections (1) and (3) of section 507.06,  
430 Florida Statutes, are amended, and subsection (4) is added to  
431 that section, to read:

432 507.06 Delivery and storage of household goods.—

433 (1) On the agreed upon delivery date or within the



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434 timeframe specified in the contract for service, a mover must  
435 relinquish household goods to a shipper and must place the  
436 household goods inside a shipper's dwelling or, if directed by  
437 the shipper, inside a storehouse or warehouse that is owned or  
438 rented by the shipper or the shipper's agent, unless the shipper  
439 has not tendered payment pursuant to s. 507.065 in the amount  
440 specified in a written contract or estimate signed and dated by  
441 the shipper. This requirement may be waived by the shipper. A  
442 mover may not, under any circumstances, refuse to relinquish  
443 prescription medicines and household goods for use by children,  
444 including children's furniture, clothing, or toys, under any  
445 circumstances.

446 (3) A mover that lawfully fails to relinquish a shipper's  
447 household goods may place the goods in storage until payment in  
448 accordance with s. 507.065 is tendered; however, the mover must  
449 notify the shipper of the location where the goods are stored  
450 and the amount due within 5 days after receipt of a written  
451 request for that information from the shipper, which request  
452 must include the address where the shipper may receive the  
453 notice. A mover may not require a prospective shipper to waive  
454 any rights or requirements under this section.

455 (4) If a mover becomes aware that it will be unable to  
456 perform either the pickup or the delivery of household goods on  
457 the date agreed upon or during the timeframe specified in the  
458 contract for service due to circumstances not anticipated by the  
459 contract, the mover shall notify the shipper of the delay and  
460 advise the shipper of the amended date or timeframe within which  
461 the mover expects to pick up or deliver the household goods in a  
462 timely manner.



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463 Section 8. Section 507.065, Florida Statutes, is created to  
464 read:

465 507.065 Payment.-

466 (1) Except as provided in s. 507.05(3), the maximum amount  
467 that a mover may charge before relinquishing household goods to  
468 a shipper is the exact amount of the binding estimate, unless  
469 waived by the shipper, plus charges for any additional services  
470 requested or agreed to in writing by the shipper after the  
471 contract for service was issued and for impracticable  
472 operations, if applicable.

473 (2) A mover must bill a shipper for any charges assessed  
474 under this chapter which are not collected upon delivery of  
475 household goods at their destination within 15 days after such  
476 delivery. A mover may assess a late fee for any uncollected  
477 charges if the shipper fails to make payment within 30 days  
478 after receipt of the bill.

479 Section 9. Subsections (1), (4), and (5) and paragraphs (a)  
480 and (b) of subsection (6), of section 507.07, Florida Statutes,  
481 are amended, to read:

482 507.07 Violations.-It is a violation of this chapter:

483 (1) To operate conduct business as a mover or moving  
484 broker, or advertise to engage in violation the business of  
485 moving or fail to comply with ss. 507.03-507.10, or any other  
486 requirement under this chapter offering to move, without being  
487 registered with the department.

488 (4) To increase the contracted cost fail to honor and  
489 comply with all provisions of the contract for moving services  
490 in any way other than provided for in this chapter or bill of  
491 lading regarding the purchaser's rights, benefits, and



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492 ~~privileges thereunder.~~

493 (5) To withhold delivery of household goods or in any way  
494 hold household goods in storage against the expressed wishes of  
495 the shipper if payment has been made as delineated in the  
496 estimate or contract for services, or pursuant to this chapter.

497 ~~(6)(a) To include in any contract any provision purporting~~  
498 ~~to waive or limit any right or benefit provided to shippers~~  
499 ~~under this chapter.~~

500 (a)(b) Unless expressly authorized by this chapter, to seek  
501 or solicit a waiver or acceptance of limitation from a shipper  
502 concerning rights or benefits provided under this chapter.

503 Section 10. Section 507.09, Florida Statutes, is amended to  
504 read:

505 507.09 Administrative remedies; penalties.-

506 (1) The department may enter an order doing one or more of  
507 the following if the department finds that a mover or moving  
508 broker, or a person employed or contracted by a mover or broker,  
509 has violated or is operating in violation of this chapter or the  
510 rules or orders issued pursuant to this chapter:

511 (a) Issuing a notice of noncompliance under s. 120.695.

512 (b) Imposing an administrative fine in the Class II  
513 category pursuant to s. 570.971 for each act or omission.

514 (c) Directing that the person cease and desist specified  
515 activities.

516 (d) Refusing to register or revoking or suspending a  
517 registration.

518 (e) Placing the registrant on probation, subject to the  
519 conditions specified by the department.

520 (2) The department shall, upon notification and subsequent



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521 written verification by a law enforcement agency, a court, a  
522 state attorney, or the Department of Law Enforcement,  
523 immediately suspend a registration or the processing of an  
524 application for a registration if the registrant, applicant, or  
525 an officer or director of the registrant or applicant is  
526 formally charged with a crime involving fraud, theft, larceny,  
527 embezzlement, or fraudulent conversion or misappropriation of  
528 property or a crime arising from conduct during a movement of  
529 household goods until final disposition of the case or removal  
530 or resignation of that officer or director.

531 (3) The administrative proceedings that which could result  
532 in the entry of an order imposing any of the penalties specified  
533 in subsection (1) or subsection (2) are governed by chapter 120.

534 ~~(3) The department may adopt rules under ss. 120.536(1) and~~  
535 ~~120.54 to administer this chapter.~~

536 Section 11. Subsection (4) of section 507.10, Florida  
537 Statutes, is amended to read:

538 507.10 Civil penalties; remedies.—

539 (4) Except as expressly authorized by this chapter, any  
540 provision in a contract for services or bill of lading from a  
541 mover or moving broker that purports to waive, limit, restrict,  
542 or avoid any of the duties, obligations, or prescriptions of the  
543 mover or broker, as provided in this chapter, is void.

544 Section 12. Section 507.11, Florida Statutes, is amended to  
545 read:

546 507.11 Criminal penalties.—

547 (1) The refusal of a mover or a mover's employee, agent, or  
548 contractor to comply with an order from a law enforcement  
549 officer to relinquish a shipper's household goods after the



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550 officer determines that the shipper has tendered payment in  
551 accordance with s. 507.065 of the amount of a written estimate  
552 or contract, or after the officer determines that the mover did  
553 not produce a signed estimate or contract for service upon which  
554 demand is being made for payment, is a felony of the third  
555 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
556 775.084. A mover's compliance with an order from a law  
557 enforcement officer to relinquish household goods to a shipper  
558 is not a waiver or finding of fact regarding any right to seek  
559 further payment from the shipper.

560 (2) Except as provided in subsection (1), any person or  
561 business that violates this chapter commits a misdemeanor of the  
562 first degree, punishable as provided in s. 775.082 or s.  
563 775.083.

564 Section 13. Section 507.14, Florida Statutes, is created  
565 to read:

566 507.14 Rulemaking.—The department shall adopt rules to  
567 administer this chapter.

568 Section 14. This act shall take effect July 1, 2015.

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/CS/SB 798

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Commerce and Tourism Committee; and Senator Lee

SUBJECT: Household Moving Services

DATE: April 20, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Blizzard</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Blizzard</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 798 broadens protections for consumers who use intrastate moving services (shippers) by:

- Providing for a required insurance protection plan for shippers' moved goods;
- Requiring a binding estimate of the cost of services to be provided by the mover; and
- Clarifying what payment a mover can demand prior to returning the moved goods to the shipper.

The bill has an insignificant fiscal impact on state funds.

The bill provides an effective date of July 1, 2015.

**II. Present Situation:**

Chapter 507, F.S., governs the loading, transportation, shipment, unloading, and affiliated storage of household goods as part of intrastate household moves. The chapter applies to any mover or moving broker engaged in intrastate transportation or shipment of household goods originating and terminating in the state.<sup>1</sup> These regulations co-exist with federal law, which governs interstate moving of household goods.

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<sup>1</sup> Section 507.02, F.S.

Section 507.01(9), F.S., defines “mover” as a person who, for compensation, contracts for or engages in the loading, transportation, shipment, or unloading of household goods as part of a household move.<sup>2</sup> A “moving broker” arranges for another person to load, transport, ship, or unload household goods as part of a household move or refers a shipper to a mover by telephone, postal, or electronic mail, website, or other means.<sup>3</sup>

Section 507.03, F.S., requires any mover or moving broker who wishes to do business in Florida to register annually with the Department of Agriculture and Consumer Services (DACS). As of March 2015, 1,037 movers and 12 moving brokers were registered.<sup>4</sup> In order to obtain a registration certificate, the mover or moving broker must file an application, pay a \$300 annual registration fee, and meet certain statutory qualifications, including proof of insurance coverage.<sup>5</sup>

### **Insurance Coverage and Liability Limitations**

Section 507.04, F.S., requires movers and moving brokers to maintain liability and motor vehicle insurance. A mover who operates more than two vehicles is required to maintain liability insurance of at least \$10,000 per shipment, and not less than 60 cents per pound, per article.<sup>6</sup> Movers who operate fewer than two vehicles are required only to carry either a performance bond or a \$25,000 certificate of deposit in lieu of liability insurance.<sup>7</sup>

Any contractual limitation to a mover’s liability for loss incurred to a shipper’s goods must be disclosed in writing to the shipper, along with the valuation rate, but a mover’s attempt to limit its liability beyond the minimum 60 cents per pound, per article rate is void under s. 507.04(4), F.S. The mover must inform the shipper of the opportunity to purchase valuation coverage, if the mover offers such additional insurance.<sup>8</sup>

### **Violations and Penalties**

Section 507.05, F.S., requires an intrastate mover to provide an estimate and contract to the shipper before commencing the move. Should a dispute arise over payment or costs, s. 507.06, F.S., provides that the mover may place the shipper’s goods in a storage unit until payment is tendered. Because of ambiguity regarding what payment may legally be demanded, some shippers have been taken advantage of by deceptive or fraudulent moving practices.<sup>9</sup> Often, moving fraud manifests as an increased fee assessed by the mover, who then refuses to relinquish the shipper’s goods until the inflated price has been paid in full.

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<sup>2</sup> Section 507.01(9), F.S.

<sup>3</sup> Section 507.01(10), F.S.

<sup>4</sup> DACS, *SB 798 Agency Analysis* (February 24, 2015), on file with the Senate Commerce and Tourism Committee; Interview with DACS staff, March 17, 2015.

<sup>5</sup> Section 507.03(1), F.S.

<sup>6</sup> Section 507.04(4), F.S.

<sup>7</sup> Section 507.04(1)(b), F.S.

<sup>8</sup> Section 507.04(4), F.S.

<sup>9</sup> According to the Federal Motor Carrier Safety Administration (FMCSA), Florida is a hot spot for moving fraud. See, e.g. Christina Hernandez, *3 South Florida Moving Companies Accused of Holding Customer Shipments Hostage* (November 26, 2013), available at <http://www.nbcmiami.com/news/local/3-South-Florida-Moving-Companies-Accused-of-Holding-Customer-Shipments-Hostage-233525971.html> (last accessed March 16, 2015).

While administrative, civil, and criminal penalties exist in ch. 507, F.S., for such fraudulent moving practices and other violations, the aggrieved shipper is not guaranteed the return of his or her goods until after such remedies have been finalized.

### **Local Ordinances and Regulations**

Municipalities and counties may adopt local ordinances or regulations relating to the moving of household goods in addition to the state regulations required by statute.<sup>10</sup> Broward, Miami-Dade, Palm Beach, Hillsborough, and Pinellas counties currently have such ordinances. Movers or moving brokers whose principal place of business is located in a county or municipality with such an ordinance are required to register under local and state laws. State law also allows for local taxes, fees, and bonding related to movers and moving brokers, so long as any local registration fees are reasonable and do not exceed the cost of administering the ordinance or regulation.<sup>11</sup>

## **III. Effect of Proposed Changes:**

### **Definitions and Legislative Intent**

**Section 1** defines terms used in the bill, deletes the definition of “estimate” (but provides for a binding estimate in later sections). Additionally, “personal laborers” who assist shippers exclusively with the loading or unloading of their household goods are excluded from the definition of “mover.”

**Section 2** provides that the bill is intended to provide consistency and transparency in moving practices.

### **Insurance Requirement**

**Section 3** clarifies that movers must maintain current and valid *cargo* liability insurance coverage. The bill also removes the 60 cents per pound, per article minimum liability insurance requirement for the loss or damage of household goods, but adds a requirement that a mover place valuation coverage<sup>12</sup> equal to the cost of repair or replacement of the shipper’s goods, unless such coverage is waived by the shipper. Valuation coverage can be more valuable to shippers than liability insurance in instances of loss of relatively light items, e.g., electronics, are lost or damaged during the move because they will be insured based on value rather than weight.

### **Before the Move**

**Section 6** requires a mover to provide a prospective shipper with an informational publication (see section 5) and a binding estimate (see section 4) prior to entering into any contract for moving services.

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<sup>10</sup> Section 507.09, F.S.

<sup>11</sup> Section 507.09, F.S.

<sup>12</sup> Valuation coverage will only cover loss caused by the mover’s fault, whereas moving coverage, available through an insurance agent, will cover loss caused by “acts of God.”

<https://www.protectyourmove.gov/consumer/awareness/valuation/valuation-insurance.htm>.

**Section 5** creates s. 507.054, F.S., which mandates the DACS to prepare a publication entitled “Your Rights and Responsibilities When You Move. Furnished by Your Mover, as Required by Florida Law.” This booklet, distributed by movers, must:

- Describe the shipper’s and mover’s rights and responsibilities, as well as available remedies;
- Bear an attestation signed by both parties signifying that they have read and understand the document as well as the criminal and administrative penalties for specific violations;
- Include a warning of the risks of shipping sentimental or family heirlooms;
- Be attached to the general contract for moving services as an integral part thereof; and
- Measure at least 36 square inches.

The shipper must acknowledge receipt of this publication by signed acknowledgement in the contract.

The binding estimate, described in **section 4** of the bill, must be based on the mover’s physical survey of the household goods to be moved. In addition, it must:

- Be provided to the shipper before the execution of a contract for services, and at least 48 hours before the move;
- Include at least an itemized total cost for the loading, transport or shipment, and unloading of household goods and accessorial services;
- Provide a table of measures used by the mover in preparing the estimate;
- Evince the date the estimate was prepared and the proposed date of the move;
- State that the estimate is binding on the mover and shipper;
- Identify accepted forms of payment; and
- Bear the signature of both parties.

A physical survey may only be waived if the goods are outside a 50-mile radius from the mover or if the shipper waives the right by signed writing. A binding estimate must be provided in every move performed by a mover, but the 48-hour period between provision of the binding estimate, and the move may be waived by a shipper’s signed or electronic acknowledgement in the contract.

The waiting period between the provision of a binding estimate and the move may be waived if the shipper contacts the mover within 48 hours of the move.

The binding estimate may not be amended by the mover within 48 hours of the move unless the shipper requests additional services or unless both parties agree to amend the estimate.

A mover and shipper must enter into a contract for services prior to the performance of any services. In accordance with **section 4** of the bill, the contract must include:

- Contact information of both parties;
- Date contract was prepared and date of the move;
- Where the goods will be stored, including in the case of a contract dispute;
- A copy of the binding estimate;
- Total cost to shipper that may be collected by the mover at delivery, and terms of the payment; and

- Acceptable forms of payment.

The mover must retain a copy of the binding estimate and the contract for one year after their preparation dates and keep a copy with him or her during the entire move, should a dispute over cost or payment arise.

### **Payment and Delivery of Goods**

**Sections 7 and 8** provide for notice requirements if the mover is unable to perform the requested services on the date reflected in the contract. Additionally, the bill requires a mover to relinquish a shipper's goods inside the location directed by the shipper in a timely manner, if the shipper has paid the exact amount of the binding estimate; paid any additional charges properly agreed to by both parties in writing, if applicable; and paid any charges related to impracticable operations, if applicable.

**Section 8** provides that a mover may require payment in excess of the binding estimate prior to his or her relinquishment of the household goods, if:

- Prior to beginning the move, the parties negotiate a revised binding estimate to reflect extra services requested by the shipper.
- The shipper, after at least a one-hour cool off period, consents by written contract addendum to the mover's performance of (and charging for) additional services that the mover has advised are essential to the move.
- After execution of the contract, the shipper requests additional services and the mover informs the shipper of associated charges in writing.
- Impracticable operations require additional services to be performed by the mover.

The mover cannot demand payment of any additional charges assessed under ch. 507, F.S., prior to relinquishing the shipper's household goods, but may collect payment by billing the shipper within 15 days after delivery of the goods. Payment for legitimate charges must be paid by the shipper within 30 days after receipt of the bill.

### **Violations and Penalties**

**Section 9** prohibits increasing the contracted cost of the move, if not in accordance with ch. 507, F.S., improperly withholding a shipper's goods, and otherwise failing to comply with chapter 507.

**Section 10** creates administrative penalties for violations of ch. 507, F.S., including the suspension of a mover's license if the company's officer or director is charged with a crime involving fraud, theft, larceny, embezzlement, or fraudulent conversion or misappropriation of property, or a crime arising from conduct during movement of household goods.

**Section 11** makes conforming changes.

**Section 12** creates criminal penalties for violations of ch. 507, F.S., including penalizing as a third degree felony any mover's refusal to relinquish a shipper's goods after a law enforcement officer determines that payment has been made in accordance with this chapter.

**Rulemaking Authority**

**Section 13** grants the DACS rulemaking authority to administer this bill.

**Effective Date**

**Section 14** creates an effective date of July 1, 2015.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

The public may see a faster resolution to moving disputes that arise due to the provisions in CS/CS/SB 798.

**C. Government Sector Impact:**

The bill requires the DACS to prepare a publication that includes a summary of the rights and responsibilities of, and remedies available to, movers and shippers. The DACS indicates the cost of this publication can be absorbed within existing resources.

The Criminal Justice Impact Conference (CJIC) considered SB 798, which had the same criminal penalties as CS/CS/SB 798, and determined that SB 798 would have a positive insignificant impact (less than 10 per year) on prison beds.<sup>13</sup>

**VI. Technical Deficiencies:**

None.

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<sup>13</sup> Florida Criminal Justice Impact Conference, *March 11, 2015 Results*, (March 11, 2015), available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/index.cfm> (last accessed March 19, 2015).

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 507.01, 507.02, 507.04, 507.05, 507.06, 507.07, 507.09, 507.10, and 507.11.

This bill creates the following sections of the Florida Statutes: 507.054, 507.055, 507.065, 507.066, and 507.14.

**IX. Additional Information:**

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

**CS/CS by Appropriations on April 16, 2015:**

The committee substitute:

- Defines “personal laborers” as individuals hired directly by shippers to assist in the moving of household goods, and removes them from the requirements of the bill;
- Requires movers to provide valuation coverage, equal to the cost of repair or replacement of the shipper’s goods, unless waived in writing by the shipper;
- Allows a shipper to waive the binding estimate by signed or electronic acknowledgement;
- Allows shippers to waive the 48-hour waiting period between provision of a binding estimate and the move, if the shipper initially contacts the mover within the 48-hour waiting period; and
- Deletes provisions relating to payment in case of partial or total loss of goods by the mover.

**CS by Commerce and Tourism on March 23, 2015:**

The committee substitute maintains the requirement that moving brokers provide proof of insurance to the DACS;

- Removes requirement that movers publish a tariff;
- Allows shippers to waive the 48-hour waiting period between provision of a binding estimate and the move; and
- Clarifies what costs may be collected by the mover upon delivery of the moved household goods.

- B. **Amendments:**

None.

By the Committee on Commerce and Tourism; and Senator Lee

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1 A bill to be entitled  
 2 An act relating to household moving services; amending  
 3 s. 507.01, F.S.; defining terms; amending s. 507.02,  
 4 F.S.; clarifying intent; amending s. 507.04, F.S.;  
 5 removing a prohibition that a mover may not limit its  
 6 liability for the loss or damage of household goods to  
 7 a specified valuation rate; removing a requirement  
 8 that a mover disclose a liability limitation when the  
 9 mover limits its liability for a shipper's goods;  
 10 requiring a mover to offer valuation coverage to  
 11 compensate a shipper for the loss or damage of the  
 12 shipper's household goods that are lost or damaged  
 13 during a household move; requiring the valuation  
 14 coverage to indemnify the shipper for at least the  
 15 cost of replacement goods less depreciated value;  
 16 revising the time at which the mover must disclose the  
 17 terms of the coverage to the shipper in writing;  
 18 revising the information that the disclosure must  
 19 provide to the shipper; amending s. 507.05, F.S.;  
 20 requiring a mover to conduct a physical survey and  
 21 provide a binding estimate in certain circumstances  
 22 unless waived by the shipper; requiring specified  
 23 content for the binding estimate; authorizing the  
 24 mover to provide a maximum one-time fee for providing  
 25 a binding estimate; requiring the mover and shipper to  
 26 sign the estimate; requiring the mover to provide the  
 27 shipper with a copy of the estimate at the time of  
 28 signature; providing that a binding estimate may only  
 29 be amended under certain circumstances; authorizing a

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30 mover to charge more than the binding estimate in  
 31 certain circumstances; requiring a mover to allow a  
 32 shipper to consider whether additional services are  
 33 needed; requiring a mover to retain a copy of the  
 34 binding estimate for a specified period; requiring a  
 35 mover to provide a contract for service to the shipper  
 36 before providing moving or accessorial services;  
 37 requiring a driver to have possession of the contract  
 38 before leaving the point of origin; requiring a mover  
 39 to retain a contract of service for a specified  
 40 period; creating s. 507.054, F.S.; requiring the  
 41 department to prepare a publication that summarizes  
 42 the rights and responsibilities of, and remedies  
 43 available to, movers and shippers; requiring the  
 44 publication to meet certain specifications; creating  
 45 s. 507.055, F.S.; requiring a mover to provide certain  
 46 disclosures to a prospective shipper; amending s.  
 47 507.06, F.S.; requiring a mover to tender household  
 48 goods for delivery on the agreed upon delivery date or  
 49 within a specified period unless waived by the  
 50 shipper; requiring a mover to notify and provide  
 51 certain information to a shipper if the mover is  
 52 unable to perform delivery on the agreed upon date or  
 53 during the specified period; creating s. 507.065,  
 54 F.S.; providing a maximum amount that a mover may  
 55 charge a shipper; requiring a mover to bill a shipper  
 56 for certain amounts within a specified period;  
 57 creating s. 507.066, F.S.; specifying the amount of  
 58 payment that the mover may collect upon delivery of

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59 partially lost or destroyed household goods; requiring  
 60 a mover to determine the proportion of lost or  
 61 destroyed household goods; prohibiting a mover from  
 62 collecting or requiring a shipper to pay any charges  
 63 other than specific valuation rate charges if a  
 64 household goods shipment is totally lost or destroyed  
 65 in transit; amending s. 507.07, F.S.; providing that  
 66 it is a violation of ch. 507, F.S., to fail to comply  
 67 with specified provisions; providing that it is a  
 68 violation of ch. 507, F.S., to increase the contracted  
 69 cost for moving services in certain circumstances;  
 70 conforming a provision to a change made by this act;  
 71 amending s. 507.09, F.S.; requiring the department,  
 72 upon verification by certain entities, to immediately  
 73 suspend a registration or the processing of an  
 74 application for a registration in certain  
 75 circumstances; amending s. 507.11, F.S.; providing  
 76 criminal penalties; creating s. 507.14, F.S.;

77 requiring the department to adopt rules; providing an  
 78 effective date.

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

81  
 82 Section 1. Present subsections (6) through (9) of section  
 83 507.01, Florida Statutes, are amended, and new subsection (8) is  
 84 added to that section, to read:

85 507.01 Definitions.—As used in this chapter, the term:

86 ~~(6) "Estimate" means a written document that sets forth the~~  
 87 ~~total costs and describes the basis of those costs, relating to~~

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88 ~~a shipper's household move, including, but not limited to, the~~  
 89 ~~loading, transportation or shipment, and unloading of household~~  
 90 ~~goods and accessorial services.~~  
 91 (6)-(7) "Household goods" or "goods" means personal effects  
 92 or other personal property commonly found in a home, personal  
 93 residence, or other dwelling, including, but not limited to,  
 94 household furniture. The term does not include freight or  
 95 personal property moving to or from a factory, store, or other  
 96 place of business.  
 97 (7)-(8) "Household move" or "move" means the loading of  
 98 household goods into a vehicle, moving container, or other mode  
 99 of transportation or shipment; the transportation or shipment of  
 100 those household goods; and the unloading of those household  
 101 goods, when the transportation or shipment originates and  
 102 terminates at one of the following ultimate locations,  
 103 regardless of whether the mover temporarily stores the goods  
 104 while en route between the originating and terminating  
 105 locations:  
 106 (a) From one dwelling to another dwelling;  
 107 (b) From a dwelling to a storehouse or warehouse that is  
 108 owned or rented by the shipper or the shipper's agent; or  
 109 (c) From a storehouse or warehouse that is owned or rented  
 110 by the shipper or the shipper's agent to a dwelling.  
 111 (8) "Impracticable operations" means conditions that arise  
 112 after execution of a contract for household moving services  
 113 which make it impractical for a mover to perform pickup or  
 114 delivery services for a household move.  
 115 (9) "Additional Services" means any additional  
 116 transportation of household goods that is performed by a mover,

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117 is not specifically included in a binding estimate, and which  
 118 results in a charge to the shipper.

119 (10){9} "Mover" means a person who, for compensation,  
 120 contracts for or engages in the loading, transportation or  
 121 shipment, or unloading of household goods as part of a household  
 122 move. The term does not include a postal, courier, envelope, or  
 123 package service that does not advertise itself as a mover or  
 124 moving service.

125 Section 2. Subsection (3) of section 507.02, Florida  
 126 Statutes, is amended to read:

127 507.02 Construction; intent; application.—

128 (3) This chapter is intended to provide consistency and  
 129 transparency in moving practices and to secure the satisfaction  
 130 and confidence of shippers and members of the public when using  
 131 a mover.

132 Section 3. Subsections (1), (3), (4), and (5) of section  
 133 507.04, Florida Statutes, are amended to read:

134 507.04 Required insurance coverages; liability limitations;  
 135 valuation coverage.—

136 (1) CARGO LIABILITY INSURANCE.—

137 (a)1. Except as provided in paragraph (b), each mover  
 138 operating in this state must maintain current and valid cargo  
 139 liability insurance coverage of at least \$10,000 per shipment  
 140 for the loss or damage of household goods resulting from the  
 141 negligence of the mover or its employees or agents.

142 2. The mover must provide the department with evidence of  
 143 liability insurance coverage before the mover is registered with  
 144 the department under s. 507.03. All insurance coverage  
 145 maintained by a mover must remain in effect throughout the

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146 mover's registration period. A mover's failure to maintain  
 147 insurance coverage in accordance with this paragraph constitutes  
 148 an immediate threat to the public health, safety, and welfare.  
 149 ~~If a mover fails to maintain insurance coverage, the department~~  
 150 ~~may immediately suspend the mover's registration or eligibility~~  
 151 ~~for registration, and the mover must immediately cease operating~~  
 152 ~~as a mover in this state. In addition, and notwithstanding the~~  
 153 ~~availability of any administrative relief pursuant to chapter~~  
 154 ~~120, the department may seek from the appropriate circuit court~~  
 155 ~~an immediate injunction prohibiting the mover from operating in~~  
 156 ~~this state until the mover complies with this paragraph, a civil~~  
 157 ~~penalty not to exceed \$5,000, and court costs.~~

158 (b) A mover that operates two or fewer vehicles, in lieu of  
 159 maintaining the cargo liability insurance coverage required  
 160 under paragraph (a), may, and each moving broker must, maintain  
 161 one of the following alternative coverages:

162 1. A performance bond in the amount of \$25,000, for which  
 163 the surety of the bond must be a surety company authorized to  
 164 conduct business in this state; or

165 2. A certificate of deposit in a Florida banking  
 166 institution in the amount of \$25,000.

167  
 168 The original bond or certificate of deposit must be filed with  
 169 the department and must designate the department as the sole  
 170 beneficiary. The department must use the bond or certificate of  
 171 deposit exclusively for the payment of claims to consumers who  
 172 are injured by the fraud, misrepresentation, breach of contract,  
 173 misfeasance, malfeasance, or financial failure of the mover or  
 174 moving broker or by a violation of this chapter by the mover or

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175 broker. Liability for these injuries may be determined in an  
 176 administrative proceeding of the department or through a civil  
 177 action in a court of competent jurisdiction. However, claims  
 178 against the bond or certificate of deposit must only be paid, in  
 179 amounts not to exceed the determined liability for these  
 180 injuries, by order of the department in an administrative  
 181 proceeding. The bond or certificate of deposit is subject to  
 182 successive claims, but the aggregate amount of these claims may  
 183 not exceed the amount of the bond or certificate of deposit.

184 (3) INSURANCE COVERAGES.—The insurance coverages required  
 185 under paragraph (1) (a) and subsection (2) must be issued by an  
 186 insurance company or carrier licensed to transact business in  
 187 this state under the Florida Insurance Code as designated in s.  
 188 624.01. The department shall require a mover to present a  
 189 certificate of insurance of the required coverages before  
 190 issuance or renewal of a registration certificate under s.  
 191 507.03. The department shall be named as a certificateholder in  
 192 the certificate and must be notified at least 10 days before  
 193 cancellation of insurance coverage. A mover's failure to  
 194 maintain insurance coverage constitutes an immediate threat to  
 195 the public health, safety, and welfare. If a mover fails to  
 196 maintain insurance coverage, the department may immediately  
 197 suspend the mover's registration or eligibility for  
 198 registration, and the mover must immediately cease operating as  
 199 a mover in this state. In addition, and notwithstanding the  
 200 availability of any administrative relief pursuant to chapter  
 201 120, the department may seek from the appropriate circuit court  
 202 an immediate injunction prohibiting the mover from operating in  
 203 this state until the mover complies with this paragraph, a civil

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204 penalty not to exceed \$5,000, and court costs.

205 (4) ~~LIABILITY LIMITATIONS; VALUATION RATES.~~ ~~A mover may not~~  
 206 ~~limit its liability for the loss or damage of household goods to~~  
 207 ~~a valuation rate that is less than 60 cents per pound per~~  
 208 ~~article. A provision of a contract for moving services is void~~  
 209 ~~if the provision limits a mover's liability to a valuation rate~~  
 210 ~~that is less than the minimum rate under this subsection. If a~~  
 211 ~~mover limits its liability for a shipper's goods, the mover must~~  
 212 ~~disclose the limitation, including the valuation rate, to the~~  
 213 ~~shipper in writing at the time that the estimate and contract~~  
 214 ~~for services are executed and before any moving or accessorial~~  
 215 ~~services are provided. The disclosure must also inform the~~  
 216 ~~shipper of the opportunity to purchase valuation coverage if the~~  
 217 ~~mover offers that coverage under subsection (5).~~

218 ~~(5) VALUATION COVERAGE.~~ ~~A mover shall~~ may offer valuation  
 219 coverage to compensate a shipper for the loss or damage of the  
 220 shipper's household goods that are lost or damaged during a  
 221 household move. ~~If a mover offers valuation coverage,~~ The  
 222 coverage must indemnify the shipper for at least the cost of  
 223 replacement of the goods less depreciated value ~~minimum~~  
 224 valuation rate required under subsection (4). The mover must  
 225 disclose the terms of the coverage to the shipper in writing  
 226 within ~~at the time that~~ the binding estimate and again when the  
 227 contract for services ~~is~~ are executed and before any moving or  
 228 accessorial services are provided. The disclosure must inform  
 229 the shipper of the cost of the valuation coverage, if any the  
 230 valuation rate of the coverage, ~~and the opportunity to reject~~  
 231 the coverage. If valuation coverage compensates a shipper for at  
 232 least the minimum valuation rate required under subsection (4),

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233 ~~the coverage satisfies the mover's liability for the minimum~~  
 234 ~~valuation rate.~~

235 Section 4. Section 507.05, Florida Statutes, is amended to  
 236 read:

237 507.05 Physical surveys, binding estimates, and contracts  
 238 for service. ~~Before providing any moving or accessorial~~  
 239 ~~services, a contract and estimate must be provided to a~~  
 240 ~~prospective shipper in writing, must be signed and dated by the~~  
 241 ~~shipper and the mover, and must include:~~

242 (1) PHYSICAL SURVEY. ~~A mover must conduct a physical survey~~  
 243 of the household goods to be moved and provide the prospective  
 244 shipper with a binding estimate of the cost of the move.

245 (2) WAIVER OF SURVEY. ~~A shipper may elect to waive the~~  
 246 physical survey, and such waiver must be in writing and signed  
 247 by the shipper before the household goods are loaded. The mover  
 248 shall retain a copy of the waiver as an addendum to the contract  
 249 for service.

250 (3) BINDING ESTIMATE. ~~Before executing a contract for~~  
 251 service for a household move, and at least 48 hours before the  
 252 scheduled time and date of a shipment of household goods, a  
 253 mover must provide a binding estimate of the total charges,  
 254 including, but not limited to, the loading, transportation or  
 255 shipment, and unloading of household goods and accessorial  
 256 services. The binding estimate shall be based on a physical  
 257 survey conducted pursuant to subsection (1), unless waived  
 258 pursuant to subsection (2).

259 (a) The shipper may waive the 48 hour waiting period and  
 260 such waiver must be made by signed acknowledgement in the  
 261 contract.

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262 (b) At a minimum, the binding estimate must include all of  
 263 the following:

264 1. The table of measures used by the mover or the mover's  
 265 agent in preparing the estimate.

266 2. The date the estimate was prepared and the proposed date  
 267 of the move, if any.

268 3. An itemized breakdown and description of services, and  
 269 the total cost to the shipper of loading, transporting or  
 270 shipping, unloading, and accessorial services.

271 4. A statement that the estimate is binding on the mover  
 272 and the shipper and that the charges shown apply only to those  
 273 services specifically identified in the estimate.

274 5. Identification of acceptable forms of payment.

275 (c) A mover may charge a one-time fee, not to exceed \$100,  
 276 for providing a binding estimate.

277 (d) The binding estimate must be signed by the mover and  
 278 the shipper, and a copy must be provided to the shipper by the  
 279 mover at the time that the estimate is signed.

280 (e) A binding estimate may only be amended by the mover  
 281 before the scheduled loading of household goods for shipment  
 282 when the shipper has requested additional services of the mover  
 283 not previously disclosed in the original binding estimate, or  
 284 upon mutual agreement of the mover and the shipper. Once a mover  
 285 begins to load the household goods for a move, failure to  
 286 execute a new binding estimate signifies the mover has  
 287 reaffirmed the original binding estimate.

288 (f) A mover may not collect more than the amount of the  
 289 binding estimate unless:

290 1. The shipper tenders additional household goods, requests

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291 additional services, or requires services that are not  
 292 specifically included in the binding estimate, in which case the  
 293 mover is not required to honor the estimate. If, despite the  
 294 addition of household goods or the need for additional services,  
 295 the mover chooses to perform the move, it must, before loading  
 296 the household goods, inform the shipper of the associated  
 297 charges in writing. The mover may require full payment at the  
 298 destination for the costs associated with the additional  
 299 requested services and the full amount of the original binding  
 300 estimate.

301 2. Upon issuance of the contract for services, the mover  
 302 advises the shipper, in advance of performing additional  
 303 services, including accessorial services, that such services are  
 304 essential to properly performing the move. The mover must allow  
 305 the shipper at least 1 hour to determine whether to authorize  
 306 the additional services.

307 a. If the shipper agrees to pay for the additional  
 308 services, the mover must execute a written addendum to the  
 309 contract for services, which must be signed by the shipper. The  
 310 addendum may be sent to the shipper by facsimile, e-mail,  
 311 overnight courier, or certified mail, with return receipt  
 312 requested. The mover must bill the shipper for the agreed upon  
 313 additional services within 15 days after the delivery of those  
 314 additional services pursuant to s. 507.06.

315 b. If the shipper does not agree to pay for the additional  
 316 services, the mover may perform and, pursuant to s. 507.06, bill  
 317 the shipper for those additional services necessary to complete  
 318 the delivery.

319 (g) A mover shall retain a copy of the binding estimate for

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320 each move performed for at least 1 year after its preparation  
 321 date as an attachment to the contract for service.

322 (4) CONTRACT FOR SERVICE.—Before providing any moving or  
 323 accessorial services, a mover must provide a contract for  
 324 service to the shipper, which the shipper must sign and date.

325 (a) At a minimum, the contract for service must include:

326 1.(4) The name, telephone number, and physical address  
 327 where the mover's employees are available during normal business  
 328 hours.

329 2.(2) The date the contract was ~~or~~ estimate is prepared and  
 330 the ~~any~~ proposed date of the move, if any.

331 3.(3) The name and address of the shipper, the addresses  
 332 where the articles are to be picked up and delivered, and a  
 333 telephone number where the shipper may be reached.

334 4.(4) The name, telephone number, and physical address of  
 335 any location where the household goods will be held pending  
 336 further transportation, including situations in which ~~where~~ the  
 337 mover retains possession of household goods pending resolution  
 338 of a fee dispute with the shipper.

339 5.(5) A binding estimate provided in accordance with s.  
 340 507.05—~~An itemized breakdown and description and total of all~~  
 341 ~~costs and services for loading, transportation or shipment,~~  
 342 ~~unloading, and accessorial services to be provided during a~~  
 343 ~~household move or storage of household goods.~~

344 6. The total charges owed by the shipper based on the  
 345 binding estimate and the terms and conditions for their payment,  
 346 including any required minimum payment.

347 7. If the household goods are transported under an  
 348 agreement to collect payment upon delivery, the maximum payment

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349 that the mover may demand at the time of delivery.

350 8.(6) Acceptable forms of payment, which must be clearly

351 and conspicuously disclosed to the shipper on the binding

352 estimate and the contract for services. A mover ~~must shall~~

353 accept at least ~~a minimum of~~ two of the three following forms of

354 payment:

355 a.~~(a)~~ Cash, cashier's check, money order, or traveler's

356 check;

357 b.~~(b)~~ Valid personal check, showing upon its face the name

358 and address of the shipper or authorized representative; or

359 c.~~(c)~~ Valid credit card, which shall include, but not be

360 limited to, Visa or MasterCard. ~~A mover must clearly and~~

361 conspicuously disclose to the shipper in the estimate and

362 contract for services the forms of payments the mover will

363 accept, including the forms of payment described in paragraphs

364 ~~(a)-(c).~~

365 (b) Each addendum to the contract for service is an

366 integral part of the contract.

367 (c) A copy of the contract for service must accompany the

368 household goods whenever they are in the mover's or the mover's

369 agent's possession. Before a vehicle that is being used for the

370 move leaves the point of origin, the driver responsible for the

371 move must have the contract for service in his or her

372 possession.

373 (d) A mover shall retain a contract for service for each

374 move it performs for at least 1 year after the date the contract

375 for service was signed.

376 Section 5. Section 507.054, Florida Statutes, is created to

377 read:

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378 507.054 Publication.-

379 (1) The department shall prepare a publication that

380 includes a summary of the rights and responsibilities of, and

381 remedies available to movers and shippers under this chapter.

382 The publication must include a statement that a mover's failure

383 to relinquish household goods as required by this chapter

384 constitutes a felony of the third degree, punishable as provided

385 in s. 775.082, s. 775.083, or s. 775.084, that any other

386 violation of this chapter constitutes a misdemeanor of the first

387 degree, punishable as provided in s. 775.082 or s. 775.083, and

388 that any violation of this chapter constitutes a violation of

389 the Florida Deceptive and Unfair Trade Practices Act. The

390 publication must also include a notice to the shipper about the

391 potential risks of shipping sentimental or family heirloom

392 items.

393 (2) A mover may provide exact copies of the department's

394 publication to shippers or may customize the color, design, and

395 dimension of the front and back covers of the standard

396 department publication. If the mover customizes the publication,

397 the customized publication must include the content specified in

398 subsection (1) and meet the following requirements:

399 (a) The font size used must be at least 10 points, with the

400 exception that the following must appear prominently on the

401 front cover in at least 12-point boldface type: "Your Rights and

402 Responsibilities When You Move. Furnished by Your Mover, as

403 Required by Florida Law."

404 (b) The size of the booklet must be at least 36 square

405 inches.

406 (3) The shipper must acknowledge receipt of the publication

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407 by signed acknowledgement in the contract.

408 Section 6. Section 507.055, Florida Statutes, is created to  
409 read:

410 507.055 Required disclosure and acknowledgment of rights  
411 and remedies.—Before executing a contract for service for a  
412 move, a mover must provide to a prospective shipper all of the  
413 following:

414 (1) The publication required under s. 507.054.

415 (2) A concise, easy-to-read, and accurate binding estimate  
416 required under s. 507.05(3).

417 Section 7. Subsections (1) and (3) of section 507.06,  
418 Florida Statutes, are amended, and subsection (4) is added to  
419 that section, to read:

420 507.06 Delivery and storage of household goods.—

421 (1) On the agreed upon delivery date or within the  
422 timeframe specified in the contract for service, a mover must  
423 relinquish household goods to a shipper and must place the  
424 household goods inside a shipper's dwelling or, if directed by  
425 the shipper, inside a storehouse or warehouse that is owned or  
426 rented by the shipper or the shipper's agent, unless the shipper  
427 has not tendered payment pursuant to ss. 507.065 or 507.066 ~~in~~  
428 the amount specified in a written contract or estimate signed  
429 and dated by the shipper. This requirement may be waived by the  
430 shipper. A mover may not, under any circumstances, refuse to  
431 relinquish prescription medicines and household goods for use by  
432 children, including children's furniture, clothing, or toys,  
433 under any circumstances.

434 (3) A mover that lawfully fails to relinquish a shipper's  
435 household goods may place the goods in storage until payment in

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436 accordance with ss. 507.065 or 507.066 is tendered; however, the  
437 mover must notify the shipper of the location where the goods  
438 are stored and the amount due within 5 days after receipt of a  
439 written request for that information from the shipper, which  
440 request must include the address where the shipper may receive  
441 the notice. A mover may not require a prospective shipper to  
442 waive any rights or requirements under this section.

443 (4) If a mover becomes aware that it will be unable to  
444 perform either the pickup or the delivery of household goods on  
445 the date agreed upon or during the timeframe specified in the  
446 contract for service due to circumstances not anticipated by the  
447 contract, the mover shall notify the shipper of the delay and  
448 advise the shipper of the amended date or timeframe within which  
449 the mover expects to pick up or deliver the household goods in a  
450 timely manner.

451 Section 8. Section 507.065, Florida Statutes, is created to  
452 read:

453 507.065 Payment.—

454 (1) Except as provided in s. 507.05(3), the maximum amount  
455 that a mover may charge before relinquishing household goods to  
456 a shipper is the exact amount of the binding estimate, plus  
457 charges for any additional services requested or agreed to in  
458 writing by the shipper after the contract for service was issued  
459 and for impracticable operations, if applicable.

460 (2) A mover must bill a shipper for any charges assessed  
461 under this chapter which are not collected upon delivery of  
462 household goods at their destination within 15 days after such  
463 delivery. A mover may assess a late fee for any uncollected  
464 charges if the shipper fails to make payment within 30 days

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465 after receipt of the bill.

466 Section 9. Section 507.066, Florida Statutes, is created to  
467 read:

468 507.066 Collection for losses.—

469 (1) PARTIAL LOSSES.—A mover may collect an adjusted payment  
470 from a shipper if part of a shipment of household goods is lost  
471 or destroyed.

472 (a) A mover may collect the following at delivery:

473 1. A prorated percentage of the binding estimate. The  
474 prorated percentage must equal the percentage of the weight of  
475 the portion of the household goods delivered relative to the  
476 total weight of the household goods that were ordered to be  
477 moved.

478 2. Charges for any additional services requested by the  
479 shipper after the contract for service was issued.

480 3. Charges for impracticable operations, if applicable;  
481 however, such charges may not exceed 15 percent of all other  
482 charges due at delivery.

483 4. Any specific valuation rate charges due, as provided in  
484 s. 507.04(4), if applicable.

485 (b) The mover may bill and collect from the shipper any  
486 remaining charges not collected at the time of delivery in  
487 accordance with s. 507.065. This paragraph does not apply if the  
488 loss or destruction of household goods occurred as a result of  
489 an act or omission of the shipper.

490 (c) A mover must determine, at its own expense, the  
491 proportion of the household goods, based on actual or  
492 constructive weight, which were lost or destroyed in transit.

493 (2) TOTAL LOSSES.—A mover may not collect, or require a

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494 shipper to pay, freight charges, including a charge for  
495 accessorial services, when a household goods shipment is lost or  
496 destroyed in transit; however, the mover may collect a specific  
497 valuation rate charge due, as provided in s. 507.04(4). This  
498 subsection does not apply if the loss or destruction was due to  
499 an act or omission of the shipper.

500 (3) SHIPPER'S RIGHTS.—A shipper's rights under this section  
501 are in addition to any other rights the shipper may have with  
502 respect to household goods that were lost or destroyed while in  
503 the custody of the mover or the mover's agent. These rights also  
504 apply regardless of whether the shipper exercises his or her  
505 right to obtain a refund of the portion of a mover's published  
506 freight charges corresponding to the portion of the lost or  
507 destroyed household goods, including any charges for accessorial  
508 services, at the time the mover disposes of claims for loss,  
509 damage, or injury to the household goods.

510 Section 10. Subsections (1), (4), and (5) of section  
511 507.07, Florida Statutes, are amended, to read:

512 507.07 Violations.—It is a violation of this chapter:

513 (1) To ~~operate~~ ~~conduct business as a mover or moving~~  
514 ~~broker, or advertise to engage in violation the business of~~  
515 ~~moving or fail to comply with ss. 507.03-507.10, or any other~~  
516 ~~requirement under this chapter offering to move, without being~~  
517 ~~registered with the department.~~

518 (4) To ~~increase the contracted cost fail to honor and~~  
519 ~~comply with all provisions of the contract for moving services~~  
520 ~~in any way other than provided for in this chapter or bill of~~  
521 ~~lading regarding the purchaser's rights, benefits, and~~  
522 ~~privileges thereunder.~~

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523 (5) To withhold delivery of household goods or in any way  
524 hold household goods in storage against the expressed wishes of  
525 the shipper if payment has been made as delineated in the  
526 estimate or contract for services, or pursuant to this chapter.

527 Section 11. Section 507.09, Florida Statutes, is amended to  
528 read:

529 507.09 Administrative remedies; penalties.—

530 (1) The department may enter an order doing one or more of  
531 the following if the department finds that a mover or moving  
532 broker, or a person employed or contracted by a mover or broker,  
533 has violated or is operating in violation of this chapter or the  
534 rules or orders issued pursuant to this chapter:

535 (a) Issuing a notice of noncompliance under s. 120.695.

536 (b) Imposing an administrative fine in the Class II  
537 category pursuant to s. 570.971 for each act or omission.

538 (c) Directing that the person cease and desist specified  
539 activities.

540 (d) Refusing to register or revoking or suspending a  
541 registration.

542 (e) Placing the registrant on probation, subject to the  
543 conditions specified by the department.

544 (2) The department shall, upon notification and subsequent  
545 written verification by a law enforcement agency, a court, a  
546 state attorney, or the Department of Law Enforcement,  
547 immediately suspend a registration or the processing of an  
548 application for a registration if the registrant, applicant, or  
549 an officer or director of the registrant or applicant is  
550 formally charged with a crime involving fraud, theft, larceny,  
551 embezzlement, or fraudulent conversion or misappropriation of

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552 property or a crime arising from conduct during a movement of  
553 household goods until final disposition of the case or removal  
554 or resignation of that officer or director.

555 (3) The administrative proceedings ~~that~~ which could result  
556 in the entry of an order imposing any of the penalties specified  
557 in subsection (1) or subsection (2) are governed by chapter 120.

558 ~~(3) The department may adopt rules under ss. 120.536(1) and~~  
559 ~~120.54 to administer this chapter.~~

560 Section 12. Section 507.11, Florida Statutes, is amended to  
561 read:

562 507.11 Criminal penalties.—

563 (1) The refusal of a mover or a mover's employee, agent, or  
564 contractor to comply with an order from a law enforcement  
565 officer to relinquish a shipper's household goods after the  
566 officer determines that the shipper has tendered payment in  
567 accordance with ss. 507.065 and 507.066 ~~of the amount of a~~  
568 ~~written estimate or contract~~, or after the officer determines  
569 that the mover did not produce a signed estimate or contract for  
570 service upon which demand is being made for payment, is a felony  
571 of the third degree, punishable as provided in s. 775.082, s.  
572 775.083, or s. 775.084. A mover's compliance with an order from  
573 a law enforcement officer to relinquish household goods to a  
574 shipper is not a waiver or finding of fact regarding any right  
575 to seek further payment from the shipper.

576 (2) Except as provided in subsection (1), any person or  
577 business that violates this chapter commits a misdemeanor of the  
578 first degree, punishable as provided in s. 775.082 or s.  
579 775.083.

580 Section 13. Section 507.14, Florida Statutes, is created

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581 to read:

582 507.14 Rulemaking.~~The department shall adopt rules to~~  
583 administer this chapter.

584 Section 14. This act shall take effect July 1, 2015.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4 / 16 / 201

*Meeting Date*

Topic \_\_\_\_\_

Bill Number 798  
*(if applicable)*

Name BRIAN PITTS

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

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

*Street*

SAINT PETERSBURG      FLORIDA      33705

E-mail JUSTICE2JESUS@YAHOO.COM

*City*

*State*

*Zip*

Speaking:     For     Against     Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:     Yes     No

Lobbyist registered with Legislature:     Yes     No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

4/16/15  
Meeting/Date

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

798  
Bill Number (if applicable)

Topic Household Moving Services

Amendment Barcode (if applicable)

Name Gloria Pugh

Job Title CEO - AMWAT Moving Warehousing Storage

Address 319 Ross Road

Phone 850-877-7131

Tallahassee FL 32305  
City State Zip

Email gloria@amwat  
movers.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing my company

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/16/15

Meeting Date

SB 798

Bill Number (if applicable)

Topic Household Moving Services

Amendment Barcode (if applicable)

Name Jonathan Rees

Job Title Deputy Director, Legislative Affairs

Address 400 S. Monroe St.

Phone (850) 617-7700

Tallahassee FL 32399  
City State Zip

Email Jonathan.Rees@freshfromflorida.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Department of Agriculture and Consumer Services

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 (10/14/14)

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/SB 874

INTRODUCER: Appropriations Committee and Senator Stargel

SUBJECT: Dual Enrollment Program

DATE: April 20, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Graf	Klebacha	ED	<b>Favorable</b>
2.	Sikes	Elwell	AED	<b>Favorable</b>
3.	Sikes	Kynoch	AP	<b>Fav/CS</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 874 modifies public and private dual enrollment articulation agreements to expand benefits for home education program and private school students and establishes August 1 as the annual deadline for submitting such agreements to the Florida Department of Education.

Specifically, the bill:

- Clarifies that the provision of instructional materials and transportation for home education program and private school students will be addressed in the articulation agreement with the postsecondary institution.
- Specifies dual enrollment articulation agreement provisions and requirements for agreements with private school students, similar to current law for home education program students.
- Adds technology fees to the existing fees that public and private school students and home education program students are exempt from paying for dual enrollment courses.

The bill has an indeterminate fiscal impact in terms of a loss of revenue for postsecondary institutions. The requirement for all eligible postsecondary institutions to enter into dual enrollment articulation agreements with private and home education program students, who are exempt from payment of tuition and fees, will result in a loss of revenue for the state's postsecondary institutions. However, due to the uncertainty in the number of eligible students, the potential loss of revenue is not known at this time. Postsecondary institutions may also need to increase administrative staff to implement the required dual enrollment policies, provide additional oversight over the admission and retention of dual enrollment students, and maintain additional academic records.

Dual enrollment students will be exempt from technology fees for dual enrollment courses. In 2014-2015, the average technology fee was \$5.23 per credit hour at state universities and \$3.90 per credit hour at Florida College System institutions.

The bill provides an effective date of July 1, 2015.

## II. Present Situation:

Each year, more than 50,000 students participate in Florida's dual enrollment program and participation is continuing to grow.<sup>1</sup> Dual enrollment is an acceleration mechanism that allows a student, who is enrolled in grades 6 through 12 in a Florida public school or in a Florida private school<sup>2</sup> or who is a home education<sup>3</sup> student, to enroll in a postsecondary course that is creditable toward high school completion and a career certificate, an associate degree, or a baccalaureate degree.<sup>4</sup> A student who is enrolled in postsecondary instruction that is not creditable toward a high school diploma must not be classified as a dual enrollment student.<sup>5</sup> Eligible students are authorized to enroll in dual enrollment courses conducted during school hours, after school hours, and during the summer term.<sup>6</sup> If, however, a student is projected to graduate from high school before the scheduled completion date for a postsecondary course, the student must not register for that course through dual enrollment.<sup>7</sup>

### *Student Eligibility Requirements*

To enroll in a postsecondary course through dual enrollment, a student must demonstrate readiness to perform college-level work.<sup>8</sup> To demonstrate readiness for college-credit dual enrollment courses, students must attain a 3.0 unweighted high school grade point average

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<sup>1</sup> Florida Department of Education, *Dual Enrollment FAQs*, available at <http://www.fldoe.org/core/fileparse.php/5423/urlt/DualEnrollmentFAQ.pdf>, at 1 of 12.

<sup>2</sup> A private school is "a nonpublic school defined as an individual, association, copartnership, or corporation, or department, division, or section of such organizations, that designates itself as an educational center that includes kindergarten or a higher grade or as an elementary, secondary, business, technical, or trade school below college level or any organization that provides instructional services that meet the intent of s. 1003.01(13) or that gives preemployment or supplementary training in technology or in fields of trade or industry or that offers academic, literary, or career training below college level, or any combination of the above, including an institution that performs the functions of the above schools through correspondence or extension, except those licensed under the provisions of chapter 1005. A private school may be a parochial, religious, denominational, for-profit, or nonprofit school. This definition does not include home education programs conducted in accordance with s. 1002.41." Section 1002.01(2), F.S. The Florida Department of Education (DOE) maintains a database of private schools that meet the specified requirements in law. Section 1002.42(2), F.S.

<sup>3</sup> A home education program means "the sequentially progressive instruction of a student directed by his or her parent in order to satisfy the attendance requirements of ss. 1002.41, 1003.01(13), and 1003.21(1)." Section 1002.01(1), F.S. A parent must notify the district school superintendent of the county in which the parent resides of his or her intent to establish and maintain a home education program. The notice must be in writing, signed by the parent, and must include the names, addresses, and birthdates of all children who shall be enrolled as students in the home education program. The notice must be filed in the district school superintendent's office within 30 days of the establishment of the home education program. Section 1002.41(1)(a), F.S.

<sup>4</sup> Section 1007.271(1)-(2), F.S.

<sup>5</sup> Section 1007.271(1), F.S.

<sup>6</sup> Section 1007.271(2), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> Section 1007.271(3), F.S.

(GPA) and the minimum required score on a common placement test<sup>9</sup> adopted by the State Board of Education.<sup>10</sup> To enroll in a career dual enrollment course, students must attain a 2.0 unweighted high school GPA.<sup>11</sup> Florida College System (FCS) institution boards of trustees may establish additional initial student eligibility requirements which must be specified in dual enrollment articulation agreements.<sup>12</sup> However, such requirements must not “arbitrarily prohibit students who have demonstrated the ability to master advanced courses from participating in dual enrollment courses.”<sup>13</sup>

### ***Dual Enrollment Articulation Agreements***

Dual enrollment articulation agreements (articulation agreement) are locally-developed agreements between a school district, a home education parent, or a private school and an eligible postsecondary education institution<sup>14</sup> regarding participation in dual enrollment courses.<sup>15</sup> The articulation agreement between each school district and public postsecondary institution are mandatory and must be submitted to the Florida Department of Education (DOE or department) annually by August 1.<sup>16</sup> However, articulation agreements between postsecondary education institutions and private secondary schools are optional and not submitted to the department.<sup>17</sup> In addition, articulation agreements between a home education parent and the partnering postsecondary education institution are not required to be submitted to the department.<sup>18</sup> Consequently, DOE does not annually collect information on articulation agreements for private school and home education program students.

Currently, two of Florida’s 12 state universities and all 28 FCS institutions participate in dual enrollment.<sup>19</sup>

### ***Tuition, Fees, and Other Costs***

A student who enrolls in a postsecondary course through dual enrollment is exempt from the payment of registration, tuition, and laboratory fees.<sup>20</sup>

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<sup>9</sup> A student may take the Florida Postsecondary Education Readiness Test (PERT), Accuplacer, SAT, or Enhanced ACT to demonstrate reading, writing, and mathematics proficiency, by meeting specified minimum test scores, to perform college-level work. Rule 61-10.0315, F.A.C.

<sup>10</sup> Section 1007.271(3), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> An eligible postsecondary education institution is a state university, a Florida College System (FCS) institution, or “an independent college or university which is located and chartered in Florida, is not for profit, is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools or the Accrediting Council for Independent Colleges and Schools, and confers degrees as defined in s. 1005.02” Sections 1007.271 and 1011.62(1)(i), F.S.

<sup>15</sup> Section 1007.271, F.S.; Florida Department of Education, *Dual Enrollment FAQs*, available at <http://www.fldoe.org/core/fileparse.php/5423/urlt/DualEnrollmentFAQ.pdf>, at 3 of 12.

<sup>16</sup> Section 1007.271(21), F.S.

<sup>17</sup> Section 1007.271(24), F.S.

<sup>18</sup> Section 1007.271(13), F.S.

<sup>19</sup> Email, Florida Department of Education (March 13, 2015), on file with the Committee on Education Pre-K – 12 staff; Florida Department of Education, *2014-15 Dual Enrollment Agreements*, <http://www.fldoe.org/policy/articulation/1415dual-enrollment-agreements.stml> (last visited March 13, 2015).

<sup>20</sup> Section 1007.271(2), F.S.

Instructional materials assigned for dual enrollment courses must be provided to dual enrollment students from Florida public high schools free of charge.<sup>21</sup> This requirement does not prohibit a FCS institution from providing instructional materials at no cost to a home education program or a private school student.<sup>22</sup> Instructional materials purchased by a district school board or a FCS institution board of trustees on behalf of dual enrollment students must be the property of the board that purchased the instructional materials.<sup>23</sup>

### III. Effect of Proposed Changes:

The bill modifies public and private dual enrollment articulation agreements to expand benefits for home education program and private school students and establishes August 1 as the annual deadline for submitting such agreements to the Florida Department of Education (DOE).

Specifically, the bill:

- Clarifies that the provision of instructional materials and transportation for home education program and private school students will be addressed in the articulation agreement with the postsecondary institution.<sup>24</sup>
- Specifies dual enrollment articulation agreement provisions and requirements for agreements with private school students, similar to current law for home education program students.<sup>25</sup>
- Adds technology fees to the existing fees that public and private school students and home education program students are exempt from paying for dual enrollment courses.

#### *Dual Enrollment Articulation Agreements*

The bill:

- Clarifies that public and private postsecondary institutions that are eligible to receive funding for participation in dual enrollment,<sup>26</sup> must enter into a home education articulation agreement with each home education program student seeking enrollment in dual enrollment courses.
  - Requires public and private postsecondary institutions that enter into articulation agreements with home education program students, to complete and submit the articulation agreements annually to the DOE by August 1. This provision will allow the department to compile information on locally-developed articulation agreements between home education program student and eligible postsecondary institutions.
  - Requires that the articulation agreement include a provision expressing whether the student or the postsecondary institution is responsible for providing instructional materials and transportation.
- Requires district school boards and FCS institutions that enter into articulation agreements with state universities or eligible private postsecondary education institutions, to complete and submit the articulation agreements annually to the DOE by August 1. This provision will

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<sup>21</sup> Section 1007.271(17), F.S.

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

<sup>23</sup> *Id.*

<sup>24</sup> Section 1007.271(17), F.S.

<sup>25</sup> Section 1007.271(13), F.S.

<sup>26</sup> An eligible postsecondary education institution is a state university, a Florida College System (FCS) institution, or “an independent college or university which is located and chartered in Florida, is not for profit, is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools or the Accrediting Council for Independent Colleges and Schools, and confers degrees as defined in s. 1005.02” Sections 1007.271 and 1011.62(1)(i), F.S.

allow the department to compile information on locally-developed school district and FCS institution articulation agreements with eligible postsecondary institutions.

- Requires each eligible postsecondary education institution to enter into an articulation agreement with each private school student seeking to participate in dual enrollment courses that are creditable toward a career certificate, an associate degree, or a baccalaureate degree, in effect, aligning this provision to the articulation agreement requirements for home education program students.
  - Specifies information that must be included in the articulation agreements with private school students similar to information that must be included in articulation agreements with home education program students (i.e., delineation of available courses and programs, initial and continued student eligibility requirements which must not exceed the requirements for other dual enrollment students, whether the student or postsecondary institution is responsible for providing instructional materials and transportation, and a copy of transfer guarantees developed by the DOE to inform students and parents about transferability of credits earned through dual enrollment toward elective or general education requirement).
  - Requires the postsecondary education institutions to complete and submit the articulation agreements annually to the DOE by August 1.
- Requires the electronic submission system for submitting dual enrollment articulation agreements between public postsecondary education institutions and school districts to also be used for the submission of articulation agreements with home education program and private school students. This provision may streamline the process for submitting the articulation agreements with home education program and private school students which will assist with compiling relevant information.
  - Requires the DOE to review, for compliance, articulation agreements with home education program and private school students, in effect, aligning this provision with the department's oversight responsibility for articulation agreements between public postsecondary education institutions and school districts.

#### ***Tuition, Fees, and Other Costs***

The bill requires that, in addition to registration, tuition, and laboratory fees, all dual enrollment students will also be exempt from technology fees.

The bill provides an effective date of July 1, 2015.

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

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

None.

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

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under CS/SB 874, dual enrollment students will be exempt from technology fees for dual enrollment courses. In 2014-2015, the average technology fee was \$5.23 per credit hour at state universities and \$3.90 per credit hour at Florida College System institutions.

C. Government Sector Impact:

According to the Board of Governors (BOG), the requirement for state universities to enter into dual enrollment articulation agreements with private and home education program students, who are exempt from payment of tuition and fees, will result in a loss of revenue for the state universities. However, due to the uncertainty in the number of eligible students, the potential loss in revenues to the universities is indeterminable at this time. Universities may also need to increase administrative staff to implement the required dual enrollment policies, provide additional oversight over the admission and retention of dual enrollment students, and maintain additional academic records.<sup>27</sup>

Florida College System institutions should experience a similar, yet also indeterminate, loss of revenue and need to increase administrative staff to implement the required dual enrollment policies.

The bill requires electronic submission of dual enrollment articulation agreements for home education program and private school students to the Department of Education and requires the department to review each agreement for compliance. According to the department, this will require modifications to the existing electronic submission system and additional staff to review each of these agreements at a cost of \$100,000.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

---

<sup>27</sup>Board of Governors, *2015 Legislative Bill Analysis for SB 874*, on file with Appropriations Subcommittee on Education staff.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 1002.20, 1007.271, and 1011.62.

**IX. Additional Information:**

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

**CS by Appropriations on April 16, 2015:**

The committee substitute clarifies that provision of instructional materials and transportation for home education program and private school students will be addressed in the articulation agreement with the postsecondary institution.

- B. **Amendments:**

None.



517502

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
	.	
	.	
	.	

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The Committee on Appropriations (Hays) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 115 - 221

and insert:

2. Be responsible for his or her own instructional materials and transportation unless provided for in the articulation agreement otherwise.

3. Sign a home education articulation agreement pursuant to paragraph (b).

(b) Each postsecondary institution that is eligible to



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11 participate in the dual enrollment program pursuant to s.  
12 1011.62(1)(i) must ~~shall~~ enter into a home education  
13 articulation agreement with each home education student seeking  
14 enrollment in a dual enrollment course and the student's parent.  
15 By August 1 of each year, the applicable postsecondary  
16 institution shall complete and submit the home education  
17 articulation agreement to the Department of Education. The home  
18 education articulation agreement must ~~shall~~ include, at a  
19 minimum:

20       1. A delineation of courses and programs available to a  
21 ~~dually enrolled~~ home education student who participates in a  
22 dual enrollment program ~~students~~. The postsecondary institution  
23 may add, revise, or delete courses and programs ~~may be added,~~  
24 ~~revised, or deleted~~ at any time by the postsecondary  
25 institution.

26       2. The initial and continued eligibility requirements for  
27 home education student participation, not to exceed those  
28 required of other dual enrollment ~~dually enrolled~~ students.

29       3. A provision expressing whether the postsecondary  
30 institution or the student is responsible ~~The student's~~  
31 ~~responsibilities~~ for providing ~~his or her own~~ instructional  
32 materials and transportation.

33       4. A copy of the statement on transfer guarantees developed  
34 by the Department of Education under subsection (15).

35       (16) A student ~~Students~~ who meets ~~meet~~ the eligibility  
36 requirements of this section and who chooses ~~choose~~ to  
37 participate in dual enrollment programs is ~~are~~ exempt from the  
38 payment of registration, tuition, technology, and laboratory  
39 fees.



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40 (17) Instructional materials assigned for use in ~~within~~  
41 dual enrollment courses shall be made available to dual  
42 enrollment students from Florida public high schools free of  
43 charge. This subsection does not prohibit a postsecondary  
44 ~~Florida College System~~ institution from providing instructional  
45 materials at no cost to a home education student or student from  
46 a private school, if provided for in the articulation agreement.  
47 Instructional materials purchased by a district school board or  
48 Florida College System institution board of trustees on behalf  
49 of dual enrollment students are ~~shall be~~ the property of the  
50 board against which the purchase is charged.

51 (22) The Department of Education shall develop an  
52 electronic submission system for dual enrollment articulation  
53 agreements and shall review, for compliance, each dual  
54 enrollment articulation agreement submitted pursuant to  
55 subsections (13), ~~subsection~~ (21), and (24). The Commissioner of  
56 Education shall notify the district school superintendent and  
57 the president of the postsecondary institution that is eligible  
58 to participate in the dual enrollment program pursuant to s.  
59 1011.62(1)(i) ~~Florida College System institution president~~ if  
60 the dual enrollment articulation agreement does not comply with  
61 statutory requirements and shall submit any dual enrollment  
62 articulation agreement with unresolved issues of noncompliance  
63 to the State Board of Education.

64 (23) A district school board ~~boards~~ and a Florida College  
65 System institution ~~institutions~~ may enter into an additional  
66 dual enrollment articulation agreement ~~agreements~~ with a state  
67 university ~~universities~~ for the purposes of this section. A  
68 school district ~~districts~~ may also enter into a dual enrollment



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69 articulation agreement ~~agreements~~ with an eligible independent  
70 college or university ~~colleges and universities~~ pursuant to s.  
71 1011.62(1)(i). By August 1 of each year, the district school  
72 board and the Florida College System institution shall complete  
73 and submit the dual enrollment articulation agreement with the  
74 state university and an eligible independent college or  
75 university, as applicable, to the Department of Education.

76 (24)(a) The dual enrollment program for a private school  
77 student consists of the enrollment of an eligible private school  
78 student in a postsecondary course creditable toward an associate  
79 degree, a career certificate, or a baccalaureate degree. In  
80 addition, the private school in which the student is enrolled  
81 must award credit toward high school completion for the  
82 postsecondary course under the dual enrollment program. To  
83 participate in the dual enrollment program, an eligible private  
84 school student shall:

85 1. Provide proof of enrollment in a private school pursuant  
86 to subsection (2).

87 2. Be responsible for his or her own instructional  
88 materials and transportation unless provided for in the  
89 articulation agreement.

90 3. Sign a private school articulation agreement pursuant to  
91 paragraph (b).

92 (b) Each postsecondary institution that is eligible to  
93 participate in the dual enrollment program pursuant to s.  
94 1011.62(1)(i) must enter into a private school articulation  
95 agreement with each private school student seeking enrollment in  
96 a dual enrollment course and the student's parent. By August 1  
97 of each year, the applicable postsecondary institution shall



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98 complete and submit the private school articulation agreement to  
99 the Department of Education. The articulation agreement must  
100 include, at a minimum:

101 1. A delineation of courses and programs available to a  
102 private school student who participates in a dual enrollment  
103 program. The postsecondary institution may add, revise, or  
104 delete courses and programs at any time.

105 2. The initial and continued eligibility requirements for  
106 private school student participation, not to exceed those  
107 required of other dual enrollment students.

108 3. A provision expressing whether the postsecondary  
109 institution or the student is responsible for providing  
110 instructional materials and transportation.

111 4. A copy of the statement on transfer guarantees developed  
112 by the Department of Education under subsection (15)  
113 ~~Postsecondary institutions may enter into dual enrollment~~  
114 ~~articulation agreements with private secondary schools pursuant~~  
115 ~~to subsection (2).~~

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

118 And the title is amended as follows:

119 Delete lines 5 - 18

120 and insert:

121 technology fees; requiring a home education secondary  
122 student to be responsible for his or her own  
123 instructional materials and transportation in order to  
124 participate in the dual enrollment program unless the  
125 articulation agreement provides otherwise; requiring a  
126 postsecondary institution that is eligible to



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127        participate in the dual enrollment program to enter  
128        into a home education articulation agreement;  
129        requiring the postsecondary institution to annually  
130        complete and submit the agreement to the Department of  
131        Education by a specified date; conforming provisions  
132        to changes made by the act; authorizing certain  
133        instructional materials to be made available free of  
134        charge to dual enrollment students in home education  
135        programs and private schools if provided for in the  
136        articulation agreement;

By Senator Stargel

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2015874\_\_

1 A bill to be entitled  
 2 An act relating to the dual enrollment program;  
 3 amending s. 1007.271, F.S.; exempting dual enrollment  
 4 students from paying certain fees, including  
 5 technology fees; deleting the requirement that a home  
 6 education secondary student be responsible for his or  
 7 her own instructional materials in order to  
 8 participate in the dual enrollment program; requiring  
 9 a postsecondary institution that is eligible to  
 10 participate in the dual enrollment program to enter  
 11 into a home education articulation agreement;  
 12 requiring the postsecondary institution to annually  
 13 complete and submit the agreement to the Department of  
 14 Education by a specified date; conforming provisions  
 15 to changes made by the act; authorizing certain  
 16 instructional materials to be made available free of  
 17 charge to dual enrollment students in public high  
 18 schools, home education programs, and private schools;  
 19 requiring the department to review dual enrollment  
 20 articulation agreements submitted for certain  
 21 students, including home education students and  
 22 private school students, to participate in a dual  
 23 enrollment program; requiring the Commissioner of  
 24 Education to notify the district school board  
 25 superintendent and the president of the postsecondary  
 26 institution if the dual enrollment articulation  
 27 agreement does not comply with statutory requirements;  
 28 requiring a district school board and a Florida  
 29 College System institution to annually complete and

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30 submit to the department by a specified date a dual  
 31 enrollment articulation agreement with a state  
 32 university and an eligible independent college or  
 33 university, as applicable; providing requirements for  
 34 a private school student to participate in a dual  
 35 enrollment program; requiring a postsecondary  
 36 institution eligible to participate in the dual  
 37 enrollment program to enter into an articulation  
 38 agreement with each private school student seeking  
 39 enrollment in a dual enrollment course and his or her  
 40 parent; requiring the postsecondary institution to  
 41 annually complete and submit the articulation  
 42 agreement to the department by a specified date;  
 43 providing requirements for the articulation agreement;  
 44 amending ss. 1002.20 and 1011.62, F.S.; conforming  
 45 provisions to changes made by the act; providing an  
 46 effective date.

47  
 48 Be It Enacted by the Legislature of the State of Florida:  
 49

50 Section 1. Subsections (2), (10), (11), (13), (16), (17),  
 51 (22), (23), and (24) of section 1007.271, Florida Statutes, are  
 52 amended to read:

53 1007.271 Dual enrollment programs.—

54 (2) For the purpose of this section, an eligible secondary  
 55 student is a student who is enrolled in any of grades 6 through  
 56 12 in a Florida public school or in a Florida private school  
 57 that is in compliance with s. 1002.42(2) and provides a  
 58 secondary curriculum pursuant to s. 1003. 4282. A student

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59 ~~Students~~ who is ~~are~~ eligible for dual enrollment pursuant to  
 60 this section may enroll in dual enrollment courses conducted  
 61 during school hours, after school hours, and during the summer  
 62 term. However, if the student is projected to graduate from high  
 63 school before the scheduled completion date of a postsecondary  
 64 course, the student may not register for that course through  
 65 dual enrollment. The student may apply to the postsecondary  
 66 institution and pay the required registration, tuition, and fees  
 67 if the student meets the postsecondary institution's admissions  
 68 requirements under s. 1007.263. Instructional time for dual  
 69 enrollment may vary from 900 hours; however, the full-time  
 70 equivalent student membership value is ~~shall be~~ subject to ~~the~~  
 71 ~~provisions in~~ s. 1011.61(4). A student enrolled as a dual  
 72 enrollment student is exempt from the payment of registration,  
 73 tuition, technology, and laboratory fees. Applied academics for  
 74 adult education instruction, developmental education, and other  
 75 forms of precollegiate instruction, as well as physical  
 76 education courses that focus on the physical execution of a  
 77 skill, rather than the intellectual attributes of the activity,  
 78 are ineligible for inclusion in the dual enrollment program.  
 79 Recreation and leisure studies courses shall be evaluated  
 80 individually in the same manner as physical education courses  
 81 for potential inclusion in the program.

82 (10) Early admission is a form of dual enrollment through  
 83 which an eligible secondary student enrolls ~~students enroll~~ in a  
 84 postsecondary institution on a full-time basis in courses that  
 85 are creditable toward the high school diploma and the associate  
 86 or baccalaureate degree. A student must enroll in a minimum of  
 87 12 college credit hours per semester or the equivalent to

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88 participate in the early admission program; however, a student  
 89 may not be required to enroll in more than 15 college credit  
 90 hours per semester or the equivalent. A student ~~Students~~  
 91 enrolled pursuant to this subsection is ~~are~~ exempt from the  
 92 payment of registration, tuition, technology, and laboratory  
 93 fees.

94 (11) Career early admission is a form of career dual  
 95 enrollment through which an eligible secondary student enrolls  
 96 ~~students enroll~~ full time in a career center or a Florida  
 97 College System institution in postsecondary programs leading to  
 98 industry certifications, as listed in the Postsecondary Industry  
 99 Certification Funding List pursuant to s. 1008.44, which are  
 100 creditable toward the high school diploma and the certificate or  
 101 associate degree. Participation in the career early admission  
 102 program is limited to students who have completed a minimum of 4  
 103 semesters of full-time secondary enrollment, including studies  
 104 undertaken in ~~the ninth~~ grade 9. A student ~~Students~~ enrolled  
 105 pursuant to this section is ~~are~~ exempt from the payment of  
 106 registration, tuition, technology, and laboratory fees.

107 (13) (a) The dual enrollment program for a home education  
 108 student ~~students~~ consists of the enrollment of an eligible home  
 109 education secondary student in a postsecondary course creditable  
 110 toward an associate degree, a career certificate, or a  
 111 baccalaureate degree. To participate in the dual enrollment  
 112 program, an eligible home education secondary student must:

113 1. Provide proof of enrollment in a home education program  
 114 pursuant to s. 1002.41.

115 2. Be responsible for his or her own ~~instructional~~  
 116 ~~materials and~~ transportation unless provided for otherwise.

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117 3. Sign a home education articulation agreement pursuant to  
118 paragraph (b).

119 (b) Each postsecondary institution that is eligible to  
120 participate in the dual enrollment program pursuant to s.  
121 1011.62(1)(i) must ~~shall~~ enter into a home education  
122 articulation agreement with each home education student seeking  
123 enrollment in a dual enrollment course and the student's parent.  
124 By August 1 of each year, the applicable postsecondary  
125 institution shall complete and submit the home education  
126 articulation agreement to the Department of Education. The home  
127 education articulation agreement must ~~shall~~ include, at a  
128 minimum:

129 1. A delineation of courses and programs available to a  
130 dually enrolled home education student who participates in a  
131 dual enrollment program ~~students~~. The postsecondary institution  
132 may add, revise, or delete courses and programs ~~may be added,~~  
133 revised, or deleted at any time by the postsecondary  
134 institution.

135 2. The initial and continued eligibility requirements for  
136 home education student participation, not to exceed those  
137 required of other dual enrollment ~~dually enrolled~~ students.

138 3. The student's responsibilities for providing his or her  
139 own ~~instructional materials and~~ transportation.

140 4. A copy of the statement on transfer guarantees developed  
141 by the Department of Education under subsection (15).

142 (16) A student ~~Students~~ who ~~meets meet~~ the eligibility  
143 requirements of this section and who ~~chooses choose~~ to  
144 participate in dual enrollment programs ~~is are~~ exempt from the  
145 payment of registration, tuition, ~~technology,~~ and laboratory

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146 fees.

147 (17) Instructional materials assigned for use within dual  
148 enrollment courses shall be made available free of charge to  
149 dual enrollment students from ~~Florida~~ public high schools in  
150 this state, home education programs pursuant to s. 1002.41, and  
151 private schools pursuant to subsection (2) ~~free of charge.~~ ~~This~~  
152 subsection does not prohibit a Florida College System  
153 institution from providing instructional materials at no cost to  
154 a home education student or student from a private school.  
155 Instructional materials purchased by a district school board or  
156 Florida College System institution board of trustees on behalf  
157 of dual enrollment students are ~~shall be~~ the property of the  
158 board against which the purchase is charged.

159 (22) The Department of Education shall develop an  
160 electronic submission system for dual enrollment articulation  
161 agreements and shall review, for compliance, each dual  
162 enrollment articulation agreement submitted pursuant to  
163 subsections (13), ~~subsection~~ (21), and (24). The Commissioner of  
164 Education shall notify the district school superintendent and  
165 the ~~president of the postsecondary institution that is eligible~~  
166 to participate in the dual enrollment program pursuant to s.  
167 1011.62(1)(i) ~~Florida College System institution president~~ if  
168 the dual enrollment articulation agreement does not comply with  
169 statutory requirements and shall submit any dual enrollment  
170 articulation agreement with unresolved issues of noncompliance  
171 to the State Board of Education.

172 (23) A district school ~~board boards~~ and a Florida College  
173 System ~~institution institutions~~ may enter into an additional  
174 dual enrollment articulation ~~agreement agreements~~ with a state

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175 ~~university universities~~ for the purposes of this section. A  
 176 ~~school district districts~~ may also enter into a dual enrollment  
 177 ~~articulation agreement agreements~~ with an eligible independent  
 178 ~~college or university colleges and universities~~ pursuant to s.  
 179 1011.62(1)(i). By August 1 of each year, the district school  
 180 board and the Florida College System institution shall complete  
 181 and submit the dual enrollment articulation agreement with the  
 182 state university and an eligible independent college or  
 183 university, as applicable, to the Department of Education.

184 (24)(a) The dual enrollment program for a private school  
 185 student consists of the enrollment of an eligible private school  
 186 student in a postsecondary course creditable toward an associate  
 187 degree, a career certificate, or a baccalaureate degree. In  
 188 addition, the private school in which the student is enrolled  
 189 must award credit toward high school completion for the  
 190 postsecondary course under the dual enrollment program. To  
 191 participate in the dual enrollment program, an eligible private  
 192 school student shall:

193 1. Provide proof of enrollment in a private school pursuant  
 194 to subsection (2).

195 2. Be responsible for his or her own transportation unless  
 196 provided for otherwise.

197 3. Sign a private school articulation agreement pursuant to  
 198 paragraph (b).

199 (b) Each postsecondary institution that is eligible to  
 200 participate in the dual enrollment program pursuant to s.  
 201 1011.62(1)(i) must enter into a private school articulation  
 202 agreement with each private school student seeking enrollment in  
 203 a dual enrollment course and the student's parent. By August 1

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204 of each year, the applicable postsecondary institution shall  
 205 complete and submit the private school articulation agreement to  
 206 the Department of Education. The articulation agreement must  
 207 include, at a minimum:

208 1. A delineation of courses and programs available to a  
 209 private school student who participates in a dual enrollment  
 210 program. The postsecondary institution may add, revise, or  
 211 delete courses and programs at any time.

212 2. The initial and continued eligibility requirements for  
 213 private school student participation, not to exceed those  
 214 required of other dual enrollment students.

215 3. The student's responsibilities for providing his or her  
 216 own transportation.

217 4. A copy of the statement on transfer guarantees developed  
 218 by the Department of Education under subsection (15)  
 219 ~~Postsecondary institutions may enter into dual enrollment~~  
 220 ~~articulation agreements with private secondary schools pursuant~~  
 221 ~~to subsection (2).~~

222 Section 2. Paragraph (d) of subsection (19) of section  
 223 1002.20, Florida Statutes, is amended to read:  
 224 1002.20 K-12 student and parent rights.—Parents of public  
 225 school students must receive accurate and timely information  
 226 regarding their child's academic progress and must be informed  
 227 of ways they can help their child to succeed in school. K-12  
 228 students and their parents are afforded numerous statutory  
 229 rights including, but not limited to, the following:  
 230 (19) INSTRUCTIONAL MATERIALS.—  
 231 (d) *Dual enrollment students.*—Instructional materials  
 232 purchased by a district school board or Florida College System

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 233 institution board of trustees on behalf of ~~public school~~ dual  
 234 enrollment students shall be made available free of charge to  
 235 the dual enrollment students ~~free of charge~~, in accordance with  
 236 s. 1007.271(17).

237 Section 3. Paragraph (i) of subsection (1) of section  
 238 1011.62, Florida Statutes, is amended to read:

239 1011.62 Funds for operation of schools.—If the annual  
 240 allocation from the Florida Education Finance Program to each  
 241 district for operation of schools is not determined in the  
 242 annual appropriations act or the substantive bill implementing  
 243 the annual appropriations act, it shall be determined as  
 244 follows:

245 (1) COMPUTATION OF THE BASIC AMOUNT TO BE INCLUDED FOR  
 246 OPERATION.—The following procedure shall be followed in  
 247 determining the annual allocation to each district for  
 248 operation:

249 (i) *Calculation of full-time equivalent membership with*  
 250 *respect to dual enrollment instruction.*—Students enrolled in  
 251 dual enrollment instruction pursuant to s. 1007.271 may be  
 252 included in calculations of full-time equivalent student  
 253 memberships for basic programs for grades 9 through 12 by a  
 254 district school board. Instructional time for dual enrollment  
 255 may vary from 900 hours; however, the full-time equivalent  
 256 student membership value shall be subject to the provisions in  
 257 s. 1011.61(4). Dual enrollment full-time equivalent student  
 258 membership shall be calculated in an amount equal to the hours  
 259 of instruction that would be necessary to earn the full-time  
 260 equivalent student membership for an equivalent course if it  
 261 were taught in the school district. Students in dual enrollment

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 262 courses may also be calculated as the proportional shares of  
 263 full-time equivalent enrollments they generate for a Florida  
 264 College System institution or university conducting the dual  
 265 enrollment instruction. Early admission students shall be  
 266 considered dual enrollments for funding purposes. Students may  
 267 be enrolled in dual enrollment instruction provided by an  
 268 eligible independent college or university and may be included  
 269 in calculations of full-time equivalent student memberships for  
 270 basic programs for grades 9 through 12 by a district school  
 271 board. However, those provisions of law which exempt dual  
 272 enrollment students ~~dual enrolled~~ and early admission students  
 273 from payment of instructional materials and tuition and fees,  
 274 including technology, registration, and laboratory fees, do  
 275 ~~shall~~ not apply to students who select the option of enrolling  
 276 in an eligible independent institution. An independent college  
 277 or university that ~~which~~ is located and chartered in Florida, is  
 278 not for profit, is accredited by the Commission on Colleges of  
 279 the Southern Association of Colleges and Schools or the  
 280 Accrediting Council for Independent Colleges and Schools, and  
 281 confers degrees as defined in s. 1005.02 ~~is shall be~~ eligible  
 282 for inclusion in the dual enrollment or early admission program.  
 283 Students enrolled in dual enrollment instruction ~~are shall be~~  
 284 exempt from the payment of tuition and fees, including  
 285 technology, registration, and laboratory fees. ~~A~~ ~~No~~ student  
 286 enrolled in college credit mathematics or English dual  
 287 enrollment instruction ~~may not shall~~ be funded as a dual  
 288 enrollment unless the student has successfully completed the  
 289 relevant section of the entry-level examination required  
 290 pursuant to s. 1008.30.

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291

Section 4. This act shall take effect July 1, 2015.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/16/2015

Meeting Date

Topic \_\_\_\_\_

Bill Number 874  
*(if applicable)*

Name BRIAN PITTS

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

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

*Street*

SAINT PETERSBURG

FLORIDA

33705

*City*

*State*

*Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4-16-15

Meeting Date

SB 874

Bill Number (if applicable)

Topic Dual ENROLLMENT

Amendment Barcode (if applicable)

Name BRENDA DICKINSON

Job Title Lobbyist

Address P.O. Box 12563

Phone 850-264-2184

Street

TALLAHASSEE

FL

32317

City

State

Zip

Email CONSULTINGBRENDA@gmail.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FLORIDA Council of Independent Schools

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/16/15

Meeting Date

874

Bill Number (if applicable)

Topic Dual Enrollment Program

Amendment Barcode (if applicable)

Name James Herzog

Job Title Associate Director for Education

Address 201 W Park Ave

Phone 850/205-6823

Street

Tallahassee FL 32301

City

State

Zip

Email jherzog@flacathconf.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida conference of catholic Bishops

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

---

Prepared By: The Professional Staff of the Committee on Appropriations

---

BILL: SB 942

INTRODUCER: Senator Gaetz

SUBJECT: Rapid Response Education and Training Program

DATE: April 15, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Scott</u>	<u>Klebacha</u>	<u>HE</u>	<b>Favorable</b>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<b>Favorable</b>
3.	<u>Sikes</u>	<u>Kynoch</u>	<u>AP</u>	<b>Favorable</b>

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**I. Summary:**

SB 942 establishes the Rapid Response Education and Training Program within the Complete Florida Plus Program at the University of West Florida to recruit and retain employees through industry-specific education and training. Also, the bill requires that the Complete Florida Plus Program work directly with Enterprise Florida, Inc., in project-specific industry recruitment and retention efforts to offer credible education and training commitments to businesses.

Specifically, the bill requires that the Rapid Response Education and Training Program:

- Award matching grants to public and private education and training providers.
- Submit to the Legislature periodic reports generated by an independent forensic accounting or auditing entity.
- Keep administrative costs to a minimum through the use of existing organizational structures.
- Work with businesses to recruit individuals for education and training.
- Terminate an education and training program by giving 30-days' notice.
- Survey businesses regarding the effectiveness of the education and training programs.

Additionally, the bill requires that the Division of Career and Adult Education within the Department of Education analyze and assess the effectiveness of the education and training programs offered through the Rapid Response Education and Training Program in meeting labor market and occupational trends and gaps.

The Senate's Fiscal Year 2015-2016 proposed General Appropriations Bill, SB 2500, appropriates \$19.2 million for the Rapid Response Education and Training Program.

The bill provides an effective date of July 1, 2015.

## II. Present Situation:

The Legislature has established mechanisms to facilitate coordination between public and private postsecondary education institutions and employment agencies to assist students in completing degree programs to meet the state's workforce needs.

### **Complete Florida Plus Program**

In 2012, the Legislature created the Complete Florida Plus Program<sup>1</sup> at the University of West Florida (UWF) for the purpose of:<sup>2</sup>

- Facilitating degree completion for the state's adult learners through the Complete Florida Degree Initiative.
- Providing information relating to and access to distance learning courses and degree programs offered by public postsecondary education institutions.
- Coordinating with the Florida College System (FCS) and the State University System (SUS) to identify and provide online academic support services and resources when the multi-institutional provision of such services and resources is more cost effective or operationally effective.
- Administering the Florida Academic Library Services Cooperative<sup>3</sup> (Cooperative) and consulting with the chancellors of the FCS and the SUS regarding the Cooperative.

The UWF must submit annual reports to the President of the Senate and the Speaker of the House of Representatives relating to the implementation and operation of the components of the Complete Florida Plus Program and the Cooperative.<sup>4</sup>

### ***Complete Florida Degree Initiative***

In 2014, the Legislature established the Complete Florida Degree Initiative (Initiative) within the Complete Florida Plus Program for the purpose of recruiting, recovering, and retaining the state's adult learners<sup>5</sup> and assisting them in completing an associate degree or a baccalaureate degree aligned to the state's high-wage, high-skill workforce needs.<sup>6</sup> The Initiative coordinates with FCS institutions, state universities, and private postsecondary institutions and partners with public and private job recruitment and placement agencies to identify associate, applied baccalaureate, and baccalaureate degree programs that meet the state's workforce needs.<sup>7</sup>

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<sup>1</sup> The program was formerly established as the Degree Completion Pilot Project pursuant to s. 15, ch. 2012-34, L.O.F.

<sup>2</sup> Section 1006.735(1), F.S.

<sup>3</sup> Section 1006.73, F.S. The cooperative provides a single library automation system and associated resources and services for public postsecondary institutions to use to support learning, teaching, and research needs. *Id.* at (1).

<sup>4</sup> Sections 1006.73(4) and 1006.735(5), F.S.

<sup>5</sup> Section 1006.735(2), F.S. Adult learners who are veterans or active duty members of the United States Armed Forces are given priority. *Id.* An "adult learner" is defined as "a student who has successfully completed college-level coursework in multiple semesters but has left an institution in good standing before completing his or her degree." *Id.*

<sup>6</sup> Section 1006.735(2), F.S.; *see also*, s. 16, ch. 2014-56, L.O.F.

<sup>7</sup> Section 1006.735(2)(a), F.S.

Specifically, the Initiative must:<sup>8</sup>

- Give priority to degree programs using labor market data and projections, including data and projections included in the Board of Governor's gap analysis,<sup>9</sup> to identify the specific workforce needs and targeted occupations of the state.
- Provide adult learners with a single point of access to information and links to innovative online and accelerated distance learning courses, student and library support services, and electronic resources that will aid them in completing a postsecondary degree.
- Use existing or develop new competency-based instructional and evaluation tools to assess prior performance, experience, and education to award college credit and reduce the time required for adults to complete degrees.
- Develop and implement an evaluation process to collect and analyze appropriate data to report the effectiveness of the Initiative to the chancellors of the FCS and the SUS, the participating postsecondary education institutions, the chairs of the legislative appropriations committees, and the Executive Office of the Governor.
- Develop and implement a statewide student recruitment campaign targeted toward adult learners, particularly veterans and active duty members of the United States Armed Forces, for enrollment in degree programs offered through the Initiative.

### **Access to Resources & Support**

#### ***Statewide Internet-Based Catalog of Distance Learning Courses***

The Complete Florida Plus Program manages a statewide internet-based catalog of distance learning courses, degree programs, and resources offered by public postsecondary education institutions to assist in developing a statewide articulation system that allows students to rapidly proceed toward their educational objectives and transfer between institutions.<sup>10</sup> Participating institutions must provide specific information regarding the distance learning courses and degree programs (*e.g.*, course numbers, availability, and costs).<sup>11</sup>

The Complete Florida Plus Program must establish operational procedures for the catalog and must review and frequently ensure that distance learning courses and degree programs comply with the operational procedures. The operational procedures must include:<sup>12</sup>

- Courses and degree programs that meet applicable accreditation standards and criteria.
- User-friendly search and retrieval options for finding courses in a variety of ways.
- An internet-based analytic tool that analyzes and collects data relating to catalog use and requests.

#### ***Statewide Online Student Advising Services & Support***

The Complete Florida Plus Program must make available statewide online services and support in coordination with FCS institutions and state universities which include:<sup>13</sup>

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<sup>8</sup> Section 1006.735(2), F.S.

<sup>9</sup> Section 1001.706(5), F.S.

<sup>10</sup> Section 1006.735(3), F.S.; *see also*, s. 1007.01, F.S.

<sup>11</sup> Section 1006.735(3), F.S.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at (4).

- A streamlined online admissions application process for undergraduate transient students who enroll in courses offered by public postsecondary education institutions that are not the students' degree-granting institution.
- A K-20 statewide computer-assisted student advising system that supports K-12 career and education planning and the advisement, registration, and certification of postsecondary students for graduation, including a degree audit and an articulation component.

### **III. Effect of Proposed Changes:**

The bill establishes the Rapid Response Education and Training Program within the Complete Florida Plus Program at the University of West Florida to recruit and retain employees through industry-specific education and training. Also, the bill requires that the Complete Florida Plus Program work directly with Enterprise Florida, Inc., in project-specific industry recruitment and retention efforts to offer credible education and training commitments to businesses.

The Complete Florida Plus Program and Complete Florida Degree Initiative currently assist in recruiting, recovering, and retaining individuals to meet the state's high-wage, high-skill workforce needs. The bill expands the Complete Florida Plus Program and further serves its purpose to include targeted education and training programs for industries and businesses in the state.

Specifically, the bill requires that the Rapid Response Education and Training Program:

- Award matching grants to public and private education and training providers.
- Submit to the Legislature periodic reports generated by an independent forensic accounting or auditing entity.
- Keep administrative costs to a minimum through the use of existing organizational structures.
- Work with businesses to recruit individuals for education and training.
- Terminate an education and training program by giving 30-days' notice.
- Survey businesses regarding the effectiveness of the education and training programs.

Additionally, the bill requires that the Division of Career and Adult Education within the Department of Education analyze and assess the effectiveness of the education and training programs offered through the Rapid Response Education and Training Program in meeting labor market and occupational trends and gaps.

The award of matching grants to public and private education and training providers and partnerships with businesses may assist individuals in retaining and securing employment.

The bill provides for an effective date of July 1, 2015.

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

A. Municipality/County Mandates Restrictions:

None.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Senate's Fiscal Year 2015-2016 proposed General Appropriations Bill, SB 2500, appropriates \$19.2 million for the Rapid Response Education and Training Program under SB 942.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill substantially amends section 1006.735 of the Florida Statutes.

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

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

None.

**B. Amendments:**

None.

By Senator Gaetz

1-00787A-15

2015942\_\_

A bill to be entitled

An act relating to a Rapid Response Education and Training Program; amending s. 1006.735, F.S.; establishing the Rapid Response Education and Training Program within the Complete Florida Plus Program; requiring the Complete Florida Plus Program to work with Enterprise Florida, Inc., to offer certain education and training commitments to businesses; specifying the duties of the program; requiring reports to the Legislature; requiring the Division of Career and Adult Education within the Department of Education to conduct an analysis and assessment of the effectiveness of the education and training programs; providing an effective date.

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

Section 1. Present subsections (5) and (6) of section 1006.735, Florida Statutes, are redesignated as subsections (6) and (7), respectively, and a new subsection (5) is added to that section, to read:

1006.735 Complete Florida Plus Program.—The Complete Florida Plus Program is created at the University of West Florida.

(5) RAPID RESPONSE EDUCATION AND TRAINING PROGRAM.—The Rapid Response Education and Training Program is established within the Complete Florida Plus Program. Under this education and training program, the Complete Florida Plus Program shall work directly with Enterprise Florida, Inc., in project-specific

Page 1 of 2

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

1-00787A-15

2015942\_\_

industry recruitment and retention efforts to offer credible education and training commitments to businesses.

(a) The Rapid Response Education and Training Program must:

1. Issue challenge grants through requests for proposals that are open to all education and training providers, public or private. These grants match state dollars with education and training provider dollars to implement particular education and training programs.

2. Generate periodic reports from an independent forensic accounting or auditing entity to ensure transparency of the program. These periodic reports must be submitted to the President of the Senate and the Speaker of the House of Representatives.

3. Keep administrative costs to a minimum through the use of existing organizational structures.

4. Work directly with businesses to recruit individuals for education and training.

5. Be able to terminate an education and training program by giving 30 days' notice.

6. Survey employers after completion of an education and training program to ascertain the effectiveness of the program.

(b) The Division of Career and Adult Education within the Department of Education shall conduct an analysis and assessment of the effectiveness of the education and training programs under this section in meeting labor market and occupational trends and gaps.

Section 2. This act shall take effect July 1, 2015.

Page 2 of 2

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4 / 16 / 2015

Meeting Date

Topic \_\_\_\_\_

Bill Number 942  
*(if applicable)*

Name BRIAN PITTS

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

Job Title TRUSTEE

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Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)

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

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

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/SB 968

INTRODUCER: Banking and Insurance Committee and Senator Detert

SUBJECT: Employee Health Care Plans

DATE: April 15, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<b>Fav/CS</b>
2.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<b>Favorable</b>
3.	<u>Betta</u>	<u>Kynoch</u>	<u>AP</u>	<b>Favorable</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 968 revises and streamlines provisions relating to the 1992 Employee Health Care Access Act (act) which was enacted to promote the availability of health insurance coverage for small employers (50 or fewer employees) regardless of their claims experience, on a guaranteed issue basis. Many provisions of this act are outdated or conflict with the federal Patient Protection and Affordable Care Act (PPACA).<sup>1</sup> The bill also amends the stop loss insurance provisions for self-insured small employers and self-insured large employers. The bill removes the following requirements from the act:

- Mandated offer of standard, basic, and high deductible plans to small employers with specified benefits. The PPACA requires health plans to provide coverage for ten essential health benefits and other benefits, which are not included in the standard, basic, or high deductible plans.
- Annual August open enrollment period for one-person employer groups. The PPACA requires continuous open enrollment for small groups.
- Submission by insurers of an annual premium report to the Office of Insurance Regulation (OIR); and
- Submission by insurers of the semiannual rating report to the OIR.

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<sup>1</sup> On March 23, 2010, President Obama signed into law Public Law No. 111-148, the Patient Protection and Affordable Care Act (PPACA), and on March 30, 2010, President Obama signed into law Public Law No. 111-152, the Health Care and Education Affordability Reconciliation Act of 2010, amending PPACA.

There is no fiscal impact to state funds.

The bill provides an effective date of July 1, 2015.

## **II. Present Situation:**

The PPACA provided fundamental changes to the U.S. health care system by requiring health insurers to make coverage available to all individuals and employers, without exclusions for preexisting conditions and without basing premiums on any health-related factors. The PPACA imposes many insurance requirements including required benefits, rating and underwriting standards, required review of rate increases, and other requirements.<sup>2</sup>

### ***Essential Health Benefits***

The PPACA requires coverage<sup>3</sup> offered in the individual and small group markets to provide the following categories of services (essential health benefits package):

- Ambulatory patient services;
- Emergency services;
- Hospitalization;
- Maternity and newborn care;
- Mental health and substance abuse disorder services, including behavioral health treatment;
- Prescription drugs;
- Rehabilitative and habilitative services and devices;
- Laboratory services;
- Preventive and wellness services and chronic disease management; or
- Pediatric services, including oral and vision care.

### ***Rating and Underwriting Standards<sup>4</sup>***

The PPACA requires that premiums for individual and small group policies may vary only by:

- Age, up to a maximum ratio of 3 to 1. This means that the rates for older adults cannot be more than three times greater than the rates for younger adults;
- Tobacco, up to a maximum ratio of 1.5 to 1;
- Geographic rating area; or
- Whether coverage is for an individual or a family.

### **Office of Insurance Regulation**

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, health maintenance organizations, and other risk-bearing entities.<sup>5</sup> The Employee Health Care Access Act (act) under s. 627.6699, F.S., requires insurers in the small group market to guarantee the

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<sup>2</sup> Most of the insurance regulatory provisions in PPACA amend Title XXVII of the Public Health Service Act (PHSA), (42 U.S.C. 300gg et seq.

<sup>3</sup> 42 U.S.C. 300gg-6.

<sup>4</sup> 42 U.S.C. 300gg.

<sup>5</sup> Section 20.121(3)(a), F.S.

issuance of coverage to any small employer with 1-50 employees, including sole proprietors and self-employed individuals, regardless of their health condition.

The act requires small group carriers to offer the standard health benefit plan and the basic health benefit plan to each small employer applying for coverage. The act lists certain benefits that must be included in each of these policies. These plans do not comply with the PPACA essential health benefit requirements; therefore, insurers discontinued offering these policies for sale after January 1, 2014. Insurers are required to provide information regarding their standard and basic plans to the OIR on a quarterly basis.

Employers with fewer than two employees, typically referred to as “one-life groups,” are limited to a one-month open enrollment period in August of each year, rather than the year-round guarantee-issue requirement that applies to employers with 2-50 employees. The PPACA requires continuous open enrollment periods for small groups (unless groups strictly comply with market rules and elect to have open enrollment that coincides with open enrollment for the individual market), thus a separate August open enrollment period is no longer necessary.

The Small Employer Health Reinsurance Program was created by this act to facilitate the guaranteed issuance of standard and basic health benefit plans to all small employers by providing optional reinsurance coverage to small employer carriers.<sup>6</sup> The program now operates as the Florida Health Insurance Advisory Board. The board is required to establish a methodology for determining premium rates to be charged by the program for reinsuring small employers and individuals pursuant to this section. The basic reinsurance premium rates must be established by the board, subject to the approval of the OIR, and must be set at levels that reasonably approximate gross premiums charged to small employers by small employer carriers for health benefit plans with benefits similar to the standard and basic health benefit plan.

The act also authorizes the Chief Financial Officer to appoint a health benefit plan committee to make recommendations regarding additional benefits or provisions for the standard and basic health benefit plans.<sup>7</sup> The last report was issued in 2002 and recommendations by the CFO were adopted for all small group coverage effective April 1, 2003.<sup>8</sup>

Insurers are required to file with the OIR an annual premium report for all plans issued to small employers for the prior year.<sup>9</sup> In addition, each small group insurer is required to submit a semiannual report that provides the effects of certain rating factors (modified community rating) in setting premiums for small group employers. Under the act, each carrier is required to submit a semiannual report that shows the effects of certain rating factors in setting premiums.<sup>10</sup> The report allows the OIR to compare the actual adjusted aggregate premiums charged to policyholders by each carrier to the premiums that would have been charged if the carrier’s approved modified community rates were applied.<sup>11</sup>

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<sup>6</sup> Section 627.6699(11), F.S.

<sup>7</sup> Section 627.6699(12), F.S.

<sup>8</sup> Florida Department of Financial Services, *Informational Memorandum DFS-03-001M*, Mar. 6, 2003, available at [www.floir.com/siteDocuments/dfs-03-001m.pdf](http://www.floir.com/siteDocuments/dfs-03-001m.pdf) (last accessed March 20, 2015).

<sup>9</sup> Section 627.6699(4)(i)4., F.S.

<sup>10</sup> Section 627.6699(6)(b)5., F.S.

<sup>11</sup> *Id.*

A modified community rate allows a carrier to spread financial risk across a large population using separate rating factors such as age, gender, family composition, and tobacco usage.<sup>12</sup> It also permits adjustments to the rate for claims experience, health status, and certain expenses incurred by the carrier.<sup>13</sup> If the aggregate premium actually charged exceeds the premium that would have been charged by applying the modified community rate by four percent or more, the carrier is limited in the application of rate adjustments.<sup>14</sup>

While these rating factors are allowed in policies that are grandfathered plans<sup>15</sup> or transitional policies under the PPACA, PPACA-compliant policies do not use these rating factors to set premiums levels. Therefore, the usefulness of this report has decreased significantly. The data currently received by the OIR mixes grandfathered or transitional data (modified community rating allowed) with fully PPACA-compliant plans (modified community rating not allowed).

Stop-loss coverage is an arrangement whereby an insurer insures against the risk that any one claim will exceed a specific dollar amount or that an entire self-insurance plan's loss will exceed a specific amount.<sup>16</sup> Employers that self-insure may purchase stop-loss coverage as provided in Rule 69O-149.0025(23), F.A.C., which contains standards for stop-loss coverage purchased by a self-insured employer group and prescribes when such coverage is considered stop-loss coverage and when it is considered health insurance coverage under s. 627.6699, F.S. Additionally, Rule 69O-149.0025(23), F.A.C., provides that such coverage is considered as a health insurance policy, rather than a stop-loss coverage if the policy:

- Has an attachment point for claims incurred per individual which is lower than \$20,000; or
- For insured employer groups with 50 or fewer covered employees, has an aggregate attachment point which is lower than the greater of:
  - \$4,000 times the number of employees;
  - 120 percent of expected claims; or
  - \$20,000.

Under such a stop-loss arrangement, the self-insured employer is solely responsible for employee health claims below the attachment point and the stop-loss insurer provides coverage for employee health claims above the attachment point. There are no minimum surplus requirements for self-insured employer plans and no guarantee fund protection for the claims obligation of the self-insured employer.

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<sup>12</sup>Section 627.6699(3)(o), F.S.

<sup>13</sup> Small group carriers are allowed to adjust a small employer's rate by plus or minus 15 percent, based on health status, claims experience, or duration of coverage. The renewal premium can be adjusted up to 10 percent annually (up to the total 15 percent limit) of the carrier's approved rate, based on these factors.

<sup>14</sup> Section 627.6699(6)(b)5., F.S.

<sup>15</sup>Pursuant to s. 627.402, F.S., a "grandfathered health plan" has the same meaning as provided in 42 U.S.C. s. 18011, subject to the conditions for maintaining status as a grandfathered health plan specified in regulations adopted by the federal Department of Health and Human Services in 45 C.F.R. s. 147.140. "A non-grandfathered health plan" is a health insurance policy or health maintenance organization contract that is not a grandfathered health plan and does not provide the benefits or coverages specified under s. 627.6561(5)(b)-(e), F.S.

<sup>16</sup> Section 627.6482(14), F.S.

### III. Effect of Proposed Changes:

**Section 1** removes the following requirements that apply to insurers offering coverage in the small group market

- An annual August open enrollment period for one person employer groups;
- Mandatory offering of standard, basic, and high deductible plans to small employers;
- Submission by insurers of information regarding standard and basic plans to the OIR; and
- Submission by the insurers of small group experience rating report to the OIR.

The bill provides conforming changes to eliminate provisions relating to standard, basic, and high-deductible plans.

**Section 2** revises requirements for the use of stop-loss insurance policies by small employers, as defined in s. 627.6699, F.S., and large employers. The section provides that a self-insured health benefit plan established or maintained by a small employer is exempt from s. 627.6699, F.S., and may use a stop-loss insurance policy. A “stop-loss insurance policy,” is an insurance policy issued to a small employer, which covers the employer’s obligations for the excess cost of medical care on an equivalent basis per employee provided under a self-insured health benefit plan.

However, a small employer stop-loss insurance policy is considered a health insurance policy and is subject to s. 627.6699, F.S., if the policy has an aggregate attachment that is lower than the greatest of:

- \$2,000 times the number of employees;
- 120 percent of expected claims; or
- \$20,000.

Once claims under a small employer benefit plan reach the aggregate attachment point, the stop-loss policy must cover 100 percent of all claims that exceed the aggregate attachment point.

A self-insured health benefit plan established or maintained by a large employer (51 or more employees) is considered health insurance if the plan’s stop-loss coverage, as defined in s. 627.6482(14), F.S., has an aggregate attachment point that is lower than the greater of 110 percent of expected claims or \$20,000.

Stop-loss insurance carriers are required to use a consistent basis for determining the number of covered employees of an employer. Such basis may include, but is not limited to, the average number of employees employed annually or at a uniform date.

**Sections 3 through 9** provide technical, conforming changes.

**Section 10** provides the bill takes effect July 1, 2015.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

Under CS/SB 968, the elimination of the mandatory outdated reports will reduce the regulatory burden of insurers.

## C. Government Sector Impact:

The elimination of outdated reports will reduce the administrative burden for the Office of Insurance Regulation.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 627.6699, 627.642, 627.6475, 627.657, 627.6571, 627.6675, 641.31074, and 641.3922.

This bill creates section 627.66997 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Banking and Insurance on March 23, 2015:**

The bill revises provisions relating to stop-loss insurance for small and large employers.

- B. **Amendments:**

None.

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

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By the Committee on Banking and Insurance; and Senator Detert

597-02740-15

2015968c1

1 A bill to be entitled  
 2 An act relating to employee health care plans;  
 3 amending s. 627.6699, F.S.; revising definitions;  
 4 removing provisions requiring certain insurance  
 5 carriers to provide semiannual reports to the Office  
 6 of Insurance Regulation; repealing requirements that  
 7 certain insurance carriers offer standard, basic, high  
 8 deductible, and limited health benefit plans; making  
 9 conforming changes; creating s. 627.66997, F.S.;  
 10 authorizing certain health benefit plans to use a  
 11 stop-loss insurance policy; defining the term "stop-  
 12 loss insurance policy"; providing requirements for  
 13 such policies; amending ss. 627.642, 627.6475, and  
 14 627.657, F.S.; conforming cross-references; amending  
 15 ss. 627.6571, 627.6675, 641.31074, and 641.3922, F.S.;  
 16 conforming provisions to changes made by the act;  
 17 providing an effective date.  
 18  
 19 Be It Enacted by the Legislature of the State of Florida:  
 20  
 21 Section 1. Subsection (2) of section 627.6699, Florida  
 22 Statutes, is amended, present paragraphs (c) through (x) of  
 23 subsection (3) are redesignated as paragraphs (b) through (w),  
 24 respectively, and present paragraphs (b) and (o) of that  
 25 subsection, subsection (5), paragraph (b) of subsection (6),  
 26 paragraphs (g), (h), (j), and (l) through (o) of subsection  
 27 (11), subsections (12) through (14), paragraph (k) of subsection  
 28 (15), and subsections (16) through (18) of that section are  
 29 amended, to read:

Page 1 of 42

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

597-02740-15

2015968c1

30 627.6699 Employee Health Care Access Act.—  
 31 (2) PURPOSE AND INTENT.—The purpose and intent of this  
 32 section is to promote the availability of health insurance  
 33 coverage to small employers regardless of their claims  
 34 experience or their employees' health status, to establish rules  
 35 regarding renewability of that coverage, to establish  
 36 limitations on the use of exclusions for preexisting conditions,  
 37 ~~to provide for development of a standard health benefit plan and~~  
 38 ~~a basic health benefit plan to be offered to all small~~  
 39 ~~employers~~, to provide for establishment of a reinsurance program  
 40 for coverage of small employers, and to improve the overall  
 41 fairness and efficiency of the small group health insurance  
 42 market.  
 43 (3) DEFINITIONS.—As used in this section, the term:  
 44 ~~(b) "Basic health benefit plan" and "standard health~~  
 45 ~~benefit plan" mean low-cost health care plans developed pursuant~~  
 46 ~~to subsection (12).~~  
 47 (n)(e) "Modified community rating" means a method used to  
 48 develop carrier premiums which spreads financial risk across a  
 49 large population; allows the use of separate rating factors for  
 50 age, gender, family composition, tobacco usage, and geographic  
 51 area as determined under paragraph (5)(f) ~~(5)(j)~~; and allows  
 52 adjustments for: claims experience, health status, or duration  
 53 of coverage as permitted under subparagraph (6)(b)5.; and  
 54 administrative and acquisition expenses as permitted under  
 55 subparagraph (6)(b)5.  
 56 (5) AVAILABILITY OF COVERAGE.—  
 57 ~~(a) Beginning January 1, 1993, every small employer carrier~~  
 58 ~~issuing new health benefit plans to small employers in this~~

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59 state must, as a condition of transacting business in this  
 60 state, offer to eligible small employers a standard health  
 61 benefit plan and a basic health benefit plan. Such a small  
 62 employer carrier shall issue a standard health benefit plan or a  
 63 basic health benefit plan to every eligible small employer that  
 64 elects to be covered under such plan, agrees to make the  
 65 required premium payments under such plan, and to satisfy the  
 66 other provisions of the plan.

67 (a)(b) In the case of A small employer carrier that which  
 68 does not, ~~on or after January 1, 1993,~~ offer coverage but renews  
 69 or continues which does, ~~on or after January 1, 1993,~~ renew or  
 70 continue coverage in force must, such carrier shall be required  
 71 to provide coverage to newly eligible employees and dependents  
 72 on the same basis as small employer carriers that offer which  
 73 are offering coverage ~~on or after January 1, 1993.~~

74 (b)(e) Every small employer carrier must, as a condition of  
 75 transacting business in this state, ~~+~~

76 1. offer and issue all small employer health benefit plans  
 77 on a guaranteed-issue basis to every eligible small employer,  
 78 with 2 to 50 eligible employees, that elects to be covered under  
 79 such plan, agrees to make the required premium payments, and  
 80 satisfies the other provisions of the plan. A rider for  
 81 additional or increased benefits may be medically underwritten  
 82 and may only be added to the standard health benefit plan. The  
 83 increased rate charged for the additional or increased benefit  
 84 must be rated in accordance with this section.

85 2. ~~In the absence of enrollment availability in the Florida~~  
 86 ~~Health Insurance Plan, offer and issue basic and standard small~~  
 87 ~~employer health benefit plans and a high-deductible plan that~~

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88 meets the requirements of a health savings account plan or  
 89 health reimbursement account as defined by federal law, on a  
 90 guaranteed-issue basis, during a 31-day open enrollment period  
 91 of August 1 through August 31 of each year, to every eligible  
 92 small employer, with fewer than two eligible employees, which  
 93 small employer is not formed primarily for the purpose of buying  
 94 health insurance and which elects to be covered under such plan,  
 95 agrees to make the required premium payments, and satisfies the  
 96 other provisions of the plan. Coverage provided under this  
 97 subparagraph shall begin on October 1 of the same year as the  
 98 date of enrollment, unless the small employer carrier and the  
 99 small employer agree to a different date. A rider for additional  
 100 or increased benefits may be medically underwritten and may only  
 101 be added to the standard health benefit plan. The increased rate  
 102 charged for the additional or increased benefit must be rated in  
 103 accordance with this section. For purposes of this subparagraph,  
 104 a person, his or her spouse, and his or her dependent children  
 105 constitute a single eligible employee if that person and spouse  
 106 are employed by the same small employer and either that person  
 107 or his or her spouse has a normal work week of less than 25  
 108 hours. Any right to an open enrollment of health benefit  
 109 coverage for groups of fewer than two employees, pursuant to  
 110 this section, shall remain in full force and effect in the  
 111 absence of the availability of new enrollment into the Florida  
 112 Health Insurance Plan.

113 3. ~~This paragraph does not limit a carrier's ability to~~  
 114 ~~offer other health benefit plans to small employers if the~~  
 115 ~~standard and basic health benefit plans are offered and~~  
 116 ~~rejected.~~

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117 ~~(d) A small employer carrier must file with the office, in~~  
 118 ~~a format and manner prescribed by the committee, a standard~~  
 119 ~~health care plan, a high deductible plan that meets the federal~~  
 120 ~~requirements of a health savings account plan or a health~~  
 121 ~~reimbursement arrangement, and a basic health care plan to be~~  
 122 ~~used by the carrier. The provisions of this section requiring~~  
 123 ~~the filing of a high deductible plan are effective September 1,~~  
 124 ~~2004.~~

125 ~~(e) The office at any time may, after providing notice and~~  
 126 ~~an opportunity for a hearing, disapprove the continued use by~~  
 127 ~~the small employer carrier of the standard or basic health~~  
 128 ~~benefit plan on the grounds that such plan does not meet the~~  
 129 ~~requirements of this section.~~

130 (c)(f) Except as provided in paragraph (d) ~~(g)~~, a health  
 131 benefit plan covering small employers must comply with  
 132 preexisting condition provisions specified in s. 627.6561 or,  
 133 for health maintenance contracts, in s. 641.31071.

134 (d)(g) A health benefit plan covering small employers,  
 135 issued or renewed on or after January 1, 1994, must comply with  
 136 the following conditions:

137 1. All health benefit plans must be offered and issued on a  
 138 guaranteed-issue basis, ~~except that benefits purchased through~~  
 139 ~~riders as provided in paragraph (e) may be medically~~  
 140 ~~underwritten for the group, but may not be individually~~  
 141 ~~underwritten as to the employees or the dependents of such~~  
 142 ~~employees. Additional or increased benefits may only be offered~~  
 143 ~~by riders.~~

144 2. ~~The provisions of Paragraph (c) applies (f) apply to~~  
 145 health benefit plans issued to a small employer who has two or

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146 more eligible employees, and to health benefit plans that are  
 147 issued to a small employer who has fewer than two eligible  
 148 employees and that cover an employee who has had creditable  
 149 coverage continually to a date not more than 63 days before the  
 150 effective date of the new coverage.

151 3. For health benefit plans that are issued to a small  
 152 employer who has fewer than two employees and that cover an  
 153 employee who has not been continually covered by creditable  
 154 coverage within 63 days before the effective date of the new  
 155 coverage, preexisting condition provisions must not exclude  
 156 coverage for a period beyond 24 months following the employee's  
 157 effective date of coverage and may relate only to:

158 a. Conditions that, during the 24-month period immediately  
 159 preceding the effective date of coverage, had manifested  
 160 themselves in such a manner as would cause an ordinarily prudent  
 161 person to seek medical advice, diagnosis, care, or treatment or  
 162 for which medical advice, diagnosis, care, or treatment was  
 163 recommended or received; or

164 b. A pregnancy existing on the effective date of coverage.

165 (e)(h) All health benefit plans issued under this section  
 166 must comply with the following conditions:

167 1. For employers who have fewer than two employees, a late  
 168 enrollee may be excluded from coverage for no longer than 24  
 169 months if he or she was not covered by creditable coverage  
 170 continually to a date not more than 63 days before the effective  
 171 date of his or her new coverage.

172 2. Any requirement used by a small employer carrier in  
 173 determining whether to provide coverage to a small employer  
 174 group, including requirements for minimum participation of

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175 eligible employees and minimum employer contributions, must be  
 176 applied uniformly among all small employer groups having the  
 177 same number of eligible employees applying for coverage or  
 178 receiving coverage from the small employer carrier, except that  
 179 a small employer carrier that participates in, administers, or  
 180 issues health benefits pursuant to s. 381.0406 which do not  
 181 include a preexisting condition exclusion may require as a  
 182 condition of offering such benefits that the employer has had no  
 183 health insurance coverage for its employees for a period of at  
 184 least 6 months. A small employer carrier may vary application of  
 185 minimum participation requirements and minimum employer  
 186 contribution requirements only by the size of the small employer  
 187 group.

188 3. In applying minimum participation requirements with  
 189 respect to a small employer, a small employer carrier shall not  
 190 consider as an eligible employee employees or dependents who  
 191 have qualifying existing coverage in an employer-based group  
 192 insurance plan or an ERISA qualified self-insurance plan in  
 193 determining whether the applicable percentage of participation  
 194 is met. However, a small employer carrier may count eligible  
 195 employees and dependents who have coverage under another health  
 196 plan that is sponsored by that employer.

197 4. A small employer carrier shall not increase any  
 198 requirement for minimum employee participation or any  
 199 requirement for minimum employer contribution applicable to a  
 200 small employer at any time after the small employer has been  
 201 accepted for coverage, unless the employer size has changed, in  
 202 which case the small employer carrier may apply the requirements  
 203 that are applicable to the new group size.

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204 5. If a small employer carrier offers coverage to a small  
 205 employer, it must offer coverage to all the small employer's  
 206 eligible employees and their dependents. A small employer  
 207 carrier may not offer coverage limited to certain persons in a  
 208 group or to part of a group, except with respect to late  
 209 enrollees.

210 6. A small employer carrier may not modify any health  
 211 benefit plan issued to a small employer with respect to a small  
 212 employer or any eligible employee or dependent through riders,  
 213 endorsements, or otherwise to restrict or exclude coverage for  
 214 certain diseases or medical conditions otherwise covered by the  
 215 health benefit plan.

216 7. An initial enrollment period of at least 30 days must be  
 217 provided. An annual 30-day open enrollment period must be  
 218 offered to each small employer's eligible employees and their  
 219 dependents. A small employer carrier must provide special  
 220 enrollment periods as required by s. 627.65615.

221 ~~(i)1. A small employer carrier need not offer coverage or~~  
 222 ~~accept applications pursuant to paragraph (a):~~

223 ~~a. To a small employer if the small employer is not~~  
 224 ~~physically located in an established geographic service area of~~  
 225 ~~the small employer carrier, provided such geographic service~~  
 226 ~~area shall not be less than a county;~~

227 ~~b. To an employee if the employee does not work or reside~~  
 228 ~~within an established geographic service area of the small~~  
 229 ~~employer carrier; or~~

230 ~~c. To a small employer group within an area in which the~~  
 231 ~~small employer carrier reasonably anticipates, and demonstrates~~  
 232 ~~to the satisfaction of the office, that it cannot, within its~~

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233 network of providers, deliver service adequately to the members  
 234 of such groups because of obligations to existing group contract  
 235 holders and enrollees.

236 ~~2. A small employer carrier that cannot offer coverage~~  
 237 ~~pursuant to sub-subparagraph 1.c. may not offer coverage in the~~  
 238 ~~applicable area to new cases of employer groups having more than~~  
 239 ~~50 eligible employees or small employer groups until the later~~  
 240 ~~of 180 days following each such refusal or the date on which the~~  
 241 ~~carrier notifies the office that it has regained its ability to~~  
 242 ~~deliver services to small employer groups.~~

243 ~~3.a. A small employer carrier may deny health insurance~~  
 244 ~~coverage in the small group market if the carrier has~~  
 245 ~~demonstrated to the office that:~~

246 ~~(I) It does not have the financial reserves necessary to~~  
 247 ~~underwrite additional coverage; and~~

248 ~~(II) It is applying this sub-subparagraph uniformly to all~~  
 249 ~~employers in the small group market in this state consistent~~  
 250 ~~with this section and without regard to the claims experience of~~  
 251 ~~those employers and their employees and their dependents or any~~  
 252 ~~health-status-related factor that relates to such employees and~~  
 253 ~~dependents.~~

254 ~~b. A small employer carrier, upon denying health insurance~~  
 255 ~~coverage in connection with health benefit plans in accordance~~  
 256 ~~with sub-subparagraph a., may not offer coverage in connection~~  
 257 ~~with group health benefit plans in the small group market in~~  
 258 ~~this state for a period of 180 days after the date such coverage~~  
 259 ~~is denied or until the insurer has demonstrated to the office~~  
 260 ~~that the insurer has sufficient financial reserves to underwrite~~  
 261 ~~additional coverage, whichever is later. The office may provide~~

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262 ~~for the application of this sub-subparagraph on a service-area-~~  
 263 ~~specific basis.~~

264 ~~4. The commission shall, by rule, require each small~~  
 265 ~~employer carrier to report, on or before March 1 of each year,~~  
 266 ~~its gross annual premiums for all health benefit plans issued to~~  
 267 ~~small employers during the previous calendar year, and also to~~  
 268 ~~report its gross annual premiums for new, but not renewal,~~  
 269 ~~standard and basic health benefit plans subject to this section~~  
 270 ~~issued during the previous calendar year. No later than May 1 of~~  
 271 ~~each year, the office shall calculate each carrier's percentage~~  
 272 ~~of all small employer group health premiums for the previous~~  
 273 ~~calendar year and shall calculate the aggregate gross annual~~  
 274 ~~premiums for new, but not renewal, standard and basic health~~  
 275 ~~benefit plans for the previous calendar year.~~

276 ~~(f)(j)~~ The boundaries of geographic areas used by a small  
 277 employer carrier must coincide with county lines. A carrier may  
 278 not apply different geographic rating factors to the rates of  
 279 small employers located within the same county.

280 (6) RESTRICTIONS RELATING TO PREMIUM RATES.-

281 (b) For all small employer health benefit plans that are  
 282 subject to this section and issued by small employer carriers on  
 283 or after January 1, 1994, premium rates for health benefit plans  
 284 are subject to the following:

285 1. Small employer carriers must use a modified community  
 286 rating methodology in which the premium for each small employer  
 287 is determined solely on the basis of the eligible employee's and  
 288 eligible dependent's gender, age, family composition, tobacco  
 289 use, or geographic area as determined under paragraph (5) (f)  
 290 ~~(5) (j)~~ and in which the premium may be adjusted as permitted by

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291 this paragraph. A small employer carrier is not required to use  
292 gender as a rating factor for a nongrandfathered health plan.

293 2. Rating factors related to age, gender, family  
294 composition, tobacco use, or geographic location may be  
295 developed by each carrier to reflect the carrier's experience.  
296 The factors used by carriers are subject to office review and  
297 approval.

298 3. Small employer carriers may not modify the rate for a  
299 small employer for 12 months from the initial issue date or  
300 renewal date, unless the composition of the group changes or  
301 benefits are changed. However, a small employer carrier may  
302 modify the rate one time within the 12 months after the initial  
303 issue date for a small employer who enrolls under a previously  
304 issued group policy that has a common anniversary date for all  
305 employers covered under the policy if:

306 a. The carrier discloses to the employer in a clear and  
307 conspicuous manner the date of the first renewal and the fact  
308 that the premium may increase on or after that date.

309 b. The insurer demonstrates to the office that efficiencies  
310 in administration are achieved and reflected in the rates  
311 charged to small employers covered under the policy.

312 4. A carrier may issue a group health insurance policy to a  
313 small employer health alliance or other group association with  
314 rates that reflect a premium credit for expense savings  
315 attributable to administrative activities being performed by the  
316 alliance or group association if such expense savings are  
317 specifically documented in the insurer's rate filing and are  
318 approved by the office. Any such credit may not be based on  
319 different morbidity assumptions or on any other factor related

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320 to the health status or claims experience of any person covered  
321 under the policy. This subparagraph does not exempt an alliance  
322 or group association from licensure for activities that require  
323 licensure under the insurance code. A carrier issuing a group  
324 health insurance policy to a small employer health alliance or  
325 other group association shall allow any properly licensed and  
326 appointed agent of that carrier to market and sell the small  
327 employer health alliance or other group association policy. Such  
328 agent shall be paid the usual and customary commission paid to  
329 any agent selling the policy.

330 5. Any adjustments in rates for claims experience, health  
331 status, or duration of coverage may not be charged to individual  
332 employees or dependents. For a small employer's policy, such  
333 adjustments may not result in a rate for the small employer  
334 which deviates more than 15 percent from the carrier's approved  
335 rate. Any such adjustment must be applied uniformly to the rates  
336 charged for all employees and dependents of the small employer.  
337 A small employer carrier may make an adjustment to a small  
338 employer's renewal premium, up to 10 percent annually, due to  
339 the claims experience, health status, or duration of coverage of  
340 the employees or dependents of the small employer. ~~Semiannually,~~  
341 ~~small group carriers shall report information on forms adopted~~  
342 ~~by rule by the commission, to enable the office to monitor the~~  
343 ~~relationship of aggregate adjusted premiums actually charged~~  
344 ~~policyholders by each carrier to the premiums that would have~~  
345 ~~been charged by application of the carrier's approved modified~~  
346 ~~community rates.~~ If the aggregate resulting from the application  
347 of such adjustment exceeds the premium that would have been  
348 charged by application of the approved modified community rate

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349 by 4 percent for the current policy term reporting period, the  
 350 carrier shall limit the application of such adjustments only to  
 351 minus adjustments ~~beginning within 60 days after the report is~~  
 352 ~~sent to the office~~. For any subsequent policy term reporting  
 353 period, if the total aggregate adjusted premium actually charged  
 354 does not exceed the premium that would have been charged by  
 355 application of the approved modified community rate by 4  
 356 percent, the carrier may apply both plus and minus adjustments.  
 357 A small employer carrier may provide a credit to a small  
 358 employer's premium based on administrative and acquisition  
 359 expense differences resulting from the size of the group. Group  
 360 size administrative and acquisition expense factors may be  
 361 developed by each carrier to reflect the carrier's experience  
 362 and are subject to office review and approval.

363 6. A small employer carrier rating methodology may include  
 364 separate rating categories for one dependent child, for two  
 365 dependent children, and for three or more dependent children for  
 366 family coverage of employees having a spouse and dependent  
 367 children or employees having dependent children only. A small  
 368 employer carrier may have fewer, but not greater, numbers of  
 369 categories for dependent children than those specified in this  
 370 subparagraph.

371 7. Small employer carriers may not use a composite rating  
 372 methodology to rate a small employer with fewer than 10  
 373 employees. For the purposes of this subparagraph, the term  
 374 "composite rating methodology" means a rating methodology that  
 375 averages the impact of the rating factors for age and gender in  
 376 the premiums charged to all of the employees of a small  
 377 employer.

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378 8. A carrier may separate the experience of small employer  
 379 groups with fewer than 2 eligible employees from the experience  
 380 of small employer groups with 2-50 eligible employees for  
 381 purposes of determining an alternative modified community  
 382 rating.

383 a. If a carrier separates the experience of small employer  
 384 groups, the rate to be charged to small employer groups of fewer  
 385 than 2 eligible employees may not exceed 150 percent of the rate  
 386 determined for small employer groups of 2-50 eligible employees.  
 387 However, the carrier may charge excess losses of the experience  
 388 pool consisting of small employer groups with less than 2  
 389 eligible employees to the experience pool consisting of small  
 390 employer groups with 2-50 eligible employees so that all losses  
 391 are allocated and the 150-percent rate limit on the experience  
 392 pool consisting of small employer groups with less than 2  
 393 eligible employees is maintained.

394 b. Notwithstanding s. 627.411(1), the rate to be charged to  
 395 a small employer group of fewer than 2 eligible employees,  
 396 insured as of July 1, 2002, may be up to 125 percent of the rate  
 397 determined for small employer groups of 2-50 eligible employees  
 398 for the first annual renewal and 150 percent for subsequent  
 399 annual renewals.

400 9. A carrier shall separate the experience of grandfathered  
 401 health plans from nongrandfathered health plans for determining  
 402 rates.

403 (11) SMALL EMPLOYER HEALTH REINSURANCE PROGRAM.—

404 (g) A reinsuring carrier may reinsure with the program  
 405 coverage of an eligible employee of a small employer, or any  
 406 dependent of such an employee, subject to each of the following

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407 provisions:

408 ~~1. With respect to a standard and basic health care plan,~~  
 409 ~~the program must reinsure the level of coverage provided; and,~~  
 410 ~~with respect to any other plan, the program must reinsure the~~  
 411 ~~coverage up to, but not exceeding, the level of coverage~~  
 412 ~~provided under the standard and basic health care plan.~~

413 ~~1.2-~~ Except in the case of a late enrollee, a reinsuring  
 414 carrier may reinsure an eligible employee or dependent within 60  
 415 days after the commencement of the coverage of the small  
 416 employer. A newly employed eligible employee or dependent of a  
 417 small employer may be reinsured within 60 days after the  
 418 commencement of his or her coverage.

419 ~~2.3-~~ A small employer carrier may reinsure an entire  
 420 employer group within 60 days after the commencement of the  
 421 group's coverage under the plan. ~~The carrier may choose to~~  
 422 ~~reinsure newly eligible employees and dependents of the~~  
 423 ~~reinsured group pursuant to subparagraph 1.~~

424 ~~3.4-~~ The program may not reimburse a participating carrier  
 425 with respect to the claims of a reinsured employee or dependent  
 426 until the carrier has paid incurred claims of at least \$5,000 in  
 427 a calendar year for benefits covered by the program. In  
 428 addition, the reinsuring carrier shall be responsible for 10  
 429 percent of the next \$50,000 and 5 percent of the next \$100,000  
 430 of incurred claims during a calendar year and the program shall  
 431 reinsure the remainder.

432 ~~4.5-~~ The board annually shall adjust the initial level of  
 433 claims and the maximum limit to be retained by the carrier to  
 434 reflect increases in costs and utilization within the standard  
 435 market for health benefit plans within the state. The adjustment

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436 shall not be less than the annual change in the medical  
 437 component of the "Consumer Price Index for All Urban Consumers"  
 438 of the Bureau of Labor Statistics of the Department of Labor,  
 439 unless the board proposes and the office approves a lower  
 440 adjustment factor.

441 ~~5.6-~~ A small employer carrier may terminate reinsurance for  
 442 all reinsured employees or dependents on any plan anniversary.

443 ~~6.7-~~ The premium rate charged for reinsurance by the  
 444 program to a health maintenance organization that is approved by  
 445 the Secretary of Health and Human Services as a federally  
 446 qualified health maintenance organization pursuant to 42 U.S.C.  
 447 s. 300e(c)(2)(A) and that, as such, is subject to requirements  
 448 that limit the amount of risk that may be ceded to the program,  
 449 which requirements are more restrictive than subparagraph ~~3. 4-~~,  
 450 shall be reduced by an amount equal to that portion of the risk,  
 451 if any, which exceeds the amount set forth in subparagraph ~~3. 4-~~  
 452 which may not be ceded to the program.

453 ~~7.8-~~ The board may consider adjustments to the premium  
 454 rates charged for reinsurance by the program for carriers that  
 455 use effective cost containment measures, including high-cost  
 456 case management, as defined by the board.

457 ~~8.9-~~ A reinsuring carrier shall apply its case-management  
 458 and claims-handling techniques, including, but not limited to,  
 459 utilization review, individual case management, preferred  
 460 provider provisions, other managed care provisions or methods of  
 461 operation, consistently with both reinsured business and  
 462 nonreinsured business.

463 (h)1. The board, as part of the plan of operation, shall  
 464 establish a methodology for determining premium rates to be

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465 charged by the program for reinsuring small employers and  
 466 individuals pursuant to this section. The methodology shall  
 467 include a system for classification of small employers that  
 468 reflects the types of case characteristics commonly used by  
 469 small employer carriers in the state. The methodology shall  
 470 provide for the development of basic reinsurance premium rates,  
 471 which shall be multiplied by the factors set for them in this  
 472 paragraph to determine the premium rates for the program. The  
 473 basic reinsurance premium rates shall be established by the  
 474 board, subject to the approval of the office, ~~and shall be set~~  
 475 ~~at levels which reasonably approximate gross premiums charged to~~  
 476 ~~small employers by small employer carriers for health benefit~~  
 477 ~~plans with benefits similar to the standard and basic health~~  
 478 ~~benefit plan.~~ The premium rates set by the board may vary by  
 479 geographical area, as determined under this section, to reflect  
 480 differences in cost. The multiplying factors must be established  
 481 as follows:

482 a. The entire group may be reinsured for a rate that is 1.5  
 483 times the rate established by the board.

484 b. An eligible employee or dependent may be reinsured for a  
 485 rate that is 5 times the rate established by the board.

486 2. The board periodically shall review the methodology  
 487 established, including the system of classification and any  
 488 rating factors, to assure that it reasonably reflects the claims  
 489 experience of the program. The board may propose changes to the  
 490 rates which shall be subject to the approval of the office.

491 (j)1. Before July 1 of each calendar year, the board shall  
 492 determine and report to the office the program net loss for the  
 493 previous year, including administrative expenses for that year,

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494 and the incurred losses for the year, taking into account  
 495 investment income and other appropriate gains and losses.

496 2. Any net loss for the year shall be recouped by  
 497 assessment of the carriers, as follows:

498 a. The operating losses of the program shall be assessed in  
 499 the following order subject to the specified limitations. The  
 500 first tier of assessments shall be made against reinsuring  
 501 carriers in an amount which shall not exceed 5 percent of each  
 502 reinsuring carrier's premiums from health benefit plans covering  
 503 small employers. If such assessments have been collected and  
 504 additional moneys are needed, the board shall make a second tier  
 505 of assessments in an amount which shall not exceed 0.5 percent  
 506 of each carrier's health benefit plan premiums. Except as  
 507 provided in paragraph (m) ~~(n)~~, risk-assuming carriers are exempt  
 508 from all assessments authorized pursuant to this section. The  
 509 amount paid by a reinsuring carrier for the first tier of  
 510 assessments shall be credited against any additional assessments  
 511 made.

512 b. The board shall equitably assess carriers for operating  
 513 losses of the plan based on market share. The board shall  
 514 annually assess each carrier a portion of the operating losses  
 515 of the plan. The first tier of assessments shall be determined  
 516 by multiplying the operating losses by a fraction, the numerator  
 517 of which equals the reinsuring carrier's earned premium  
 518 pertaining to direct writings of small employer health benefit  
 519 plans in the state during the calendar year for which the  
 520 assessment is levied, and the denominator of which equals the  
 521 total of all such premiums earned by reinsuring carriers in the  
 522 state during that calendar year. The second tier of assessments

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523 shall be based on the premiums that all carriers, except risk-  
 524 assuming carriers, earned on all health benefit plans written in  
 525 this state. The board may levy interim assessments against  
 526 carriers to ensure the financial ability of the plan to cover  
 527 claims expenses and administrative expenses paid or estimated to  
 528 be paid in the operation of the plan for the calendar year prior  
 529 to the association's anticipated receipt of annual assessments  
 530 for that calendar year. Any interim assessment is due and  
 531 payable within 30 days after receipt by a carrier of the interim  
 532 assessment notice. Interim assessment payments shall be credited  
 533 against the carrier's annual assessment. Health benefit plan  
 534 premiums and benefits paid by a carrier that are less than an  
 535 amount determined by the board to justify the cost of collection  
 536 may not be considered for purposes of determining assessments.

537 c. Subject to the approval of the office, the board shall  
 538 make an adjustment to the assessment formula for reinsuring  
 539 carriers that are approved as federally qualified health  
 540 maintenance organizations by the Secretary of Health and Human  
 541 Services pursuant to 42 U.S.C. s. 300e(c)(2)(A) to the extent,  
 542 if any, that restrictions are placed on them that are not  
 543 imposed on other small employer carriers.

544 3. Before July 1 of each year, the board shall determine  
 545 and file with the office an estimate of the assessments needed  
 546 to fund the losses incurred by the program in the previous  
 547 calendar year.

548 4. If the board determines that the assessments needed to  
 549 fund the losses incurred by the program in the previous calendar  
 550 year will exceed the amount specified in subparagraph 2., the  
 551 board shall evaluate the operation of the program and report its

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552 findings, including any recommendations for changes to the plan  
 553 of operation, to the office within 180 days following the end of  
 554 the calendar year in which the losses were incurred. The  
 555 evaluation shall include an estimate of future assessments, the  
 556 administrative costs of the program, the appropriateness of the  
 557 premiums charged and the level of carrier retention under the  
 558 program, and the costs of coverage for small employers. If the  
 559 board fails to file a report with the office within 180 days  
 560 following the end of the applicable calendar year, the office  
 561 may evaluate the operations of the program and implement such  
 562 amendments to the plan of operation the office deems necessary  
 563 to reduce future losses and assessments.

564 5. If assessments exceed the amount of the actual losses  
 565 and administrative expenses of the program, the excess shall be  
 566 held as interest and used by the board to offset future losses  
 567 or to reduce program premiums. As used in this paragraph, the  
 568 term "future losses" includes reserves for incurred but not  
 569 reported claims.

570 6. Each carrier's proportion of the assessment shall be  
 571 determined annually by the board, based on annual statements and  
 572 other reports considered necessary by the board and filed by the  
 573 carriers with the board.

574 7. Provision shall be made in the plan of operation for the  
 575 imposition of an interest penalty for late payment of an  
 576 assessment.

577 8. A carrier may seek, from the office, a deferment, in  
 578 whole or in part, from any assessment made by the board. The  
 579 office may defer, in whole or in part, the assessment of a  
 580 carrier if, in the opinion of the office, the payment of the

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581 assessment would place the carrier in a financially impaired  
 582 condition. If an assessment against a carrier is deferred, in  
 583 whole or in part, the amount by which the assessment is deferred  
 584 may be assessed against the other carriers in a manner  
 585 consistent with the basis for assessment set forth in this  
 586 section. The carrier receiving such deferment remains liable to  
 587 the program for the amount deferred and is prohibited from  
 588 reinsuring any individuals or groups in the program if it fails  
 589 to pay assessments.

590 ~~(l) The board, as part of the plan of operation, shall~~  
 591 ~~develop standards setting forth the manner and levels of~~  
 592 ~~compensation to be paid to agents for the sale of basic and~~  
 593 ~~standard health benefit plans. In establishing such standards,~~  
 594 ~~the board shall take into consideration the need to assure the~~  
 595 ~~broad availability of coverages, the objectives of the program,~~  
 596 ~~the time and effort expended in placing the coverage, the need~~  
 597 ~~to provide ongoing service to the small employer, the levels of~~  
 598 ~~compensation currently used in the industry, and the overall~~  
 599 ~~costs of coverage to small employers selecting these plans.~~

600 (l) (m) The board shall monitor compliance with this  
 601 section, including the market conduct of small employer  
 602 carriers, and shall report to the office any unfair trade  
 603 practices and misleading or unfair conduct by a small employer  
 604 carrier that has been reported to the board by agents,  
 605 consumers, or any other person. The office shall investigate all  
 606 reports and, upon a finding of noncompliance with this section  
 607 or of unfair or misleading practices, shall take action against  
 608 the small employer carrier as permitted under the insurance code  
 609 or chapter 641. The board is not given investigatory or

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610 regulatory powers, but must forward all reports of cases or  
 611 abuse or misrepresentation to the office.

612 (m) (n) Notwithstanding paragraph (j), the administrative  
 613 expenses of the program shall be recouped by assessment of risk-  
 614 assuming carriers and reinsuring carriers and such amounts shall  
 615 not be considered part of the operating losses of the plan for  
 616 the purposes of this paragraph. Each carrier's portion of such  
 617 administrative expenses shall be determined by multiplying the  
 618 total of such administrative expenses by a fraction, the  
 619 numerator of which equals the carrier's earned premium  
 620 pertaining to direct writing of small employer health benefit  
 621 plans in the state during the calendar year for which the  
 622 assessment is levied, and the denominator of which equals the  
 623 total of such premiums earned by all carriers in the state  
 624 during such calendar year.

625 (n) (o) The board shall advise the office, the Agency for  
 626 Health Care Administration, the department, other executive  
 627 departments, and the Legislature on health insurance issues.  
 628 Specifically, the board shall:

- 629 1. Provide a forum for stakeholders, consisting of
- 630 insurers, employers, agents, consumers, and regulators, in the
- 631 private health insurance market in this state.
- 632 2. Review and recommend strategies to improve the
- 633 functioning of the health insurance markets in this state with a
- 634 specific focus on market stability, access, and pricing.
- 635 3. Make recommendations to the office for legislation
- 636 addressing health insurance market issues and provide comments
- 637 on health insurance legislation proposed by the office.
- 638 4. Meet at least three times each year. One meeting shall

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639 be held to hear reports and to secure public comment on the  
640 health insurance market, to develop any legislation needed to  
641 address health insurance market issues, and to provide comments  
642 on health insurance legislation proposed by the office.

643 5. Issue a report to the office on the state of the health  
644 insurance market by September 1 each year. The report shall  
645 include recommendations for changes in the health insurance  
646 market, results from implementation of previous recommendations,  
647 and information on health insurance markets.

648 ~~(12) STANDARD, BASIC, HIGH DEDUCTIBLE, AND LIMITED HEALTH~~  
649 ~~BENEFIT PLANS.~~

650 ~~(a)1. The Chief Financial Officer shall appoint a health~~  
651 ~~benefit plan committee composed of four representatives of~~  
652 ~~carriers which shall include at least two representatives of~~  
653 ~~HMOs, at least one of which is a staff model HMO, two~~  
654 ~~representatives of agents, four representatives of small~~  
655 ~~employers, and one employee of a small employer. The carrier~~  
656 ~~members shall be selected from a list of individuals recommended~~  
657 ~~by the board. The Chief Financial Officer may require the board~~  
658 ~~to submit additional recommendations of individuals for~~  
659 ~~appointment.~~

660 ~~2. The plans shall comply with all of the requirements of~~  
661 ~~this subsection.~~

662 ~~3. The plans must be filed with and approved by the office~~  
663 ~~prior to issuance or delivery by any small employer carrier.~~

664 ~~4. After approval of the revised health benefit plans, if~~  
665 ~~the office determines that modifications to a plan might be~~  
666 ~~appropriate, the Chief Financial Officer shall appoint a new~~  
667 ~~health benefit plan committee in the manner provided in~~

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668 ~~subparagraph 1. to submit recommended modifications to the~~  
669 ~~office for approval.~~

670 ~~(b)1. Each small employer carrier issuing new health~~  
671 ~~benefit plans shall offer to any small employer, upon request, a~~  
672 ~~standard health benefit plan, a basic health benefit plan, and a~~  
673 ~~high deductible plan that meets the requirements of a health~~  
674 ~~savings account plan as defined by federal law or a health~~  
675 ~~reimbursement arrangement as authorized by the Internal Revenue~~  
676 ~~Service, that meet the criteria set forth in this section.~~

677 ~~2. For purposes of this subsection, the terms "standard~~  
678 ~~health benefit plan," "basic health benefit plan," and "high~~  
679 ~~deductible plan" mean policies or contracts that a small~~  
680 ~~employer carrier offers to eligible small employers that~~  
681 ~~contain:~~

682 ~~a. An exclusion for services that are not medically~~  
683 ~~necessary or that are not covered preventive health services;~~  
684 ~~and~~

685 ~~b. A procedure for preauthorization by the small employer~~  
686 ~~carrier, or its designees.~~

687 ~~3. A small employer carrier may include the following~~  
688 ~~managed care provisions in the policy or contract to control~~  
689 ~~costs:~~

690 ~~a. A preferred provider arrangement or exclusive provider~~  
691 ~~organization or any combination thereof, in which a small~~  
692 ~~employer carrier enters into a written agreement with the~~  
693 ~~provider to provide services at specified levels of~~  
694 ~~reimbursement or to provide reimbursement to specified~~  
695 ~~providers. Any such written agreement between a provider and a~~  
696 ~~small employer carrier must contain a provision under which the~~

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697 ~~parties agree that the insured individual or covered member has~~  
 698 ~~no obligation to make payment for any medical service rendered~~  
 699 ~~by the provider which is determined not to be medically~~  
 700 ~~necessary. A carrier may use preferred provider arrangements or~~  
 701 ~~exclusive provider arrangements to the same extent as allowed in~~  
 702 ~~group products that are not issued to small employers.~~

703 ~~b. A procedure for utilization review by the small employer~~  
 704 ~~carrier or its designees.~~

705  
 706 ~~This subparagraph does not prohibit a small employer carrier~~  
 707 ~~from including in its policy or contract additional managed care~~  
 708 ~~and cost containment provisions, subject to the approval of the~~  
 709 ~~office, which have potential for controlling costs in a manner~~  
 710 ~~that does not result in inequitable treatment of insureds or~~  
 711 ~~subscribers. The carrier may use such provisions to the same~~  
 712 ~~extent as authorized for group products that are not issued to~~  
 713 ~~small employers.~~

- 714 ~~4. The standard health benefit plan shall include:~~  
 715 ~~a. Coverage for inpatient hospitalization;~~  
 716 ~~b. Coverage for outpatient services;~~  
 717 ~~c. Coverage for newborn children pursuant to s. 627.6575;~~  
 718 ~~d. Coverage for child care supervision services pursuant to~~  
 719 ~~s. 627.6579;~~  
 720 ~~e. Coverage for adopted children upon placement in the~~  
 721 ~~residence pursuant to s. 627.6578;~~  
 722 ~~f. Coverage for mammograms pursuant to s. 627.6613;~~  
 723 ~~g. Coverage for handicapped children pursuant to s.~~  
 724 ~~627.6615;~~  
 725 ~~h. Emergency or urgent care out of the geographic service~~

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726 ~~area; and~~

727 ~~i. Coverage for services provided by a hospice licensed~~  
 728 ~~under s. 400.602 in cases where such coverage would be the most~~  
 729 ~~appropriate and the most cost-effective method for treating a~~  
 730 ~~covered illness.~~

731 ~~5. The standard health benefit plan and the basic health~~  
 732 ~~benefit plan may include a schedule of benefit limitations for~~  
 733 ~~specified services and procedures. If the committee develops~~  
 734 ~~such a schedule of benefits limitation for the standard health~~  
 735 ~~benefit plan or the basic health benefit plan, a small employer~~  
 736 ~~carrier offering the plan must offer the employer an option for~~  
 737 ~~increasing the benefit schedule amounts by 4 percent annually.~~

738 ~~6. The basic health benefit plan shall include all of the~~  
 739 ~~benefits specified in subparagraph 4.; however, the basic health~~  
 740 ~~benefit plan shall place additional restrictions on the benefits~~  
 741 ~~and utilization and may also impose additional cost containment~~  
 742 ~~measures.~~

743 ~~7. Sections 627.419(2), (3), and (4), 627.6574, 627.6612,~~  
 744 ~~627.66121, 627.66122, 627.6616, 627.6618, 627.668, and 627.66911~~  
 745 ~~apply to the standard health benefit plan and to the basic~~  
 746 ~~health benefit plan. However, notwithstanding said provisions,~~  
 747 ~~the plans may specify limits on the number of authorized~~  
 748 ~~treatments, if such limits are reasonable and do not~~  
 749 ~~discriminate against any type of provider.~~

750 ~~8. The high deductible plan associated with a health~~  
 751 ~~savings account or a health reimbursement arrangement shall~~  
 752 ~~include all the benefits specified in subparagraph 4.~~

753 ~~9. Each small employer carrier that provides for inpatient~~  
 754 ~~and outpatient services by allopathic hospitals may provide as~~

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755 an option of the insured similar inpatient and outpatient  
 756 services by hospitals accredited by the American Osteopathic  
 757 Association when such services are available and the osteopathic  
 758 hospital agrees to provide the service.

759 ~~(e) If a small employer rejects, in writing, the standard~~  
 760 ~~health benefit plan, the basic health benefit plan, and the high~~  
 761 ~~deductible health savings account plan or a health reimbursement~~  
 762 ~~arrangement, the small employer carrier may offer the small~~  
 763 ~~employer a limited benefit policy or contract.~~

764 ~~(d)1. Upon offering coverage under a standard health~~  
 765 ~~benefit plan, a basic health benefit plan, or a limited benefit~~  
 766 ~~policy or contract for a small employer group, the small~~  
 767 ~~employer carrier shall provide such employer group with a~~  
 768 ~~written statement that contains, at a minimum:~~

769 ~~a. An explanation of those mandated benefits and providers~~  
 770 ~~that are not covered by the policy or contract;~~

771 ~~b. An explanation of the managed care and cost control~~  
 772 ~~features of the policy or contract, along with all appropriate~~  
 773 ~~mailing addresses and telephone numbers to be used by insureds~~  
 774 ~~in seeking information or authorization; and~~

775 ~~c. An explanation of the primary and preventive care~~  
 776 ~~features of the policy or contract.~~

777

778 ~~Such disclosure statement must be presented in a clear and~~  
 779 ~~understandable form and format and must be separate from the~~  
 780 ~~policy or certificate or evidence of coverage provided to the~~  
 781 ~~employer group.~~

782 ~~2. Before a small employer carrier issues a standard health~~  
 783 ~~benefit plan, a basic health benefit plan, or a limited benefit~~

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784 ~~policy or contract, the carrier must obtain from the prospective~~  
 785 ~~policyholder a signed written statement in which the prospective~~  
 786 ~~policyholder:~~

787 ~~a. Certifies as to eligibility for coverage under the~~  
 788 ~~standard health benefit plan, basic health benefit plan, or~~  
 789 ~~limited benefit policy or contract;~~

790 ~~b. Acknowledges the limited nature of the coverage and an~~  
 791 ~~understanding of the managed care and cost control features of~~  
 792 ~~the policy or contract;~~

793 ~~c. Acknowledges that if misrepresentations are made~~  
 794 ~~regarding eligibility for coverage under a standard health~~  
 795 ~~benefit plan, a basic health benefit plan, or a limited benefit~~  
 796 ~~policy or contract, the person making such misrepresentations~~  
 797 ~~forfeits coverage provided by the policy or contract; and~~

798 ~~d. If a limited plan is requested, acknowledges that the~~  
 799 ~~prospective policyholder had been offered, at the time of~~  
 800 ~~application for the insurance policy or contract, the~~  
 801 ~~opportunity to purchase any health benefit plan offered by the~~  
 802 ~~carrier and that the prospective policyholder rejected that~~  
 803 ~~coverage.~~

804

805 ~~A copy of such written statement must be provided to the~~  
 806 ~~prospective policyholder by the time of delivery of the policy~~  
 807 ~~or contract, and the original of such written statement must be~~  
 808 ~~retained in the files of the small employer carrier for the~~  
 809 ~~period of time that the policy or contract remains in effect or~~  
 810 ~~for 5 years, whichever is longer.~~

811 ~~3. Any material statement made by an applicant for coverage~~  
 812 ~~under a health benefit plan which falsely certifies the~~

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813 applicant's eligibility for coverage serves as the basis for  
814 terminating coverage under the policy or contract.

815 ~~(e) A small employer carrier may not use any policy,~~  
816 ~~contract, form, or rate under this section, including~~  
817 ~~applications, enrollment forms, policies, contracts,~~  
818 ~~certificates, evidences of coverage, riders, amendments,~~  
819 ~~endorsements, and disclosure forms, until the insurer has filed~~  
820 ~~it with the office and the office has approved it under ss.~~  
821 ~~627.410 and 627.411 and this section.~~

822 (12) ~~(13)~~ STANDARDS TO ASSURE FAIR MARKETING.-

823 (a) Each small employer carrier shall actively market  
824 health benefit plan coverage, including the basic and standard  
825 health benefit plans, including any subsequent modifications or  
826 additions to those plans, to eligible small employers in the  
827 state. ~~Before January 1, 1994, if a small employer carrier~~  
828 ~~denies coverage to a small employer on the basis of the health~~  
829 ~~status or claims experience of the small employer or its~~  
830 ~~employees or dependents, the small employer carrier shall offer~~  
831 ~~the small employer the opportunity to purchase a basic health~~  
832 ~~benefit plan and a standard health benefit plan. Beginning~~  
833 ~~January 1, 1994, Small employer carriers must offer and issue~~  
834 all plans on a guaranteed-issue basis.

835 (b) A ~~No~~ small employer carrier or agent shall not,  
836 directly or indirectly, engage in the following activities:

837 1. Encouraging or directing small employers to refrain from  
838 filing an application for coverage with the small employer  
839 carrier because of the health status, claims experience,  
840 industry, occupation, or geographic location of the small  
841 employer.

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842 2. Encouraging or directing small employers to seek  
843 coverage from another carrier because of the health status,  
844 claims experience, industry, occupation, or geographic location  
845 of the small employer.

846 (c) ~~The provisions of Paragraph (a) does shall~~ not apply  
847 with respect to information provided by a small employer carrier  
848 or agent to a small employer regarding the established  
849 geographic service area or a restricted network provision of a  
850 small employer carrier.

851 (d) A ~~No~~ small employer carrier shall not, directly or  
852 indirectly, enter into any contract, agreement, or arrangement  
853 with an agent that provides for or results in the compensation  
854 paid to an agent for the sale of a health benefit plan to be  
855 varied because of the health status, claims experience,  
856 industry, occupation, or geographic location of the small  
857 employer except if the compensation arrangement provides  
858 compensation to an agent on the basis of percentage of premium,  
859 provided that the percentage shall not vary because of the  
860 health status, claims experience, industry, occupation, or  
861 geographic area of the small employer.

862 ~~(e) A small employer carrier shall provide reasonable~~  
863 ~~compensation, as provided under the plan of operation of the~~  
864 ~~program, to an agent, if any, for the sale of a basic or~~  
865 ~~standard health benefit plan.~~

866 (e) ~~(f)~~ A ~~No~~ small employer carrier shall not terminate,  
867 fail to renew, or limit its contract or agreement of  
868 representation with an agent for any reason related to the  
869 health status, claims experience, occupation, or geographic  
870 location of the small employers placed by the agent with the

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871 small employer carrier unless the agent consistently engages in  
872 practices that violate this section or s. 626.9541.

873 ~~(f)(g)~~ A ~~no~~ small employer carrier or agent shall not  
874 induce or otherwise encourage a small employer to separate or  
875 otherwise exclude an employee from health coverage or benefits  
876 provided in connection with the employee's employment.

877 ~~(g)(h)~~ Denial by a small employer carrier of an application  
878 for coverage from a small employer shall be in writing and shall  
879 state the reason or reasons for the denial.

880 ~~(h)(i)~~ The commission may establish regulations setting  
881 forth additional standards to provide for the fair marketing and  
882 broad availability of health benefit plans to small employers in  
883 this state.

884 ~~(i)(j)~~ A violation of this section by a small employer  
885 carrier or an agent is ~~shall be~~ an unfair trade practice under  
886 s. 626.9541 or ss. 641.3903 and 641.3907.

887 ~~(j)(k)~~ If a small employer carrier enters into a contract,  
888 agreement, or other arrangement with a third-party administrator  
889 to provide administrative, marketing, or other services relating  
890 to the offering of health benefit plans to small employers in  
891 this state, the third-party administrator shall be subject to  
892 this section.

893 ~~(13)(14)~~ DISCLOSURE OF INFORMATION.—

894 (a) In connection with the offering of a health benefit  
895 plan to a small employer, a small employer carrier:

- 896 1. Shall make a reasonable disclosure to such employer, as  
897 part of its solicitation and sales materials, of the  
898 availability of information described in paragraph (b); and  
899 2. Upon request of the small employer, provide such

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900 information.

901 (b)1. Subject to subparagraph 3., with respect to a small  
902 employer carrier that offers a health benefit plan to a small  
903 employer, information described in this paragraph is information  
904 that concerns:

905 a. The provisions of such coverage concerning an insurer's  
906 right to change premium rates and the factors that may affect  
907 changes in premium rates;

908 b. The provisions of such coverage that relate to  
909 renewability of coverage;

910 c. The provisions of such coverage that relate to any  
911 preexisting condition exclusions; and

912 d. The benefits and premiums available under all health  
913 insurance coverage for which the employer is qualified.

914 2. Information required under this subsection shall be  
915 provided to small employers in a manner determined to be  
916 understandable by the average small employer, and shall be  
917 sufficient to reasonably inform small employers of their rights  
918 and obligations under the health insurance coverage.

919 3. An insurer is not required under this subsection to  
920 disclose any information that is proprietary or a trade secret  
921 under state law.

922 ~~(14)(15)~~ SMALL EMPLOYERS ACCESS PROGRAM.—

923 (k) Benefits. ~~The benefits provided by the plan shall be~~  
924 ~~the same as the coverage required for small employers under~~  
925 ~~subsection (12).~~ Upon the approval of the office, the insurer  
926 may ~~also~~ establish an optional mutually supported benefit plan  
927 that which is an alternative plan developed within a defined  
928 geographic region of this state or any other such alternative

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929 plan ~~that which~~ will carry out the intent of this subsection.  
 930 Any small employer carrier issuing new health benefit plans may  
 931 offer a benefit plan with coverages similar to, but not less  
 932 than, any alternative coverage plan developed pursuant to this  
 933 subsection.

934 ~~(15)(16)~~ APPLICABILITY OF OTHER STATE LAWS.—

935 (a) Except as expressly provided in this section, a law  
 936 requiring coverage for a specific health care service or  
 937 benefit, or a law requiring reimbursement, utilization, or  
 938 consideration of a specific category of licensed health care  
 939 practitioner, does not apply to a ~~standard or basic health~~  
 940 ~~benefit plan policy or contract~~ or a limited benefit policy or  
 941 contract offered or delivered to a small employer unless that  
 942 law is made expressly applicable to such policies or contracts.  
 943 A law restricting or limiting deductibles, coinsurance,  
 944 copayments, or annual or lifetime maximum payments does not  
 945 apply to any health plan policy, ~~including a standard or basic~~  
 946 ~~health benefit plan policy or contract~~, offered or delivered to  
 947 a small employer unless such law is made expressly applicable to  
 948 such policy or contract. ~~However, every small employer carrier~~  
 949 ~~must offer to eligible small employers the standard benefit plan~~  
 950 ~~and the basic benefit plan, as required by subsection (5), as~~  
 951 ~~such plans have been approved by the office pursuant to~~  
 952 ~~subsection (12).~~

953 ~~(b) Except as provided in this section, a standard or basic~~  
 954 ~~health benefit plan policy or contract or limited benefit policy~~  
 955 ~~or contract offered to a small employer is not subject to any~~  
 956 ~~provision of this code which:~~

957 ~~1. Inhibits a small employer carrier from contracting with~~

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958 ~~providers or groups of providers with respect to health care~~  
 959 ~~services or benefits.~~

960 ~~2. Imposes any restriction on a small employer carrier's~~  
 961 ~~ability to negotiate with providers regarding the level or~~  
 962 ~~method of reimbursing care or services provided under a health~~  
 963 ~~benefit plan; or~~

964 ~~3. Requires a small employer carrier to either include a~~  
 965 ~~specific provider or class of providers when contracting for~~  
 966 ~~health care services or benefits or to exclude any class of~~  
 967 ~~providers that is generally authorized by statute to provide~~  
 968 ~~such care.~~

969 (b)(c) Any second tier assessment paid by a carrier  
 970 pursuant to paragraph (11)(j) may be credited against  
 971 assessments levied against the carrier pursuant to s. 627.6494.

972 (c)(d) Notwithstanding chapter 641, a health maintenance  
 973 organization may ~~is authorized to~~ issue contracts providing  
 974 benefits equal to the ~~standard health benefit plan, the basic~~  
 975 ~~health benefit plan, and the limited benefit policy authorized~~  
 976 by this section.

977 ~~(16)(17)~~ RESTRICTIONS ON COVERAGE.—

978 (a) A plan under which coverage is purchased in whole or in  
 979 part with any state or federal funds through an exchange created  
 980 pursuant to the federal Patient Protection and Affordable Care  
 981 Act, Pub. L. No. 111-148, may not provide coverage for an  
 982 abortion, as defined in s. 390.011(1), except if the pregnancy  
 983 is the result of an act of rape or incest, or in the case where  
 984 a woman suffers from a physical disorder, physical injury, or  
 985 physical illness, including a life-endangering physical  
 986 condition caused by or arising from the pregnancy itself, which

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987 would, as certified by a physician, place the woman in danger of  
 988 death unless an abortion is performed. Coverage is deemed to be  
 989 purchased with state or federal funds if any tax credit or cost-  
 990 sharing credit is applied toward the plan.

991 (b) This subsection does not prohibit a plan from providing  
 992 any person or entity with separate coverage for an abortion if  
 993 such coverage is not purchased in whole or in part with state or  
 994 federal funds.

995 (c) As used in this section, the term "state" means this  
 996 state or any political subdivision of the state.

997 ~~(17)(18)~~ RULEMAKING AUTHORITY.--The commission may adopt  
 998 rules to administer this section, including rules governing  
 999 compliance by small employer carriers and small employers.

1000 Section 2. Section 627.66997, Florida Statutes, is created  
 1001 to read:

1002 627.66997 Stop-loss insurance.--

1003 (1) A self-insured health benefit plan established or  
 1004 maintained by a small employer, as defined in s. 627.6699(3)(v),  
 1005 is exempt from s. 627.6699 and may use a stop-loss insurance  
 1006 policy issued to the employer. For purposes of this subsection,  
 1007 the term "stop-loss insurance policy" means an insurance policy  
 1008 issued to a small employer which covers the small employer's  
 1009 obligation for the excess cost of medical care on an equivalent  
 1010 basis per employee provided under a self-insured health benefit  
 1011 plan.

1012 (a) A small employer stop-loss insurance policy is  
 1013 considered a health insurance policy and is subject to s.  
 1014 627.6699 if the policy has an aggregate attachment point that is  
 1015 lower than the greatest of:

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1016 1. Two thousand dollars multiplied by the number of  
 1017 employees;

1018 2. One hundred twenty percent of expected claims, as  
 1019 determined by the stop-loss insurer in accordance with actuarial  
 1020 standards of practice; or

1021 3. Twenty thousand dollars.

1022 (b) Once claims under the small employer health benefit  
 1023 plan reach the aggregate attachment point set forth in paragraph  
 1024 (a), the stop-loss insurance policy authorized under this  
 1025 section must cover 100 percent of all claims that exceed the  
 1026 aggregate attachment point.

1027 (2) A self-insured health benefit plan established or  
 1028 maintained by an employer with 51 or more covered employees is  
 1029 considered health insurance if the plan's stop-loss coverage, as  
 1030 defined in s. 627.6482(14), has an aggregate attachment point  
 1031 that is lower than the greater of:

1032 (a) One hundred ten percent of expected claims, as  
 1033 determined by the stop-loss insurer in accordance with actuarial  
 1034 standards of practice; or

1035 (b) Twenty thousand dollars.

1036 (3) Stop-loss insurance carriers shall use a consistent  
 1037 basis for determining the number of an employer's covered  
 1038 employees. Such basis may include, but is not limited to, the  
 1039 average number of employees employed annually or at a uniform  
 1040 time.

1041 Section 3. Subsection (3) of section 627.642, Florida  
 1042 Statutes, is amended to read:

1043 627.642 Outline of coverage.--

1044 (3) In addition to the outline of coverage, a policy as

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

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1045 specified in s. 627.6699(3)(k) ~~627.6699(3)(l)~~ must be  
 1046 accompanied by an identification card that contains, at a  
 1047 minimum:

1048 (a) The name of the organization issuing the policy or the  
 1049 name of the organization administering the policy, whichever  
 1050 applies.

1051 (b) The name of the contract holder.

1052 (c) The type of plan only if the plan is filed in the  
 1053 state, an indication that the plan is self-funded, or the name  
 1054 of the network.

1055 (d) The member identification number, contract number, and  
 1056 policy or group number, if applicable.

1057 (e) A contact phone number or electronic address for  
 1058 authorizations and admission certifications.

1059 (f) A phone number or electronic address whereby the  
 1060 covered person or hospital, physician, or other person rendering  
 1061 services covered by the policy may obtain benefits verification  
 1062 and information in order to estimate patient financial  
 1063 responsibility, in compliance with privacy rules under the  
 1064 Health Insurance Portability and Accountability Act.

1065 (g) The national plan identifier, in accordance with the  
 1066 compliance date set forth by the federal Department of Health  
 1067 and Human Services.

1068  
 1069 The identification card must present the information in a  
 1070 readily identifiable manner or, alternatively, the information  
 1071 may be embedded on the card and available through magnetic  
 1072 stripe or smart card. The information may also be provided  
 1073 through other electronic technology.

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1074 Section 4. Paragraph (g) of subsection (7) and paragraph  
 1075 (a) of subsection (8) of section 627.6475, Florida Statutes, are  
 1076 amended to read:

1077 627.6475 Individual reinsurance pool.—

1078 (7) INDIVIDUAL HEALTH REINSURANCE PROGRAM.—

1079 (g) Except as otherwise provided in this section, the board  
 1080 and the office shall have all powers, duties, and  
 1081 responsibilities with respect to carriers that issue and  
 1082 reinsure individual health insurance, as specified for the board  
 1083 and the office in s. 627.6699(11) with respect to small employer  
 1084 carriers, including, but not limited to, the provisions of s.  
 1085 627.6699(11) relating to:

1086 1. Use of assessments that exceed the amount of actual  
 1087 losses and expenses.

1088 2. The annual determination of each carrier's proportion of  
 1089 the assessment.

1090 3. Interest for late payment of assessments.

1091 4. Authority for the office to approve deferment of an  
 1092 assessment against a carrier.

1093 5. Limited immunity from legal actions or carriers.

1094 6. Development of standards for compensation to be paid to  
 1095 agents. Such standards shall be limited to those specifically  
 1096 enumerated in s. 627.6699(12)(d) ~~627.6699(13)(d)~~.

1097 7. Monitoring compliance by carriers with this section.

1098 (8) STANDARDS TO ASSURE FAIR MARKETING.—

1099 (a) Each health insurance issuer that offers individual  
 1100 health insurance shall actively market coverage to eligible  
 1101 individuals in the state. The provisions of s. 627.6699(12)  
 1102 ~~627.6699(13)~~ that apply to small employer carriers that market

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1103 policies to small employers shall also apply to health insurance  
1104 issuers that offer individual health insurance with respect to  
1105 marketing policies to individuals.

1106 Section 5. Subsection (2) of section 627.657, Florida  
1107 Statutes, is amended to read:

1108 627.657 Provisions of group health insurance policies.—

1109 (2) The medical policy as specified in s. 627.6699(3)(k)  
1110 ~~627.6699(3)(l)~~ must be accompanied by an identification card  
1111 that contains, at a minimum:

1112 (a) The name of the organization issuing the policy or name  
1113 of the organization administering the policy, whichever applies.

1114 (b) The name of the certificateholder.

1115 (c) The type of plan only if the plan is filed in the  
1116 state, an indication that the plan is self-funded, or the name  
1117 of the network.

1118 (d) The member identification number, contract number, and  
1119 policy or group number, if applicable.

1120 (e) A contact phone number or electronic address for  
1121 authorizations and admission certifications.

1122 (f) A phone number or electronic address whereby the  
1123 covered person or hospital, physician, or other person rendering  
1124 services covered by the policy may obtain benefits verification  
1125 and information in order to estimate patient financial  
1126 responsibility, in compliance with privacy rules under the  
1127 Health Insurance Portability and Accountability Act.

1128 (g) The national plan identifier, in accordance with the  
1129 compliance date set forth by the federal Department of Health  
1130 and Human Services.

1131

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1132 The identification card must present the information in a  
1133 readily identifiable manner or, alternatively, the information  
1134 may be embedded on the card and available through magnetic  
1135 stripe or smart card. The information may also be provided  
1136 through other electronic technology.

1137 Section 6. Paragraph (e) of subsection (2) of section  
1138 627.6571, Florida Statutes, is amended to read:

1139 627.6571 Guaranteed renewability of coverage.—

1140 (2) An insurer may nonrenew or discontinue a group health  
1141 insurance policy based only on one or more of the following  
1142 conditions:

1143 (e) In the case of an insurer that offers health insurance  
1144 coverage through a network plan, there is no longer any enrollee  
1145 in connection with such plan who lives, resides, or works in the  
1146 service area of the insurer or in the area in which the insurer  
1147 is authorized to do business ~~and, in the case of the small-group  
1148 market, the insurer would deny enrollment with respect to such  
1149 plan under s. 627.6699(5)(i).~~

1150 Section 7. Subsection (11) of section 627.6675, Florida  
1151 Statutes, is amended to read:

1152 627.6675 Conversion on termination of eligibility.—Subject  
1153 to all of the provisions of this section, a group policy  
1154 delivered or issued for delivery in this state by an insurer or  
1155 nonprofit health care services plan that provides, on an  
1156 expense-incurred basis, hospital, surgical, or major medical  
1157 expense insurance, or any combination of these coverages, shall  
1158 provide that an employee or member whose insurance under the  
1159 group policy has been terminated for any reason, including  
1160 discontinuance of the group policy in its entirety or with

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1161 respect to an insured class, and who has been continuously  
 1162 insured under the group policy, and under any group policy  
 1163 providing similar benefits that the terminated group policy  
 1164 replaced, for at least 3 months immediately prior to  
 1165 termination, shall be entitled to have issued to him or her by  
 1166 the insurer a policy or certificate of health insurance,  
 1167 referred to in this section as a "converted policy." A group  
 1168 insurer may meet the requirements of this section by contracting  
 1169 with another insurer, authorized in this state, to issue an  
 1170 individual converted policy, which policy has been approved by  
 1171 the office under s. 627.410. An employee or member shall not be  
 1172 entitled to a converted policy if termination of his or her  
 1173 insurance under the group policy occurred because he or she  
 1174 failed to pay any required contribution, or because any  
 1175 discontinued group coverage was replaced by similar group  
 1176 coverage within 31 days after discontinuance.

1177 (11) ALTERNATIVE PLANS.—~~The insurer shall, in addition to~~  
 1178 ~~the option required by subsection (10), offer the standard~~  
 1179 ~~health benefit plan, as established pursuant to s. 627.6699(12).~~  
 1180 The insurer may, at its option, also offer alternative plans for  
 1181 group health conversion in addition to the plans required by  
 1182 this section.

1183 Section 8. Paragraph (e) of subsection (2) of section  
 1184 641.31074, Florida Statutes, is amended to read:

1185 641.31074 Guaranteed renewability of coverage.—

1186 (2) A health maintenance organization may nonrenew or  
 1187 discontinue a contract based only on one or more of the  
 1188 following conditions:

1189 (e) There is no longer any enrollee in connection with such

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1190 plan who lives, resides, or works in the service area of the  
 1191 health maintenance organization or in the area in which the  
 1192 health maintenance organization is authorized to do business  
 1193 ~~and, in the case of the small group market, the organization~~  
 1194 ~~would deny enrollment with respect to such plan under s.~~  
 1195 ~~627.6699(5) (i).~~

1196 Section 9. Subsection (10) of section 641.3922, Florida  
 1197 Statutes, is amended to read:

1198 641.3922 Conversion contracts; conditions.—Issuance of a  
 1199 converted contract shall be subject to the following conditions:

1200 (10) ALTERNATE PLANS.—~~The health maintenance organization~~  
 1201 ~~shall offer a standard health benefit plan as established~~  
 1202 ~~pursuant to s. 627.6699(12).~~ The health maintenance organization  
 1203 may, at its option, also offer alternative plans for group  
 1204 health conversion in addition to those required by this section,  
 1205 provided any alternative plan is approved by the office or is a  
 1206 converted policy, approved under s. 627.6675 and issued by an  
 1207 insurance company authorized to transact insurance in this  
 1208 state. Approval by the office of an alternative plan shall be  
 1209 based on compliance by the alternative plan with the provisions  
 1210 of this part and the rules promulgated thereunder, applicable  
 1211 provisions of the Florida Insurance Code and rules promulgated  
 1212 thereunder, and any other applicable law.

1213 Section 10. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 16<sup>th</sup>  
Meeting Date

0968  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Tim Meenan

Job Title \_\_\_\_\_

Address 325 W College Ave  
Street  
Tallahassee FL  
City State Zip

Phone 850 425-4000

Email TM@meenanlawfirm.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing National Association of Insurance & Financial Advisors - Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/CS/SB 972

INTRODUCER: Appropriations Committee; Finance and Tax Committee; and Senators Flores and Margolis

SUBJECT: Ad Valorem Taxation

DATE: April 20, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	<b>Favorable</b>
2.	<u>Babin</u>	<u>Diez-Arguelles</u>	<u>FT</u>	<b>Fav/CS</b>
3.	<u>Babin</u>	<u>Kynoch</u>	<u>AP</u>	<b>Fav/CS</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 972 makes several changes related to ad valorem taxes.

As to Value Adjustment Board (VAB) proceedings, the bill:

- Requires a petition to the VAB to be signed by the taxpayer, or be accompanied by the taxpayer's written authorization for representation, which is only valid for one tax year.
- Limits the persons who can represent taxpayers before the VAB to certain professionals, a corporate representative of the taxpayer, or an uncompensated individual with a power of attorney from the taxpayer.
- Requires the property appraiser to notify the petitioner when the property record card is available online.
- Authorizes a petitioner or the property appraiser to reschedule a hearing once, for good cause only.
- Reduces the notice for a rehearing from 25 days to 15 days when the rehearing is requested by the petitioner.
- Changes the rate of interest for overpayments and underpayments from 12 percent to the prime rate.
- Allows district school boards and district county commissions to audit VAB expenses.
- Requires all VAB petitions to be resolved by the June 1 following the assessment year. The June 1 date is extended to December 1 in any year that the number of petitions increases by more than 10 percent over the prior year.

In addition, the bill, for purposes of ad valorem taxation, defines a subdivision “common element” to include any property within the same county as the subdivision and used for the exclusive benefit of the lot owners of the subdivision for at least 10 years.

The Revenue Estimating Conference has estimated that the interest rate change will increase local government revenues by \$8.7 million in Fiscal Year 2015-2016.

The bill provides an effective date of July 1, 2015.

## II. Present Situation:

### Overview of the Ad Valorem Process

In Florida, ad valorem taxation is reserved to local governments.<sup>1</sup> The process for levying and providing administrative review of the ad valorem tax generally involves the property appraiser, tax collector, VAB, and local taxing authorities.

Property appraisers establish each property’s just value<sup>2</sup> as of January 1 of each year and apply applicable exemptions, classifications, or assessment limitations to determine the property’s taxable value. Local taxing authorities set a millage rate (i.e., tax rate) that is levied on the property’s taxable value. Each August, property appraisers send property owners a Notice of Proposed Property Taxes (TRIM Notice), which identifies the just, assessed, and taxable values of the property and the tax that will be due based on the millage rates proposed by local governments.<sup>3</sup>

Property owners who disagree with the property appraiser’s assessment of the property or the denial of an exemption or property classification may:

- Request an informal meeting with the property appraiser;<sup>4</sup>
- Appeal to the county VAB;<sup>5</sup> or
- Challenge the assessment in circuit court.<sup>6</sup>

Petitions to the VAB are due by mid-September and hearings begin in October. Taxes become payable on November 1. In many counties, the VAB cannot complete its hearings before November 1. In this situation, the Board of County Commissioners will instruct the tax collector to begin issuing tax notices based on the initial tax roll, but the board will also extend the roll for

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<sup>1</sup> FLA. CONST. art. VII, s. 1(a) (stating that no state ad valorem taxes shall be levied upon real estate or tangible personal property).

<sup>2</sup> In arriving at just valuation, the county property appraiser takes into consideration the eight factors enumerated in s. 193.011, F.S. In 1965, the Supreme Court in *Walter v. Shuler* made the oft-quoted statement that just valuation is legally synonymous with market value and that it “may be established by the classic formula that it is the amount ‘a purchaser willing but not obliged to buy, would pay to one willing but not obliged to sell.’” 176 So. 2d 81, 86 (Fla. 1965); see also *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973); *Holly Ridge Ltd. Partnership v. Pritchett*, 936 So. 2d 694 (Fla. 5th DCA 2006).

<sup>3</sup> Section 200.069, F.S.

<sup>4</sup> Section 194.011(2), F.S.

<sup>5</sup> Section 194.011(3), F.S.

<sup>6</sup> Section 194.171, F.S.

completion of VAB proceedings. As part of extending the roll, the board will require the VAB to certify the portion of the roll that it has completed.<sup>7</sup>

Within 20 working days of receiving the certified tax roll, tax collectors send each taxpayer a tax notice.<sup>8</sup> Property taxes generally are due November 1 and are delinquent on April 1 of the following year.<sup>9</sup> Tax collectors collect all ad valorem taxes levied by the county, school district, municipalities, and any special taxing districts within the county, and then distribute the taxes to each taxing authority.<sup>10</sup>

Taxpayers with unresolved petitions remaining before the VAB on April 1 must pay at least 75 percent of the initial ad valorem tax assessment by April 1.<sup>11</sup> Once the VAB has completed its review of all petitions – oftentimes months later – the VAB will issue its second, or “final,” certification of the VAB’s changes to the roll.<sup>12</sup> In a few large counties, the VAB can take in excess of one year to complete its review of all petitions and issue its final certification. Tax collectors will collect and distribute any additional taxes received as a result of final VAB decisions.

### **Value Adjustment Boards**

Chapter 194, F.S., provides for administrative and judicial review of tax assessments. Each county in Florida has a VAB composed of five members<sup>13</sup> that reviews appeals of the ad valorem tax decisions made by property appraisers.<sup>14</sup> A property owner may petition the VAB to review the property appraiser’s assessment of real or tangible personal property or the denial of an exemption or classification.

Counties with a population greater than 75,000 are required to hire special magistrates to conduct valuation hearings. Before conducting hearings, the VAB must hold an organizational meeting to appoint special magistrates and legal counsel and to perform other administrative functions.<sup>15</sup>

The VAB must appoint private counsel who has practiced law for over five years and who shall receive such compensation as may be established by the VAB.<sup>16</sup> The private counsel may not represent the property appraiser, the tax collector, any taxing authority, or any property owner in any administrative or judicial review of property taxes. No meeting of the board may take place unless counsel to the board is present.

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<sup>7</sup> See ss. 193.122(1) and 197.323, F.S.

<sup>8</sup> Section 197.322, F.S.

<sup>9</sup> Section 197.333, F.S.

<sup>10</sup> Section 197.383, F.S.

<sup>11</sup> Section 194.014, F.S.

<sup>12</sup> Section 193.122, F.S.

<sup>13</sup> Section 194.015, F.S.

<sup>14</sup> Section 194.011, F.S.

<sup>15</sup> Section 194.011(5)(a)2., F.S.

<sup>16</sup> Section 194.015, F.S.

## Petition Process for VAB Hearing

A petitioner initiates a review of a property assessment by filing a petition in the VAB. Each petition may be subject to a filing fee, up to \$15.<sup>17</sup> Generally, anyone may represent the property owner before a VAB. Value adjustment board petitions may be found at the DOR website,<sup>18</sup> the County Property Appraiser's office, and in most counties at the office or website of the VAB Clerk. The clerk of the VAB<sup>19</sup> is responsible for receiving completed petitions, acknowledging receipt to the taxpayer, sending a copy of the petition to the property appraiser, and scheduling appearances before the VAB.

When the VAB schedules a hearing, it is required to notify the petitioner at least 25 days before the date of the scheduled hearing.<sup>20</sup> Once a petitioner receives the notice of hearing, the petitioner is allowed to reschedule the hearing a single time by submitting a written request to reschedule at least 5 days before the hearing.<sup>21</sup> If the hearing is rescheduled, the VAB is required to provide another 25-day notice.

## Property Record Cards

Property appraisers maintain records of assessment information for assessed properties. An individual property's record of information is often referred to as the "property record card." A petitioner may elect to receive a copy of the property record card when the petitioner files a petition. If an election is made, the property appraiser is required to provide the property record card, unless the property record card is available online.<sup>22</sup>

## Interest

If a petition to the VAB is still pending when the taxes become delinquent on April 1, the petitioner is required to pay 75 percent of the ad valorem taxes due.<sup>23</sup> Overpayments and underpayments accrue interest at the rate of 12 percent per year.<sup>24</sup> If the VAB determines that the petitioner owes ad valorem taxes in excess of the amount paid, the unpaid amount accrues interest at the rate of 12 percent per year from the date the taxes became delinquent until the unpaid amount is paid. If the VAB determines that a refund is due, the overpaid amount similarly accrues interest at the rate of 12 percent per year from the date the taxes became delinquent until a refund is paid. Interest does not accrue on amounts paid in excess of 100 percent of the current taxes due as provided on the tax notice issued.

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<sup>17</sup> Section 194.013, F.S.

<sup>18</sup> See Rule 12D-9.015, F.A.C.; Dep't of Revenue, *Value Adjustment Board Forms and Calendar*, available at [http://dor.myflorida.com/Pages/forms\\_index.aspx](http://dor.myflorida.com/Pages/forms_index.aspx) (last visited Apr.17, 2015) (See Form DR-486 under *Ad Valorem Tax (Property Tax)*).

<sup>19</sup> The county clerk usually serves as the clerk of the VAB. Section 194.015, F.S.

<sup>20</sup> Section 194.032(2)(a), F.S.

<sup>21</sup> *Id.*

<sup>22</sup> Section 194.032(2)(a), F.S.; See Chapter 2013-109, s. 8, Laws of Fla. (SB 556).

<sup>23</sup> Section 194.014(1)(a), F.S.

<sup>24</sup> Section 194.014(2), F.S.

## Department of Revenue Oversight

The Department of Revenue (DOR) supervises the assessment and valuation of property so that all property is placed on the tax rolls and valued according to its just valuation.<sup>25</sup> Additionally, the DOR prescribes and furnishes all forms as well as prescribes rules and regulations to be used by property appraisers, tax collectors, clerks of circuit court, and value adjustment boards in administering and collecting ad valorem taxes.<sup>26</sup>

Assessment rolls must be submitted to the DOR on or before July 1.<sup>27</sup> By definition, “complete submission of the rolls” includes, but is not limited to:

- Accurate tabular summaries of valuations as prescribed by DOR rule.
- An electronic copy of the real property assessment roll including for each parcel total value of improvements, land value, the recorded selling prices, other ownership transfer data required for an assessment roll, the value of any improvement made to the parcel in the 12 months preceding the valuation date, the type and amount of any exemption granted, and such other information as may be required by DOR rule.
- An accurate tabular summary by property class of any adjustments made to recorded selling prices or fair market value in arriving at assessed value, as prescribed by DOR rule.
- An electronic copy of the tangible personal property assessment roll, including for each entry a unique account number and such other information as may be required by DOR rule.
- An accurate tabular summary of per-acre land valuations used for each class of agricultural property in preparing the assessment roll, as prescribed by DOR rule.<sup>28</sup>

The DOR uses Form DR-493, promulgated through rule 12D-8.002(4), F.A.C., to track the adjustments made to fair market value.

Section 194.011, F.S., provides in part that the DOR is required to develop:

- Uniform procedures for hearings before the value adjustment board.
- A policies and procedures manual for value adjustment boards, special magistrates, and property owners to use in proceedings before the value adjustment board.

In addition, s. 194.035(3), F.S., provides that the DOR shall provide and conduct training for special magistrates at least once each state fiscal year in at least five locations throughout the state. Such training emphasizes the DOR standard measures of value, including the guidelines for real and tangible personal property. A person who has three years of relevant experience and who has completed the training provided by the DOR may be appointed as a special magistrate. The training is open to the public.

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<sup>25</sup> Section 195.002, F.S.

<sup>26</sup> Chapter 195, F.S.

<sup>27</sup> Section 193.1142, F.S.

<sup>28</sup> Section 192.001(18), F.S.

## Recommendations Concerning the VAB Process

In a December 2010 report,<sup>29</sup> the Office of Program Policy Analysis and Government Accountability, found that counties and other participants in the VAB process were likely incurring increased costs, and the time county boards take to complete the process varies, but has increased in recent years due to factors such as:

- Growing numbers of petitions.
- Recent changes in state law and administrative rules.
- Involvement of property tax representatives.

The Office of Program Policy Analysis and Government Accountability recommended that “if the Legislature wishes to make additional changes to the VAB process, it could consider options to (1) shorten the process; (2) address costs and other fiscal implications; and (3) increase accountability.”

In its March 2015 internal audit report,<sup>30</sup> the Miami-Dade County Public Schools Office of Management and Compliance Audits makes 11 recommendations concerning the VAB process. The audit explains that delays to the final certification of the county’s tax roll negatively and significantly affect the school district’s ability to fund its operations. The Miami-Dade audit notes that the number of days between the first and last hearing date by the VAB was 802 days in tax year 2009, 535 days in tax year 2010, 492 days in tax year 2011, and 519 days in tax year 2012. Having such a lag in reporting the final tax roll to DOR restricts the school district’s revenue, and may affect its ability to receive full funding in the appropriations bill in the year appropriated by the Florida Legislature. The audit found:

- Inconsistencies between rules and statute, particularly as it pertains to DOR rules on rescheduling hearings.
- Lack of compliance with statutes and rules, such as petitions presented by unlicensed agents without signed or written authorization from the taxpayer.
- Internal control weakness, with one example being no limitation placed on the incentive to overpay and collect interest at 12 percent annual percentage rate.

## Taxpayer Bill of Rights

The Florida Statutes set forth a general taxpayer bill of rights in s. 213.015, F.S., and a property tax specific taxpayer bill of rights in s. 192.0105, F.S. The Florida Taxpayer’s Bill of Rights for property taxes and assessments was created to guarantee that the rights, privacy, and property of the taxpayers of this state are adequately safeguarded and protected during tax levy, assessment, collection, and enforcement processes administered under the revenue laws of this state. These rights are available only insofar as they are implemented in other parts of the Florida Statutes or rules of the DOR. Section 192.0105, F.S., sets forth the taxpayer rights along with cross references to where those rights are effectuated. The rights are categorized as follows: the right to know, the right to due process, the right to redress, and the right to confidentiality.

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<sup>29</sup> The Florida Legislature Office of Program Policy Analysis and Gov’t Accountability, Florida Legislature, *Time and Costs Are Increasing for Counties to Complete the Value Adjustment Board Process*, Report No. 10-64 (Dec. 2010).

<sup>30</sup> Miami-Dade County Public Schools Office of Management and Compliance Audits, *Audit of the Miami-Dade County Value Adjustment Board (VAB) Appeals Process – Phase 1* (March 2015).

### Subdivision Common Elements

All real property is subject to ad valorem tax unless exempted.<sup>31</sup> Each parcel of real property is assessed separately on the tax roll.<sup>32</sup> Counties and municipalities, as well as other taxing units, may levy a separate millage on the property within their jurisdictions.<sup>33</sup> Each taxing unit's millage must be uniformly applied to the all property within the unit.<sup>34</sup>

Property that is or has been part of a platted subdivision and is designated on the plat or the approved site plan as a common element is not subject to the general requirement that all parcels of real property be assessed separately.<sup>35</sup> The value of property that is part of a platted subdivision and designated on the plat or approved site plan as a common element is required to be prorated and added to the value of each individual lot within the subdivision. The taxes that are imposed on the lot are applied to all of the value assigned to it.<sup>36</sup>

Section 193.0235(2), F.S., defines "common element" to include:

- Subdivision property not included within lots constituting inventory for the developer which are intended to be conveyed or have been conveyed into private ownership.
- An easement through the subdivision property . . . which has been dedicated to the public or retained for the benefit of the subdivision.
- Any other part of the subdivision which has been designated on the plat or is required to be designated on the site plan as a drainage pond, or detention or retention pond, for the exclusive benefit of the subdivision.<sup>37</sup>

Frenchman's Creek subdivision, located in the City of Palm Beach Gardens, owns beachfront property (the beach club) in a neighboring municipality, the City of Juno Beach. Both municipalities are in Palm Beach County.

Beginning in 2003, the Palm Beach County Property Appraiser treated the beach club as property that is part of a platted subdivision and designated on the plat or approved site plan as a common element.<sup>38</sup> As such, the property appraiser prorated the value of the beach club located in the City of Juno Beach to the individual lot owners of the Frenchman's Creek subdivision located in the City of Palm Beach Gardens. Such treatment continued until 2014.

In 2014, the Palm Beach County Property Appraiser reconsidered the treatment of the beach club and concluded that the beach club was not property that is part of a platted subdivision and designated on the plat or site plan as a common element. Thus, the property appraiser transferred

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<sup>31</sup> FLA. CONST. art. VII, s. 4.

<sup>32</sup> See s. 192.001(18), F.S. (defining "complete submission of the [tax] rolls" to require assessment information for "each parcel").

<sup>33</sup> There are provisions that protect property owners within a municipality from double taxation by the county. See FLA. CONST. art. VIII, s. 1(h).

<sup>34</sup> FLA. CONST. art. VII, s. 2.

<sup>35</sup> See generally s. 193.0235, F.S.

<sup>36</sup> *Id.*

<sup>37</sup> Section 193.0235(2), F.S.

<sup>38</sup> See Email from Gary Nikolits, Palm Beach County Property Appraiser, to staff of the Senate Committee on Finance and Tax (Apr. 15, 2015) (on file with the Senate Committee on Finance and Tax).

the value of the beach club back to the City of Juno Beach tax roll and taxes were assessed against the owner – Frenchman’s Creek, Inc. (the subdivision’s homeowner’s association).

### III. Effect of Proposed Changes:

**Sections 1 and 9** amend s. 194.034, F.S., to limit the persons that are authorized to represent petitioners before VABs to include: a corporate representative of the taxpayer, an attorney who is a member of the Florida bar, a real estate appraiser licensed under ch. 475, a real estate broker licensed under ch. 475, or a certified public accountant licensed under ch. 473, retained by the taxpayer, or an uncompensated individual with a power of attorney to act on behalf of the taxpayer. The bill makes conforming changes to s. 192.0105, F.S.

**Section 2** amends s. 193.0235, F.S., to include as a subdivision “common element,” property located within the same county as the subdivision and used for at least 10 years exclusively for the benefit of lot owners within the subdivision.

**Sections 3 and 4** amend s. 193.122, F.S., to provide that a VAB must complete its second certification of the assessment roll by June 1 following the year the tax roll is assessed. The deadline is extended to December 1 in any year that the number of petitions increases by more than 10 percent over the prior year. The change first applies to the 2017 tax roll.

**Section 5** amends s. 194.011, F.S., to require that petitions be signed by the taxpayer or be accompanied by the taxpayer’s written authorization for representation. A new written authorization for representation is required each year.

**Section 6** amends s. 194.014, F.S., to change the interest rate on overpayments and underpayments from 12 percent to the prime interest rate quoted by commercial banks to large businesses as published by the Board of Governors of the Federal Reserve System.

**Section 7** amends s. 194.015, F.S., to allow district school boards and district county commissions to audit expenses related to the VAB process.

**Section 8** amends s. 194.032, F.S., to:

- Require the property appraiser to notify a petitioner when property record cards are available online.
- Allow the property appraiser or the petitioner to reschedule a hearing once, only for good cause. “Good cause” is defined to mean circumstances beyond the control of the party seeking to reschedule that would reasonably prevent the party from being adequately represented at the hearing. If the petitioner requests the rescheduling, the petitioner is only entitled to a 15-day notice of the date of the rescheduled hearing.

**Section 10** provides an effective date of July 1, 2015.

**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 2 of the bill attempts to address the situation in Palm Beach County concerning the Frenchman's Creek subdivision and its beach club by requiring the property appraiser to revert to the 2003-2014 treatment of prorating the value of the beach club among the individual lots in the Frenchman's Creek subdivision. If the beach club property is treated like other property that is part of a platted subdivision and designated on the plat or approved site plan as a common element, the prorated value of property located within the City of Juno Beach will be subjected to the millage imposed within the City of Palm Beach Gardens.

Imposing the millage applicable to property in the City of Palm Beach Gardens to property physically located in the City of Juno Beach may implicate Article VII, section 2, of the Florida Constitution. This constitutional provision provides that all ad valorem taxation shall be at a uniform rate within each taxing unit (uniformity requirement).<sup>39</sup> Although there are reported court decisions concerning the uniformity requirement,<sup>40</sup> none appear to directly address an issue similar to that pursuant to section 2 of the bill.

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

The Revenue Estimating Conference has estimated that the interest rate change under CS/SB 972 will increase local government recurring revenues by \$8.7 million in Fiscal Year 2015-2016.

For Miami-Dade and Broward counties, staff estimates that section three of CS/CS/SB 972 will increase Fiscal Year 2017-2018 receipts by approximately \$50 million and reduce Fiscal Year 2018-2019 receipts by approximately \$50 million, assuming that the counties can meet the June 1 deadline required by that section of the bill. For other counties, the impact is indeterminate.

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<sup>39</sup> See Fla. Const. art. VII, s. 2.

<sup>40</sup> See, e.g., *Gallant v. Stephens*, 358 So. 2d 536 (Fla. 1978); *W.J. Howey Co. v. Williams*, 142 Fla. 415 (1940); *Moore v. Palm Beach County*, 731 So. 2d 754 (Fla. 4<sup>th</sup> DCA 1999).

**B. Private Sector Impact:**

By increasing accountability of the VAB process, the bill may make the VAB process more efficient and easier to navigate for petitioners and their authorized agents.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 192.0105, 193.0235, 193.122, 194.011, 194.014, 194.015, 194.032, and 194.034.

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

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

**CS/CS by Appropriations on April 16, 2015:**

The committee substitute:

- Extends the June 1 VAB completion requirement until December 1 in years when petitions increase more than 10 percent.
- Provides a new definition of “common elements” to include property located in the same county and dedicated for the exclusive use of subdivision lot owners for longer than 10 years.
- Requires good cause for a property appraiser or petitioner to reschedule a hearing and defines “good cause.”
- Reduces the time period for a rehearing notice to 15 days when the rehearing is requested by the petitioner.
- Defines prime interest rate by reference to the Board of Governors of the Federal Reserve System rather than Florida Department of Revenue procedures.

**CS by Finance and Tax on March 30, 2015:**

The CS:

- Delays the new June 1 VAB completion requirement until the 2017 tax roll.
- Uses the prime rate of interest determined by the executive director of the Department of Revenue pursuant to s. 213.235, F.S., and deletes reference to the Wall Street Journal.

- Removes the DOR oversight of the VAB process and review of VABs that receive in excess of 10,000 petitions per year.
- Adds uncompensated individuals with powers of attorney to act on behalf of the taxpayer to the list of persons who may represent taxpayers before VABs.

B. Amendments:

None.

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

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196224

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
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The Committee on Appropriations (Negron) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 54 and 55  
insert:

Section 2. Paragraph (d) is added to subsection (2) of section 193.0235, Florida Statutes, to read:

193.0235 Ad valorem taxes and non-ad valorem assessments against subdivision property.—

(2) As used in this section, the term "common element" includes:



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11           (d) Property located within the same county as the  
12 subdivision and used for at least 10 years exclusively for the  
13 benefit of lot owners within the subdivision.

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 2 - 4

18 and insert:

19           An act relating to ad valorem taxation; amending s.  
20           192.0105, F.S.; conforming a provision to changes made  
21           by the act; amending s. 193.0235, F.S.; revising the  
22           definition of the term "common element" for purposes  
23           of prorating ad valorem taxes for certain properties  
24           under certain circumstances; amending s. 193.122,  
25           F.S.;



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
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The Committee on Appropriations (Flores) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 65 - 220  
and insert:  
were assessed. If the number of petitions filed increases by more than 10 percent over the prior year, the June 1 deadline is extended until December 1. Upon the value adjustment board's second ~~such~~ certification, the property appraiser shall recertify the tax rolls with all changes to the collector and shall provide public notice of the date and fact of



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11 recertification pursuant to subsection (2).

12       Section 3. The amendment to s. 193.122, Florida Statutes,  
13 made by this act first applies to the 2017 tax roll.

14       Section 4. Subsection (3) of section 194.011, Florida  
15 Statutes, is amended to read:

16       194.011 Assessment notice; objections to assessments.—

17       (3) A petition to the value adjustment board must be in  
18 substantially the form prescribed by the department.

19 Notwithstanding s. 195.022, a county officer may not refuse to  
20 accept a form provided by the department for this purpose if the  
21 taxpayer chooses to use it. A petition to the value adjustment  
22 board must be signed by the taxpayer or accompanied by the  
23 taxpayer's written authorization for representation by a person  
24 specified in s. 194.034(1)(a). A written authorization is valid  
25 for 1 tax year, and a new written authorization by the taxpayer  
26 shall be required for each subsequent tax year. A petition shall  
27 also describe the property by parcel number and shall be filed  
28 as follows:

29       (a) The property appraiser shall have available and shall  
30 distribute forms prescribed by the Department of Revenue on  
31 which the petition shall be made. Such petition shall be sworn  
32 to by the petitioner.

33       (b) The completed petition shall be filed with the clerk of  
34 the value adjustment board of the county, who shall acknowledge  
35 receipt thereof and promptly furnish a copy thereof to the  
36 property appraiser.

37       (c) The petition shall state the approximate time  
38 anticipated by the taxpayer to present and argue his or her  
39 petition before the board.



40 (d) The petition may be filed, as to valuation issues, at  
41 any time during the taxable year on or before the 25th day  
42 following the mailing of notice by the property appraiser as  
43 provided in subsection (1). With respect to an issue involving  
44 the denial of an exemption, an agricultural or high-water  
45 recharge classification application, an application for  
46 classification as historic property used for commercial or  
47 certain nonprofit purposes, or a deferral, the petition must be  
48 filed at any time during the taxable year on or before the 30th  
49 day following the mailing of the notice by the property  
50 appraiser under s. 193.461, s. 193.503, s. 193.625, s. 196.173,  
51 or s. 196.193 or notice by the tax collector under s. 197.2425.

52 (e) A condominium association, cooperative association, or  
53 any homeowners' association as defined in s. 723.075, with  
54 approval of its board of administration or directors, may file  
55 with the value adjustment board a single joint petition on  
56 behalf of any association members who own parcels of property  
57 which the property appraiser determines are substantially  
58 similar with respect to location, proximity to amenities, number  
59 of rooms, living area, and condition. The condominium  
60 association, cooperative association, or homeowners' association  
61 as defined in s. 723.075 shall provide the unit owners with  
62 notice of its intent to petition the value adjustment board and  
63 shall provide at least 20 days for a unit owner to elect, in  
64 writing, that his or her unit not be included in the petition.

65 (f) An owner of contiguous, undeveloped parcels may file  
66 with the value adjustment board a single joint petition if the  
67 property appraiser determines such parcels are substantially  
68 similar in nature.



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69 (g) The individual, agent, or legal entity that signs the  
70 petition becomes an agent of the taxpayer for the purpose of  
71 serving process to obtain personal jurisdiction over the  
72 taxpayer for the entire value adjustment board proceedings,  
73 including any appeals of a board decision by the property  
74 appraiser pursuant to s. 194.036.

75 Section 5. Subsection (2) of section 194.014, Florida  
76 Statutes, is amended to read:

77 194.014 Partial payment of ad valorem taxes; proceedings  
78 before value adjustment board.—

79 (2) If the value adjustment board or the property appraiser  
80 determines that the petitioner owes ad valorem taxes in excess  
81 of the amount paid, the unpaid amount accrues interest at an  
82 annual percentage rate equal to the bank prime loan rate on July  
83 1, or the first business day thereafter if July 1 is a Saturday,  
84 Sunday, or legal holiday, of the tax ~~the rate of 12 percent per~~  
85 year, beginning on ~~from~~ the date the taxes became delinquent  
86 pursuant to s. 197.333 until the unpaid amount is paid. If the  
87 value adjustment board or the property appraiser determines that  
88 a refund is due, the overpaid amount accrues interest at an  
89 annual percentage rate equal to the bank prime loan rate on July  
90 1, or the first business day thereafter if July 1 is a Saturday,  
91 Sunday, or legal holiday, of the tax ~~the rate of 12 percent per~~  
92 year, beginning on ~~from~~ the date the taxes became delinquent  
93 pursuant to s. 197.333 until a refund is paid. Interest does not  
94 accrue on amounts paid in excess of 100 percent of the current  
95 taxes due as provided on the tax notice issued pursuant to s.  
96 197.322. As used in this subsection, the term "bank prime loan  
97 rate" means the average predominant prime rate quoted by



98 commercial banks to large businesses as published by the Board  
99 of Governors of the Federal Reserve System.

100 Section 6. Section 194.015, Florida Statutes, is amended to  
101 read:

102 194.015 Value adjustment board. ~~There is hereby created~~ A  
103 value adjustment board is created for each county, which shall  
104 consist of two members of the governing body of the county as  
105 elected from the membership of the board of said governing body,  
106 one of whom shall be elected chairperson, and one member of the  
107 school board as elected from the membership of the school board,  
108 and two citizen members, one of whom shall be appointed by the  
109 governing body of the county and must own homestead property  
110 within the county and one of whom must be appointed by the  
111 school board and must own a business occupying commercial space  
112 located within the school district. A citizen member may not be  
113 a member or an employee of any taxing authority, and may not be  
114 a person who represents property owners in any administrative or  
115 judicial review of property taxes. The members of the board may  
116 be temporarily replaced by other members of the respective  
117 boards on appointment by their respective chairpersons. Any  
118 three members shall constitute a quorum of the board, except  
119 that each quorum must include at least one member of said  
120 governing board, at least one member of the school board, and at  
121 least one citizen member and no meeting of the board shall take  
122 place unless a quorum is present. Members of the board may  
123 receive such per diem compensation as is allowed by law for  
124 state employees if both bodies elect to allow such compensation.  
125 The clerk of the governing body of the county shall be the clerk  
126 of the value adjustment board. The board shall appoint private



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127 counsel who has practiced law for over 5 years and who shall  
128 receive such compensation as may be established by the board.  
129 The private counsel may not represent the property appraiser,  
130 the tax collector, any taxing authority, or any property owner  
131 in any administrative or judicial review of property taxes. ~~A No~~  
132 meeting of the board may not ~~shall~~ take place unless counsel to  
133 the board is present. Two-fifths of the expenses of the board  
134 shall be borne by the district school board and three-fifths by  
135 the district county commission. The district school board and  
136 the county commission may audit the expenses related to the  
137 value adjustment board process.

138 Section 7. Paragraph (a) of subsection (2) of section  
139 194.032, Florida Statutes, is amended to read:

140 194.032 Hearing purposes; timetable.-

141 (2) (a) The clerk of the governing body of the county shall  
142 prepare a schedule of appearances before the board based on  
143 petitions timely filed with him or her. The clerk shall notify  
144 each petitioner of the scheduled time of his or her appearance  
145 at least 25 calendar days before the day of the scheduled  
146 appearance. The notice must indicate whether the petition has  
147 been scheduled to be heard at a particular time or during a  
148 block of time. If the petition has been scheduled to be heard  
149 within a block of time, the beginning and ending of that block  
150 of time must be indicated on the notice; however, as provided in  
151 paragraph (b), a petitioner may not be required to wait for more  
152 than a reasonable time, not to exceed 2 hours, after the  
153 beginning of the block of time. If the petitioner checked the  
154 appropriate box on the petition form to request a copy of the  
155 property record card containing relevant information used in



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156 computing the current assessment, the property appraiser must  
157 provide the copy to the petitioner upon receipt of the petition  
158 from the clerk regardless of whether the petitioner initiates  
159 evidence exchange, unless the property record card is available  
160 online from the property appraiser, in which case the property  
161 appraiser must notify the petitioner that the property record  
162 card is available online. ~~Upon receipt of the notice,~~ The  
163 petitioner or the property appraiser may reschedule the hearing  
164 a single time for good cause by submitting to the clerk a  
165 written request to reschedule, at least 5 calendar days before  
166 the day of the originally scheduled hearing. As used in this  
167 paragraph, the term "good cause" means circumstances beyond the  
168 control of the person seeking to reschedule the hearing which  
169 reasonably prevent the party from having adequate representation  
170 at the hearing. If the hearing is rescheduled by the petitioner,  
171 the clerk shall notify the petitioner of the rescheduled date  
172 and time for his or her appearance at least 15 calendar days  
173 before the date of the rescheduled appearance.

174  
175 ===== T I T L E A M E N D M E N T =====

176 And the title is amended as follows:

177 Delete lines 10 - 19

178 and insert:

179 194.014, F.S.; revising the entities authorized to  
180 determine under certain circumstances that a  
181 petitioner owes ad valorem taxes or is owed a refund  
182 of overpaid taxes; revising the interest rate upon  
183 which unpaid and overpaid ad valorem taxes accrue;  
184 defining the term "bank prime loan rate"; amending s.



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185 194.015, F.S.; authorizing the district school board  
186 and county commission to audit certain expenses of the  
187 value adjustment board; amending s. 194.032, F.S.;  
188 requiring a property appraiser to notify a petitioner  
189 when property record cards are available online;  
190 authorizing a property appraiser to reschedule a  
191 hearing relating to an assessment; requiring a  
192 petitioner and a property appraiser to show good cause  
193 to reschedule such hearing; defining the term "good  
194 cause"; requiring the clerk to provide certain notice  
195 to a petitioner of a rescheduled hearing requested by  
196 the petitioner;

By the Committee on Finance and Tax; and Senator Flores

593-03125-15

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1 A bill to be entitled  
 2 An act relating to value adjustment boards; amending  
 3 s. 192.0105, F.S.; conforming a provision to changes  
 4 made by the act; amending s. 193.122, F.S.;  
 5 establishing deadlines for value adjustment boards to  
 6 hear petitions and issue the second tax roll  
 7 certification; providing applicability; amending s.  
 8 194.011, F.S.; specifying procedures for filing  
 9 petitions to the value adjustment board; amending s.  
 10 194.014, F.S.; revising the interest rate upon which  
 11 unpaid and overpaid ad valorem taxes accrue; amending  
 12 s. 194.015, F.S.; authorizing the district school  
 13 board and county commission to audit certain expenses  
 14 of the value adjustment board; amending s. 194.032,  
 15 F.S.; requiring a property appraiser to notify a  
 16 petitioner when property record cards are available  
 17 online; requiring a petitioner to show good cause to  
 18 reschedule a hearing related to an assessment;  
 19 limiting a petitioner to rescheduling a hearing twice;  
 20 amending s. 194.034, F.S.; revising the entities that  
 21 may represent a taxpayer before the value adjustment  
 22 board; providing effective dates.  
 23  
 24 Be It Enacted by the Legislature of the State of Florida:  
 25  
 26 Section 1. Paragraph (f) of subsection (2) of section  
 27 192.0105, Florida Statutes, is amended to read:  
 28 192.0105 Taxpayer rights.—There is created a Florida  
 29 Taxpayer’s Bill of Rights for property taxes and assessments to

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30 guarantee that the rights, privacy, and property of the  
 31 taxpayers of this state are adequately safeguarded and protected  
 32 during tax levy, assessment, collection, and enforcement  
 33 processes administered under the revenue laws of this state. The  
 34 Taxpayer’s Bill of Rights compiles, in one document, brief but  
 35 comprehensive statements that summarize the rights and  
 36 obligations of the property appraisers, tax collectors, clerks  
 37 of the court, local governing boards, the Department of Revenue,  
 38 and taxpayers. Additional rights afforded to payors of taxes and  
 39 assessments imposed under the revenue laws of this state are  
 40 provided in s. 213.015. The rights afforded taxpayers to assure  
 41 that their privacy and property are safeguarded and protected  
 42 during tax levy, assessment, and collection are available only  
 43 insofar as they are implemented in other parts of the Florida  
 44 Statutes or rules of the Department of Revenue. The rights so  
 45 guaranteed to state taxpayers in the Florida Statutes and the  
 46 departmental rules include:  
 47 (2) THE RIGHT TO DUE PROCESS.—  
 48 (f) The right, in value adjustment board proceedings, to  
 49 have all evidence presented and considered at a public hearing  
 50 at the scheduled time, to be represented by a person specified  
 51 in s. 194.034(1)(a) an attorney or agent, to have witnesses  
 52 sworn and cross-examined, and to examine property appraisers or  
 53 evaluators employed by the board who present testimony (see ss.  
 54 194.034(1)(a) and (c) and (4), and 194.035(2)).  
 55 Section 2. Effective July 1, 2017, subsection (3) of  
 56 section 193.122, Florida Statutes, is amended to read:  
 57 193.122 Certificates of value adjustment board and property  
 58 appraiser; extensions on the assessment rolls.—

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59 (3) When the tax rolls have been extended pursuant to s.  
60 197.323, the second certification of the value adjustment board  
61 shall reflect all changes made by the board together with any  
62 adjustments or changes made by the property appraiser. The value  
63 adjustment board must hear all petitions and issue its second  
64 certification by June 1 following the year in which the taxes  
65 were assessed. Upon the value adjustment board's second ~~such~~  
66 certification, the property appraiser shall recertify the tax  
67 rolls with all changes to the collector and shall provide public  
68 notice of the date and fact of recertification pursuant to  
69 subsection (2).

70 Section 3. The amendment to s. 193.122, Florida Statutes,  
71 made by this act first applies to the 2017 tax roll.

72 Section 4. Subsection (3) of section 194.011, Florida  
73 Statutes, is amended to read:

74 194.011 Assessment notice; objections to assessments.—

75 (3) A petition to the value adjustment board must be in  
76 substantially the form prescribed by the department.  
77 Notwithstanding s. 195.022, a county officer may not refuse to  
78 accept a form provided by the department for this purpose if the  
79 taxpayer chooses to use it. A petition to the value adjustment  
80 board must be signed by the taxpayer or accompanied by the  
81 taxpayer's written authorization for representation by a person  
82 specified in s. 194.034(1)(a). A written authorization is valid  
83 for 1 tax year, and a new written authorization by the taxpayer  
84 shall be required for each subsequent tax year. A petition shall  
85 also describe the property by parcel number and shall be filed  
86 as follows:

87 (a) The property appraiser shall have available and shall

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88 distribute forms prescribed by the Department of Revenue on  
89 which the petition shall be made. Such petition shall be sworn  
90 to by the petitioner.

91 (b) The completed petition shall be filed with the clerk of  
92 the value adjustment board of the county, who shall acknowledge  
93 receipt thereof and promptly furnish a copy thereof to the  
94 property appraiser.

95 (c) The petition shall state the approximate time  
96 anticipated by the taxpayer to present and argue his or her  
97 petition before the board.

98 (d) The petition may be filed, as to valuation issues, at  
99 any time during the taxable year on or before the 25th day  
100 following the mailing of notice by the property appraiser as  
101 provided in subsection (1). With respect to an issue involving  
102 the denial of an exemption, an agricultural or high-water  
103 recharge classification application, an application for  
104 classification as historic property used for commercial or  
105 certain nonprofit purposes, or a deferral, the petition must be  
106 filed at any time during the taxable year on or before the 30th  
107 day following the mailing of the notice by the property  
108 appraiser under s. 193.461, s. 193.503, s. 193.625, s. 196.173,  
109 or s. 196.193 or notice by the tax collector under s. 197.2425.

110 (e) A condominium association, cooperative association, or  
111 any homeowners' association as defined in s. 723.075, with  
112 approval of its board of administration or directors, may file  
113 with the value adjustment board a single joint petition on  
114 behalf of any association members who own parcels of property  
115 which the property appraiser determines are substantially  
116 similar with respect to location, proximity to amenities, number

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117 of rooms, living area, and condition. The condominium  
 118 association, cooperative association, or homeowners' association  
 119 as defined in s. 723.075 shall provide the unit owners with  
 120 notice of its intent to petition the value adjustment board and  
 121 shall provide at least 20 days for a unit owner to elect, in  
 122 writing, that his or her unit not be included in the petition.

123 (f) An owner of contiguous, undeveloped parcels may file  
 124 with the value adjustment board a single joint petition if the  
 125 property appraiser determines such parcels are substantially  
 126 similar in nature.

127 (g) The individual, agent, or legal entity that signs the  
 128 petition becomes an agent of the taxpayer for the purpose of  
 129 serving process to obtain personal jurisdiction over the  
 130 taxpayer for the entire value adjustment board proceedings,  
 131 including any appeals of a board decision by the property  
 132 appraiser pursuant to s. 194.036.

133 Section 5. Subsection (2) of section 194.014, Florida  
 134 Statutes, is amended to read:

135 194.014 Partial payment of ad valorem taxes; proceedings  
 136 before value adjustment board.—

137 (2) If the value adjustment board determines that the  
 138 petitioner owes ad valorem taxes in excess of the amount paid,  
 139 the unpaid amount accrues interest at an annual percentage rate  
 140 equal to the interest rate determined by the executive director  
 141 of the Department of Revenue under s. 213.235 less 4 percentage  
 142 points, beginning on the rate of 12 percent per year from the  
 143 date the taxes became delinquent pursuant to s. 197.333 until  
 144 the unpaid amount is paid. If the value adjustment board  
 145 determines that a refund is due, the overpaid amount accrues

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2015972c1

146 interest at an annual percentage rate equal to the interest rate  
 147 determined by the executive director of the Department of  
 148 Revenue under s. 213.235 less 4 percentage points, beginning on  
 149 ~~the rate of 12 percent per year from~~ the date the taxes became  
 150 delinquent pursuant to s. 197.333 until a refund is paid.  
 151 Interest does not accrue on amounts paid in excess of 100  
 152 percent of the current taxes due as provided on the tax notice  
 153 issued pursuant to s. 197.322.

154 Section 6. Section 194.015, Florida Statutes, is amended to  
 155 read:

156 194.015 Value adjustment board.—~~There is hereby created~~ A  
 157 value adjustment board is created for each county, which shall  
 158 consist of two members of the governing body of the county as  
 159 elected from the membership of the board of said governing body,  
 160 one of whom shall be elected chairperson, and one member of the  
 161 school board as elected from the membership of the school board,  
 162 and two citizen members, one of whom shall be appointed by the  
 163 governing body of the county and must own homestead property  
 164 within the county and one of whom must be appointed by the  
 165 school board and must own a business occupying commercial space  
 166 located within the school district. A citizen member may not be  
 167 a member or an employee of any taxing authority, and may not be  
 168 a person who represents property owners in any administrative or  
 169 judicial review of property taxes. The members of the board may  
 170 be temporarily replaced by other members of the respective  
 171 boards on appointment by their respective chairpersons. Any  
 172 three members shall constitute a quorum of the board, except  
 173 that each quorum must include at least one member of said  
 174 governing board, at least one member of the school board, and at

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

593-03125-15

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175 least one citizen member and no meeting of the board shall take  
 176 place unless a quorum is present. Members of the board may  
 177 receive such per diem compensation as is allowed by law for  
 178 state employees if both bodies elect to allow such compensation.  
 179 The clerk of the governing body of the county shall be the clerk  
 180 of the value adjustment board. The board shall appoint private  
 181 counsel who has practiced law for over 5 years and who shall  
 182 receive such compensation as may be established by the board.  
 183 The private counsel may not represent the property appraiser,  
 184 the tax collector, any taxing authority, or any property owner  
 185 in any administrative or judicial review of property taxes. ~~A No~~  
 186 meeting of the board may not ~~shall~~ take place unless counsel to  
 187 the board is present. Two-fifths of the expenses of the board  
 188 shall be borne by the district school board and three-fifths by  
 189 the district county commission. The district school board and  
 190 the county commission may audit the expenses related to the  
 191 value adjustment board process.

192 Section 7. Paragraph (a) of subsection (2) of section  
 193 194.032, Florida Statutes, is amended to read:

194 194.032 Hearing purposes; timetable.—

195 (2) (a) The clerk of the governing body of the county shall  
 196 prepare a schedule of appearances before the board based on  
 197 petitions timely filed with him or her. The clerk shall notify  
 198 each petitioner of the scheduled time of his or her appearance  
 199 at least 25 calendar days before the day of the scheduled  
 200 appearance. The notice must indicate whether the petition has  
 201 been scheduled to be heard at a particular time or during a  
 202 block of time. If the petition has been scheduled to be heard  
 203 within a block of time, the beginning and ending of that block

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204 of time must be indicated on the notice; however, as provided in  
 205 paragraph (b), a petitioner may not be required to wait for more  
 206 than a reasonable time, not to exceed 2 hours, after the  
 207 beginning of the block of time. If the petitioner checked the  
 208 appropriate box on the petition form to request a copy of the  
 209 property record card containing relevant information used in  
 210 computing the current assessment, the property appraiser must  
 211 provide the copy to the petitioner upon receipt of the petition  
 212 from the clerk regardless of whether the petitioner initiates  
 213 evidence exchange, unless the property record card is available  
 214 online from the property appraiser, in which case the property  
 215 appraiser must notify the petitioner that the property record  
 216 card is available online. Upon receipt of the notice, the  
 217 petitioner, for good cause, may reschedule the hearing no more  
 218 than twice a single time by submitting to the clerk a written  
 219 request to reschedule, at least 5 calendar days before the day  
 220 of the originally scheduled hearing.

221 Section 8. Paragraph (a) of subsection (1) of section  
 222 194.034, Florida Statutes, is amended to read:

223 194.034 Hearing procedures; rules.—

224 (1) (a) Petitioners before the board may be represented by a  
 225 corporate representative of the taxpayer, an attorney who is a  
 226 member of The Florida Bar, a real estate appraiser licensed  
 227 under chapter 475, a real estate broker licensed under chapter  
 228 475, or a certified public accountant licensed under chapter  
 229 473, retained by the taxpayer, or an individual with power of  
 230 attorney to act on behalf of the taxpayer who receives no  
 231 compensation, an attorney or agent and such person may present  
 232 testimony and other evidence. The property appraiser or his or

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593-03125-15

2015972c1

233 her authorized representatives may be represented by an attorney  
234 in defending the property appraiser's assessment or opposing an  
235 exemption and may present testimony and other evidence. The  
236 property appraiser, each petitioner, and all witnesses shall be  
237 required, upon the request of either party, to testify under  
238 oath as administered by the chairperson of the board. Hearings  
239 shall be conducted in the manner prescribed by rules of the  
240 department, which rules shall include the right of cross-  
241 examination of any witness.

242 Section 9. Except as otherwise expressly provided in this  
243 act, this act shall take effect July 1, 2015.



The Florida Senate

## Committee Agenda Request

**To:** Senator Tom Lee, Chair  
Committee on Appropriations

**Subject:** Committee Agenda Request

**Date:** April 1, 2015

---

I respectfully request that **Senate Bill #972**, relating to Value Adjustment Boards, be placed on the:

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

*Anitere Flores*

---

Senator Anitere Flores  
Florida Senate, District 37

SENATE APPROPRIATIONS  
RECEIVED  
15 APR - 1 AM 10: 28  
STAFF DIR. \_\_\_\_\_ STAFF \_\_\_\_\_

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/16/15  
Meeting Date

972  
Bill Number (if applicable)

Topic Value Adjustment Boards

Negron 196224  
Amendment Barcode (if applicable)

Name Mat Forrest

Job Title \_\_\_\_\_

Address 403 E. Park Ave.  
Street

Phone 250-577-0444

Tallahassee FL 32301  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing residents of Frenchmen's Creek

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/16/15  
Meeting Date

912  
Bill Number (if applicable)

Topic VALUE ADJUSTMENT BOARDS

Amendment Barcode (if applicable)

Name DIANA RAGBEER

Job Title DIRECTOR, PUBLIC POLICY

Address 3150 SW 3RD AVE, 8TH FLOOR Phone 305 571 5700  
Street

MIAMI FL 33129 Email \_\_\_\_\_  
City State Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing THE CHILDREN'S TRUST

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)

972

Bill Number (if applicable)

Meeting Date

Topic

Amendment Barcode (if applicable)

Name JESS MCCARTY

Job Title

Address III NW 1<sup>st</sup> ST

Phone 305-979-7110

Street

MIAMI 33128

Email

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing MIAMI - DADE COUNTY

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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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)

4/16/15

Meeting Date

972

Bill Number (if applicable)

Topic Value Adjustment Boards

Amendment Barcode (if applicable)

Name Jim Overton

Job Title Duval County Property Appraiser

Address 231 Forsyth St. Suite

Phone 904/630-2014

Street

Jacksonville, FL 32302

City

State

Zip

Email joverton@cj.net

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Assoc. of Property Appraisers

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 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/17/15  
Meeting Date

SB 972  
Bill Number (if applicable)

Topic Value Adjustment Board

Amendment Barcode (if applicable)

Name ~~Michael J. Sullivan~~ John Sullivan

Job Title \_\_\_\_\_

Address 1701 Prudential Drive  
Street

Phone 904-390-2000

Jacksonville, FL 32207  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Duval County Public Schools

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/17/15

Meeting Date

SB972

Bill Number (if applicable)

Topic Value Adjustment Board

Amendment Barcode (if applicable)

Name Eva M. Regueira

Job Title Director

Address 1450 NE 2nd Ave, ~~MIAMI~~

Phone 305 995 1706

Street

Miami, FL 33132

City

State

Zip

Email emregueira@dadeschools.net

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Miami-Dade County Public Schools

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/16/15

Meeting Date

SB 972

Bill Number (if applicable)

Topic Value Adjustment Board

Amendment Barcode (if applicable)

Name TOM CERRA

Job Title Ex. Director

Address 9737 NW 41st #359

Phone 305-513-9995

Street  
City Miami State FL Zip 33178

Email tomcerra@gmail.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Greater FL Consortium of School Boards

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

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Prepared By: The Professional Staff of the Committee on Appropriations

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**BILL:** PCS/CS/SB 1006 (313118)

**INTRODUCER:** Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senator Flores

**SUBJECT:** Depopulation of Citizens Property Insurance Corporation

**DATE:** April 15, 2015      **REVISED:** \_\_\_\_\_

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Betta</u>	<u>Kynoch</u>	<u>AP</u>	<u>Pre-meeting</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/CS/SB 1006 makes the following changes related to Citizens Property Insurance Corporation (Citizens):

- Allows the consumer representative to the Citizens Board of Governors to be afforded the same conflict of interest exemption as other board members.
- Requires agents who write business for Citizens must also hold an appointment with an admitted carrier that is currently writing or renewing policies in the state.
- Allows Citizens to share underwriting and claims files data with entities that have obtained a permit to become an authorized insurer, a reinsurer, reinsurance broker, or modeling company. Such data may not be used for direct solicitations and must be kept confidential.
- Requires Citizens to make changes, by January 1, 2016, to their plan of operation as it relates to take-out agreements made with private insurers.
- Requires that all Citizens take-out agreements are subject to the Office of Insurance Regulations (OIR) approval.
- Requires that private companies must include in their take-out offers to Citizens policyholders, a comparison of coverages and rate between the insurer's policy and Citizens policy.
- Allows a Citizens policyholder who declines a take-out offer the option to be excluded from future take-out agreements for up to six months.

- Allows a Citizens policyholder, who accepts a take-out offer, the ability to reapply to Citizens and be treated as a renewal through the clearinghouse if within 36 months of leaving Citizens their premium is increased above the rate allowed under Citizens glide path.

There is no fiscal impact to state funds.

The bill provides an effective date of July 1, 2015.

## II. Present Situation:

### **Citizens Property Insurance Corporation (Citizens)**

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.<sup>1</sup> Citizens is not a private insurance company.<sup>2</sup> Citizens was statutorily created in 2002 when the Florida Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by an eight member Board of Governors<sup>3</sup> (board) that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission. The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoints two members to the board. Citizens is subject to regulation by the Florida Office of Insurance Regulation.

Citizens offers property insurance in three separate accounts. Each account is a separate statutory account with separate calculations of surplus and deficits.<sup>4</sup> Assets may not be commingled or used to fund losses in another account.<sup>5</sup>

The Personal Lines Account (PLA) offers personal lines residential policies that provide comprehensive, multiperil coverage statewide, except for those areas contained in the Coastal Account. The PLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Personal lines residential coverage consists of the types of coverage provided by homeowners, mobile homeowners, dwellings, tenants, and condominium unit owner's policies.

The Commercial Lines Account (CLA) offers commercial lines residential and nonresidential policies that provide basic perils coverage statewide, except for those areas contained in the Coastal Account. The CLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Commercial lines coverage includes commercial residential policies

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<sup>1</sup> Admitted market means insurance companies licensed to transact insurance in Florida.

<sup>2</sup> s. 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the Office of Insurance Regulation.

<sup>3</sup> The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives.

<sup>4</sup> The Personal Lines Account and the Commercial Lines account are combined for credit and Florida Hurricane Catastrophe Fund coverage.

<sup>5</sup> s. 627.351(6)(b)2b., F.S.

covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes commercial nonresidential policies covering business properties.

The Coastal Account offers personal residential, commercial residential and commercial non-residential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind only policies) and may offer multiperil policies.<sup>6</sup>

### **Citizens Clearinghouse**

The Citizens Property Insurance Corporation policyholder eligibility clearinghouse program was established by the Legislature in 2013<sup>7</sup>. Under the program, new and renewal policies for Citizens are placed into the clearinghouse where participating private insurers can review and decide to make offers of coverage before policies are placed or renewed with Citizens. For new policies applying with Citizens, any private market offer through the clearinghouse for similar coverage that is not greater than 15 percent of Citizens rate makes the policy ineligible for coverage with Citizens. Additionally, a renewal Citizens policy that receives any private market offer through the clearinghouse for similar coverage that is equal to or less than Citizens rate is ineligible for coverage with Citizens.

### **Citizens Board of Governors**

Citizens operates under the direction of a nine-member Board of Governors (board). The board members are not Citizens' employees and are not paid. The Governor, Chief Financial Officer, Senate President, and Speaker of the House of Representatives each appoint two members to the board, with one member appointed chair by the Chief Financial Officer. Board members serve three-year staggered terms. There is also a consumer representative on the board that is appointed by the Governor.

At least one of the two board members appointed by each appointing officer must have demonstrated expertise in insurance. By law, board members with the required insurance expertise fall within the exemption in the conflicting employment or contractual relationship statute that applies to public officers and agency employees.<sup>8</sup> Thus, these board members can maintain employment in the private sector in jobs involving business with Citizens without violating the conflict of interest statute because the board member is required by law to have insurance expertise in order to sit on the board.

### **Citizens Underwriting and Claims Files**

Current law allows Citizens to share confidential underwriting and claims files with an insurer that is contemplating underwriting a risk insured by the corporation, provided the insurer executes a notarized agreement to retain their confidentiality.<sup>9</sup> The corporation may also make

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<sup>6</sup> In August of 2007, Citizens began offering personal and commercial residential multiperil policies in this limited eligibility area. Additionally, near the end of 2008, Citizens began offering commercial non-residential multiperil policies in this account.

<sup>7</sup> s. 10 ch. 2013-60 L.O.F.

<sup>8</sup> Board members of Citizens fall under the definition of "public officer" in s. 112.313(1), F.S., because that definition includes any person appointed to hold office in any agency, including serving on an advisory board. "Agency" is defined in s. 112.312, F.S.

<sup>9</sup> s. 627.351(6)(x)2., F.S.

specified information from the underwriting and claims files available to general lines insurance agents. Such information is limited to the name, address, and telephone number of the property owner or insured; the location of the risk; rating information; loss history; and policy type. The law requires the agent to retain the confidentiality of the information.<sup>10</sup>

### **Takeout Bonus Agreements**

Section 627.3511, F.S., was created by the Legislature in 1995<sup>11</sup> and at that time applied to the depopulation of the Residential Property and Casualty Joint Underwriting Association. After the Legislature merged the two underwriting associations to create Citizens in 2002, this section was amended to apply to the depopulation of Citizens Property Insurance Corporation.

Take out agreements that were approved under this section allowed for a per policy bonus to be paid to each participating insurer provided that they removed a given number of policies for a set number of years. Today, takeouts from Citizens are no longer approved through takeout bonus agreements. The last Citizens takeout bonus agreement under this section took place in November 2007.

### **Takeout Non-Bonus Agreements**

In January of 2008, Citizens Board of Governors adopted a takeout non-bonus plan that was approved by the Office of Insurance Regulation (OIR) in March of that year. Since that time, most takeout agreements between Citizens and private carriers have occurred under this plan. In addition to the requirements of the approved plan, the OIR has on occasion required additional requirements to be included in such takeout agreements. According to the OIR, until 2009 the OIR required private carriers that removed policies from Citizens through a takeout agreement to write the risk at a rate below the rate of Citizens at that time.<sup>12</sup> Additionally, in November of 2013 the OIR began requiring takeout companies to provide information to the policyholder detailing a rate comparison between the Citizens rate and the private insurer's rate.<sup>13</sup>

### **Depopulation**

Florida law requires Citizens to create programs to help return Citizens policies to the private market and reduce the risk of additional assessments for all Floridians.<sup>14</sup> Policyholders whose policies are selected for takeout are sent a letter notifying them of the pending takeout and provided instructions on how they can elect (opt-out) to remain with Citizens, if eligible and should they wish to do so. Policyholders who do not opt-out within the opt-out timeframe will receive a Notice of Assumption, a non-renewal from Citizens and a Certificate of Assumption. The policyholder still has an additional timeframe from the receipt of these notices to elect to remain with Citizens. Citizens encourage policyholders who receive private-market offers to consider them carefully and discuss the advantages of such coverage with their agents. Accepting an offer from a private insurer can decrease a Citizens policyholder's potential of assessment.

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<sup>10</sup> *Id.*

<sup>11</sup> s. 10, ch.95-276, L.O.F.

<sup>12</sup> Information received from the OIR on March 19, 2015. (On file with the Banking and Insurance Committee)

<sup>13</sup> *Id.*

<sup>14</sup> s. 627.351(6), F.S.

In November 2011, Citizens reported a policy count of 1,472,391 policies insured. As of March 13, 2015, Citizens reports their policy count was at 598,408 policies insured.<sup>15</sup> Much of the success of Citizens reduction in size is the result of depopulation through takeout agreements. In 2012, 2013, and 2014, a total of 1,059,323 policies were removed from Citizens and placed into the private market through the use of the current takeout agreement process.<sup>16</sup>

### III. Effect of Proposed Changes:

The bill allows for the consumer representative on Citizens' board to be afforded the same exemption from the conflicting employment or contractual relationship statute for public officers and agency employees as is provided in current law to other members appointed to the Citizens board.

The bill requires agents placing policies with Citizens to hold an appointment by an insurer authorized to write and is writing or renewing personal lines or commercial residential property coverage or commercial nonresidential property coverage within the state.

The bill expands the list of who may receive information from the confidential underwriting and claims files to include an entity which has obtained a permit to become an authorized insurer, a reinsurer, reinsurance broker, or modeling company. The information made available to these entities is the same information available to a licensed general lines agent. The information may be used for the sole purpose of analyzing risks for underwriting in the private insurance market and must be kept confidential. In addition, the bill expressly prohibits the use of the data by any of the authorized users for direct solicitation of policyholders.

The bill requires Citizens Property Insurance Corporation to, by January 1, 2016, amend its plan of operations related to take-out agreements made with private insurers. The amended plan must include:

- That the Office of Insurance Regulation (OIR) has to approve all take-out agreements before policies can be removed from Citizens. This is currently done by the OIR, and this provision will codify such practice in statute.
- That private companies must provide in their take-out offers to Citizens policyholders, a comparison of coverages, and rate between their policy and the Citizens policy. The OIR has required this of all take-out agreements reached after November 2013. This provision again will codify this requirement in statute.
- That a Citizens policyholder who declines a take-out offer may elect to not receive additional take-out offers for up to six months.
- That Citizens policyholders who accepts a take-out offer have the ability to reapply with Citizens and be treated as a renewal through the Citizens clearinghouse if, within 36 months of leaving Citizens, the private insurer increases the policy rate more than what is allowed under the Citizens glide path. This mirrors a similar provision that is applied to policyholders who accept offers of coverage from private insurers though the clearinghouse.

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<sup>15</sup> Citizens Policy Inforce Weekly Summary Report March 16, 2015.

<sup>16</sup> Citizens President's Report to the Board of Governors March 18, 2015.

The bill provides an effective date of July 1, 2015.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under PCS/CS/SB 1006, Citizens policyholders who accept take-out offers from private insurers and whose rates then increase above the Citizens glide path, within 36 months of leaving Citizens, will have the ability to reapply with Citizens and be rated as a renewal through the clearinghouse.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 627.351 of the Florida Statutes.

**IX. Additional Information:**

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

**Recommended CS/CS by Appropriations Subcommittee on General Government on April 8, 2015:**

The committee substitute makes the following changes to the bill:

- Allows the consumer representative to the Citizens Board the same conflict of interest exemption provided to other board members.
- Requires agents who write business for Citizens must also hold an appointment with an admitted carrier that is currently writing or renewing policies in the state.
- Allows Citizens to share underwriting and claims files data with entities that have obtained a permit to become an authorized insurer, a reinsurer, reinsurance broker, or modeling company.
- Provides that Citizens must, by January 1, 2016, amend its plan of operations related to take-out agreements with private insurers.

**CS by Banking and Insurance on March 23, 2015:**

CS/SB 1006 made the following changes to the bill:

- Requires that all Citizens take-out agreements be approved by the OIR.
- Requires private companies to provide a comparison of coverages and rate between their policy and the Citizens policy.
- Allows Citizens policyholders a 6 month opt out from being included in any takeout agreements.
- Allows Citizens policyholders who accept take-out offers from private insurers and whose rates are then increased above the Citizens glide path, within 36 months of leaving Citizens, the ability to reapply with Citizens and be rated as a renewal through the clearinghouse.

- B. **Amendments:**

None.



313118

576-03719-15

Proposed Committee Substitute by the Committee on Appropriations  
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to operations of the Citizens Property Insurance Corporation; amending s. 627.351, F.S.; specifying that a consumer representative appointed by the Governor to the Citizens Property Insurance Corporation's board of governors is not prohibited from practicing in a certain profession if required or permitted by law or ordinance; revising the requirements for licensed agents of the corporation; authorizing the use of specified information by certain entities in analyzing risks and prohibiting the use of such information for the direct solicitation of policyholders; requiring the take-out program to be revised for specified purposes; requiring policyholders after a specified date to receive certain information relating to a demonstration of interest to insure by private insurers; requiring the corporation to develop uniform formats for certain information; allowing a policyholder to elect to limit the frequency of solicitations for take-out offers; providing circumstances under which a policyholder whose policy was taken out to be considered a renewal policyholder for certain rate increase purposes; providing an effective date.

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



313118

576-03719-15

Section 1. Paragraphs (c) and (x) of subsection (6) of section 627.351, Florida Statutes, are amended, and paragraph (ii) is added to that subsection, to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(c) The corporation's plan of operation:

1. Must provide for adoption of residential property and casualty insurance policy forms and commercial residential and nonresidential property insurance forms, which must be approved by the office before use. The corporation shall adopt the following policy forms:

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent to the coverage provided in the private insurance market under an HO-3, HO-4, or HO-6 policy.

b. Basic personal lines policy forms that are policies similar to an HO-8 policy or a dwelling fire policy that provide coverage meeting the requirements of the secondary mortgage market, but which is more limited than the coverage under a standard policy.

c. Commercial lines residential and nonresidential policy forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the admitted voluntary market.

d. Personal lines and commercial lines residential property insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas



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57 eligible for coverage under the coastal account referred to in  
58 sub-subparagraph (b)2.a.

59 e. Commercial lines nonresidential property insurance forms  
60 that cover the peril of wind only. The forms are applicable only  
61 to nonresidential properties located in areas eligible for  
62 coverage under the coastal account referred to in sub-  
63 subparagraph (b)2.a.

64 f. The corporation may adopt variations of the policy forms  
65 listed in sub-subparagraphs a.-e. which contain more restrictive  
66 coverage.

67 g. Effective January 1, 2013, the corporation shall offer a  
68 basic personal lines policy similar to an HO-8 policy with  
69 dwelling repair based on common construction materials and  
70 methods.

71 2. Must provide that the corporation adopt a program in  
72 which the corporation and authorized insurers enter into quota  
73 share primary insurance agreements for hurricane coverage, as  
74 defined in s. 627.4025(2)(a), for eligible risks, and adopt  
75 property insurance forms for eligible risks which cover the  
76 peril of wind only.

77 a. As used in this subsection, the term:

78 (I) "Quota share primary insurance" means an arrangement in  
79 which the primary hurricane coverage of an eligible risk is  
80 provided in specified percentages by the corporation and an  
81 authorized insurer. The corporation and authorized insurer are  
82 each solely responsible for a specified percentage of hurricane  
83 coverage of an eligible risk as set forth in a quota share  
84 primary insurance agreement between the corporation and an  
85 authorized insurer and the insurance contract. The



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86 responsibility of the corporation or authorized insurer to pay  
87 its specified percentage of hurricane losses of an eligible  
88 risk, as set forth in the agreement, may not be altered by the  
89 inability of the other party to pay its specified percentage of  
90 losses. Eligible risks that are provided hurricane coverage  
91 through a quota share primary insurance arrangement must be  
92 provided policy forms that set forth the obligations of the  
93 corporation and authorized insurer under the arrangement,  
94 clearly specify the percentages of quota share primary insurance  
95 provided by the corporation and authorized insurer, and  
96 conspicuously and clearly state that the authorized insurer and  
97 the corporation may not be held responsible beyond their  
98 specified percentage of coverage of hurricane losses.

99 (II) "Eligible risks" means personal lines residential and  
100 commercial lines residential risks that meet the underwriting  
101 criteria of the corporation and are located in areas that were  
102 eligible for coverage by the Florida Windstorm Underwriting  
103 Association on January 1, 2002.

104 b. The corporation may enter into quota share primary  
105 insurance agreements with authorized insurers at corporation  
106 coverage levels of 90 percent and 50 percent.

107 c. If the corporation determines that additional coverage  
108 levels are necessary to maximize participation in quota share  
109 primary insurance agreements by authorized insurers, the  
110 corporation may establish additional coverage levels. However,  
111 the corporation's quota share primary insurance coverage level  
112 may not exceed 90 percent.

113 d. Any quota share primary insurance agreement entered into  
114 between an authorized insurer and the corporation must provide



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115 for a uniform specified percentage of coverage of hurricane  
116 losses, by county or territory as set forth by the corporation  
117 board, for all eligible risks of the authorized insurer covered  
118 under the agreement.

119 e. Any quota share primary insurance agreement entered into  
120 between an authorized insurer and the corporation is subject to  
121 review and approval by the office. However, such agreement shall  
122 be authorized only as to insurance contracts entered into  
123 between an authorized insurer and an insured who is already  
124 insured by the corporation for wind coverage.

125 f. For all eligible risks covered under quota share primary  
126 insurance agreements, the exposure and coverage levels for both  
127 the corporation and authorized insurers shall be reported by the  
128 corporation to the Florida Hurricane Catastrophe Fund. For all  
129 policies of eligible risks covered under such agreements, the  
130 corporation and the authorized insurer must maintain complete  
131 and accurate records for the purpose of exposure and loss  
132 reimbursement audits as required by fund rules. The corporation  
133 and the authorized insurer shall each maintain duplicate copies  
134 of policy declaration pages and supporting claims documents.

135 g. The corporation board shall establish in its plan of  
136 operation standards for quota share agreements which ensure that  
137 there is no discriminatory application among insurers as to the  
138 terms of the agreements, pricing of the agreements, incentive  
139 provisions if any, and consideration paid for servicing policies  
140 or adjusting claims.

141 h. The quota share primary insurance agreement between the  
142 corporation and an authorized insurer must set forth the  
143 specific terms under which coverage is provided, including, but



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144 not limited to, the sale and servicing of policies issued under  
145 the agreement by the insurance agent of the authorized insurer  
146 producing the business, the reporting of information concerning  
147 eligible risks, the payment of premium to the corporation, and  
148 arrangements for the adjustment and payment of hurricane claims  
149 incurred on eligible risks by the claims adjuster and personnel  
150 of the authorized insurer. Entering into a quota sharing  
151 insurance agreement between the corporation and an authorized  
152 insurer is voluntary and at the discretion of the authorized  
153 insurer.

154 3. May provide that the corporation may employ or otherwise  
155 contract with individuals or other entities to provide  
156 administrative or professional services that may be appropriate  
157 to effectuate the plan. The corporation may borrow funds by  
158 issuing bonds or by incurring other indebtedness, and shall have  
159 other powers reasonably necessary to effectuate the requirements  
160 of this subsection, including, without limitation, the power to  
161 issue bonds and incur other indebtedness in order to refinance  
162 outstanding bonds or other indebtedness. The corporation may  
163 seek judicial validation of its bonds or other indebtedness  
164 under chapter 75. The corporation may issue bonds or incur other  
165 indebtedness, or have bonds issued on its behalf by a unit of  
166 local government pursuant to subparagraph (q)2. in the absence  
167 of a hurricane or other weather-related event, upon a  
168 determination by the corporation, subject to approval by the  
169 office, that such action would enable it to efficiently meet the  
170 financial obligations of the corporation and that such  
171 financings are reasonably necessary to effectuate the  
172 requirements of this subsection. The corporation may take all



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173 actions needed to facilitate tax-free status for such bonds or  
174 indebtedness, including formation of trusts or other affiliated  
175 entities. The corporation may pledge assessments, projected  
176 recoveries from the Florida Hurricane Catastrophe Fund, other  
177 reinsurance recoverables, policyholder surcharges and other  
178 surcharges, and other funds available to the corporation as  
179 security for bonds or other indebtedness. In recognition of s.  
180 10, Art. I of the State Constitution, prohibiting the impairment  
181 of obligations of contracts, it is the intent of the Legislature  
182 that no action be taken whose purpose is to impair any bond  
183 indenture or financing agreement or any revenue source committed  
184 by contract to such bond or other indebtedness.

185 4. Must require that the corporation operate subject to the  
186 supervision and approval of a board of governors consisting of  
187 nine individuals who are residents of this state and who are  
188 from different geographical areas of the state, one of whom is  
189 appointed by the Governor and serves solely to advocate on  
190 behalf of the consumer. The appointment of a consumer  
191 representative by the Governor is deemed to be within the scope  
192 of the exemption provided in s. 112.313(7)(b) and is in addition  
193 to the appointments authorized under sub-subparagraph a.

194 a. The Governor, the Chief Financial Officer, the President  
195 of the Senate, and the Speaker of the House of Representatives  
196 shall each appoint two members of the board. At least one of the  
197 two members appointed by each appointing officer must have  
198 demonstrated expertise in insurance and be deemed to be within  
199 the scope of the exemption provided in s. 112.313(7)(b). The  
200 Chief Financial Officer shall designate one of the appointees as  
201 chair. All board members serve at the pleasure of the appointing



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202 officer. All members of the board are subject to removal at will  
203 by the officers who appointed them. All board members, including  
204 the chair, must be appointed to serve for 3-year terms beginning  
205 annually on a date designated by the plan. However, for the  
206 first term beginning on or after July 1, 2009, each appointing  
207 officer shall appoint one member of the board for a 2-year term  
208 and one member for a 3-year term. A board vacancy shall be  
209 filled for the unexpired term by the appointing officer. The  
210 Chief Financial Officer shall appoint a technical advisory group  
211 to provide information and advice to the board in connection  
212 with the board's duties under this subsection. The executive  
213 director and senior managers of the corporation shall be engaged  
214 by the board and serve at the pleasure of the board. Any  
215 executive director appointed on or after July 1, 2006, is  
216 subject to confirmation by the Senate. The executive director is  
217 responsible for employing other staff as the corporation may  
218 require, subject to review and concurrence by the board.

219 b. The board shall create a Market Accountability Advisory  
220 Committee to assist the corporation in developing awareness of  
221 its rates and its customer and agent service levels in  
222 relationship to the voluntary market insurers writing similar  
223 coverage.

224 (I) The members of the advisory committee consist of the  
225 following 11 persons, one of whom must be elected chair by the  
226 members of the committee: four representatives, one appointed by  
227 the Florida Association of Insurance Agents, one by the Florida  
228 Association of Insurance and Financial Advisors, one by the  
229 Professional Insurance Agents of Florida, and one by the Latin  
230 American Association of Insurance Agencies; three



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231 representatives appointed by the insurers with the three highest  
232 voluntary market share of residential property insurance  
233 business in the state; one representative from the Office of  
234 Insurance Regulation; one consumer appointed by the board who is  
235 insured by the corporation at the time of appointment to the  
236 committee; one representative appointed by the Florida  
237 Association of Realtors; and one representative appointed by the  
238 Florida Bankers Association. All members shall be appointed to  
239 3-year terms and may serve for consecutive terms.

240 (II) The committee shall report to the corporation at each  
241 board meeting on insurance market issues which may include rates  
242 and rate competition with the voluntary market; service,  
243 including policy issuance, claims processing, and general  
244 responsiveness to policyholders, applicants, and agents; and  
245 matters relating to depopulation.

246 5. Must provide a procedure for determining the eligibility  
247 of a risk for coverage, as follows:

248 a. Subject to s. 627.3517, with respect to personal lines  
249 residential risks, if the risk is offered coverage from an  
250 authorized insurer at the insurer's approved rate under a  
251 standard policy including wind coverage or, if consistent with  
252 the insurer's underwriting rules as filed with the office, a  
253 basic policy including wind coverage, for a new application to  
254 the corporation for coverage, the risk is not eligible for any  
255 policy issued by the corporation unless the premium for coverage  
256 from the authorized insurer is more than 15 percent greater than  
257 the premium for comparable coverage from the corporation.  
258 Whenever an offer of coverage for a personal lines residential  
259 risk is received for a policyholder of the corporation at



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260 renewal from an authorized insurer, if the offer is equal to or  
261 less than the corporation's renewal premium for comparable  
262 coverage, the risk is not eligible for coverage with the  
263 corporation. If the risk is not able to obtain such offer, the  
264 risk is eligible for a standard policy including wind coverage  
265 or a basic policy including wind coverage issued by the  
266 corporation; however, if the risk could not be insured under a  
267 standard policy including wind coverage regardless of market  
268 conditions, the risk is eligible for a basic policy including  
269 wind coverage unless rejected under subparagraph 8. However, a  
270 policyholder removed from the corporation through an assumption  
271 agreement remains eligible for coverage from the corporation  
272 until the end of the assumption period. The corporation shall  
273 determine the type of policy to be provided on the basis of  
274 objective standards specified in the underwriting manual and  
275 based on generally accepted underwriting practices.

276 (I) If the risk accepts an offer of coverage through the  
277 market assistance plan or through a mechanism established by the  
278 corporation other than a plan established by s. 627.3518, before  
279 a policy is issued to the risk by the corporation or during the  
280 first 30 days of coverage by the corporation, and the producing  
281 agent who submitted the application to the plan or to the  
282 corporation is not currently appointed by the insurer, the  
283 insurer shall:

284 (A) Pay to the producing agent of record of the policy for  
285 the first year, an amount that is the greater of the insurer's  
286 usual and customary commission for the type of policy written or  
287 a fee equal to the usual and customary commission of the  
288 corporation; or



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289 (B) Offer to allow the producing agent of record of the  
290 policy to continue servicing the policy for at least 1 year and  
291 offer to pay the agent the greater of the insurer's or the  
292 corporation's usual and customary commission for the type of  
293 policy written.

294  
295 If the producing agent is unwilling or unable to accept  
296 appointment, the new insurer shall pay the agent in accordance  
297 with sub-sub-sub-paragraph (A).

298 (II) If the corporation enters into a contractual agreement  
299 for a take-out plan, the producing agent of record of the  
300 corporation policy is entitled to retain any unearned commission  
301 on the policy, and the insurer shall:

302 (A) Pay to the producing agent of record, for the first  
303 year, an amount that is the greater of the insurer's usual and  
304 customary commission for the type of policy written or a fee  
305 equal to the usual and customary commission of the corporation;  
306 or

307 (B) Offer to allow the producing agent of record to  
308 continue servicing the policy for at least 1 year and offer to  
309 pay the agent the greater of the insurer's or the corporation's  
310 usual and customary commission for the type of policy written.

311  
312 If the producing agent is unwilling or unable to accept  
313 appointment, the new insurer shall pay the agent in accordance  
314 with sub-sub-sub-paragraph (A).

315 b. With respect to commercial lines residential risks, for  
316 a new application to the corporation for coverage, if the risk  
317 is offered coverage under a policy including wind coverage from



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318 an authorized insurer at its approved rate, the risk is not  
319 eligible for a policy issued by the corporation unless the  
320 premium for coverage from the authorized insurer is more than 15  
321 percent greater than the premium for comparable coverage from  
322 the corporation. Whenever an offer of coverage for a commercial  
323 lines residential risk is received for a policyholder of the  
324 corporation at renewal from an authorized insurer, if the offer  
325 is equal to or less than the corporation's renewal premium for  
326 comparable coverage, the risk is not eligible for coverage with  
327 the corporation. If the risk is not able to obtain any such  
328 offer, the risk is eligible for a policy including wind coverage  
329 issued by the corporation. However, a policyholder removed from  
330 the corporation through an assumption agreement remains eligible  
331 for coverage from the corporation until the end of the  
332 assumption period.

333 (I) If the risk accepts an offer of coverage through the  
334 market assistance plan or through a mechanism established by the  
335 corporation other than a plan established by s. 627.3518, before  
336 a policy is issued to the risk by the corporation or during the  
337 first 30 days of coverage by the corporation, and the producing  
338 agent who submitted the application to the plan or the  
339 corporation is not currently appointed by the insurer, the  
340 insurer shall:

341 (A) Pay to the producing agent of record of the policy, for  
342 the first year, an amount that is the greater of the insurer's  
343 usual and customary commission for the type of policy written or  
344 a fee equal to the usual and customary commission of the  
345 corporation; or

346 (B) Offer to allow the producing agent of record of the



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347 policy to continue servicing the policy for at least 1 year and  
348 offer to pay the agent the greater of the insurer's or the  
349 corporation's usual and customary commission for the type of  
350 policy written.

351  
352 If the producing agent is unwilling or unable to accept  
353 appointment, the new insurer shall pay the agent in accordance  
354 with sub-sub-subparagraph (A).

355 (II) If the corporation enters into a contractual agreement  
356 for a take-out plan, the producing agent of record of the  
357 corporation policy is entitled to retain any unearned commission  
358 on the policy, and the insurer shall:

359 (A) Pay to the producing agent of record, for the first  
360 year, an amount that is the greater of the insurer's usual and  
361 customary commission for the type of policy written or a fee  
362 equal to the usual and customary commission of the corporation;  
363 or

364 (B) Offer to allow the producing agent of record to  
365 continue servicing the policy for at least 1 year and offer to  
366 pay the agent the greater of the insurer's or the corporation's  
367 usual and customary commission for the type of policy written.

368  
369 If the producing agent is unwilling or unable to accept  
370 appointment, the new insurer shall pay the agent in accordance  
371 with sub-sub-sub-subparagraph (A).

372 c. For purposes of determining comparable coverage under  
373 sub-subparagraphs a. and b., the comparison must be based on  
374 those forms and coverages that are reasonably comparable. The  
375 corporation may rely on a determination of comparable coverage



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376 and premium made by the producing agent who submits the  
377 application to the corporation, made in the agent's capacity as  
378 the corporation's agent. A comparison may be made solely of the  
379 premium with respect to the main building or structure only on  
380 the following basis: the same coverage A or other building  
381 limits; the same percentage hurricane deductible that applies on  
382 an annual basis or that applies to each hurricane for commercial  
383 residential property; the same percentage of ordinance and law  
384 coverage, if the same limit is offered by both the corporation  
385 and the authorized insurer; the same mitigation credits, to the  
386 extent the same types of credits are offered both by the  
387 corporation and the authorized insurer; the same method for loss  
388 payment, such as replacement cost or actual cash value, if the  
389 same method is offered both by the corporation and the  
390 authorized insurer in accordance with underwriting rules; and  
391 any other form or coverage that is reasonably comparable as  
392 determined by the board. If an application is submitted to the  
393 corporation for wind-only coverage in the coastal account, the  
394 premium for the corporation's wind-only policy plus the premium  
395 for the ex-wind policy that is offered by an authorized insurer  
396 to the applicant must be compared to the premium for multiperil  
397 coverage offered by an authorized insurer, subject to the  
398 standards for comparison specified in this subparagraph. If the  
399 corporation or the applicant requests from the authorized  
400 insurer a breakdown of the premium of the offer by types of  
401 coverage so that a comparison may be made by the corporation or  
402 its agent and the authorized insurer refuses or is unable to  
403 provide such information, the corporation may treat the offer as  
404 not being an offer of coverage from an authorized insurer at the



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405 insurer's approved rate.

406 6. Must include rules for classifications of risks and  
407 rates.

408 7. Must provide that if premium and investment income for  
409 an account attributable to a particular calendar year are in  
410 excess of projected losses and expenses for the account  
411 attributable to that year, such excess shall be held in surplus  
412 in the account. Such surplus must be available to defray  
413 deficits in that account as to future years and used for that  
414 purpose before assessing assessable insurers and assessable  
415 insureds as to any calendar year.

416 8. Must provide objective criteria and procedures to be  
417 uniformly applied to all applicants in determining whether an  
418 individual risk is so hazardous as to be uninsurable. In making  
419 this determination and in establishing the criteria and  
420 procedures, the following must be considered:

421 a. Whether the likelihood of a loss for the individual risk  
422 is substantially higher than for other risks of the same class;  
423 and

424 b. Whether the uncertainty associated with the individual  
425 risk is such that an appropriate premium cannot be determined.

426

427 The acceptance or rejection of a risk by the corporation shall  
428 be construed as the private placement of insurance, and the  
429 provisions of chapter 120 do not apply.

430 9. Must provide that the corporation make its best efforts  
431 to procure catastrophe reinsurance at reasonable rates, to cover  
432 its projected 100-year probable maximum loss as determined by  
433 the board of governors.



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434 10. The policies issued by the corporation must provide  
435 that if the corporation or the market assistance plan obtains an  
436 offer from an authorized insurer to cover the risk at its  
437 approved rates, the risk is no longer eligible for renewal  
438 through the corporation, except as otherwise provided in this  
439 subsection.

440 11. Corporation policies and applications must include a  
441 notice that the corporation policy could, under this section, be  
442 replaced with a policy issued by an authorized insurer which  
443 does not provide coverage identical to the coverage provided by  
444 the corporation. The notice must also specify that acceptance of  
445 corporation coverage creates a conclusive presumption that the  
446 applicant or policyholder is aware of this potential.

447 12. May establish, subject to approval by the office,  
448 different eligibility requirements and operational procedures  
449 for any line or type of coverage for any specified county or  
450 area if the board determines that such changes are justified due  
451 to the voluntary market being sufficiently stable and  
452 competitive in such area or for such line or type of coverage  
453 and that consumers who, in good faith, are unable to obtain  
454 insurance through the voluntary market through ordinary methods  
455 continue to have access to coverage from the corporation. If  
456 coverage is sought in connection with a real property transfer,  
457 the requirements and procedures may not provide an effective  
458 date of coverage later than the date of the closing of the  
459 transfer as established by the transferor, the transferee, and,  
460 if applicable, the lender.

461 13. Must provide that, with respect to the coastal account,  
462 any assessable insurer with a surplus as to policyholders of \$25



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463 million or less writing 25 percent or more of its total  
464 countrywide property insurance premiums in this state may  
465 petition the office, within the first 90 days of each calendar  
466 year, to qualify as a limited apportionment company. A regular  
467 assessment levied by the corporation on a limited apportionment  
468 company for a deficit incurred by the corporation for the  
469 coastal account may be paid to the corporation on a monthly  
470 basis as the assessments are collected by the limited  
471 apportionment company from its insureds, but a limited  
472 apportionment company must begin collecting the regular  
473 assessments not later than 90 days after the regular assessments  
474 are levied by the corporation, and the regular assessments must  
475 be paid in full within 15 months after being levied by the  
476 corporation. A limited apportionment company shall collect from  
477 its policyholders any emergency assessment imposed under sub-  
478 subparagraph (b)3.d. The plan must provide that, if the office  
479 determines that any regular assessment will result in an  
480 impairment of the surplus of a limited apportionment company,  
481 the office may direct that all or part of such assessment be  
482 deferred as provided in subparagraph (q)4. However, an emergency  
483 assessment to be collected from policyholders under sub-  
484 subparagraph (b)3.d. may not be limited or deferred.

485 14. Must provide that the corporation appoint as its  
486 licensed agents only those agents who throughout such  
487 appointments also hold an appointment as defined in s.  
488 626.015(3) ~~by with an insurer who at the time of the agent's~~  
489 ~~initial appointment by the corporation~~ is authorized to write  
490 and is actually writing or renewing personal lines residential  
491 property coverage, commercial residential property coverage, or



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492 commercial nonresidential property coverage within the state.

493 15. Must provide a premium payment plan option to its  
494 policyholders which, at a minimum, allows for quarterly and  
495 semiannual payment of premiums. A monthly payment plan may, but  
496 is not required to, be offered.

497 16. Must limit coverage on mobile homes or manufactured  
498 homes built before 1994 to actual cash value of the dwelling  
499 rather than replacement costs of the dwelling.

500 17. Must provide coverage for manufactured or mobile home  
501 dwellings. Such coverage must also include the following  
502 attached structures:

503 a. Screened enclosures that are aluminum framed or screened  
504 enclosures that are not covered by the same or substantially the  
505 same materials as those of the primary dwelling;

506 b. Carports that are aluminum or carports that are not  
507 covered by the same or substantially the same materials as those  
508 of the primary dwelling; and

509 c. Patios that have a roof covering that is constructed of  
510 materials that are not the same or substantially the same  
511 materials as those of the primary dwelling.

512  
513 The corporation shall make available a policy for mobile homes  
514 or manufactured homes for a minimum insured value of at least  
515 \$3,000.

516 18. Must provide such limits of coverage as the board  
517 determines, consistent with the requirements of this subsection.

518 19. Must require commercial property to meet specified  
519 hurricane mitigation construction features as a condition of  
520 eligibility for coverage.



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521 20. Must provide that new or renewal policies issued by the  
522 corporation on or after January 1, 2012, which cover sinkhole  
523 loss do not include coverage for any loss to appurtenant  
524 structures, driveways, sidewalks, decks, or patios that are  
525 directly or indirectly caused by sinkhole activity. The  
526 corporation shall exclude such coverage using a notice of  
527 coverage change, which may be included with the policy renewal,  
528 and not by issuance of a notice of nonrenewal of the excluded  
529 coverage upon renewal of the current policy.

530 21. As of January 1, 2012, must require that the agent  
531 obtain from an applicant for coverage from the corporation an  
532 acknowledgment signed by the applicant, which includes, at a  
533 minimum, the following statement:

534 ACKNOWLEDGMENT OF POTENTIAL SURCHARGE  
535 AND ASSESSMENT LIABILITY:

536 1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE  
537 CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A  
538 DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON,  
539 MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND  
540 PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE  
541 POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT  
542 OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA  
543 LEGISLATURE.

544 2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER  
545 SURCHARGE, WHICH COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM,  
546 BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO  
547 BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN  
548 PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE  
549 WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES



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550 ARE REGULATED AND APPROVED BY THE STATE.

551 3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY  
552 ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER  
553 INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE  
554 FLORIDA LEGISLATURE.

555 4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE  
556 CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE  
557 STATE OF FLORIDA.

558 a. The corporation shall maintain, in electronic format or  
559 otherwise, a copy of the applicant's signed acknowledgment and  
560 provide a copy of the statement to the policyholder as part of  
561 the first renewal after the effective date of this subparagraph.

562 b. The signed acknowledgment form creates a conclusive  
563 presumption that the policyholder understood and accepted his or  
564 her potential surcharge and assessment liability as a  
565 policyholder of the corporation.

566 (x)1. The following records of the corporation are  
567 confidential and exempt from the provisions of s. 119.07(1) and  
568 s. 24(a), Art. I of the State Constitution:

569 a. Underwriting files, except that a policyholder or an  
570 applicant shall have access to his or her own underwriting  
571 files. Confidential and exempt underwriting file records may  
572 also be released to other governmental agencies upon written  
573 request and demonstration of need; such records held by the  
574 receiving agency remain confidential and exempt as provided  
575 herein.

576 b. Claims files, until termination of all litigation and  
577 settlement of all claims arising out of the same incident,  
578 although portions of the claims files may remain exempt, as



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579 otherwise provided by law. Confidential and exempt claims file  
580 records may be released to other governmental agencies upon  
581 written request and demonstration of need; such records held by  
582 the receiving agency remain confidential and exempt as provided  
583 herein.

584 c. Records obtained or generated by an internal auditor  
585 pursuant to a routine audit, until the audit is completed, or if  
586 the audit is conducted as part of an investigation, until the  
587 investigation is closed or ceases to be active. An investigation  
588 is considered "active" while the investigation is being  
589 conducted with a reasonable, good faith belief that it could  
590 lead to the filing of administrative, civil, or criminal  
591 proceedings.

592 d. Matters reasonably encompassed in privileged attorney-  
593 client communications.

594 e. Proprietary information licensed to the corporation  
595 under contract and the contract provides for the confidentiality  
596 of such proprietary information.

597 f. All information relating to the medical condition or  
598 medical status of a corporation employee which is not relevant  
599 to the employee's capacity to perform his or her duties, except  
600 as otherwise provided in this paragraph. Information that is  
601 exempt shall include, but is not limited to, information  
602 relating to workers' compensation, insurance benefits, and  
603 retirement or disability benefits.

604 g. Upon an employee's entrance into the employee assistance  
605 program, a program to assist any employee who has a behavioral  
606 or medical disorder, substance abuse problem, or emotional  
607 difficulty which affects the employee's job performance, all



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608 records relative to that participation shall be confidential and  
609 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I  
610 of the State Constitution, except as otherwise provided in s.  
611 112.0455(11).

612 h. Information relating to negotiations for financing,  
613 reinsurance, depopulation, or contractual services, until the  
614 conclusion of the negotiations.

615 i. Minutes of closed meetings regarding underwriting files,  
616 and minutes of closed meetings regarding an open claims file  
617 until termination of all litigation and settlement of all claims  
618 with regard to that claim, except that information otherwise  
619 confidential or exempt by law shall be redacted.

620 2. If an authorized insurer is considering underwriting a  
621 risk insured by the corporation, relevant underwriting files and  
622 confidential claims files may be released to the insurer  
623 provided the insurer agrees in writing, notarized and under  
624 oath, to maintain the confidentiality of such files. If a file  
625 is transferred to an insurer, that file is no longer a public  
626 record because it is not held by an agency subject to the  
627 provisions of the public records law. Underwriting files and  
628 confidential claims files may also be released to staff and the  
629 board of governors of the market assistance plan established  
630 pursuant to s. 627.3515, who must retain the confidentiality of  
631 such files, except such files may be released to authorized  
632 insurers that are considering assuming the risks to which the  
633 files apply, provided the insurer agrees in writing, notarized  
634 and under oath, to maintain the confidentiality of such files.  
635 Finally, the corporation or the board or staff of the market  
636 assistance plan may make the following information obtained from



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637 underwriting files and confidential claims files available to  
638 licensed general lines insurance agents: name, address, and  
639 telephone number of the residential property owner or insured;  
640 location of the risk; rating information; loss history; and  
641 policy type. The receiving licensed general lines insurance  
642 agent must retain the confidentiality of the information  
643 received and may use the information only for the purposes of  
644 developing a take-out plan to be submitted to the office for  
645 approval or otherwise analyzing the underwriting of a risk or  
646 risks insured by the corporation on behalf of the private  
647 insurance market. The licensed general lines agent and an  
648 insurer receiving information under this subparagraph may not  
649 use the information for the direct solicitation of  
650 policyholders. An entity that has obtained a permit to become an  
651 authorized insurer, a reinsurer, a reinsurance broker, or a  
652 modeling company may receive the information available to a  
653 licensed general lines agent for the sole purpose of analyzing  
654 risks for underwriting in the private insurance market and must  
655 retain the confidentiality of the information received. Such  
656 entities may not use the information for the direct solicitation  
657 of policyholders.

658 3. A policyholder who has filed suit against the  
659 corporation has the right to discover the contents of his or her  
660 own claims file to the same extent that discovery of such  
661 contents would be available from a private insurer in litigation  
662 as provided by the Florida Rules of Civil Procedure, the Florida  
663 Evidence Code, and other applicable law. Pursuant to subpoena, a  
664 third party has the right to discover the contents of an  
665 insured's or applicant's underwriting or claims file to the same



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666 extent that discovery of such contents would be available from a  
667 private insurer by subpoena as provided by the Florida Rules of  
668 Civil Procedure, the Florida Evidence Code, and other applicable  
669 law, and subject to any confidentiality protections requested by  
670 the corporation and agreed to by the seeking party or ordered by  
671 the court. The corporation may release confidential underwriting  
672 and claims file contents and information as it deems necessary  
673 and appropriate to underwrite or service insurance policies and  
674 claims, subject to any confidentiality protections deemed  
675 necessary and appropriate by the corporation.

676 4. Portions of meetings of the corporation are exempt from  
677 the provisions of s. 286.011 and s. 24(b), Art. I of the State  
678 Constitution wherein confidential underwriting files or  
679 confidential open claims files are discussed. All portions of  
680 corporation meetings which are closed to the public shall be  
681 recorded by a court reporter. The court reporter shall record  
682 the times of commencement and termination of the meeting, all  
683 discussion and proceedings, the names of all persons present at  
684 any time, and the names of all persons speaking. No portion of  
685 any closed meeting shall be off the record. Subject to the  
686 provisions hereof and s. 119.07(1)(d)-(f), the court reporter's  
687 notes of any closed meeting shall be retained by the corporation  
688 for a minimum of 5 years. A copy of the transcript, less any  
689 exempt matters, of any closed meeting wherein claims are  
690 discussed shall become public as to individual claims after  
691 settlement of the claim.

692 (ii) The corporation shall revise the programs adopted  
693 pursuant to sub-subparagraph (6)(q)3.a. to maximize policyholder  
694 options and encourage increased participation by insurers and



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695 agents.

696 1. After January 1, 2016, such revisions must include a  
697 process by which policyholders are informed if one or more  
698 insurers demonstrate an interest in taking out that policy from  
699 the corporation. This demonstration of interest must include the  
700 amount of the estimated premium, a description of the coverage,  
701 including an explanation of differences, and a comparison of the  
702 estimated premium and coverage offered by the insurer to the  
703 estimated premium and coverage provided by the corporation. The  
704 corporation shall develop a uniform format for the estimated  
705 premium and coverage information required by this subparagraph.  
706 After January 1, 2016, a policy may not be taken out from the  
707 corporation unless the provisions of this subparagraph are met.

708 2. A policyholder may elect not to be solicited for take-  
709 out offers more than once in a 6-month period.

710 3. A policyholder whose policy was taken out by an insurer  
711 in the previous 36 months is considered a renewal policyholder  
712 under s. 627.3518 if the corporation determines that the insurer  
713 continues to insure the policyholder and that the initial  
714 premium of the insurer exceeded its estimated premium by more  
715 than 10 percent or the insurer increased the rate on the policy  
716 in excess of the increase allowed for the corporation under  
717 subparagraph (6)(n)6.

718 Section 2. This act shall take effect July 1, 2015.

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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**BILL:** CS/CS/SB 1006

**INTRODUCER:** Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senators Flores and Margolis

**SUBJECT:** Depopulation of Citizens Property Insurance Corporation

**DATE:** April 20, 2015      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Betta</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1006 makes the following changes related to Citizens Property Insurance Corporation (Citizens):

- Allows the consumer representative to the Citizens Board of Governors to be afforded the same conflict of interest exemption as other board members.
- Requires agents who write business for Citizens must also hold an appointment with an admitted carrier that is currently writing or renewing policies in the state.
- Allows Citizens to share underwriting and claims files data with entities that have obtained a permit to become an authorized insurer, a reinsurer, reinsurance broker, or modeling company. Such data may not be used for direct solicitations and must be kept confidential.
- Requires Citizens to make changes, by January 1, 2016, to their plan of operation as it relates to take-out agreements made with private insurers.
- Requires that private companies must include in their take-out offers to Citizens policyholders, a comparison of coverages and rate between the insurer's policy and Citizens policy.
- Allows a Citizens policyholder who declines a take-out offer the option to be excluded from future take-out agreements for up to six months.
- Allows a Citizens policyholder, who accepts a take-out offer, the ability to reapply to Citizens and be treated as a renewal through the clearinghouse if within 36 months of leaving Citizens their premium is increased above the rate allowed under Citizens glide path.

There is no fiscal impact to state funds.

The bill provides an effective date of July 1, 2015.

## II. Present Situation:

### **Citizens Property Insurance Corporation (Citizens)**

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.<sup>1</sup> Citizens is not a private insurance company.<sup>2</sup> Citizens was statutorily created in 2002 when the Florida Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by an eight member Board of Governors<sup>3</sup> (board) that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission. The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoints two members to the board. Citizens is subject to regulation by the Florida Office of Insurance Regulation.

Citizens offers property insurance in three separate accounts. Each account is a separate statutory account with separate calculations of surplus and deficits.<sup>4</sup> Assets may not be commingled or used to fund losses in another account.<sup>5</sup>

The Personal Lines Account (PLA) offers personal lines residential policies that provide comprehensive, multiperil coverage statewide, except for those areas contained in the Coastal Account. The PLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Personal lines residential coverage consists of the types of coverage provided by homeowners, mobile homeowners, dwellings, tenants, and condominium unit owner's policies.

The Commercial Lines Account (CLA) offers commercial lines residential and nonresidential policies that provide basic perils coverage statewide, except for those areas contained in the Coastal Account. The CLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Commercial lines coverage includes commercial residential policies covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes commercial nonresidential policies covering business properties.

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<sup>1</sup> Admitted market means insurance companies licensed to transact insurance in Florida.

<sup>2</sup> s. 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the Office of Insurance Regulation.

<sup>3</sup> The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives.

<sup>4</sup> The Personal Lines Account and the Commercial Lines account are combined for credit and Florida Hurricane Catastrophe Fund coverage.

<sup>5</sup> s. 627.351(6)(b)2b., F.S.

The Coastal Account offers personal residential, commercial residential and commercial non-residential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind only policies) and may offer multiperil policies.<sup>6</sup>

### **Citizens Clearinghouse**

The Citizens Property Insurance Corporation policyholder eligibility clearinghouse program was established by the Legislature in 2013<sup>7</sup>. Under the program, new and renewal policies for Citizens are placed into the clearinghouse where participating private insurers can review and decide to make offers of coverage before policies are placed or renewed with Citizens. For new policies applying with Citizens, any private market offer through the clearinghouse for similar coverage that is not greater than 15 percent of Citizens rate makes the policy ineligible for coverage with Citizens. Additionally, a renewal Citizens policy that receives any private market offer through the clearinghouse for similar coverage that is equal to or less than Citizens rate is ineligible for coverage with Citizens.

### **Citizens Board of Governors**

Citizens operates under the direction of a nine-member Board of Governors (board). The board members are not Citizens' employees and are not paid. The Governor, Chief Financial Officer, Senate President, and Speaker of the House of Representatives each appoint two members to the board, with one member appointed chair by the Chief Financial Officer. Board members serve three-year staggered terms. There is also a consumer representative on the board that is appointed by the Governor.

At least one of the two board members appointed by each appointing officer must have demonstrated expertise in insurance. By law, board members with the required insurance expertise fall within the exemption in the conflicting employment or contractual relationship statute that applies to public officers and agency employees.<sup>8</sup> Thus, these board members can maintain employment in the private sector in jobs involving business with Citizens without violating the conflict of interest statute because the board member is required by law to have insurance expertise in order to sit on the board.

### **Citizens Underwriting and Claims Files**

Current law allows Citizens to share confidential underwriting and claims files with an insurer that is contemplating underwriting a risk insured by the corporation, provided the insurer executes a notarized agreement to retain their confidentiality.<sup>9</sup> The corporation may also make specified information from the underwriting and claims files available to general lines insurance agents. Such information is limited to the name, address, and telephone number of the property

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<sup>6</sup> In August of 2007, Citizens began offering personal and commercial residential multiperil policies in this limited eligibility area. Additionally, near the end of 2008, Citizens began offering commercial non-residential multiperil policies in this account.

<sup>7</sup> s. 10 ch. 2013-60 L.O.F.

<sup>8</sup> Board members of Citizens fall under the definition of "public officer" in s. 112.313(1), F.S., because that definition includes any person appointed to hold office in any agency, including serving on an advisory board. "Agency" is defined in s. 112.312, F.S.

<sup>9</sup> s. 627.351(6)(x)2., F.S.

owner or insured; the location of the risk; rating information; loss history; and policy type. The law requires the agent to retain the confidentiality of the information.<sup>10</sup>

### **Takeout Bonus Agreements**

Section 627.3511, F.S., was created by the Legislature in 1995<sup>11</sup> and at that time applied to the depopulation of the Residential Property and Casualty Joint Underwriting Association. After the Legislature merged the two underwriting associations to create Citizens in 2002, this section was amended to apply to the depopulation of Citizens Property Insurance Corporation.

Take out agreements that were approved under this section allowed for a per policy bonus to be paid to each participating insurer provided that they removed a given number of policies for a set number of years. Today, takeouts from Citizens are no longer approved through takeout bonus agreements. The last Citizens takeout bonus agreement under this section took place in November 2007.

### **Takeout Non-Bonus Agreements**

In January of 2008, Citizens Board of Governors adopted a takeout non-bonus plan that was approved by the Office of Insurance Regulation (OIR) in March of that year. Since that time, most takeout agreements between Citizens and private carriers have occurred under this plan. In addition to the requirements of the approved plan, the OIR has on occasion required additional requirements to be included in such takeout agreements. According to the OIR, until 2009 the OIR required private carriers that removed policies from Citizens through a takeout agreement to write the risk at a rate below the rate of Citizens at that time.<sup>12</sup> Additionally, in November of 2013 the OIR began requiring takeout companies to provide information to the policyholder detailing a rate comparison between the Citizens rate and the private insurer's rate.<sup>13</sup>

### **Depopulation**

Florida law requires Citizens to create programs to help return Citizens policies to the private market and reduce the risk of additional assessments for all Floridians.<sup>14</sup> Policyholders whose policies are selected for takeout are sent a letter notifying them of the pending takeout and provided instructions on how they can elect (opt-out) to remain with Citizens, if eligible and should they wish to do so. Policyholders who do not opt-out within the opt-out timeframe will receive a Notice of Assumption, a non-renewal from Citizens and a Certificate of Assumption. The policyholder still has an additional timeframe from the receipt of these notices to elect to remain with Citizens. Citizens encourage policyholders who receive private-market offers to consider them carefully and discuss the advantages of such coverage with their agents. Accepting an offer from a private insurer can decrease a Citizens policyholder's potential of assessment.

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<sup>10</sup> *Id.*

<sup>11</sup> s. 10, ch.95-276, L.O.F.

<sup>12</sup> Information received from the OIR on March 19, 2015. (On file with the Banking and Insurance Committee)

<sup>13</sup> *Id.*

<sup>14</sup> s. 627.351(6), F.S.

In November 2011, Citizens reported a policy count of 1,472,391 policies insured. As of March 13, 2015, Citizens reports their policy count was at 598,408 policies insured.<sup>15</sup> Much of the success of Citizens reduction in size is the result of depopulation through takeout agreements. In 2012, 2013, and 2014, a total of 1,059,323 policies were removed from Citizens and placed into the private market through the use of the current takeout agreement process.<sup>16</sup>

### III. Effect of Proposed Changes:

The bill allows for the consumer representative on Citizens' board to be afforded the same exemption from the conflicting employment or contractual relationship statute for public officers and agency employees as is provided in current law to other members appointed to the Citizens board.

The bill requires agents placing policies with Citizens to hold an appointment by an insurer authorized to write and is writing or renewing personal lines or commercial residential property coverage or commercial nonresidential property coverage within the state.

The bill expands the list of who may receive information from the confidential underwriting and claims files to include an entity which has obtained a permit to become an authorized insurer, a reinsurer, reinsurance broker, or modeling company. The information made available to these entities is the same information available to a licensed general lines agent. The information may be used for the sole purpose of analyzing risks for underwriting in the private insurance market and must be kept confidential. In addition, the bill expressly prohibits the use of the data by any of the authorized users for direct solicitation of policyholders.

The bill requires Citizens Property Insurance Corporation to, by January 1, 2016, amend its plan of operations related to take-out agreements made with private insurers. The amended plan must include:

- That private companies must provide in their take-out offers to Citizens policyholders, a comparison of coverages, and rate between their policy and the Citizens policy. The OIR has required this of all take-out agreements reached after November 2013. This provision again will codify this requirement in statute.
- That a Citizens policyholder who declines a take-out offer may elect to not receive additional take-out offers for up to six months.
- That Citizens policyholders who accepts a take-out offer have the ability to reapply with Citizens and be treated as a renewal through the Citizens clearinghouse if, within 36 months of leaving Citizens, the private insurer increases the policy rate more than what is allowed under the Citizens glide path. This mirrors a similar provision that is applied to policyholders who accept offers of coverage from private insurers through the clearinghouse.

The bill provides an effective date of July 1, 2015.

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<sup>15</sup> Citizens Policy Inforce Weekly Summary Report March 16, 2015.

<sup>16</sup> Citizens President's Report to the Board of Governors March 18, 2015.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

Under CS/CS/SB 1006, Citizens policyholders who accept take-out offers from private insurers and whose rates then increase above the Citizens glide path, within 36 months of leaving Citizens, will have the ability to reapply with Citizens and be rated as a renewal through the clearinghouse.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 627.351 of the Florida Statutes.

**IX. Additional Information:**

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

**CS/CS by Appropriations on April 16, 2015:**

The committee substitute makes the following changes to the bill:

- Allows the consumer representative to the Citizens Board the same conflict of interest exemption provided to other board members.
- Requires agents who write business for Citizens must also hold an appointment with an admitted carrier that is currently writing or renewing policies in the state.
- Allows Citizens to share underwriting and claims files data with entities that have obtained a permit to become an authorized insurer, a reinsurer, reinsurance broker, or modeling company.
- Provides that Citizens must, by January 1, 2016, amend its plan of operations related to take-out agreements with private insurers.

**CS by Banking and Insurance on March 23, 2015:**

CS/SB 1006 made the following changes to the bill:

- Requires that all Citizens take-out agreements be approved by the OIR.
- Requires private companies to provide a comparison of coverages and rate between their policy and the Citizens policy.
- Allows Citizens policyholders a 6 month opt out from being included in any takeout agreements.
- Allows Citizens policyholders who accept take-out offers from private insurers and whose rates are then increased above the Citizens glide path, within 36 months of leaving Citizens, the ability to reapply with Citizens and be rated as a renewal through the clearinghouse.

- B. **Amendments:**

None.

By the Committee on Banking and Insurance; and Senator Flores

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A bill to be entitled

An act relating to the depopulation of the Citizens Property Insurance Corporation; amending s. 627.351, F.S.; requiring takeout agreements to be approved by the Office of Insurance Regulation; requiring an insurer to provide certain information to a policyholder regarding a takeout agreement; excluding corporation policyholders from future takeout offers for 6 months under certain circumstances; allowing specified applicants for corporation coverage to be considered renewal policyholders; providing an effective date.

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

Section 1. Paragraph (c) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(c) The corporation's plan of operation:

1. Must provide for adoption of residential property and casualty insurance policy forms and commercial residential and nonresidential property insurance forms, which must be approved by the office before use. The corporation shall adopt the following policy forms:

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent to the coverage provided in the private insurance market under an HO-3, HO-4, or HO-6 policy.

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b. Basic personal lines policy forms that are policies similar to an HO-8 policy or a dwelling fire policy that provide coverage meeting the requirements of the secondary mortgage market, but which is more limited than the coverage under a standard policy.

c. Commercial lines residential and nonresidential policy forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the admitted voluntary market.

d. Personal lines and commercial lines residential property insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

e. Commercial lines nonresidential property insurance forms that cover the peril of wind only. The forms are applicable only to nonresidential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

f. The corporation may adopt variations of the policy forms listed in sub-subparagraphs a.-e. which contain more restrictive coverage.

g. Effective January 1, 2013, the corporation shall offer a basic personal lines policy similar to an HO-8 policy with dwelling repair based on common construction materials and methods.

2. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota

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59 share primary insurance agreements for hurricane coverage, as  
60 defined in s. 627.4025(2)(a), for eligible risks, and adopt  
61 property insurance forms for eligible risks which cover the  
62 peril of wind only.

63 a. As used in this subsection, the term:

64 (I) "Quota share primary insurance" means an arrangement in  
65 which the primary hurricane coverage of an eligible risk is  
66 provided in specified percentages by the corporation and an  
67 authorized insurer. The corporation and authorized insurer are  
68 each solely responsible for a specified percentage of hurricane  
69 coverage of an eligible risk as set forth in a quota share  
70 primary insurance agreement between the corporation and an  
71 authorized insurer and the insurance contract. The  
72 responsibility of the corporation or authorized insurer to pay  
73 its specified percentage of hurricane losses of an eligible  
74 risk, as set forth in the agreement, may not be altered by the  
75 inability of the other party to pay its specified percentage of  
76 losses. Eligible risks that are provided hurricane coverage  
77 through a quota share primary insurance arrangement must be  
78 provided policy forms that set forth the obligations of the  
79 corporation and authorized insurer under the arrangement,  
80 clearly specify the percentages of quota share primary insurance  
81 provided by the corporation and authorized insurer, and  
82 conspicuously and clearly state that the authorized insurer and  
83 the corporation may not be held responsible beyond their  
84 specified percentage of coverage of hurricane losses.

85 (II) "Eligible risks" means personal lines residential and  
86 commercial lines residential risks that meet the underwriting  
87 criteria of the corporation and are located in areas that were

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88 eligible for coverage by the Florida Windstorm Underwriting  
89 Association on January 1, 2002.

90 b. The corporation may enter into quota share primary  
91 insurance agreements with authorized insurers at corporation  
92 coverage levels of 90 percent and 50 percent.

93 c. If the corporation determines that additional coverage  
94 levels are necessary to maximize participation in quota share  
95 primary insurance agreements by authorized insurers, the  
96 corporation may establish additional coverage levels. However,  
97 the corporation's quota share primary insurance coverage level  
98 may not exceed 90 percent.

99 d. Any quota share primary insurance agreement entered into  
100 between an authorized insurer and the corporation must provide  
101 for a uniform specified percentage of coverage of hurricane  
102 losses, by county or territory as set forth by the corporation  
103 board, for all eligible risks of the authorized insurer covered  
104 under the agreement.

105 e. Any quota share primary insurance agreement entered into  
106 between an authorized insurer and the corporation is subject to  
107 review and approval by the office. However, such agreement shall  
108 be authorized only as to insurance contracts entered into  
109 between an authorized insurer and an insured who is already  
110 insured by the corporation for wind coverage.

111 f. For all eligible risks covered under quota share primary  
112 insurance agreements, the exposure and coverage levels for both  
113 the corporation and authorized insurers shall be reported by the  
114 corporation to the Florida Hurricane Catastrophe Fund. For all  
115 policies of eligible risks covered under such agreements, the  
116 corporation and the authorized insurer must maintain complete

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117 and accurate records for the purpose of exposure and loss  
 118 reimbursement audits as required by fund rules. The corporation  
 119 and the authorized insurer shall each maintain duplicate copies  
 120 of policy declaration pages and supporting claims documents.

121 g. The corporation board shall establish in its plan of  
 122 operation standards for quota share agreements which ensure that  
 123 there is no discriminatory application among insurers as to the  
 124 terms of the agreements, pricing of the agreements, incentive  
 125 provisions if any, and consideration paid for servicing policies  
 126 or adjusting claims.

127 h. The quota share primary insurance agreement between the  
 128 corporation and an authorized insurer must set forth the  
 129 specific terms under which coverage is provided, including, but  
 130 not limited to, the sale and servicing of policies issued under  
 131 the agreement by the insurance agent of the authorized insurer  
 132 producing the business, the reporting of information concerning  
 133 eligible risks, the payment of premium to the corporation, and  
 134 arrangements for the adjustment and payment of hurricane claims  
 135 incurred on eligible risks by the claims adjuster and personnel  
 136 of the authorized insurer. Entering into a quota sharing  
 137 insurance agreement between the corporation and an authorized  
 138 insurer is voluntary and at the discretion of the authorized  
 139 insurer.

140 3. May provide that the corporation may employ or otherwise  
 141 contract with individuals or other entities to provide  
 142 administrative or professional services that may be appropriate  
 143 to effectuate the plan. The corporation may borrow funds by  
 144 issuing bonds or by incurring other indebtedness, and shall have  
 145 other powers reasonably necessary to effectuate the requirements

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146 of this subsection, including, without limitation, the power to  
 147 issue bonds and incur other indebtedness in order to refinance  
 148 outstanding bonds or other indebtedness. The corporation may  
 149 seek judicial validation of its bonds or other indebtedness  
 150 under chapter 75. The corporation may issue bonds or incur other  
 151 indebtedness, or have bonds issued on its behalf by a unit of  
 152 local government pursuant to subparagraph (q)2. in the absence  
 153 of a hurricane or other weather-related event, upon a  
 154 determination by the corporation, subject to approval by the  
 155 office, that such action would enable it to efficiently meet the  
 156 financial obligations of the corporation and that such  
 157 financings are reasonably necessary to effectuate the  
 158 requirements of this subsection. The corporation may take all  
 159 actions needed to facilitate tax-free status for such bonds or  
 160 indebtedness, including formation of trusts or other affiliated  
 161 entities. The corporation may pledge assessments, projected  
 162 recoveries from the Florida Hurricane Catastrophe Fund, other  
 163 reinsurance recoverables, policyholder surcharges and other  
 164 surcharges, and other funds available to the corporation as  
 165 security for bonds or other indebtedness. In recognition of s.  
 166 10, Art. I of the State Constitution, prohibiting the impairment  
 167 of obligations of contracts, it is the intent of the Legislature  
 168 that no action be taken whose purpose is to impair any bond  
 169 indenture or financing agreement or any revenue source committed  
 170 by contract to such bond or other indebtedness.

171 4. Must require that the corporation operate subject to the  
 172 supervision and approval of a board of governors consisting of  
 173 nine individuals who are residents of this state and who are  
 174 from different geographical areas of the state, one of whom is

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175 appointed by the Governor and serves solely to advocate on  
 176 behalf of the consumer. The appointment of a consumer  
 177 representative by the Governor is in addition to the  
 178 appointments authorized under sub-subparagraph a.

179 a. The Governor, the Chief Financial Officer, the President  
 180 of the Senate, and the Speaker of the House of Representatives  
 181 shall each appoint two members of the board. At least one of the  
 182 two members appointed by each appointing officer must have  
 183 demonstrated expertise in insurance and be deemed to be within  
 184 the scope of the exemption provided in s. 112.313(7)(b). The  
 185 Chief Financial Officer shall designate one of the appointees as  
 186 chair. All board members serve at the pleasure of the appointing  
 187 officer. All members of the board are subject to removal at will  
 188 by the officers who appointed them. All board members, including  
 189 the chair, must be appointed to serve for 3-year terms beginning  
 190 annually on a date designated by the plan. However, for the  
 191 first term beginning on or after July 1, 2009, each appointing  
 192 officer shall appoint one member of the board for a 2-year term  
 193 and one member for a 3-year term. A board vacancy shall be  
 194 filled for the unexpired term by the appointing officer. The  
 195 Chief Financial Officer shall appoint a technical advisory group  
 196 to provide information and advice to the board in connection  
 197 with the board's duties under this subsection. The executive  
 198 director and senior managers of the corporation shall be engaged  
 199 by the board and serve at the pleasure of the board. Any  
 200 executive director appointed on or after July 1, 2006, is  
 201 subject to confirmation by the Senate. The executive director is  
 202 responsible for employing other staff as the corporation may  
 203 require, subject to review and concurrence by the board.

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204 b. The board shall create a Market Accountability Advisory  
 205 Committee to assist the corporation in developing awareness of  
 206 its rates and its customer and agent service levels in  
 207 relationship to the voluntary market insurers writing similar  
 208 coverage.

209 (I) The members of the advisory committee consist of the  
 210 following 11 persons, one of whom must be elected chair by the  
 211 members of the committee: four representatives, one appointed by  
 212 the Florida Association of Insurance Agents, one by the Florida  
 213 Association of Insurance and Financial Advisors, one by the  
 214 Professional Insurance Agents of Florida, and one by the Latin  
 215 American Association of Insurance Agencies; three  
 216 representatives appointed by the insurers with the three highest  
 217 voluntary market share of residential property insurance  
 218 business in the state; one representative from the Office of  
 219 Insurance Regulation; one consumer appointed by the board who is  
 220 insured by the corporation at the time of appointment to the  
 221 committee; one representative appointed by the Florida  
 222 Association of Realtors; and one representative appointed by the  
 223 Florida Bankers Association. All members shall be appointed to  
 224 3-year terms and may serve for consecutive terms.

225 (II) The committee shall report to the corporation at each  
 226 board meeting on insurance market issues which may include rates  
 227 and rate competition with the voluntary market; service,  
 228 including policy issuance, claims processing, and general  
 229 responsiveness to policyholders, applicants, and agents; and  
 230 matters relating to depopulation.

231 5. Must provide a procedure for determining the eligibility  
 232 of a risk for coverage, as follows:

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233 a. Subject to s. 627.3517, with respect to personal lines  
 234 residential risks, if the risk is offered coverage from an  
 235 authorized insurer at the insurer's approved rate under a  
 236 standard policy including wind coverage or, if consistent with  
 237 the insurer's underwriting rules as filed with the office, a  
 238 basic policy including wind coverage, for a new application to  
 239 the corporation for coverage, the risk is not eligible for any  
 240 policy issued by the corporation unless the premium for coverage  
 241 from the authorized insurer is more than 15 percent greater than  
 242 the premium for comparable coverage from the corporation.  
 243 Whenever an offer of coverage for a personal lines residential  
 244 risk is received for a policyholder of the corporation at  
 245 renewal from an authorized insurer, if the offer is equal to or  
 246 less than the corporation's renewal premium for comparable  
 247 coverage, the risk is not eligible for coverage with the  
 248 corporation. If the risk is not able to obtain such offer, the  
 249 risk is eligible for a standard policy including wind coverage  
 250 or a basic policy including wind coverage issued by the  
 251 corporation; however, if the risk could not be insured under a  
 252 standard policy including wind coverage regardless of market  
 253 conditions, the risk is eligible for a basic policy including  
 254 wind coverage unless rejected under subparagraph 8. However, a  
 255 policyholder removed from the corporation through an assumption  
 256 agreement remains eligible for coverage from the corporation  
 257 until the end of the assumption period. The corporation shall  
 258 determine the type of policy to be provided on the basis of  
 259 objective standards specified in the underwriting manual and  
 260 based on generally accepted underwriting practices.  
 261 (I) If the risk accepts an offer of coverage through the

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262 market assistance plan or through a mechanism established by the  
 263 corporation other than a plan established by s. 627.3518, before  
 264 a policy is issued to the risk by the corporation or during the  
 265 first 30 days of coverage by the corporation, and the producing  
 266 agent who submitted the application to the plan or to the  
 267 corporation is not currently appointed by the insurer, the  
 268 insurer shall:  
 269 (A) Pay to the producing agent of record of the policy for  
 270 the first year, an amount that is the greater of the insurer's  
 271 usual and customary commission for the type of policy written or  
 272 a fee equal to the usual and customary commission of the  
 273 corporation; or  
 274 (B) Offer to allow the producing agent of record of the  
 275 policy to continue servicing the policy for at least 1 year and  
 276 offer to pay the agent the greater of the insurer's or the  
 277 corporation's usual and customary commission for the type of  
 278 policy written.  
 279  
 280 If the producing agent is unwilling or unable to accept  
 281 appointment, the new insurer shall pay the agent in accordance  
 282 with sub-sub-sub-subparagraph (A).  
 283 (II) If the corporation enters into a contractual agreement  
 284 for a take-out plan, the producing agent of record of the  
 285 corporation policy is entitled to retain any unearned commission  
 286 on the policy, and the insurer shall:  
 287 (A) Pay to the producing agent of record, for the first  
 288 year, an amount that is the greater of the insurer's usual and  
 289 customary commission for the type of policy written or a fee  
 290 equal to the usual and customary commission of the corporation;

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291 or

292 (B) Offer to allow the producing agent of record to  
 293 continue servicing the policy for at least 1 year and offer to  
 294 pay the agent the greater of the insurer's or the corporation's  
 295 usual and customary commission for the type of policy written.  
 296

297 If the producing agent is unwilling or unable to accept  
 298 appointment, the new insurer shall pay the agent in accordance  
 299 with sub-sub-sub-subparagraph (A).

300 b. With respect to commercial lines residential risks, for  
 301 a new application to the corporation for coverage, if the risk  
 302 is offered coverage under a policy including wind coverage from  
 303 an authorized insurer at its approved rate, the risk is not  
 304 eligible for a policy issued by the corporation unless the  
 305 premium for coverage from the authorized insurer is more than 15  
 306 percent greater than the premium for comparable coverage from  
 307 the corporation. Whenever an offer of coverage for a commercial  
 308 lines residential risk is received for a policyholder of the  
 309 corporation at renewal from an authorized insurer, if the offer  
 310 is equal to or less than the corporation's renewal premium for  
 311 comparable coverage, the risk is not eligible for coverage with  
 312 the corporation. If the risk is not able to obtain any such  
 313 offer, the risk is eligible for a policy including wind coverage  
 314 issued by the corporation. However, a policyholder removed from  
 315 the corporation through an assumption agreement remains eligible  
 316 for coverage from the corporation until the end of the  
 317 assumption period.

318 (I) If the risk accepts an offer of coverage through the  
 319 market assistance plan or through a mechanism established by the

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320 corporation other than a plan established by s. 627.3518, before  
 321 a policy is issued to the risk by the corporation or during the  
 322 first 30 days of coverage by the corporation, and the producing  
 323 agent who submitted the application to the plan or the  
 324 corporation is not currently appointed by the insurer, the  
 325 insurer shall:

326 (A) Pay to the producing agent of record of the policy, for  
 327 the first year, an amount that is the greater of the insurer's  
 328 usual and customary commission for the type of policy written or  
 329 a fee equal to the usual and customary commission of the  
 330 corporation; or

331 (B) Offer to allow the producing agent of record of the  
 332 policy to continue servicing the policy for at least 1 year and  
 333 offer to pay the agent the greater of the insurer's or the  
 334 corporation's usual and customary commission for the type of  
 335 policy written.

336 If the producing agent is unwilling or unable to accept  
 337 appointment, the new insurer shall pay the agent in accordance  
 338 with sub-sub-sub-subparagraph (A).

339 (II) If the corporation enters into a contractual agreement  
 340 for a take-out plan, the producing agent of record of the  
 341 corporation policy is entitled to retain any unearned commission  
 342 on the policy, and the insurer shall:

343 (A) Pay to the producing agent of record, for the first  
 344 year, an amount that is the greater of the insurer's usual and  
 345 customary commission for the type of policy written or a fee  
 346 equal to the usual and customary commission of the corporation;  
 347 or  
 348

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349 (B) Offer to allow the producing agent of record to  
 350 continue servicing the policy for at least 1 year and offer to  
 351 pay the agent the greater of the insurer's or the corporation's  
 352 usual and customary commission for the type of policy written.

353  
 354 If the producing agent is unwilling or unable to accept  
 355 appointment, the new insurer shall pay the agent in accordance  
 356 with sub-sub-sub-paragraph (A).

357 c. For purposes of determining comparable coverage under  
 358 sub-subparagraphs a. and b., the comparison must be based on  
 359 those forms and coverages that are reasonably comparable. The  
 360 corporation may rely on a determination of comparable coverage  
 361 and premium made by the producing agent who submits the  
 362 application to the corporation, made in the agent's capacity as  
 363 the corporation's agent. A comparison may be made solely of the  
 364 premium with respect to the main building or structure only on  
 365 the following basis: the same coverage A or other building  
 366 limits; the same percentage hurricane deductible that applies on  
 367 an annual basis or that applies to each hurricane for commercial  
 368 residential property; the same percentage of ordinance and law  
 369 coverage, if the same limit is offered by both the corporation  
 370 and the authorized insurer; the same mitigation credits, to the  
 371 extent the same types of credits are offered both by the  
 372 corporation and the authorized insurer; the same method for loss  
 373 payment, such as replacement cost or actual cash value, if the  
 374 same method is offered both by the corporation and the  
 375 authorized insurer in accordance with underwriting rules; and  
 376 any other form or coverage that is reasonably comparable as  
 377 determined by the board. If an application is submitted to the

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378 corporation for wind-only coverage in the coastal account, the  
 379 premium for the corporation's wind-only policy plus the premium  
 380 for the ex-wind policy that is offered by an authorized insurer  
 381 to the applicant must be compared to the premium for multiperil  
 382 coverage offered by an authorized insurer, subject to the  
 383 standards for comparison specified in this subparagraph. If the  
 384 corporation or the applicant requests from the authorized  
 385 insurer a breakdown of the premium of the offer by types of  
 386 coverage so that a comparison may be made by the corporation or  
 387 its agent and the authorized insurer refuses or is unable to  
 388 provide such information, the corporation may treat the offer as  
 389 not being an offer of coverage from an authorized insurer at the  
 390 insurer's approved rate.

391 6. Must include rules for classifications of risks and  
 392 rates.

393 7. Must provide that if premium and investment income for  
 394 an account attributable to a particular calendar year are in  
 395 excess of projected losses and expenses for the account  
 396 attributable to that year, such excess shall be held in surplus  
 397 in the account. Such surplus must be available to defray  
 398 deficits in that account as to future years and used for that  
 399 purpose before assessing assessable insurers and assessable  
 400 insureds as to any calendar year.

401 8. Must provide objective criteria and procedures to be  
 402 uniformly applied to all applicants in determining whether an  
 403 individual risk is so hazardous as to be uninsurable. In making  
 404 this determination and in establishing the criteria and  
 405 procedures, the following must be considered:

406 a. Whether the likelihood of a loss for the individual risk

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407 is substantially higher than for other risks of the same class;  
408 and

409 b. Whether the uncertainty associated with the individual  
410 risk is such that an appropriate premium cannot be determined.

411

412 The acceptance or rejection of a risk by the corporation shall  
413 be construed as the private placement of insurance, and the  
414 provisions of chapter 120 do not apply.

415 9. Must provide that the corporation make its best efforts  
416 to procure catastrophe reinsurance at reasonable rates, to cover  
417 its projected 100-year probable maximum loss as determined by  
418 the board of governors.

419 10. The policies issued by the corporation must provide  
420 that if the corporation or the market assistance plan obtains an  
421 offer from an authorized insurer to cover the risk at its  
422 approved rates, the risk is no longer eligible for renewal  
423 through the corporation, except as otherwise provided in this  
424 subsection.

425 11. Corporation policies and applications must include a  
426 notice that the corporation policy could, under this section, be  
427 replaced with a policy issued by an authorized insurer which  
428 does not provide coverage identical to the coverage provided by  
429 the corporation. The notice must also specify that acceptance of  
430 corporation coverage creates a conclusive presumption that the  
431 applicant or policyholder is aware of this potential.

432 12. May establish, subject to approval by the office,  
433 different eligibility requirements and operational procedures  
434 for any line or type of coverage for any specified county or  
435 area if the board determines that such changes are justified due

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436 to the voluntary market being sufficiently stable and  
437 competitive in such area or for such line or type of coverage  
438 and that consumers who, in good faith, are unable to obtain  
439 insurance through the voluntary market through ordinary methods  
440 continue to have access to coverage from the corporation. If  
441 coverage is sought in connection with a real property transfer,  
442 the requirements and procedures may not provide an effective  
443 date of coverage later than the date of the closing of the  
444 transfer as established by the transferor, the transferee, and,  
445 if applicable, the lender.

446 13. Must provide that, with respect to the coastal account,  
447 any assessable insurer with a surplus as to policyholders of \$25  
448 million or less writing 25 percent or more of its total  
449 countrywide property insurance premiums in this state may  
450 petition the office, within the first 90 days of each calendar  
451 year, to qualify as a limited apportionment company. A regular  
452 assessment levied by the corporation on a limited apportionment  
453 company for a deficit incurred by the corporation for the  
454 coastal account may be paid to the corporation on a monthly  
455 basis as the assessments are collected by the limited  
456 apportionment company from its insureds, but a limited  
457 apportionment company must begin collecting the regular  
458 assessments not later than 90 days after the regular assessments  
459 are levied by the corporation, and the regular assessments must  
460 be paid in full within 15 months after being levied by the  
461 corporation. A limited apportionment company shall collect from  
462 its policyholders any emergency assessment imposed under sub-  
463 subparagraph (b)3.d. The plan must provide that, if the office  
464 determines that any regular assessment will result in an

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465 impairment of the surplus of a limited apportionment company,  
 466 the office may direct that all or part of such assessment be  
 467 deferred as provided in subparagraph (q)4. However, an emergency  
 468 assessment to be collected from policyholders under sub-  
 469 subparagraph (b)3.d. may not be limited or deferred.

470 14. Must provide that the corporation appoint as its  
 471 licensed agents only those agents who also hold an appointment  
 472 as defined in s. 626.015(3) with an insurer who at the time of  
 473 the agent's initial appointment by the corporation is authorized  
 474 to write and is actually writing personal lines residential  
 475 property coverage, commercial residential property coverage, or  
 476 commercial nonresidential property coverage within the state.

477 15. Must provide a premium payment plan option to its  
 478 policyholders which, at a minimum, allows for quarterly and  
 479 semiannual payment of premiums. A monthly payment plan may, but  
 480 is not required to, be offered.

481 16. Must limit coverage on mobile homes or manufactured  
 482 homes built before 1994 to actual cash value of the dwelling  
 483 rather than replacement costs of the dwelling.

484 17. Must provide coverage for manufactured or mobile home  
 485 dwellings. Such coverage must also include the following  
 486 attached structures:

487 a. Screened enclosures that are aluminum framed or screened  
 488 enclosures that are not covered by the same or substantially the  
 489 same materials as those of the primary dwelling;

490 b. Carports that are aluminum or carports that are not  
 491 covered by the same or substantially the same materials as those  
 492 of the primary dwelling; and

493 c. Patios that have a roof covering that is constructed of

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494 materials that are not the same or substantially the same  
 495 materials as those of the primary dwelling.

496  
 497 The corporation shall make available a policy for mobile homes  
 498 or manufactured homes for a minimum insured value of at least  
 499 \$3,000.

500 18. May provide such limits of coverage as the board  
 501 determines, consistent with the requirements of this subsection.

502 19. May require commercial property to meet specified  
 503 hurricane mitigation construction features as a condition of  
 504 eligibility for coverage.

505 20. Must provide that new or renewal policies issued by the  
 506 corporation on or after January 1, 2012, which cover sinkhole  
 507 loss do not include coverage for any loss to appurtenant  
 508 structures, driveways, sidewalks, decks, or patios that are  
 509 directly or indirectly caused by sinkhole activity. The  
 510 corporation shall exclude such coverage using a notice of  
 511 coverage change, which may be included with the policy renewal,  
 512 and not by issuance of a notice of nonrenewal of the excluded  
 513 coverage upon renewal of the current policy.

514 21. As of January 1, 2012, must require that the agent  
 515 obtain from an applicant for coverage from the corporation an  
 516 acknowledgment signed by the applicant, which includes, at a  
 517 minimum, the following statement:

518  
 519 ACKNOWLEDGMENT OF POTENTIAL SURCHARGE  
 520 AND ASSESSMENT LIABILITY:

521  
 522 1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE

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523 CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A  
 524 DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON,  
 525 MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND  
 526 PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE  
 527 POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT  
 528 OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA  
 529 LEGISLATURE.

530 2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER  
 531 SURCHARGE, WHICH COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM,  
 532 BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO  
 533 BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN  
 534 PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE  
 535 WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES  
 536 ARE REGULATED AND APPROVED BY THE STATE.

537 3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY  
 538 ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER  
 539 INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE  
 540 FLORIDA LEGISLATURE.

541 4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE  
 542 CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE  
 543 STATE OF FLORIDA.

544 a. The corporation shall maintain, in electronic format or  
 545 otherwise, a copy of the applicant's signed acknowledgment and  
 546 provide a copy of the statement to the policyholder as part of  
 547 the first renewal after the effective date of this subparagraph.

548 b. The signed acknowledgment form creates a conclusive  
 549 presumption that the policyholder understood and accepted his or  
 550 her potential surcharge and assessment liability as a  
 551 policyholder of the corporation.

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552 22. Must provide that before an insurer may remove a policy  
 553 from the corporation under a takeout agreement, such agreement  
 554 must:

555 a. Be approved by the office.

556 b. Require that the insurer provide information to the  
 557 policyholder explaining the differences in coverage and rate  
 558 between the corporation policy and the policy offered.

559 23. Must exclude a policyholder for 6 months from future  
 560 takeout agreements by the corporation if the policyholder  
 561 declined a takeout agreement offer from an authorized insurer  
 562 and declined to receive additional takeout offers.

563 24. Must allow a policyholder who was removed from the  
 564 corporation in the previous 36 months by a takeout agreement  
 565 with an authorized insurer to reapply with the corporation and  
 566 be considered a renewal under s. 627.3518(5) if the corporation  
 567 determines that the authorized insurer increased the rate for  
 568 the policy in excess of the increase allowed for the corporation  
 569 under s. 627.351(6)(n)6.

570 Section 2. This act shall take effect July 1, 2015.

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The Florida Senate

## Committee Agenda Request

**To:** Senator Tom Lee, Chair  
Committee on Appropriations

**Subject:** Committee Agenda Request

**Date:** April 9, 2015

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I respectfully request that **Senate Bill #1006**, relating to Depopulation of Citizens Property Insurance, be placed on the:

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

*Anitere Flores*

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Senator Anitere Flores  
Florida Senate, District 37

SENATE APPROPRIATIONS  
RECEIVED  
15 APR -9 PM 4: 55  
STAFF DIR. \_\_\_\_\_ STAFF \_\_\_\_\_

# APPEARANCE RECORD

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

4/16/15

Meeting Date

1006

Bill Number (if applicable)

Topic CITIZENS PROPERTY INSURANCE

Amendment Barcode (if applicable)

Name KYLE ULRICH

Job Title SVP

Address 3159 SHAMROCK S.

Phone 850-566-4204

Street

TALAHASSEE

FL

32309

Email KULRICH@FAIA.COM

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FL. ASSOC. OF INSURANCE AGENTS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: PCS/SB 1016 (130614)

INTRODUCER: Appropriations Committee (Recommended by the Appropriations Subcommittee on Criminal and Civil Justice); and Senators Abruzzo and Negron

SUBJECT: Care for Retired Law Enforcement Dogs

DATE: April 15, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Recommend: Fav/CS</b>
3.	<u>Clodfelter</u>	<u>Kynoch</u>	<u>AP</u>	<b>Pre-meeting</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/SB 1016 creates the Care for Retired Law Enforcement Dogs Program. The program will provide reimbursement for up to \$1,500 of annual veterinary costs associated with caring for a retired law enforcement dog for the former handler or adopter who incurs the costs. The program will be administered and managed by a not-for-profit corporation in a contractual arrangement with FDLE.

SB 2500, the Senate's General Appropriations Bill for Fiscal Year 2015-2016, includes an appropriation of \$300,000 in recurring general revenue funds for the program. The appropriation is contingent on passage of this bill.

The bill provides an effective date of July 1, 2015.

**II. Present Situation:**

Law enforcement dogs have become an integral part of many law enforcement efforts statewide, including suspect apprehension through tracking and searching, evidence location, drug and bomb detection, and search and rescue operations. Law enforcement agencies agree that the use

of law enforcement dogs is an extremely cost-effective means for crime control and that these dogs possess skills and abilities that frequently exceed that of existing technology.<sup>1</sup>

Just one example of a law enforcement dog's invaluable service is Koda, who worked with the Leon County Sheriff's Office. K9 Koda was shot and killed in January 2013 as he attempted to immobilize a subject following a vehicle pursuit. Deputies pursued a vehicle several blocks until the vehicle crashed into a ditch. The subject continued to flee on foot and then opened fire on K9 Koda and the deputies. Two deputies returned fire and wounded the subject before taking him into custody. It was later determined that the subject was wanted on warrants for attempted first degree murder, aggravated battery with a deadly weapon, and discharging a firearm from a vehicle.<sup>2</sup>

### III. Effect of Proposed Changes:

The bill creates the Care for Retired Law Enforcement Dogs Program (program) within the Florida Department of Law Enforcement (department). The program will provide up to \$1,500 to any former handler or adopter of a retired law enforcement dog for reimbursement of veterinary care for the dog if the agency from which the dog retired provides verification of the dog's service. The former handler or adopter must submit a valid invoice from a veterinarian for care provided in Florida for reimbursement to occur. When the annual funding for the program is depleted, reimbursements must be discontinued for the remainder of the year.

"Retired law enforcement dog" is defined by the bill as a dog that has received certification in obedience and apprehension work from a certifying organization, such as the National Police Canine Association.<sup>3</sup> The dog must have been in the service of or employed by a law enforcement agency in this state for the purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders.

The bill defines "law enforcement agency" as a state or local public agency that has primary responsibility for the prevention and detection of crime or the enforcement of the penal, traffic, highway, regulatory, game, immigration, postal, customs, or controlled substance laws.

The bill adopts the term "veterinarian" from s. 474.202, F.S. Subsection (11) of s. 474.202, F.S., defines "veterinarian" as a health care practitioner who is licensed to engage in the practice of veterinary medicine in Florida under the authority of ch. 474, F.S.<sup>4</sup> The bill refers to s. 474.202,

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<sup>1</sup> <http://brevardsheriff.com/home/commands-services/operational-services/k-9-unit> (last visited March 17, 2015); [www.softretiredk9fund.com](http://www.softretiredk9fund.com) and <http://www.wsvn.com/story/27320793/student-launches-retired-k-9-donation-fund> (last visited March 17, 2015).

<sup>2</sup> Read more: <http://www.odmp.org/k9/1497-k9-koda#ixzz2vrveuHYu>

<sup>3</sup> [www.npca.net](http://www.npca.net) (last visited March 26, 2014). The National Police Canine Association is one of many such organizations in the country, including The Florida Law Enforcement Canine Association (FLECA) which is a 501(c)(3) non-profit organization dedicated to the training and certification of Florida's Law Enforcement Canine Teams according to the website, <http://www.flecak9.com/>. Additionally, the department provides a 400 hour K-9 Team training course and proficiency exam.

<sup>4</sup> (9) "Practice of veterinary medicine" means diagnosing the medical condition of animals and prescribing, dispensing, or administering drugs, medicine, appliances, applications, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease thereof; performing any manual procedure for the diagnosis of or treatment for pregnancy or fertility or infertility of animals; or representing oneself by the use of titles or words, or undertaking, offering,

F.S., in defining “veterinary care” as a veterinary medical service provided by a veterinarian licensed to practice under ch. 474, F.S.<sup>5</sup> The bill also lists the following veterinary services:

- Annual wellness examinations,
- Vaccines,
- Internal and external parasite prevention treatments,
- Testing and treatment of illnesses and diseases,
- Medications,
- Emergency care and surgeries,
- Care provided in specialties of veterinary medicine such as veterinary oncology, and
- Euthanasia and cremation services.

The department is directed to contract with a corporation not for profit, organized under ch. 617, F.S., to administer and manage the program.<sup>6</sup> The corporation must:

- Be dedicated to the protection and care of retired law enforcement dogs.
- Hold tax-exempt status under the Internal Revenue code as a s. 501(c)(3) organization.<sup>7</sup>
- Have held tax-exempt status for at least five years.
- Agree to be subject to review and audit at the discretion of the Auditor General to ensure accurate accounting and disbursement of state funds.
- Demonstrate the ability to effectively and efficiently disseminate information and assist former handlers and adopters of retired law enforcement dogs in complying with the bill.
- Receive administrative fees, including salaries and benefits, not to exceed 10 percent of appropriated funds.

The bill contains legislative findings related to the value of law enforcement dogs to the residents of Florida.

The department is given rulemaking authority to implement the provisions in the bill.

The bill provides an effective date of July 1, 2015.

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

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

None.

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or holding oneself out, as performing any of these functions. The term includes the determination of the health, fitness, or soundness of an animal.

<sup>5</sup> (13) “Veterinary medicine” includes, with respect to animals, surgery, acupuncture, obstetrics, dentistry, physical therapy, radiology, theriogenology, and other branches or specialties of veterinary medicine. s. 474.202, F.S.

<sup>6</sup> Section 617.01401(5), F.S., defines “corporation not for profit” to be a corporation no part of the income or profit of which is distributable to its members, directors, or officers, except as otherwise provided under this chapter.

<sup>7</sup> See 26 U.S.C.A. s. 501(c)(3).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

- D. SB 2500, the Senate's General Appropriation Bill for Fiscal Year 2015-2016, includes an appropriation of \$300,000 in recurring general revenue funds for the program. The appropriation is contingent on passage of PCS/SB 1016.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 943.69 of the Florida Statutes.

**IX. Additional Information:**

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

**Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice on April 2, 2015:**

The committee substitute deletes the appropriation of \$300,000 to the department's Operating Trust Fund for operation of the program. Senate Bill 2500, the Senate's General Appropriation Bill for Fiscal Year 2015-2016, appropriates \$300,000 in recurring general revenue funds for the program, contingent on passage of this bill.

B. Amendments:

None.

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

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130614

576-03374A-15

Proposed Committee Substitute by the Committee on Appropriations  
(Appropriations Subcommittee on Criminal and Civil Justice)

A bill to be entitled

An act relating to care for retired law enforcement dogs; creating s. 943.69, F.S.; providing a short title; defining terms; providing legislative findings; creating the Care for Retired Law Enforcement Dogs Program within the Department of Law Enforcement; requiring the department to contract with a corporation not for profit to administer and manage the program; providing requirements for the corporation not for profit; providing requirements for the disbursement of funds for the veterinary care of eligible retired law enforcement dogs; placing an annual cap on the amount of funds available for the care of an eligible retired law enforcement dog; prohibiting a former handler or adopter from receiving reimbursement if funds are depleted for the year such reimbursement is sought; providing for administrative fees; requiring the department to adopt rules; providing an appropriation; providing an effective date.

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

Section 1. Section 943.69, Florida Statutes, is created to read:

943.69 Care for Retired Law Enforcement Dogs Program.—

(1) SHORT TITLE.—This section may be cited as the "Care for



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Retired Law Enforcement Dogs Program Act."

(2) DEFINITIONS.—As used in this section, the term:

(a) "Law enforcement agency" means a lawfully established state or local public agency having primary responsibility for the prevention and detection of crime or the enforcement of the penal, traffic, highway, regulatory, game, immigration, postal, customs, or controlled substance laws.

(b) "Retired law enforcement dog" means a dog that was previously in the service of or employed by a law enforcement agency in this state for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders and that received certification in obedience and apprehension work from a certifying organization such as the National Police Canine Association or other certifying organization.

(c) "Veterinarian" has the same meaning as provided in s. 474.202.

(d) "Veterinary care" means a veterinary medical service specified in s. 474.202 which is provided by a veterinarian licensed under chapter 474. The term includes annual wellness examinations, vaccines, internal and external parasite prevention treatments, testing and treatment of illnesses and diseases, medications, emergency care and surgeries, specialty care such as veterinary oncology, euthanasia, and cremation.

(3) LEGISLATIVE FINDINGS.—The Legislature finds that:

(a) Law enforcement dogs have become an integral part of many law enforcement efforts statewide, including the apprehension of suspects through tracking and searching, evidence location, drug and bomb detection, and search and



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57 rescue operations;

58 (b) Law enforcement agencies agree that the use of law  
59 enforcement dogs is an extremely cost-effective means of crime  
60 control and that these dogs possess skills and abilities that  
61 frequently exceed those of existing technology;

62 (c) The service of law enforcement dogs is often dangerous  
63 and can expose them to injury at a rate higher than that of  
64 nonservice dogs; and

65 (d) Law enforcement dogs provide significant contributions  
66 to the residents of this state.

67 (4) ESTABLISHMENT OF PROGRAM.—The Care for Retired Law  
68 Enforcement Dogs Program is created within the Department of Law  
69 Enforcement to provide a stable funding source for veterinary  
70 care provided to these dogs.

71 (5) ADMINISTRATION.—The Department of Law Enforcement shall  
72 contract with a corporation not for profit organized under  
73 chapter 617 to administer and manage the Care for Retired Law  
74 Enforcement Dogs Program. Notwithstanding the competitive sealed  
75 bid procedures required under chapter 287, the department shall  
76 enter into a contract with a corporation not for profit that:

77 (a) Is dedicated to the protection or care of retired law  
78 enforcement dogs;

79 (b) Is exempt from taxation under s. 501(a) of the Internal  
80 Revenue Code as an organization described in s. 501(c)(3) of  
81 that code;

82 (c) Has maintained such tax-exempt status for at least 5  
83 years;

84 (d) Agrees to be subject to review and audit at the  
85 discretion of the Auditor General in order to ensure accurate



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86 accounting and disbursement of state funds; and

87 (e) Demonstrates the ability to effectively and efficiently  
88 disseminate information and to assist former handlers and  
89 adopters of retired law enforcement dogs in complying with this  
90 section.

91 (6) FUNDING.—

92 (a) The corporation not for profit shall be the disbursing  
93 authority for funds appropriated by the Legislature to the  
94 department for the Care for Retired Law Enforcement Dogs  
95 Program. These funds shall be disbursed upon receipt of:

96 1. Valid documentation from the law enforcement agency from  
97 which the dog retired which verifies that the dog was in the  
98 service of or employed by such agency; and

99 2. A valid invoice from a veterinarian for veterinary care  
100 provided in this state to a retired law enforcement dog which is  
101 submitted by the former handler or adopter of a retired law  
102 enforcement dog.

103 (b) Annual disbursements to a former handler or adopter to  
104 reimburse him or her for the cost of care provided to a retired  
105 law enforcement dog may not exceed \$1,500 per dog. A former  
106 handler or adopter of a retired law enforcement dog may not  
107 accumulate unused funds from a current year for use in a future  
108 year.

109 (c) A former handler or adopter of a retired law  
110 enforcement dog who seeks reimbursement for veterinary services  
111 may not receive reimbursement if funds appropriated for the Care  
112 for Retired Law Enforcement Dogs Program are depleted in the  
113 year for which the reimbursement is sought.

114 (7) ADMINISTRATIVE FEES.—The corporation not for profit



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115 must receive administrative fees, including salaries and  
116 benefits, of up to 10 percent of appropriated funds.

117 (8) RULEMAKING AUTHORITY.-The department shall adopt rules  
118 pursuant to ss. 120.536(1) and 120.54 to implement this section.

119 Section 2. This act shall take effect July 1, 2015.

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/SB 1016

INTRODUCER: Appropriations Committee (Recommended by the Appropriations Subcommittee on Criminal and Civil Justice); and Senators Abruzzo and Negron

SUBJECT: Care for Retired Law Enforcement Dogs

DATE: April 20, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Recommend: Fav/CS</b>
3.	<u>Clodfelter</u>	<u>Kynoch</u>	<u>AP</u>	<b>Fav/CS</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1016 creates the Care for Retired Law Enforcement Dogs Program. The program will provide reimbursement for up to \$1,500 of annual veterinary costs associated with caring for a retired law enforcement dog for the former handler or adopter who incurs the costs. The program will be administered and managed by a not-for-profit corporation in a contractual arrangement with FDLE.

SB 2500, the Senate's General Appropriations Bill for Fiscal Year 2015-2016, includes an appropriation of \$300,000 in recurring general revenue funds for the program. The appropriation is contingent on passage of this bill.

The bill provides an effective date of July 1, 2015.

**II. Present Situation:**

Law enforcement dogs have become an integral part of many law enforcement efforts statewide, including suspect apprehension through tracking and searching, evidence location, drug and bomb detection, and search and rescue operations. Law enforcement agencies agree that the use

of law enforcement dogs is an extremely cost-effective means for crime control and that these dogs possess skills and abilities that frequently exceed that of existing technology.<sup>1</sup>

Just one example of a law enforcement dog's invaluable service is Koda, who worked with the Leon County Sheriff's Office. K9 Koda was shot and killed in January 2013 as he attempted to immobilize a subject following a vehicle pursuit. Deputies pursued a vehicle several blocks until the vehicle crashed into a ditch. The subject continued to flee on foot and then opened fire on K9 Koda and the deputies. Two deputies returned fire and wounded the subject before taking him into custody. It was later determined that the subject was wanted on warrants for attempted first degree murder, aggravated battery with a deadly weapon, and discharging a firearm from a vehicle.<sup>2</sup>

### III. Effect of Proposed Changes:

The bill creates the Care for Retired Law Enforcement Dogs Program (program) within the Florida Department of Law Enforcement (department). The program will provide up to \$1,500 to any former handler or adopter of a retired law enforcement dog for reimbursement of veterinary care for the dog if the agency from which the dog retired provides verification of the dog's service. The former handler or adopter must submit a valid invoice from a veterinarian for care provided in Florida for reimbursement to occur. When the annual funding for the program is depleted, reimbursements must be discontinued for the remainder of the year.

"Retired law enforcement dog" is defined by the bill as a dog that has received certification in obedience and apprehension work from a certifying organization, such as the National Police Canine Association.<sup>3</sup> The dog must have been in the service of or employed by a law enforcement agency in this state for the purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders.

The bill defines "law enforcement agency" as a state or local public agency that has primary responsibility for the prevention and detection of crime or the enforcement of the penal, traffic, highway, regulatory, game, immigration, postal, customs, or controlled substance laws.

The bill adopts the term "veterinarian" from s. 474.202, F.S. Subsection (11) of s. 474.202, F.S., defines "veterinarian" as a health care practitioner who is licensed to engage in the practice of veterinary medicine in Florida under the authority of ch. 474, F.S.<sup>4</sup> The bill refers to s. 474.202,

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<sup>1</sup> <http://brevardsheriff.com/home/commands-services/operational-services/k-9-unit> (last visited March 17, 2015); [www.soflretiredk9fund.com](http://www.soflretiredk9fund.com) and <http://www.wsvn.com/story/27320793/student-launches-retired-k-9-donation-fund> (last visited March 17, 2015).

<sup>2</sup> Read more: <http://www.odmp.org/k9/1497-k9-koda#ixzz2vrveuHYu>

<sup>3</sup> [www.npca.net](http://www.npca.net) (last visited March 26, 2014). The National Police Canine Association is one of many such organizations in the country, including The Florida Law Enforcement Canine Association (FLECA) which is a 501(c)(3) non-profit organization dedicated to the training and certification of Florida's Law Enforcement Canine Teams according to the website, <http://www.flecak9.com/>. Additionally, the department provides a 400 hour K-9 Team training course and proficiency exam.

<sup>4</sup> (9) "Practice of veterinary medicine" means diagnosing the medical condition of animals and prescribing, dispensing, or administering drugs, medicine, appliances, applications, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease thereof; performing any manual procedure for the diagnosis of or treatment for pregnancy or fertility or infertility of animals; or representing oneself by the use of titles or words, or undertaking, offering,

F.S., in defining “veterinary care” as a veterinary medical service provided by a veterinarian licensed to practice under ch. 474, F.S.<sup>5</sup> The bill also lists the following veterinary services:

- Annual wellness examinations,
- Vaccines,
- Internal and external parasite prevention treatments,
- Testing and treatment of illnesses and diseases,
- Medications,
- Emergency care and surgeries,
- Care provided in specialties of veterinary medicine such as veterinary oncology, and
- Euthanasia and cremation services.

The department is directed to contract with a corporation not for profit, organized under ch. 617, F.S., to administer and manage the program.<sup>6</sup> The corporation must:

- Be dedicated to the protection and care of retired law enforcement dogs.
- Hold tax-exempt status under the Internal Revenue code as a s. 501(c)(3) organization.<sup>7</sup>
- Have held tax-exempt status for at least five years.
- Agree to be subject to review and audit at the discretion of the Auditor General to ensure accurate accounting and disbursement of state funds.
- Demonstrate the ability to effectively and efficiently disseminate information and assist former handlers and adopters of retired law enforcement dogs in complying with the bill.
- Receive administrative fees, including salaries and benefits, not to exceed 10 percent of appropriated funds.

The bill contains legislative findings related to the value of law enforcement dogs to the residents of Florida.

The department is given rulemaking authority to implement the provisions in the bill.

The bill provides an effective date of July 1, 2015.

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

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

None.

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or holding oneself out, as performing any of these functions. The term includes the determination of the health, fitness, or soundness of an animal.

<sup>5</sup> (13) “Veterinary medicine” includes, with respect to animals, surgery, acupuncture, obstetrics, dentistry, physical therapy, radiology, theriogenology, and other branches or specialties of veterinary medicine. s. 474.202, F.S.

<sup>6</sup> Section 617.01401(5), F.S., defines “corporation not for profit” to be a corporation no part of the income or profit of which is distributable to its members, directors, or officers, except as otherwise provided under this chapter.

<sup>7</sup> See 26 U.S.C.A. s. 501(c)(3).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

- D. SB 2500, the Senate's General Appropriation Bill for Fiscal Year 2015-2016, includes an appropriation of \$300,000 in recurring general revenue funds for the program. The appropriation is contingent on passage of CS/SB 1016.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 943.69 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Appropriations on April 16, 2015:**

The committee substitute deletes the appropriation of \$300,000 to the department's Operating Trust Fund for operation of the program. Senate Bill 2500, the Senate's General Appropriation Bill for Fiscal Year 2015-2016, appropriates \$300,000 in recurring general revenue funds for the program, contingent on passage of this bill.

B. Amendments:

None.

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

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By Senator Abruzzo

25-00322A-15

20151016\_\_

1 A bill to be entitled  
 2 An act relating to care for retired law enforcement  
 3 dogs; creating s. 943.69, F.S.; providing a short  
 4 title; defining terms; providing legislative findings;  
 5 creating the Care for Retired Law Enforcement Dogs  
 6 Program within the Department of Law Enforcement;  
 7 requiring the department to contract with a  
 8 corporation not for profit to administer and manage  
 9 the program; providing requirements for the  
 10 corporation not for profit; providing requirements for  
 11 the disbursement of funds for the veterinary care of  
 12 eligible retired law enforcement dogs; placing an  
 13 annual cap on the amount of funds available for the  
 14 care of an eligible retired law enforcement dog;  
 15 prohibiting a former handler or adopter from receiving  
 16 reimbursement if funds are depleted for the year such  
 17 reimbursement is sought; providing for the deposit of  
 18 program funds; providing for the reversion of funds to  
 19 the department under certain circumstances;  
 20 authorizing the carryforward of unexpended  
 21 appropriations for use in the program up to certain  
 22 limits; authorizing the department to adopt rules and  
 23 forms; providing an appropriation; providing an  
 24 effective date.

25  
 26 Be It Enacted by the Legislature of the State of Florida:

27  
 28 Section 1. Section 943.69, Florida Statutes, is created to  
 29 read:

Page 1 of 5

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

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20151016\_\_

30 943.69 Care for Retired Law Enforcement Dogs Program.—  
 31 (1) SHORT TITLE.—This section may be cited as the “Care for  
 32 Retired Law Enforcement Dogs Program Act.”  
 33 (2) DEFINITIONS.—As used in this section, the term:  
 34 (a) “Law enforcement agency” means a lawfully established  
 35 state or local public agency having primary responsibility for  
 36 the prevention and detection of crime or the enforcement of the  
 37 penal, traffic, highway, regulatory, game, immigration, postal,  
 38 customs, or controlled substance laws.  
 39 (b) “Retired law enforcement dog” means a dog that was  
 40 previously in the service of or employed by a law enforcement  
 41 agency in this state for the principal purpose of aiding in the  
 42 detection of criminal activity, enforcement of laws, or  
 43 apprehension of offenders and that received certification in  
 44 obedience and apprehension work from a certifying organization  
 45 such as the National Police Canine Association or other  
 46 certifying organization.  
 47 (c) “Veterinarian” has the same meaning as provided in s.  
 48 474.202.  
 49 (d) “Veterinary care” means a veterinary medical service  
 50 specified in s. 474.202 which is provided by a veterinarian  
 51 licensed under chapter 474. The term includes annual wellness  
 52 examinations, vaccines, internal and external parasite  
 53 prevention treatments, testing and treatment of illnesses and  
 54 diseases, medications, emergency care and surgeries, specialty  
 55 care such as veterinary oncology, euthanasia, and cremation.  
 56 (3) LEGISLATIVE FINDINGS.—The Legislature finds that:  
 57 (a) Law enforcement dogs have become an integral part of  
 58 many law enforcement efforts statewide, including the

Page 2 of 5

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

25-00322A-15 20151016\_\_

59 apprehension of suspects through tracking and searching,  
60 evidence location, drug and bomb detection, and search and  
61 rescue operations;

62 (b) Law enforcement agencies agree that the use of law  
63 enforcement dogs is an extremely cost-effective means of crime  
64 control and that these dogs possess skills and abilities that  
65 frequently exceed those of existing technology;

66 (c) The service of law enforcement dogs is often dangerous  
67 and can expose them to injury at a rate higher than that of  
68 nonservice dogs; and

69 (d) Law enforcement dogs provide significant contributions  
70 to the residents of this state.

71 (4) ESTABLISHMENT OF PROGRAM.-The Care for Retired Law  
72 Enforcement Dogs Program is created within the Department of Law  
73 Enforcement to provide a stable funding source for veterinary  
74 care provided to these dogs.

75 (5) ADMINISTRATION.-The Department of Law Enforcement shall  
76 contract with a corporation not for profit organized under  
77 chapter 617 to administer and manage the Care for Retired Law  
78 Enforcement Dogs Program. Notwithstanding the competitive sealed  
79 bid procedures required under chapter 287, the department shall  
80 enter into a contract with a corporation not for profit that:

81 (a) Is dedicated to the protection or care of retired law  
82 enforcement dogs;

83 (b) Is exempt from taxation under s. 501(a) of the Internal  
84 Revenue Code as an organization described in s. 501(c)(3) of  
85 that code;

86 (c) Has maintained such tax-exempt status for at least 5  
87 years;

25-00322A-15 20151016\_\_

88 (d) Agrees to be subject to review and audit at the  
89 discretion of the Auditor General in order to ensure accurate  
90 accounting and disbursement of state funds; and

91 (e) Demonstrates the ability to effectively and efficiently  
92 disseminate information and to assist former handlers and  
93 adopters of retired law enforcement dogs in complying with this  
94 section.

95 (6) FUNDING.-

96 (a) The corporation not for profit shall be the disbursing  
97 authority for funds appropriated by the Legislature to the  
98 department for the Care for Retired Law Enforcement Dogs  
99 Program. These funds shall be disbursed upon receipt of:

100 1. Valid documentation from the law enforcement agency from  
101 which the dog retired which verifies that the dog was in the  
102 service of or employed by such agency; and

103 2. A valid invoice from a veterinarian for veterinary care  
104 provided in this state to a retired law enforcement dog which is  
105 submitted by the former handler or adopter of a retired law  
106 enforcement dog.

107 (b) Annual disbursements to a former handler or adopter to  
108 reimburse him or her for the cost of care provided to a retired  
109 law enforcement dog may not exceed \$1,500 per dog. A former  
110 handler or adopter of a retired law enforcement dog may not  
111 accumulate unused funds from a current year for use in a future  
112 year.

113 (c) A former handler or adopter of a retired law  
114 enforcement dog who seeks reimbursement for veterinary services  
115 may not receive reimbursement if funds appropriated for the Care  
116 for Retired Law Enforcement Dogs Program are depleted in the

25-00322A-15

20151016\_\_

117 year for which the reimbursement is sought.  
118 (d) Funds appropriated for the Care for Retired Law  
119 Enforcement Dogs Program shall be held in a separate depository  
120 account in the Operating Trust Fund of the department in the  
121 name of the corporation not for profit and are subject to the  
122 provisions of the corporation's contract with the department.  
123 The contract must provide that:  
124 1. The corporation not for profit must receive  
125 administrative fees, including salaries and benefits, of up to  
126 10 percent of appropriated funds; and  
127 2. Any funds held in the separate depository account in the  
128 name of the corporation not for profit must revert to the  
129 department upon expiration or termination of the contract.  
130 (e) Notwithstanding s. 216.301, and pursuant to s. 216.351,  
131 on July 1 of each year, the Executive Office of the Governor  
132 shall certify forward all unexpended funds appropriated pursuant  
133 to this section. However, the fund balance for the Care for  
134 Retired Law Enforcement Dogs Program may not exceed \$400,000.  
135 (7) RULEMAKING AUTHORITY.-The department shall adopt rules  
136 pursuant to ss. 120.536(1) and 120.54 to implement this section.  
137 Section 2. For the 2015-2016 fiscal year, and each fiscal  
138 year thereafter, the sum of \$300,000 in recurring funds is  
139 appropriated from the General Revenue Fund to the Department of  
140 Law Enforcement for the purpose of implementing the Care for  
141 Retired Law Enforcement Dogs Program.  
142 Section 3. This act shall take effect July 1, 2015.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Finance and Tax, *Vice Chair*  
Appropriations Subcommittee on Health and Human Services  
Communications, Energy, and Public Utilities  
Community Affairs  
Fiscal Policy  
Regulated Industries

### JOINT COMMITTEE:

Joint Legislative Auditing Committee, *Chair*

### SENATOR JOSEPH ABRUZZO

Minority Whip  
25th District

April 2<sup>nd</sup>, 2015

The Honorable Tom Lee  
418 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chairman Lee:

I respectfully request that Senate Bill 1016, Care for Retired Law Enforcement Dogs, be considered for placement on the Appropriations committee agenda. This piece of legislation will create the "Care for Retired Law Enforcement Dogs Program" which will provide a stable funding source for handlers and adopters of retired law enforcement dogs as a means of providing for their veterinary services. This program will be administered through the Florida Department of Law Enforcement (FDLE).

Thank you in advance for your consideration. Please feel free to notify me if I can provide you with any additional information.

Sincerely,

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

Joseph Abruzzo

Cc: Cindy Kynoch, Staff Director

#### REPLY TO:

- 12300 Forest Hill Boulevard, Suite 200, Wellington, Florida 33414-5785 (561) 791-4774 FAX: (888) 284-6495
- 110 Dr. Martin Luther King, Jr. Boulevard, Belle Glade, Florida 33430-3900 (561) 829-1410
- 222 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

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

**ANDY GARDINER**  
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)

4 / 16 / 2015

*Meeting Date*

Topic \_\_\_\_\_ Bill Number 1016  
*(if applicable)*

Name BRIAN PITTS Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291  
*Street*

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM  
*City State Zip*

Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

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

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

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

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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**BILL:** PCS/SB 1106 (694962)

**INTRODUCER:** Appropriations Committee (Recommended by the Appropriations Subcommittee on Criminal and Civil Justice); and Senator Flores

**SUBJECT:** Human Trafficking

**DATE:** April 15, 2015

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Recommend: Fav/CS</b>
3.	<u>Clodfelter</u>	<u>Kynoch</u>	<u>AP</u>	<b>Pre-meeting</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/SB 1106 amends section 796.07, Florida Statutes, relating to prostitution, by enhancing the criminal penalties for a person who solicits, induces, entices, or procures another to commit prostitution, lewdness, or assignation as follows:

- A first violation becomes a first degree misdemeanor (currently a second degree misdemeanor);
- A second violation becomes a third degree felony (currently a first degree misdemeanor); and
- A third or subsequent violation becomes a second degree felony (currently a third degree felony).

The bill requires such person to perform 100 hours of community service and to pay for and attend an educational program about the negative effects of prostitution and human trafficking, if one exists. The bill allows a judge to order the offender's vehicle, if one is used in the offense, to be impounded or immobilized for up to 60 days (unless certain exceptions apply).

A person convicted of a second or subsequent solicitation violation under the bill is required to serve a minimum of 10 days in county jail.

The bill also amends section 943.0583, Florida Statutes, relating to human trafficking victim expunction, to require the court to allow an advocate from the state attorney's office, law enforcement agency, safe house or safe foster home, or residential facility offering services to

adult human trafficking victims to be present with the victim/petitioner during any expunction court proceeding.

The Criminal Justice Impact Conference (CJIC) has determined that this bill will result in an insignificant increase in the need for state prison beds.

The bill provides an effective date of October 1, 2015.

## **II. Present Situation:**

### **Prostitution**

The human trafficking statute recognizes that many victims of human trafficking are forced to work in prostitution or the sexual entertainment industry.<sup>1</sup> Prostitution is criminalized in ch. 796, F.S. It is defined as the “giving or receiving of the body for sexual activity<sup>2</sup> for hire but excludes sexual activity between spouses.”<sup>3</sup> Prohibited activities include, among others, soliciting, inducing, enticing, or procuring another to commit prostitution, lewdness<sup>4</sup>, or assignation<sup>5, 6</sup>.

A first solicitation violation is punishable as a second degree misdemeanor<sup>7</sup>, a second violation as a first degree misdemeanor<sup>8</sup>, and a third or subsequent violation as a third degree felony<sup>9</sup> under s. 796.07(4), F.S. A civil penalty of \$5,000 is also required to be assessed, unless the offender is acquitted or the case is dismissed.<sup>10</sup>

Finally, the statute requires that a person who is charged with a third violation be offered admission to a pretrial intervention program or substance abuse treatment program under s. 948.08, F.S.<sup>11</sup>

### **Human Trafficking Victim Expunction**

Section 943.0583, F.S., authorizes a victim of human trafficking to petition the court for an expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed while he or she was a victim of human trafficking.<sup>12</sup> The statute defines “victim of human trafficking” to mean a person subjected to coercion for the purpose of being

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<sup>1</sup> Section 787.06(1)(b), F.S.

<sup>2</sup> Section 796.07(1)(d), F.S., defines “sexual activity” to mean oral, anal, or vaginal penetration by, or union with, the sexual organ of another; anal or vaginal penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation; however, it does not include acts done for bona fide medical purposes.

<sup>3</sup> Section 796.07(1)(a), F.S.

<sup>4</sup> Section 796.07(1)(b), F.S., defines “lewdness” as any indecent or obscene act.

<sup>5</sup> Section 796.07(1)(c), F.S., defines “assignation” as making an appointment or engagement for prostitution or lewdness.

<sup>6</sup> Section 796.07(2)(f), F.S.

<sup>7</sup> Incarceration not exceeding 60 days in county jail and/or a fine not exceeding \$500. Sections 775.082 and 775.083, F.S.

<sup>8</sup> Incarceration not exceeding one year in county jail and/or a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

<sup>9</sup> Imprisonment not exceeding 5 years and/or a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

<sup>10</sup> Section 796.07(6), F.S.

<sup>11</sup> Section 796.07(5), F.S.

<sup>12</sup> “Human trafficking” is defined under s. 787.06(2)(d), F.S., as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.

used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.<sup>13</sup>

The court of original jurisdiction over the crime sought to be expunged is the court designated in the statute to hear the victim's petition.<sup>14</sup> A petition must be initiated by the petitioner with due diligence after the victim has ceased being a victim of human trafficking or has sought human trafficking services.<sup>15</sup> A petition to expunge must be accompanied by the following:

- A sworn statement attesting that the petitioner is eligible for an expunction to the best of his or her knowledge and does not have other petitions to expunge or seal pending before any court; and
- Official documentation of the petitioner's status as a human trafficking victim, if any exists.<sup>16</sup>

The petitioner or the petitioner's attorney is allowed under the statute to appear at the hearing telephonically, via video conference, or by other electronic means.<sup>17</sup>

If the court grants relief to the petitioner, the clerk of the court must certify copies of the expunction order to the appropriate state attorney or statewide prosecutor and the arresting agency. The Florida Department of Law Enforcement (department) is responsible for forwarding the order to expunge to the Federal Bureau of Investigation.<sup>18</sup>

Any criminal justice agency having custody of such record, except the department, must physically destroy the record. Human trafficking victims receiving a record expunction under this statute are lawfully able to deny or fail to acknowledge the covered arrests, except if they are applying for employment with a criminal justice agency or are a defendant in a criminal prosecution.<sup>19</sup>

### **III. Effect of Proposed Changes:**

#### **Prostitution**

The bill amends s. 796.07, F.S., by enhancing the criminal penalties for a person who solicits, induces, entices, or procures another to commit prostitution, lewdness, or assignation as follows:

- A first violation becomes a first degree misdemeanor (currently a second degree misdemeanor);
- A second violation becomes a third degree felony (currently a first degree misdemeanor); and
- A third or subsequent violation becomes a second degree felony<sup>20</sup> (currently a third degree felony).

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<sup>13</sup> Section 943.0583(1)(c), F.S.

<sup>14</sup> Section 943.0583(2), F.S.

<sup>15</sup> Section 943.0583(4), F.S.

<sup>16</sup> Section 943.0583(6), F.S.

<sup>17</sup> Section 943.0583(7) (b), F.S.

<sup>18</sup> Section 943.0583(7)(c), F.S.

<sup>19</sup> Section 943.0583(8), F.S.

<sup>20</sup> Punishable by imprisonment not exceeding 15 years and/or a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

The bill requires such person to perform 100 hours of community service and to pay for and attend an educational program about the negative effects of prostitution and human trafficking, if one exists.

It also requires a person convicted of a second or subsequent solicitation violation to serve a minimum of 10 days in county jail.

The bill prohibits a person who is charged with a third or subsequent solicitation violation from attending a pretrial intervention program or substance abuse program.

The bill also allows a judge to order the offender's vehicle, if one is used in the offense, to be impounded or immobilized for up to 60 days. The order of impoundment or immobilization must include the names and telephone numbers of all immobilization agencies meeting the conditions of s. 316.193(13).<sup>21</sup> Within seven business days after the order is issued, the clerk of the court must send notice by certified mail, return receipt requested, to the registered owner of the vehicle, if the registered owner is a person other than the defendant, and to each person of record claiming a lien against the vehicle.

The owner of the vehicle may request the court to dismiss the order, and the court must dismiss the order, at no cost to the owner, if it finds any of the following to be true:

- The owner's family has no other private or public means of transportation;
- The vehicle was stolen at the time of the offense;
- The owner bought the vehicle after the offense was committed and it was not done to circumvent the order and allow the defendant continued access; or
- The vehicle is owned by the defendant but is operated solely by employees of the defendant or employees of a business owned by the defendant.

If the court denies the request to dismiss the order, the petitioner may request an evidentiary hearing. At that hearing, if the court finds that any of the above circumstances exist, it must dismiss the order, at no cost to the owner.

### **Human Trafficking Victim Expunction**

The bill amends s. 943.0583, F.S., to require the court to allow an advocate from the state attorney's office, law enforcement agency, safe house or safe foster home, or residential facility offering services to adult human trafficking victims to be present with the petitioner during any expunction court proceeding. This requirement only applies if the petitioner requests it and an advocate is available.

The bill also provides that any court in the circuit in which the petitioner was arrested may order expunction of a human trafficking victim's criminal record if the court has jurisdiction over the class of offense or offenses sought to be expunged. Currently, expunction can only be ordered by "the court of original jurisdiction over the crime sought to be expunged."

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<sup>21</sup> These conditions include, among others: having verifiable experience in immobilizing vehicles, maintaining accurate records, and employing persons that meet specified requirements.

Finally, the bill amends ss. 456.074, 480.041, and 480.043, F.S., to make a technical and conforming cross-reference change.

The effective date of the bill is October 1, 2015.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons convicted of soliciting prostitution may be subject to potentially higher fines under PCS/SB 1106. Their vehicles may also be subject to immobilization, which could have a positive fiscal impact on immobilization companies.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) met on February 27, 2015, and determined that this bill will result in an increase in the need for state prison beds. However, the impact will be insignificant because of the low volume of offenses.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 796.07 and 943.0583.

The bill makes technical and conforming cross-reference changes to the following sections of the Florida Statutes: 456.074, 480.041, and 480.043.

**IX. Additional Information:**

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

**Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice on April 8, 2015:**

The committee substitute amends the bill to provide that any court in the circuit in which a human trafficking victim was arrested may order expungement of the victim's criminal record if the court has jurisdiction over the class of offense or offenses sought to be expunged.

- B. **Amendments:**

None.



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Proposed Committee Substitute by the Committee on Appropriations  
(Appropriations Subcommittee on Criminal and Civil Justice)

A bill to be entitled

An act relating to human trafficking; amending s. 796.07, F.S.; providing enhanced criminal penalties for soliciting another to commit prostitution and similar offenses; requiring persons convicted of such offenses to perform community service and pay for and attend an education program; requiring the court to impose minimum mandatory terms of incarceration for persons convicted two or more times of soliciting another to commit prostitution and similar offenses; providing for impoundment of a vehicle used in soliciting another to commit prostitution and similar offenses; providing an opportunity for owners to prevent the impoundment or immobilization in certain circumstances; amending s. 943.0583, F.S.; providing that any court in the circuit in which the petitioner was arrested may expunge the criminal history record of a victim of human trafficking; requiring a judge to allow an advocate to be present with a human trafficking victim in an expunction hearing in certain circumstances; amending ss. 456.074, 480.041, and 480.043, 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. Section 796.07, Florida Statutes, is amended to



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28 read:

29 796.07 Prohibiting prostitution and related acts.—

30 (1) As used in this section:

31 (a) "Prostitution" means the giving or receiving of the  
32 body for sexual activity for hire but excludes sexual activity  
33 between spouses.

34 (b) "Lewdness" means any indecent or obscene act.

35 (c) "Assignment" means the making of any appointment or  
36 engagement for prostitution or lewdness, or any act in  
37 furtherance of such appointment or engagement.

38 (d) "Sexual activity" means oral, anal, or vaginal  
39 penetration by, or union with, the sexual organ of another; anal  
40 or vaginal penetration of another by any other object; or the  
41 handling or fondling of the sexual organ of another for the  
42 purpose of masturbation; however, the term does not include acts  
43 done for bona fide medical purposes.

44 (2) It is unlawful:

45 (a) To own, establish, maintain, or operate any place,  
46 structure, building, or conveyance for the purpose of lewdness,  
47 assignment, or prostitution.

48 (b) To offer, or to offer or agree to secure, another for  
49 the purpose of prostitution or for any other lewd or indecent  
50 act.

51 (c) To receive, or to offer or agree to receive, any person  
52 into any place, structure, building, or conveyance for the  
53 purpose of prostitution, lewdness, or assignment, or to permit  
54 any person to remain there for such purpose.

55 (d) To direct, take, or transport, or to offer or agree to  
56 direct, take, or transport, any person to any place, structure,



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57 or building, or to any other person, with knowledge or  
58 reasonable cause to believe that the purpose of such directing,  
59 taking, or transporting is prostitution, lewdness, or  
60 assignation.

61 (e) To offer to commit, or to commit, or to engage in,  
62 prostitution, lewdness, or assignation.

63 (f) To solicit, induce, entice, or procure another to  
64 commit prostitution, lewdness, or assignation.

65 (g) To reside in, enter, or remain in, any place,  
66 structure, or building, or to enter or remain in any conveyance,  
67 for the purpose of prostitution, lewdness, or assignation.

68 (h) To aid, abet, or participate in any of the acts or  
69 things enumerated in this subsection.

70 (i) To purchase the services of any person engaged in  
71 prostitution.

72 (3) (a) In the trial of a person charged with a violation of  
73 this section, testimony concerning the reputation of any place,  
74 structure, building, or conveyance involved in the charge,  
75 testimony concerning the reputation of any person residing in,  
76 operating, or frequenting such place, structure, building, or  
77 conveyance, and testimony concerning the reputation of the  
78 defendant is admissible in evidence in support of the charge.

79 (b) Notwithstanding any other provision of law, a police  
80 officer may testify as an offended party in an action regarding  
81 charges filed pursuant to this section.

82 (4) (a) A person who violates any provision of this section,  
83 other than paragraph (2) (f), commits:

84 1. (a) A misdemeanor of the second degree for a first  
85 violation, punishable as provided in s. 775.082 or s. 775.083.



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86 2. (b) A misdemeanor of the first degree for a second  
87 violation, punishable as provided in s. 775.082 or s. 775.083.

88 3. (c) A felony of the third degree for a third or  
89 subsequent violation, punishable as provided in s. 775.082, s.  
90 775.083, or s. 775.084.

91 (b) (5) A person who is charged with a third or subsequent  
92 violation of this section, other than paragraph (2) (f), shall be  
93 offered admission to a pretrial intervention program or a  
94 substance abuse treatment program as provided in s. 948.08.

95 (5) (a) A person who violates paragraph (2) (f) commits:

96 1. A misdemeanor of the first degree for a first violation,  
97 punishable as provided in s. 775.082 or s. 775.083.

98 2. A felony of the third degree for a second violation,  
99 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

100 3. A felony of the second degree for a third or subsequent  
101 violation, punishable as provided in s. 775.082, s. 775.083, or  
102 s. 775.084.

103 (b) In addition to any other penalty imposed, the court  
104 shall order a person convicted of a violation of paragraph  
105 (2) (f) to:

106 1. Perform 100 hours of community service; and

107 2. Pay for and attend an educational program about the  
108 negative effects of prostitution and human trafficking, such as  
109 a sexual violence prevention education program, if such program  
110 exists in the judicial circuit in which the offender is  
111 sentenced.

112 (c) In addition to any other penalty imposed, the court  
113 shall sentence a person convicted of a second or subsequent  
114 violation of paragraph (2) (f) to a minimum mandatory period of



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115 incarceration of 10 days.

116 (d)1. If a person who violates paragraph (2)(f) uses a  
117 vehicle in the course of the violation, the judge, upon the  
118 person's conviction, may issue an order for the impoundment or  
119 immobilization of the vehicle for a period of up to 60 days. The  
120 order of impoundment or immobilization must include the names  
121 and telephone numbers of all immobilization agencies meeting all  
122 of the conditions of s. 316.193(13). Within 7 business days  
123 after the date that the court issues the order of impoundment or  
124 immobilization, the clerk of the court must send notice by  
125 certified mail, return receipt requested, to the registered  
126 owner of the vehicle, if the registered owner is a person other  
127 than the defendant, and to each person of record claiming a lien  
128 against the vehicle.

129 2. The owner of the vehicle may request the court to  
130 dismiss the order. The court must dismiss the order, and the  
131 owner of the vehicle will incur no costs, if the owner of the  
132 vehicle alleges and the court finds to be true any of the  
133 following:

- 134 a. The owner's family has no other private or public means  
135 of transportation;  
136 b. The vehicle was stolen at the time of the offense;  
137 c. The owner purchased the vehicle after the offense was  
138 committed, and the sale was not made to circumvent the order and  
139 allow the defendant continued access to the vehicle; or  
140 d. The vehicle is owned by the defendant but is operated  
141 solely by employees of the defendant or employees of a business  
142 owned by the defendant.

143 3. If the court denies the request to dismiss the order,



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144 the petitioner may request an evidentiary hearing. If, at the  
145 evidentiary hearing, the court finds to be true any of the  
146 circumstances described in sub-subparagraphs 2.a.-d., the court  
147 must dismiss the order and the owner of the vehicle will incur  
148 no costs.

149 (6) A person who violates paragraph (2)(f) shall be  
150 assessed a civil penalty of \$5,000 if the violation results in  
151 any judicial disposition other than acquittal or dismissal. Of  
152 the proceeds from each penalty assessed under this subsection,  
153 the first \$500 shall be paid to the circuit court administrator  
154 for the sole purpose of paying the administrative costs of  
155 treatment-based drug court programs provided under s. 397.334.  
156 The remainder of the penalty assessed shall be deposited in the  
157 Operations and Maintenance Trust Fund of the Department of  
158 Children and Families for the sole purpose of funding safe  
159 houses and safe foster homes as provided in s. 409.1678.

160 Section 2. Subsections (2) and (7) and paragraph (a) of  
161 subsection (8) of section 943.0583, Florida Statutes, are  
162 amended to read:

163 943.0583 Human trafficking victim expunction.—

164 (2) Notwithstanding any other provision of law, upon the  
165 filing of a petition as provided in this section, any court in  
166 the circuit in which the petitioner was arrested ~~the court of~~  
167 original jurisdiction over the crime sought to be expunged may  
168 order a criminal justice agency to expunge the criminal history  
169 record of a victim of human trafficking who complies with the  
170 requirements of this section so long as the court has  
171 jurisdiction over the class of offense or offenses sought to be  
172 expunged. A petition need not be filed in the court where the



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173 petitioner's criminal proceeding or proceedings originally took  
174 place. This section does not confer any right to the expunction  
175 of any criminal history record, and any request for expunction  
176 of a criminal history record may be denied at the discretion of  
177 the court.

178 (7) (a) In judicial proceedings under this section, a copy  
179 of the completed petition to expunge shall be served upon the  
180 appropriate state attorney or the statewide prosecutor and upon  
181 the arresting agency; however, it is not necessary to make any  
182 agency other than the state a party. The appropriate state  
183 attorney or the statewide prosecutor and the arresting agency  
184 may respond to the court regarding the completed petition to  
185 expunge.

186 (b) The petitioner or the petitioner's attorney may appear  
187 at any hearing under this section telephonically, via video  
188 conference, or by other electronic means.

189 (c) The court shall allow an advocate from a state  
190 attorney's office, law enforcement agency, safe house, or safe  
191 foster home as defined in s. 409.1678(1), or a residential  
192 facility offering services to adult victims of human trafficking  
193 to be present with the petitioner during any court proceedings  
194 or hearings under this section, if the petitioner has made such  
195 a request and the advocate is able to be present.

196 (d) ~~(e)~~ If relief is granted by the court, the clerk of the  
197 court shall certify copies of the order to the appropriate state  
198 attorney or the statewide prosecutor and the arresting agency.  
199 The arresting agency is responsible for forwarding the order to  
200 any other agency listed in the court order to which the  
201 arresting agency disseminated the criminal history record



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202 information to which the order pertains. The department shall  
203 forward the order to expunge to the Federal Bureau of  
204 Investigation. The clerk of the court shall certify a copy of  
205 the order to any other agency that the records of the court  
206 reflect has received the criminal history record from the court.

207 (8) (a) Any criminal history record of a minor or an adult  
208 that is ordered expunged ~~by the court of original jurisdiction~~  
209 ~~over the charges sought to be expunged~~ pursuant to this section  
210 must be physically destroyed or obliterated by any criminal  
211 justice agency having custody of such record, except that any  
212 criminal history record in the custody of the department must be  
213 retained in all cases.

214 Section 3. Paragraph (1) of subsection (5) of section  
215 456.074, Florida Statutes, is amended to read:

216 456.074 Certain health care practitioners; immediate  
217 suspension of license.—

218 (5) The department shall issue an emergency order  
219 suspending the license of a massage therapist or establishment  
220 as defined in chapter 480 upon receipt of information that the  
221 massage therapist, a person with an ownership interest in the  
222 establishment, or, for a corporation that has more than \$250,000  
223 of business assets in this state, the owner, officer, or  
224 individual directly involved in the management of the  
225 establishment has been convicted or found guilty of, or has  
226 entered a plea of guilty or nolo contendere to, regardless of  
227 adjudication, a felony offense under any of the following  
228 provisions of state law or a similar provision in another  
229 jurisdiction:

230 (1) Section 796.07(4)(a)3. ~~796.07(4)(e)~~, relating to a



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231 felony of the third degree for a third or subsequent violation  
232 of s. 796.07, relating to prohibiting prostitution and related  
233 acts.

234 Section 4. Paragraph (1) of subsection (7) of section  
235 480.041, Florida Statutes, is amended to read:

236 480.041 Massage therapists; qualifications; licensure;  
237 endorsement.-

238 (7) The board shall deny an application for a new or  
239 renewal license if an applicant has been convicted or found  
240 guilty of, or enters a plea of guilty or nolo contendere to,  
241 regardless of adjudication, a felony offense under any of the  
242 following provisions of state law or a similar provision in  
243 another jurisdiction:

244 (1) Section 796.07(4)(a)3. ~~796.07(4)(e)~~, relating to a  
245 felony of the third degree for a third or subsequent violation  
246 of s. 796.07, relating to prohibiting prostitution and related  
247 acts.

248 Section 5. Paragraph (1) of subsection (8) of section  
249 480.043, Florida Statutes, is amended to read:

250 480.043 Massage establishments; requisites; licensure;  
251 inspection.-

252 (8) The department shall deny an application for a new or  
253 renewal license if a person with an ownership interest in the  
254 establishment or, for a corporation that has more than \$250,000  
255 of business assets in this state, the owner, officer, or  
256 individual directly involved in the management of the  
257 establishment has been convicted or found guilty of, or entered  
258 a plea of guilty or nolo contendere to, regardless of  
259 adjudication, a felony offense under any of the following



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260 provisions of state law or a similar provision in another  
261 jurisdiction:

262 (1) Section 796.07(4)(a)3. ~~796.07(4)(e)~~, relating to a  
263 felony of the third degree for a third or subsequent violation  
264 of s. 796.07, relating to prohibiting prostitution and related  
265 acts.

266 Section 6. This act shall take effect October 1, 2015.

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/SB 1106

INTRODUCER: Appropriations Committee (Recommended by the Appropriations Subcommittee on Criminal and Civil Justice); and Senator Flores

SUBJECT: Human Trafficking

DATE: April 20, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Recommend: Fav/CS</b>
3.	<u>Clodfelter</u>	<u>Kynoch</u>	<u>AP</u>	<b>Fav/CS</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1106 amends section 796.07, Florida Statutes, relating to prostitution, by enhancing the criminal penalties for a person who solicits, induces, entices, or procures another to commit prostitution, lewdness, or assignation as follows:

- A first violation becomes a first degree misdemeanor (currently a second degree misdemeanor);
- A second violation becomes a third degree felony (currently a first degree misdemeanor); and
- A third or subsequent violation becomes a second degree felony (currently a third degree felony).

The bill requires such person to perform 100 hours of community service and to pay for and attend an educational program about the negative effects of prostitution and human trafficking, if one exists. The bill allows a judge to order the offender's vehicle, if one is used in the offense, to be impounded or immobilized for up to 60 days (unless certain exceptions apply).

A person convicted of a second or subsequent solicitation violation under the bill is required to serve a minimum of 10 days in county jail.

The bill also amends section 943.0583, Florida Statutes, relating to human trafficking victim expunction, to require the court to allow an advocate from the state attorney's office, law enforcement agency, safe house or safe foster home, or residential facility offering services to

adult human trafficking victims to be present with the victim/petitioner during any expunction court proceeding.

The Criminal Justice Impact Conference (CJIC) has determined that this bill will result in an insignificant increase in the need for state prison beds.

The bill provides an effective date of October 1, 2015.

## **II. Present Situation:**

### **Prostitution**

The human trafficking statute recognizes that many victims of human trafficking are forced to work in prostitution or the sexual entertainment industry.<sup>1</sup> Prostitution is criminalized in ch. 796, F.S. It is defined as the “giving or receiving of the body for sexual activity<sup>2</sup> for hire but excludes sexual activity between spouses.”<sup>3</sup> Prohibited activities include, among others, soliciting, inducing, enticing, or procuring another to commit prostitution, lewdness<sup>4</sup>, or assignation<sup>5, 6</sup>.

A first solicitation violation is punishable as a second degree misdemeanor<sup>7</sup>, a second violation as a first degree misdemeanor<sup>8</sup>, and a third or subsequent violation as a third degree felony<sup>9</sup> under s. 796.07(4), F.S. A civil penalty of \$5,000 is also required to be assessed, unless the offender is acquitted or the case is dismissed.<sup>10</sup>

Finally, the statute requires that a person who is charged with a third violation be offered admission to a pretrial intervention program or substance abuse treatment program under s. 948.08, F.S.<sup>11</sup>

### **Human Trafficking Victim Expunction**

Section 943.0583, F.S., authorizes a victim of human trafficking to petition the court for an expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed while he or she was a victim of human trafficking.<sup>12</sup> The statute defines “victim of human trafficking” to mean a person subjected to coercion for the purpose of being

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<sup>1</sup> Section 787.06(1)(b), F.S.

<sup>2</sup> Section 796.07(1)(d), F.S., defines “sexual activity” to mean oral, anal, or vaginal penetration by, or union with, the sexual organ of another; anal or vaginal penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation; however, it does not include acts done for bona fide medical purposes.

<sup>3</sup> Section 796.07(1)(a), F.S.

<sup>4</sup> Section 796.07(1)(b), F.S., defines “lewdness” as any indecent or obscene act.

<sup>5</sup> Section 796.07(1)(c), F.S., defines “assignation” as making an appointment or engagement for prostitution or lewdness.

<sup>6</sup> Section 796.07(2)(f), F.S.

<sup>7</sup> Incarceration not exceeding 60 days in county jail and/or a fine not exceeding \$500. Sections 775.082 and 775.083, F.S.

<sup>8</sup> Incarceration not exceeding one year in county jail and/or a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

<sup>9</sup> Imprisonment not exceeding 5 years and/or a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

<sup>10</sup> Section 796.07(6), F.S.

<sup>11</sup> Section 796.07(5), F.S.

<sup>12</sup> “Human trafficking” is defined under s. 787.06(2)(d), F.S., as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.

used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.<sup>13</sup>

The court of original jurisdiction over the crime sought to be expunged is the court designated in the statute to hear the victim's petition.<sup>14</sup> A petition must be initiated by the petitioner with due diligence after the victim has ceased being a victim of human trafficking or has sought human trafficking services.<sup>15</sup> A petition to expunge must be accompanied by the following:

- A sworn statement attesting that the petitioner is eligible for an expunction to the best of his or her knowledge and does not have other petitions to expunge or seal pending before any court; and
- Official documentation of the petitioner's status as a human trafficking victim, if any exists.<sup>16</sup>

The petitioner or the petitioner's attorney is allowed under the statute to appear at the hearing telephonically, via video conference, or by other electronic means.<sup>17</sup>

If the court grants relief to the petitioner, the clerk of the court must certify copies of the expunction order to the appropriate state attorney or statewide prosecutor and the arresting agency. The Florida Department of Law Enforcement (department) is responsible for forwarding the order to expunge to the Federal Bureau of Investigation.<sup>18</sup>

Any criminal justice agency having custody of such record, except the department, must physically destroy the record. Human trafficking victims receiving a record expunction under this statute are lawfully able to deny or fail to acknowledge the covered arrests, except if they are applying for employment with a criminal justice agency or are a defendant in a criminal prosecution.<sup>19</sup>

### **III. Effect of Proposed Changes:**

#### **Prostitution**

The bill amends s. 796.07, F.S., by enhancing the criminal penalties for a person who solicits, induces, entices, or procures another to commit prostitution, lewdness, or assignation as follows:

- A first violation becomes a first degree misdemeanor (currently a second degree misdemeanor);
- A second violation becomes a third degree felony (currently a first degree misdemeanor); and
- A third or subsequent violation becomes a second degree felony<sup>20</sup> (currently a third degree felony).

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<sup>13</sup> Section 943.0583(1)(c), F.S.

<sup>14</sup> Section 943.0583(2), F.S.

<sup>15</sup> Section 943.0583(4), F.S.

<sup>16</sup> Section 943.0583(6), F.S.

<sup>17</sup> Section 943.0583(7) (b), F.S.

<sup>18</sup> Section 943.0583(7)(c), F.S.

<sup>19</sup> Section 943.0583(8), F.S.

<sup>20</sup> Punishable by imprisonment not exceeding 15 years and/or a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

The bill requires such person to perform 100 hours of community service and to pay for and attend an educational program about the negative effects of prostitution and human trafficking, if one exists.

It also requires a person convicted of a second or subsequent solicitation violation to serve a minimum of 10 days in county jail.

The bill prohibits a person who is charged with a third or subsequent solicitation violation from attending a pretrial intervention program or substance abuse program.

The bill also allows a judge to order the offender's vehicle, if one is used in the offense, to be impounded or immobilized for up to 60 days. The order of impoundment or immobilization must include the names and telephone numbers of all immobilization agencies meeting the conditions of s. 316.193(13).<sup>21</sup> Within seven business days after the order is issued, the clerk of the court must send notice by certified mail, return receipt requested, to the registered owner of the vehicle, if the registered owner is a person other than the defendant, and to each person of record claiming a lien against the vehicle.

The owner of the vehicle may request the court to dismiss the order, and the court must dismiss the order, at no cost to the owner, if it finds any of the following to be true:

- The owner's family has no other private or public means of transportation;
- The vehicle was stolen at the time of the offense;
- The owner bought the vehicle after the offense was committed and it was not done to circumvent the order and allow the defendant continued access; or
- The vehicle is owned by the defendant but is operated solely by employees of the defendant or employees of a business owned by the defendant.

If the court denies the request to dismiss the order, the petitioner may request an evidentiary hearing. At that hearing, if the court finds that any of the above circumstances exist, it must dismiss the order, at no cost to the owner.

### **Human Trafficking Victim Expunction**

The bill amends s. 943.0583, F.S., to require the court to allow an advocate from the state attorney's office, law enforcement agency, safe house or safe foster home, or residential facility offering services to adult human trafficking victims to be present with the petitioner during any expunction court proceeding. This requirement only applies if the petitioner requests it and an advocate is available.

The bill also provides that any court in the circuit in which the petitioner was arrested may order expunction of a human trafficking victim's criminal record if the court has jurisdiction over the class of offense or offenses sought to be expunged. Currently, expunction can only be ordered by "the court of original jurisdiction over the crime sought to be expunged."

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<sup>21</sup> These conditions include, among others: having verifiable experience in immobilizing vehicles, maintaining accurate records, and employing persons that meet specified requirements.

Finally, the bill amends ss. 456.074, 480.041, and 480.043, F.S., to make a technical and conforming cross-reference change.

The effective date of the bill is October 1, 2015.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons convicted of soliciting prostitution may be subject to potentially higher fines under CS/SB 1106. Their vehicles may also be subject to immobilization, which could have a positive fiscal impact on immobilization companies.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) met on February 27, 2015, and determined that this bill will result in an increase in the need for state prison beds. However, the impact will be insignificant because of the low volume of offenses.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 796.07 and 943.0583.

The bill makes technical and conforming cross-reference changes to the following sections of the Florida Statutes: 456.074, 480.041, and 480.043.

**IX. Additional Information:**

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

**CS by Appropriations on April 16, 2015:**

The committee substitute amends the bill to provide that any court in the circuit in which a human trafficking victim was arrested may order expungement of the victim's criminal record if the court has jurisdiction over the class of offense or offenses sought to be expunged.

- B. **Amendments:**

None.

By Senator Flores

37-00751A-15

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1 A bill to be entitled  
 2 An act relating to human trafficking; amending s.  
 3 796.07, F.S.; providing enhanced criminal penalties  
 4 for soliciting another to commit prostitution and  
 5 similar offenses; requiring persons convicted of such  
 6 offenses to perform community service and pay for and  
 7 attend an education program; requiring the court to  
 8 impose minimum mandatory terms of incarceration for  
 9 persons convicted two or more times of soliciting  
 10 another to commit prostitution and similar offenses;  
 11 providing for impoundment of a vehicle used in  
 12 soliciting another to commit prostitution and similar  
 13 offenses; providing an opportunity for owners to  
 14 prevent the impoundment or immobilization in certain  
 15 circumstances; amending s. 943.0583, F.S.; providing  
 16 that a circuit court in the circuit in which the  
 17 petitioner was arrested may expunge the criminal  
 18 history record of a victim of human trafficking;  
 19 requiring a judge to allow an advocate to be present  
 20 with a human trafficking victim in an expunction  
 21 hearing in certain circumstances; amending ss.  
 22 456.074, 480.041, and 480.043, F.S.; conforming  
 23 provisions to changes made by the act; providing an  
 24 effective date.

25  
 26 Be It Enacted by the Legislature of the State of Florida:

27  
 28 Section 1. Section 796.07, Florida Statutes, is amended to  
 29 read:

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30 796.07 Prohibiting prostitution and related acts.—  
 31 (1) As used in this section:  
 32 (a) "Prostitution" means the giving or receiving of the  
 33 body for sexual activity for hire but excludes sexual activity  
 34 between spouses.  
 35 (b) "Lewdness" means any indecent or obscene act.  
 36 (c) "Assignment" means the making of any appointment or  
 37 engagement for prostitution or lewdness, or any act in  
 38 furtherance of such appointment or engagement.  
 39 (d) "Sexual activity" means oral, anal, or vaginal  
 40 penetration by, or union with, the sexual organ of another; anal  
 41 or vaginal penetration of another by any other object; or the  
 42 handling or fondling of the sexual organ of another for the  
 43 purpose of masturbation; however, the term does not include acts  
 44 done for bona fide medical purposes.  
 45 (2) It is unlawful:  
 46 (a) To own, establish, maintain, or operate any place,  
 47 structure, building, or conveyance for the purpose of lewdness,  
 48 assignment, or prostitution.  
 49 (b) To offer, or to offer or agree to secure, another for  
 50 the purpose of prostitution or for any other lewd or indecent  
 51 act.  
 52 (c) To receive, or to offer or agree to receive, any person  
 53 into any place, structure, building, or conveyance for the  
 54 purpose of prostitution, lewdness, or assignment, or to permit  
 55 any person to remain there for such purpose.  
 56 (d) To direct, take, or transport, or to offer or agree to  
 57 direct, take, or transport, any person to any place, structure,  
 58 or building, or to any other person, with knowledge or

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59 reasonable cause to believe that the purpose of such directing,  
60 taking, or transporting is prostitution, lewdness, or  
61 assignation.

62 (e) To offer to commit, or to commit, or to engage in,  
63 prostitution, lewdness, or assignation.

64 (f) To solicit, induce, entice, or procure another to  
65 commit prostitution, lewdness, or assignation.

66 (g) To reside in, enter, or remain in, any place,  
67 structure, or building, or to enter or remain in any conveyance,  
68 for the purpose of prostitution, lewdness, or assignation.

69 (h) To aid, abet, or participate in any of the acts or  
70 things enumerated in this subsection.

71 (i) To purchase the services of any person engaged in  
72 prostitution.

73 (3) (a) In the trial of a person charged with a violation of  
74 this section, testimony concerning the reputation of any place,  
75 structure, building, or conveyance involved in the charge,  
76 testimony concerning the reputation of any person residing in,  
77 operating, or frequenting such place, structure, building, or  
78 conveyance, and testimony concerning the reputation of the  
79 defendant is admissible in evidence in support of the charge.

80 (b) Notwithstanding any other provision of law, a police  
81 officer may testify as an offended party in an action regarding  
82 charges filed pursuant to this section.

83 (4) (a) A person who violates any provision of this section,  
84 other than paragraph (2) (f), commits:

85 1. ~~(a)~~ A misdemeanor of the second degree for a first  
86 violation, punishable as provided in s. 775.082 or s. 775.083.

87 2. ~~(b)~~ A misdemeanor of the first degree for a second

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88 violation, punishable as provided in s. 775.082 or s. 775.083.

89 3. ~~(e)~~ A felony of the third degree for a third or  
90 subsequent violation, punishable as provided in s. 775.082, s.  
91 775.083, or s. 775.084.

92 (b) ~~(5)~~ A person who is charged with a third or subsequent  
93 violation of this section, other than paragraph (2) (f), shall be  
94 offered admission to a pretrial intervention program or a  
95 substance abuse treatment program as provided in s. 948.08.

96 (5) (a) A person who violates paragraph (2) (f) commits:

97 1. A misdemeanor of the first degree for a first violation,  
98 punishable as provided in s. 775.082 or s. 775.083.

99 2. A felony of the third degree for a second violation,  
100 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

101 3. A felony of the second degree for a third or subsequent  
102 violation, punishable as provided in s. 775.082, s. 775.083, or  
103 s. 775.084.

104 (b) In addition to any other penalty imposed, the court  
105 shall order a person convicted of a violation of paragraph  
106 (2) (f) to:

107 1. Perform 100 hours of community service; and

108 2. Pay for and attend an educational program about the  
109 negative effects of prostitution and human trafficking, such as  
110 a sexual violence prevention education program, if such program  
111 exists in the judicial circuit in which the offender is  
112 sentenced.

113 (c) In addition to any other penalty imposed, the court  
114 shall sentence a person convicted of a second or subsequent  
115 violation of paragraph (2) (f) to a minimum mandatory period of  
116 incarceration of 10 days.

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117 (d)1. If a person who violates paragraph (2) (f) uses a  
 118 vehicle in the course of the violation, the judge, upon the  
 119 person's conviction, may issue an order for the impoundment or  
 120 immobilization of the vehicle for a period of up to 60 days. The  
 121 order of impoundment or immobilization must include the names  
 122 and telephone numbers of all immobilization agencies meeting all  
 123 of the conditions of s. 316.193(13). Within 7 business days  
 124 after the date that the court issues the order of impoundment or  
 125 immobilization, the clerk of the court must send notice by  
 126 certified mail, return receipt requested, to the registered  
 127 owner of the vehicle, if the registered owner is a person other  
 128 than the defendant, and to each person of record claiming a lien  
 129 against the vehicle.

130 2. The owner of the vehicle may request the court to  
 131 dismiss the order. The court must dismiss the order, and the  
 132 owner of the vehicle will incur no costs, if the owner of the  
 133 vehicle alleges and the court finds to be true any of the  
 134 following:

135 a. The owner's family has no other private or public means  
 136 of transportation;

137 b. The vehicle was stolen at the time of the offense;

138 c. The owner purchased the vehicle after the offense was  
 139 committed, and the sale was not made to circumvent the order and  
 140 allow the defendant continued access to the vehicle; or

141 d. The vehicle is owned by the defendant but is operated  
 142 solely by employees of the defendant or employees of a business  
 143 owned by the defendant.

144 3. If the court denies the request to dismiss the order,  
 145 the petitioner may request an evidentiary hearing. If, at the

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146 evidentiary hearing, the court finds to be true any of the  
 147 circumstances described in sub-subparagraphs 2.a.-d., the court  
 148 must dismiss the order and the owner of the vehicle will incur  
 149 no costs.

150 (6) A person who violates paragraph (2) (f) shall be  
 151 assessed a civil penalty of \$5,000 if the violation results in  
 152 any judicial disposition other than acquittal or dismissal. Of  
 153 the proceeds from each penalty assessed under this subsection,  
 154 the first \$500 shall be paid to the circuit court administrator  
 155 for the sole purpose of paying the administrative costs of  
 156 treatment-based drug court programs provided under s. 397.334.  
 157 The remainder of the penalty assessed shall be deposited in the  
 158 Operations and Maintenance Trust Fund of the Department of  
 159 Children and Families for the sole purpose of funding safe  
 160 houses and safe foster homes as provided in s. 409.1678.

161 Section 2. Subsections (2) and (7) and paragraph (a) of  
 162 subsection (8) of section 943.0583, Florida Statutes, are  
 163 amended to read:

164 943.0583 Human trafficking victim expunction.—

165 (2) Notwithstanding any other provision of law, a circuit  
 166 court in the circuit in which the petitioner was arrested ~~the~~  
 167 ~~court of original jurisdiction over the crime sought to be~~  
 168 ~~expunged~~ may order a criminal justice agency to expunge the  
 169 criminal history record of a victim of human trafficking who  
 170 complies with the requirements of this section. This section  
 171 does not confer any right to the expunction of any criminal  
 172 history record, and any request for expunction of a criminal  
 173 history record may be denied at the discretion of the court.

174 (7) (a) In judicial proceedings under this section, a copy

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175 of the completed petition to expunge shall be served upon the  
 176 appropriate state attorney or the statewide prosecutor and upon  
 177 the arresting agency; however, it is not necessary to make any  
 178 agency other than the state a party. The appropriate state  
 179 attorney or the statewide prosecutor and the arresting agency  
 180 may respond to the court regarding the completed petition to  
 181 expunge.

182 (b) The petitioner or the petitioner's attorney may appear  
 183 at any hearing under this section telephonically, via video  
 184 conference, or by other electronic means.

185 (c) The court shall allow an advocate from a state  
 186 attorney's office, law enforcement agency, safe house, or safe  
 187 foster home as defined in s. 409.1678(1), or a residential  
 188 facility offering services to adult victims of human trafficking  
 189 to be present with the petitioner during any court proceedings  
 190 or hearings under this section, if the petitioner has made such  
 191 a request and the advocate is able to be present.

192 (d) (e) If relief is granted by the court, the clerk of the  
 193 court shall certify copies of the order to the appropriate state  
 194 attorney or the statewide prosecutor and the arresting agency.  
 195 The arresting agency is responsible for forwarding the order to  
 196 any other agency listed in the court order to which the  
 197 arresting agency disseminated the criminal history record  
 198 information to which the order pertains. The department shall  
 199 forward the order to expunge to the Federal Bureau of  
 200 Investigation. The clerk of the court shall certify a copy of  
 201 the order to any other agency that the records of the court  
 202 reflect has received the criminal history record from the court.

203 (8) (a) Any criminal history record of a minor or an adult

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204 that is ordered expunged ~~by the court of original jurisdiction~~  
 205 ~~over the charges sought to be expunged~~ pursuant to this section  
 206 must be physically destroyed or obliterated by any criminal  
 207 justice agency having custody of such record, except that any  
 208 criminal history record in the custody of the department must be  
 209 retained in all cases.

210 Section 3. Paragraph (1) of subsection (5) of section  
 211 456.074, Florida Statutes, is amended to read:

212 456.074 Certain health care practitioners; immediate  
 213 suspension of license.—

214 (5) The department shall issue an emergency order  
 215 suspending the license of a massage therapist or establishment  
 216 as defined in chapter 480 upon receipt of information that the  
 217 massage therapist, a person with an ownership interest in the  
 218 establishment, or, for a corporation that has more than \$250,000  
 219 of business assets in this state, the owner, officer, or  
 220 individual directly involved in the management of the  
 221 establishment has been convicted or found guilty of, or has  
 222 entered a plea of guilty or nolo contendere to, regardless of  
 223 adjudication, a felony offense under any of the following  
 224 provisions of state law or a similar provision in another  
 225 jurisdiction:

226 (1) Section 796.07(4)(a)3. ~~796.07(4)(e)~~, relating to a  
 227 felony of the third degree for a third or subsequent violation  
 228 of s. 796.07, relating to prohibiting prostitution and related  
 229 acts.

230 Section 4. Paragraph (1) of subsection (7) of section  
 231 480.041, Florida Statutes, is amended to read:

232 480.041 Massage therapists; qualifications; licensure;

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233 endorsement.-

234 (7) The board shall deny an application for a new or  
 235 renewal license if an applicant has been convicted or found  
 236 guilty of, or enters a plea of guilty or nolo contendere to,  
 237 regardless of adjudication, a felony offense under any of the  
 238 following provisions of state law or a similar provision in  
 239 another jurisdiction:

240 (1) Section 796.07(4)(a)3. ~~796.07(4)(e)~~, relating to a  
 241 felony of the third degree for a third or subsequent violation  
 242 of s. 796.07, relating to prohibiting prostitution and related  
 243 acts.

244 Section 5. Paragraph (1) of subsection (8) of section  
 245 480.043, Florida Statutes, is amended to read:

246 480.043 Massage establishments; requisites; licensure;  
 247 inspection.-

248 (8) The department shall deny an application for a new or  
 249 renewal license if a person with an ownership interest in the  
 250 establishment or, for a corporation that has more than \$250,000  
 251 of business assets in this state, the owner, officer, or  
 252 individual directly involved in the management of the  
 253 establishment has been convicted or found guilty of, or entered  
 254 a plea of guilty or nolo contendere to, regardless of  
 255 adjudication, a felony offense under any of the following  
 256 provisions of state law or a similar provision in another  
 257 jurisdiction:

258 (1) Section 796.07(4)(a)3. ~~796.07(4)(e)~~, relating to a  
 259 felony of the third degree for a third or subsequent violation  
 260 of s. 796.07, relating to prohibiting prostitution and related  
 261 acts.

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262 Section 6. This act shall take effect October 1, 2015.

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The Florida Senate

## Committee Agenda Request

**To:** Senator Tom Lee, Chair  
Committee on Appropriations

**Subject:** Committee Agenda Request

**Date:** April 9, 2015

---

I respectfully request that **Senate Bill #1106**, relating to Human Trafficking, be placed on the:

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

*Anitere Flores*

Senator Anitere Flores  
Florida Senate, District 37

SENATE APPROPRIATIONS  
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15 APR -9 PM 4:55  
STAFF DIR. STAFF

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-16-15  
Meeting Date

1106  
Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Erin Choy

Job Title Chair-Elect

Address 404 E. Sixth Ave

Phone (888) 550-4133

Street

Tallahassee

FL

32303

City

State

Zip

Email echoy@nationalstrategies.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Union Leagues of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/16/15

Meeting Date

1106

Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate for Social Concerns & Respect Life

Address 201 W Park

Phone

Street

Tallahassee

State

Zip

Email

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Conference of Catholic Bishops

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

---

Prepared By: The Professional Staff of the Committee on Appropriations

---

BILL: CS/SB 1108

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Flores

SUBJECT: Public Records/Identity of a Victim of Human Trafficking Offenses

DATE: April 15, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	<b>Favorable</b>
2.	Kim	McVaney	GO	<b>Fav/CS</b>
3.	Shettle	Kynoch	AP	<b>Favorable</b>

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1108 expands the current public records exemption for certain criminal intelligence and criminal investigative information to include identifying information of a child victim of human trafficking for labor or services, as well as any victim of human trafficking for commercial sexual activity.

The bill also creates a public record exemption for this newly described criminal intelligence or investigative information relating to human trafficking victims that is expunged or ordered expunged under section 943.0583, Florida Statutes.

The bill provides for repeal of the exemptions on October 2, 2020, pursuant to the Open Government Sunset Review Act, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

This bill expands an existing public record exemption and creates a new one; therefore, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill has no discernable fiscal impact.

The bill provides an effective date of October 1, 2015.

## II. Present Situation:

### Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.<sup>1</sup> The records of the legislative, executive, and judicial branches are specifically included in the Florida Constitution.<sup>2</sup>

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act<sup>3</sup> guarantees every person's right to inspect and copy any state or local government public record<sup>4</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>5</sup>

Only the Legislature may create an exemption to public records requirements.<sup>6</sup> Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>7</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions<sup>8</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>9</sup>

### Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records or open

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> *Id.*

<sup>3</sup> Chapter 119, F.S.

<sup>4</sup> Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

<sup>5</sup> Section 119.07(1)(a), F.S.

<sup>6</sup> FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

<sup>7</sup> FLA. CONST., art. I, s. 24(c).

<sup>8</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

meetings exemptions.<sup>10</sup> The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>11</sup>

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>12</sup> An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>13</sup>
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>14</sup> or
- It protects trade or business secrets.<sup>15</sup>

The OGSR also requires specified questions to be considered during the review process.<sup>16</sup> In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>17</sup> If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless otherwise provided for by law.<sup>18</sup>

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<sup>10</sup> Section 119.15, F.S. Section 119.15(4)(b), F.S. provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

<sup>11</sup> Section 119.15(3), F.S.

<sup>12</sup> Section 119.15(6)(b), F.S.

<sup>13</sup> Section 119.15(6)(b)1., F.S.

<sup>14</sup> Section 119.15(6)(b)2., F.S.

<sup>15</sup> Section 119.15(6)(b)3., F.S.

<sup>16</sup> Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?  
If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>17</sup> FLA. CONST., art. I, s. 24(c).

<sup>18</sup> Section 119.15(7), F.S.

## Public Record Exemption for Investigation Information

Section 119.071(2)(h), F.S., provides that specified criminal intelligence information<sup>19</sup> or criminal investigative information<sup>20,21</sup> is confidential and exempt from public records requirements, including the following:

- Any information, including the photograph, name, address, or other fact, which reveals the identity of the victim of the crime of child abuse as defined by ch. 827, F.S. (child abuse);
- Any information, which may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in ch. 794, F.S. (sexual battery), ch. 796, F.S. (prostitution), ch. 800, F.S. (lewdness and indecent exposure), ch. 827, F.S. (abuse of children), or ch. 847, F.S. (obscenity); and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under ch. 794, F.S. (sexual battery), ch. 796, F.S. (prostitution), ch. 800, F.S. (lewdness and indecent exposure), s. 810.145, F.S. (video voyeurism), ch. 827, F.S. (child abuse), or ch. 847, F.S. (obscenity), regardless of whether the photograph, videotape, or image identifies the victim.<sup>22</sup>

This confidential and exempt criminal investigative and criminal intelligence information may be disclosed by a law enforcement agency in specified instances, including:

- In the furtherance of its official duties and responsibilities;
- For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered;<sup>23</sup> or
- To another governmental agency in the furtherance of its official duties and responsibilities.

<sup>19</sup> Section 119.011(3)(a), F.S., defines “criminal intelligence information” to mean information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.

<sup>20</sup> Section 119.011(3)(b), F.S., defines “criminal investigative information” to mean information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

<sup>21</sup> Section 119.011(3)(c), F.S., provides “criminal intelligence information” and “criminal investigative information” shall not include:

- The time, date, location, and nature of a reported crime.
- The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.071(2)(h), F.S.
- The time, date, and location of the incident and of the arrest.
- The crime charged.
- Documents given or required by law or agency rule to be given to the person arrested, except as provided in s. 119.071(2)(h), F.S., and, except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the provisions of s. 119.071(1), F.S., until released at trial if it is found that the release of such information would:
  - Be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness; and
  - Impair the ability of a state attorney to locate or prosecute a codefendant.
- Informations and indictments except as provided in s. 905.26, F.S.

<sup>22</sup> Section 119.071(2)(h)3., F.S., requires the exemption to apply to confidential and exempt criminal intelligence and criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

<sup>23</sup> Section 119.071(2)(h)2.b., F.S., provides the information disclosed should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.

### **Public Record Exemption for Expunged Criminal History Records**

A criminal history record of a minor or an adult that is ordered expunged must be physically destroyed by any criminal justice agency having custody of such record, with the exception of the Florida Department of Law Enforcement (FDLE), which must retain criminal history records in all cases.<sup>24</sup> Current law provides that a criminal history record ordered expunged that is retained by the FDLE is confidential and exempt from public records requirements, and is not available to any person or entity except upon order of the court with jurisdiction.<sup>25</sup>

In addition, information relating to the existence of an expunged criminal history record is confidential and exempt from public record requirements; however, the FDLE must disclose the existence of such record to specified entities for their respective licensing, access authorization, and employment purposes as well as to criminal justice agencies for their respective criminal justice purposes.<sup>26</sup> Disclosure of the existence of such record to unauthorized persons is a first degree misdemeanor.<sup>27</sup>

### **Human Trafficking**

Human trafficking is defined as “transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.”<sup>28</sup> The human trafficking statute, s. 787.06, F.S., states that the Legislature finds that this crime is a form of modern-day slavery and that victims of human trafficking include young children, teenagers, and adults. These victims are subjected to force, fraud, or coercion so they can become forced labor or be sexually exploited.<sup>29</sup>

### **Human Trafficking Victim Expunction/Public Record Exemption**

Section 943.0583, F.S., authorizes a victim of human trafficking to petition the court for an expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed while he or she was a victim of human trafficking. The statute defines “victim of human trafficking” to mean a person subjected to coercion for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.<sup>30</sup>

The court of original jurisdiction over the crime desired to be expunged is the court designated in the statute to hear the victim’s petition.<sup>31</sup> A petition must be initiated by the petitioner with due

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<sup>24</sup> Section 943.0585(4), F.S.

<sup>25</sup> *Id.*

<sup>26</sup> Section 943.0585(4)(c), F.S.

<sup>27</sup> *Id.* A first degree misdemeanor is punishable by serving up to one year in county jail and/or paying a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

<sup>28</sup> Section 787.06(2)(d), F.S.

<sup>29</sup> Section 787.06(1)(a), F.S.

<sup>30</sup> Section 943.0583(1)(c), F.S.

<sup>31</sup> Section 943.0583(2), F.S.

diligence after the victim has ceased being a victim of human trafficking or has sought human trafficking services.<sup>32</sup> A petition to expunge must be accompanied by the following:

- A sworn statement attesting that the petitioner is eligible for an expunction to the best of his or her knowledge and does not have other petitions to expunge or seal pending before any court; and
- Official documentation of the petitioner's status as a human trafficking victim, if any exists.<sup>33</sup>

The petitioner or the petitioner's attorney is allowed under the statute to appear at the hearing telephonically, via video conference, or by other electronic means.<sup>34</sup>

If the court grants relief to the petitioner, the clerk of the court must certify copies of the expunction order to the appropriate state attorney or statewide prosecutor and the arresting agency. The FDLE is responsible for forwarding the order to expunge to the Federal Bureau of Investigation.<sup>35</sup>

Any criminal justice agency having custody of such record, except the FDLE, must physically destroy the record. Human trafficking victims receiving a record expunction under this statute are lawfully able to deny or fail to acknowledge the covered arrests, except if they are applying for employment with a criminal justice agency or are a defendant in a criminal prosecution.<sup>36</sup>

A criminal history record ordered expunged under this section that is retained by the FDLE is confidential and exempt from public record requirements and can only be made available to criminal justice agencies for their respective criminal justice purposes and to any governmental agency that is authorized to determine eligibility to buy or possess a firearm or to carry a concealed firearm for use in the course of such agency's official duties. A criminal justice agency may retain a notation indicating compliance with an order to expunge. The exemption is repealed on October 2, 2018, unless reviewed and reenacted by the Legislature.<sup>37</sup>

### III. Effect of Proposed Changes:

The bill expands the current public records exemption for certain criminal intelligence and criminal investigative information that is confidential and exempt under s. 119.071(2)(h), F.S., to include the following:

- Any information that reveals the identity of a person under 18 who is the victim of human trafficking for labor or services under s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is the victim of human trafficking for commercial sexual activity under s. 787.06(3)(b), (d), (f), or (g), F.S.; and
- Any photograph, videotape, or image of a body part of a victim of human trafficking involving commercial sexual activity under s. 787.06(3)(b), (d), (f), or (g), F.S.

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<sup>32</sup> Section 943.0583(4), F.S.

<sup>33</sup> Section 943.0583(6), F.S.

<sup>34</sup> Section 943.0583(7)(b), F.S.

<sup>35</sup> Section 943.0583(7)(c), F.S.

<sup>36</sup> Section 943.0583(8), F.S.

<sup>37</sup> Section 943.0583(10), F.S.

The bill also creates a public record exemption under s. 943.0583, F.S. The new exemption makes confidential and exempt from public disclosure any criminal intelligence information or criminal investigative information that reveals the identity of victim of human trafficking whose criminal history has been expunged. The exemption also applies to criminal intelligence information or criminal investigative information that may reveal the identity of a victim of human trafficking whose criminal history been ordered to be expunged.

The exempted information may be disclosed by a law enforcement agency as follows:

- In the furtherance of its official duties and responsibilities;
- For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered;<sup>38</sup> or
- To another governmental agency in the furtherance of its official duties and responsibilities.

The exemption applies to information held by a law enforcement agency before, on, or after the effective date of the exemption.

The bill provides a statement of public necessity as required by the Florida Constitution.

The bill also provides for repeal of the exemptions on October 2, 2020, unless reviewed and reenacted by the Legislature.

The act will become effective on October 1, 2015.

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

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

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

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

###### **Vote Requirement**

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands and creates a public record exemption; thus, it requires a two-thirds vote for final passage.

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<sup>38</sup> See Note 17.

**Public Necessity Statement**

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands and creates a public record exemption; thus, it includes a public necessity statement.

**Breadth of Exemption**

Article I, s. 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands a public record exemption limited to certain criminal intelligence and criminal investigative information relating to human trafficking and it creates a public record exemption limited to such information that has been ordered expunged. The exemption appears to be no broader than necessary to accomplish its stated purpose.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

CS SB 1108 does not exempt criminal intelligence and investigative information related to an adult or child who is an unauthorized alien and a victim of human trafficking for labor or services under s. 787.06(3)(c), F.S. It is not clear why this category of people are excluded from the exemption since unauthorized aliens who are trafficked for commercial sexual activity under 787.06(3)(d), F.S., are included in that exemption.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 119.071 and 943.0583.

**IX. Additional Information:**

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

**CS by Governmental Oversight and Accountability on March 31, 2015:**

The CS removes the contingent effective date which linked the bill to the enactment of SB 1106 and provides an effective date.

- B. **Amendments:**

None.

By the Committee on Governmental Oversight and Accountability;  
and Senator Flores

585-03193-15

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1 A bill to be entitled  
2 An act relating to public records; amending s.  
3 119.071, F.S.; revising an exemption from public  
4 records requirements for certain criminal intelligence  
5 and investigative information to exempt information  
6 that reveals the identity of a victim of certain human  
7 trafficking offenses; amending s. 943.0583, F.S.;  
8 providing an exemption from public records  
9 requirements for investigative information relating to  
10 criminal history records of human trafficking victims  
11 that have been ordered expunged; providing for future  
12 legislative review and repeal of the exemption;  
13 providing a statement of public necessity; providing  
14 an effective date.  
15  
16 Be It Enacted by the Legislature of the State of Florida:  
17  
18 Section 1. Paragraph (h) of subsection (2) of section  
19 119.071, Florida Statutes, is amended to read:  
20 119.071 General exemptions from inspection or copying of  
21 public records.—  
22 (2) AGENCY INVESTIGATIONS.—  
23 (h)1. The following criminal intelligence information or  
24 criminal investigative information is confidential and exempt  
25 from s. 119.07(1) and s. 24(a), Art. I of the State  
26 Constitution:  
27 a. Any information ~~that, including the photograph, name,~~  
28 ~~address, or other fact, which~~ reveals the identity of the victim  
29 of the crime of child abuse as defined by chapter 827 or that

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30 reveals the identity of a person under the age of 18 who is the  
31 victim of the crime of human trafficking proscribed in s.  
32 787.06(3) (a).  
33 b. Any information ~~that~~ ~~which~~ may reveal the identity of a  
34 person who is a victim of any sexual offense, including a sexual  
35 offense proscribed in s. 787.06(3) (b), (d), (f), or (g), chapter  
36 794, chapter 796, chapter 800, chapter 827, or chapter 847.  
37 c. A photograph, videotape, or image of any part of the  
38 body of the victim of a sexual offense prohibited under s.  
39 787.06(3) (b), (d), (f), or (g), chapter 794, chapter 796,  
40 chapter 800, s. 810.145, chapter 827, or chapter 847, regardless  
41 of whether the photograph, videotape, or image identifies the  
42 victim.  
43 2. Criminal investigative information and criminal  
44 intelligence information made confidential and exempt under this  
45 paragraph may be disclosed by a law enforcement agency:  
46 a. In the furtherance of its official duties and  
47 responsibilities.  
48 b. For print, publication, or broadcast if the law  
49 enforcement agency determines that such release would assist in  
50 locating or identifying a person that such agency believes to be  
51 missing or endangered. The information provided should be  
52 limited to that needed to identify or locate the victim and not  
53 include the sexual nature of the offense committed against the  
54 person.  
55 c. To another governmental agency in the furtherance of its  
56 official duties and responsibilities.  
57 3. This exemption applies to such confidential and exempt  
58 criminal intelligence information or criminal investigative

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59 information held by a law enforcement agency before, on, or  
60 after the effective date of the exemption.

61 4. This paragraph is subject to the Open Government Sunset  
62 Review Act in accordance with s. 119.15, and shall stand  
63 repealed on October 2, ~~2020~~ ~~2016~~, unless reviewed and saved from  
64 repeal through reenactment by the Legislature.

65 Section 2. Subsection (11) is added to section 943.0583,  
66 Florida Statutes, to read:

67 943.0583 Human trafficking victim expunction.—

68 (11) (a) The following criminal intelligence information or  
69 criminal investigative information is confidential and exempt  
70 from s. 119.07(1) and s. 24(a), Art. I of the State  
71 Constitution:

72 1. Any information that reveals the identity of a person  
73 who is a victim of human trafficking whose criminal history  
74 record has been expunged under this section.

75 2. Any information that may reveal the identity of a person  
76 who is a victim of human trafficking whose criminal history  
77 record has been ordered expunged under this section.

78 (b) Criminal investigative information and criminal  
79 intelligence information made confidential and exempt under this  
80 subsection may be disclosed by a law enforcement agency:

81 1. In the furtherance of its official duties and  
82 responsibilities.

83 2. For print, publication, or broadcast if the law  
84 enforcement agency determines that such release would assist in  
85 locating or identifying a person that the agency believes to be  
86 missing or endangered. The information provided should be  
87 limited to that needed to identify or locate the victim.

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88 3. To another governmental agency in the furtherance of its  
89 official duties and responsibilities.

90 (c) This exemption applies to such confidential and exempt  
91 criminal intelligence information or criminal investigative  
92 information held by a law enforcement agency before, on, or  
93 after the effective date of the exemption.

94 (d) This subsection is subject to the Open Government  
95 Sunset Review Act in accordance with s. 119.15 and shall stand  
96 repealed on October 2, 2020, unless reviewed and saved from  
97 repeal through reenactment by the Legislature.

98 Section 3. The Legislature finds that it is a public  
99 necessity to make confidential and exempt from public records  
100 requirements certain criminal intelligence information or  
101 criminal investigative information that reveals the identity of  
102 a victim of the crime of human trafficking of a minor for labor  
103 or any victim of human trafficking for commercial sexual  
104 activity. The Legislature finds that it is important to  
105 strengthen the protections afforded victims of human trafficking  
106 for labor who are minors and victims of human trafficking for  
107 commercial sexual activity, regardless of age, in order to  
108 ensure their privacy and to prevent their revictimization by  
109 making such information confidential and exempt. The identity of  
110 these victims is information of a sensitive personal nature. As  
111 such, this exemption serves to minimize the trauma to victims  
112 because the release of such information would compound the  
113 tragedy already visited upon their lives and would be defamatory  
114 to or cause unwarranted damage to the good name or reputation of  
115 the victims. Protecting the release of identifying information  
116 of such victims protects them from further embarrassment,

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117 harassment, or injury. The Legislature also finds that it is a  
118 public necessity that information in the investigative or  
119 intelligence records related to a criminal history record  
120 ordered expunged under s. 943.0583, Florida Statutes, which  
121 would or could reasonably be expected to reveal the identity of  
122 a person who is a victim of human trafficking whose criminal  
123 history record has been ordered expunged under s. 943.0583,  
124 Florida Statutes, be made confidential and exempt from s.  
125 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
126 State Constitution. Persons who are victims of human trafficking  
127 and who have been charged with crimes allegedly committed at the  
128 behest of their traffickers are themselves victims of crimes.  
129 Such victims face barriers to employment and other life  
130 opportunities as long as these criminal charges remain on record  
131 and accessible to potential employers and others. Therefore, it  
132 is necessary that these records be made confidential and exempt  
133 in order for human trafficking victims to have the chance to  
134 rebuild their lives and reenter society.

135 Section 4. This act shall take effect October 1, 2015.



The Florida Senate

## Committee Agenda Request

**To:** Senator Tom Lee, Chair  
Committee on Appropriations

**Subject:** Committee Agenda Request

**Date:** April 1, 2015

---

I respectfully request that **Senate Bill #1108**, relating to Pub. Rec. / Human Trafficking Victims, be placed on the:

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

*Anitere Flores*

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Senator Anitere Flores  
Florida Senate, District 37

SENATE APPROPRIATIONS  
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SENATE CHAIRMAN  
STAFF DIR. \_\_\_\_\_  
STAFF \_\_\_\_\_

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/16/15

Meeting Date

1108

Bill Number (if applicable)

Topic Public Records / Victims of Human Traff. Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate for Social Concerns & Respect Life

Address 201 W Park Phone \_\_\_\_\_  
Street

Tallahassee Email \_\_\_\_\_  
City State Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Conference of Catholic Bishops

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4-16-15

Meeting Date

1108

Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Erin Choy

Job Title Chair - Elect

Address 404 E. Sixth Ave

Phone (850) 560-4133

Street

Ft Lauderdale

FL

32303

Email echoy@nationalstrategies.com

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Junior Leagues of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/16/2015

Meeting Date

Topic \_\_\_\_\_ Bill Number 1108 (if applicable)

Name BRIAN PITTS Amendment Barcode \_\_\_\_\_ (if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291

*Street*

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM

*City State Zip*

Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

*part of the public record for this meeting.*

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

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

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Prepared By: The Professional Staff of the Committee on Appropriations

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**BILL:** CS/SB 1110

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

**SUBJECT:** Public Records/Residential Facilities Serving Victims of Sexual Exploitation and Human Trafficking

**DATE:** April 15, 2015      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<b>Fav/CS</b>
3.	<u>Shettle</u>	<u>Kynoch</u>	<u>AP</u>	<b>Favorable</b>

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 1110 makes confidential and exempt from public disclosure the location information of a safe house, safe foster home, or other residential facility serving child victims of sexual exploitation. It also makes confidential and exempt the location information of a residential facility offering services for adult victims of human trafficking involving commercial sexual activity.

The exempted location information can be disclosed to an agency as necessary to maintain health and safety standards or to address emergency situations in the safe house or residential facility.

The bill provides for repeal of the exemptions on October 2, 2020, pursuant to the Open Government Sunset Review Act, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

Since the bill creates two public records exemptions, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill has no discernable fiscal impact.

The bill provides an effective date of October 1, 2015.

## II. Present Situation:

### Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.<sup>1</sup> The records of the legislative, executive, and judicial branches are specifically included in the Florida Constitution.<sup>2</sup>

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act<sup>3</sup> guarantees every person's right to inspect and copy any state or local government public record<sup>4</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>5</sup>

Only the Legislature may create an exemption to public records requirements.<sup>6</sup> Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>7</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions<sup>8</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>9</sup>

### Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records or open

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> *Id.*

<sup>3</sup> Chapter 119, F.S.

<sup>4</sup> Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

<sup>5</sup> Section 119.07(1)(a), F.S.

<sup>6</sup> FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

<sup>7</sup> FLA. CONST., art. I, s. 24(c).

<sup>8</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

meetings exemptions.<sup>10</sup> The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>11</sup>

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>12</sup> An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>13</sup>
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>14</sup> or
- It protects trade or business secrets.<sup>15</sup>

The OGSR also requires specified questions to be considered during the review process.<sup>16</sup> In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>17</sup> If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless otherwise provided for by law.<sup>18</sup>

### **Residential Facilities Serving Victims of Sexual Exploitation and Human Trafficking**

Human trafficking is defined as “transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that

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<sup>10</sup> Section 119.15, F.S. Section 119.15(4)(b), F.S. provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

<sup>11</sup> Section 119.15(3), F.S.

<sup>12</sup> Section 119.15(6)(b), F.S.

<sup>13</sup> Section 119.15(6)(b)1., F.S.

<sup>14</sup> Section 119.15(6)(b)2., F.S.

<sup>15</sup> Section 119.15(6)(b)3., F.S.

<sup>16</sup> Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?  
If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>17</sup> FLA. CONST., art. I, s. 24(c).

<sup>18</sup> Section 119.15(7), F.S.

person.”<sup>19</sup> The human trafficking statute, s. 787.06, F.S., states that the Legislature finds that this crime is a form of modern-day slavery and that victims of human trafficking include young children, teenagers, and adults. These victims are subjected to force, fraud, or coercion so they can become forced labor or be sexually exploited.<sup>20</sup> The statute also expresses legislative intent that the Department of Children and Families (DCF) and other state agencies cooperate with other state and federal agencies to ensure that these victims can access social services and benefits to alleviate their plight.<sup>21</sup>

Section 409.1678, F.S., provides specialized residential options for children who are victims of sexual exploitation<sup>22</sup> to include safe foster homes and safe houses. A “safe foster home” is a foster home certified by the DCF to care for sexually exploited children.<sup>23</sup> A “safe house” is a group residential placement certified by the DCF to also care for sexually exploited children.<sup>24</sup> To be certified, a safe foster home must hold a license as a family foster home, and a safe house must hold a license as a residential child-caring agency, both defined under s. 409.175, F.S.<sup>25</sup>

These residential facilities must also do the following to be designated a safe foster home or safe house under the statute: use strength-based and trauma-informed approaches to care; serve exclusively one sex; group sexually exploited children by age or maturity level; care for them in a way that separates them from children with other needs; have awake staff members on duty 24 hours a day; provide appropriate security; and meet all other department criteria.<sup>26</sup>

There are traditional residential facilities that serve both children and adult victims of sexual exploitation, but if these facilities serve adults, they cannot be designated a safe foster home or safe house under s. 409.1678, F.S.

### **III. Effect of Proposed Changes:**

The bill creates a new public records exemption for facilities that serve children and adults who are victims of sexual exploitation and trafficking. The bill makes confidential and exempt from public records the location information of a safe house, safe foster home, or other residential facility serving child victims of sexual exploitation. It also makes confidential and exempt from public disclosure the location information of a residential facility offering services for adult victims of human trafficking involving commercial sexual activity.

The bill allows the exempted location information to be disclosed to an agency as necessary to maintain health and safety standards or to address emergency situations in the safe house or residential facility. This may be problematic if an agency needs to disclose the location information for any other purpose since confidential and exempt information can only be

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<sup>19</sup> Section 787.06(2)(d), F.S.

<sup>20</sup> Section 787.06(1)(a), F.S.

<sup>21</sup> Section 787.06(1)(d), F.S.

<sup>22</sup> Defined in part, to include allowing, encouraging, or forcing a child to participate in the trade of human trafficking for commercial sexual activity. Section 39.01(69)(g)3., F.S.

<sup>23</sup> Section 409.1678(1)(a), F.S.

<sup>24</sup> Section 409.1678(1)(b), F.S.

<sup>25</sup> Section 409.1678(2)(c), F.S.

<sup>26</sup> *Id.*

released pursuant to statute or by a court order. However, since this exemption only applies to agencies, the victim may reveal his or her location if the need arose.

The bill provides a statement of public necessity as required by the Florida Constitution.

The bill also provides for repeal of the exemptions on October 2, 2020, unless reviewed and reenacted by the Legislature, pursuant to the OGSR.

The bill provides an effective date of October 1, 2015.

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

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

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

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

###### **Vote Requirement**

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates two public records exemptions and it requires a two-thirds vote for final passage.

###### **Public Necessity Statement**

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates two public records exemptions and it includes a public necessity statement.

###### **Breadth of Exemption**

Article I, s. 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates two limited public records exemptions: one exempts the location information of safe houses, safe foster homes, and other residential facilities serving child victims of sexual exploitation and the other exempts the location information of residential facilities for adult victims of human trafficking involving commercial sexual activity. These exemptions are not broader than necessary to accomplish their purpose.

##### **C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill does not include a retroactivity clause, therefore the exemption would only apply prospectively. Any location information held by an agency before this bill goes into effect will remain public.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 409.1678 and 787.06.

**IX. Additional Information:**

## A. Committee Substitute – Statement of Changes:

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

**CS by Governmental Oversight and Accountability on March 31, 2015:**

The CS removes the contingent effective date which linked the bill to the enactment of SB 1106 and adds an effective date.

## B. Amendments:

None.

By the Committee on Governmental Oversight and Accountability;  
and Senator Flores

585-03194-15

20151110c1

1 A bill to be entitled  
2 An act relating to public records; amending s.  
3 409.1678, F.S.; providing an exemption from public  
4 records requirements for information held by an agency  
5 about the location of safe houses, safe foster homes,  
6 and other residential facilities serving victims of  
7 sexual exploitation; providing for future legislative  
8 review and repeal of the exemption; amending s.  
9 787.06, F.S.; providing an exemption from public  
10 records requirements for information held by an agency  
11 about the location of residential facilities serving  
12 adult victims of human trafficking involving  
13 commercial sexual activity; providing for future  
14 legislative review and repeal of the exemption;  
15 providing a statement of public necessity; providing  
16 an effective date.

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

19  
20 Section 1. Subsection (6) is added to section 409.1678,  
21 Florida Statutes, to read:

22 409.1678 Specialized residential options for children who  
23 are victims of sexual exploitation.—

24 (6) (a) LOCATION INFORMATION.—Information about the location  
25 of a safe house, safe foster home, or other residential facility  
26 serving children who are victims of sexual exploitation, as  
27 defined in s. 39.01(69)(g), which is held by an agency, as  
28 defined in s. 119.011, is confidential and exempt from s.  
29 119.07(1) and s. 24(a), Art. I of the State Constitution.

Page 1 of 4

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

585-03194-15

20151110c1

30 (b) Information about the location of a safe house, safe  
31 foster home, or other residential facility serving children who  
32 are victims of sexual exploitation, as defined in s.  
33 39.01(69)(g), may be provided to an agency, as defined in s.  
34 119.011, as necessary to maintain health and safety standards  
35 and to address emergency situations in the safe house, safe  
36 foster home, or other residential facility.

37 (c) This subsection is subject to the Open Government  
38 Sunset Review Act in accordance with s. 119.15 and shall stand  
39 repealed on October 2, 2020, unless reviewed and saved from  
40 repeal through reenactment by the Legislature.

41 Section 2. Subsection (9) is added to section 787.06,  
42 Florida Statutes, to read:

43 787.06 Human trafficking.—

44 (9) (a) Information about the location of a residential  
45 facility offering services for adult victims of human  
46 trafficking involving commercial sexual activity, which is held  
47 by an agency, as defined in s. 119.011, is confidential and  
48 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
49 Constitution.

50 (b) Information about the location of a residential  
51 facility offering services for adult victims of human  
52 trafficking involving commercial sexual activity may be provided  
53 to an agency, as defined in s. 119.011, as necessary to maintain  
54 health and safety standards and to address emergency situations  
55 in the residential facility.

56 (c) This subsection is subject to the Open Government  
57 Sunset Review Act in accordance with s. 119.15 and shall stand  
58 repealed on October 2, 2020, unless reviewed and saved from

Page 2 of 4

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585-03194-15

20151110c1

59 repeal through reenactment by the Legislature.  
 60 Section 3. The Legislature finds that it is a public  
 61 necessity that information about the location of safe houses,  
 62 safe foster homes, and other residential facilities serving  
 63 children who are victims of sexual exploitation, as defined in  
 64 s. 39.01(69)(g), Florida Statutes, or adult victims of human  
 65 trafficking involving commercial sexual activity, held by an  
 66 agency, as defined in s. 119.011, Florida Statutes, be made  
 67 confidential and exempt from s. 119.07(1), Florida Statutes, and  
 68 s. 24(a), Article I of the State Constitution. Safe houses, safe  
 69 foster homes, and other residential facilities serving victims  
 70 of sexual exploitation, as defined in s. 39.01(69)(g), Florida  
 71 Statutes, or adult victims of human trafficking involving  
 72 commercial sexual activity, are intended as refuges for sexually  
 73 exploited victims from those who exploited them. If the  
 74 individuals who victimized these people were able to learn the  
 75 location of such facilities, they may attempt to contact their  
 76 victims, exploit their vulnerabilities, and return them to the  
 77 situations in which they were victimized. Even without the  
 78 return of these victims to their former situations, additional  
 79 contact with those who victimized them would have the effect of  
 80 continuing their victimization and inhibiting their recoveries.  
 81 Additionally, knowledge about the location of safe houses, safe  
 82 foster homes, and other residential facilities serving victims  
 83 of sexual exploitation, as defined in s. 39.01(69)(g), Florida  
 84 Statutes, or adult victims of human trafficking involving  
 85 commercial sexual activity, could enable other individuals to  
 86 locate and attempt to victimize the residents. Therefore, it is  
 87 the finding of the Legislature that such information must be

Page 3 of 4

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585-03194-15

20151110c1

88 made confidential and exempt from public records requirements.  
 89 Section 4. This act shall take effect October 1, 2015.

Page 4 of 4

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



The Florida Senate

## Committee Agenda Request

**To:** Senator Tom Lee, Chair  
Committee on Appropriations

**Subject:** Committee Agenda Request

**Date:** April 1, 2015

---

I respectfully request that **Senate Bill #1110**, relating to Pub. Rec. / Residential Facilities Serving Victims of Sexual Exploitation, be placed on the:

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

---

Senator Anitere Flores  
Florida Senate, District 37

SENATE APPROPRIATIONS  
RECEIVED  
15 APR - 1 AM 10: 29  
JUNICE CHARMAN  
STAFF DIR. STAFF

File signed original with committee office

S-020 (03/2004)



The Florida Senate

## Committee Agenda Request

**To:** Senator Tom Lee, Chair  
Committee on Appropriations

**Subject:** Committee Agenda Request

**Date:** April 9, 2015

---

I respectfully request that **Senate Bill #1110**, relating to Pub. Rec / Residential Facilities Serving Victims of Sexual Exploitation, be placed on the:

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

*Anitere Flores*

---

Senator Anitere Flores  
Florida Senate, District 37

SENATE CHAIRMAN  
STAFF DIR. STAFF

15 APR -9 PM 4:55

SENATE APPROPRIATIONS  
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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)

4/16/2015

Meeting Date

Topic \_\_\_\_\_ Bill Number 1110 (if applicable)

Name BRIAN PITTS Amendment Barcode \_\_\_\_\_ (if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

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

Representing JUSTICE-2-JESUS

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

Lobbyist registered with Legislature: [ ] Yes [X] 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 public record for this meeting

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/16/15

Meeting Date

1110

Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Erin Choy

Job Title Chair-Elect

Address 404 E. Sixth Ave

Street

Phone (850) 536-4133

Tallahassee FL 32303

City

State

Zip

Email echoy@nationalstrategies.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Univ Leagues of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

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Prepared By: The Professional Staff of the Committee on Appropriations

---

BILL: CS/SB 1136

INTRODUCER: Banking and Insurance Committee and Senator Hukill

SUBJECT: Title Insurance

DATE: April 15, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Favorable</u>
3.	<u>Betta</u>	<u>Kynoch</u>	<u>AP</u>	<u>Favorable</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1136 revises procedures for dealing with insolvent title insurers. There is no guaranty fund for title insurers in Florida. If funds are necessary to pay the claims of title insurers in rehabilitation, all title insurers doing business in Florida are liable for an assessment to pay those claims. The Department of Financial Services (DFS or receiver) and Office of Insurance Regulation (OIR) determine the amount of money necessary and order an assessment. The title insurers recover the assessment by collecting a surcharge on each title policy issued in Florida. To prevent an insurer from gaining a competitive advantage, each title insurer is required to continue to collect the surcharge until all title insurers have recovered their assessments. Current law provides that surcharges collected in excess of the assessment amount are paid to the state.

This bill creates a mechanism for using excess surcharges to reduce the time that surcharges are collected. It provides that when a company has collected surcharges in excess of the amount it was assessed, the company shall pay the excess to the receiver. The receiver must maintain the money in an excess surcharge account and may use the excess surcharges only:

- To reduce or eliminate the amount of a future assessment for a title insurer currently in receivership or that later enters receivership; or
- To reduce the amount of time that consumers in the state are subject to surcharges by transferring the excess to title insurers that have not fully collected surcharges equal to the amount of the aggregate assessments they paid pursuant to s. 631.400 F.S.

If the receiver has no active title insurer receiverships for 12 consecutive months or there have been no payable claims against any title insurer receivership for 60 consecutive months, all excess surcharges held by the receiver must be paid to the Insurance Regulatory Trust Fund within the DFS.

The bill also allows the OIR to order an additional surcharge in situations where a surcharge is being collected.

The Insurance Regulatory Trust Fund will receive an indeterminate amount of additional funds based on the requirement that excess surcharges held by DFS be deposited into the trust fund.

The bill provides an effective date of July 1, 2015.

## II. Present Situation:

Title insurance is (1) insurance of owners of real property or others having an interest in real property or contractual interest derived therefrom, or liens or encumbrances on real property, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title; or (2) insurance of owners and secured parties of the existence, attachment, perfection, and priority of security interests in personal property under the Uniform Commercial Code.<sup>1</sup> Title insurance serves to indemnify the insured against financial loss caused by defects in the title arising out of events that occurred before the date of the policy.<sup>2</sup> Title insurance agents and agencies are licensed and regulated by the DFS while title insurance companies are licensed and regulated by the OIR.

### Rehabilitation of a Title Insurer

Chapter 631, F.S., relates to insurer insolvency. Sections 631.400 and 631.401, F.S., specifically govern title insurer insolvency. If the OIR believes an insurer is impaired or insolvent, it notifies the DFS and provides supporting information.<sup>3</sup> The DFS through its Division of Rehabilitation and Liquidation (receiver) may commence a proceeding in circuit court for an order directing that it liquidate or rehabilitate the insurer.<sup>4</sup> Once the court enters an order directing the receiver to rehabilitate a title insurer, the receiver reviews the condition of the insurer and files a plan of rehabilitation with the court for approval.<sup>5</sup> The rehabilitation plan provides that policies on properties located in Florida will remain in force subject the ability to assess other title insurers<sup>6</sup> and provides a mechanism for canceling policies on out of state properties.<sup>7</sup>

### Assessments

There is no guaranty fund for title insurers in Florida. All title insurers doing business in Florida are liable for an assessment to pay unpaid title insurance claims and expenses for any title insurer

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<sup>1</sup> Section 624.608, F.S.

<sup>2</sup> See *Lawyers Title Insurance Co. Inc., v. Novastar Mortgage, Inc.*, 862 So. 2d 793, 797 (Fla. 4<sup>th</sup> DCA 2003).

<sup>3</sup> See s. 631.031, F.S.

<sup>4</sup> See generally ss. 631.031-631.152, F.S.

<sup>5</sup> See s. 631.400(1), F.S.

<sup>6</sup> See s. 631.400(1)(a), F.S.

<sup>7</sup> See s. 631.400(1)(b)-(f), F.S.

ordered into rehabilitation.<sup>8</sup> Before an assessment is ordered, the receiver reviews the condition of the insurer to determine the amount necessary for the payment of known claims, loss adjustment expenses, and the cost of the administration of the rehabilitation expenses.<sup>9</sup> If insurer funds are not sufficient to cover the necessary amount, the receiver requests that the OIR order an assessment.<sup>10</sup> The OIR orders other title insurers<sup>11</sup> to pay assessments based on a pro rata share of the total direct written premium in Florida.<sup>12</sup> The assessment must be paid to the receiver within 90 days.<sup>13</sup>

### Recovery of the Assessments

Section 631.401, F.S., provides a mechanism for title insurers to recoup the assessments. When the OIR orders an assessment, it also orders a surcharge on each title policy issued thereafter.<sup>14</sup> The surcharge amount is estimated to allow insurers to recover the assessment amount in not more than seven years.<sup>15</sup> A title insurer cannot retain more in surcharges for an assessment than the amount paid.<sup>16</sup> Section 631.401(1), F.S., allows the OIR to increase the surcharge if additional insurers become impaired but does not allow the OIR to increase the surcharge if additional assessments are needed for one insurer. The OIR reports that the inability to increase the surcharge can result in accounting difficulties for the OIR and the insurers.<sup>17</sup>

Each title insurer is required to continue to collect the surcharge until all title insurers have recovered their assessments.<sup>18</sup> This prevents a title insurer from gaining a competitive advantage by selling policies without a surcharge while other title insurance continue to collect a surcharge.<sup>19</sup> Each title insurer is required to notify the OIR when it has recovered its assessed amount and the OIR notifies all companies to cease collecting surcharges once each company has recovered its assessed amount.<sup>20</sup>

Any surcharges collected in excess of the amount assessed are paid to the Insurance Regulatory Trust Fund.<sup>21</sup>

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<sup>8</sup> See s. 631.400(2), F.S.

<sup>9</sup> See s. 631.400(3), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> According to information provided by the DFS, there are 18 title insurers authorized to do business in Florida.

<sup>12</sup> See s. 631.400(4), F.S.

<sup>13</sup> See s. 631.400(5), F.S. The statute also allows companies to pay the receiver through an installment plan.

<sup>14</sup> See s. 631.401(1), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> See s. 631.401(5), F.S.

<sup>17</sup> See Office of Insurance Regulation, *HB 927/SB 1136 Agency Bill Analysis* (February 25, 2015)(on file with the Committee on Banking and Insurance).

<sup>18</sup> See s. 631.401(6), F.S.

<sup>19</sup> See Office of Insurance Regulation, *HB 927/SB 1136 Agency Bill Analysis* (February 25, 2015)(on file with the Committee on Banking and Insurance).

<sup>20</sup> See s. 631.401(6), F.S.

<sup>21</sup> See s. 631.401(7), F.S.

### **Experience with Title Insurers in Receivership**

Sections 631.400 and 631.401, F.S., were enacted in 2011.<sup>22</sup> Since the enactment of the statutes, assessments and surcharges have been ordered for two title insurer receiverships.<sup>23</sup> There is currently a \$3.28 surcharge on title insurance policies that has been in effect since September 2014.<sup>24</sup> Excess surcharges have not been collected thus far but it is anticipated that excess surcharges will be collected in the future.

### **III. Effect of Proposed Changes:**

This bill amends s. 631.401(1), F.S., to allow the OIR to order an additional surcharge in situations where a surcharge is currently in effect but the OIR determines that an additional surcharge is necessary. According to the OIR, this will reduce accounting problems that could arise in situations where multiple surcharges are imposed.<sup>25</sup>

This bill provides a mechanism in s. 631.401(6), F.S., for dealing with the collection of excess surcharges. It provides that when a company has collected surcharges in excess of the amount it was assessed, the company shall pay the excess to the receiver. The receiver must maintain the money in an excess surcharge account and may use the excess surcharges only:

- To reduce or eliminate the amount of a future assessment for a title insurer currently in receivership or that later enters receivership; or
- To reduce the amount of time that consumers in the state are subject to surcharges by transferring excess surcharges to title insurers that have not fully collected surcharges equal to the amount of the aggregate assessments they paid pursuant to s. 631.400, F.S.

If the receiver has no active title insurer receiverships for 12 consecutive months or if there have been no payable claims against any title insurer receivership for 60 consecutive months, all excess surcharges held by the receiver shall be paid to the Insurance Regulatory Trust Fund.

The bill also amends the following subsections of s. 631.401, F.S., to revise and clarify the title insurance assessment process:

- Section 631.401(5), F.S., to provide that a title insurer may not retain more in surcharges than the amount of aggregate assessments paid by that insurer. Any surcharges collected in excess of the amount of the aggregate assessments paid by a title insurer must be paid to the receiver.
- Section 631.401(2), F.S., to provide that the surcharge will be listed on the settlement statement as a “surcharge” and clarify that the surcharge is not premium and is not subject to premium tax.
- Section 631.401(3), F.S., to provide that title insurers not subject to a particular assessment must still collect the surcharge and remit the surcharge to the receiver.

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<sup>22</sup> See ch. 2011-226, L.O.F.

<sup>23</sup> See *In re: 2012 Title Insurance Assessment for the Rehabilitation of National Title Insurance Company*, OIR Case No. 127302-12 (September 4, 2012) and *In re: 2014 Title Insurance Assessment for the Rehabilitation of K.E.L. Title Insurance Company*, OIR Case No. 150289-14 (June 5, 2014).

<sup>24</sup> Interview with the staff of the DFS and the OIR.

<sup>25</sup> See Office of Insurance Regulation, *HB 927/SB 1136 Agency Bill Analysis* (February 25, 2015)(on file with the Committee on Banking and Insurance).

- Section 631.401(4), F.S., to provide that surcharges do not need to be remitted by agents to insurers with the premium. This is to avoid co-mingling of premium and surcharge funds.
- Section 631.401(9), F.S., to provide that the Financial Services Commission may adopt rules specifying procedures for the collection, use, and transfer of surcharges, including excess surcharges and the DFS may adopt rules for claiming, distributing, and using excess surcharge funds held by the receiver.

This bill provides an effective date of July 1, 2015.

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

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

None.

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

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

CS/SB 1136 could have the effect of reducing the time that surcharges are collected. This would reduce the amount paid by purchasers of title insurance.

##### **C. Government Sector Impact:**

The Insurance Regulatory Trust Fund will receive an indeterminate amount of additional funds based upon the requirement for excess surcharges held by the DFS to be deposited into the trust fund.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 631.401 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Banking and Insurance on March 17, 2015:**

The committee adopted an amendment that:

- Revised current law to allow the OIR to end the collection of assessment recovery surcharges once all active title insurers have recovered their assessment payment, rather than continuing the surcharges until all title insurers that paid the assessment have recovered their payment.
- Clarified a provision to provide that excess surcharges can only be used to fund the claims and expenses of insolvent title insurers or to fund the unpaid assessment recovery balance of title insurers that are slow to recover their assessment payments.
- Corrected the entity receiving rulemaking authority under the bill to reflect the Financial Services Commission as the agency head of the OIR and added rulemaking authority for the DFS to allow it to create a process to claim against and distribute funds from the excess surcharge account created by the bill.
- Revised the condition precedent to paying the excess surcharges held by the receiver into the Insurance Regulatory Trust Fund.

- B. **Amendments:**

None.

By the Committee on Banking and Insurance; and Senator Hukill

597-02402-15

20151136c1

1 A bill to be entitled  
 2 An act relating to title insurance; amending s.  
 3 631.401, F.S.; revising procedures and requirements  
 4 relating to the recovery of assessments from title  
 5 insurers through surcharges assessed on policies;  
 6 revising provisions relating to surcharges collected  
 7 in excess of the assessments paid by title insurers;  
 8 revising requirements for the payment of excess  
 9 surcharges to the Insurance Regulatory Trust Fund;  
 10 authorizing the Financial Services Commission and the  
 11 Department of Financial Services to adopt rules for  
 12 certain purposes; providing an effective date.  
 13  
 14 Be It Enacted by the Legislature of the State of Florida:  
 15  
 16 Section 1. Section 631.401, Florida Statutes, is amended to  
 17 read:  
 18 631.401 Recovery of assessments and assumed policy  
 19 obligations.—  
 20 (1) Upon the making of any assessment allowed by s.  
 21 631.400, the office shall order a surcharge or, if a surcharge  
 22 is currently in effect, an additional surcharge amount on each  
 23 title insurance policy thereafter issued insuring an interest in  
 24 real property in this state. The office shall set the per  
 25 transaction surcharge at an amount estimated to generate  
 26 sufficient funds to recover the amount assessed over a period of  
 27 not more than 7 years. The amount of the surcharge ordered under  
 28 this section may not exceed \$25 per transaction for each  
 29 impaired title insurer. ~~If additional surcharges are occasioned~~

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

597-02402-15

20151136c1

30 ~~by additional title insurers becoming impaired, the office shall~~  
 31 ~~order an increase in the amount of the surcharge to reflect the~~  
 32 ~~aggregate surcharge.~~  
 33 (2) The party responsible for the payment of title  
 34 insurance premium, unless otherwise agreed between the parties,  
 35 shall be responsible for the payment of the surcharge. No  
 36 surcharge will be due or owing as to any policy of title  
 37 insurance subject to issued at the simultaneous issue premium  
 38 ~~rate. For all other purposes,~~ The surcharge will be considered a  
 39 governmental assessment to be separately stated on any  
 40 settlement statement as a surcharge. The surcharge is not  
 41 premium and is not subject to premium tax or reserve  
 42 requirements under chapter 625.  
 43 (3) Title insurers doing business in this state which are  
 44 not subject to a given assessment writing no premiums in the  
 45 prior calendar year shall collect the same per transaction  
 46 surcharge as provided by this section. Such surcharge collected  
 47 shall be paid to the receiver within 60 days after receipt to be  
 48 maintained in an excess surcharge account and used only as  
 49 provided in subsection (6) from the title agent or agency.  
 50 (4) Each title insurance agent, agency, or direct title  
 51 operation shall collect the surcharge as to each title insurance  
 52 policy written and remit those surcharges ~~along with the~~  
 53 ~~policies and premiums~~ within 60 days to the title insurer on  
 54 which whom the policy was written.  
 55 (5) A title insurer may not retain more in surcharges ~~for~~  
 56 ~~an ordered assessment~~ than the amount of aggregate assessments  
 57 paid by the assessment that title insurer paid. Any surcharges  
 58 collected in excess of the amount of the aggregate assessments

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

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59 paid by a title insurer shall be paid as provided in subsection  
 60 (6). As used in this section, the term "aggregate assessments"  
 61 means the total amount of assessments ordered by the office  
 62 under s. 631.400.

63 (6) Each title insurer collecting surcharges shall promptly  
 64 notify the office when it has collected surcharges equal to the  
 65 amount of the aggregate assessments ~~assessment~~ paid pursuant to  
 66 s. 631.400. The office shall notify all companies, including  
 67 those collecting surcharges as required by subsection (3), to  
 68 cease collecting surcharges when notified that all aggregate  
 69 assessments have been recovered by the title insurers that wrote  
 70 policies in the state during the previous calendar year. Any  
 71 surcharges collected by a title insurer in excess of the total  
 72 amount it was assessed for aggregate assessments shall be paid  
 73 quarterly to the receiver to be maintained in the excess  
 74 surcharge account by the receiver. Excess surcharges may be used  
 75 by the receiver for the following purposes only:

76 (a) To reduce or eliminate the amount of a future  
 77 assessment for a title insurer that is in receivership at the  
 78 time of the assessment or that later enters receivership; or

79 (b) To reduce the amount of time that consumers in the  
 80 state are subject to surcharges by transferring excess  
 81 surcharges to title insurers that have not fully collected  
 82 surcharges equal to the amount of the aggregate assessments paid  
 83 by title insurers pursuant to s. 631.400.

84 (7) In conjunction with the filing of each quarterly  
 85 financial statement, each title insurer shall provide the office  
 86 with an accounting of assessments paid and surcharges collected  
 87 during the period.

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88 (8) If the receiver has no active title insurer  
 89 receiverships for 12 consecutive months or if there have been no  
 90 payable claims against any title insurer receivership for 60  
 91 consecutive months, all excess surcharges held by the receiver  
 92 under this section ~~Any surcharges collected in excess of the~~  
 93 ~~amount assessed~~ shall be paid into ~~to~~ the Insurance Regulatory  
 94 Trust Fund.

95 (9) The Financial Services Commission may adopt rules  
 96 specifying procedures for the collection, use, and transfer of  
 97 surcharges, including excess surcharges.

98 (10) The department may adopt rules specifying procedures  
 99 for claiming, distributing, and using excess surcharge account  
 100 funds held by the receiver under this section and for the  
 101 purposes specified in subsection (6).

102 Section 2. This act shall take effect July 1, 2015.



**THE FLORIDA SENATE**

Tallahassee, Florida 32399-1100

**COMMITTEES:**

Finance and Tax, *Chair*  
Communications, Energy, and Public Utilities,  
*Vice Chair*  
Appropriations  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Banking and Insurance  
Fiscal Policy

**JOINT COMMITTEE:**

Joint Committee on Public Counsel Oversight

**SENATOR DOROTHY L. HUKILL**  
8th District

April 2, 2015

The Honorable Tom Lee  
201 The Capitol  
404 S. Monroe Street  
Tallahassee, FL 32399

Re: Senate Bill 1136 -- Title Insurance

Dear Chairman Lee:

Senate Bill 1136, relating Title Insurance has been referred to the Appropriations Committee. I am requesting your consideration on placing SB 1136 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

Dorothy L. Hukill, District 8

cc: Cindy Kynoch, Staff Director of the Appropriations Committee  
Alicia Weiss, Administrative Assistant of the Appropriations Committee

REPLY TO:

- 209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818
- Ocala City Hall, 110 SE Watula Avenue, 3rd Floor, Ocala, Florida 34471 (352) 694-0160

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

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

SENATE CHAIRMAN  
STAFF DIR. STAFF

15 APR - 2 PM 3:43

SENATE APPROPRIATIONS  
RECEIVED

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4.16.15  
Meeting Date

1136  
Bill Number (if applicable)

Topic title insurance

Amendment Barcode (if applicable)

Name Ashley Mayer

Job Title cap city consultant - lobbyist

Address 121 E. Colby Ave # 302  
Street  
Tallahassee FL  
City State Zip

Phone 222-9075

Email akalifeh@capcityconsult.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Old Republic National Title

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/16/15

Meeting Date

1136

Bill Number (if applicable)

Topic RELATING TO TILE INSURANCE

Amendment Barcode (if applicable)

Name ALEXANDRA OVERHOFF

Job Title EXEC DIR

Address Street

Phone 513-519-2121

City

State

Zip

Email alex@flta.org

Speaking: [ ] For [ ] Against [ ] Information

Waive Speaking: [x] In Support [ ] Against (The Chair will read this information into the record.)

Representing FLORIDA LAND TILE ASSOCIATION

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

Lobbyist registered with Legislature: [x] Yes [ ] No

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

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

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

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

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: SB 1138

INTRODUCER: Senator Brandes

SUBJECT: Unclaimed Property

DATE: April 15, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<b>Favorable</b>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<b>Favorable</b>
3.	<u>Betta</u>	<u>Kynoch</u>	<u>AP</u>	<b>Favorable</b>

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**I. Summary:**

SB 1138 is intended to allow the Department of Financial Services (DFS), through their Unclaimed Property bureau the ability to obtain the title to unclaimed savings bonds issued by the U.S. Department of the Treasury (Treasury) to citizens of the state, when such unclaimed bonds are more than five years past their maturity date.

There is no fiscal impact to state funds.

The bill provides an effective date of July 1, 2015.

**II. Present Situation:**

**Florida Disposition of Unclaimed Property Act**

In 1987, the Florida Legislature adopted the Uniform Unclaimed Property Act and enacted the Florida Disposition of Unclaimed Property Act (chapter 717, F.S., the Act).<sup>1</sup> The Act defines unclaimed property as any funds or other property, tangible or intangible, that has remained unclaimed by the owner for a certain number of years. Unclaimed property may include savings and checking accounts, money orders, travelers' checks, uncashed payroll or cashiers' checks, stocks, bonds, other securities, insurance policy payments, refunds, security and utility deposits, and contents of safe deposit boxes.<sup>2</sup> The Act serves to protect the interests of missing owners of property, while the state derives a benefit from the unclaimed and abandoned property until the property is claimed, if ever. Under the Act, the DFS Bureau of Unclaimed Property is responsible for receiving property, attempting to locate the rightful owners, and returning the

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<sup>1</sup> Ch. 87-105, L.O.F. See also UNIFORM LAW COMMISSION, *Unclaimed Property Act Summary*, <http://www.uniformlaws.org/ActSummary.aspx?title=Unclaimed%20Property%20Act> (Last visited March 26, 2014)

<sup>2</sup> ss. 717.104 – 717.116, F.S.

property or proceeds to them. There is no statute of limitations in the Act, and citizens may claim their property at any time and at no cost.

Generally, all intangible property, including any income less any lawful charges, which is held in the ordinary course of the holder's business, is presumed to be unclaimed when the owner fails to claim the property for more than five years after the property becomes payable or distributable, unless otherwise provided in the Act.<sup>3</sup> Holders of unclaimed property (which typically include banks and insurance companies) are required to use due diligence to locate the apparent owners within 180 days after an account becomes inactive.<sup>4</sup> Once this search period expires, holders must file an annual report with the DFS for all property, valued at \$50 or more, that is presumed unclaimed for the preceding year.<sup>5</sup> The report must contain certain identifying information, such as the apparent owner's name, social security number or federal employer identification number, and last known address. The holder must deliver all reportable unclaimed property to the DFS when it submits its annual report.<sup>6</sup>

Upon the payment or delivery of unclaimed property to the DFS, the state assumes custody and responsibility for the safekeeping of the property.<sup>7</sup> The original property owner retains the right to recover the proceeds of the property, and any person claiming an interest in the property delivered to the DFS may file a claim for the property, subject to certain requirements.<sup>8</sup> The DFS is required to make a determination on a claim within 90 days. If a claim is determined in favor of the claimant, the department must deliver or pay to the claimant the property or the amount the department actually received or the proceeds, if it has been sold by the DFS.<sup>9</sup>

If the property remains unclaimed, all proceeds from abandoned property are then deposited by the DFS into the Unclaimed Property Trust Fund.<sup>10</sup> The DFS is allowed to retain up to \$15 million to make prompt payment of verified claims and to cover costs incurred by the DFS in administering and enforcing the Act. All remaining funds received must be deposited into the State School Fund.<sup>11</sup>

Like many other state unclaimed property programs, the Act is based on the common-law doctrine of escheat and is a "custody" statute, rather than a "title" statute, in that the DFS does not take title to abandoned property but instead obtains its custody and beneficial use pending identification of the property owner.<sup>12</sup>

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<sup>3</sup> s. 717.102(1), F.S.

<sup>4</sup> s. 717.117(4), F.S.

<sup>5</sup> s. 717.117, F.S.

<sup>6</sup> s. 717.119, F.S.

<sup>7</sup> s. 717.1201, F.S.

<sup>8</sup> ss. 717.117 and 717.124, F.S.

<sup>9</sup> s. 717.124, F.S.

<sup>10</sup> s. 717.123, F.S.

<sup>11</sup> Id.

<sup>12</sup> Ch. 717, F.S., was intended to replace ch. 716, F.S. (Escheats), which was enacted in 1947 and has not been repealed. While ch. 716, F.S., does provide that funds in the possession of federal agencies (including Treasury) shall escheat to the state upon certain conditions, it does not contain the necessary administrative processes and receipt mechanism (such as a Trust Fund) that the Act contains.

## U.S. Savings Bonds<sup>13</sup>

Pursuant to its constitutional power “to borrow money on the credit of the United States,”<sup>14</sup> Congress delegated authority to the United States Department of the Treasury (Treasury), with approval of the President, to issue savings bonds “for expenditures authorized by law.”<sup>15</sup> United States (U.S.) savings bonds are debt securities issued by the Treasury to help pay for the federal government’s borrowing needs and are backed by the full faith and credit of the U.S. government. A U.S. savings bond is a contract between the federal government and the bond’s owner that is controlled by federal law. However, in disputes which do not concern the rights and duties of the United States, questions of title are to be decided by state law.<sup>16</sup>

The federal government began selling savings bonds in 1941 for World War II defense spending and, subsequently, to encourage thrift and savings by small investors. The majority of the bonds at issue are Series E bonds (known informally as Defense Bonds), which were issued between 1941 and 1980 and had maturity terms of 30-40 years. In 2011, the last Series E bonds matured and stopped earning interest.<sup>17</sup>

Due to the passage of time, the long maturities of these bonds, the deaths or relocations of registered owners, and bonds being lost, stolen, or destroyed, a significant number of bonds remain unclaimed. As of January 31, 2015, the Treasury holds nearly 49.3 million matured, unredeemed savings bonds, with a maturity value of \$16.5 billion.<sup>18</sup> The federal regulations do not impose any time limits for bond owners to redeem Series E savings bonds.

There are two types of unclaimed savings bonds:

- *Bonds in possession* are U.S. savings bonds physically held by an unclaimed property administrator’s office, typically discovered from expired safe-deposit boxes. These bonds are delivered to the DFS pursuant to the Act. However, the DFS currently cannot redeem bonds in possession without first taking title to these bonds via escheatment.
- *Absent bonds* are the class of U.S. savings bonds issued to an individual whose last known address is in Florida, but have been lost, stolen, or destroyed. As such, these bonds are not physically in the possession of the DFS. The records regarding absent bonds (such as registration information, serial numbers, and addresses) are exclusively held by the Treasury. The Treasury’s online unredeemed bonds database, Treasury Hunt, does not contain a record

<sup>13</sup> Except where specifically identified, this portion of the analysis is derived from the facts and background in *Treasurer of New Jersey v U.S. Dep’t of Treasury*, 684 F.3d 382 (3rd Cir. 2012).

<sup>14</sup> U.S. CONST. art. I, s. 8, cl. 2.

<sup>15</sup> 31 U.S.C. s. 3105(a). The federal legislation authorizing Treasury to sell U.S. savings bonds was signed into law in 1935. See TREASURY DIRECT, *The History of U.S. Savings Bonds*, <http://www.treasurydirect.gov/timeline.htm> (Last visited March 26, 2014)

<sup>16</sup> 91 C.J.S. United States s. 249 (Government bonds, generally).

<sup>17</sup> TREASURYDIRECT, *The Volunteer Program and Series E Savings Bonds*, [http://www.treasurydirect.gov/indiv/research/history/history\\_ebond.htm](http://www.treasurydirect.gov/indiv/research/history/history_ebond.htm). (Last visited March 26, 2014) The federal government sold the Series E bonds at a discount and paid interest on them only at maturity. While Series E bonds have stopped earning interest, owners of E bonds may still redeem them. Series E bonds were replaced by the Series EE bond in 1980.

<sup>18</sup> TREASURYDIRECT, *Matured, Unredeemed Debt and Unclaimed Moneys Reports: Statistical report of matured, unredeemed savings bonds and notes* (Jan. 21, 2015), [http://www.treasurydirect.gov/foia/foia\\_mud.htm](http://www.treasurydirect.gov/foia/foia_mud.htm). (Last visited March 26, 2014)

of all savings bonds. The system only provides information on Series E bonds issued in 1974 or after, and is organized by social security number. Additionally, pursuant to the Privacy Act of 1974, Treasury Hunt only provides limited information to anyone who is not the bond owner or co-owner.<sup>19</sup>

In Florida, the DFS presently is in possession of unclaimed *physical* U.S. savings bonds with a face value of more than \$1.2 million. According to the DFS, the total amount of unclaimed, matured *absent* U.S. savings bonds registered to persons with a last known address in Florida is estimated to be well over \$100 million.<sup>20</sup>

Unlike many other types of securities, “savings bonds are not transferable and are payable only to the owners named on the bonds,” except as specifically provided for in the federal regulations.<sup>21</sup> There are limited exceptions to this general rule against transferability of savings bonds, including cases in which a third party attains an interest in a bond through valid judicial proceedings.<sup>22</sup> A registered owner of a bond is presumed conclusively to be its owner, absent errors in registration.<sup>23</sup>

While federal law pervades the terms and conditions of the U.S. savings bond program (including the authority to fix the bonds’ investment yield, transfer, redemption, and sales prices),<sup>24</sup> there is no federal escheat or unclaimed property law requiring the federal government to search for and reunite bond owners with the bonds. Instead, the federal government will hold these bonds in perpetuity. State unclaimed property laws, on the other hand, govern the significant public policy concerns of the abandonment of intangible personal property.<sup>25</sup>

For several decades, various states have sought to recover the proceeds from matured but unredeemed savings bonds. In 1952, the Treasury issued a bulletin (referred to as the “Escheat Decision”) explaining that it would pay the proceeds of savings bonds to the state of New York if it actually obtained *title* to the bonds, but would not do so if the state merely obtained a right to the *custody* of the proceeds.<sup>26</sup> In 2000, the Treasury published online guidance consistent with the 1952 Escheat Decision.<sup>27</sup> Both articulations of the Treasury policy raised serious concerns with releasing U.S. bonds to states with custody-based statutes, because such a state that replaces the *payor* (Treasury) merely as a custodian would not discharge Treasury of its contractual obligation and liability to bond holders.<sup>28</sup> On the other hand, the Treasury guidance appears to

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<sup>19</sup> TREASURYDIRECT, *Treasury Hunt*, at [http://www.treasurydirect.gov/indiv/tools/tools\\_treasuryhunt.htm](http://www.treasurydirect.gov/indiv/tools/tools_treasuryhunt.htm). (Last visited March 26, 2014)

<sup>20</sup> Department of Financial Services Agency Analysis, March 17, 2015. (On file with the Banking and Insurance Committee.)

<sup>21</sup> 31 C.F.R. ss. 315.15, 353.15.

<sup>22</sup> 31 C.F.R. ss. 315.20(b), 353.20(b).

<sup>23</sup> 31 C.F.R. ss. 315.15, 353.15.

<sup>24</sup> 31 U.S.C. s. 3105.

<sup>25</sup> Other scenarios involving the application of state unclaimed property laws to unclaimed intangible property in the federal government’s possession include unclaimed accounts from liquidated nationally-chartered financial institutions or property subject to administration by the U.S. bankruptcy courts.

<sup>26</sup> *New Jersey v. Treasury*, at 390-391.

<sup>27</sup> TREASURYDIRECT, *EE/E Savings Bonds FAQs*, [http://www.treasurydirect.gov/indiv/research/indepth/ebonds/res\\_e\\_bonds\\_eefaq.htm](http://www.treasurydirect.gov/indiv/research/indepth/ebonds/res_e_bonds_eefaq.htm) (Last visited March 26, 2014)

<sup>28</sup> In *New Jersey v. Treasury*, several states with custody-based statutes offered to indemnify Treasury in exchange for the bond proceeds; however, Treasury declined.

accept a state replacing the *payee* (the bond owner) through a valid judicial determination made under a title-based law.

### **Kansas Title-Based Statute and Recovery of Proceeds from Bonds in Possession**

In 2000, the state of Kansas enacted a change in state law to designate its state treasurer's office as the official *title owner* of unclaimed U.S. savings bonds,<sup>29</sup> in order to align with long-standing Treasury policy. Based on this state law, Kansas obtained a favorable declaratory judgment in state trial court awarding title to 1,447 fully matured and unclaimed U.S. savings bonds in possession found in unclaimed safe deposit boxes. In January 2014, the Kansas state treasurer announced the receipt of \$861,908 from the Treasury for those physical bonds (bonds in possession).<sup>30</sup>

In contrast to the outcome in Kansas, a federal appeals court in 2012 denied an attempt by several state unclaimed property administrators to recover proceeds of unredeemed physical U.S. savings bonds from the Treasury, based on several constitutional grounds.<sup>31</sup> However, a significant aspect of the court's holding turned on the fact that these states' unclaimed property acts were "custody" statutes, not "title" statutes, thus conflicting with Treasury's policy.<sup>32</sup>

To date, seven states have enacted similar title-based unclaimed property laws based on the Kansas statute, in an effort to seek the proceeds of bonds in possession. Title-based unclaimed property legislation is currently pending in at least nine other states.

### **Unclaimed Absent Bonds**

Following its receipt of proceeds from the Treasury for unclaimed physical bonds, Kansas next petitioned the Treasury to redeem the remaining class of matured *absent* savings bonds issued to owners with a last known address in Kansas. While the Treasury made limited information available to Kansas about matured savings bonds issued after 1974 on its Treasury Hunt website, it did not provide other information necessary to search the database (such as the original owners' social security number) or any information about older bonds.

In December 2014, the Kansas state treasurer initiated suit against the Treasury in the U.S. Court of Federal Claims,<sup>33</sup> seeking payment for \$151 million in unclaimed absent bonds and for

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<sup>29</sup> Kan. Stat. Ann. ss. 58-3979 and 3980 (2014).

<sup>30</sup> KANSAS STATE TREASURER, *Media Release: State Treasurer Estes Announces Kansas the First State in Nation to Receive Title & Payment for U.S. Savings Bonds* (Jan. 14, 2014), at: <https://www.kansasstatetreasurer.com/prodweb/news/mr-2014-01-14.php>. (Last visited March 26, 2014)

<sup>31</sup> The constitutional issues in *New Jersey v. Treasury* involved preemption, intergovernmental immunity, and waiver of sovereign immunity under the federal Administrative Procedures Act.

<sup>32</sup> *New Jersey v. Treasury*, at 389. The plaintiff states were New Jersey, North Carolina, Montana, Kentucky, Oklahoma, Missouri, and Pennsylvania.

<sup>33</sup> *Ron Estes, Treasurer of the State of Kansas v. United States*, U.S. Ct. of Fed. Claims (Case No. 1:13-cv-01011-EDK). The U.S. Court of Federal Claims is an Article I, congressionally created court that has exclusive jurisdiction over claims for monetary damages against the federal government and that arise from federal constitutional, statutory, and regulatory laws, as well as contracts with the U.S. government. *See* 28 U.S.C. s. 1491.

records identifying the original owners.<sup>34</sup> This lawsuit is still pending. The parties recently completed supplemental briefing on the Treasury's motion to dismiss, but a final ruling has not yet been issued.<sup>35</sup>

### III. Effect of Proposed Changes:

The bill creates a judicial process for the DFS to file a civil action in a court of competent jurisdiction in Leon County, Florida, to determine if title to unclaimed U.S. savings bonds issued to residents of the state shall escheat to the state. This is similar to what was done in the state of Kansas. If the DFS is successful in obtaining title to these bonds, it places the DFS in the same position as the record owner of the bond, which is necessary to recover proceeds from the Treasury.

The bill stipulates that U.S. savings bonds are not considered unclaimed until they have matured and have remained unclaimed for five years after the bond maturity date (typically 30-40 years). This five year post-maturity period will indicate that the bonds are lost, stolen, or destroyed, allowing the DFS to initiate escheat proceedings.

If the proceeds from such unclaimed bonds are received by the DFS, the bill requires all proceeds to be deposited in accordance with any other unclaimed property, which requires deposit of proceeds into the Unclaimed Property Trust Fund and allows the DFS to retain \$15 million to pay proceeds and administrative expenses, and requires deposit of remaining funds into the State School Fund.

The bill creates a claims process to return the money to valid claimants and requires the DFS to comport with due process prior to any escheat hearing. Due process means that DFS must undertake specific efforts to notify registered owners, co-owners, and beneficiaries of the escheat proceedings through notice of publication.<sup>36</sup> Even after the bonds escheat to the state, an original bond owner may still recover the proceeds of the bond under the claims process set forth in the bill, and may make a claim with the DFS for the proceeds of the bond. This "second chance" provision allows originally named bond owners who did not or could not comply with Treasury's regulations for redemption.

Once the DFS obtains title to these bonds, it may petition the Treasury for redemption of these bonds in possession and, if necessary, to render a full accounting of the necessary information of absent bonds, which would identify the class of bonds registered with the last known address in Florida.<sup>37</sup>

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<sup>34</sup> KANSAS STATE TREASURER, *Media Release: State Treasurer Estes Announces Kansas the First State in Nation to Receive Title & Payment for U.S. Savings Bonds* (Jan. 14, 2014), at: <https://www.kansasstatetreasurer.com/prodweb/news/mr-2014-01-14.php>. (Last visited March 26, 2014)

<sup>35</sup> Supplemental briefs in *Estes v. United States* (On file with the Banking and Insurance committee).

<sup>36</sup> Service of process by publication is set forth in ch. 49, F.S. (Constructive Service of Process).

<sup>37</sup> If necessary, the state may join the lawsuit against Treasury. Because the value of absent bonds is significantly higher than the bonds in possession, it is likely that the state will have to file suit to recover the proceeds from the absent bonds.

**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:

Under SB 1138, the fiscal impact to the private sector is indeterminate given the pending litigation on the escheatment of such bonds to a state.

## C. Government Sector Impact:

The fiscal impact to state funds is indeterminate given the pending litigation on the escheatment of such bonds to a state. This bill could generate additional funds transferred to the State School Fund if it results in more money transferred to the state than claimed by claimants.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates the following sections of the Florida Statutes: 717.1382 and 717.1383.

**IX. Additional Information:**

## A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

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By Senator Brandes

22-00806A-15

20151138\_\_

A bill to be entitled

An act relating to unclaimed property; creating s. 717.1382, F.S.; providing for escheatment to the state of unclaimed United States savings bonds; providing for judicial determination of escheatment; providing procedures for challenging escheatment; providing for deposit of the proceeds of escheatment; creating s. 717.1383, F.S.; providing that a person claiming a United States savings bond may file a claim with the Department of Financial Services; providing limitations on such claim; providing applicability; providing an effective date.

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

Section 1. Section 717.1382, Florida Statutes, is created to read:

717.1382 United States savings bond; unclaimed property; escheatment; procedure.-

(1) Notwithstanding any other provision of law, a United States savings bond in the possession of the department or registered to a person with a last known address in the state, including a bond that is lost, stolen, or destroyed, is presumed abandoned and unclaimed 5 years after the bond reaches maturity and no longer earns interest and shall be reported and remitted to the department by the financial institution or other holder in accordance with ss. 717.117(1) and (3) and 717.119, if the department is not in possession of the bond.

(2) (a) After a United States savings bond is abandoned and

Page 1 of 3

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

22-00806A-15

20151138\_\_

unclaimed in accordance with subsection (1), the department may commence a civil action in a court of competent jurisdiction in Leon County for a determination that the bond shall escheat to the state. Upon determination of escheatment, all property rights to the bond or proceeds from the bond, including all rights, powers, and privileges of survivorship of an owner, coowner, or beneficiary, shall vest solely in the state.

(b) Service of process by publication may be made on a party in a civil action pursuant to this section. A notice of action shall state the name of any known owner of the bond, the nature of the action or proceeding in short and simple terms, the name of the court in which the action or proceeding is instituted, and an abbreviated title of the case.

(c) The notice of action shall require a person claiming an interest in the bond to file a written defense with the clerk of the court and serve a copy of the defense by the date fixed in the notice. The date must not be less than 28 or more than 60 days after the first publication of the notice.

(d) The notice of action shall be published once a week for 4 consecutive weeks in a newspaper of general circulation published in Leon County. Proof of publication shall be placed in the court file.

(e)1. If no person files a claim with the court for the bond and if the department has substantially complied with the provisions of this section, the court shall enter a default judgment that the bond, or proceeds from such bond, has escheated to the state.

2. If a person files a claim for one or more bonds and, after notice and hearing, the court determines that the claimant

Page 2 of 3

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

22-00806A-15

20151138\_\_

59 is not entitled to the bonds claimed by such claimant, the court  
60 shall enter a judgment that such bonds, or proceeds from such  
61 bonds, have escheated to the state.

62 3. If a person files a claim for one or more bonds and,  
63 after notice and hearing, the court determines that the claimant  
64 is entitled to the bonds claimed by such claimant, the court  
65 shall enter a judgment in favor of the claimant.

66 (3) The department may redeem a United States savings bond  
67 escheated to the state pursuant to this section or, in the event  
68 that the department is not in possession of the bond, seek to  
69 obtain the proceeds from such bond. Proceeds received by the  
70 department shall be deposited in accordance with s. 717.123.

71 Section 2. Section 717.1383, Florida Statutes, is created  
72 to read:

73 717.1383 United States savings bond; claim for bond.—A  
74 person claiming a United States savings bond escheated to the  
75 state under s. 717.1382, or for the proceeds from such bond, may  
76 file a claim with the department. The department may approve the  
77 claim if the person is able to provide sufficient proof of the  
78 validity of the person's claim. Once a bond, or the proceeds  
79 from such bond, are remitted to a claimant, no action thereafter  
80 may be maintained by any other person against the department,  
81 the state, or any officer thereof, for or on account of such  
82 funds. The person's sole remedy, if any, shall be against the  
83 claimant who received the bond or the proceeds from such bond.

84 Section 3. This act applies to any United States savings  
85 bond that reaches maturity on, before, or after the effective  
86 date of this act.

87 Section 4. This act shall take effect July 1, 2015.



The Florida Senate

## Committee Agenda Request

**To:** Senator Tom Lee, Chair  
Committee on Appropriations

**Subject:** Committee Agenda Request

**Date:** April 8, 2015

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I respectfully request that **Senate Bill #1138**, relating to **Unclaimed Property**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes  
Florida Senate, District 22

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/16  
Meeting Date

1138  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name BG Murphy

Job Title Deputy Legislative Affairs Director, DFS

Address \_\_\_\_\_  
Street  
Tallahassee  
City State Zip

Phone 850-413-2896

Email BG.Murphy@myfloridactf.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing CFO Atwater

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



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

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

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Prepared By: The Professional Staff of the Committee on Appropriations

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**BILL:** PCS/SB 1148 (135278)

**INTRODUCER:** Appropriations Committee (Recommended by Appropriations Subcommittee on General Government) and Senator Stargel

**SUBJECT:** Firesafety

**DATE:** April 15, 2015      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Favorable</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Betta</u>	<u>Kynoch</u>	<u>AP</u>	<u>Pre-meeting</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/SB 1148 makes the following changes with regards to the regulation by the Fire Prevention Code of agriculture property:

- Defines “Agricultural pole barn” and exempts such barns from the Florida Fire Prevention Code, National Codes, and the Life Safety Code.
- Defines a “nonresidential farm building” and specifies certain uses allowing such buildings to be exempt for the Florida Fire Prevention Code, National Codes, and the Life Safety Code.
- Requires the State Fire Marshal to conduct a study on the use of nonresidential farm buildings for certain assemblies as defined in the fire code.
- Requires the State Fire Marshal to convene a working group of various stakeholders to assist with the study.
- Authorizes a local fire official to consider the Fire Safety Evaluation System found in the National Fire Protection Association (NFPA) 101A Life Safety Code when identifying alternatives to a firesafety code with regards to existing buildings.

There is no fiscal impact to state funds.

The bill provides an effective date of July 1, 2015.

## II. Present Situation:

### **Division of the State Fire Marshal (State Fire Marshal)**

State law on fire prevention and control is provided in ch. 633, F.S. Section 633.104, F.S., designates the Chief Financial Officer (CFO) as the State Fire Marshal, operating through the Division of the State Fire Marshal.<sup>1</sup> Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; develops firesafety standards; provides facilities for the analysis of fire debris; and operates the Florida State Fire College. Additionally, the State Fire Marshal adopts by rule the Florida Fire Prevention Code, which contains or references all firesafety laws and rules regarding public and private buildings.<sup>2</sup>

The Division of the State Fire Marshal (Division) consists of the following four bureaus: the Bureau of Fire and Arson Investigations, the Bureau of Fire Standards and Training, the Bureau of Forensic Fire and Explosive Analysis, and Bureau of Fire Prevention. The Florida State Fire College, part of the Bureau of Fire Standards and Training, trains over 6,000 students per year. The Inspections Section, under the Bureau of Fire Prevention, annually inspects more than 14,000 state-owned buildings and facilities. Over 1.8 million fire and emergency reports are collected every year. These reports are entered into a database to form the basis for the State Fire Marshal's annual report.<sup>3</sup>

### **National Fire Protection Association (NFPA) 101 Life Safety Code**

The National Fire Protection Association (NFPA) publishes the NFPA 101 Life Safety Code. The Life Safety Code is used to protect the public by developing standards on building construction, protection, and occupancy features that minimize the effects of fire and related hazards. The Life Safety Code covers life safety in both new and existing structures.<sup>4</sup> Under current law, the State Fire Marshal must adopt the Life Safety Code.<sup>5</sup> The current Florida Fire Prevention Code and the Life Safety Code incorporates the NFPA 101 Life Safety Code as adopted by the State Fire Marshal.<sup>6</sup>

### **NFPA Occupancy Definitions<sup>7</sup>**

The NFPA provides the following definitions relating to occupancy:

- “Assembly Occupancy” is defined as an occupancy used for a gathering of 50 or more persons for deliberation, worship, entertainment, eating, drinking, amusement, awaiting transportation, or similar uses; or used as a special amusement building, regardless of occupant load.

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<sup>1</sup> The head of the Department of Financial Services (DFS) is the Chief Financial Officer. The Division of State Fire Marshal is located within the DFS.

<sup>2</sup> s. 633.202(1), F.S.

<sup>3</sup> State Fire Marshal website: <http://www.myfloridacfo.com/sfm/> (Last visited March 14, 2015).

<sup>4</sup> <http://www.nfpa.org/aboutthecodes> (Last visited March 14, 2015).

<sup>5</sup> s. 633.202(2), F.S.

<sup>6</sup> s. 633.104(1), F.S.

<sup>7</sup> <http://codesonline.nfpa.org/a/c.ref/ID020101110939/chapter> (Last visited March 14, 2015).

- “Mercantile Occupancy” is defined as an occupancy used for the display and sale of merchandise.
- “Business Occupancy” is defined as an occupancy used for the transaction of business other than mercantile.

### **Nonresidential Farm Buildings**

Section 604.50, F.S., defines a nonresidential farm building as any temporary or permanent building or support structure located on a farm or that is used primarily for agricultural purposes, is located on land that is an integral part of a farm operation, and is not intended to be used as a residential dwelling. The term may include, but is not limited to, a barn, greenhouse, shade house, farm office, storage building, or poultry house. This definition does not provide any exemptions from the Florida Fire Prevention Code.

### **III. Effect of Proposed Changes:**

The bill defines an “Agricultural pole barn” as a nonresidential farm building in which 90 percent or more of the perimeter walls are permanently open and allow free ingress and egress. Furthermore, the section states such pole barns are exempt for the Florida Fire Prevention Code, National Codes and the Life Safety Code.

The bill defines a nonresidential farm building for purposes of the Florida Fire Prevention Code as having the same meaning as provided in s. 604.50, F.S. The bill allows two scenarios for when such buildings can be exempt from the Florida Fire Prevention Code, National Codes and the Life Safety Code:

- If occupancy is limited by the property owner to no more than 35 persons and the building is not used by the public for direct sales or as an educational outreach facility, or
- The building is used by the owner for assembly, business, or mercantile occupancies, as defined in the Florida Fire Prevention Code, is not used for lodging purposes, each event has no more than 100 persons occupying the building at one time, there are at least two openings, a minimum of 36 inches wide and 80 inches high, the building provides at least seven square feet per person in attendance if the building is not concentrated with tables, chairs, or other obstacles and 15 square feet per person if the building is concentrated with tables, chairs or other obstacles, and no combustible or flammable liquids are stored inside the building during the event.

By exempting a nonresidential farm building from the Florida Fire Prevention Code, National Codes, and the Life Safety Code, the formula used for determining safe occupancy size of a building will not apply.

The bill requires the State Fire Marshal to conduct a study on the secondary use of nonresidential farm buildings as assembly occupancies with more than 100 individuals in attendance. The State Fire Marshal is directed to convene a workgroup on or before September 1, 2015, to assist with the study. The workgroup must include a representative of the Florida Agritourism Association, the Florida Farm Bureau, the Department of Agriculture and Consumer Services, the Florida Fire Chiefs Association, the Florida Professional Firefighters Association, the Florida Fire Marshals

and Inspectors Association, and the Florida Volunteer Firefighters Association. The workgroup may include other interested parties.

If the study determines that an assembly occupancy requires life safety or fire prevention standards different from those currently specified in the Florida Fire Prevention Code, the State Fire Marshal must adopt alternative standards by rule and such rulemaking must begin on or before December 1, 2015.

The bill makes a technical change regarding the configuration of a tent. No longer must a tent be up to 30 feet by 30 feet but rather the change in the bill limits tents to no more than a total of 900 square feet in order to be exempt from the Florida Fire Prevention Code and National Codes.

Lastly, when establishing minimum firesafety standards for existing buildings, the bill allows a local fire official to consider the Fire Safety Evaluation System found in NFPA 101A, Guide on Alternative Solutions to Life Safety, that has been adopted by the State Fire Marshal, as an acceptable source for the identification of low-cost, reasonable alternatives.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

According to the DFS, PCS/SB 1148 may reduce the number and amount of permit review fees imposed by local governments. Local Governments currently have the authority to inspect and review structures for the types of events exempted from the Florida Fire Prevention Code in this bill.

B. Private Sector Impact:

Pole barns and nonresidential farm buildings used in specific circumstances are exempt from the Florida Fire Prevention Code, National Codes, and the Life Safety Code. Exemptions from such codes could be a cost savings to such owners.

C. **Government Sector Impact:**

The State Fire Marshal is directed to conduct a study and convene a workgroup to review exemptions for nonresidential farm buildings when used for certain assembly occupancies. According to the DFS, existing resources are sufficient to conduct the study and fulfill the workgroup responsibilities included in the bill.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 633.202 and 633.208.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**

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

**Recommended CS by Appropriations Subcommittee on General Government on April 2, 2015:**

The committee substitute amends the requirements necessary for an exemption to fire safety codes when an agricultural pole barn is used for assembly, business, or mercantile occupancies. These changes are:

- The building must not be used for lodging purposes;
- Each event has no more than 100 occupying the building at one time;
- There are at least two openings with a minimum of 36 inches wide and 80 inches high;
- There are at least seven square feet per person in attendance if the building is not concentrated with tables, chairs, or other obstacles, and 15 square feet per person if the building is concentrated with tables, chairs or other obstacles; and
- There is no storage of combustible or flammable liquids inside the building during the event.

B. **Amendments:**

None.



420210

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
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The Committee on Appropriations (Hukill) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 51 - 77

and insert:

1. The nonresidential farm building is used by the owner only for the secondary purposes of assembly, business, or mercantile occupancy, as defined in the Florida Fire Prevention Code, and is not used for lodging purposes.

2. Each event has less than 100 persons occupying the building at one time.



11 3. There are at least two means of egress or openings of at  
12 least 36 inches in width and 80 inches in height.

13 4. The nonresidential farm building provides at least 7  
14 square feet per person in attendance if the building is not  
15 concentrated with chairs, tables, or other obstacles, and 15  
16 square feet per person in attendance if the building is  
17 concentrated with chairs, tables, or other obstacles.

18 5. The storage of combustible or flammable liquids inside  
19 the nonresidential farm building during each event is not  
20 permitted.

21 (d) Notwithstanding any other provision of law, an  
22 agricultural pole barn is exempt from the Florida Fire  
23 Prevention Code, including the national fire codes and the Life  
24 Safety Code incorporated by reference.

25 (e) The State Fire Marshal shall conduct a study on the  
26 secondary use of nonresidential farm buildings as assembly,  
27 business, or mercantile occupancies that exceed 100 persons in  
28 attendance and on the development of a fire safety evaluation  
29 system for nonresidential farm buildings used for those  
30 occupancies.

31  
32 ===== T I T L E A M E N D M E N T =====

33 And the title is amended as follows:

34 Delete lines 7 - 9

35 and insert:

36 circumstances; requiring the State Fire



576-03397-15

Proposed Committee Substitute by the Committee on Appropriations  
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to firesafety; amending s. 633.202, F.S.; defining terms; exempting nonresidential farm buildings and agricultural pole barns, rather than specified structures located on agricultural property, from the Florida Fire Prevention Code under specified circumstances; authorizing the local fire official to request notification of certain events held in a nonresidential farm building; requiring the State Fire Marshal to conduct a study addressing certain secondary uses of nonresidential farm buildings; requiring the State Fire Marshal to convene a workgroup by a specified date to assist with the study; requiring the State Fire Marshal to initiate rulemaking by a specified date if the study determines that certain life safety or fire prevention standards are required; revising the maximum measurements of a tent that is exempt from the Florida Fire Prevention Code; amending s. 633.208, F.S.; authorizing a local fire official to consider a specified publication when identifying an alternative to a firesafety code; providing an effective date.

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

Section 1. Subsection (16) of section 633.202, Florida Statutes, is amended to read:



576-03397-15

633.202 Florida Fire Prevention Code.—

(16) (a) As used in this subsection, the term:

1. "Agricultural pole barn" means a nonresidential farm building in which 90 percent or more of the perimeter walls are permanently open and allow free ingress and egress.

2. "Nonresidential farm building" has the same meaning provided in s. 604.50.

(b) A nonresidential farm building structure, located on property that is classified for ad valorem purposes as agricultural, which is part of a farming or ranching operation, in which the occupancy is limited by the property owner to no more than 35 persons, and which is not used by the public for direct sales or as an educational outreach facility, is exempt from the Florida Fire Prevention Code, including the national codes and Life Safety Code incorporated by reference. This paragraph does not include structures used for residential or assembly occupancies, as defined in the Florida Fire Prevention Code.

(c) Notwithstanding any other provision of law, a nonresidential farm building is exempt from the Florida Fire Prevention Code, including the national codes and the Life Safety Code incorporated by reference, if all of the following conditions are met:

1. The nonresidential farm building is used occasionally by the owner only for the secondary purposes of assembly, business, or mercantile occupancy, as defined in the Florida Fire Prevention Code, and is not used for lodging purposes.

2. Each event has less than 100 persons occupying the building at one time.



576-03397-15

57 3. There are at least two means of egress or openings of at  
58 least 36 inches in width and 80 inches in height.

59 4. The nonresidential farm building provides at least 7  
60 square feet per person in attendance if the building is not  
61 concentrated with chairs, tables, or other obstacles, and 15  
62 square feet per person in attendance if the building is  
63 concentrated with chairs, tables, or other obstacles.

64 5. The storage of combustible or flammable liquids inside  
65 the nonresidential farm building during each event is not  
66 permitted.

67 (d) The local fire official may request to be notified of  
68 an event that is subject to the conditions of paragraph (c).

69 (e) Notwithstanding any other provision of law, an  
70 agricultural pole barn is exempt from the Florida Fire  
71 Prevention Code, including the national fire codes and the Life  
72 Safety Code incorporated by reference.

73 (f) The State Fire Marshal shall conduct a study on the  
74 secondary use of nonresidential farm buildings as assembly  
75 occupancies that exceed 100 persons in attendance and on the  
76 development of a fire safety evaluation system for  
77 nonresidential farm buildings used as assembly occupancies.

78 1. The State Fire Marshal shall convene a workgroup on or  
79 before September 1, 2015, to assist with the study. The  
80 workgroup must include a representative of the Florida  
81 Agritourism Association, the Florida Farm Bureau, the Department  
82 of Agriculture and Consumer Services, the Florida Fire Chiefs  
83 Association, the Florida Professional Firefighters Association,  
84 the Florida Fire Marshals and Inspectors Association, and the  
85 Florida Volunteer Firefighters Association. The workgroup may



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86 include other interested parties.

87 2. If the study determines that the secondary use of  
88 nonresidential farm buildings as described in this paragraph  
89 requires alternative life safety or fire prevention standards  
90 instead of those currently specified in the Florida Fire  
91 Prevention Code, the State Fire Marshal shall in coordination  
92 with the Department of Agriculture and Consumer Services adopt  
93 the alternative standards by rule. Such rulemaking shall be  
94 initiated on or before December 1, 2015.

95 (17) ~~(b)~~ A tent up to 900 square feet by 30 feet is  
96 exempt from the Florida Fire Prevention Code, including the  
97 national codes incorporated by reference.

98 Section 2. Subsection (5) of section 633.208, Florida  
99 Statutes, is amended to read:

100 633.208 Minimum firesafety standards.—

101 (5) With regard to existing buildings, the Legislature  
102 recognizes that it is not always practical to apply any or all  
103 of the provisions of the Florida Fire Prevention Code and that  
104 physical limitations may require disproportionate effort or  
105 expense with little increase in fire or life safety. ~~Before~~  
106 ~~Prior to~~ applying the minimum firesafety code to an existing  
107 building, the local fire official shall determine that a threat  
108 to lifesafety or property exists. If a threat to lifesafety or  
109 property exists, the fire official shall apply the applicable  
110 firesafety code for existing buildings to the extent practical  
111 to assure a reasonable degree of lifesafety and safety of  
112 property or the fire official shall fashion a reasonable  
113 alternative ~~that~~ ~~which~~ affords an equivalent degree of  
114 lifesafety and safety of property. The local fire official may



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115 consider the Fire Safety Evaluation System found in NFPA 101A,  
116 Guide on Alternative Solutions to Life Safety, adopted by the  
117 State Fire Marshal, as an acceptable source for the  
118 identification of low-cost, reasonable alternatives. The  
119 decision of the local fire official may be appealed to the local  
120 administrative board described in s. 553.73.

121 Section 3. This act shall take effect July 1, 2015.

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

---

BILL: CS/SB 1148

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government) and Senator Stargel

SUBJECT: Firesafety

DATE: April 20, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Favorable</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Betta</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1148 makes the following changes with regards to the regulation by the Fire Prevention Code of agriculture property:

- Defines “Agricultural pole barn” and exempts such barns from the Florida Fire Prevention Code, National Codes, and the Life Safety Code.
- Defines a “nonresidential farm building” and specifies certain uses allowing such buildings to be exempt for the Florida Fire Prevention Code, National Codes, and the Life Safety Code.
- Requires the State Fire Marshal to conduct a study on the use of nonresidential farm buildings for certain assemblies as defined in the fire code.
- Requires the State Fire Marshal to convene a working group of various stakeholders to assist with the study.
- Authorizes a local fire official to consider the Fire Safety Evaluation System found in the National Fire Protection Association (NFPA) 101A Life Safety Code when identifying alternatives to a firesafety code with regards to existing buildings.

There is no fiscal impact to state funds.

The bill provides an effective date of July 1, 2015.

## II. Present Situation:

### **Division of the State Fire Marshal (State Fire Marshal)**

State law on fire prevention and control is provided in ch. 633, F.S. Section 633.104, F.S., designates the Chief Financial Officer (CFO) as the State Fire Marshal, operating through the Division of the State Fire Marshal.<sup>1</sup> Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; develops firesafety standards; provides facilities for the analysis of fire debris; and operates the Florida State Fire College. Additionally, the State Fire Marshal adopts by rule the Florida Fire Prevention Code, which contains or references all firesafety laws and rules regarding public and private buildings.<sup>2</sup>

The Division of the State Fire Marshal (Division) consists of the following four bureaus: the Bureau of Fire and Arson Investigations, the Bureau of Fire Standards and Training, the Bureau of Forensic Fire and Explosive Analysis, and Bureau of Fire Prevention. The Florida State Fire College, part of the Bureau of Fire Standards and Training, trains over 6,000 students per year. The Inspections Section, under the Bureau of Fire Prevention, annually inspects more than 14,000 state-owned buildings and facilities. Over 1.8 million fire and emergency reports are collected every year. These reports are entered into a database to form the basis for the State Fire Marshal's annual report.<sup>3</sup>

### **National Fire Protection Association (NFPA) 101 Life Safety Code**

The National Fire Protection Association (NFPA) publishes the NFPA 101 Life Safety Code. The Life Safety Code is used to protect the public by developing standards on building construction, protection, and occupancy features that minimize the effects of fire and related hazards. The Life Safety Code covers life safety in both new and existing structures.<sup>4</sup> Under current law, the State Fire Marshal must adopt the Life Safety Code.<sup>5</sup> The current Florida Fire Prevention Code and the Life Safety Code incorporates the NFPA 101 Life Safety Code as adopted by the State Fire Marshal.<sup>6</sup>

### **NFPA Occupancy Definitions<sup>7</sup>**

The NFPA provides the following definitions relating to occupancy:

- “Assembly Occupancy” is defined as an occupancy used for a gathering of 50 or more persons for deliberation, worship, entertainment, eating, drinking, amusement, awaiting transportation, or similar uses; or used as a special amusement building, regardless of occupant load.

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<sup>1</sup> The head of the Department of Financial Services (DFS) is the Chief Financial Officer. The Division of State Fire Marshal is located within the DFS.

<sup>2</sup> s. 633.202(1), F.S.

<sup>3</sup> State Fire Marshal website: <http://www.myfloridacfo.com/sfm/> (Last visited March 14, 2015).

<sup>4</sup> <http://www.nfpa.org/aboutthecodes> (Last visited March 14, 2015).

<sup>5</sup> s. 633.202(2), F.S.

<sup>6</sup> s. 633.104(1), F.S.

<sup>7</sup> <http://codesonline.nfpa.org/a/c.ref/ID020101110939/chapter> (Last visited March 14, 2015).

- “Mercantile Occupancy” is defined as an occupancy used for the display and sale of merchandise.
- “Business Occupancy” is defined as an occupancy used for the transaction of business other than mercantile.

### **Nonresidential Farm Buildings**

Section 604.50, F.S., defines a nonresidential farm building as any temporary or permanent building or support structure located on a farm or that is used primarily for agricultural purposes, is located on land that is an integral part of a farm operation, and is not intended to be used as a residential dwelling. The term may include, but is not limited to, a barn, greenhouse, shade house, farm office, storage building, or poultry house. This definition does not provide any exemptions from the Florida Fire Prevention Code.

### **III. Effect of Proposed Changes:**

The bill defines an “Agricultural pole barn” as a nonresidential farm building in which 90 percent or more of the perimeter walls are permanently open and allow free ingress and egress. Furthermore, the section states such pole barns are exempt for the Florida Fire Prevention Code, National Codes and the Life Safety Code.

The bill defines a nonresidential farm building for purposes of the Florida Fire Prevention Code as having the same meaning as provided in s. 604.50, F.S. The bill allows two scenarios for when such buildings can be exempt from the Florida Fire Prevention Code, National Codes and the Life Safety Code:

- If occupancy is limited by the property owner to no more than 35 persons and the building is not used by the public for direct sales or as an educational outreach facility, or
- The building is used by the owner for assembly, business, or mercantile occupancies, as defined in the Florida Fire Prevention Code, is not used for lodging purposes, each event has no more than 100 persons occupying the building at one time, there are at least two openings, a minimum of 36 inches wide and 80 inches high, the building provides at least seven square feet per person in attendance if the building is not concentrated with tables, chairs, or other obstacles and 15 square feet per person if the building is concentrated with tables, chairs or other obstacles, and no combustible or flammable liquids are stored inside the building during the event.

By exempting a nonresidential farm building from the Florida Fire Prevention Code, National Codes, and the Life Safety Code, the formula used for determining safe occupancy size of a building will not apply.

The bill requires the State Fire Marshal to conduct a study on the secondary use of nonresidential farm buildings as assembly occupancies with more than 100 individuals in attendance. The State Fire Marshal is directed to convene a workgroup on or before September 1, 2015, to assist with the study. The workgroup must include a representative of the Florida Agritourism Association, the Florida Farm Bureau, the Department of Agriculture and Consumer Services, the Florida Fire Chiefs Association, the Florida Professional Firefighters Association, the Florida Fire Marshals

and Inspectors Association, and the Florida Volunteer Firefighters Association. The workgroup may include other interested parties.

If the study determines that an assembly occupancy requires life safety or fire prevention standards different from those currently specified in the Florida Fire Prevention Code, the State Fire Marshal must adopt alternative standards by rule and such rulemaking must begin on or before December 1, 2015.

The bill makes a technical change regarding the configuration of a tent. No longer must a tent be up to 30 feet by 30 feet but rather the change in the bill limits tents to no more than a total of 900 square feet in order to be exempt from the Florida Fire Prevention Code and National Codes.

Lastly, when establishing minimum firesafety standards for existing buildings, the bill allows a local fire official to consider the Fire Safety Evaluation System found in NFPA 101A, Guide on Alternative Solutions to Life Safety, that has been adopted by the State Fire Marshal, as an acceptable source for the identification of low-cost, reasonable alternatives.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

According to the DFS, CS/SB 1148 may reduce the number and amount of permit review fees imposed by local governments. Local Governments currently have the authority to inspect and review structures for the types of events exempted from the Florida Fire Prevention Code in this bill.

B. Private Sector Impact:

Pole barns and nonresidential farm buildings used in specific circumstances are exempt from the Florida Fire Prevention Code, National Codes, and the Life Safety Code. Exemptions from such codes could be a cost savings to such owners.

**C. Government Sector Impact:**

The State Fire Marshal is directed to conduct a study and convene a workgroup to review exemptions for nonresidential farm buildings when used for certain assembly occupancies. According to the DFS, existing resources are sufficient to conduct the study and fulfill the workgroup responsibilities included in the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 633.202 and 633.208.

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

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

**CS by Appropriations on April 16, 2015:**

The committee substitute amends the requirements necessary for an exemption to fire safety codes when an agricultural pole barn is used for assembly, business, or mercantile occupancies. These changes are:

- The building must not be used for lodging purposes;
- Each event has no more than 100 occupying the building at one time;
- There are at least two openings with a minimum of 36 inches wide and 80 inches high;
- There are at least seven square feet per person in attendance if the building is not concentrated with tables, chairs, or other obstacles, and 15 square feet per person if the building is concentrated with tables, chairs or other obstacles; and
- There is no storage of combustible or flammable liquids inside the building during the event.
- Technical changes relating to the owner's use of the building.

**B. Amendments:**

None.

By Senator Stargel

15-00960A-15

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1 A bill to be entitled  
 2 An act relating to firesafety; amending s. 633.202,  
 3 F.S.; defining terms; exempting nonresidential farm  
 4 buildings, rather than specified structures located on  
 5 agricultural property, from the Florida Fire  
 6 Prevention Code under specified circumstances;  
 7 requiring the State Fire Marshal to conduct a study  
 8 addressing certain secondary uses of nonresidential  
 9 farm buildings; requiring the State Fire Marshal to  
 10 convene a workgroup by a specified date to assist with  
 11 the study; requiring the State Fire Marshal to  
 12 initiate rulemaking by a specified date if the study  
 13 determines that certain life safety or fire prevention  
 14 standards are required; revising the maximum  
 15 measurements of a tent that is exempt from the Florida  
 16 Fire Prevention Code; amending s. 633.208, F.S.;

17 authorizing a local fire official to consider a  
 18 specified publication when identifying an alternative  
 19 to a firesafety code; providing an effective date.

20

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

22

23 Section 1. Subsection (16) of section 633.202, Florida  
 24 Statutes, is amended to read:

25 633.202 Florida Fire Prevention Code.—

26 (16) (a) As used in this subsection, the term:

27 1. "Agricultural pole barn" means a nonresidential farm  
 28 building in which 90 percent or more of the perimeter walls are  
 29 permanently open and allow free ingress and egress.

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

15-00960A-15

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30 2. "Nonresidential farm building" has the same meaning  
 31 provided in s. 604.50.

32 ~~(b) A nonresidential farm building structure, located on~~  
 33 ~~property that is classified for ad valorem purposes as~~  
 34 ~~agricultural, which is part of a farming or ranching operation,~~  
 35 in which the occupancy is limited by the property owner to no  
 36 more than 35 persons, and which is not used by the public for  
 37 direct sales or as an educational outreach facility, is exempt  
 38 from the Florida Fire Prevention Code, including the national  
 39 codes and Life Safety Code incorporated by reference. ~~This~~  
 40 ~~paragraph does not include structures used for residential or~~  
 41 ~~assembly occupancies, as defined in the Florida Fire Prevention~~  
 42 ~~Code.~~

43 (c) Notwithstanding any other provision of law, a  
 44 nonresidential farm building is exempt from the Florida Fire  
 45 Prevention Code, including the national codes and the Life  
 46 Safety Code incorporated by reference, if:

47 1. The nonresidential farm building is used by the owner  
 48 for assembly, business, or mercantile occupancies, as defined in  
 49 the Florida Fire Prevention Code, no more than a total of 20  
 50 times per year; and

51 2. Each occupancy under subparagraph 1. lasts no longer  
 52 than 72 hours and has no more than 150 individuals in  
 53 attendance.

54 (d) Notwithstanding any other provision of law, an  
 55 agricultural pole barn is exempt from the Florida Fire  
 56 Prevention Code, including the national codes and the Life  
 57 Safety Code incorporated by reference.

58 (e) The State Fire Marshal shall conduct a study on the

Page 2 of 4

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

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59 secondary use of nonresidential farm buildings as assembly  
 60 occupancies that occur more than 20 times per year and as  
 61 assembly occupancies with more than 150 individuals in  
 62 attendance.

63 1. The State Fire Marshal shall convene a workgroup on or  
 64 before September 1, 2015, to assist with the study. The  
 65 workgroup must include a representative of the Florida  
 66 Agritourism Association, the Florida Farm Bureau, the Department  
 67 of Agriculture and Consumer Services, the Florida Fire Chiefs  
 68 Association, the Florida Professional Firefighters Association,  
 69 the Florida Fire Marshals and Inspectors Association, and the  
 70 Florida Volunteer Firefighters Association. The workgroup may  
 71 include other interested parties.

72 2. If the study determines that an assembly occupancy  
 73 described under this paragraph requires life safety or fire  
 74 prevention standards different from those currently specified in  
 75 the Florida Fire Prevention Code, the State Fire Marshal shall  
 76 adopt the alternative standards by rule. Such rulemaking must be  
 77 initiated on or before December 1, 2015.

78 (17) ~~(b)~~ A tent up to 900 square 30 feet by 30 feet is  
 79 exempt from the Florida Fire Prevention Code, including the  
 80 national codes incorporated by reference.

81 Section 2. Subsection (5) of section 633.208, Florida  
 82 Statutes, is amended to read:

83 633.208 Minimum firesafety standards.—

84 (5) With regard to existing buildings, the Legislature  
 85 recognizes that it is not always practical to apply any or all  
 86 of the provisions of the Florida Fire Prevention Code and that  
 87 physical limitations may require disproportionate effort or

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88 expense with little increase in fire or life safety. Before  
 89 ~~Prior to~~ applying the minimum firesafety code to an existing  
 90 building, the local fire official shall determine that a threat  
 91 to lifesafety or property exists. If a threat to lifesafety or  
 92 property exists, the fire official shall apply the applicable  
 93 firesafety code for existing buildings to the extent practical  
 94 to assure a reasonable degree of lifesafety and safety of  
 95 property or the fire official shall fashion a reasonable  
 96 alternative that which affords an equivalent degree of  
 97 lifesafety and safety of property. The local fire official may  
 98 consider the Fire Safety Evaluation System found in NFPA 101A,  
 99 Guide on Alternative Solutions to Life Safety, adopted by the  
 100 State Fire Marshal, as an acceptable source for the  
 101 identification of low-cost, reasonable alternatives. The  
 102 decision of the local fire official may be appealed to the local  
 103 administrative board described in s. 553.73.

104 Section 3. This act shall take effect July 1, 2015.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Higher Education, *Chair*  
Appropriations Subcommittee on Education  
Fiscal Policy  
Judiciary  
Military and Veterans Affairs, Space, and Domestic  
Security  
Regulated Industries

### JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

### SENATOR KELLI STARGEL

15th District

April 6, 2015

The Honorable Tom Lee  
Senate Appropriations Committee, Chair  
418 Senate Office Building  
404 S. Monroe Street  
Tallahassee, FL 32399

Dear Chair Lee:

I am respectfully requesting that SB 1148, related to *Firesafety*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kelli Stargel".

Kelli Stargel  
State Senator, District 15

Cc: Cindy Kynoch/ Staff Director  
Alicia Weiss/ AA

#### REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

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

**ANDY GARDINER**  
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)

4/16/15  
Meeting Date

1148  
Bill Number (if applicable)

Topic Fire Safety

Amendment Barcode (if applicable)

Name Adam Basford

Job Title Legislative Affairs Director

Address 315 S Calhoun St #850

Phone 222 2557

Tallahassee FL 32301  
City State Zip

Email adam.basford@fla.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FL Farm Bureau

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/14/15  
Meeting Date

SB 1148  
Bill Number (if applicable)

Topic Fire Safety

Amendment Barcode (if applicable)

Name Jonathan Rees

Job Title Deputy Director, Legislative Affairs

Address 400 S. Monroe St.

Phone (850) 617-7700

Tallahassee FL 32399  
City State Zip

Email Jonathan.Rees@freshfromflorida.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Department of Agriculture and Consumer Services

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

---

Prepared By: The Professional Staff of the Committee on Appropriations

---

BILL: CS/SB 1284

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Soto

SUBJECT: Maintenance of Agency Final Orders

DATE: April 15, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	<b>Fav/CS</b>
2.	Davis	DeLoach	AGG	<b>Favorable</b>
3.	Davis	Kynoch	AP	<b>Favorable</b>

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

COMMITTEE SUBSTITUTE - Technical Changes

---

**I. Summary:**

CS/SB 1284 revises the requirements governing the maintenance of all agency final orders and requires each state agency to electronically transmit specified final orders rendered on or after July 1, 2015, to the electronic database of the Division of Administrative Hearings (DOAH) within 90 days of rendering such order. Before electronically transmitting agency final orders to DOAH's database, each agency must redact all information in the document which is exempt or confidential and exempt from public records requirements. The bill provides database requirements for the DOAH.

The bill also requires that each state agency maintain a list of all final orders that are not required to be electronically transmitted to the DOAH's database. A state agency must maintain a subject-matter index for final orders rendered before July 1, 2015, and identify the location of this index on the agency's website. The DOAH's database will constitute the official compilation of administrative final orders rendered after July 1, 2015, for each agency.

The bill revises the duties of the Department of State (DOS) to coordinate the transmittal and listing of agency final orders. The DOS is required to provide standards and guidelines for the certification, electronic transmittal, and maintenance of agency final orders in DOAH's database.

The bill authorizes the DOS to adopt rules that are binding on state agencies and the DOAH, which acts in the capacity of official compiler of final orders. The DOS is also authorized to designate an alternative official compiler under certain circumstances.

Further, the technical assistance advisements issued by the Department of Revenue (DOR) continue to be exempt from the final order maintenance requirements specified in s. 120.53, F.S.

The bill may have a minimal, indeterminate fiscal impact on some state agencies not presently submitting electronic copies of their final orders to the DOAH. The bill may reduce some agency costs associated with reporting or indexing and maintaining final orders for public access.

The bill provides an effective date of July 1, 2015.

## II. Present Situation:

### Administrative Procedure Act

Chapter 120, F.S., known as the Administrative Procedure Act (APA),<sup>1</sup> regulates administrative rulemaking, administrative enforcement and administrative resolution of disputes arising out of administrative actions of most state agencies and some subdivisions of state government. The term “agency” is defined in s. 120.52(1), F.S., as:

- Each state officer and state department, and departmental unit described in s. 20.04, F.S.<sup>2</sup>
- The Board of Governors of the State University System, the Commission on Ethics, and the Fish and Wildlife Conservation Commission when acting pursuant to statutory authority derived from the Legislature.
- A regional water supply authority.
- A regional planning agency.
- A multicounty special district with a majority of its governing board comprised of non-elected persons.
- Educational units.
- Each entity described in chs. 163 (Intergovernmental Programs), 373 (Water Resources), 380 (Land and Water Management), and 582 (Soil and Water Conservation), F.S., and s. 186.504 (regional planning councils), F.S.
- Other units of government in the state, including counties and municipalities, to the extent they are expressly made subject to the act by general or special law or existing judicial decisions.<sup>3</sup>

The definition of “agency” also includes the Governor<sup>4</sup> in the exercise of all executive powers other than those derived from the State Constitution.

Administrative actions authorized by law and regulated by the APA include adoption of a rule,<sup>5</sup> granting or denying a permit or license, an order enforcing a law or rule that assesses a fine or other discipline and final decisions in administrative disputes or other matters resulting in an agency decision. Such disputes include challenges to the validity of a rule or proposed rule or

---

<sup>1</sup> Section 120.51, F.S.

<sup>2</sup> Section 20.04, F.S., sets the structure of the executive branch of state government.

<sup>3</sup> The definition of agency expressly excludes certain legal entities or organizations found in chs. 343, 348, 349 and 361, F.S., and ss. 339.175 and 163.01(7), F.S.

<sup>4</sup> Section 120.52(1)(a), F.S.

<sup>5</sup> Section 120.54, F.S.

challenges to agency reliance on unadopted rules,<sup>6</sup> as well as challenges to other proposed agency actions which affect substantial interests of any party.<sup>7</sup> In addition to disputes, agency action occurs when the agency acts on a petition for a declaratory statement<sup>8</sup> or settles a dispute through mediation.<sup>9</sup>

### Agency Final Orders

Section 120.52(7), F.S., defines the term “final order,” in pertinent part, as “a written final decision which results from a proceeding under ss. 120.56,<sup>10</sup> 120.565,<sup>11</sup> 120.569,<sup>12</sup> 120.57,<sup>13</sup> 120.573,<sup>14</sup> or 120.574, F.S.,<sup>15</sup> which is not a rule, and which is not excepted from the definition of a rule, and which has been filed with the agency clerk, and includes final agency actions which are affirmative, negative, injunctive, or declaratory in form. A final order includes all materials explicitly adopted in it.”

The APA requires agencies to “maintain” all final orders (with certain exceptions) and a hierarchical subject-matter index thereof, allowing orders to be located and publicly accessed for research or copying.<sup>16</sup> One purpose of the requirement was to enhance public notice of agency policy expressed in precedents.<sup>17</sup> In lieu of the requirement for making available for public inspection and copying a hierarchical subject-matter index of agency orders, the APA authorizes agencies to maintain an electronic database of final orders that allow public users to research and retrieve the full text of final orders using common logical search terms.<sup>18</sup>

Currently, state agencies must index the following within 120 days of rendering:<sup>19</sup>

- Each final order resulting from a proceeding under s. 120.57, F.S., or s. 120.573, F.S.
- Each final agency order rendered pursuant to s. 120.57(4), F.S.,<sup>20</sup> which contains a statement of agency policy that may be the basis of future agency decisions or that may otherwise contain a statement of precedential value.

<sup>6</sup> Section 120.56, F.S.

<sup>7</sup> Section 120.569, F.S.

<sup>8</sup> Section 120.565, F.S.

<sup>9</sup> Section 120.573, F.S.

<sup>10</sup> Section 120.56, F.S., provides procedures for challenging the validity of an agency’s existing rule, proposed rule, agency statements defined as rules, and emergency rules.

<sup>11</sup> Section 120.565, F.S., governs procedures for requesting a declaratory statement from an agency by a substantially affected person regarding the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the person’s particular set of circumstances.

<sup>12</sup> Section 120.569, F.S., governs procedures which affect substantial interests.

<sup>13</sup> Section 120.57, F.S., provides additional procedures for particular cases regarding hearings involving disputed issues of material fact and hearings not involving disputed issues of material fact.

<sup>14</sup> Section 120.573, F.S., governs procedures for the mediation of disputes of agency action that affects substantial interests.

<sup>15</sup> Section 120.574, F.S., governs summary hearing procedures.

<sup>16</sup> Section 120.53(1)(a)2.a., F.S.

<sup>17</sup> *McDonald v. Department of Banking and Finance*, 346 So.2d 569, 582 (1<sup>st</sup> DCA 1977). Also, see *Gessler v. Dep’t of Bus. & Prof. Reg.*, 627 So.2d 501, 503 (Fla. 4<sup>th</sup> DCA 1993) (“Persons have the right to examine agency precedent and the right to know the factual basis and policy reasons for agency action.”).

<sup>18</sup> Section 120.53(1)(a)2.b., F.S.

<sup>19</sup> Section 120.53(1)(b), F.S.

<sup>20</sup> Section 120.57(4), F.S., provides that “[u]nless precluded by law, informal disposition may be made of any proceeding by stipulation, agreed settlement, or consent order.”

- Each declaratory statement issued by an agency.
- Each final order resulting from a proceeding under s. 120.56, F.S., or s. 120.574, F.S.

Agency final orders may be maintained in hard copy in agency files, published by a reporter<sup>21</sup> or made available online in an electronic database. These various methods can make finding agency final orders difficult at times. The Ad Hoc Orders Access Committee of the Florida Bar's Administrative Law Section surveyed state agencies to gather information on how agencies index final orders and where final orders may be accessed.<sup>22</sup> The survey revealed that some agencies still require a public records request to access their index and copies of final orders, or they simply identify a particular agency employee to contact for access. Such methods are not always in keeping with the information age. Florida's public records law require agencies to permanently maintain records of agency final orders.<sup>23</sup>

### **Coordination of Indexing of Final Orders by Department of State**

In addition to its supervisory role in the archiving of state records,<sup>24</sup> the DOS is required to administer the coordination of the indexing, management, preservation, and availability of agency final orders that must be indexed or listed in accordance with s. 120.53(1), F.S.<sup>25</sup> The DOS has rulemaking authority over the system of indexing that agencies may use<sup>26</sup> and the storage and retrieval systems used to provide access.<sup>27</sup> The DOS may approve more than one system.<sup>28</sup> Authorized storage and retrieval systems for agencies include reporters, microfilm, automated systems or any other system considered appropriate by the DOS.<sup>29</sup> Also, the DOS is required to determine which final orders agencies must index.<sup>30</sup> Agencies must receive approval in writing from the DOS regarding various provisions for indexing final orders.<sup>31</sup>

### **Division of Administrative Hearings**

The DOAH is a state agency consisting of an independent group of administrative law judges (ALJs) that presides over disputes under the APA and other state laws.<sup>32</sup> The DOAH is placed administratively under the Department of Management Services (DMS);<sup>33</sup> however, DOAH is not subject to any control, supervision, or direction by the DMS. The director of the DOAH, who

<sup>21</sup> Section 120.53(2)(a), F.S., provides, in part, that “[a]n agency may comply with subparagraphs (1)(a)1. and 2. by designating an official reporter to publish and index by subject matter each agency order that must be indexed and made available to the public . . .”

<sup>22</sup> Jowanna N. Oates, *Access to Agency Final Orders*, The Florida Bar, Administrative Law Section Newsletter, Vol. XXXIV, No. 4 (June 2013). For an updated list on accessing agency final orders, see <http://www.fladminlaw.org/pdf/information-about-accessing-agency-final-orders.pdf>.

<sup>23</sup> Section 119.021(3), F.S.

<sup>24</sup> Section 257.35, F.S., Also, see s. 15.02, F.S.

<sup>25</sup> Section 120.533(1), F.S.

<sup>26</sup> Section 120.533(2), F.S.

<sup>27</sup> Section 120.533(3), F.S.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Section 120.533(4), F.S. The rules adopted under this section are found in ch. 1B-32, F.A.C.

<sup>31</sup> Section 120.53(1)(c), F.S.

<sup>32</sup> Section 120.65, F.S.

<sup>33</sup> Section 120.65(1), F.S.

also serves as chief administrative law judge, has effective administrative control over DOAH, its resources and operations.<sup>34</sup>

Since the 2008 amendments to the APA,<sup>35</sup> agencies have been permitted to satisfy the final order index requirement by electronically transmitting a copy of its final orders to DOAH for posting on its website.<sup>36</sup> Many agencies use the DOAH alternative.<sup>37</sup> There does not appear to be any law requiring the DOAH to maintain its electronic database that is accessible for searching orders. However, the DOS has adopted a rule governing the use of a database for maintaining final orders. The rule provides:

If an electronic database is used by an agency, it shall allow users to research and retrieve agency orders by searching the text of the order and descriptive information about the order, which shall contain, at a minimum, major subject headings. To promote consistent, reliable indexing, the indexing system for an electronic database shall have fixed fields to ensure common usage of search terms by anyone that uses the system.<sup>38</sup>

### **Department of Revenue (DOR) Technical Assistance Advisements**

Upon request, the DOR issues informal technical assistance regarding certain tax consequences.<sup>39</sup> Currently, these technical assistance advisements are exempted from the requirements of s. 120.53(1), F.S.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 119.021(3), F.S., to make conforming changes regarding the requirement of each state agency to permanently maintain all final orders rendered before July 1, 2015, which were indexed or listed pursuant to s. 120.53, F.S., and agency final orders rendered on or after July 1, 2015, which must be listed or copies of which must be electronically transmitted to the DOAH pursuant to s. 120.53, F.S.

**Section 2** amends s. 120.53, F.S., to require each state agency, in addition to the agency requirement of maintaining records in accordance with s. 119.021(3), F.S., to electronically

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<sup>34</sup> *Id.*

<sup>35</sup> Ch. 2008-104, L.O.F.

<sup>36</sup> Section 120.53(2)(a), F.S., provides, in part that that “[a]n agency may comply with subparagraphs (1)(a)1. and 2. by . . . electronically transmitting to the division a copy of such orders for posting on the division’s website.” Also, see DOAH’s website at <https://www.doah.state.fl.us/FLAIO/>.

<sup>37</sup> The DOAH website lists the following agencies having final orders accessible: Department of Agriculture and Consumer Services, Agency for Persons with Disabilities, Department of Children and Family Services, Department of Corrections, Department of Community Affairs, Department of Economic Opportunity, Department of Environmental Protection, Department of Health, Department of Education, Department of State, Department of Business and Professional Regulation, Florida Housing Finance Corporation, Office of the Governor, Agency for Health Care Administration, and Department of Highway Safety and Motor Vehicles.

<sup>38</sup> Chapter 1B-32.002(2)(e), F.A.C.

<sup>39</sup> Section 213.22(1), F.S.

transmit a certified text-searchable copy of each agency final orders rendered on or after July 1, 2015, to a centralized electronic database maintained by the DOAH.

The DOAH database must allow users to search and retrieve the full texts of agency final orders by the:

- Name of the agency that issued the final order.
- Date the final agency order was issued.
- Type of final order.
- Subject of the final order.
- Terms contained in the text of the final order.

The types of agency final orders that must be electronically transmitted to DOAH's database include the following:

- Each final order resulting from a proceeding under s. 120.57, F.S., or s. 120.573, F.S.
- Each final order rendered pursuant to s. 120.57(4), F.S., which contains a statement of agency policy that may be the basis of future agency decisions or that may otherwise contain a statement of precedential value.
- Each declaratory statement issued by an agency.
- Each final order resulting from a proceeding under s. 120.56, F.S., or s. 120.574, F.S.

Also, the bill requires each agency to maintain a list of all agency final orders rendered pursuant to s. 120.57(4), F.S., which are not required to be electronically transmitted to DOAH's database.

The bill requires each agency to maintain a subject matter index for final orders rendered before July 1, 2015, and the agency must identify where this index is located on its website.

Within 90 days after the final order is rendered, each agency must electronically transmit the order to DOAH's database. If the final order is rendered pursuant to s. 120.57(4), F.S., the agency must maintain such order on its list as required by this bill.

Additionally, for cases where DOAH has final order authority, the DOAH must transmit the final order to its database within 90 days of issuance of such order.

The bill authorizes an agency to electronically transmit to DOAH's database certified copies of all final orders rendered before July 1, 2015, that are required to be placed in a subject-matter index. The DOAH's centralized electronic database constitutes the official compilation of administrative final orders rendered on or after July 1, 2015.

The bill requires each agency to redact all information in a final order that is exempt or confidential and exempt from public records requirements before electronically transmitting the agency final order to DOAH.

**Section 3** amends s. 120.533, F.S., to require the Department of State (DOS) to coordinate the transmittal of agency final orders pursuant to s. 120.53, F.S. The DOS is required to provide for storage and retrieval systems to be maintained by agencies pursuant to s. 120.53(5), F.S., for

indexing and making available agency final orders by subject matter. The DOS is authorized to approve more than one of these systems.

The DOS is required to provide standards and guidelines for the certification and electronic transmittal of copies of agency final orders to DOAH in accordance with s. 120.53, F.S., and for protection of integrity and authenticity of information publicly accessible through the electronic database.

The DOS is also required to provide standards and guidelines to ensure security of copies of agency final orders transmitted and maintained in DOAH's electronic database.

The bill authorizes the DOS to adopt rules to administer its responsibilities that are binding on state agencies and DOAH, which acts in capacity of official compiler of administrative final orders under s. 120.53, F.S. The DOS is also authorized to designate an alternative official compiler if the Administration Commission<sup>40</sup> determines that DOAH's performance is unsatisfactory.

**Section 4** amends s. 213.22, F.S., to make conforming changes regarding the non-applicability of s. 120.53, F.S., requirements to technical assistance advisements issued by the DOR.

**Section 5** provides an effective date of July 1, 2015.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 1284 may have a slight positive economic impact on the private sector by offering easy internet access to agency orders that may only be accessible in person under current law.

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<sup>40</sup> Section 14.202, F.S. Also, see s. 120.65, F.S.

**C. Government Sector Impact:**

The bill may have a minimal fiscal impact on some state agencies that do not presently use a searchable electronic database of final orders; however this impact is should be minimal and most likely could be absorbed within agency resources. The bill could reduce some agency costs associated with reporting or indexing and maintaining final orders for public access.

According to the DOAH, the agency supports the uniform indexing and maintenance of final orders set forth in the bill, and it can maintain all final orders on its website and host full public access with current resources, personnel and equipment.<sup>41</sup>

According to the Department of State (DOS), rulemaking, coordinating and providing standards and guidelines related to the certification, electronic transmittal, and maintenance of agency final orders in the DOAH's database may have a minimal fiscal impact that can be absorbed with existing resources. The fiscal impact related to authorizing the DOS to provide an alternative official compiler if the Administration Commission determines that the DOAH's performance is unsatisfactory is indeterminate at this time.<sup>42</sup>

**VI. Technical Deficiencies:**

Amendments to s. 120.533(7), F.S. contained in Section 3 of the bill, requires the DOAH to act as the official compiler of "administrative final orders" under s. 120.53, F.S. The bill consistently refers to "agency final orders". The use of the word "administrative" may create ambiguity in regards to the DOAH's responsibilities under this legislation. It is recommended that the word "administrative" be deleted and replaced with the word "agency."

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 119.021, 120.53, 120.533, and 213.22.

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<sup>41</sup> See DOAH legislative bill analysis dated February 12, 2015. A copy of this analysis is on file with the Governmental Oversight and Accountability Committee.

<sup>42</sup> Telephone conversation with the Department of State staff on April 2, 2015.

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

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

**CS by Governmental Oversight and Accountability on March 17, 2015:**

Each agency is required to redact all information in a final order that is exempt or confidential and exempt from public records requirements before electronically transmitting such order to DOAH.

The DOAH's electronic database will constitute the official compilation of administrative final orders rendered after July 1, 2015, for each agency.

The bill amends s. 120.533, F.S., regarding DOS's duty to coordinate the transmittal and listing of agency final orders.

The DOS is required to provide standards and guidelines for the certification and electronic transmittal of copies of agency final orders to DOAH in accordance with s. 120.53, F.S., and for protection of integrity and authenticity of information publicly accessible through the electronic database.

The DOS is also required to provide standards and guidelines to ensure security of copies of agency final orders transmitted and maintained in DOAH's electronic database.

The DOS is authorized to adopt rules to administer its responsibilities that are binding on state agencies and DOAH, which acts in capacity of official compiler of administrative final orders under s. 120.53, F.S. DOS is also authorized to designate an alternative official compiler if the Administration Commission determines that DOAH's performance is unsatisfactory.

**B. Amendments:**

None.

By the Committee on Governmental Oversight and Accountability;  
and Senator Soto

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1 A bill to be entitled  
2 An act relating to the maintenance of agency final  
3 orders; amending s. 119.021, F.S.; conforming a  
4 provision to changes made by the act; amending s.  
5 120.53, F.S.; requiring agencies to electronically  
6 transmit certain agency final orders to a centralized  
7 electronic database maintained by the Division of  
8 Administrative Hearings; providing the methods by  
9 which such final orders can be searched; requiring  
10 each agency to maintain a list of final orders that  
11 are not required to be electronically transmitted to  
12 the database; providing a timeframe for electronically  
13 transmitting or listing the final orders; authorizing  
14 agencies to maintain subject matter indexes of final  
15 orders issued before a specified date or to  
16 electronically transmit such orders to the database;  
17 providing that the centralized electronic database is  
18 the official compilation of administrative final  
19 orders issued on or after a specified date for each  
20 agency; requiring an agency to redact information  
21 exempt from public records requirements before  
22 electronically transmitting final orders to the  
23 database; deleting obsolete provisions regarding  
24 filing, indexing, and publishing final orders;  
25 amending s. 120.533, F.S.; requiring the Department of  
26 State to provide standards and guidelines for the  
27 certification and electronic transmittal and the  
28 secure transmittal and maintenance of agency final  
29 orders; authorizing the department to adopt rules;

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

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30 authorizing the department to provide for an  
31 alternative official compiler of agency final orders  
32 under certain circumstances; conforming provisions to  
33 changes made by the act; amending s. 213.22, F.S.;  
34 conforming a cross-reference; providing an effective  
35 date.  
36  
37 Be It Enacted by the Legislature of the State of Florida:  
38  
39 Section 1. Subsection (3) of section 119.021, Florida  
40 Statutes, is amended to read:  
41 119.021 Custodial requirements; maintenance, preservation,  
42 and retention of public records.-  
43 (3) Agency final orders rendered before July 1, 2015, which  
44 were indexed or listed pursuant to s. 120.53, and agency final  
45 orders rendered on or after July 1, 2015, which must be listed  
46 or copies of which must be transmitted to the Division of  
47 Administrative Hearings ~~orders that comprise final agency action~~  
48 and that must be indexed or listed pursuant to s. 120.53, have  
49 continuing legal significance; therefore, notwithstanding any  
50 other provision of this chapter or any provision of chapter 257,  
51 each agency shall permanently maintain records of such orders  
52 pursuant to the applicable rules of the Department of State.  
53 Section 2. Section 120.53, Florida Statutes, is amended to  
54 read:  
55 120.53 Maintenance of agency final orders; ~~indexing;~~  
56 listing; ~~organizational information.~~-  
57 (1) In addition to maintaining records contained in s.  
58 119.021(3), each agency shall also electronically transmit a

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59 certified text-searchable copy of each agency final order listed  
 60 in subsection (2) rendered on or after July 1, 2015, to a  
 61 centralized electronic database of agency final orders  
 62 maintained by the division. The database must allow users to  
 63 research and retrieve the full texts of agency final orders by:  
 64 (a) The name of the agency that issued the final order.  
 65 (b) The date the final order was issued.  
 66 (c) The type of final order.  
 67 (d) The subject of the final order.  
 68 (e) Terms contained in the text of the final order.  
 69 ~~(a) Each agency shall maintain:~~  
 70 ~~1. All agency final orders:~~  
 71 ~~2.a. A current hierarchical subject matter index,~~  
 72 ~~identifying for the public any rule or order as specified in~~  
 73 ~~this subparagraph.~~  
 74 ~~b. In lieu of the requirement for making available for~~  
 75 ~~public inspection and copying a hierarchical subject-matter~~  
 76 ~~index of its orders, an agency may maintain and make available~~  
 77 ~~for public use an electronic database of its orders that allows~~  
 78 ~~users to research and retrieve the full texts of agency orders~~  
 79 ~~by devising an ad hoc indexing system employing any logical~~  
 80 ~~search terms in common usage which are composed by the user and~~  
 81 ~~which are contained in the orders of the agency or by~~  
 82 ~~descriptive information about the order which may not be~~  
 83 ~~specifically contained in the order.~~  
 84 (2)e- The agency final orders that must be electronically  
 85 transmitted to the centralized electronic database indexed,  
 86 unless excluded under paragraph (c) or paragraph (d), include:  
 87 (a)(i) Each final agency order resulting from a proceeding

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88 under s. 120.57 or s. 120.573.  
 89 ~~(b)(ii)~~ Each final ~~agency~~ order rendered pursuant to s.  
 90 120.57(4) which contains a statement of agency policy that may  
 91 be the basis of future agency decisions or that may otherwise  
 92 contain a statement of precedential value.  
 93 ~~(c)(iii)~~ Each declaratory statement issued by an agency.  
 94 ~~(d)(iv)~~ Each final order resulting from a proceeding under  
 95 s. 120.56 or s. 120.574.  
 96 ~~(3)3-~~ Each agency shall maintain a list of all final orders  
 97 rendered pursuant to s. 120.57(4) that are not required to be  
 98 electronically transmitted to the centralized electronic  
 99 database which have been excluded from the indexing requirement  
 100 of this section, with the approval of the Department of State,  
 101 because they do not contain statements of agency policy or  
 102 statements of precedential value. The list must include the name  
 103 of the parties to the proceeding and the number assigned to the  
 104 final order.  
 105 ~~4. All final orders listed pursuant to subparagraph 3-~~  
 106 ~~(4)(b)~~ Each An agency final order, whether rendered by the  
 107 agency or the division, that must be electronically transmitted  
 108 to the centralized electronic database or maintained on a list  
 109 pursuant to subsection (3) must be electronically transmitted to  
 110 the database or added to the list within 90 days after the final  
 111 indexed or listed pursuant to paragraph (a) must be indexed or  
 112 listed within 120 days after the order is rendered. Each final  
 113 order that must be electronically transmitted to the database or  
 114 added to the list indexed or listed pursuant to paragraph (a)  
 115 must have attached a copy of the complete text of any materials  
 116 incorporated by reference; however, if the quantity of the

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117 materials incorporated makes attachment of the complete text of  
 118 the materials impractical, the final order may contain a  
 119 statement of the location of such materials and the manner in  
 120 which the public may inspect or obtain copies of the materials  
 121 incorporated by reference. ~~The Department of State shall~~  
 122 ~~establish by rule procedures for indexing final orders, and~~  
 123 ~~procedures of agencies for indexing orders must be approved by~~  
 124 ~~the department.~~

125 (5) Nothing in this section relieves an agency from its  
 126 responsibility for maintaining a subject matter index of final  
 127 orders rendered before July 1, 2015, and identifying the  
 128 location of the subject matter index on the agency's website. In  
 129 addition, an agency may electronically transmit to the  
 130 centralized electronic database certified copies of all of the  
 131 final orders that were rendered before July 1, 2015, which were  
 132 required to be in the subject matter index. The centralized  
 133 electronic database constitutes the official compilation of  
 134 administrative final orders rendered on or after July 1, 2015,  
 135 for each agency.

136 (6) Before electronically transmitting agency final orders  
 137 to the centralized electronic database, each agency shall redact  
 138 all information in a final order which is exempt or confidential  
 139 and exempt from public records requirements.

140 ~~(e) Each agency must receive approval in writing from the~~  
 141 ~~Department of State for:~~

142 ~~1. The specific types and categories of agency final orders~~  
 143 ~~that may be excluded from the indexing and public inspection~~  
 144 ~~requirements, as determined by the department pursuant to~~  
 145 ~~paragraph (d).~~

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146 ~~2. The method for maintaining indexes, lists, and final~~  
 147 ~~orders that must be indexed or listed and made available to the~~  
 148 ~~public.~~

149 ~~3. The method by which the public may inspect or obtain~~  
 150 ~~copies of indexes, lists, and final orders.~~

151 ~~4. A sequential numbering system which numbers all final~~  
 152 ~~orders required to be indexed or listed pursuant to paragraph~~  
 153 ~~(a), in the order rendered.~~

154 ~~5. Proposed rules for implementing the requirements of this~~  
 155 ~~section for indexing and making final orders available for~~  
 156 ~~public inspection.~~

157 ~~(d) In determining which final orders may be excluded from~~  
 158 ~~the indexing and public inspection requirements, the Department~~  
 159 ~~of State may consider all factors specified by an agency,~~  
 160 ~~including precedential value, legal significance, and purpose.~~  
 161 ~~Only agency final orders that are of limited or no precedential~~  
 162 ~~value, that are of limited or no legal significance, or that are~~  
 163 ~~ministerial in nature may be excluded.~~

164 ~~(e) Each agency shall specify the specific types or~~  
 165 ~~categories of agency final orders that are excluded from the~~  
 166 ~~indexing and public inspection requirements.~~

167 ~~(f) Each agency shall specify the location or locations~~  
 168 ~~where agency indexes, lists, and final orders that are required~~  
 169 ~~to be indexed or listed are maintained and shall specify the~~  
 170 ~~method or procedure by which the public may inspect or obtain~~  
 171 ~~copies of indexes, lists, and final orders.~~

172 ~~(g) Each agency shall specify all systems in use by the~~  
 173 ~~agency to search and locate agency final orders that are~~  
 174 ~~required to be indexed or listed, including, but not limited to,~~

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175 any automated system. An agency shall make the search  
 176 capabilities employed by the agency available to the public  
 177 subject to reasonable terms and conditions, including a  
 178 reasonable charge, as provided by s. 119.07. The agency shall  
 179 ~~specify how assistance and information pertaining to final~~  
 180 ~~orders may be obtained.~~

181 ~~(h) Each agency shall specify the numbering system used to~~  
 182 ~~identify agency final orders.~~

183 ~~(2)(a) An agency may comply with subparagraphs (1)(a)1. and~~  
 184 ~~2. by designating an official reporter to publish and index by~~  
 185 ~~subject matter each agency order that must be indexed and made~~  
 186 ~~available to the public, or by electronically transmitting to~~  
 187 ~~the division a copy of such orders for posting on the division's~~  
 188 ~~website. An agency is in compliance with subparagraph (1)(a)3.~~  
 189 ~~if it publishes in its designated reporter a list of each agency~~  
 190 ~~final order that must be listed and preserves each listed order~~  
 191 ~~and makes it available for public inspection and copying.~~

192 ~~(b) An agency may publish its official reporter or may~~  
 193 ~~contract with a publishing firm to publish its official~~  
 194 ~~reporter; however, if an agency contracts with a publishing firm~~  
 195 ~~to publish its reporter, the agency is responsible for the~~  
 196 ~~quality, timeliness, and usefulness of the reporter. The~~  
 197 ~~Department of State may publish an official reporter for an~~  
 198 ~~agency or may contract with a publishing firm to publish the~~  
 199 ~~reporter for the agency; however, if the department contracts~~  
 200 ~~for publication of the reporter, the department is responsible~~  
 201 ~~for the quality, timeliness, and usefulness of the reporter. A~~  
 202 ~~reporter that is designated by an agency as its official~~  
 203 ~~reporter and approved by the Department of State constitutes the~~

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204 ~~official compilation of the administrative final orders for that~~  
 205 ~~agency.~~

206 ~~(c) A reporter that is published by the Department of State~~  
 207 ~~may be made available by annual subscription, and each agency~~  
 208 ~~that designates an official reporter published by the department~~  
 209 ~~may be charged a space rate payable to the department. The~~  
 210 ~~subscription rate and the space rate must be equitably~~  
 211 ~~apportioned to cover the costs of publishing the reporter.~~

212 ~~(d) An agency that designates an official reporter need not~~  
 213 ~~publish the full text of an agency final order that is rendered~~  
 214 ~~pursuant to s. 120.57(4) and that must be indexed pursuant to~~  
 215 ~~paragraph (1)(a), if the final order is preserved by the agency~~  
 216 ~~and made available for public inspection and copying and the~~  
 217 ~~official reporter indexes the final order and includes a~~  
 218 ~~synopsis of the order. A synopsis must include the names of the~~  
 219 ~~parties to the order; any rule, statute, or constitutional~~  
 220 ~~provision pertinent to the order; a summary of the facts, if~~  
 221 ~~included in the order, which are pertinent to the final~~  
 222 ~~disposition; and a summary of the final disposition.~~

223 ~~(3) Agency orders that must be indexed or listed are~~  
 224 ~~documents of continuing legal value and must be permanently~~  
 225 ~~preserved and made available to the public. Each agency to which~~  
 226 ~~this chapter applies shall provide, under the direction of the~~  
 227 ~~Department of State, for the preservation of orders as required~~  
 228 ~~by this chapter and for maintaining an index to those orders.~~

229 ~~(4) Each agency must provide any person who makes a request~~  
 230 ~~with a written description of its organization and the general~~  
 231 ~~course of its operations.~~

232 Section 3. Section 120.533, Florida Statutes, is amended to

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233 read:

234 120.533 Coordination of the transmittal, indexing, and  
 235 listing of agency final orders by Department of State.—The  
 236 Department of State shall:

237 (1) ~~Coordinate~~ Administer the coordination of the  
 238 transmittal, indexing, management, preservation, and  
 239 availability of agency final orders that must be transmitted,  
 240 indexed, or listed pursuant to s. 120.53 ~~s. 120.53(1).~~

241 (2) Provide, ~~by rule,~~ guidelines for the indexing of agency  
 242 final orders. More than one system for indexing may be approved  
 243 by the Department of State, including systems or methods in use,  
 244 or proposed for use, by an agency. More than one system may be  
 245 approved for use by a single agency as best serves the needs of  
 246 that agency and the public.

247 (3) Provide, ~~by rule,~~ for storage and retrieval systems to  
 248 be maintained by agencies pursuant to s. 120.53(5) for indexing,  
 249 and making available, agency final orders by subject matter. The  
 250 Department of State may authorize ~~approve~~ more than one system,  
 251 including systems in use, ~~or proposed for use,~~ by an agency.  
 252 Storage and retrieval systems that may be used by an agency  
 253 include, without limitation, a designated reporter or reporters,  
 254 a microfilming system, an automated system, or any other system  
 255 considered appropriate by the Department of State.

256 (4) Provide standards and guidelines for the certification  
 257 and electronic transmittal of copies of agency final orders to  
 258 the division as required under s. 120.53, and, to protect the  
 259 integrity and authenticity of information publicly accessible  
 260 through the electronic database, coordinate and provide  
 261 standards and guidelines to ensure the security of copies of

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262 agency final orders transmitted and maintained in the electronic  
 263 database by the division under s. 120.53(1).

264 ~~(5)(4)~~ For each agency, determine which final orders must  
 265 be indexed ~~or transmitted for each agency.~~

266 ~~(6)(5)~~ Require each agency to report to the department  
 267 concerning which types or categories of agency orders establish  
 268 precedent for each agency.

269 (7) Adopt rules as necessary to administer its  
 270 responsibilities under this section, which shall be binding on  
 271 all agencies, including the division acting in the capacity of  
 272 official compiler of administrative final orders under s.  
 273 120.53, notwithstanding s. 120.65. The Department of State may  
 274 provide for an alternative official compiler to manage and  
 275 operate the division's database and related services if the  
 276 Administration Commission determines that the performance of the  
 277 division as official compiler is unsatisfactory.

278 Section 4. Subsection (1) of section 213.22, Florida  
 279 Statutes, is amended to read:

280 213.22 Technical assistance advisements.—

281 (1) The department may issue informal technical assistance  
 282 advisements to persons, upon written request, as to the position  
 283 of the department on the tax consequences of a stated  
 284 transaction or event, under existing statutes, rules, or  
 285 policies. After the issuance of an assessment, a technical  
 286 assistance advisement may not be issued to a taxpayer who  
 287 requests an advisement relating to the tax or liability for tax  
 288 in respect to which the assessment has been made, except that a  
 289 technical assistance advisement may be issued to a taxpayer who  
 290 requests an advisement relating to the exemptions in s.

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291 212.08(1) or (2) at any time. Technical assistance advisements  
292 shall have no precedential value except to the taxpayer who  
293 requests the advisement and then only for the specific  
294 transaction addressed in the technical assistance advisement,  
295 unless specifically stated otherwise in the advisement. Any  
296 modification of an advisement shall be prospective only. A  
297 technical assistance advisement is not an order issued pursuant  
298 to s. 120.565 or s. 120.569 or a rule or policy of general  
299 applicability under s. 120.54. The provisions of s. 120.53 ~~s.~~  
300 ~~120.53(1)~~ are not applicable to technical assistance  
301 advisements.

302 Section 5. This act shall take effect July 1, 2015.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Rules, *Vice Chair*  
Appropriations Subcommittee on Criminal and  
Civil Justice  
Environmental Preservation and Conservation  
Finance and Tax  
Judiciary

### JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

### SENATOR DARREN SOTO

*Democratic Caucus Rules Chair*  
14th District

April 10, 2015

The Honorable Tom Lee  
Committee on Appropriations  
201 The Capitol  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Chair Lee,

I respectfully request that Senate Bill 1284, Maintenance of Agency Final Orders, be placed on the agenda as soon as possible. Senate Bill 1284 requires agency final orders rendered on or after July 1, 2015 to be uploaded to an electronic database within 90 days.

Thank you for your consideration. Should you have any questions or concerns, please feel free to contact me at 850-487-5014.

Sincerely,

A handwritten signature in cursive script that reads "Darren M. Soto".

Darren M. Soto  
State Senator, District 14

Cc: Cindy Kynoch, Staff Director  
Sharon Bradford, Deputy Staff Director  
Alicia Weiss, Committee Administrative Assistant  
Ann Roberts, Committee Administrative Assistant

#### REPLY TO:

- Kissimmee City Hall, 101 North Church Street, Suite 305, Kissimmee, Florida 34741 (407) 846-5187 FAX: (407) 846-5188
- 220 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

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

**ANDY GARDINER**  
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)

4-16-15

Meeting Date

1284

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Daniel Nordby

Job Title \_\_\_\_\_

Address 215 South Monroe Street, Suite 804

Phone 850-521-0600

Street

Tallahassee

FL

32301

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Bar - Administrative Law Section

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

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Prepared By: The Professional Staff of the Committee on Appropriations

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**BILL:** CS/CS/SB 1296

**INTRODUCER:** Appropriations Committee; Military and Veterans Affairs, Space, and Domestic Security Committee; and Senator Bean

**SUBJECT:** Military and Veterans Affairs

**DATE:** April 20, 2015      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ryon	Ryon	MS	<b>Fav/CS</b>
2.	Fox	Roberts	EE	<b>Favorable</b>
3.	Sneed	Miller	ATD	<b>Favorable</b>
4.	Sneed	Kynoch	AP	<b>Fav/CS</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1296 is a wide-ranging veterans bill that:

- Creates the Military and Overseas Voting Assistance Task Force within the Department of State for one year, to study issues involving the development and implementation of an online voting system that allows absent military members who are overseas to electronically submit *voted* ballots;
- Provides legislative intent regarding academic credit for military training and coursework and collaboration between the State Board of Education and the Board of Governors on student veteran issues; and
- Establishes a voluntary check-off on driver license and identification card applications to allow a veteran to request written or electronic information on federal, state, and local benefits and services available to veterans;

The fiscal impact of the bill is indeterminate but likely insignificant for the Department of State, the Department of Highway Safety and Motor Vehicles, and the Department of Veterans' Affairs.

The bill provides an effective date of July 1, 2015.

## II. Present Situation:

### **Military Overseas Absentee Voters**

Florida currently does not allow for the return of *voted* absentee ballots through an online system or by other Internet-related or electronic means, with the exception of overseas voters who may return their ballots via secure facsimile.<sup>1</sup>

Regarding the general voting process for overseas voters, the federal Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”) requires each state to permit absent military and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for federal office. Florida law also permits the use of state absentee ballots for all state and local elections, merit retention, and ballot measures. An overseas voter can register to vote and request an absentee ballot at the same time by using the Federal Post Card Application (“FPCA”). The FPCA can be submitted by mail, e-mail, or fax if the overseas voter is already registered. If the overseas voter is not registered, the FPCA must be submitted by mail. An overseas voter may also obtain an absentee ballot by submitting a request to the supervisor of elections by telephone, mail, fax or e-mail. Absentee ballots are mailed to military and overseas voters no later than 45 days before each election. A voter can also request that the absentee ballot be faxed or e-mailed.

Additionally, the Federal Write-In Absentee Ballot (“FWAB”) is the emergency back-up absentee ballot that allows UOCAVA voters who have requested but not yet received their absentee ballot to vote in any election for federal office and any state or local election involving two or more candidates.<sup>2</sup> Overseas voters must return<sup>3</sup> their voted absentee ballot or the FWAB to their local elections supervisor no later than 7:00 p.m. on Election Day (or no later than 10 days after Election Day for presidential preference primaries and general elections).

### **Veterans’ Training and Coursework**

#### ***State Board of Education – Florida College System***

The State Board of Education is the chief implementing and coordinating body of public education in Florida, except for the State University System.<sup>4</sup> In accordance with Article IX, Section 2, of the State Constitution, the State Board of Education is responsible for supervising the system of free public education as is provided by law and appoints the Commissioner of the Department of Education.

There are 28 locally-governed public colleges in the Florida College System. While governed by local boards, the colleges are coordinated under the jurisdiction of the State Board of Education.

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<sup>1</sup> Section 101.697, F.S.; Rule 1S-2.030, F.A.C. Notwithstanding, the law directs the Department of State to adopt rules providing for the receipt of absentee ballots from “overseas” (civilian and military) voters by “secure electronic means,” if the Department of State determines such security can be established (i.e., verification of the voter, security of the transmission, etc.) section 101.697, F.S.

<sup>2</sup> Section 101.6952, F.S.

<sup>3</sup> Overseas voters may return their voted ballot by mail, by secure fax, in person, or through someone else on behalf of the voter. Section 101.697, F.S.; Rule 1S-2.030, F.A.C.

<sup>4</sup> Section 1001.02(1), F.S.

Administratively, the Chancellor of Florida Colleges is the chief executive officer of the system, reporting to the Commissioner of Education who serves as the chief executive officer of Florida's K-20 System.<sup>5</sup>

### ***Board of Governors - State University System***

The Board of Governors is the governing body for the State University System of Florida. In accordance with Article IX, Section 7(d), of the State Constitution, it is required to “operate, regulate, control, and be fully responsible for the management of the whole university system.” Currently, there are 12 institutions within the State University System (SUS).<sup>6</sup> The SUS enrolls over 337,000 students, offers nearly 1,800 degree programs at the baccalaureate, graduate, and professional levels, and annually awards over 81,000 degrees at all levels.<sup>7</sup>

### ***College Credit for Military Training and Education***

Section 1004.096, F.S., requires the Board of Governors to adopt regulations and the State Board of Education to adopt rules that enable eligible members of the U.S. Armed Forces to earn academic college credit at public postsecondary educational institutions for college-level training and education acquired in the military.<sup>8</sup> Accordingly, Board of Governors Regulation 6.013 and Rule 6A-14.0302 of the Florida Administrative Code, require all Florida universities and colleges, respectively, to have an established policy and process in place for evaluating military training and education. Pursuant to both the rule and regulation, such military training and education must be recognized by the American Council on Education (ACE).

### ***Priority Course Registration for Veterans***

Section 1004.075, F.S., requires each Florida College System institution and state university to provide priority course registration for veterans receiving GI Bill benefits if the institution offers priority course registration for any segment of the student population.<sup>9</sup> Additionally, a spouse or dependent child of a veteran to whom GI Bill benefits have been transferred are also entitled to priority course registration until the expiration of their GI Bill benefits.

### ***Voluntary Contributions on Driver License/Identification Card Applications***

The voluntary contribution process, also known as voluntary check-offs, provides the opportunity for citizens to make a donation by checking a box on a form when registering a vehicle or renewing a registration, as well as applying for a new or replacement driver license or identification card.<sup>10</sup>

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<sup>5</sup> Florida Department of Education website, About Us. Available at: <http://www.fldoe.org/schools/higher-ed/fl-college-system/about-us>.

<sup>6</sup> The State University System 2025 System Strategic Plan, p 5. Available at: [http://www.flbog.edu/pressroom/doc/2025\\_System\\_Strategic\\_Plan\\_Revised\\_FINAL.pdf](http://www.flbog.edu/pressroom/doc/2025_System_Strategic_Plan_Revised_FINAL.pdf).

<sup>7</sup> *Id.*

<sup>8</sup> Chapter 2012-169, Laws of Fla.

<sup>9</sup> Chapter 2012-159, Laws of Fla.

<sup>10</sup> Sections 320.02(8), (14), and (15) and 328.72(11) and (16), F.S., provide motor vehicle registration applicants with 26 options for voluntary contributions. Section 322.08(7), F.S., provides driver license applicants with 19 options for voluntary contributions.

An organization that desires to receive a voluntary contribution must be specifically authorized by Florida Statutes. Section 320.023, F.S., establishes requirements for organizations seeking to establish a voluntary contribution on motor vehicle registration application forms, and s. 322.081, F.S., establishes similar requirements for driver license and identification card applications. Both sections require the following:

- A request for the voluntary contribution being sought, describing the voluntary contribution in general terms;
- An application fee<sup>11</sup>, not to exceed \$10,000, to defray the Department of Highway Safety and Motor Vehicles' (DHSMV) cost for reviewing the application and developing the voluntary contribution check off, if authorized; and
- A marketing strategy outlining short-term and long-term marketing plans for the contribution, and a financial analysis outlining the anticipated revenues and the planned expenditures of the revenues to be derived from the contributions.

There are three veteran or military-related voluntary contributions authorized for driver license and identification card applications. An applicant may elect to contribute \$1 to the State Homes for Veterans Trust Fund, the Disabled American Veterans, and Support Our Troops, Inc.<sup>12</sup>

### **The Florida Vets Connect Program**

In 2010, the DHSMV and the Florida Department of Veterans' Affairs (FDVA) partnered to create the Florida Vets Connect Program to stimulate outreach efforts to veterans in Florida.<sup>13</sup> Through the Florida Vets Connect Program, veterans have the opportunity to voluntarily identify their veteran status when applying for or renewing a Florida driver license or state of Florida identification card. Beginning in 2010, present on each driver license and identification card application is the option for an individual to indicate status as a veteran and interest in receiving information on benefits, services, and support available to veterans.<sup>14</sup> The DHSMV and the FDVA entered into a Memorandum of Understanding to facilitate the sharing of a veteran's contact information from the DHSMV to the FDVA. The FDVA, through a third party provider, distributes general state of Florida veterans' benefits information via e-mail<sup>15</sup> to those individuals who request such information on the driver license or identification card application.<sup>16</sup> The FDVA distributed 50,350 e-mails during the 2014 calendar year under the Vets Connect Program.<sup>17</sup> E-mails are distributed on a monthly basis.<sup>18</sup>

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<sup>11</sup> State funds may not be used to pay the application fee.

<sup>12</sup> See Section 322.08(7)(n), (o), and (r), F.S.

<sup>13</sup> See Florida Department of Financial Services Press Release. *CFO Sink Announces "Florida Vets Connect" to Recognize Brave Service of Florida Veterans*. March 3, 2010. Available at: <http://www.myfloridacfo.com/sitepages/newsroom/pressrelease.aspx?id=3449>.

<sup>14</sup> Military and Veterans Affairs, Space, and Domestic Security Committee staff telephone conversation with Steve Murray, Communications Director, Florida Department of Veterans' Affairs. March 6, 2015.

<sup>15</sup> According to the FDVA, it is too cost prohibitive to distribute printouts of the veterans' benefits information via the United States mail.

<sup>16</sup> *Supra* note 9.

<sup>17</sup> E-mail correspondence with FDVA staff on March 5, 2015. On file with the Senate Military and Veterans Affairs, Space, and Domestic Security Committee.

<sup>18</sup> *Id.*

## County and City Veteran Service Officers

Section 292.11, F.S., authorizes each county and city to employ a county or city veteran service officer to provide a myriad of assistance to veterans including presenting claims for and securing benefits or privileges to which veterans are or may become entitled by reason of their service in the military. County veteran service officers are county employees, but are certified by the FDVA.<sup>19</sup> Each county currently employs a veteran service officer, however, in some cases, one veteran service officer may service two counties.<sup>20</sup> There are currently no certified city veteran service officers in Florida.<sup>21</sup>

### III. Effect of Proposed Changes:

**Section 1** establishes the Military and Overseas Voting Assistance Task Force (“Task Force”) within the Department of State to study issues involving the development and implementation of an online voting system that allows absent military members who are overseas to electronically submit voted ballots.

The Task Force consists of the following 20 members:

- The Secretary of State or his or her designee, who shall serve as the chair of the Task Force;
- The Adjutant General or his or her designee;
- The executive director of the Florida Department of Veterans’ Affairs, or his or her designee;
- The executive director of the Agency for State Technology or his or her designee;
- One member of the Senate appointed by the President of the Senate;
- One member of the House of Representatives appointed by the Speaker of the House of Representatives;
- One member of the Senate appointed by the Minority Leader of the Senate;
- One member of the House of Representatives appointed by the Minority Leader of the House of Representatives;
- One member appointed by the Governor;
- Six supervisors of elections appointed by the Secretary of State; and
- Five individuals appointed by the Secretary of State with relevant expertise in computers, the Internet, or other associated technologies.

Members of the Task Force shall serve without compensation, but are entitled to reimbursement for per diem and travel expenses.

The bill directs the Task Force to study and report on the following issues:

- Any factor that limits the ability of absent military members who are overseas to request, receive, and return absentee ballots within the current statutory time period for casting absentee ballots;
- The costs associated with the development and implementation of an online voting system;

<sup>19</sup> Section 292.11(4), F.S.

<sup>20</sup> Listing of Florida County Veteran Service Officers: [http://floridavets.org/wp-content/uploads/2014/02/CVSO\\_Directory\\_1-February-2014.pdf](http://floridavets.org/wp-content/uploads/2014/02/CVSO_Directory_1-February-2014.pdf)

<sup>21</sup> E-mail correspondence with FDVA staff on March 6. On file with the Senate Military and Veterans Affairs, Space, and Domestic Security Committee.

- The feasibility of absent military members who are overseas using an online voting system to electronically submit a voted ballot;
- The security of electronically submitting a voted ballot through an online voting system; and
- Procedures adopted by other states to facilitate greater electoral participation among absent military members.

The Secretary of State must submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by July 1, 2016, containing the Task Force's recommendation on whether the state should pursue the development and implementation of an online voting system for absent military voters. If the Task Force recommends an online voting system, the report must include recommended steps for developing and implementing such a system.

The Task Force will expire upon the submission of the Secretary of State's required report by July 1, 2016.

Additionally, the bill requires the Division of Elections of the Department of State to provide support staff for the Task Force and requires the Agency for State Technology to assist the Task Force upon request.

**Section 2** provides legislative intent regarding the provision of college credit for military training and coursework and other services to student veterans. The bill provides that it is the intent of the Legislature that the State Board of Education and the Board of Governors work collaboratively to do the following:

- Align existing degree programs with applicable military training and experience to maximize academic credit awarded for such training and experience;
- Appoint and train specific faculty within each degree program at each institution as liaisons and contacts for veterans;
- Incorporate outreach services tailored to disabled veterans to inform disabled veterans of disability services provided by the USDVA, and other federal and state agencies, and private entities.
- Facilitate statewide meetings for campus personnel to discuss and develop best practices, exchange ideas and experiences, and hear presentations by individuals with expertise in the unique needs of veterans; and
- Provide veterans with sufficient courses required for graduation, including but not limited to, giving priority registration for veterans.

**Section 3** amends s. 322.08, F.S., to provide a voluntary check-off on the application form for an original, renewal, or replacement driver license or identification card to allow veterans of the U.S. Armed Forces to request written or electronic information on federal, state, and local benefits and services available to veterans. The veteran may elect to receive the information through the U.S. mail or by e-mail. The FDVA will select one or more third-party providers to act on the FDVA's behalf and deliver the requested information to the veteran.

The Department of Highway Safety and Motor Vehicles (DHSMV) and the FDVA will collaborate to administer the voluntary check-off. The DHSMV will report monthly to the FDVA

the name and mailing address or e-mail address of each veteran who selects the voluntary check-off. The FDVA will then distribute the veterans' contact information to the third-party provider to administer delivery of veteran benefit and service information via the indicated preferred method of delivery (U.S. mail or e-mail). The FDVA will also disseminate the contact information for veterans who select the voluntary check-off to the appropriate county or city veteran service officer in order to facilitate further outreach to veterans.

The bill requires that a third-party provider selected by the FDVA to act on its behalf be a nonprofit organization with sufficient ability to communicate with veterans throughout the state. "Nonprofit organization" is defined as an organization exempt from the federal income tax under s. 501 of the Internal Revenue Code of 1986 or any federal, state, or local governmental entity.

Additionally, the bill requires that a veteran's contact information obtained by a third-party may only be used for purposes outlined in the bill, prohibits a third-party provider from selling a veteran's contact information, and requires a third-party to maintain confidentiality of the contact information in accordance with Ch. 119, F.S., and the federal Driver's Privacy Protection Act of 1994. Any person who willfully and knowingly violates the aforementioned conditions commits a misdemeanor of the first degree.

**Section 4** provides an effective date of July 1, 2015.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Under CS/CS/SB 1296, the Department of State would be responsible for the reimbursement of per diem and travel expenses for the Military and Overseas Voting

Assistance Task Force members. Additionally, the department will provide support staff for the Task Force as needed. It appears that the department can absorb these costs within existing resources. The FDVA projects that its current contractual arrangement with a third-party provider would increase by \$11,529. The FDVA may also incur additional program costs to create additional outreach materials and additional postage costs to respond to veterans' requests for benefits and services information. It appears that these additional costs could be absorbed by the FDVA.

The DHSMV will have programming costs to develop the voluntary contribution check off box. The costs are indeterminate and expected to be minimal.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 322.08 and 322.21.

This bill creates undesignated sections of the Florida Law.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

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

**CS/CS by Appropriations on April 16, 2015:**

The committee substitute makes the following changes:

- Removes the provision of this bill that any honorably discharged veteran who has served in combat and is qualified to obtain a driver license is exempt from the driver license and identification card fees provided in s. 322.21, F.S.
- Clarifies that the Task Force will study and make recommendations on issues involving the development and implementation of an online voting system that allows absent military members *who are overseas* to electronically submit voted ballots;

**CS by Military and Veterans Affairs, Space, and Domestic Security on March 17, 2015:**

The CS makes the following changes to the veterans voluntary check-off program:

- Replaces “direct-support organization” with “third-party provider” selected by the FDVA to act on its behalf;
- Defines “third-party provider;”
- Allows a veteran to opt to receive the benefit information via U.S. mail or e-mail;
- Provides that only the veteran’s name and mailing address or e-mail address will be shared;

- Removes requirement that a veteran present a DD-214 to be able to participate in the check-off program;
- Changes frequency in which DHSMV will disseminate veterans' contact information to the FDVA from quarterly to monthly;
- Provides that a third-party provider, instead of a county or city veteran service officer, will distribute the benefit information directly to veterans;
- Requires FDVA to disseminate veterans' contact information to each county and city veteran service officer for optional outreach to veterans;
- Provides a criminal penalty for any person who sells a veteran's contact information or who does not maintain confidentiality of a veteran's contact information; and
- Removes unnecessary redundant language.

The CS also revises the legislative intent regarding college and university student veteran support.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
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	.	

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The Committee on Appropriations (Flores) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Military and Overseas Voting Assistance Task Force.—The Military and Overseas Voting Assistance Task Force, a task force as defined in s. 20.03, Florida Statutes, is created within the Department of State. The task force is created for the express purpose of studying issues involving the development and implementation of an online voting system that allows absent



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11 uniformed services voters who are overseas to electronically  
12 submit voted ballots.

13 (1) The task force is composed of 20 members, as follows:

14 (a) The Secretary of State or his or her designee, who  
15 shall serve as chair of the task force.

16 (b) The Adjutant General or his or her designee.

17 (c) The executive director of the Department of Veterans'  
18 Affairs or his or her designee.

19 (d) The executive director of the Agency for State  
20 Technology or his or her designee.

21 (e) One member of the Senate appointed by the President of  
22 the Senate.

23 (f) One member of the House of Representatives appointed by  
24 the Speaker of the House of Representatives.

25 (g) One member of the Senate appointed by the Minority  
26 Leader of the Senate.

27 (h) One member of the House of Representatives appointed by  
28 the Minority Leader of the House of Representatives.

29 (i) One member appointed by the Governor.

30 (j) Six supervisors of elections appointed by the Secretary  
31 of State.

32 (k) Five individuals appointed by the Secretary of State,  
33 with relevant expertise in computers, the Internet, or other  
34 associated technologies.

35 (2) Members of the task force shall serve without  
36 compensation, but are entitled to reimbursement for per diem and  
37 travel expenses pursuant to s. 112.061, Florida Statutes.

38 (3) The task force, at a minimum, shall study and report on  
39 the following issues:



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40           (a) Any factor that limits the ability of absent uniformed  
41 services voters who are overseas to request, receive, and return  
42 absentee ballots within the current statutory time period for  
43 casting absentee ballots.

44           (b) The costs associated with the development and  
45 implementation of an online voting system.

46           (c) The feasibility of absent uniformed services voters who  
47 are overseas using an online voting system to electronically  
48 submit a voted ballot.

49           (d) The security of electronically submitting a voted  
50 ballot through an online voting system.

51           (e) Procedures adopted by other states to facilitate  
52 greater electoral participation among absent uniformed services  
53 voters who are overseas.

54           (4) The Secretary of State shall submit a report to the  
55 Governor, the President of the Senate, and the Speaker of the  
56 House of Representatives by July 1, 2016, containing the task  
57 force's recommendation concerning whether the state should  
58 pursue the development and implementation of an online voting  
59 system that allows absent uniformed services voters who are  
60 overseas to electronically submit voted ballots. If the task  
61 force favorably recommends an online voting system, the report  
62 must include recommended steps for developing and implementing  
63 such a system. Upon submission of the report, the task force  
64 shall expire.

65           (5) The Division of Elections of the Department of State  
66 shall provide support staff for the task force. The Agency for  
67 State Technology shall assist the task force upon request.

68           Section 2. The Legislature finds that many veterans of the



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69 United States Armed Forces in this state have completed training  
70 and coursework during their military service, including overseas  
71 deployments, resulting in tangible and quantifiable strides in  
72 their pursuit of a postsecondary degree. The Legislature further  
73 finds that the State Board of Education and the Board of  
74 Governors of the State University System must work together to  
75 ensure that military training and coursework are granted  
76 academic credit in order to assist veterans in continuing their  
77 education. Therefore, it is the intent of the Legislature that  
78 the State Board of Education and the Board of Governors work  
79 collaboratively to:

80 (1) Align existing degree programs, including, but not  
81 limited to, vocational and technical degrees, at each state  
82 university and Florida College System institution with  
83 applicable military training and experience to maximize academic  
84 credit awarded for such training and experience.

85 (2) Appoint and train specific faculty within each degree  
86 program at each state university and Florida College System  
87 institution as liaisons and contacts for veterans.

88 (3) Incorporate outreach services tailored to disabled  
89 veterans into existing disability services on the campus of each  
90 state university and Florida College System institution to make  
91 available to such veterans information on disability services  
92 provided by the United States Department of Veterans Affairs,  
93 other federal and state agencies, and private entities.

94 (4) Facilitate statewide meetings for personnel at state  
95 universities and Florida College System institutions who provide  
96 student services for veterans to discuss and develop best  
97 practices, exchange ideas and experiences, and attend



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98 presentations by individuals with expertise in the unique needs  
99 of veterans.

100 (5) Make every effort to provide veterans with sufficient  
101 courses required for graduation, including, but not limited to,  
102 giving priority registration to veterans.

103 Section 3. Present subsection (8) of section 322.08,  
104 Florida Statutes, is redesignated as subsection (9), and a new  
105 subsection (8) is added to that section, to read:

106 322.08 Application for license; requirements for license  
107 and identification card forms.—

108 (8) (a) To support the carrying out of the duties of the  
109 Department of Veterans' Affairs prescribed in s. 292.05 and to  
110 facilitate outreach to veterans residing in this state, the  
111 application form for an original, renewal, or replacement driver  
112 license or identification card must include a voluntary checkoff  
113 authorizing a veteran of the United States Armed Forces to  
114 request written or electronic information on federal, state, and  
115 local benefits and services available to veterans. The veteran  
116 may elect to receive requested information through United States  
117 mail or by e-mail. The requested information shall be delivered  
118 to the veteran by any third party provider selected by the  
119 Department of Veterans' Affairs to act on its behalf.

120 (b) The department shall collaborate with the Department of  
121 Veterans' Affairs to administer this subsection. The department  
122 shall report monthly to the Department of Veterans' Affairs the  
123 name and mailing address or e-mail address of each veteran who  
124 requests information as provided in paragraph (a). Following  
125 receipt of the monthly report, the Department of Veterans'  
126 Affairs shall disseminate the contact information for each such



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127 veteran to the third-party provider acting on its behalf. The  
128 third-party provider must be a nonprofit organization with  
129 sufficient ability to communicate with veterans residing  
130 throughout this state. For purposes of this paragraph, the term  
131 "nonprofit organization" means an organization exempt from the  
132 federal income tax under s. 501 of the Internal Revenue Code of  
133 1986 or any federal, state, or local governmental entity.

134 (c) In addition to the requirements of paragraph (b), the  
135 Department of Veterans' Affairs shall disseminate the contact  
136 information for a veteran who selects the voluntary checkoff to  
137 the appropriate county or city veteran service officer in order  
138 to facilitate further outreach to veterans.

139 (d)1. The contact information of a veteran which is  
140 obtained by a third-party provider pursuant to this subsection  
141 may be used only as authorized by this subsection. The third-  
142 party provider may not sell such contact information. Except as  
143 otherwise provided, the third-party provider must maintain the  
144 confidentiality of the contact information in accordance with  
145 chapter 119 and the federal Driver's Privacy Protection Act of  
146 1994, 18 U.S.C. ss. 2721 et seq.

147 2. A person who willfully and knowingly violates this  
148 paragraph commits a misdemeanor of the first degree, punishable  
149 as provided in s. 775.082 or s. 775.083.

150 Section 4. This act shall take effect July 1, 2015.

151  
152 ===== T I T L E A M E N D M E N T =====

153 And the title is amended as follows:

154 Delete everything before the enacting clause  
155 and insert:



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156                                   A bill to be entitled  
157           An act relating to military and veterans affairs;  
158           creating the Military and Overseas Voting Assistance  
159           Task Force within the Department of State; specifying  
160           membership of the task force; authorizing  
161           reimbursement for per diem and travel expenses;  
162           prescribing duties of the task force; requiring  
163           submission of a report to the Governor and the  
164           Legislature by a specified date; providing for  
165           expiration of the task force; providing for staffing;  
166           providing legislative findings regarding continuing  
167           education for veterans of the United States Armed  
168           Forces; providing legislative intent for the State  
169           Board of Education and the Board of Governors of the  
170           State University System to work collaboratively to  
171           align existing degree programs at state universities  
172           and Florida College System institutions, train  
173           faculty, incorporate outreach services into existing  
174           disability services, facilitate statewide meetings for  
175           personnel, and provide sufficient courses and priority  
176           registration to veterans; amending s. 322.08, F.S.;  
177           requiring the application form for an original,  
178           renewal, or replacement driver license or  
179           identification card to include a voluntary checkoff  
180           authorizing veterans to request written or electronic  
181           information on federal, state, and local benefits and  
182           services for veterans; requiring the requested  
183           information to be delivered by a third-party provider;  
184           requiring the Department of Highway Safety and Motor



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185 Vehicles to report monthly to the Department of  
186 Veterans' Affairs the names and mailing or e-mail  
187 addresses of veterans who request information;  
188 requiring the Department of Veterans' Affairs to  
189 disseminate veteran contact information to the third-  
190 party provider; requiring that the third-party  
191 provider be a nonprofit organization; defining the  
192 term "nonprofit organization"; requiring that the  
193 Department of Veterans' Affairs provide veteran  
194 contact information to the appropriate county or city  
195 veteran service officer; specifying that a third-party  
196 provider may use veteran contact information only as  
197 authorized; prohibiting a third-party provider from  
198 selling veteran contact information; requiring a  
199 third-party provider to maintain confidentiality of  
200 veteran contact information under specified  
201 provisions; providing a penalty; providing an  
202 effective date.

By the Committee on Military and Veterans Affairs, Space, and Domestic Security; and Senator Bean

583-02396-15

20151296c1

1 A bill to be entitled  
 2 An act relating to military and veterans affairs;  
 3 creating the Military and Overseas Voting Assistance  
 4 Task Force within the Department of State; specifying  
 5 membership of the task force; authorizing  
 6 reimbursement for per diem and travel expenses;  
 7 prescribing duties of the task force; requiring  
 8 submission of a report to the Governor and the  
 9 Legislature by a specified date; providing for  
 10 expiration of the task force; providing for staffing;  
 11 providing legislative findings regarding continuing  
 12 education for veterans of the United States Armed  
 13 Forces; providing legislative intent for the State  
 14 Board of Education and the Board of Governors of the  
 15 State University System to work collaboratively to  
 16 align existing degree programs at state universities  
 17 and Florida College System institutions, train  
 18 faculty, incorporate outreach services into existing  
 19 disability services, facilitate statewide meetings for  
 20 personnel, and provide sufficient courses and priority  
 21 registration to veterans; amending s. 322.08, F.S.;  
 22 requiring the application form for an original,  
 23 renewal, or replacement driver license or  
 24 identification card to include a voluntary checkoff  
 25 authorizing veterans to request written or electronic  
 26 information on federal, state, and local benefits and  
 27 services for veterans; requiring the requested  
 28 information to be delivered by a third-party provider;  
 29 requiring the Department of Highway Safety and Motor

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583-02396-15

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30 Vehicles to report monthly to the Department of  
 31 Veterans' Affairs the names and mailing or e-mail  
 32 addresses of veterans who request information;  
 33 requiring the Department of Veterans' Affairs to  
 34 disseminate veteran contact information to the third-  
 35 party provider; requiring that the third-party  
 36 provider be a nonprofit organization; defining the  
 37 term "nonprofit organization"; requiring that the  
 38 Department of Veterans' Affairs provide veteran  
 39 contact information to the appropriate county or city  
 40 veteran service officer; specifying that a third-party  
 41 provider may use veteran contact information only as  
 42 authorized; prohibiting a third-party provider from  
 43 selling veteran contact information; requiring a  
 44 third-party provider to maintain confidentiality of  
 45 veteran contact information under specified  
 46 provisions; providing a penalty; amending s. 322.21,  
 47 F.S.; revising eligibility for veterans for exemptions  
 48 from certain license fees; providing an effective  
 49 date.

50  
51 Be It Enacted by the Legislature of the State of Florida:

52  
 53 Section 1. Military and Overseas Voting Assistance Task  
 54 Force.—The Military and Overseas Voting Assistance Task Force, a  
 55 task force as defined in s. 20.03, Florida Statutes, is created  
 56 within the Department of State. The task force is created for  
 57 the express purpose of studying issues involving the development  
 58 and implementation of an online voting system that allows absent

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59 uniformed services voters to electronically submit voted  
 60 ballots.  
 61 (1) The task force is composed of 20 members, as follows:  
 62 (a) The Secretary of State or his or her designee, who  
 63 shall serve as chair of the task force.  
 64 (b) The Adjutant General or his or her designee.  
 65 (c) The executive director of the Department of Veterans'  
 66 Affairs or his or her designee.  
 67 (d) The executive director of the Agency for State  
 68 Technology or his or her designee.  
 69 (e) One member of the Senate appointed by the President of  
 70 the Senate.  
 71 (f) One member of the House of Representatives appointed by  
 72 the Speaker of the House of Representatives.  
 73 (g) One member of the Senate appointed by the Minority  
 74 Leader of the Senate.  
 75 (h) One member of the House of Representatives appointed by  
 76 the Minority Leader of the House of Representatives.  
 77 (i) One member appointed by the Governor.  
 78 (j) Six supervisors of elections appointed by the Secretary  
 79 of State.  
 80 (k) Five individuals appointed by the Secretary of State,  
 81 with relevant expertise in computers, the Internet, or other  
 82 associated technologies.  
 83 (2) Members of the task force shall serve without  
 84 compensation, but are entitled to reimbursement for per diem and  
 85 travel expenses pursuant to s. 112.061, Florida Statutes.  
 86 (3) The task force, at a minimum, shall study and report on  
 87 the following issues:

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88 (a) Any factor that limits the ability of absent uniformed  
 89 services voters to request, receive, and return absentee ballots  
 90 within the current statutory time period for casting absentee  
 91 ballots.  
 92 (b) The costs associated with the development and  
 93 implementation of an online voting system.  
 94 (c) The feasibility of absent uniformed services voters  
 95 using an online voting system to electronically submit a voted  
 96 ballot.  
 97 (d) The security of electronically submitting a voted  
 98 ballot through an online voting system.  
 99 (e) Procedures adopted by other states to facilitate  
 100 greater electoral participation among absent uniformed services  
 101 voters.  
 102 (4) The Secretary of State shall submit a report to the  
 103 Governor, the President of the Senate, and the Speaker of the  
 104 House of Representatives by July 1, 2016, containing the task  
 105 force's recommendation concerning whether the state should  
 106 pursue the development and implementation of an online voting  
 107 system that allows absent uniformed services voters to  
 108 electronically submit voted ballots. If the task force favorably  
 109 recommends an online voting system, the report must include  
 110 recommended steps for developing and implementing such a system.  
 111 Upon submission of the report, the task force shall expire.  
 112 (5) The Division of Elections of the Department of State  
 113 shall provide support staff for the task force. The Agency for  
 114 State Technology shall assist the task force upon request.  
 115 Section 2. The Legislature finds that many veterans of the  
 116 United States Armed Forces in this state have completed training

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117 and coursework during their military service, including overseas  
 118 deployments, resulting in tangible and quantifiable strides in  
 119 their pursuit of a postsecondary degree. The Legislature further  
 120 finds that the State Board of Education and the Board of  
 121 Governors of the State University System must work together to  
 122 ensure that military training and coursework are granted  
 123 academic credit in order to assist veterans in continuing their  
 124 education. Therefore, it is the intent of the Legislature that  
 125 the State Board of Education and the Board of Governors work  
 126 collaboratively to:

127 (1) Align existing degree programs, including, but not  
 128 limited to, vocational and technical degrees, at each state  
 129 university and Florida College System institution with  
 130 applicable military training and experience to maximize academic  
 131 credit award for such training and experience.

132 (2) Appoint and train specific faculty within each degree  
 133 program at each state university and Florida College System  
 134 institution as liaisons and contacts for veterans.

135 (3) Incorporate outreach services tailored to disabled  
 136 veterans into existing disability services on the campus of each  
 137 state university and Florida College System institution to make  
 138 available to such veterans information on disability services  
 139 provided by the United States Department of Veterans Affairs,  
 140 other federal and state agencies, and private entities.

141 (4) Facilitate statewide meetings for personnel at state  
 142 universities and Florida College System institutions who provide  
 143 student services for veterans to discuss and develop best  
 144 practices, exchange ideas and experiences, and attend  
 145 presentations by individuals with expertise in the unique needs

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146 of veterans.

147 (5) Make every effort to provide veterans with sufficient  
 148 courses required for graduation, including, but not limited to,  
 149 giving priority registration to veterans.

150 Section 3. Present subsection (8) of section 322.08,  
 151 Florida Statutes, is redesignated as subsection (9), and a new  
 152 subsection (8) is added to that section, to read:

153 322.08 Application for license; requirements for license  
 154 and identification card forms.—

155 (8) (a) To support the carrying out of the duties of the  
 156 Department of Veterans' Affairs prescribed in s. 292.05 and to  
 157 facilitate outreach to veterans residing in this state, the  
 158 application form for an original, renewal, or replacement driver  
 159 license or identification card must include a voluntary checkoff  
 160 authorizing a veteran of the United States Armed Forces to  
 161 request written or electronic information on federal, state, and  
 162 local benefits and services available to veterans. The veteran  
 163 may elect to receive requested information through United States  
 164 mail or by e-mail. The requested information shall be delivered  
 165 to the veteran by any third party provider selected by the  
 166 Department of Veterans' Affairs to act on its behalf.

167 (b) The department shall collaborate with the Department of  
 168 Veterans' Affairs to administer this subsection. The department  
 169 shall report monthly to the Department of Veterans' Affairs the  
 170 name and mailing address or e-mail address of each veteran who  
 171 requests information as provided in paragraph (a). Following  
 172 receipt of the monthly report, the Department of Veterans'  
 173 Affairs shall disseminate the contact information for each such  
 174 veteran to the third-party provider acting on its behalf. The

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175 third-party provider must be a nonprofit organization with  
 176 sufficient ability to communicate with veterans residing  
 177 throughout this state. For purposes of this paragraph, the term  
 178 "nonprofit organization" means an organization exempt from the  
 179 federal income tax under s. 501 of the Internal Revenue Code of  
 180 1986 or any federal, state, or local governmental entity.

181 (c) In addition to the requirements of paragraph (b), the  
 182 Department of Veterans' Affairs shall disseminate the contact  
 183 information for a veteran who selects the voluntary checkoff to  
 184 the appropriate county or city veteran service officer in order  
 185 to facilitate further outreach to veterans.

186 (d)1. The contact information of a veteran which is  
 187 obtained by a third-party provider pursuant to this subsection  
 188 may be used only as authorized by this subsection. The third-  
 189 party provider may not sell such contact information. Except as  
 190 otherwise provided, the third-party provider must maintain the  
 191 confidentiality of the contact information in accordance with  
 192 chapter 119 and the federal Driver's Privacy Protection Act of  
 193 1994, 18 U.S.C. ss. 2721 et seq.

194 2. A person who willfully and knowingly violates this  
 195 paragraph commits a misdemeanor of the first degree, punishable  
 196 as provided in s. 775.082 or s. 775.083.

197 Section 4. Subsection (7) of section 322.21, Florida  
 198 Statutes, is amended to read:  
 199 322.21 License fees; procedure for handling and collecting  
 200 fees.—

201 (7) Any veteran honorably discharged from the Armed Forces  
 202 who has served in combat ~~been issued a valid identification card~~  
 203 ~~by the Department of Veterans' Affairs in accordance with s.~~

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204 ~~295.17, has been determined by the United States Department of~~  
 205 ~~Veterans Affairs or its predecessor to have a 100-percent total~~  
 206 ~~and permanent service-connected disability rating for~~  
 207 ~~compensation, or has been determined to have a service-connected~~  
 208 ~~total and permanent disability rating of 100 percent, is in~~  
 209 ~~receipt of disability retirement pay from any branch of the~~  
 210 ~~United States Armed Services, and who is qualified to obtain a~~  
 211 ~~driver license under this chapter is exempt from all fees~~  
 212 ~~required by this section.~~

213 Section 5. This act shall take effect July 1, 2015.

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The Florida Senate

## Committee Agenda Request

**To:** Senator Tom Lee, Chair  
Committee on Appropriations

**Subject:** Committee Agenda Request

**Date:** April 8, 2015

---

I respectfully request that **Senate Bill # 1296**, relating to Military and Veterans Affairs, be placed on the:

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

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

---

Senator Aaron Bean  
Florida Senate, District 4

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4 / 16 / 2015

*Meeting Date*

Topic \_\_\_\_\_

Bill Number 1296  
*(if applicable)*

Name BRIAN PITTS

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

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH  
*Street*

Phone 727-897-9291

SAINT PETERSBURG      FLORIDA      33705  
*City*                                      *State*                                      *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:     For     Against     Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:     Yes     No

Lobbyist registered with Legislature:     Yes     No

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

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

SENATE PROFESSIONAL STAFF

THE FLORIDA SENATE

APPEARANCE RECORD

4/16/2015

Meeting Date

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

SB 1296

Bill Number (if applicable)

Topic Military and Veterans Affairs

Amendment Barcode (if applicable)

Name Col. Mike Prendergast

Job Title Executive Director

Address The Capitol, Suite 2105

Phone (850) 487-1533

Tallahassee FL 32399

Email exdir@fdva.state.fl

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

Waive Speaking: [X] In Support [ ] Against (The Chair will read this information into the record.)

Representing The Florida Dept. of Veterans' Affairs

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

Lobbyist registered with Legislature: [X] Yes [ ] No

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

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

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

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

---

Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/CS/SB 1306

INTRODUCER: Appropriations Committee; Banking and Insurance Committee; and Senator Bradley

SUBJECT: Insurance Fraud

DATE: April 20, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
3.	<u>Brown</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/CS/SB 1306 provides that a knowing, unlawful claim for reimbursement made by an unlicensed clinic or a clinic operating in violation of the Health Care Clinic Act is considered theft, regardless of whether payment is made. The bill creates two new criminal penalties within the Health Care Clinic Act. The first prohibits offering or advertising services that require licensure under the Health Care Clinic Act or the Health Care Licensing Procedures Act. The second applies when a person knowingly fails to report a change in information contained in the most recent health care clinic license application or a change regarding required insurance or bonds, as set forth under s. 408.810(3), F.S.

In 2012, the Department of Financial Services established a direct-support organization to support the prosecution, investigation, and prevention of motor vehicle insurance fraud. The direct support organization has engaged in limited organizational activity during its existence. The bill repeals the statute authorizing the direct support organization.

The bill creates a fiscal impact to the General Revenue Fund of not more than \$180,000.

The bill provides an effective date of July 1, 2015.

## II. Present Situation:

### Unlicensed Clinics and Unlawful Charges

Section 627.736(5)(h), F.S., requires all entities meeting the definition of a “clinic” in s. 400.9905(4), F.S., to be licensed by the Agency for Health Care Administration (AHCA) as a health care clinic in order to receive reimbursement pursuant to the Florida Motor Vehicle No-Fault Law,<sup>1</sup> unless the entity is wholly owned by a doctor, dentist, chiropractor, or hospital, or is a hospital, ambulatory surgical center or clinical facility affiliated with a medical school. Under s. 400.9935(6), F.S., these exempted entities may voluntarily apply to the AHCA for a certificate of exemption from licensure or may self-exempt and operate a health care clinic.

Section 408.812, F.S., prohibits an unlicensed clinic from offering or advertising services that require licensure by the AHCA and prohibits a person or entity from owning, operating, or maintaining an unlicensed provider. Violations of s. 408.812, F.S., are punished as a third degree felony<sup>2</sup> for a first offense and a second degree felony<sup>3</sup> for a second or subsequent offense.<sup>4</sup> Section 408.812(3), F.S., requires any health care provider who is aware of the operation of an unlicensed clinic to report that facility to the AHCA. The AHCA is required to report to the provider’s licensing board a failure to report a clinic that the provider knows or has reasonable cause to suspect is unlicensed.<sup>5</sup>

Section 400.9935(3), F.S., provides that the charges and reimbursement claims made by a health care clinic that is required to be licensed under ss. 400.990-400.995, F.S., but is not licensed or is operating in violation of the referenced statutes, are unlawful, non-compensable, and unenforceable. According to the Department of Financial Services (DFS), s. 400.9935(3), F.S., has routinely been applied in the civil context to permit insurance companies and third parties to deny paying, or to recover payments for, such unlawful charges. However, the DFS believes that prosecutors have been reluctant to file criminal theft charges because the theft statute does not specifically name such unlawful charges as theft.<sup>6</sup>

### Automotive Insurance Fraud Strike Force

Section 626.9895, F.S., authorizes the Division of Insurance Fraud within the DFS to establish a direct-support organization, known as the “Automobile Insurance Fraud Strike Force” (DSO). The DSO’s sole purpose is to support the prosecution, investigation, and prevention of motor vehicle insurance fraud. The DSO is authorized to raise funds, conduct programs and activities, hold, invest, and administer assets in its name, and make grants and expenditures to state

---

<sup>1</sup> See ss. 627.730–627.7405, F.S.

<sup>2</sup> A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S. However, if total sentenced points scored under the Criminal Punishment Code are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that this sanction would present a danger to the public. Section 775.082(10), F.S.

<sup>3</sup> A second degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or both. Sections 775.082 and 775.083, F.S.

<sup>4</sup> See s. 400.993, F.S. Each day of continued operation is a separate offense.

<sup>5</sup> See s. 400.993(3), F.S.

<sup>6</sup> See Department of Financial Services, *Agency Bill Analysis SB 1306*, March 13, 2015 (on file with the Banking and Insurance Committee and Criminal Justice Committee).

attorneys' offices, the statewide prosecutor, the AHCA, and the Department of Health to be used exclusively to prosecute, investigate, or prevent motor vehicle insurance fraud.

The DSO filed its incorporation documents with the Department of State on April 25, 2012. The DSO has engaged in limited organizational activity during its existence. The DFS reported to Senate Banking and Insurance Committee staff that the DSO has not taken in any donations, paid any grants, established a bank account, or made any transfers into the Insurance Regulatory Trust Fund.

### III. Effect of Proposed Changes:

**Section 1** repeals s. 400.993, F.S., those statutory provisions moved to s. 400.9935, F.S.

**Section 2** amends s. 400.9935, F.S., to provide that an unlawful claim for reimbursement made by an unlicensed clinic, or a clinic operating in violation of the Health Care Clinic Act is considered theft under s. 812.014, F.S., regardless of whether payment is made.

Two new criminal penalties within the Health Care Clinic Act are created to provide that:

- It is a third degree felony to offer or advertise services that require licensure under the Health Care Clinic Act or the Health Care Licensing Procedures Act, without having a license; and
- It is a third degree felony to knowingly fail to report a change in information contained in the most recent health care clinic license application or a change regarding the required insurance or bonds, as required under s. 408.810(3), F.S.

The bill also consolidates existing criminal offense provisions (the third degree felony and second degree felony in s. 400.993, F.S.) into s. 400.9935, F.S.

The bill requires a health care provider who is aware of the operation of an unlicensed clinic to report the clinic to the Agency for Health Care Administration (AHCA). The AHCA must report to the provider's licensing board a failure to report a clinic that the provider knows or has reasonable cause to suspect is unlicensed.

**Section 5** amends s. 921.0022, F.S., (which contains the offense severity ranking chart of the Criminal Punishment Code) to include in Level 3 the third degree felonies created in or added to s. 400.9935, F.S. The bill also includes in Level 6 the second degree felony added to s. 400.9935, F.S.

**Section 4** repeals, s. 626.9895, F.S., in which the Automobile Insurance Fraud Strike Force direct-support organization is created.

**Section 3** makes a conforming change to s. 626.9894(5), F.S.

**Section 6** provides an effective date of July 1, 2015.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The Department of Financial Services reports there could be an indeterminate increase in expenditures for rulemaking and administrative litigation related to CS/CS/SB 1306.<sup>7</sup>

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation estimates that the bill will have a positive insignificant prison bed impact because the bill is expected to increase the Department of Corrections' prison population by 10 or fewer beds annually. Accordingly, the projected prison bed impact would create a fiscal impact to the General Revenue Fund of not more than \$180,000 annually as to operating costs. No additional fixed capital outlay costs are anticipated for these additional prison beds because the prison population is below the capacity of the correctional system.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

---

<sup>7</sup> *Id.*

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 400.9935, 626.9894, and 921.0022.

This bill repeals the following sections of the Florida Statutes: 400.993 and 626.9895.

**IX. Additional Information:**

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

**CS/CS by Appropriations on April 16, 2015:**

The committee substitute removes from the bill the provision that a charge or reimbursement claim made by or on behalf of a clinic operating in violation of rules of the Agency for Health Care Administration is necessarily an unlawful charge.

**CS by Banking and Insurance on March 31, 2015:**

The CS removes provisions from the bill relating to insurance company special investigative units and removes provisions requiring insurers to report anti-fraud plans and statistical information to the Department of Financial Services. The bill also removes a provision requiring a separate certificate of exemption for each clinic location.

- B. **Amendments:**

None.



473280

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
	.	
	.	
	.	

---

The Committee on Appropriations (Garcia) recommended the following:

**Senate Amendment**

Delete lines 31 - 32  
and insert:  
otherwise operating in violation of this part, regardless of  
whether a service is rendered or whether

By the Committee on Banking and Insurance; and Senator Bradley

597-03196-15

20151306c1

1 A bill to be entitled  
 2 An act relating to insurance fraud; repealing s.  
 3 400.993, F.S., relating to criminal penalties  
 4 applicable to unlicensed health care clinics and the  
 5 reporting of unlicensed health care clinics; amending  
 6 s. 400.9935, F.S.; revising provisions related to  
 7 unlawful, noncompensable, and unenforceable health  
 8 care clinic charges or reimbursement claims; revising  
 9 and providing criminal penalties for making unlawful  
 10 charges, operating or failing to report an unlicensed  
 11 clinic, filing false or misleading information related  
 12 to a clinic license application, and other violations;  
 13 defining the term "convicted"; amending s. 626.9894,  
 14 F.S.; conforming provisions to changes made by the  
 15 act; repealing s. 626.9895, F.S., relating to the  
 16 establishment of a motor vehicle insurance fraud  
 17 direct-support organization; amending s. 921.0022,  
 18 F.S.; conforming provisions of the offense severity  
 19 ranking chart of the Criminal Punishment Code to  
 20 changes made by the act; providing an effective date.

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

22 Section 1. Section 400.993, Florida Statutes, is repealed.  
 23 Section 2. Subsections (3) and (4) of section 400.9935,  
 24 Florida Statutes, are amended to read:  
 25 400.9935 Clinic responsibilities.—  
 26 (3) A charge ~~All charges~~ or reimbursement claim ~~claims~~ made  
 27 by or on behalf of a clinic that is required to be licensed  
 28  
 29

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30 under this part, but that is not so licensed, or that is  
 31 otherwise operating in violation of this part or rules of the  
 32 agency, regardless of whether a service is rendered or whether  
 33 the charge or reimbursement claim is paid, is an ~~are~~ unlawful  
 34 charge ~~charges~~, and is therefore ~~are~~ noncompensable and  
 35 unenforceable. A person who knowingly makes or causes to be made  
 36 an unlawful charge commits theft within the meaning of, and  
 37 punishable as provided in, s. 812.014.

38 (4) (a) Regardless of whether notification is provided by  
 39 the agency under ~~In addition to the requirements of s. 408.812,~~  
 40 a any person commits a felony of the third degree, punishable as  
 41 provided in s. 775.082, s. 775.083, or s. 775.084, if the person  
 42 knowingly:

43 1. Establishes, owns, operates, manages, or maintains  
 44 establishing, operating, or managing an unlicensed clinic  
 45 ~~otherwise~~ required to be licensed under this part or part II of  
 46 chapter 408; ~~r~~ or

47 2. Offers or advertises services that require licensure as  
 48 a clinic under this part or part II of chapter 408 without a  
 49 license.

50 (b) If the agency provides notification under s. 408.812  
 51 of, or if a person is arrested for, a violation of subparagraph  
 52 (a)1. or subparagraph (a)2., each day during which a violation  
 53 of subparagraph (a)1. or subparagraph (a)2. occurs constitutes a  
 54 separate offense.

55 (c) A person convicted of a second or subsequent violation  
 56 of subparagraph (a)1. or subparagraph (a)2. commits a felony of  
 57 the second degree, punishable as provided in s. 775.082, s.  
 58 775.083, or s. 775.084. If the agency provides notification of,

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59 or if a person is arrested for, a violation of this paragraph,  
 60 each day that this paragraph is violated thereafter constitutes  
 61 a separate offense. For purposes of this paragraph, the term  
 62 "convicted" means a determination of guilt which is the result  
 63 of a trial or the entry of a plea of guilty or nolo contendere,  
 64 regardless of whether adjudication is withheld.

65 (d) In addition to the requirements of part II of chapter  
 66 408, a health care provider who is aware of the operation of an  
 67 unlicensed clinic shall report the clinic to the agency. The  
 68 agency shall report to the provider's licensing board a failure  
 69 to report a clinic that the provider knows or has reasonable  
 70 cause to suspect is unlicensed.

71 (e) A person commits a felony of the third degree,  
 72 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,  
 73 if the any person who knowingly:

74 1. Files a false or misleading license application or  
 75 license renewal application, or files false or misleading  
 76 information related to such application or agency department  
 77 rule; or

78 2. Fails to report information to the agency as required by  
 79 s. 408.810(3), commits a felony of the third degree, punishable  
 80 as provided in s. 775.082, s. 775.083, or s. 775.084.

81 Section 3. Subsection (5) of section 626.9894, Florida  
 82 Statutes, is amended to read:  
 83 626.9894 Gifts and grants.-

84 (5) Notwithstanding s. 216.301 and pursuant to s. 216.351,  
 85 any balance of moneys deposited into the Insurance Regulatory  
 86 Trust Fund pursuant to this section ~~or s. 626.9895~~ remaining at  
 87 the end of any fiscal year is available for carrying out the

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88 duties and responsibilities of the division. The department may  
 89 request annual appropriations from the grants and donations  
 90 received pursuant to this section ~~or s. 626.9895~~ and cash  
 91 balances in the Insurance Regulatory Trust Fund for the purpose  
 92 of carrying out its duties and responsibilities related to the  
 93 division's anti-fraud efforts, including the funding of  
 94 dedicated prosecutors and related personnel.

95 Section 4. Section 626.9895, Florida Statutes, is repealed.

96 Section 5. Paragraphs (c) and (f) of subsection (3) of  
 97 section 921.0022, Florida Statutes, are amended to read:

98 921.0022 Criminal Punishment Code; offense severity ranking  
 99 chart.-

100 (3) OFFENSE SEVERITY RANKING CHART

101 (c) LEVEL 3

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude

597-03196-15 20151306c1  
 law enforcement officer in  
 patrol vehicle with siren and  
 lights activated.

108 319.30(4) 3rd Possession by junkyard of  
 motor vehicle with  
 identification number plate  
 removed.

109 319.33(1) (a) 3rd Alter or forge any certificate  
 of title to a motor vehicle or  
 mobile home.

110 319.33(1) (c) 3rd Procure or pass title on  
 stolen vehicle.

111 319.33(4) 3rd With intent to defraud,  
 possess, sell, etc., a blank,  
 forged, or unlawfully obtained  
 title or registration.

112 327.35(2) (b) 3rd Felony BUI.

113 328.05(2) 3rd Possess, sell, or counterfeit  
 fictitious, stolen, or  
 fraudulent titles or bills of  
 sale of vessels.

114 328.07(4) 3rd Manufacture, exchange, or

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 possess vessel with  
 counterfeit or wrong ID  
 number.

115 376.302(5) 3rd Fraud related to reimbursement  
 for cleanup expenses under the  
 Inland Protection Trust Fund.

116 379.2431 3rd Taking, disturbing,  
 mutilating, destroying,  
 causing to be destroyed,  
 transferring, selling,  
 offering to sell, molesting,  
 or harassing marine turtles,  
 marine turtle eggs, or marine  
 turtle nests in violation of  
 the Marine Turtle Protection  
 Act.

117 379.2431 3rd Soliciting to commit or  
 conspiring to commit a  
 violation of the Marine Turtle  
 Protection Act.

118 400.9935(4) (a) or 3rd Operating a clinic, or  
(b) offering services requiring  
licensure, without a license  
~~or filing false license~~  
~~application or other required~~

597-03196-15 20151306c1  
~~information.~~

119 400.9935(4)(e) 3rd Filing a false license  
application or other required  
information or failing to  
report information.

120 440.1051(3) 3rd False report of workers'  
 compensation fraud or  
 retaliation for making such a  
 report.

121 501.001(2)(b) 2nd Tampers with a consumer  
 product or the container using  
 materially false/misleading  
 information.

122 624.401(4)(a) 3rd Transacting insurance without  
 a certificate of authority.

123 624.401(4)(b)1. 3rd Transacting insurance without  
 a certificate of authority;  
 premium collected less than  
 \$20,000.

124 626.902(1)(a) & 3rd Representing an unauthorized  
 (b) insurer.

125 697.08 3rd Equity skimming.

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126 790.15(3) 3rd Person directs another to  
 discharge firearm from a  
 vehicle.

127 806.10(1) 3rd Maliciously injure, destroy,  
 or interfere with vehicles or  
 equipment used in  
 firefighting.

128 806.10(2) 3rd Interferes with or assaults  
 firefighter in performance of  
 duty.

129 810.09(2)(c) 3rd Trespass on property other  
 than structure or conveyance  
 armed with firearm or  
 dangerous weapon.

130 812.014(2)(c)2. 3rd Grand theft; \$5,000 or more  
 but less than \$10,000.

131 812.0145(2)(c) 3rd Theft from person 65 years of  
 age or older; \$300 or more but  
 less than \$10,000.

132 815.04(5)(b) 2nd Computer offense devised to  
 defraud or obtain property.

133

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	597-03196-15		20151306c1
	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
134			
	817.233	3rd	Burning to defraud insurer.
135			
	817.234	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
	(8)(b) & (c)		
136			
	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
137			
	817.236	3rd	Filing a false motor vehicle insurance application.
138			
	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
139			
	817.413(2)	3rd	Sale of used goods as new.
140			
	817.505(4)	3rd	Patient brokering.
141			
	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury,

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	597-03196-15		20151306c1
			or death.
142			
	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
143			
	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
144			
	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
145			
	843.19	3rd	Injure, disable, or kill police dog or horse.
146			
	860.15(3)	3rd	Overcharging for repairs and parts.
147			
	870.01(2)	3rd	Riot; inciting or encouraging.
148			
	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).

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149 893.13(1)(d)2. 2nd Sell, manufacture, or deliver  
s. 893.03(1)(c), (2)(c)1.,  
(2)(c)2., (2)(c)3., (2)(c)5.,  
(2)(c)6., (2)(c)7., (2)(c)8.,  
(2)(c)9., (3), or (4) drugs  
within 1,000 feet of  
150 university.

893.13(1)(f)2. 2nd Sell, manufacture, or deliver  
s. 893.03(1)(c), (2)(c)1.,  
(2)(c)2., (2)(c)3., (2)(c)5.,  
(2)(c)6., (2)(c)7., (2)(c)8.,  
(2)(c)9., (3), or (4) drugs  
151 within 1,000 feet of public  
housing facility.

893.13(6)(a) 3rd Possession of any controlled  
substance other than felony  
152 possession of cannabis.

893.13(7)(a)8. 3rd Withhold information from  
practitioner regarding  
previous receipt of or  
prescription for a controlled  
substance.

153 893.13(7)(a)9. 3rd Obtain or attempt to obtain  
controlled substance by fraud,

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154 forgery, misrepresentation,  
etc.

893.13(7)(a)10. 3rd Affix false or forged label to  
package of controlled  
155 substance.

893.13(7)(a)11. 3rd Furnish false or fraudulent  
material information on any  
document or record required by  
chapter 893.

156 893.13(8)(a)1. 3rd Knowingly assist a patient,  
other person, or owner of an  
animal in obtaining a  
controlled substance through  
deceptive, untrue, or  
157 fraudulent representations in  
or related to the  
practitioner's practice.

893.13(8)(a)2. 3rd Employ a trick or scheme in  
the practitioner's practice to  
assist a patient, other  
person, or owner of an animal  
in obtaining a controlled  
substance.

158 893.13(8)(a)3. 3rd Knowingly write a prescription

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	597-03196-15		20151306c1
			for a controlled substance for a fictitious person.
159	893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
160	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
161	944.47	3rd	Introduce contraband to correctional facility.
162	(1)(a)1. & 2.		
	944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
163	985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).
164	(f) LEVEL 6		
165			
166	Florida	Felony	Description

	597-03196-15		20151306c1
	Statute	Degree	
167	316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
168	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
169	<u>400.9935(4)(c)</u>	<u>2nd</u>	<u>Operating a clinic, or offering services requiring licensure, without a license.</u>
170	499.0051(3)	2nd	Knowing forgery of pedigree papers.
171	499.0051(4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
172	499.0051(5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
173	775.0875(1)	3rd	Taking firearm from law enforcement officer.
174	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.

175	597-03196-15		20151306c1
	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
176	784.041	3rd	Felony battery; domestic battery by strangulation.
177	784.048(3)	3rd	Aggravated stalking; credible threat.
178	784.048(5)	3rd	Aggravated stalking of person under 16.
179	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
180	784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
181	784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
182	784.081(2)	2nd	Aggravated assault on specified official or employee.
183	784.082(2)	2nd	Aggravated assault by detained person on visitor or other

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			detainee.
184	784.083(2)	2nd	Aggravated assault on code inspector.
185	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
186	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
187	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
188	790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
189	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
190	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.

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191 794.05(1) 2nd Unlawful sexual activity with  
specified minor.

192 800.04(5)(d) 3rd Lewd or lascivious  
molestation; victim 12 years  
of age or older but less than  
16 years of age; offender less  
than 18 years.

193 800.04(6)(b) 2nd Lewd or lascivious conduct;  
offender 18 years of age or  
older.

194 806.031(2) 2nd Arson resulting in great  
bodily harm to firefighter or  
any other person.

195 810.02(3)(c) 2nd Burglary of occupied  
structure; unarmed; no assault  
or battery.

196 810.145(8)(b) 2nd Video voyeurism; certain minor  
victims; 2nd or subsequent  
offense.

197 812.014(2)(b)1. 2nd Property stolen \$20,000 or  
more, but less than \$100,000,  
grand theft in 2nd degree.

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198 812.014(6) 2nd Theft; property stolen \$3,000  
or more; coordination of  
others.

199 812.015(9)(a) 2nd Retail theft; property stolen  
\$300 or more; second or  
subsequent conviction.

200 812.015(9)(b) 2nd Retail theft; property stolen  
\$3,000 or more; coordination  
of others.

201 812.13(2)(c) 2nd Robbery, no firearm or other  
weapon (strong-arm robbery).

202 817.4821(5) 2nd Possess cloning paraphernalia  
with intent to create cloned  
cellular telephones.

203 825.102(1) 3rd Abuse of an elderly person or  
disabled adult.

204 825.102(3)(c) 3rd Neglect of an elderly person  
or disabled adult.

205 825.1025(3) 3rd Lewd or lascivious molestation  
of an elderly person or  
disabled adult.

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206 825.103(3)(c) 3rd Exploiting an elderly person  
or disabled adult and property  
is valued at less than  
\$10,000.

207 827.03(2)(c) 3rd Abuse of a child.

208 827.03(2)(d) 3rd Neglect of a child.

209 827.071(2) & (3) 2nd Use or induce a child in a  
sexual performance, or promote  
or direct such performance.

210 836.05 2nd Threats; extortion.

211 836.10 2nd Written threats to kill or do  
bodily injury.

212 843.12 3rd Aids or assists person to  
escape.

213 847.011 3rd Distributing, offering to  
distribute, or possessing with  
intent to distribute obscene  
materials depicting minors.

214 847.012 3rd Knowingly using a minor in the  
production of materials

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215 harmful to minors.

847.0135(2) 3rd Facilitates sexual conduct of  
or with a minor or the visual  
depiction of such conduct.

216 914.23 2nd Retaliation against a witness,  
victim, or informant, with  
bodily injury.

217 944.35(3)(a)2. 3rd Committing malicious battery  
upon or inflicting cruel or  
inhuman treatment on an inmate  
or offender on community  
supervision, resulting in  
great bodily harm.

218 944.40 2nd Escapes.

219 944.46 3rd Harboring, concealing, aiding  
escaped prisoners.

220 944.47(1)(a)5. 2nd Introduction of contraband  
(firearm, weapon, or  
explosive) into correctional  
facility.

221 951.22(1) 3rd Intoxicating drug, firearm, or  
weapon introduced into county

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facility.

222

223

Section 6. This act shall take effect July 1, 2015.



The Florida Senate

## Committee Agenda Request

**To:** Senator Tom Lee, Chair  
Committee on Appropriations

**Subject:** Committee Agenda Request

**Date:** April 10, 2015

---

I respectfully request that **Senate Bill # 1306**, relating to Insurance Fraud, be placed on the:

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

A handwritten signature in black ink, appearing to read "Rob Bradley".

---

Senator Rob Bradley  
Florida Senate, District 7

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/16

Meeting Date

1306

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name BG Murphy

Job Title Deputy Legislative Affairs Director, DFS

Address \_\_\_\_\_

Phone 850-413-2890

Street

Tallahassee

Email BG.Murphy@myflorida.cfo.com

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing CFO Atwater

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 (10/14/14)

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

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

---

Prepared By: The Professional Staff of the Committee on Appropriations

---

**BILL:** PCS/SB 1362 (449620)

**INTRODUCER:** Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); and Senator Simmons

**SUBJECT:** Department of Legal Affairs

**DATE:** April 15, 2015

**REVISED:** \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Caldwell	Cibula	JU	<b>Favorable</b>
2. Clodfelter	Sadberry	ACJ	<b>Recommend: Fav/CS</b>
3. Clodfelter	Kynoch	AP	<b>Pre-meeting</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

PCS/SB 1362 makes changes to laws enforced by or governing the Department of Legal Affairs, also known as the Office of the Attorney General, including the Office of Statewide Prosecution.

The bill:

- Revises the list of offenses that are considered to be multi-circuit crimes that may be investigated and prosecuted by the Office of Statewide Prosecution to include kidnapping, false imprisonment, luring or enticing a child, custody offenses, human trafficking, and human smuggling if commission of the offense was facilitated by or connected to use of the Internet.
- Provides authority to purchase promotional materials and basic refreshments for public training and information sessions.
- Allows the Medicaid Fraud unit to use a percentage of the recovered funds to fund investigations and enforcement actions.
- Updates references of federal consumer protection laws that are incorporated into the statutes.
- Revises Victim Assistance awards criteria to:
  - Provide for maximum lifetime amounts;
  - Expand definitions to broaden coverage for elderly persons or disabled adults who suffer a property loss; and
  - Provide for relocation assistance for human trafficking victims.

- Makes necessary conforming and technical changes.

The Department of Legal Affairs indicates that the bill does not have a fiscal impact on general revenue funds or trust fund revenues. Within existing funds, the bill apportions some revenues that are currently deposited in the department's Operating Trust Fund for use by the Medicaid Fraud Control Unit and removes a requirement for reduction of awards for catastrophic loss under some circumstances.

The bill provides an effective date of July 1, 2015.

## II. Present Situation:

For discussion of the provisions of ss. 16.56, 409.9203, 501.203, 501.204, 960.03, 960.13, 960.195, 960.198, and 960.199, F.S., that are amended and ss. 16.62 and 960.196, F.S., that are created by the bill, see the "Effect of Proposed Changes" section of this analysis.

## III. Effect of Proposed Changes:

### Attorney General

**Section 1:** Section 16.56, F.S., creates the Office of Statewide Prosecution as a separate budget entity within the Department of Legal Affairs and provides for its authority and duties to investigate and prosecute specified offenses. In general, the Office of Statewide Prosecution has jurisdiction only when one of the specified offenses occurs in two or more judicial circuits as part of a related transaction or when the offense is connected with an organized criminal conspiracy affecting two or more judicial circuits. However, all of the offenses except offenses in ch. 787, F.S. (kidnapping, false imprisonment, luring or enticing a child, custody offenses, human trafficking, and human smuggling) are considered to be committed in every judicial circuit when they are facilitated by or connected to the use of the Internet.

The bill amends s. 16.56, F.S., to provide that offenses in ch. 787, F.S., are considered to be committed in every judicial circuit when the offense is facilitated by or connected to the use of the Internet.

**Section 2** creates s. 16.62, F.S., to authorize the department to expend not more than \$20,000 annually to support costs for the Law Enforcement Officer of the Year Recognition and Awards Program and the Victims Services Recognition and Awards Program. This authorization is in addition to any expenditures separately authorized by law.

**Section 3** amends s. 409.9203, F.S., which relates to the department's Medicaid Fraud Control Unit. The Medicaid Fraud Control Unit investigates violations s. 409.920, F.S., which prohibits Medicaid provider fraud. As part of the Medicaid fraud control program, s. 409.9203, F.S., provides for rewards to persons who report a violation of the state's Medicaid fraud laws.

The Florida False Claims Act<sup>1</sup> provides for civil actions to address false claims against the state. These actions may be brought by the state or by a private person on behalf of the state.

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<sup>1</sup> Sections 68.081-68.092, F.S.

Section 68.085, F.S., provides for the distribution of funds for actions brought under the False Claim Act. It also provides for the disposition of any funds that remain after required distributions are made: 90 percent of the remaining funds is deposited in the General Revenue Fund, and 10 percent is deposited into the department's Operating Trust Fund to reward persons who report and provide information relating to Medicaid fraud.

The bill amends s. 409.9203, F.S., to direct that half of the proceeds deposited into the Operating Trust Fund pursuant to s. 68.085, F.S., must be used by the Medicaid Fraud Control Unit to fund investigations of potential violations of the False Claims Acts. The other half is still allocated for payment of rewards to persons who report Medicaid fraud.

### **Consumer Protection**

The Florida Deceptive and Unfair Trade Practices Act<sup>2</sup> provides for the protection of Florida's consumers. Section 501.203 provides that enforcement extends not only to violations of the act and related rules, but also to the following as they exist on July 1, 2013:

- Rules of the Federal Trade Commission (FTC);
- Standards of unfairness and deception set forth and interpreted by the FTC or the federal courts; and
- Any law, statute, rule regulation, or ordinance which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices.

In addition, s. 501.204(1), F.S., provides that unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful. Section 501.204(2), F.S., specifically directs that the interpretations of the FTC and federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act<sup>3</sup> as of July 1, 2013, are to be given due consideration and great weight in construing the state law.

**Sections 4 and 5** amend ss. 501.203 and 501.204, F.S., to update the date of federal law that may be used to protect Florida consumers from July 1, 2013, to July 1, 2015.

### **Victim Assistance**

The provisions of ss. 960.01 - 960.28, F.S., are known as the "Florida Crimes Compensation Act." Section 960.03, F.S., provides for definitions, including the terms "crime" and "disabled adult." Victims who suffer personal physical injury or death as a direct result of a crime are eligible for awards.

**Section 6** amends s. 960.03(3), F.S., to make the following changes to the definition of "crime" for purposes of the Florida Crimes Compensation Act:

- Adds "a forcible felony committed by an adult or juvenile which directly results in psychiatric or psychological injury;"

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<sup>2</sup> Sections 501.201 – 501.213, F.S.

<sup>3</sup> This provision is codified as 15 U.S.C. s. 45(a)(1).

- Adds s. 316.027(2), F.S. (willful failure of a vehicle driver involved in a crash that results in injury to a person other than serious bodily injury to immediately stop at the scene and remain to give information and render aid);
- Adds s. 316.1935, F.S. (fleeing or attempting to elude a law enforcement officer);
- Clarifies that an act involving the operation of a motor vehicle, boat, or aircraft which results in injury or death is included in the definition only when another person's injury or death is intentionally inflicted through the use of the vehicle, boat, or aircraft.

In addition, the definition of "disabled adult" is expanded to include adults who suffer from mental illness or from one or more physical limitations that restrict the person's ability to perform the normal activities of daily living. The amendment also clarifies that the definition includes persons who have only one mental limitation that restricts their ability to perform the normal activities of daily living.

**Section 7** amends s. 960.13, F.S., which provides for awards of compensation to victims of crime. The department is authorized to make an award only if it finds that:

- A crime was committed;
- The crime directly resulted in personal injury, psychiatric or psychological injury, or death to the victim or intervenor; and
- The crime was promptly reported to the proper authorities.

Any award, except an award for loss of support, must be reduced by the amount of any payments or services received or to be received from certain sources as a result of the injury or death. The amendment to s. 960.13(6), F.S., adds an exception for awards for catastrophic injury.

**Section 8** amends s. 960.195, F.S., which provides for awards to elderly persons or disabled adults for property loss that causes a substantial diminution of their quality of life. The statute currently provides that department may award a maximum of \$500 when:

- There is proof that a criminal or delinquent act was committed,
- The criminal or delinquent act is reported to law enforcement authorities within 72 hours,
- The victim cooperates with law enforcement authorities in the investigation,
- There is proof that the tangible personal property in question belonged to the claimant,
- The claimant did not contribute to the criminal or delinquent act,
- There is no other source of reimbursement or indemnification available to the claimant, and
- The claimant would not be able to replace the tangible personal property in question without incurring a serious financial hardship.

This statute is amended to remove cooperation with law enforcement as an act that supports an award of compensation. Rather, the department is given authority to deny, reduce, or withdraw any award if it finds that a claimant or award recipient has not cooperated with the state attorney, all law enforcement agencies, and the department. The statute is also amended to limit the amount of the award for any claim to \$500, with a lifetime cap of \$1,000 in awards for all claims. In addition, the department is given flexibility to waive the requirement that the crime have been reported within 72 hours if it finds that the delay was justified by good cause.

**Section 9** creates s. 960.196, F.S., relating to relocation assistance for victims of human trafficking. This new section authorizes the department to award a one-time payment of up to \$1,500 for any one claim and a lifetime maximum of \$3,000 to a victim of human trafficking who needs urgent assistance to escape from an unsafe environment directly related to the human trafficking offense. For the victim to be awarded the compensation:

- There must be proof that a human trafficking offense<sup>4</sup> was committed.
- The crime must be reported to the proper authorities and the claim must be filed within one year, or two years with good cause, after the date of the last human trafficking offense.<sup>5</sup>
  - A certified domestic violence or rape crisis center in the state must certify the victim's need to escape from an unsafe environment. The center must assert in its certification that the victim is cooperating with the proper authorities and must include documentation that the victim has developed a safety plan.
  - A state attorney, statewide prosecutor, or federal prosecutor may certify in writing that a human trafficking victim's need to relocate from an unsafe environment due to the threat of future violence which is directly related to the human trafficking offense in a case that exceeds the two-year requirement.

The department must deny relocation payments for a human trafficking claim if it has previously approved or paid out a domestic violence or sexual battery relocation claim under s. 960.198, F.S., or s. 960.199, F.S.

**Section 10** amends s. 960.198, F.S., which provides authority for the department to award payments for relocation assistance to victims of domestic violence who need immediate assistance to escape from a domestic violence environment. The statute provides that relocation payments for domestic violence must be denied if the same victim already received a relocation award for the same incident as a sexual battery victim pursuant to s. 960.199, F.S. The amendment adds the same prohibition relating to prior relocation assistance awards for victims of human trafficking.

**Section 11** amends s. 960.199, F.S., to remove references to relocation assistance for victims of human trafficking. The statute currently applies to relocation assistance for victims of sexual battery and human trafficking, but the bill creates s. 960.196, F.S., to specifically address human trafficking.

**Section 12** provides that the act takes effect July 1, 2015.

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

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

None.

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

None.

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<sup>4</sup> See s. 787.06(3)(b), (d), (f), or (g), F.S.

<sup>5</sup> *Id.*

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under PCS/SB 1362, if awards for victim assistance benefits are capped, citizens are limited in the amount of lifetime awards that they may receive.

C. Government Sector Impact:

The Department of Legal Affairs indicates that the bill will not affect general revenue funds or trust fund revenues. The exclusion of awards for “catastrophic loss” from types of awards that must be reduced by the amount of services received from certain sources will have “very limited impact” on the victim’s compensation fund. Also, the bill directs that half of the revenues currently deposited in the department’s Operating Trust Fund for making awards be used to fund investigations and prosecutions by the Medicaid Fraud Control Unit. Amounts awarded from the Operating Trust Fund have historically been significantly less than half of the amount that is deposited for this purpose.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 16.56, 409.9203, 501.203, 501.204, 960.03, 960.13, 960.195, 960.198, and 960.199.

The bill creates the following sections of the Florida Statutes: 16.62 and 960.196.

**IX. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

**Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice on April 2, 2015:**

The committee substitute:

- Specifies that up to \$20,000 annually may be expended by the Department of Legal Affairs for specified recognition and awards programs.
- Amends Section 3 of the bill to correct a technical error and clearly express the percentage of funds that are allocated for use by the Medicaid Fraud Unit and for payment of rewards.

**B. Amendments:**

None.

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

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631416

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
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The Committee on Appropriations (Richter) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 156 and 157  
insert:

Section 6. The Division of Law Revision and Information is directed to create part VII of chapter 501, Florida Statutes, consisting of ss. 501.991-501.997, Florida Statutes, to be entitled the "Patent Troll Prevention Act."

Section 7. Section 501.991, Florida Statutes, is created to read:



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11 501.991 Legislative intent.-

12 (1) The Legislature recognizes that it is preempted from  
13 passing any law that conflicts with federal patent law. However,  
14 the Legislature recognizes that the state is dedicated to  
15 building an entrepreneurial and business-friendly economy where  
16 businesses and consumers alike are protected from abuse and  
17 fraud. This includes protection from abusive and bad faith  
18 demands and litigation.

19 (2) Patents encourage research, development, and  
20 innovation. Patent holders have a legitimate right to enforce  
21 their patents. The Legislature does not wish to interfere with  
22 good faith patent litigation or the good faith enforcement of  
23 patents. However, the Legislature recognizes a growing issue:  
24 the frivolous filing of bad faith patent claims that have led to  
25 technical, complex, and especially expensive litigation.

26 (3) The expense of patent litigation, which may cost  
27 millions of dollars, can be a significant burden on companies  
28 and small businesses. Not only do bad faith patent infringement  
29 claims impose undue burdens on individual businesses, they  
30 undermine the state's effort to attract and nurture  
31 technological innovations. Funds spent to help avoid the threat  
32 of bad faith litigation are no longer available for serving  
33 communities through investing in producing new products, helping  
34 businesses expand, or hiring new workers. The Legislature wishes  
35 to help its businesses avoid these costs by encouraging good  
36 faith assertions of patent infringement and the expeditious and  
37 efficient resolution of patent claims.

38 Section 8. Section 501.992, Florida Statutes, is created to  
39 read:



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40 501.992 Definitions.—As used in this part, the term:  
41 (1) "Demand letter" means a letter, e-mail, or other  
42 communication asserting or claiming that a person has engaged in  
43 patent infringement.

44 (2) "Institution of higher education" means an educational  
45 institution as defined in 20 U.S.C. s. 1001(a).

46 (3) "Target" means a person, including the person's  
47 customers, distributors, or agents, residing in, incorporated  
48 in, or organized under the laws of this state which:

49 (a) Has received a demand letter or against whom an  
50 assertion or allegation of patent infringement has been made;

51 (b) Has been threatened with litigation or against whom a  
52 lawsuit has been filed alleging patent infringement; or

53 (c) Whose customers have received a demand letter asserting  
54 that the person's product, service, or technology has infringed  
55 upon a patent.

56 Section 9. Section 501.993, Florida Statutes, is created to  
57 read:

58 501.993 Bad faith assertions of patent infringement.—A  
59 person may not make a bad faith assertion of patent  
60 infringement.

61 (1) A court may consider the following factors as evidence  
62 that a person has made a bad faith assertion of patent  
63 infringement:

64 (a) The demand letter does not contain the following  
65 information:

66 1. The patent number;

67 2. The name and address of the patent owner and assignee,  
68 if any; and



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69 3. Factual allegations concerning the specific areas in  
70 which the target's products, services, or technology infringe or  
71 are covered by the claims in the patent.

72 (b) Before sending the demand letter, the person failed to  
73 conduct an analysis comparing the claims in the patent to the  
74 target's products, services, or technology, or the analysis did  
75 not identify specific areas in which the target's products,  
76 services, and technology were covered by the claims of the  
77 patent.

78 (c) The demand letter lacked the information listed under  
79 paragraph (a), the target requested the information, and the  
80 person failed to provide the information within a reasonable  
81 period.

82 (d) The demand letter requested payment of a license fee or  
83 response within an unreasonable period.

84 (e) The person offered to license the patent for an amount  
85 that is not based on a reasonable estimate of the value of the  
86 license.

87 (f) The claim or assertion of patent infringement is  
88 unenforceable, and the person knew, or should have known, that  
89 the claim or assertion was unenforceable.

90 (g) The claim or assertion of patent infringement is  
91 deceptive.

92 (h) The person, including its subsidiaries or affiliates,  
93 has previously filed or threatened to file one or more lawsuits  
94 based on the same or a similar claim of patent infringement and:

95 1. The threats or lawsuits lacked the information listed  
96 under paragraph (a); or

97 2. The person sued to enforce the claim of patent



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98 infringement and a court found the claim to be meritless.

99 (i) Any other factor the court finds relevant.

100 (2) A court may consider the following factors as evidence  
101 that a person has not made a bad faith assertion of patent  
102 infringement:

103 (a) The demand letter contained the information listed  
104 under paragraph (1)(a).

105 (b) The demand letter did not contain the information  
106 listed under paragraph (1)(a), the target requested the  
107 information, and the person provided the information within a  
108 reasonable period.

109 (c) The person engaged in a good faith effort to establish  
110 that the target has infringed the patent and negotiated an  
111 appropriate remedy.

112 (d) The person made a substantial investment in the use of  
113 the patented invention or discovery or in a product or sale of a  
114 product or item covered by the patent.

115 (e) The person is the inventor or joint inventor of the  
116 patented invention or discovery, or in the case of a patent  
117 filed by and awarded to an assignee of the original inventor or  
118 joint inventors, is the original assignee.

119 (f) The person has:

120 1. Demonstrated good faith business practices in previous  
121 efforts to enforce the patent, or a substantially similar  
122 patent; or

123 2. Successfully enforced the patent, or a substantially  
124 similar patent, through litigation.

125 (g) Any other factor the court finds relevant.

126 Section 10. Section 501.994, Florida Statutes, is created



631416

127 to read:

128 501.994 Bond.—If a person initiates a proceeding against a  
129 target in a court of competent jurisdiction, the target may move  
130 that the proceeding involves a bad faith assertion of patent  
131 infringement in violation of this part and request that the  
132 court issue a protective order. After the motion, and if the  
133 court finds that the target has established a reasonable  
134 likelihood that the plaintiff has made a bad faith assertion of  
135 patent infringement, the court must require the plaintiff to  
136 post a bond in an amount equal to the lesser of \$250,000 or a  
137 good faith estimate of the target's expense of litigation,  
138 including an estimate of reasonable attorney fees, conditioned  
139 on payment of any amount finally determined to be due to the  
140 target. The court shall hold a hearing at either party's  
141 request. A court may waive the bond requirement for good cause  
142 shown or if it finds the plaintiff has available assets equal to  
143 the amount of the proposed bond.

144 Section 11. Section 501.995, Florida Statutes, is created  
145 to read:

146 501.995 Private right of action.—A person aggrieved by a  
147 violation of this part may bring an action in a court of  
148 competent jurisdiction. A court may award the following remedies  
149 to a prevailing plaintiff in an action brought pursuant to this  
150 section:

- 151 (1) Equitable relief;  
152 (2) Damages;  
153 (3) Costs and fees, including reasonable attorney fees; and  
154 (4) Punitive damages in an amount equal to \$50,000 or three  
155 times the total damages, costs, and fees, whichever is greater.



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156 Section 12. Section 501.997, Florida Statutes, is created  
157 to read:

158 501.997 Exemptions.—This part does not apply to an  
159 institution of higher education, to a technology transfer  
160 organization owned by or affiliated with an institution of  
161 higher education, or to a demand letter or an assertion of  
162 patent infringement that includes a claim for relief arising  
163 under 35 U.S.C. s. 271(e)(2) or 42 U.S.C. s. 262.

164  
165 ===== T I T L E A M E N D M E N T =====

166 And the title is amended as follows:

167 Delete line 14

168 and insert:

169 intent; providing a directive to the Division of Law  
170 Revision and Information; creating s. 501.991, F.S.;

171 providing legislative intent; creating s. 501.992,  
172 F.S.; defining terms; creating s. 501.993, F.S.;

173 prohibiting bad faith assertions of patent  
174 infringement from being made; providing factors that a  
175 court may consider when determining whether an  
176 allegation was or was not made in bad faith; creating  
177 s. 501.994, F.S.; authorizing a court to require a  
178 patent infringement plaintiff to post a bond under  
179 certain circumstances; limiting the bond amount;  
180 authorizing the court to waive the bond requirement in  
181 certain circumstances; creating s. 501.995, F.S.;

182 authorizing private rights of action for violations of  
183 this part; authorizing the court to award certain  
184 relief to prevailing plaintiffs; creating s. 501.997,



631416

185  
186

F.S.; providing exemptions; amending s. 960.03, F.S.;  
revising the



805108

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/16/2015	.	
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The Committee on Appropriations (Richter) recommended the following:

1           **Senate Amendment to Amendment (631416) (with title**  
2 **amendment)**

3  
4           Between lines 155 and 156  
5 insert:

6           Section 12. Section 501.996, Florida Statutes, is created  
7 to read:

8           501.996 Enforcement.—A violation of this part is an unfair  
9 or deceptive trade practice in any action brought by the  
10 enforcing authority pursuant to part II of this chapter. As used



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11 in this section, the term "enforcing authority" has the same  
12 meaning as provided in s. 501.203.

13  
14 ===== T I T L E A M E N D M E N T =====

15 And the title is amended as follows:

16 Delete line 184

17 and insert:

18 relief to prevailing plaintiffs; creating s. 501.996,  
19 F.S.; providing that a violation of part VII of ch.  
20 501 is an unfair or deceptive trade practice in  
21 certain circumstances; defining a term; creating s.  
22 501.997,



159808

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
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The Committee on Appropriations (Richter) recommended the following:

1       **Senate Amendment to Amendment (631416) (with title**  
2 **amendment)**

3  
4       Between lines 155 and 156  
5 insert:

6       Section 12. Section 501.996, Florida Statutes, is created  
7 to read:

8       501.996 Enforcement.—A violation of this part is an unfair  
9 or deceptive trade practice under part II of this chapter.

10



159808

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

12 And the title is amended as follows:

13       Delete line 184

14 and insert:

15       relief to prevailing plaintiffs; creating s. 501.996,  
16       F.S.; providing that a violation of part VII of ch.  
17       501 is an unfair or deceptive trade practice; creating  
18       s. 501.997,



449620

576-03375-15

Proposed Committee Substitute by the Committee on Appropriations  
(Appropriations Subcommittee on Criminal and Civil Justice)

A bill to be entitled

An act relating to the Department of Legal Affairs;  
amending s. 16.56, F.S.; revising the list of offenses  
that may be investigated and prosecuted by the Office  
of Statewide Prosecution; creating s. 16.62, F.S.;  
authorizing the Department of Legal Affairs to spend  
no more than \$20,000 annually to support specified  
recognition and awards programs, in addition to  
expenditures separately authorized by law; amending s.  
409.9203, F.S.; specifying the distribution of certain  
funds recovered in Medicaid fraud actions; amending s.  
501.203, F.S.; revising the term "violation of this  
part"; amending s. 501.204, F.S.; revising legislative  
intent; amending s. 960.03, F.S.; revising the  
definition of the term "crime" for purposes of  
obtaining crime victim compensation from the  
department to include certain forcible felonies;  
revising provisions concerning acts involving the  
operation of a motor vehicle, boat, or aircraft;  
revising the definition of the term "disabled adult";  
correcting a cross-reference; amending s. 960.13,  
F.S.; exempting crime victim compensation awards for  
catastrophic injury from certain deductions; amending  
s. 960.195, F.S.; revising the maximum victim  
compensation amounts that the department may award to  
elderly persons or disabled adults who suffer a  
property loss that causes a substantial diminution in



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576-03375-15

their quality of life in certain circumstances;  
revising the conditions under which elderly persons or  
disabled adults who suffer a property loss are  
eligible for an award; authorizing the department to  
deny, reduce, or withdraw a specified award upon  
finding that any claimant or award recipient has not  
duly cooperated with certain persons and entities;  
creating s. 960.196, F.S.; providing for relocation  
assistance for human trafficking victims; amending s.  
960.198, F.S.; prohibiting relocation assistance for a  
domestic violence claim if the victim has received  
previous relocation assistance for a human trafficking  
claim; amending s. 960.199, F.S.; deleting provisions  
relating to relocation assistance for human  
trafficking victims; providing an effective date.

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

Section 1. Paragraphs (a) and (b) of subsection (1) of  
section 16.56, Florida Statutes, are amended to read:

16.56 Office of Statewide Prosecution.—

(1) There is created in the Department of Legal Affairs an  
Office of Statewide Prosecution. The office shall be a separate  
"budget entity" as that term is defined in chapter 216. The  
office may:

(a) Investigate and prosecute the offenses of:

1. Bribery, burglary, criminal usury, extortion, gambling,  
kidnapping, larceny, murder, prostitution, perjury, robbery,  
carjacking, and home-invasion robbery;



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- 57 2. Any crime involving narcotic or other dangerous drugs;  
58 3. Any violation of ~~the provisions of~~ the Florida RICO  
59 (Racketeer Influenced and Corrupt Organization) Act, including  
60 any offense listed in the definition of racketeering activity in  
61 s. 895.02(1)(a), providing such listed offense is investigated  
62 in connection with a violation of s. 895.03 and is charged in a  
63 separate count of an information or indictment containing a  
64 count charging a violation of s. 895.03, the prosecution of  
65 which listed offense may continue independently if the  
66 prosecution of the violation of s. 895.03 is terminated for any  
67 reason;  
68 4. Any violation of ~~the provisions of~~ the Florida Anti-  
69 Fencing Act;  
70 5. Any violation of ~~the provisions of~~ the Florida Antitrust  
71 Act of 1980, as amended;  
72 6. Any crime involving, or resulting in, fraud or deceit  
73 upon any person;  
74 7. Any violation of s. 847.0135, relating to computer  
75 pornography and child exploitation prevention, or any offense  
76 related to a violation of s. 847.0135 or any violation of  
77 chapter 827 where the crime is facilitated by or connected to  
78 the use of the Internet or any device capable of electronic data  
79 storage or transmission;  
80 8. Any violation of ~~the provisions of~~ chapter 815;  
81 9. Any criminal violation of part I of chapter 499;  
82 10. Any violation of ~~the provisions of~~ the Florida Motor  
83 Fuel Tax Relief Act of 2004;  
84 11. Any criminal violation of s. 409.920 or s. 409.9201;  
85 12. Any crime involving voter registration, voting, or



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- 86 candidate or issue petition activities;  
87 13. Any criminal violation of the Florida Money Laundering  
88 Act;  
89 14. Any criminal violation of the Florida Securities and  
90 Investor Protection Act; or  
91 15. Any violation of ~~the provisions of~~ chapter 787, as well  
92 as any and all offenses related to a violation of ~~the provisions~~  
93 ~~of~~ chapter 787;  
94  
95 or any attempt, solicitation, or conspiracy to commit any of the  
96 crimes specifically enumerated above. The office shall have such  
97 power only when any such offense is occurring, or has occurred,  
98 in two or more judicial circuits as part of a related  
99 transaction, or when any such offense is connected with an  
100 organized criminal conspiracy affecting two or more judicial  
101 circuits. Informations or indictments charging such offenses  
102 shall contain general allegations stating the judicial circuits  
103 and counties in which crimes are alleged to have occurred or the  
104 judicial circuits and counties in which crimes affecting such  
105 circuits or counties are alleged to have been connected with an  
106 organized criminal conspiracy.  
107 (b) Investigate and prosecute any crime enumerated in  
108 paragraph (a) subparagraphs (a)1, 14, facilitated by or  
109 connected to the use of the Internet. Any such crime is a crime  
110 occurring in every judicial circuit within the state.  
111 Section 2. Section 16.62, Florida Statutes, is created to  
112 read:  
113 16.62 Recognition and awards.—In addition to expenditures  
114 separately authorized by law, the Department of Legal Affairs



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576-03375-15

115 may expend no more than \$20,000 annually to support costs  
116 associated with the agency's Law Enforcement Officer of the Year  
117 Recognition and Awards Program and Victims Services Recognition  
118 and Awards Program.

119 Section 3. Subsection (5) is added to section 409.9203,  
120 Florida Statutes, to read:

121 409.9203 Rewards for reporting Medicaid fraud.—

122 (5) Notwithstanding s. 68.085(3), the 10 percent of any  
123 remaining proceeds deposited into the Operating Trust Fund from  
124 an action based on a claim of funds from the state Medicaid  
125 program shall be allocated in the following manner:

126 (a) Fifty percent of such moneys shall be used to fund  
127 rewards for reporting Medicaid fraud pursuant to this section.

128 (b) The remaining 50 percent of such moneys shall be used  
129 by the Medicaid Fraud Control Unit to fund its investigations of  
130 potential violations of s. 68.082 and any related civil actions.

131 Section 4. Subsection (3) of section 501.203, Florida  
132 Statutes, is amended to read:

133 501.203 Definitions.—As used in this chapter, unless the  
134 context otherwise requires, the term:

135 (3) "Violation of this part" means any violation of this  
136 act or the rules adopted under this act and may be based upon  
137 any of the following as of July 1, 2015 ~~2013~~:

138 (a) Any rules promulgated pursuant to the Federal Trade  
139 Commission Act, 15 U.S.C. ss. 41 et seq.;

140 (b) The standards of unfairness and deception set forth and  
141 interpreted by the Federal Trade Commission or the federal  
142 courts;

143 (c) Any law, statute, rule, regulation, or ordinance which



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144 proscribes unfair methods of competition, or unfair, deceptive,  
145 or unconscionable acts or practices.

146 Section 5. Section 501.204, Florida Statutes, is amended to  
147 read:

148 501.204 Unlawful acts and practices.—

149 (1) Unfair methods of competition, unconscionable acts or  
150 practices, and unfair or deceptive acts or practices in the  
151 conduct of any trade or commerce are hereby declared unlawful.

152 (2) It is the intent of the Legislature that, in construing  
153 subsection (1), due consideration and great weight shall be  
154 given to the interpretations of the Federal Trade Commission and  
155 the federal courts relating to s. 5(a)(1) of the Federal Trade  
156 Commission Act, 15 U.S.C. s. 45(a)(1) as of July 1, 2015 ~~2013~~.

157 Section 6. Subsections (3) and (6) of section 960.03,  
158 Florida Statutes, are amended to read:

159 960.03 Definitions; ss. 960.01-960.28.—As used in ss.  
160 960.01-960.28, unless the context otherwise requires, the term:

161 (3) "Crime" means:

162 (a) A felony or misdemeanor offense committed by an adult  
163 or a juvenile which results in physical injury or death, a  
164 forcible felony committed by an adult or juvenile which directly  
165 results in psychiatric or psychological injury, or a felony or  
166 misdemeanor offense of child abuse committed by an adult or a  
167 juvenile which results in a mental injury, as defined in s.  
168 827.03, to a person younger than 18 years of age who was not  
169 physically injured by the criminal act. The mental injury to the  
170 minor must be verified by a psychologist licensed under chapter  
171 490, by a physician licensed in this state under chapter 458 or  
172 chapter 459 who has completed an accredited residency in



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173 psychiatry, or by a physician who has obtained certification as  
174 an expert witness pursuant to s. 458.3175. The term also  
175 includes a criminal act that is committed within this state but  
176 that falls exclusively within federal jurisdiction.

177 (b) A violation of s. 316.027(2), s. 316.193, s. 316.1935  
178 ~~s. 316.027(1)~~, s. 327.35(1), s. 782.071(1)(b), or s.  
179 860.13(1)(a) which results in physical injury or death.

180 (c) ~~however,~~ An act involving the operation of a motor  
181 vehicle, boat, or aircraft which results in another person's  
182 injury or death that is intentionally inflicted through the use  
183 of the vehicle, boat, or aircraft; however, no other act  
184 involving the operation of a motor vehicle, boat, or aircraft  
185 constitutes a crime for purposes of this chapter does not  
186 constitute a crime for the purpose of this chapter unless the  
187 injury or death was intentionally inflicted through the use of  
188 the vehicle, boat, or aircraft.

189 (d) ~~(e)~~ A criminal act committed outside this state against  
190 a resident of this state which would have been compensable if it  
191 had occurred in this state and which occurred in a jurisdiction  
192 that does not have an eligible crime victim compensation program  
193 as the term is defined in the federal Victims of Crime Act of  
194 1984.

195 (e) ~~(d)~~ A violation of s. 827.071, s. 847.0135, s. 847.0137,  
196 or s. 847.0138, related to online sexual exploitation and child  
197 pornography.

198 (6) "Disabled adult" means a person 18 years of age or  
199 older who suffers from a condition of physical or mental  
200 incapacitation due to a developmental disability, ~~or~~ organic  
201 brain damage, or mental illness or who has one or more physical



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202 or mental limitations that restrict the person's ability to  
203 perform the normal activities of daily living.

204 Section 7. Subsection (6) of section 960.13, Florida  
205 Statutes, is amended to read:

206 960.13 Awards.—

207 (6) Any award made pursuant to this chapter, except an  
208 award for loss of support or catastrophic injury, shall be  
209 reduced by the amount of any payments or services received or to  
210 be received by the claimant as a result of the injury or death:

211 (a) From or on behalf of the person who committed the  
212 crime; provided, however, that a restitution award ordered by a  
213 court to be paid to the claimant by the person who committed the  
214 crime shall not reduce any award made pursuant to this chapter  
215 unless it appears to the department that the claimant will be  
216 unjustly enriched thereby.

217 (b) From any other public or private source or provider,  
218 including, but not limited to, an award of workers' compensation  
219 pursuant to chapter 440.

220 (c) From agencies mandated by other Florida statutes to  
221 provide or pay for services, except as provided in s. 960.28.

222 (d) From an emergency award under s. 960.12.

223 Section 8. Section 960.195, Florida Statutes, is amended to  
224 read:

225 960.195 Awards to elderly persons or disabled adults for  
226 property loss.—

227 (1) Notwithstanding the criteria in s. 960.13, for crime  
228 victim compensation awards, the department may award a maximum  
229 of \$500 on any one claim and a lifetime maximum of \$1,000 on all  
230 claims to elderly persons or disabled adults who suffer a



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231 property loss that causes a substantial diminution in their  
232 quality of life when:  
233 ~~(a)(1)~~ There is proof that a criminal or delinquent act was  
234 committed;  
235 ~~(b)(2)~~ The criminal or delinquent act is reported to law  
236 enforcement authorities within 72 hours, unless the department,  
237 for good cause shown, finds the delay to have been justified;  
238 ~~(3) The victim cooperates with law enforcement authorities~~  
239 ~~in the investigation of the criminal or delinquent act;~~  
240 ~~(c)(4)~~ There is proof that the tangible personal property  
241 in question belonged to the claimant;  
242 ~~(d)(5)~~ The claimant did not contribute to the criminal or  
243 delinquent act;  
244 ~~(e)(6)~~ There is no other source of reimbursement or  
245 indemnification available to the claimant; and  
246 ~~(f)(7)~~ The claimant would not be able to replace the  
247 tangible personal property in question without incurring a  
248 serious financial hardship.  
249 (2) The department may deny, reduce, or withdraw any award  
250 under subsection (1) upon finding that any claimant or award  
251 recipient has not duly cooperated with the state attorney, all  
252 law enforcement agencies, and the department.  
253 Section 9. Section 960.196, Florida Statutes, is created to  
254 read:  
255 960.196 Relocation assistance for victims of human  
256 trafficking.-  
257 (1) Notwithstanding the criteria specified in ss. 960.07(2)  
258 and 960.13 for crime victim compensation awards, the department  
259 may award a one-time payment of up to \$1,500 for any one claim



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260 and a lifetime maximum of \$3,000 to a victim of human  
261 trafficking who needs urgent assistance to escape from an unsafe  
262 environment directly related to the human trafficking offense.  
263 (2) In order for an award to be granted to a victim for  
264 relocation assistance:  
265 (a) There must be proof that a human trafficking offense,  
266 as described in s. 787.06(3)(b), (d), (f), or (g), was  
267 committed.  
268 (b) The crime must be reported to the proper authorities  
269 and the claim must be filed within 1 year, or 2 years with good  
270 cause, after the date of the last human trafficking offense, as  
271 described in s. 787.06(3)(b), (d), (f), or (g). In a case that  
272 exceeds the 2-year requirement due to an active and ongoing  
273 investigation, a state attorney, statewide prosecutor, or  
274 federal prosecutor may certify in writing a human trafficking  
275 victim's need to relocate from an unsafe environment due to the  
276 threat of future violence which is directly related to the human  
277 trafficking offense.  
278 (c) The victim's need must be certified by a certified  
279 domestic violence or rape crisis center in this state, except as  
280 provided in paragraph (b). The center's certification must  
281 assert that the victim is cooperating with the proper  
282 authorities and must include documentation that the victim has  
283 developed a safety plan.  
284 (3) Relocation payments for a human trafficking claim shall  
285 be denied if the department has previously approved or paid out  
286 a domestic violence or sexual battery relocation claim under s.  
287 960.198 or s. 960.199 to the same victim regarding the same  
288 incident.



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289 Section 10. Subsection (3) of section 960.198, Florida  
290 Statutes, is amended to read:

291 960.198 Relocation assistance for victims of domestic  
292 violence.—

293 (3) Relocation payments for a domestic violence claim shall  
294 be denied if the department has previously approved or paid out  
295 a human trafficking or sexual battery relocation claim under s.  
296 960.196 or s. 960.199 to the same victim regarding the same  
297 incident.

298 Section 11. Section 960.199, Florida Statutes, is amended  
299 to read:

300 960.199 Relocation assistance for victims of sexual battery  
301 ~~or human trafficking.~~—

302 (1) The department may award a one-time payment of up to  
303 \$1,500 on any one claim and a lifetime maximum of \$3,000 to a  
304 victim of sexual battery, as defined in s. 794.011, ~~or a victim~~  
305 ~~of human trafficking, as described in s. 787.06(3)(b), (d), (f),~~  
306 ~~or (g),~~ who needs relocation assistance.

307 (2) In order for an award to be granted to a victim for  
308 relocation assistance:

309 (a) There must be proof that a sexual battery offense ~~or~~  
310 ~~human trafficking offense, as described in s. 787.06(3)(b), (d),~~  
311 ~~(f), or (g),~~ was committed.

312 (b) The sexual battery offense ~~or human trafficking~~  
313 ~~offense, as defined in s. 787.06(3)(b), (d), (f), or (g),~~ must  
314 be reported to the proper authorities.

315 (c) The victim's need for assistance must be certified by a  
316 certified rape crisis center in this state ~~or by the state~~  
317 ~~attorney or statewide prosecutor having jurisdiction over the~~



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318 ~~offense. A victim of human trafficking's need for assistance may~~  
319 ~~also be certified by a certified domestic violence center in~~  
320 ~~this state.~~

321 (d) The center's certification must assert that the victim  
322 is cooperating with law enforcement officials, if applicable,  
323 and must include documentation that the victim has developed a  
324 safety plan. ~~If the victim seeking relocation assistance is a~~  
325 ~~victim of a human trafficking offense as described in s.~~  
326 ~~787.06(3)(b), (d), (f), or (g), the certified rape crisis~~  
327 ~~center's or certified domestic violence center's certification~~  
328 ~~must include, if applicable, approval of the state attorney or~~  
329 ~~statewide prosecutor attesting that the victim is cooperating~~  
330 ~~with law enforcement officials.~~

331 (e) The act of sexual battery ~~or human trafficking, as~~  
332 ~~described in s. 787.06(3)(b), (d), (f), or (g),~~ must be  
333 committed in the victim's place of residence or in a location  
334 that would lead the victim to reasonably fear for his or her  
335 continued safety in the place of residence.

336 (3) Relocation payments for a sexual battery ~~or human~~  
337 ~~trafficking~~ claim under this section shall be denied if the  
338 department has previously approved or paid out a human  
339 trafficking or domestic violence relocation claim under s.  
340 960.196 or s. 960.198 to the same victim regarding the same  
341 incident.

342 Section 12. This act shall take effect July 1, 2015.

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/SB 1362

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); and Senator Simmons

SUBJECT: Department of Legal Affairs

DATE: April 20, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Caldwell</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Recommend: Fav/CS</b>
3.	<u>Clodfelter</u>	<u>Kynoch</u>	<u>AP</u>	<b>Fav/CS</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1362 makes changes to laws enforced by or governing the Department of Legal Affairs, also known as the Office of the Attorney General, including the Office of Statewide Prosecution.

The bill:

- Revises the list of offenses that are considered to be multi-circuit crimes that may be investigated and prosecuted by the Office of Statewide Prosecution to include kidnapping, false imprisonment, luring or enticing a child, custody offenses, human trafficking, and human smuggling if commission of the offense was facilitated by or connected to use of the Internet.
- Provides authority to purchase promotional materials and basic refreshments for public training and information sessions.
- Allows the Medicaid Fraud unit to use a percentage of the recovered funds to fund investigations and enforcement actions.
- Updates references of federal consumer protection laws that are incorporated into the statutes.
- Revises Victim Assistance awards criteria to:
  - Provide for maximum lifetime amounts;
  - Expand definitions to broaden coverage for elderly persons or disabled adults who suffer a property loss; and
  - Provide for relocation assistance for human trafficking victims.

- Makes necessary conforming and technical changes.

The bill also creates the “Patent Troll Prevention Act” to prohibit and provide remedies for bad faith assertion of patent infringement. It allows a defendant in a patent infringement proceeding to move that the proceeding involves a bad faith assertion of patent infringement and request that the court issue a protective order. If, based on factors set out in the bill, the court finds that the defendant has established a reasonable likelihood that the plaintiff has made a bad faith assertion of patent infringement, the court must require the plaintiff to post a bond in an amount equal to the lesser of \$250,000 or a good faith estimate of the target’s expense of litigation, including an estimate of reasonable attorney fees, conditioned on payment of any amount finally determined to be due to the target. A court may waive the bond requirement for good cause shown or if it finds the plaintiff has available assets equal to the amount of the proposed bond.

A person against whom a bad faith assertion of patent infringement is made also may bring an action in a court of competent jurisdiction for relief. If successful, the court may award a plaintiff equitable relief; damages; costs and fees, including reasonable attorney fees; and punitive damages in an amount equal to \$50,000 or three times the total damages, costs, and fees, whichever is greater.

The bill provides that a violation of the prohibition against making a bad faith assertion of patent infringement also constitutes an unfair or deceptive trade practice. As such, the state attorney with jurisdiction and the Department of Legal Affairs (department) are enforcing authorities that may bring an enforcement action for an injunction and to recover actual damages.

The Department of Legal Affairs indicates that the bill does not have a fiscal impact on general revenue funds or trust fund revenues. Within existing funds, the bill apportions some revenues that are currently deposited in the department’s Operating Trust Fund for use by the Medicaid Fraud Control Unit and removes a requirement for reduction of awards for catastrophic loss under some circumstances. Any costs incurred by the Department of Legal Affairs or a state attorney with jurisdiction for enforcing violations of the Patent Troll Prevention Act would be offset by recovery of costs and attorney’s fees if the action is successful. In addition, a violator may be assessed a civil penalty of up to \$10,000 per violation that would be deposited into the General Revenue Fund.

The bill provides an effective date of July 1, 2015.

## **II. Present Situation:**

For discussion of the provisions of ss. 16.56, 409.9203, 501.203, 501.204, 960.03, 960.13, 960.195, 960.198, and 960.199, F.S., that are amended and ss. 16.62 and 960.196, F.S., that are created by the bill, see the “Effect of Proposed Changes” section of this analysis.

### III. Effect of Proposed Changes:

#### Attorney General

**Section 1:** Section 16.56, F.S., creates the Office of Statewide Prosecution as a separate budget entity within the Department of Legal Affairs and provides for its authority and duties to investigate and prosecute specified offenses. In general, the Office of Statewide Prosecution has jurisdiction only when one of the specified offenses occurs in two or more judicial circuits as part of a related transaction or when the offense is connected with an organized criminal conspiracy affecting two or more judicial circuits. However, all of the offenses except offenses in ch. 787, F.S. (kidnapping, false imprisonment, luring or enticing a child, custody offenses, human trafficking, and human smuggling) are considered to be committed in every judicial circuit when they are facilitated by or connected to the use of the Internet.

The bill amends s. 16.56, F.S., to provide that offenses in ch. 787, F.S., are considered to be committed in every judicial circuit when the offense is facilitated by or connected to the use of the Internet.

**Section 2** creates s. 16.62, F.S., to authorize the department to expend not more than \$20,000 annually to support costs for the Law Enforcement Officer of the Year Recognition and Awards Program and the Victims Services Recognition and Awards Program. This authorization is in addition to any expenditures separately authorized by law.

**Section 3** amends s. 409.9203, F.S., which relates to the department's Medicaid Fraud Control Unit. The Medicaid Fraud Control Unit investigates violations s. 409.920, F.S., which prohibits Medicaid provider fraud. As part of the Medicaid fraud control program, s. 409.9203, F.S., provides for rewards to persons who report a violation of the state's Medicaid fraud laws.

The Florida False Claims Act<sup>1</sup> provides for civil actions to address false claims against the state. These actions may be brought by the state or by a private person on behalf of the state. Section 68.085, F.S., provides for the distribution of funds for actions brought under the False Claim Act. It also provides for the disposition of any funds that remain after required distributions are made: 90 percent of the remaining funds is deposited in the General Revenue Fund, and 10 percent is deposited into the department's Operating Trust Fund to reward persons who report and provide information relating to Medicaid fraud.

The bill amends s. 409.9203, F.S., to direct that half of the proceeds deposited into the Operating Trust Fund pursuant to s. 68.085, F.S., must be used by the Medicaid Fraud Control Unit to fund investigations of potential violations of the False Claims Acts. The other half is still allocated for payment of rewards to persons who report Medicaid fraud.

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<sup>1</sup> Sections 68.081-68.092, F.S.

## Consumer Protection

The Florida Deceptive and Unfair Trade Practices Act<sup>2</sup> provides for the protection of Florida's consumers. Section 501.203 provides that enforcement extends not only to violations of the act and related rules, but also to the following as they exist on July 1, 2013:

- Rules of the Federal Trade Commission (FTC);
- Standards of unfairness and deception set forth and interpreted by the FTC or the federal courts; and
- Any law, statute, rule regulation, or ordinance which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices.

In addition, s. 501.204(1), F.S., provides that unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful. Section 501.204(2), F.S., specifically directs that the interpretations of the FTC and federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act<sup>3</sup> as of July 1, 2013, are to be given due consideration and great weight in construing the state law.

**Sections 4 and 5** amend ss. 501.203 and 501.204, F.S., to update the date of federal law that may be used to protect Florida consumers from July 1, 2013, to July 1, 2015.

**Sections 6 through 13** create Part VII of ch. 501, F.S., consisting of ss. 501.991-501.997, F.S., and entitle it the "Patent Troll Prevention Act." The bill sets forth legislative intent for the Patent Troll Prevention Act and establishes the following definitions:

- "Demand letter" means a letter, e-mail, or other communication asserting or claiming that a person has engaged in patent infringement.
- "Institution of higher education" means an educational institution as defined in 20 U.S.C. s. 1001(a).
- "Target" means a person, including the person's customers, distributors, or agents, residing in, incorporated in, or organized under the laws of this state which:
  - Has received a demand letter or against whom an assertion or allegation of patent infringement has been made;
  - Has been threatened with litigation or against whom a lawsuit has been filed alleging patent infringement; or
  - Whose customers have received a demand letter asserting that the person's product, service, or technology has infringed upon a patent.

The bill prohibits and provides remedies for bad faith assertion of patent infringement. If a patent infringement proceeding is instituted, the target may move that the proceeding involves a bad faith assertion of patent infringement and request that the court issue a protective order. The bill sets out two lists of factors the court may consider as evidence, one for evidence that that a person has made a bad faith assertion of patent infringement and one for evidence that a person has *not* made a bad faith assertion of patent infringement.

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<sup>2</sup> Sections 501.201 – 501.213, F.S.

<sup>3</sup> This provision is codified as 15 U.S.C. s. 45(a)(1).

If the court finds that the target has established a reasonable likelihood that the plaintiff has made a bad faith assertion of patent infringement, the court must require the plaintiff to post a bond in an amount equal to the lesser of \$250,000 or a good faith estimate of the target's expense of litigation, including an estimate of reasonable attorney fees, conditioned on payment of any amount finally determined to be due to the target. A court may waive the bond requirement for good cause shown or if it finds the plaintiff has available assets equal to the amount of the proposed bond.

A person aggrieved by a violation of the prohibition making a bad faith assertion of patent infringement may bring an action in a court of competent jurisdiction, and the court may award a prevailing plaintiff the following remedies:

- Equitable relief;
- Damages;
- Costs and fees, including reasonable attorney fees; and
- Punitive damages in an amount equal to \$50,000 or three times the total damages, costs, and fees, whichever is greater.

A violation also constitutes an unfair or deceptive trade practice under Part II of ch. 501, F.S. As such, the department or a state attorney, as applicable,<sup>4</sup> may bring:

- An action to obtain a declaratory judgment that an act or practice constitutes a violation;
- An action to enjoin any person who has violated, is violating, or is otherwise likely to violate, the Act; or
- An action on behalf of one or more consumers or governmental entities for the actual damages caused by a violative act or practice.

The Patent Troll Prevention Act does not apply to institutions of higher education, to a technology transfer organization owned by or affiliated with an institution of higher education, or to a demand letter or an assertion of patent infringement that includes a claim for relief arising under 35 U.S.C. s. 271(e)(2) or 42 U.S.C. s. 262, which relate to protections for pharmaceuticals and biological products.

### **Victim Assistance**

The provisions of ss. 960.01 - 960.28, F.S., are known as the "Florida Crimes Compensation Act." Section 960.03, F.S., provides for definitions, including the terms "crime" and "disabled adult." Victims who suffer personal physical injury or death as a direct result of a crime are eligible for awards.

**Section 14** amends s. 960.03(3), F.S., to make the following changes to the definition of "crime" for purposes of the Florida Crimes Compensation Act:

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<sup>4</sup> The bill refers to an action brought by an "enforcing authority" as is defined in s. 501.203, F.S. That section defines the term to mean the office of the state attorney if a violation of this part occurs in or affects the judicial circuit under the office's jurisdiction, or the Department of Legal Affairs if the violation occurs in or affects more than one judicial circuit or if the office of the state attorney defers to the department in writing, or fails to act upon a violation within 90 days after a written complaint has been filed with the state attorney.

- Adds “a forcible felony committed by an adult or juvenile which directly results in psychiatric or psychological injury;”
- Adds s. 316.027(2), F.S. (willful failure of a vehicle driver involved in a crash that results in injury to a person other than serious bodily injury to immediately stop at the scene and remain to give information and render aid);
- Adds s. 316.1935, F.S. (fleeing or attempting to elude a law enforcement officer);
- Clarifies that an act involving the operation of a motor vehicle, boat, or aircraft which results in injury or death is included in the definition only when another person’s injury or death is intentionally inflicted through the use of the vehicle, boat, or aircraft.

In addition, the definition of “disabled adult” is expanded to include adults who suffer from mental illness or from one or more physical limitations that restrict the person’s ability to perform the normal activities of daily living. The amendment also clarifies that the definition includes persons who have only one mental limitation that restricts their ability to perform the normal activities of daily living.

**Section 15** amends s. 960.13, F.S., which provides for awards of compensation to victims of crime. The department is authorized to make an award only if it finds that:

- A crime was committed;
- The crime directly resulted in personal injury, psychiatric or psychological injury, or death to the victim or intervenor; and
- The crime was promptly reported to the proper authorities.

Any award, except an award for loss of support, must be reduced by the amount of any payments or services received or to be received from certain sources as a result of the injury or death. The amendment to s. 960.13(6), F.S., adds an exception for awards for catastrophic injury.

**Section 16** amends s. 960.195, F.S., which provides for awards to elderly persons or disabled adults for property loss that causes a substantial diminution of their quality of life. The statute currently provides that department may award a maximum of \$500 when:

- There is proof that a criminal or delinquent act was committed,
- The criminal or delinquent act is reported to law enforcement authorities within 72 hours,
- The victim cooperates with law enforcement authorities in the investigation,
- There is proof that the tangible personal property in question belonged to the claimant,
- The claimant did not contribute to the criminal or delinquent act,
- There is no other source of reimbursement or indemnification available to the claimant, and
- The claimant would not be able to replace the tangible personal property in question without incurring a serious financial hardship.

This statute is amended to remove cooperation with law enforcement as an act that supports an award of compensation. Rather, the department is given authority to deny, reduce, or withdraw any award if it finds that a claimant or award recipient has not cooperated with the state attorney, all law enforcement agencies, and the department. The statute is also amended to limit the amount of the award for any claim to \$500, with a lifetime cap of \$1,000 in awards for all claims. In addition, the department is given flexibility to waive the requirement that the crime have been reported within 72 hours if it finds that the delay was justified by good cause.

**Section 17** creates s. 960.196, F.S., relating to relocation assistance for victims of human trafficking. This new section authorizes the department to award a one-time payment of up to \$1,500 for any one claim and a lifetime maximum of \$3,000 to a victim of human trafficking who needs urgent assistance to escape from an unsafe environment directly related to the human trafficking offense. For the victim to be awarded the compensation:

- There must be proof that a human trafficking offense<sup>5</sup> was committed.
- The crime must be reported to the proper authorities and the claim must be filed within one year, or two years with good cause, after the date of the last human trafficking offense.<sup>6</sup>
  - A certified domestic violence or rape crisis center in the state must certify the victim's need to escape from an unsafe environment. The center must assert in its certification that the victim is cooperating with the proper authorities and must include documentation that the victim has developed a safety plan.
  - A state attorney, statewide prosecutor, or federal prosecutor may certify in writing that a human trafficking victim's need to relocate from an unsafe environment due to the threat of future violence which is directly related to the human trafficking offense in a case that exceeds the two-year requirement.

The department must deny relocation payments for a human trafficking claim if it has previously approved or paid out a domestic violence or sexual battery relocation claim under s. 960.198, F.S., or s. 960.199, F.S.

**Section 18** amends s. 960.198, F.S., which provides authority for the department to award payments for relocation assistance to victims of domestic violence who need immediate assistance to escape from a domestic violence environment. The statute provides that relocation payments for domestic violence must be denied if the same victim already received a relocation award for the same incident as a sexual battery victim pursuant to s. 960.199, F.S. The amendment adds the same prohibition relating to prior relocation assistance awards for victims of human trafficking.

**Section 19** amends s. 960.199, F.S., to remove references to relocation assistance for victims of human trafficking. The statute currently applies to relocation assistance for victims of sexual battery and human trafficking, but the bill creates s. 960.196, F.S., to specifically address human trafficking.

**Section 20** provides that the act takes effect July 1, 2015.

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

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

None.

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<sup>5</sup> See s. 787.06(3)(b), (d), (f), or (g), F.S.

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

**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:**

Under CS/SB 1362, if awards for victim assistance benefits are capped, citizens are limited in the amount of lifetime awards that they may receive. Also, creation of the Patent Troll Prevention Act may shield some companies from costs associated with bad faith assertions of patent infringement.

**C. Government Sector Impact:**

The Department of Legal Affairs indicates that the bill will not affect general revenue funds or trust fund revenues. The exclusion of awards for “catastrophic loss” from types of awards that must be reduced by the amount of services received from certain sources will have “very limited impact” on the victim’s compensation fund. Also, the bill directs that half of the revenues currently deposited in the department’s Operating Trust Fund for making awards be used to fund investigations and prosecutions by the Medicaid Fraud Control Unit. Amounts awarded from the Operating Trust Fund have historically been significantly less than half of the amount that is deposited for this purpose.

There may be some costs for the Department of Legal Affairs and for state attorneys with jurisdiction to enforce violations of the Patent Troll Prevention Act. However, those agencies would be able to recover costs and attorney’s fees for successful actions. In addition, the violator may be assessed a civil penalty of up to \$10,000 per violation. Any civil penalties that are collected would be deposited into the General Revenue Fund.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill incorporates the provisions of CS/SB 1084.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 16.56, 409.9203, 501.203, 501.204, 960.03, 960.13, 960.195, 960.198, and 960.199.

The bill creates the following sections of the Florida Statutes: 16.62, 501.991 through 501.997, and 960.196.

**IX. Additional Information:**

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

**CS by Appropriations on April 16, 2015:**

The committee substitute:

- Specifies that up to \$20,000 annually may be expended by the Department of Legal Affairs for specified recognition and awards programs.
- Amends Section 3 of the bill to correct a technical error and clearly express the percentage of funds that are allocated for use by the Medicaid Fraud Unit and for payment of rewards.
- The bill incorporates the provisions of CS/SB 1084 to create the “Patent Troll Prevention Act.” The new act prohibits and provides remedies for bad faith assertion of patent infringement. These remedies include both private causes of action and enforcement action by the Department of Legal Affairs or the state attorney with jurisdiction.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/15/2015	.	
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The Committee on Appropriations (Richter) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 163 and 164  
insert:

Section 6. The Division of Law Revision and Information is directed to create part VII of chapter 501, Florida Statutes, consisting of ss. 501.991-501.997, Florida Statutes, to be entitled the "Patent Troll Prevention Act."

Section 7. Section 501.991, Florida Statutes, is created to read:



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11 501.991 Legislative intent.-

12 (1) The Legislature recognizes that it is preempted from  
13 passing any law that conflicts with federal patent law. However,  
14 the Legislature recognizes that the state is dedicated to  
15 building an entrepreneurial and business-friendly economy where  
16 businesses and consumers alike are protected from abuse and  
17 fraud. This includes protection from abusive and bad faith  
18 demands and litigation.

19 (2) Patents encourage research, development, and  
20 innovation. Patent holders have a legitimate right to enforce  
21 their patents. The Legislature does not wish to interfere with  
22 good faith patent litigation or the good faith enforcement of  
23 patents. However, the Legislature recognizes a growing issue:  
24 the frivolous filing of bad faith patent claims that have led to  
25 technical, complex, and especially expensive litigation.

26 (3) The expense of patent litigation, which may cost  
27 millions of dollars, can be a significant burden on companies  
28 and small businesses. Not only do bad faith patent infringement  
29 claims impose undue burdens on individual businesses, they  
30 undermine the state's effort to attract and nurture  
31 technological innovations. Funds spent to help avoid the threat  
32 of bad faith litigation are no longer available for serving  
33 communities through investing in producing new products, helping  
34 businesses expand, or hiring new workers. The Legislature wishes  
35 to help its businesses avoid these costs by encouraging good  
36 faith assertions of patent infringement and the expeditious and  
37 efficient resolution of patent claims.

38 Section 8. Section 501.992, Florida Statutes, is created to  
39 read:



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40 501.992 Definitions.—As used in this part, the term:  
41 (1) "Demand letter" means a letter, e-mail, or other  
42 communication asserting or claiming that a person has engaged in  
43 patent infringement.

44 (2) "Institution of higher education" means an educational  
45 institution as defined in 20 U.S.C. s. 1001(a).

46 (3) "Target" means a person, including the person's  
47 customers, distributors, or agents, residing in, incorporated  
48 in, or organized under the laws of this state which:

49 (a) Has received a demand letter or against whom an  
50 assertion or allegation of patent infringement has been made;

51 (b) Has been threatened with litigation or against whom a  
52 lawsuit has been filed alleging patent infringement; or

53 (c) Whose customers have received a demand letter asserting  
54 that the person's product, service, or technology has infringed  
55 upon a patent.

56 Section 9. Section 501.993, Florida Statutes, is created to  
57 read:

58 501.993 Bad faith assertions of patent infringement.—A  
59 person may not make a bad faith assertion of patent  
60 infringement.

61 (1) A court may consider the following factors as evidence  
62 that a person has made a bad faith assertion of patent  
63 infringement:

64 (a) The demand letter does not contain the following  
65 information:

66 1. The patent number;

67 2. The name and address of the patent owner and assignee,  
68 if any; and



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69       3. Factual allegations concerning the specific areas in  
70 which the target's products, services, or technology infringe or  
71 are covered by the claims in the patent.

72       (b) Before sending the demand letter, the person failed to  
73 conduct an analysis comparing the claims in the patent to the  
74 target's products, services, or technology, or the analysis did  
75 not identify specific areas in which the target's products,  
76 services, and technology were covered by the claims of the  
77 patent.

78       (c) The demand letter lacked the information listed under  
79 paragraph (a), the target requested the information, and the  
80 person failed to provide the information within a reasonable  
81 period.

82       (d) The demand letter requested payment of a license fee or  
83 response within an unreasonable period.

84       (e) The person offered to license the patent for an amount  
85 that is not based on a reasonable estimate of the value of the  
86 license.

87       (f) The claim or assertion of patent infringement is  
88 unenforceable, and the person knew, or should have known, that  
89 the claim or assertion was unenforceable.

90       (g) The claim or assertion of patent infringement is  
91 deceptive.

92       (h) The person, including its subsidiaries or affiliates,  
93 has previously filed or threatened to file one or more lawsuits  
94 based on the same or a similar claim of patent infringement and:

95       1. The threats or lawsuits lacked the information listed  
96 under paragraph (a); or

97       2. The person sued to enforce the claim of patent



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98 infringement and a court found the claim to be meritless.

99 (i) Any other factor the court finds relevant.

100 (2) A court may consider the following factors as evidence  
101 that a person has not made a bad faith assertion of patent  
102 infringement:

103 (a) The demand letter contained the information listed  
104 under paragraph (1)(a).

105 (b) The demand letter did not contain the information  
106 listed under paragraph (1)(a), the target requested the  
107 information, and the person provided the information within a  
108 reasonable period.

109 (c) The person engaged in a good faith effort to establish  
110 that the target has infringed the patent and negotiated an  
111 appropriate remedy.

112 (d) The person made a substantial investment in the use of  
113 the patented invention or discovery or in a product or sale of a  
114 product or item covered by the patent.

115 (e) The person is the inventor or joint inventor of the  
116 patented invention or discovery, or in the case of a patent  
117 filed by and awarded to an assignee of the original inventor or  
118 joint inventors, is the original assignee.

119 (f) The person has:

120 1. Demonstrated good faith business practices in previous  
121 efforts to enforce the patent, or a substantially similar  
122 patent; or

123 2. Successfully enforced the patent, or a substantially  
124 similar patent, through litigation.

125 (g) Any other factor the court finds relevant.

126 Section 10. Section 501.994, Florida Statutes, is created



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127 to read:

128 501.994 Bond.—If a person initiates a proceeding against a  
129 target in a court of competent jurisdiction, the target may move  
130 that the proceeding involves a bad faith assertion of patent  
131 infringement in violation of this part and request that the  
132 court issue a protective order. After the motion, and if the  
133 court finds that the target has established a reasonable  
134 likelihood that the plaintiff has made a bad faith assertion of  
135 patent infringement, the court must require the plaintiff to  
136 post a bond in an amount equal to the lesser of \$250,000 or a  
137 good faith estimate of the target's expense of litigation,  
138 including an estimate of reasonable attorney fees, conditioned  
139 on payment of any amount finally determined to be due to the  
140 target. The court shall hold a hearing at either party's  
141 request. A court may waive the bond requirement for good cause  
142 shown or if it finds the plaintiff has available assets equal to  
143 the amount of the proposed bond.

144 Section 11. Section 501.995, Florida Statutes, is created  
145 to read:

146 501.995 Private right of action.—A person aggrieved by a  
147 violation of this part may bring an action in a court of  
148 competent jurisdiction. A court may award the following remedies  
149 to a prevailing plaintiff in an action brought pursuant to this  
150 section:

- 151 (1) Equitable relief;  
152 (2) Damages;  
153 (3) Costs and fees, including reasonable attorney fees; and  
154 (4) Punitive damages in an amount equal to \$50,000 or three  
155 times the total damages, costs, and fees, whichever is greater.



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156 Section 12. Section 501.997, Florida Statutes, is created  
157 to read:

158 501.997 Exemptions.—This part does not apply to an  
159 institution of higher education, to a technology transfer  
160 organization owned by or affiliated with an institution of  
161 higher education, or to a demand letter or an assertion of  
162 patent infringement that includes a claim for relief arising  
163 under 35 U.S.C. s. 271(e)(2) or 42 U.S.C. s. 262.

164  
165 ===== T I T L E A M E N D M E N T =====

166 And the title is amended as follows:

167 Delete line 16

168 and insert:

169 revising legislative intent; providing a directive to  
170 the Division of Law Revision and Information; creating  
171 s. 501.991, F.S.; providing legislative intent;  
172 creating s. 501.992, F.S.; defining terms; creating s.  
173 501.993, F.S.; prohibiting bad faith assertions of  
174 patent infringement from being made; providing factors  
175 that a court may consider when determining whether an  
176 allegation was or was not made in bad faith; creating  
177 s. 501.994, F.S.; authorizing a court to require a  
178 patent infringement plaintiff to post a bond under  
179 certain circumstances; limiting the bond amount;  
180 authorizing the court to waive the bond requirement in  
181 certain circumstances; creating s. 501.995, F.S.;

182 authorizing private rights of action for violations of  
183 this part; authorizing the court to award certain  
184 relief to prevailing plaintiffs; creating s. 501.997,



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185

F.S.; providing exemptions; amending s. 960.03, F.S.;

By Senator Simmons

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1 A bill to be entitled  
 2 An act relating to the Department of Legal Affairs;  
 3 amending s. 16.56, F.S.; revising the list of offenses  
 4 that may be investigated and prosecuted by the Office  
 5 of Statewide Prosecution; creating s. 16.62, F.S.;  
 6 prohibiting the Department of Legal Affairs from  
 7 expending more than a specified amount annually to  
 8 purchase and distribute promotional materials or items  
 9 that serve to advance the goodwill of this state and  
 10 the department and to provide basic refreshments at  
 11 specified functions, seminars, or meetings; amending  
 12 s. 409.9203, F.S.; specifying the distribution of  
 13 certain funds recovered in Medicaid fraud actions;  
 14 amending s. 501.203, F.S.; revising the term  
 15 "violation of this part"; amending s. 501.204, F.S.;  
 16 revising legislative intent; amending s. 960.03, F.S.;  
 17 revising the definition of the term "crime" for  
 18 purposes of obtaining crime victim compensation from  
 19 the department to include certain forcible felonies;  
 20 revising provisions concerning acts involving the  
 21 operation of a motor vehicle, boat, or aircraft;  
 22 revising the definition of the term "disabled adult";  
 23 correcting a cross-reference; amending s. 960.13,  
 24 F.S.; exempting crime victim compensation awards for  
 25 catastrophic injury from certain deductions; amending  
 26 s. 960.195, F.S.; revising the maximum victim  
 27 compensation amounts that the department may award to  
 28 elderly persons or disabled adults who suffer a  
 29 property loss that causes a substantial diminution in

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

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30 their quality of life in certain circumstances;  
 31 revising the conditions under which elderly persons or  
 32 disabled adults who suffer a property loss are  
 33 eligible for an award; authorizing the department to  
 34 deny, reduce, or withdraw a specified award upon  
 35 finding that any claimant or award recipient has not  
 36 duly cooperated with certain persons and entities;  
 37 creating s. 960.196, F.S.; providing for relocation  
 38 assistance for human trafficking victims; amending s.  
 39 960.198, F.S.; prohibiting relocation assistance for a  
 40 domestic violence claim if the victim has received  
 41 previous relocation assistance for a human trafficking  
 42 claim; amending s. 960.199, F.S.; deleting provisions  
 43 relating to relocation assistance for human  
 44 trafficking victims; providing an effective date.

45  
 46 Be It Enacted by the Legislature of the State of Florida:

47  
 48 Section 1. Paragraphs (a) and (b) of subsection (1) of  
 49 section 16.56, Florida Statutes, are amended to read:

50 16.56 Office of Statewide Prosecution.—

51 (1) There is created in the Department of Legal Affairs an  
 52 Office of Statewide Prosecution. The office shall be a separate  
 53 "budget entity" as that term is defined in chapter 216. The  
 54 office may:

55 (a) Investigate and prosecute the offenses of:

56 1. Bribery, burglary, criminal usury, extortion, gambling,  
 57 kidnapping, larceny, murder, prostitution, perjury, robbery,  
 58 carjacking, and home-invasion robbery;

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- 59 2. Any crime involving narcotic or other dangerous drugs;  
 60 3. Any violation of ~~the provisions of~~ the Florida RICO  
 61 (Racketeer Influenced and Corrupt Organization) Act, including  
 62 any offense listed in the definition of racketeering activity in  
 63 s. 895.02(1)(a), providing such listed offense is investigated  
 64 in connection with a violation of s. 895.03 and is charged in a  
 65 separate count of an information or indictment containing a  
 66 count charging a violation of s. 895.03, the prosecution of  
 67 which listed offense may continue independently if the  
 68 prosecution of the violation of s. 895.03 is terminated for any  
 69 reason;  
 70 4. Any violation of ~~the provisions of~~ the Florida Anti-  
 71 Fencing Act;  
 72 5. Any violation of ~~the provisions of~~ the Florida Antitrust  
 73 Act of 1980, as amended;  
 74 6. Any crime involving, or resulting in, fraud or deceit  
 75 upon any person;  
 76 7. Any violation of s. 847.0135, relating to computer  
 77 pornography and child exploitation prevention, or any offense  
 78 related to a violation of s. 847.0135 or any violation of  
 79 chapter 827 where the crime is facilitated by or connected to  
 80 the use of the Internet or any device capable of electronic data  
 81 storage or transmission;  
 82 8. Any violation of ~~the provisions of~~ chapter 815;  
 83 9. Any criminal violation of part I of chapter 499;  
 84 10. Any violation of ~~the provisions of~~ the Florida Motor  
 85 Fuel Tax Relief Act of 2004;  
 86 11. Any criminal violation of s. 409.920 or s. 409.9201;  
 87 12. Any crime involving voter registration, voting, or

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- 88 candidate or issue petition activities;  
 89 13. Any criminal violation of the Florida Money Laundering  
 90 Act;  
 91 14. Any criminal violation of the Florida Securities and  
 92 Investor Protection Act; or  
 93 15. Any violation of ~~the provisions of~~ chapter 787, as well  
 94 as any and all offenses related to a violation of ~~the provisions~~  
 95 ~~of~~ chapter 787;  
 96  
 97 or any attempt, solicitation, or conspiracy to commit any of the  
 98 crimes specifically enumerated above. The office shall have such  
 99 power only when any such offense is occurring, or has occurred,  
 100 in two or more judicial circuits as part of a related  
 101 transaction, or when any such offense is connected with an  
 102 organized criminal conspiracy affecting two or more judicial  
 103 circuits. Informations or indictments charging such offenses  
 104 shall contain general allegations stating the judicial circuits  
 105 and counties in which crimes are alleged to have occurred or the  
 106 judicial circuits and counties in which crimes affecting such  
 107 circuits or counties are alleged to have been connected with an  
 108 organized criminal conspiracy.  
 109 (b) Investigate and prosecute any crime enumerated in  
 110 paragraph (a) subparagraphs (a)1.-14. facilitated by or  
 111 connected to the use of the Internet. Any such crime is a crime  
 112 occurring in every judicial circuit within the state.  
 113 Section 2. Section 16.62, Florida Statutes, is created to  
 114 read:  
 115 16.62 Authority of the Department of Legal Affairs to  
 116 expend funds on promotional materials and goodwill.-In addition

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 117 to expenditures separately authorized by law, the Department of  
 118 Legal Affairs may not expend more than \$20,000 annually to  
 119 purchase and distribute promotional materials or items that  
 120 serve to advance with dignity and integrity the goodwill of this  
 121 state and the department and to provide basic refreshments at  
 122 official functions, seminars, or meetings of the department in  
 123 which dignitaries or representatives from the Federal  
 124 Government, other states, or nations, or other agencies are in  
 125 attendance.

126 Section 3. Subsection (5) is added to section 409.9203,  
 127 Florida Statutes, to read:

128 409.9203 Rewards for reporting Medicaid fraud.—

129 (5) Notwithstanding s. 68.085(3), 10 percent of any  
 130 remaining proceeds deposited into the Operating Trust Fund from  
 131 an action based on a claim of funds from the state Medicaid  
 132 program shall be allocated in the following manner:

133 (a) Fifty percent of such moneys shall be used to fund  
 134 rewards for reporting Medicaid fraud pursuant to this section.

135 (b) The remaining 50 percent of such moneys shall be used  
 136 by the Medicaid Fraud Control Unit to fund its investigations of  
 137 potential violations of s. 68.082 and any related civil actions.

138 Section 4. Subsection (3) of section 501.203, Florida  
 139 Statutes, is amended to read:

140 501.203 Definitions.—As used in this chapter, unless the  
 141 context otherwise requires, the term:

142 (3) "Violation of this part" means any violation of this  
 143 act or the rules adopted under this act and may be based upon  
 144 any of the following as of July 1, 2015 ~~2013~~:

145 (a) Any rules promulgated pursuant to the Federal Trade

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 146 Commission Act, 15 U.S.C. ss. 41 et seq.;

147 (b) The standards of unfairness and deception set forth and  
 148 interpreted by the Federal Trade Commission or the federal  
 149 courts;

150 (c) Any law, statute, rule, regulation, or ordinance which  
 151 proscribes unfair methods of competition, or unfair, deceptive,  
 152 or unconscionable acts or practices.

153 Section 5. Section 501.204, Florida Statutes, is amended to  
 154 read:

155 501.204 Unlawful acts and practices.—

156 (1) Unfair methods of competition, unconscionable acts or  
 157 practices, and unfair or deceptive acts or practices in the  
 158 conduct of any trade or commerce are hereby declared unlawful.

159 (2) It is the intent of the Legislature that, in construing  
 160 subsection (1), due consideration and great weight shall be  
 161 given to the interpretations of the Federal Trade Commission and  
 162 the federal courts relating to s. 5(a)(1) of the Federal Trade  
 163 Commission Act, 15 U.S.C. s. 45(a)(1) as of July 1, 2015 ~~2013~~.

164 Section 6. Subsections (3) and (6) of section 960.03,  
 165 Florida Statutes, are amended to read:

166 960.03 Definitions; ss. 960.01-960.28.—As used in ss.  
 167 960.01-960.28, unless the context otherwise requires, the term:

168 (3) "Crime" means:

169 (a) A felony or misdemeanor offense committed by an adult  
 170 or a juvenile which results in physical injury or death, a  
 171 forcible felony committed by an adult or juvenile which directly  
 172 results in psychiatric or psychological injury, or a felony or  
 173 misdemeanor offense of child abuse committed by an adult or a  
 174 juvenile which results in a mental injury, as defined in s.

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175 827.03, to a person younger than 18 years of age who was not  
 176 physically injured by the criminal act. The mental injury to the  
 177 minor must be verified by a psychologist licensed under chapter  
 178 490, by a physician licensed in this state under chapter 458 or  
 179 chapter 459 who has completed an accredited residency in  
 180 psychiatry, or by a physician who has obtained certification as  
 181 an expert witness pursuant to s. 458.3175. The term also  
 182 includes a criminal act that is committed within this state but  
 183 that falls exclusively within federal jurisdiction.

184 (b) A violation of s. 316.027(2), s. 316.193, s. 316.1935  
 185 ~~s. 316.027(1)~~, s. 327.35(1), s. 782.071(1)(b), or s.  
 186 860.13(1)(a) which results in physical injury or death.

187 ~~(c) However,~~ An act involving the operation of a motor  
 188 vehicle, boat, or aircraft which results in another person's  
 189 injury or death that is intentionally inflicted through the use  
 190 of the vehicle, boat, or aircraft; however, no other act  
 191 involving the operation of a motor vehicle, boat, or aircraft  
 192 constitutes a crime for purposes of this chapter does not  
 193 ~~constitute a crime for the purpose of this chapter unless the~~  
 194 ~~injury or death was intentionally inflicted through the use of~~  
 195 ~~the vehicle, boat, or aircraft.~~

196 ~~(d)(e)~~ A criminal act committed outside this state against  
 197 a resident of this state which would have been compensable if it  
 198 had occurred in this state and which occurred in a jurisdiction  
 199 that does not have an eligible crime victim compensation program  
 200 as the term is defined in the federal Victims of Crime Act of  
 201 1984.

202 ~~(e)(d)~~ A violation of s. 827.071, s. 847.0135, s. 847.0137,  
 203 or s. 847.0138, related to online sexual exploitation and child

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204 pornography.

205 (6) "Disabled adult" means a person 18 years of age or  
 206 older who suffers from a condition of physical or mental  
 207 incapacitation due to a developmental disability, ~~or~~ organic  
 208 brain damage, or mental illness or who has one or more physical  
 209 or mental limitations that restrict the person's ability to  
 210 perform the normal activities of daily living.

211 Section 7. Subsection (6) of section 960.13, Florida  
 212 Statutes, is amended to read:

213 960.13 Awards.—

214 (6) Any award made pursuant to this chapter, except an  
 215 award for loss of support or catastrophic injury, shall be  
 216 reduced by the amount of any payments or services received or to  
 217 be received by the claimant as a result of the injury or death:

218 (a) From or on behalf of the person who committed the  
 219 crime; provided, however, that a restitution award ordered by a  
 220 court to be paid to the claimant by the person who committed the  
 221 crime shall not reduce any award made pursuant to this chapter  
 222 unless it appears to the department that the claimant will be  
 223 unjustly enriched thereby.

224 (b) From any other public or private source or provider,  
 225 including, but not limited to, an award of workers' compensation  
 226 pursuant to chapter 440.

227 (c) From agencies mandated by other Florida statutes to  
 228 provide or pay for services, except as provided in s. 960.28.

229 (d) From an emergency award under s. 960.12.

230 Section 8. Section 960.195, Florida Statutes, is amended to  
 231 read:

232 960.195 Awards to elderly persons or disabled adults for

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233 property loss.-

234 (1) Notwithstanding the criteria in s. 960.13, for crime  
 235 victim compensation awards, the department may award a maximum  
 236 of \$500 on any one claim and a lifetime maximum of \$1,000 on all  
 237 claims to elderly persons or disabled adults who suffer a  
 238 property loss that causes a substantial diminution in their  
 239 quality of life when:

240 (a)(1) There is proof that a criminal or delinquent act was  
 241 committed;

242 (b)(2) The criminal or delinquent act is reported to law  
 243 enforcement authorities within 72 hours, unless the department,  
 244 for good cause shown, finds the delay to have been justified;

245 ~~(3) The victim cooperates with law enforcement authorities~~  
 246 ~~in the investigation of the criminal or delinquent act;~~

247 (c)(4) There is proof that the tangible personal property  
 248 in question belonged to the claimant;

249 (d)(5) The claimant did not contribute to the criminal or  
 250 delinquent act;

251 (e)(6) There is no other source of reimbursement or  
 252 indemnification available to the claimant; and

253 (f)(7) The claimant would not be able to replace the  
 254 tangible personal property in question without incurring a  
 255 serious financial hardship.

256 (2) The department may deny, reduce, or withdraw any award  
 257 under subsection (1) upon finding that any claimant or award  
 258 recipient has not duly cooperated with the state attorney, all  
 259 law enforcement agencies, and the department.

260 Section 9. Section 960.196, Florida Statutes, is created to  
 261 read:

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262 960.196 Relocation assistance for victims of human  
 263 trafficking.-

264 (1) Notwithstanding the criteria specified in ss. 960.07(2)  
 265 and 960.13 for crime victim compensation awards, the department  
 266 may award a one-time payment of up to \$1,500 for any one claim  
 267 and a lifetime maximum of \$3,000 to a victim of human  
 268 trafficking who needs urgent assistance to escape from an unsafe  
 269 environment directly related to the human trafficking offense.

270 (2) In order for an award to be granted to a victim for  
 271 relocation assistance:

272 (a) There must be proof that a human trafficking offense,  
 273 as described in s. 787.06(3)(b), (d), (f), or (g), was  
 274 committed.

275 (b) The crime must be reported to the proper authorities  
 276 and the claim must be filed within 1 year, or 2 years with good  
 277 cause, after the date of the last human trafficking offense, as  
 278 described in s. 787.06(3)(b), (d), (f), or (g). In a case that  
 279 exceeds the 2-year requirement due to an active and ongoing  
 280 investigation, a state attorney, statewide prosecutor, or  
 281 federal prosecutor may certify in writing a human trafficking  
 282 victim's need to relocate from an unsafe environment due to the  
 283 threat of future violence which is directly related to the human  
 284 trafficking offense.

285 (c) The victim's need must be certified by a certified  
 286 domestic violence or rape crisis center in this state, except as  
 287 provided in paragraph (b). The center's certification must  
 288 assert that the victim is cooperating with the proper  
 289 authorities and must include documentation that the victim has  
 290 developed a safety plan.

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291 (3) Relocation payments for a human trafficking claim shall  
 292 be denied if the department has previously approved or paid out  
 293 a domestic violence or sexual battery relocation claim under s.  
 294 960.198 or s. 960.199 to the same victim regarding the same  
 295 incident.

296 Section 10. Subsection (3) of section 960.198, Florida  
 297 Statutes, is amended to read:

298 960.198 Relocation assistance for victims of domestic  
 299 violence.—

300 (3) Relocation payments for a domestic violence claim shall  
 301 be denied if the department has previously approved or paid out  
 302 a human trafficking or sexual battery relocation claim under s.  
 303 960.196 or s. 960.199 to the same victim regarding the same  
 304 incident.

305 Section 11. Section 960.199, Florida Statutes, is amended  
 306 to read:

307 960.199 Relocation assistance for victims of sexual battery  
 308 ~~or human trafficking.~~—

309 (1) The department may award a one-time payment of up to  
 310 \$1,500 on any one claim and a lifetime maximum of \$3,000 to a  
 311 victim of sexual battery, as defined in s. 794.011, ~~or a victim~~  
 312 ~~of human trafficking, as described in s. 787.06(3)(b), (d), (f),~~  
 313 ~~or (g),~~ who needs relocation assistance.

314 (2) In order for an award to be granted to a victim for  
 315 relocation assistance:

316 (a) There must be proof that a sexual battery offense ~~or~~  
 317 ~~human trafficking offense, as described in s. 787.06(3)(b), (d),~~  
 318 ~~(f), or (g),~~ was committed.

319 (b) The sexual battery offense ~~or human trafficking~~

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320 ~~offense, as defined in s. 787.06(3)(b), (d), (f), or (g),~~ must  
 321 be reported to the proper authorities.

322 (c) The victim's need for assistance must be certified by a  
 323 certified rape crisis center in this state ~~or by the state~~  
 324 ~~attorney or statewide prosecutor having jurisdiction over the~~  
 325 ~~offense. A victim of human trafficking's need for assistance may~~  
 326 ~~also be certified by a certified domestic violence center in~~  
 327 ~~this state.~~

328 (d) The center's certification must assert that the victim  
 329 is cooperating with law enforcement officials, if applicable,  
 330 and must include documentation that the victim has developed a  
 331 safety plan. ~~If the victim seeking relocation assistance is a~~  
 332 ~~victim of a human trafficking offense as described in s.~~  
 333 ~~787.06(3)(b), (d), (f), or (g), the certified rape crisis~~  
 334 ~~center's or certified domestic violence center's certification~~  
 335 ~~must include, if applicable, approval of the state attorney or~~  
 336 ~~statewide prosecutor attesting that the victim is cooperating~~  
 337 ~~with law enforcement officials.~~

338 (e) The act of sexual battery ~~or human trafficking, as~~  
 339 ~~described in s. 787.06(3)(b), (d), (f), or (g),~~ must be  
 340 committed in the victim's place of residence or in a location  
 341 that would lead the victim to reasonably fear for his or her  
 342 continued safety in the place of residence.

343 (3) Relocation payments for a sexual battery ~~or human~~  
 344 ~~trafficking~~ claim under this section shall be denied if the  
 345 department has previously approved or paid out a human  
 346 trafficking or domestic violence relocation claim under s.  
 347 960.196 or s. 960.198 to the same victim regarding the same  
 348 incident.

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349

Section 12. This act shall take effect July 1, 2015.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/16/2015  
Meeting Date

1362  
Bill Number (if applicable)

631416  
Amendment Barcode (if applicable)

Topic \_\_\_\_\_

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S  
Street

Phone 727/897-9291

St. Petersburg FL 33705  
City State Zip

Email justice2jesus@yahoo.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Justice-2-Jesus

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/16/15

Meeting Date

1362

Bill Number (if applicable)

631416

Amendment Barcode (if applicable)

Topic Dept. of Legal Affairs

Name Samantha Padgett

Job Title General Counsel

Address 227 S. Adams St.

Street

Phone 222-4082

Tallahassee FL 32301

City

State

Zip

Email samantha@frf.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Retail Federation

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)

8.4.16. 2015

Meeting Date

1362

Bill Number (if applicable)

Topic Dept. of legal affairs

631416

Amendment Barcode (if applicable)

Name Kim Siomkos (see -OM- Kos)

Job Title VP of Governmental Affairs

Address 1001 Thomasville Road Suite 201

Phone 561-317-4704

Street

Tallahassee

FL

32303

Email ~~KA~~ ksiomka@floridabankers.com

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Bankers Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

04/16/15  
Meeting Date

1362  
Bill Number (if applicable)

Topic Dept. of Legal Affairs

631416  
Amendment Barcode (if applicable)

Name JARED ROSS

Job Title SVP, Governmental Affairs

Address 3692 Coolidge Ct.  
Street

Phone (850) 322-6956

Tallahassee FL 32311  
City State Zip

Email jared.ross@lscu.coop

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FLORIDA CREDIT UNION ASSOCIATION

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/16/2015

Meeting Date

Topic \_\_\_\_\_

Bill Number 1362  
*(if applicable)*

Name BRIAN PITTS

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

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

*Street*

SAINT PETERSBURG

FLORIDA

33705

E-mail JUSTICE2JESUS@YAHOO.COM

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)

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

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

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Prepared By: The Professional Staff of the Committee on Appropriations

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**BILL:** PCS/CS/SB 1402 (801726)

**INTRODUCER:** Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senator Lee

**SUBJECT:** Organization of the Department of Financial Services

**DATE:** April 15, 2015

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Betta</u>	<u>Kynoch</u>	<u>AP</u>	<u>Pre-meeting</u>

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

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

PCS/CS/SB 1402 changes the organization of the Department of Financial Services (DFS or department). The bill gives the Chief Financial Officer (CFO) the authority to establish any division, bureau, or office of the department as the CFO deems necessary to promote effective and efficient operations. The bill does not change the review and approval process by the Department of Management Services and the Executive Office of the Governor.

The bill repeals the statutory requirement to establish the following divisions, offices, and bureaus:

- The Division of Administration;
- The Division of Legal Services;
- The Division of Information Systems;
- The Bureau of Unclaimed Property;
- The Office of Fiscal Integrity.

The DFS will continue to perform the functions but the CFO will have the authority to determine the organizational placement of those functions within the DFS.

The Division of Insurance Fraud is renamed the Division of Criminal Investigations. The Strategic Markets Research and Assessment Unit, which is currently not active nor funded, is repealed.

The bill provides that Division of Accounting and Auditing positions directly responsible for performing investigations, audits, or management studies for the purpose of making recommendations for corrective action within the DFS are exempt from the career service requirements.

The \$15 service of process fee paid to the DFS will be deposited in the Administrative Trust Fund rather than the Insurance Regulatory Trust Fund.

The department has indicated the cost of changing the 66 accountants and auditors to the select exempt service classification from career service is estimated to be \$75,000 from the General Revenue Fund and \$12,000 from the Administrative Trust Fund. The department has indicated that it has sufficient current appropriations to cover these increased costs.

The bill provides an effective date of July 1, 2015.

## II. Present Situation:

The CFO is a member of the Cabinet<sup>1</sup> and serves as the chief fiscal officer of the state. The CFO is agency head of the DFS.<sup>2</sup> The DFS is organized in fourteen divisions and some specialized offices. The divisions are:

- The Division of Accounting and Auditing, which includes the Bureau of Unclaimed Property and the Office of Fiscal Integrity;
- The Division of State Fire Marshal;
- The Division of Risk Management;
- The Division of Treasury;
- The Division of Insurance Fraud;
- The Division of Rehabilitation and Liquidation;
- The Division of Insurance Agent and Agency Services;
- The Division of Consumer Services;
- The Division of Workers' Compensation;
- The Division of Administration;
- The Division of Legal Services;
- The Division of Information Systems;
- The Division of Funeral, Cemetery, and Consumer Services; and
- The Division of Public Assistance Fraud.<sup>3</sup>

Section 20.04, F.S., provides for the establishment of divisions, bureaus, sections, or subsections within a state department. A department head may recommend the establishment of additional divisions, bureaus, sections, and subsections to promote efficient and effective operation of the

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<sup>1</sup> See Art. IV, s. 4, Fla. Const.

<sup>2</sup> See s. 20.121(1), F.S.

<sup>3</sup> See s. 20.121(2), F.S.

department.<sup>4</sup> The Department of Management Services and the Executive Office of the Governor review and approve reorganization requests.<sup>5</sup>

### **Bureau of Unclaimed Property**

Chapter 717, Florida Statutes, governs the disposition of unclaimed property and requires the DFS to administer the statute. Currently, the DFS holds unclaimed property accounts valued at more than \$1 billion from dormant accounts in financial institutions, insurance and utility companies, securities, trust holdings, and unclaimed safe deposit boxes. The Bureau of Unclaimed Property within the DFS is the bureau responsible for administering chapter 717, F.S.<sup>6</sup>

### **The Office of Fiscal Integrity**

The Office of Fiscal Integrity is a criminal justice entity within the DFS whose mission is to detect and investigate the misappropriation or misuse of state assets. The office performs functions related to the duty of the CFO to examine, audit, adjust, and settle the accounts of all state officers and any other person who has received state funds or moneys.<sup>7</sup> The Office of Fiscal Integrity has sworn law enforcement officers on staff to conduct investigations or provide investigative assistance to other law enforcement agencies.<sup>8</sup>

### **Division of Insurance Fraud**

The Division of Insurance Fraud investigates various types of insurance fraud including Personal Injury Protection (PIP) fraud, workers' compensation fraud, vehicle fraud, application fraud, licensee fraud, homeowner's fraud, and healthcare fraud.<sup>9</sup> The division is directed by statute to investigate fraudulent insurance acts, violations of the Unfair Insurance Trade Practices Act,<sup>10</sup> false and fraudulent insurance claims,<sup>11</sup> and willful violations of the Florida Insurance Code and rules adopted pursuant to the code.<sup>12</sup> The division employs sworn law enforcement officers to investigate insurance fraud. In Fiscal Year 2012-2013, the division received over 15,440 referrals.

### **Division of Consumer Services**

The Division of Consumer Services within the DFS is created by s. 20.121, F.S., and handles consumer issues and complaints related to the jurisdiction of the DFS and the Office of Insurance Regulation ("OIR"). The division:

- Receives inquiries and complaints from consumers;

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<sup>4</sup> See s. 20.04(7)(b), F.S.

<sup>5</sup> See s. 20.04(7)(c), F.S.

<sup>6</sup> See <https://www.fltreasurehunt.org/> (discussing the Bureau of Unclaimed Property)(last accessed March 11, 2015).

<sup>7</sup> Section 17.04, F.S.

<sup>8</sup> See <http://www.myfloridacfo.com/Division/AA/StateAgencies/OfficeofFiscalIntegrity.htm#.VQCOFPnF8eE> (last accessed March 11, 2015).

<sup>9</sup> See <http://www.myfloridacfo.com/Division/Fraud/#.VQDPuPnF8eF> (last accessed March 11, 2015).

<sup>10</sup> Section 626.9541, F.S.

<sup>11</sup> Section 817.234, F.S.

<sup>12</sup> Section 624.15, F.S.

- Prepares and disseminates information as the DFS deems appropriate to inform or assist consumers;
- Provides direct assistance and advocacy for consumers; and
- Reports potential violations of law or applicable rules by a person or entity licensed by the DFS or the OIR to appropriate division within DFS or the OIR, as appropriate.<sup>13</sup>

### **Strategic Markets Research and Assistance Unit**

Section 20.121, F.S., creates the Strategic Markets Research and Assessment Unit within the DFS. It requires the CFO or his or her designee to report quarterly to the Cabinet, the President of the Senate, and the Speaker of the House of Representatives on the status of the state's financial services markets. The CFO must also provide findings and recommendations regarding regulatory and policy changes to the Cabinet, the President of the Senate, and the Speaker of the House of Representatives. According to the DFS, the unit has not functioned since before 2010 and funding was discontinued in 2009.<sup>14</sup>

### **Audit and Accounting Positions in the Department of Financial Services**

Article III, s. 14, Florida Constitution, requires the Legislature to create a civil service system for state employees, except for those employees specifically exempted. Employees in the civil service system are "career service" employees<sup>15</sup> while employees exempted from the career service system are called "select exempt"<sup>16</sup> or "senior management."<sup>17</sup> In general, career service employees are subject to dismissal for cause while senior management and select exempt employees serve at the pleasure of the agency head.<sup>18</sup> The various classes also have different pay scales, different leave rules, and different levels of insurance subsidies. Section 110.205, F.S., provides a number of classes of employees that are exempt from the career service and serve in the senior management or select exempt classifications.

According to the DFS, in 2008 the Department of Management Services authorized that DFS "investigators and auditors" could remain in the select exempt class but suggested that the department should seek a legislative change to make the authorization permanent. Positions reverted to career service as they became vacant. There are currently 66 accounting and auditing positions which the DFS seeks to change from career service to select exempt.

### **Service of Process**

Section 624.502, F.S., requires that in all instances as provided in any section of the insurance code and s. 48.151(3), F.S.,<sup>19</sup> in which service of process is authorized to be made upon the CFO

---

<sup>13</sup> See s. 20.121(2)(h), F.S.

<sup>14</sup> See Department of Financial Services, *SB 1402 Analysis* (March 11, 2015)(on file with the Senate Committee on Banking and Insurance).

<sup>15</sup> See s. 110.205, F.S.

<sup>16</sup> See Part V, ch. 110, F.S.

<sup>17</sup> See Part III, ch. 110, F.S.

<sup>18</sup> See ss. 110.227, 110.402, and 110.604, F.S.

<sup>19</sup> Section 48.151(3), provides that the CFO or his or her designee is the agent for service of process on all insurers applying for authority to transact insurance, all licensed nonresident insurance agents, all nonresident disability insurance agents,

or the director of the OIR, the plaintiff shall pay \$15 to the DFS or the OIR for service of process. The fee is deposited into the Insurance Regulatory Trust Fund. Chapter 2014-53, Laws of Florida, directed those funds to the Administrative Trust Fund for the 2014-15 fiscal year.

### III. Effect of Proposed Changes:

#### Organization of the DFS

**Section 1** makes various changes to the organization of the DFS. The bill gives the CFO the authority to establish any division, bureau, or office of the department as the CFO deems necessary to promote the effective and efficient operation of the DFS pursuant to s. 20.04, F.S. The bill does not change the review and approval process of s. 20.04, F.S.

The bill repeals the statutory requirement to establish the following divisions, offices, and bureaus:

- The Division of Administration;
- The Division of Legal Services;
- The Division of Information Systems;
- The Bureau of Unclaimed Property;
- The Office of Fiscal Integrity.

The DFS will continue to perform the functions, but the CFO will have the authority to determine the organizational placement of those functions within the DFS.

The Division of Insurance Fraud is renamed the Division of Criminal Investigations. The division will retain the same powers and duties as the Division of Insurance Fraud.

**Sections 6 through 27** amend various statutory provisions to reflect the name change of the Division of Insurance Fraud to the Division of Criminal Investigation.

The Strategic Markets Research and Assessment Unit, which is not currently active nor funded, is repealed.

#### Relocation of the Division of Consumer Services Statute

**Sections 1, 3, and 4** relocate statutory references to the duties of the Division of Consumer Services from s. 20.121, F.S., to the Insurance Code at s. 624.307, F.S., and provide conforming changes.

#### Audit and Accounting Positions in the Department of Financial Services

**Section 2** amends s. 110.205, F.S., to provide that all auditing and accounting positions in the DFS are exempt from the career services provisions of law.

**Service of Process Fees**

**Section 5** of this bill amends s. 624.502, F.S., to provide that the \$15 service of process fee paid to the DFS will be deposited in the Administrative Trust Fund rather than the Insurance Regulatory Trust Fund. The Insurance Regulatory Trust Fund, created by s. 624.523, F.S., is appropriated for use by the DFS and the OIR to defray the expenses in the discharge of administrative and regulatory powers. Chapter 2014-53, Laws of Florida, implementing the 2014-2015 General Appropriations Act, directed those funds to the Administrative Trust Fund for the 2014-15 fiscal year.

**Effective Date**

**Section 28** provides an effective date of July 1, 2015.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The DFS reports that PCS/CS/SB 1402 would result in an additional cost of \$75,000 to the General Revenue Fund and \$12,000 from the Administrative Trust Fund, to reclassify 66 positions from the career service to the select exempt service. These additional costs can be absorbed within existing resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill substantially amends the following sections of the Florida Statutes: 20.121, 110.205, 624.26, 624.307, 624.502, 16.59, 400.9935, 409.91212, 440.105, 440.1051, 440.12, 624.521, 626.016, 626.989, 626.9891, 626.9892, 626.9893, 626.9894, 626.9895, 626.99278, 627.351, 627.711, 627.736, 627.7401, 631.156, 641.30, and 932.7055.

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

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

**Recommended CS/CS by Appropriations Subcommittee on General Government on April 8, 2015:**

The proposed committee substitute restores all the filing fee deposits into the Administrative Trust Fund and the requirements for the Department of Financial Services to enter into an agreement with the Florida Clerks of Court Operations Corporation to audit court-related expenditures of individual clerks. The proposed committee substitute also narrows the positions which are exempt from career service within the Division of Accounting and Auditing.

**CS by Banking and Insurance on March 17, 2015:**

The committee adopted an amendment to change the name of the “Division of Insurance Fraud” to the “Division of Criminal Investigations” in various sections of law.

**B. Amendments:**

None.



801726

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Proposed Committee Substitute by the Committee on Appropriations  
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to the organization of the Department of Financial Services; amending s. 20.121, F.S.; revising the divisions and functions of the department; authorizing the Chief Financial Officer to establish divisions, bureaus, or offices of the department; amending s. 110.205, F.S.; exempting certain positions within the department's Division of Accounting and Auditing from career service requirements; amending s. 624.26, F.S.; conforming provisions to changes made by the act; amending s. 624.307, F.S.; providing powers and duties of the department's Division of Consumer Services; authorizing the division to impose certain penalties; authorizing the department to adopt rules relating to the division; providing for construction; amending s. 624.502, F.S.; requiring that certain service of process fees be deposited into the Administrative Trust Fund; amending ss. 16.59, 400.9935, 409.91212, 440.105, 440.1051, 440.12, 624.521, 626.016, 626.989, 626.9891, 626.9892, 626.9893, 626.9894, 626.9895, 626.99278, 627.351, 627.711, 627.736, 627.7401, 631.156, 641.30, and 932.7055, F.S.; conforming provisions to changes made by the act; making technical changes; providing an effective date.

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



801726

576-03721-15

Section 1. Subsections (2) and (6) of section 20.121, Florida Statutes, are amended to read:

20.121 Department of Financial Services.—There is created a Department of Financial Services.

(2) DIVISIONS.—The Department of Financial Services shall consist of the following divisions and offices:

(a) The Division of Accounting and Auditing, ~~which shall include the following bureau and office:~~

1. ~~The Bureau of Unclaimed Property.~~

2. ~~The Office of Fiscal Integrity which shall function as a criminal justice agency for purposes of ss. 943.045-943.08 and shall have a separate budget. The office may conduct investigations within or outside this state as the bureau deems necessary to aid in the enforcement of this section. If during an investigation the office has reason to believe that any criminal law of this state has or may have been violated, the office shall refer any records tending to show such violation to state or federal law enforcement or prosecutorial agencies and shall provide investigative assistance to those agencies as required.~~

(b) The Division of State Fire Marshal.

(c) The Division of Risk Management.

(d) The Division of Treasury, which shall include a Bureau of Deferred Compensation responsible for administering the Government Employees Deferred Compensation Plan established under s. 112.215 for state employees.

(e) The Division of Criminal Investigations, which shall function as a criminal justice agency for purposes of ss.



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57 ~~943.045-943.08 Insurance Fraud.~~

58 (f) The Division of Rehabilitation and Liquidation.

59 (g) The Division of Insurance Agent and Agency Services.

60 (h) The Division of Consumer Services.

61 ~~1. The Division of Consumer Services shall perform the~~  
62 ~~following functions concerning products or services regulated by~~  
63 ~~the department or by the Office of Insurance Regulation:~~

64 a. ~~Receive inquiries and complaints from consumers.~~

65 b. ~~Prepare and disseminate such information as the~~  
66 ~~department deems appropriate to inform or assist consumers.~~

67 c. ~~Provide direct assistance and advocacy for consumers who~~  
68 ~~request such assistance or advocacy.~~

69 d. ~~With respect to apparent or potential violations of law~~  
70 ~~or applicable rules by a person or entity licensed by the~~  
71 ~~department or office, report apparent or potential violations to~~  
72 ~~the office or the appropriate division of the department, which~~  
73 ~~may take such further action as it deems appropriate.~~

74 e. ~~Designate an employee of the division as primary contact~~  
75 ~~for consumers on issues relating to sinkholes.~~

76 ~~2. Any person licensed or issued a certificate of authority~~  
77 ~~by the department or by the Office of Insurance Regulation shall~~  
78 ~~respond, in writing, to the Division of Consumer Services within~~  
79 ~~20 days after receipt of a written request for information from~~  
80 ~~the division concerning a consumer complaint. The response must~~  
81 ~~address the issues and allegations raised in the complaint. The~~  
82 ~~division may impose an administrative penalty for failure to~~  
83 ~~comply with this subparagraph of up to \$2,500 per violation upon~~  
84 ~~any entity licensed by the department or the office and \$250 for~~  
85 ~~the first violation, \$500 for the second violation, and up to~~



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86 ~~\$1,000 per violation thereafter upon any individual licensed by~~  
87 ~~the department or the office.~~

88 ~~3. The department may adopt rules to administer this~~  
89 ~~paragraph.~~

90 ~~4. The powers, duties, and responsibilities expressed or~~  
91 ~~granted in this paragraph do not limit the powers, duties, and~~  
92 ~~responsibilities of the Department of Financial Services, the~~  
93 ~~Financial Services Commission, the Office of Insurance~~  
94 ~~Regulation, or the Office of Financial Regulation set forth~~  
95 ~~elsewhere in the Florida Statutes.~~

96 (i) The Division of Workers' Compensation.

97 (j) The Division of Administration.

98 (k) The Division of Legal Services.

99 (l) The Division of Information Systems.

100 (j)(m) The Office of Insurance Consumer Advocate.

101 (k)(n) The Division of Funeral, Cemetery, and Consumer  
102 Services.

103 (l)(o) The Division of Public Assistance Fraud.

104  
105 The Chief Financial Officer may establish any other division,  
106 bureau, or office of the department that he or she deems  
107 necessary to promote the efficient and effective operation of  
108 the department pursuant to s. 20.04.

109 ~~(6) STRATEGIC MARKETS RESEARCH AND ASSESSMENT UNIT. The~~  
110 ~~Strategic Markets Research and Assessment Unit is established~~  
111 ~~within the Department of Financial Services. The Chief Financial~~  
112 ~~Officer or his or her designee shall report on September 1,~~  
113 ~~2008, and quarterly thereafter, to the Cabinet, the President of~~  
114 ~~the Senate, and the Speaker of the House of Representatives on~~



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115 ~~the status of the state's financial services markets. At a~~  
116 ~~minimum, the report must include a summary of issues, trends,~~  
117 ~~and threats that broadly impact the condition of the financial~~  
118 ~~services industries, along with the effect of such conditions on~~  
119 ~~financial institutions, the securities industries, other~~  
120 ~~financial entities, and the credit market. The Chief Financial~~  
121 ~~Officer shall also provide findings and recommendations~~  
122 ~~regarding regulatory and policy changes to the Cabinet, the~~  
123 ~~President of the Senate, and the Speaker of the House of~~  
124 ~~Representatives.~~

125 Section 2. Paragraph (y) is added to subsection (2) of  
126 section 110.205, Florida Statutes, to read:

127 110.205 Career service; exemptions.-

128 (2) EXEMPT POSITIONS.-The exempt positions that are not  
129 covered by this part include the following:

130 (y) Positions in the Division of Accounting and Auditing of  
131 the Department of Financial Services which are directly  
132 responsible for performing investigations, audits, or management  
133 studies for the purpose of making recommendations for corrective  
134 action, such as an employee disciplinary action, a civil  
135 recovery action, a criminal prosecution, or a revision of agency  
136 operational procedures.

137 Section 3. Subsection (4) of section 624.26, Florida  
138 Statutes, is amended to read:

139 624.26 Collaborative arrangement with the Department of  
140 Health and Human Services.-

141 (4) The department's Division of Consumer Services may  
142 respond to complaints by consumers relating to a requirement of  
143 PPACA ~~as authorized under s. 20.121(2)(h)~~, and report apparent



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144 or potential violations to the office and to the federal  
145 Department of Health and Human Services.

146 Section 4. Subsection (10) is added to section 624.307,  
147 Florida Statutes, to read:

148 624.307 General powers; duties.-

149 (10) (a) The department's Division of Consumer Services  
150 shall perform the following functions concerning products or  
151 services regulated by the department or office:

152 1. Receive inquiries and complaints from consumers.

153 2. Prepare and disseminate such information as the  
154 department deems appropriate to inform or assist consumers.

155 3. Provide direct assistance and advocacy for consumers who  
156 request such assistance or advocacy.

157 4. With respect to apparent or potential violations of law  
158 or applicable rules by a person or entity licensed by the  
159 department or office, report apparent or potential violations to  
160 the office or the appropriate division of the department, which  
161 may take such further action as it deems appropriate.

162 5. Designate an employee of the division as primary contact  
163 for consumers on issues relating to sinkholes.

164 (b) Any person licensed or issued a certificate of  
165 authority by the department or the office shall respond, in  
166 writing, to the division within 20 days after receipt of a  
167 written request for information from the division concerning a  
168 consumer complaint. The response must address the issues and  
169 allegations raised in the complaint. The division may impose an  
170 administrative penalty for failure to comply with this paragraph  
171 of up to \$2,500 per violation upon any entity licensed by the  
172 department or the office and \$250 for the first violation, \$500



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173 for the second violation, and up to \$1,000 per violation  
174 thereafter upon any individual licensed by the department or the  
175 office.

176 (c) The department may adopt rules to administer this  
177 subsection.

178 (d) The powers, duties, and responsibilities expressed or  
179 granted in this subsection do not limit the powers, duties, and  
180 responsibilities of the Department of Financial Services, the  
181 Financial Services Commission, the Office of Insurance  
182 Regulation, or the Office of Financial Regulation as otherwise  
183 provided by law.

184 Section 5. Section 624.502, Florida Statutes, as amended by  
185 chapter 2014-53, Laws of Florida, is amended to read:

186 624.502 Service of process fee.—In all instances as  
187 provided in any section of the insurance code and s. 48.151(3)  
188 in which service of process is authorized to be made upon the  
189 Chief Financial Officer or the director of the office, the  
190 plaintiff shall pay to the department or office a fee of \$15 for  
191 such service of process, which fee shall be deposited into the  
192 Administrative Trust Fund ~~Insurance Regulatory Trust Fund~~.

193 Section 6. Section 16.59, Florida Statutes, is amended to  
194 read:

195 16.59 Medicaid fraud control.—The Medicaid Fraud Control  
196 Unit is created in the Department of Legal Affairs to  
197 investigate all violations of s. 409.920 and any criminal  
198 violations discovered during the course of those investigations.  
199 The Medicaid Fraud Control Unit may refer any criminal violation  
200 so uncovered to the appropriate prosecuting authority. The  
201 offices of the Medicaid Fraud Control Unit, the Agency for



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202 Health Care Administration Medicaid program integrity program,  
203 and the Divisions of Criminal Investigations ~~Insurance Fraud~~ and  
204 Public Assistance Fraud within the Department of Financial  
205 Services shall, to the extent possible, be collocated; however,  
206 positions dedicated to Medicaid managed care fraud within the  
207 Medicaid Fraud Control Unit shall be collocated with the  
208 Division of Criminal Investigations ~~Insurance Fraud~~. The Agency  
209 for Health Care Administration, the Department of Legal Affairs,  
210 and the Divisions of Criminal Investigations ~~Insurance Fraud~~ and  
211 Public Assistance Fraud within the Department of Financial  
212 Services shall conduct joint training and other joint activities  
213 designed to increase communication and coordination in  
214 recovering overpayments.

215 Section 7. Subsection (9) of section 400.9935, Florida  
216 Statutes, is amended to read:

217 400.9935 Clinic responsibilities.—

218 (9) In addition to the requirements of part II of chapter  
219 408, the clinic shall display a sign in a conspicuous location  
220 within the clinic readily visible to all patients indicating  
221 that, pursuant to s. 626.9892, the Department of Financial  
222 Services may pay rewards of up to \$25,000 to persons providing  
223 information leading to the arrest and conviction of persons  
224 committing crimes investigated by the Division of Criminal  
225 Investigations ~~Insurance Fraud~~ arising from violations of s.  
226 440.105, s. 624.15, s. 626.9541, s. 626.989, or s. 817.234. An  
227 authorized employee of the Division of Criminal Investigations  
228 ~~Insurance Fraud~~ may make unannounced inspections of a clinic  
229 licensed under this part as necessary to determine whether the  
230 clinic is in compliance with this subsection. A licensed clinic



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231 shall allow full and complete access to the premises to such  
232 authorized employee of the division who makes an inspection to  
233 determine compliance with this subsection.

234 Section 8. Subsection (6) of section 409.91212, Florida  
235 Statutes, is amended to read:

236 409.91212 Medicaid managed care fraud.—

237 (6) Each managed care plan shall report all suspected or  
238 confirmed instances of provider or recipient fraud or abuse  
239 within 15 calendar days after detection to the Office of  
240 Medicaid Program Integrity within the agency. At a minimum the  
241 report must contain the name of the provider or recipient, the  
242 Medicaid billing number or tax identification number, and a  
243 description of the fraudulent or abusive act. The Office of  
244 Medicaid Program Integrity in the agency shall forward the  
245 report of suspected overpayment, abuse, or fraud to the  
246 appropriate investigative unit, including, but not limited to,  
247 the Bureau of Medicaid program integrity, the Medicaid fraud  
248 control unit, the Division of Public Assistance Fraud, the  
249 Division of Criminal Investigations Insurance Fraud, or the  
250 Department of Law Enforcement.

251 (a) Failure to timely report shall result in an  
252 administrative fine of \$1,000 per calendar day after the 15th  
253 day of detection.

254 (b) Failure to timely report may result in additional  
255 administrative, civil, or criminal penalties.

256 Section 9. Paragraph (a) of subsection (1) of section  
257 440.105, Florida Statutes, is amended to read:

258 440.105 Prohibited activities; reports; penalties;  
259 limitations.—



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260 (1) (a) Any insurance carrier, any individual self-insured,  
261 any commercial or group self-insurance fund, any professional  
262 practitioner licensed or regulated by the Department of Health,  
263 except as otherwise provided by law, any medical review  
264 committee as defined in s. 766.101, any private medical review  
265 committee, and any insurer, agent, or other person licensed  
266 under the insurance code, or any employee thereof, having  
267 knowledge or who believes that a fraudulent act or any other act  
268 or practice which, upon conviction, constitutes a felony or  
269 misdemeanor under this chapter is being or has been committed  
270 shall send to the Division of Criminal Investigations Insurance  
271 Fraud, Bureau of Workers' Compensation Fraud, a report or  
272 information pertinent to such knowledge or belief and such  
273 additional information relative thereto as the bureau may  
274 require. The bureau shall review such information or reports and  
275 select such information or reports as, in its judgment, may  
276 require further investigation. It shall then cause an  
277 independent examination of the facts surrounding such  
278 information or report to be made to determine the extent, if  
279 any, to which a fraudulent act or any other act or practice  
280 which, upon conviction, constitutes a felony or a misdemeanor  
281 under this chapter is being committed. The bureau shall report  
282 any alleged violations of law which its investigations disclose  
283 to the appropriate licensing agency and state attorney or other  
284 prosecuting agency having jurisdiction with respect to any such  
285 violations of this chapter. If prosecution by the state attorney  
286 or other prosecuting agency having jurisdiction with respect to  
287 such violation is not begun within 60 days of the bureau's  
288 report, the state attorney or other prosecuting agency having



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289 jurisdiction with respect to such violation shall inform the  
290 bureau of the reasons for the lack of prosecution.

291 Section 10. Subsections (1) and (2) of section 440.1051,  
292 Florida Statutes, are amended to read

293 440.1051 Fraud reports; civil immunity; criminal  
294 penalties.-

295 (1) The Bureau of Workers' Compensation Insurance Fraud of  
296 the Division of Criminal Investigations ~~Insurance Fraud~~ of the  
297 department shall establish a toll-free telephone number to  
298 receive reports of workers' compensation fraud committed by an  
299 employee, employer, insurance provider, physician, attorney, or  
300 other person.

301 (2) Any person who reports workers' compensation fraud to  
302 the Division of Criminal Investigations ~~Insurance Fraud~~ under  
303 subsection (1) is immune from civil liability for doing so, and  
304 the person or entity alleged to have committed the fraud may not  
305 retaliate against him or her for providing such report, unless  
306 the person making the report knows it to be false.

307 Section 11. Paragraph (c) of subsection (1) of section  
308 440.12, Florida Statutes, is amended to read:

309 440.12 Time for commencement and limits on weekly rate of  
310 compensation.-

311 (1) Compensation is not allowed for the first 7 days of  
312 the disability, except for benefits provided under s. 440.13.  
313 However, if the injury results in more than 21 days of  
314 disability, compensation is allowed from the commencement of the  
315 disability.

316 (c) Each carrier shall keep a record of all payments made  
317 under this subsection, including the time and manner of such



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318 payments, and shall furnish these records or a report based on  
319 these records to the Division of Criminal Investigations  
320 ~~Insurance Fraud~~ and the Division of Workers' Compensation, upon  
321 request.

322 Section 12. Subsection (1) of section 624.521, Florida  
323 Statutes, is amended to read:

324 624.521 Deposit of certain tax receipts; refund of improper  
325 payments.-

326 (1) The department ~~of Financial Services~~ shall promptly  
327 deposit in the State Treasury to the credit of the Insurance  
328 Regulatory Trust Fund all "state tax" portions of agents'  
329 licenses collected under s. 624.501 necessary to fund the  
330 Division of Criminal Investigations ~~Insurance Fraud~~. The balance  
331 of the tax shall be credited to the General Fund. All moneys  
332 received by the department ~~of Financial Services~~ or the office  
333 not in accordance with the provisions of this code or not in the  
334 exact amount as specified by the applicable provisions of this  
335 code shall be returned to the remitter. The records of the  
336 department or office shall show the date and reason for such  
337 return.

338 Section 13. Subsection (4) of section 626.016, Florida  
339 Statutes, is amended to read:

340 626.016 Powers and duties of department, commission, and  
341 office.-

342 (4) Nothing in this section is intended to limit the  
343 authority of the department and the Division of Criminal  
344 Investigations ~~Insurance Fraud~~, as specified in s. 626.989.

345 Section 14. Subsections (2) and (6) of section 626.989,  
346 Florida Statutes, are amended to read:



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347 626.989 Investigation by department or Division of Criminal  
348 Investigations Insurance Fraud; compliance; immunity;  
349 confidential information; reports to division; division  
350 investigator's power of arrest.—

351 (2) If, by its own inquiries or as a result of complaints,  
352 the department or its Division of Criminal Investigations  
353 Insurance Fraud has reason to believe that a person has engaged  
354 in, or is engaging in, a fraudulent insurance act, an act or  
355 practice that violates s. 626.9541 or s. 817.234, or an act or  
356 practice punishable under s. 624.15, it may administer oaths and  
357 affirmations, request the attendance of witnesses or proffering  
358 of matter, and collect evidence. The department shall not compel  
359 the attendance of any person or matter in any such investigation  
360 except pursuant to subsection (4).

361 (6) Any person, other than an insurer, agent, or other  
362 person licensed under the code, or an employee thereof, having  
363 knowledge or who believes that a fraudulent insurance act or any  
364 other act or practice which, upon conviction, constitutes a  
365 felony or a misdemeanor under the code, or under s. 817.234, is  
366 being or has been committed may send to the Division of Criminal  
367 Investigations Insurance Fraud a report or information pertinent  
368 to such knowledge or belief and such additional information  
369 relative thereto as the department may request. Any professional  
370 practitioner licensed or regulated by the Department of Business  
371 and Professional Regulation, except as otherwise provided by  
372 law, any medical review committee as defined in s. 766.101, any  
373 private medical review committee, and any insurer, agent, or  
374 other person licensed under the code, or an employee thereof,  
375 having knowledge or who believes that a fraudulent insurance act



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376 or any other act or practice which, upon conviction, constitutes  
377 a felony or a misdemeanor under the code, or under s. 817.234,  
378 is being or has been committed shall send to the Division of  
379 Criminal Investigations Insurance Fraud a report or information  
380 pertinent to such knowledge or belief and such additional  
381 information relative thereto as the department may require. The  
382 Division of Criminal Investigations Insurance Fraud shall review  
383 such information or reports and select such information or  
384 reports as, in its judgment, may require further investigation.  
385 It shall then cause an independent examination of the facts  
386 surrounding such information or report to be made to determine  
387 the extent, if any, to which a fraudulent insurance act or any  
388 other act or practice which, upon conviction, constitutes a  
389 felony or a misdemeanor under the code, or under s. 817.234, is  
390 being committed. The Division of Criminal Investigations  
391 Insurance Fraud shall report any alleged violations of law which  
392 its investigations disclose to the appropriate licensing agency  
393 and state attorney or other prosecuting agency having  
394 jurisdiction with respect to any such violation, as provided in  
395 s. 624.310. If prosecution by the state attorney or other  
396 prosecuting agency having jurisdiction with respect to such  
397 violation is not begun within 60 days of the division's report,  
398 the state attorney or other prosecuting agency having  
399 jurisdiction with respect to such violation shall inform the  
400 division of the reasons for the lack of prosecution.

401 Section 15. Subsections (1), (2), and (3) of section  
402 626.9891, Florida Statutes, are amended to read:

403 626.9891 Insurer anti-fraud investigative units; reporting  
404 requirements; penalties for noncompliance.—



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405 (1) ~~Each Every~~ insurer admitted to do business in this  
406 state who in the previous calendar year, at any time during that  
407 year, had \$10 million or more in direct premiums written shall:

408 (a) Establish and maintain a unit or division within the  
409 company to investigate possible fraudulent claims by insureds or  
410 by persons making claims for services or repairs against  
411 policies held by insureds; or

412 (b) Contract with others to investigate possible fraudulent  
413 claims for services or repairs against policies held by  
414 insureds.

415  
416 An insurer subject to this subsection shall file with the  
417 Division of Criminal Investigations Insurance Fraud of the  
418 department on or before July 1, 1996, a detailed description of  
419 the unit or division established pursuant to paragraph (a) or a  
420 copy of the contract and related documents required by paragraph  
421 (b).

422 (2) Every insurer admitted to do business in this state,  
423 which in the previous calendar year had less than \$10 million in  
424 direct premiums written, must adopt an anti-fraud plan and file  
425 it with the Division of Criminal Investigations Insurance Fraud  
426 of the department on or before July 1, 1996. An insurer may, in  
427 lieu of adopting and filing an anti-fraud plan, comply with ~~the~~  
428 ~~provisions of~~ subsection (1).

429 (3) Each ~~insurer's insurers~~ anti-fraud ~~plan must plans~~  
430 ~~shall~~ include all of the following:

431 (a) A description of the insurer's procedures for detecting  
432 and investigating possible fraudulent insurance acts. ~~+~~

433 (b) A description of the insurer's procedures for the



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434 mandatory reporting of possible fraudulent insurance acts to the  
435 Division of Criminal Investigations Insurance Fraud of the  
436 department. ~~+~~

437 (c) A description of the insurer's plan for anti-fraud  
438 education and training of its claims adjusters or other  
439 personnel. ~~+~~ ~~and~~

440 (d) A written description or chart outlining the  
441 organizational arrangement of the insurer's anti-fraud personnel  
442 who are responsible for the investigation and reporting of  
443 possible fraudulent insurance acts.

444 Section 16. Subsection (2) of section 626.9892, Florida  
445 Statutes, is amended to read:  
446 626.9892 Anti-Fraud Reward Program; reporting of insurance  
447 fraud.-

448 (2) The department may pay rewards of up to \$25,000 to  
449 persons providing information leading to the arrest and  
450 conviction of persons committing crimes investigated by the  
451 Division of Criminal Investigations Insurance Fraud arising from  
452 violations of s. 440.105, s. 624.15, s. 626.9541, s. 626.989, or  
453 s. 817.234.

454 Section 17. Subsection (1) of section 626.9893, Florida  
455 Statutes, is amended to read:  
456 626.9893 Disposition of revenues; criminal or forfeiture  
457 proceedings.-

458 (1) The Division of Criminal Investigations Insurance Fraud  
459 of the Department of Financial Services may deposit revenues  
460 received as a result of criminal proceedings or forfeiture  
461 proceedings, other than revenues deposited into the Department  
462 of Financial Services' Federal Law Enforcement Trust Fund under



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463 s. 17.43, into the Insurance Regulatory Trust Fund. Moneys  
464 deposited pursuant to this section shall be separately accounted  
465 for and shall be used solely for the division to carry out its  
466 duties and responsibilities.

467 Section 18. Subsection (2) of section 626.9894, Florida  
468 Statutes, is amended to read:

469 626.9894 Gifts and grants.—

470 (2) All rights to, interest in, and title to such donated  
471 or granted property shall immediately vest in the Division of  
472 Criminal Investigations Insurance Fraud upon donation. The  
473 division may hold such property in coownership, sell its  
474 interest in the property, liquidate its interest in the  
475 property, or dispose of its interest in the property in any  
476 other reasonable manner.

477 Section 19. Paragraph (a) of subsection (1) of section  
478 626.9895, Florida Statutes, is amended to read:

479 626.9895 Motor vehicle insurance fraud direct-support  
480 organization.—

481 (1) DEFINITIONS.—As used in this section, the term:

482 (a) "Division" means the Division of Criminal  
483 Investigations Insurance Fraud of the Department of Financial  
484 Services.

485 Section 20. Section 626.99278, Florida Statutes, is amended  
486 to read:

487 626.99278 Viatical provider anti-fraud plan.—Every licensed  
488 viatical settlement provider and registered life expectancy  
489 provider must adopt an anti-fraud plan and file it with the  
490 Division of Criminal Investigations Insurance Fraud of the  
491 department. Each anti-fraud plan shall include:



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492 (1) A description of the procedures for detecting and  
493 investigating possible fraudulent acts and procedures for  
494 resolving material inconsistencies between medical records and  
495 insurance applications.

496 (2) A description of the procedures for the mandatory  
497 reporting of possible fraudulent insurance acts and prohibited  
498 practices set forth in s. 626.99275 to the Division of Criminal  
499 Investigations Insurance Fraud of the department.

500 (3) A description of the plan for anti-fraud education and  
501 training of its underwriters or other personnel.

502 (4) A written description or chart outlining the  
503 organizational arrangement of the anti-fraud personnel who are  
504 responsible for the investigation and reporting of possible  
505 fraudulent insurance acts and for the investigation of  
506 unresolved material inconsistencies between medical records and  
507 insurance applications.

508 (5) For viatical settlement providers, a description of the  
509 procedures used to perform initial and continuing review of the  
510 accuracy of life expectancies used in connection with a viatical  
511 settlement contract or viatical settlement investment.

512 Section 21. Paragraph (k) of subsection (6) of section  
513 627.351, Florida Statutes, is amended to read:

514 627.351 Insurance risk apportionment plans.—

515 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

516 (k)1. The corporation shall establish and maintain a unit  
517 or division to investigate possible fraudulent claims by  
518 insureds or by persons making claims for services or repairs  
519 against policies held by insureds; or it may contract with  
520 others to investigate possible fraudulent claims for services or



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521 repairs against policies held by the corporation pursuant to s.  
522 626.9891. The corporation must comply with reporting  
523 requirements of s. 626.9891. An employee of the corporation  
524 shall notify the corporation's Office of the Inspector General  
525 and the Division of Criminal Investigations Insurance Fraud  
526 within 48 hours after having information that would lead a  
527 reasonable person to suspect that fraud may have been committed  
528 by any employee of the corporation.

529 2. The corporation shall establish a unit or division  
530 responsible for receiving and responding to consumer complaints,  
531 which unit or division is the sole responsibility of a senior  
532 manager of the corporation.

533 Section 22. Subsections (4) and (7) of section 627.711,  
534 Florida Statutes, are amended to read:

535 627.711 Notice of premium discounts for hurricane loss  
536 mitigation; uniform mitigation verification inspection form.—

537 (4) An authorized mitigation inspector that signs a uniform  
538 mitigation form, and a direct employee authorized to conduct  
539 mitigation verification inspections under subsection paragraph  
540 (3), may not commit misconduct in performing hurricane  
541 mitigation inspections or in completing a uniform mitigation  
542 form that causes financial harm to a customer or their insurer;  
543 or that jeopardizes a customer's health and safety. Misconduct  
544 occurs when an authorized mitigation inspector signs a uniform  
545 mitigation verification form that:

546 (a) Falsely indicates that he or she personally inspected  
547 the structures referenced by the form;

548 (b) Falsely indicates the existence of a feature which  
549 entitles an insured to a mitigation discount which the inspector



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550 knows does not exist or did not personally inspect;

551 (c) Contains erroneous information due to the gross  
552 negligence of the inspector; or

553 (d) Contains a pattern of demonstrably false information  
554 regarding the existence of mitigation features that could give  
555 an insured a false evaluation of the ability of the structure to  
556 withstand major damage from a hurricane endangering the safety  
557 of the insured's life and property.

558 (7) An insurer, person, or other entity that obtains  
559 evidence of fraud or evidence that an authorized mitigation  
560 inspector or an employee authorized to conduct mitigation  
561 verification inspections under subsection paragraph (3) has made  
562 false statements in the completion of a mitigation inspection  
563 form shall file a report with the Division of Criminal  
564 Investigations Insurance Fraud, along with all of the evidence  
565 in its possession that supports the allegation of fraud or  
566 falsity. An insurer, person, or other entity making the report  
567 shall be immune from liability, in accordance with s.  
568 626.989(4), for any statements made in the report, during the  
569 investigation, or in connection with the report. The Division of  
570 Criminal Investigations Insurance Fraud shall issue an  
571 investigative report if it finds that probable cause exists to  
572 believe that the authorized mitigation inspector, or an employee  
573 authorized to conduct mitigation verification inspections under  
574 subsection paragraph (3), made intentionally false or fraudulent  
575 statements in the inspection form. Upon conclusion of the  
576 investigation and a finding of probable cause that a violation  
577 has occurred, the Division of Criminal Investigations Insurance  
578 Fraud shall send a copy of the investigative report to the



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579 office and a copy to the agency responsible for the professional  
580 licensure of the authorized mitigation inspector, whether or not  
581 a prosecutor takes action based upon the report.

582 Section 23. Paragraph (i) of subsection (4) and subsection  
583 (14) of section 627.736, Florida Statutes, are amended to read:

584 627.736 Required personal injury protection benefits;  
585 exclusions; priority; claims.-

586 (4) PAYMENT OF BENEFITS.-Benefits due from an insurer under  
587 ss. 627.730-627.7405 are primary, except that benefits received  
588 under any workers' compensation law must be credited against the  
589 benefits provided by subsection (1) and are due and payable as  
590 loss accrues upon receipt of reasonable proof of such loss and  
591 the amount of expenses and loss incurred which are covered by  
592 the policy issued under ss. 627.730-627.7405. If the Agency for  
593 Health Care Administration provides, pays, or becomes liable for  
594 medical assistance under the Medicaid program related to injury,  
595 sickness, disease, or death arising out of the ownership,  
596 maintenance, or use of a motor vehicle, the benefits under ss.  
597 627.730-627.7405 are subject to the Medicaid program. However,  
598 within 30 days after receiving notice that the Medicaid program  
599 paid such benefits, the insurer shall repay the full amount of  
600 the benefits to the Medicaid program.

601 (i) If an insurer has a reasonable belief that a fraudulent  
602 insurance act, for the purposes of s. 626.989 or s. 817.234, has  
603 been committed, the insurer shall notify the claimant, in  
604 writing, within 30 days after submission of the claim that the  
605 claim is being investigated for suspected fraud. Beginning at  
606 the end of the initial 30-day period, the insurer has an  
607 additional 60 days to conduct its fraud investigation.



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608 Notwithstanding subsection (10), no later than 90 days after the  
609 submission of the claim, the insurer must deny the claim or pay  
610 the claim with simple interest as provided in paragraph (d).  
611 Interest shall be assessed from the day the claim was submitted  
612 until the day the claim is paid. All claims denied for suspected  
613 fraudulent insurance acts shall be reported to the Division of  
614 Criminal Investigations ~~Insurance Fraud~~.

615 (14) FRAUD ADVISORY NOTICE.-Upon receiving notice of a  
616 claim under this section, an insurer shall provide a notice to  
617 the insured or to a person for whom a claim for reimbursement  
618 for diagnosis or treatment of injuries has been filed, advising  
619 that:

620 (a) Pursuant to s. 626.9892, the Department of Financial  
621 Services may pay rewards of up to \$25,000 to persons providing  
622 information leading to the arrest and conviction of persons  
623 committing crimes investigated by the Division of Criminal  
624 Investigations ~~Insurance Fraud~~ arising from violations of s.  
625 440.105, s. 624.15, s. 626.9541, s. 626.989, or s. 817.234.

626 (b) Solicitation of a person injured in a motor vehicle  
627 crash for purposes of filing personal injury protection or tort  
628 claims could be a violation of s. 817.234, s. 817.505, or the  
629 rules regulating The Florida Bar and should be immediately  
630 reported to the Division of Criminal Investigations ~~Insurance~~  
631 ~~Fraud~~ if such conduct has taken place.

632 Section 24. Paragraphs (b) and (c) of subsection (1) of  
633 section 627.7401, Florida Statutes, are amended to read:

634 627.7401 Notification of insured's rights.-

635 (1) The commission, by rule, shall adopt a form for the  
636 notification of insureds of their right to receive personal



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637 injury protection benefits under the Florida Motor Vehicle No-  
638 Fault Law. Such notice shall include:

639 (b) An advisory informing insureds that:

640 1. Pursuant to s. 626.9892, the Department of Financial  
641 Services may pay rewards of up to \$25,000 to persons providing  
642 information leading to the arrest and conviction of persons  
643 committing crimes investigated by the Division of Criminal  
644 Investigations Insurance Fraud arising from violations of s.  
645 440.105, s. 624.15, s. 626.9541, s. 626.989, or s. 817.234.

646 2. Pursuant to s. 627.736(5)(e)1., if the insured notifies  
647 the insurer of a billing error, the insured may be entitled to a  
648 certain percentage of a reduction in the amount paid by the  
649 insured's motor vehicle insurer.

650 (c) A notice that solicitation of a person injured in a  
651 motor vehicle crash for purposes of filing personal injury  
652 protection or tort claims could be a violation of s. 817.234, s  
653 817.505, or the rules regulating The Florida Bar and should be  
654 immediately reported to the Division of Criminal Investigations  
655 Insurance Fraud if such conduct has taken place.

656 Section 25. Subsection (2) of section 631.156, Florida  
657 Statutes, is amended to read:

658 631.156 Investigation by the department; scope of  
659 authority; sharing of materials.-

660 (2) The department may provide documents, books, and  
661 records; other investigative products, work product, and  
662 analysis; and copies of any or all of such materials to the  
663 Division of Criminal Investigations Insurance Fraud or any other  
664 appropriate government agency. The sharing of these materials  
665 shall not waive any work product or other privilege otherwise



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666 applicable under law.

667 Section 26. Subsection (4) of section 641.30, Florida  
668 Statutes, is amended to read:

669 641.30 Construction and relationship to other laws.-

670 (4) The Division of Criminal Investigations Insurance Fraud  
671 of the department is vested with all powers granted to it under  
672 the Florida Insurance Code with respect to the investigation of  
673 any violation of this part.

674 Section 27. Paragraph (1) of subsection (6) of section  
675 932.7055, Florida Statutes, is amended to read:

676 932.7055 Disposition of liens and forfeited property.-

677 (6) If the seizing agency is a state agency, all remaining  
678 proceeds shall be deposited into the General Revenue Fund.

679 However, if the seizing agency is:

680 (1) The Division of Criminal Investigations Insurance Fraud  
681 of the Department of Financial Services, the proceeds accrued  
682 pursuant to the provisions of the Florida Contraband Forfeiture  
683 Act shall be deposited into the Insurance Regulatory Trust Fund  
684 as provided in s. 626.9893 or into the Department of Financial  
685 Services' Federal Law Enforcement Trust Fund as provided in s.  
686 17.43, as applicable.

687 Section 28. This act shall take effect July 1, 2015.

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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**BILL:** CS/CS/SB 1402

**INTRODUCER:** Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senator Lee

**SUBJECT:** Organization of the Department of Financial Services

**DATE:** April 20, 2015      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Betta</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

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

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/CS/SB 1402 changes the organization of the Department of Financial Services (DFS or department). The bill gives the Chief Financial Officer (CFO) the authority to establish any division, bureau, or office of the department as the CFO deems necessary to promote effective and efficient operations. The bill does not change the review and approval process by the Department of Management Services and the Executive Office of the Governor.

The bill repeals the statutory requirement to establish the following divisions, offices, and bureaus:

- The Division of Administration;
- The Division of Legal Services;
- The Division of Information Systems;
- The Bureau of Unclaimed Property;
- The Office of Fiscal Integrity.

The DFS will continue to perform the functions but the CFO will have the authority to determine the organizational placement of those functions within the DFS.

The Division of Insurance Fraud is renamed the Division of Criminal Investigations. The Strategic Markets Research and Assessment Unit, which is currently not active nor funded, is repealed.

The bill provides that Division of Accounting and Auditing positions directly responsible for performing investigations, audits, or management studies for the purpose of making recommendations for corrective action within the DFS are exempt from the career service requirements.

The \$15 service of process fee paid to the DFS will be deposited in the Administrative Trust Fund rather than the Insurance Regulatory Trust Fund.

The department has indicated the cost of changing the 66 accountants and auditors to the select exempt service classification from career service is estimated to be \$75,000 from the General Revenue Fund and \$12,000 from the Administrative Trust Fund. The department has indicated that it has sufficient current appropriations to cover these increased costs.

The bill provides an effective date of July 1, 2015.

## II. Present Situation:

The CFO is a member of the Cabinet<sup>1</sup> and serves as the chief fiscal officer of the state. The CFO is agency head of the DFS.<sup>2</sup> The DFS is organized in fourteen divisions and some specialized offices. The divisions are:

- The Division of Accounting and Auditing, which includes the Bureau of Unclaimed Property and the Office of Fiscal Integrity;
- The Division of State Fire Marshal;
- The Division of Risk Management;
- The Division of Treasury;
- The Division of Insurance Fraud;
- The Division of Rehabilitation and Liquidation;
- The Division of Insurance Agent and Agency Services;
- The Division of Consumer Services;
- The Division of Workers' Compensation;
- The Division of Administration;
- The Division of Legal Services;
- The Division of Information Systems;
- The Division of Funeral, Cemetery, and Consumer Services; and
- The Division of Public Assistance Fraud.<sup>3</sup>

Section 20.04, F.S., provides for the establishment of divisions, bureaus, sections, or subsections within a state department. A department head may recommend the establishment of additional divisions, bureaus, sections, and subsections to promote efficient and effective operation of the

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<sup>1</sup> See Art. IV, s. 4, Fla. Const.

<sup>2</sup> See s. 20.121(1), F.S.

<sup>3</sup> See s. 20.121(2), F.S.

department.<sup>4</sup> The Department of Management Services and the Executive Office of the Governor review and approve reorganization requests.<sup>5</sup>

### **Bureau of Unclaimed Property**

Chapter 717, Florida Statutes, governs the disposition of unclaimed property and requires the DFS to administer the statute. Currently, the DFS holds unclaimed property accounts valued at more than \$1 billion from dormant accounts in financial institutions, insurance and utility companies, securities, trust holdings, and unclaimed safe deposit boxes. The Bureau of Unclaimed Property within the DFS is the bureau responsible for administering chapter 717, F.S.<sup>6</sup>

### **The Office of Fiscal Integrity**

The Office of Fiscal Integrity is a criminal justice entity within the DFS whose mission is to detect and investigate the misappropriation or misuse of state assets. The office performs functions related to the duty of the CFO to examine, audit, adjust, and settle the accounts of all state officers and any other person who has received state funds or moneys.<sup>7</sup> The Office of Fiscal Integrity has sworn law enforcement officers on staff to conduct investigations or provide investigative assistance to other law enforcement agencies.<sup>8</sup>

### **Division of Insurance Fraud**

The Division of Insurance Fraud investigates various types of insurance fraud including Personal Injury Protection (PIP) fraud, workers' compensation fraud, vehicle fraud, application fraud, licensee fraud, homeowner's fraud, and healthcare fraud.<sup>9</sup> The division is directed by statute to investigate fraudulent insurance acts, violations of the Unfair Insurance Trade Practices Act,<sup>10</sup> false and fraudulent insurance claims,<sup>11</sup> and willful violations of the Florida Insurance Code and rules adopted pursuant to the code.<sup>12</sup> The division employs sworn law enforcement officers to investigate insurance fraud. In Fiscal Year 2012-2013, the division received over 15,440 referrals.

### **Division of Consumer Services**

The Division of Consumer Services within the DFS is created by s. 20.121, F.S., and handles consumer issues and complaints related to the jurisdiction of the DFS and the Office of Insurance Regulation ("OIR"). The division:

- Receives inquiries and complaints from consumers;

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<sup>4</sup> See s. 20.04(7)(b), F.S.

<sup>5</sup> See s. 20.04(7)(c), F.S.

<sup>6</sup> See <https://www.fltreasurehunt.org/> (discussing the Bureau of Unclaimed Property)(last accessed March 11, 2015).

<sup>7</sup> Section 17.04, F.S.

<sup>8</sup> See <http://www.myfloridacfo.com/Division/AA/StateAgencies/OfficeofFiscalIntegrity.htm#.VQCOFPnF8eE> (last accessed March 11, 2015).

<sup>9</sup> See <http://www.myfloridacfo.com/Division/Fraud/#.VQDPuPnF8eF> (last accessed March 11, 2015).

<sup>10</sup> Section 626.9541, F.S.

<sup>11</sup> Section 817.234, F.S.

<sup>12</sup> Section 624.15, F.S.

- Prepares and disseminates information as the DFS deems appropriate to inform or assist consumers;
- Provides direct assistance and advocacy for consumers; and
- Reports potential violations of law or applicable rules by a person or entity licensed by the DFS or the OIR to appropriate division within DFS or the OIR, as appropriate.<sup>13</sup>

### **Strategic Markets Research and Assistance Unit**

Section 20.121, F.S., creates the Strategic Markets Research and Assessment Unit within the DFS. It requires the CFO or his or her designee to report quarterly to the Cabinet, the President of the Senate, and the Speaker of the House of Representatives on the status of the state's financial services markets. The CFO must also provide findings and recommendations regarding regulatory and policy changes to the Cabinet, the President of the Senate, and the Speaker of the House of Representatives. According to the DFS, the unit has not functioned since before 2010 and funding was discontinued in 2009.<sup>14</sup>

### **Audit and Accounting Positions in the Department of Financial Services**

Article III, s. 14 of the Florida Constitution, requires the Legislature to create a civil service system for state employees, except for those employees specifically exempted. Employees in the civil service system are "career service" employees<sup>15</sup> while employees exempted from the career service system are called "select exempt"<sup>16</sup> or "senior management."<sup>17</sup> In general, career service employees are subject to dismissal for cause while senior management and select exempt employees serve at the pleasure of the agency head.<sup>18</sup> The various classes also have different pay scales, different leave rules, and different levels of insurance subsidies. Section 110.205, F.S., provides a number of classes of employees that are exempt from the career service and serve in the senior management or select exempt classifications.

According to the DFS, in 2008 the Department of Management Services authorized that DFS "investigators and auditors" could remain in the select exempt class but suggested that the department should seek a legislative change to make the authorization permanent. Positions reverted to career service as they became vacant. There are currently 66 accounting and auditing positions which the DFS seeks to change from career service to select exempt.

### **Service of Process**

Section 624.502, F.S., requires that in all instances as provided in any section of the insurance code and s. 48.151(3), F.S.,<sup>19</sup> in which service of process is authorized to be made upon the CFO

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<sup>13</sup> See s. 20.121(2)(h), F.S.

<sup>14</sup> See Department of Financial Services, *SB 1402 Analysis* (March 11, 2015)(on file with the Senate Committee on Banking and Insurance).

<sup>15</sup> See s. 110.205, F.S.

<sup>16</sup> See Part V, ch. 110, F.S.

<sup>17</sup> See Part III, ch. 110, F.S.

<sup>18</sup> See ss. 110.227, 110.402, and 110.604, F.S.

<sup>19</sup> Section 48.151(3), provides that the CFO or his or her designee is the agent for service of process on all insurers applying for authority to transact insurance, all licensed nonresident insurance agents, all nonresident disability insurance agents,

or the director of the OIR, the plaintiff shall pay \$15 to the DFS or the OIR for service of process. The fee is deposited into the Insurance Regulatory Trust Fund. Chapter 2014-53, Laws of Florida, directed those funds to the Administrative Trust Fund for the 2014-15 fiscal year.

### III. Effect of Proposed Changes:

#### Organization of the DFS

**Section 1** makes various changes to the organization of the DFS. The bill gives the CFO the authority to establish any division, bureau, or office of the department as the CFO deems necessary to promote the effective and efficient operation of the DFS pursuant to s. 20.04, F.S. The bill does not change the review and approval process of s. 20.04, F.S.

The bill repeals the statutory requirement to establish the following divisions, offices, and bureaus:

- The Division of Administration;
- The Division of Legal Services;
- The Division of Information Systems;
- The Bureau of Unclaimed Property;
- The Office of Fiscal Integrity.

The DFS will continue to perform the functions, but the CFO will have the authority to determine the organizational placement of those functions within the DFS.

The Division of Insurance Fraud is renamed the Division of Criminal Investigations. The division will retain the same powers and duties as the Division of Insurance Fraud.

**Sections 6 through 27** amend various statutory provisions to reflect the name change of the Division of Insurance Fraud to the Division of Criminal Investigation.

The Strategic Markets Research and Assessment Unit, which is not currently active nor funded, is repealed.

#### Relocation of the Division of Consumer Services Statute

**Sections 1, 3, and 4** relocate statutory references to the duties of the Division of Consumer Services from s. 20.121, F.S., to the Insurance Code at s. 624.307, F.S., and provide conforming changes.

#### Audit and Accounting Positions in the Department of Financial Services

**Section 2** amends s. 110.205, F.S., to provide that all auditing and accounting positions in the DFS are exempt from the career services provisions of law.

**Service of Process Fees**

**Section 5** of this bill amends s. 624.502, F.S., to provide that the \$15 service of process fee paid to the DFS will be deposited in the Administrative Trust Fund rather than the Insurance Regulatory Trust Fund. The Insurance Regulatory Trust Fund, created by s. 624.523, F.S., is appropriated for use by the DFS and the OIR to defray the expenses in the discharge of administrative and regulatory powers. Chapter 2014-53, Laws of Florida, implementing the 2014-2015 General Appropriations Act, directed those funds to the Administrative Trust Fund for the 2014-15 fiscal year.

**Effective Date**

**Section 28** provides an effective date of July 1, 2015.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The DFS reports that CS/CS/SB 1402 would result in an additional cost of \$75,000 to the General Revenue Fund and \$12,000 from the Administrative Trust Fund, to reclassify 66 positions from the career service to the select exempt service. These additional costs can be absorbed within existing resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill substantially amends the following sections of the Florida Statutes: 20.121, 110.205, 624.26, 624.307, 624.502, 16.59, 400.9935, 409.91212, 440.105, 440.1051, 440.12, 624.521, 626.016, 626.989, 626.9891, 626.9892, 626.9893, 626.9894, 626.9895, 626.99278, 627.351, 627.711, 627.736, 627.7401, 631.156, 641.30, and 932.7055.

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

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

**CS/CS by Appropriations on April 16, 2015:**

The committee substitute restores all the filing fee deposits into the Administrative Trust Fund and the requirements for the Department of Financial Services to enter into an agreement with the Florida Clerks of Court Operations Corporation to audit court-related expenditures of individual clerks. The committee substitute also narrows the positions which are exempt from career service within the Division of Accounting and Auditing.

**CS by Banking and Insurance on March 17, 2015:**

The committee adopted an amendment to change the name of the “Division of Insurance Fraud” to the “Division of Criminal Investigations” in various sections of law.

**B. Amendments:**

None.

By the Committee on Banking and Insurance; and Senator Lee

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1 A bill to be entitled  
 2 An act relating to the organization of the Department  
 3 of Financial Services; amending s. 20.121, F.S.;  
 4 revising the divisions and functions of the  
 5 department; authorizing the Chief Financial Officer to  
 6 establish divisions, bureaus, or offices of the  
 7 department; amending s. 28.2401, F.S.; providing  
 8 funding from certain probate petition service charges  
 9 to the Florida Clerks of Court Operations Corporation  
 10 for clerk education provided by the corporation;  
 11 amending s. 28.241, F.S., relating to the deposit of  
 12 certain filing fees for trial and appellate  
 13 proceedings, to conform provisions to changes made by  
 14 the act; amending s. 28.35, F.S.; deleting a  
 15 requirement that the Florida Clerks of Court  
 16 Operations Corporation contract with the department  
 17 for certain audits; amending s. 110.205, F.S.;  
 18 exempting audit and accounting positions of the  
 19 department from career service requirements; amending  
 20 s. 624.26, F.S.; conforming provisions to changes made  
 21 by the act; amending s. 624.307, F.S.; providing  
 22 powers and duties of the department's Division of  
 23 Consumer Services; authorizing the division to impose  
 24 certain penalties; authorizing the department to adopt  
 25 rules relating to the division; providing for  
 26 construction; amending s. 624.502, F.S.; requiring  
 27 that certain service of process fees be deposited into  
 28 the Administrative Trust Fund; amending ss. 16.59,  
 29 400.9935, 409.91212, 440.105, 440.1051, 440.12,

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30 624.521, 626.016, 626.989, 626.9891, 626.9892,  
 31 626.9893, 626.9894, 626.9895, 626.99278, 627.351,  
 32 627.711, 627.736, 627.7401, 631.156, 641.30, and  
 33 932.7055, F.S.; conforming provisions to changes made  
 34 by act; making technical changes; providing an  
 35 effective date.

36  
 37 Be It Enacted by the Legislature of the State of Florida:

38  
 39 Section 1. Subsections (2) and (6) of section 20.121,  
 40 Florida Statutes, are amended to read:  
 41 20.121 Department of Financial Services.—There is created a  
 42 Department of Financial Services.  
 43 (2) DIVISIONS.—The Department of Financial Services shall  
 44 consist of the following divisions and offices:  
 45 (a) The Division of Accounting and Auditing, ~~which shall~~  
 46 ~~include the following bureau and office:~~  
 47 1. ~~The Bureau of Unclaimed Property.~~  
 48 2. ~~The Office of Fiscal Integrity which shall function as a~~  
 49 ~~criminal justice agency for purposes of ss. 943.045-943.08 and~~  
 50 ~~shall have a separate budget. The office may conduct~~  
 51 ~~investigations within or outside this state as the bureau deems~~  
 52 ~~necessary to aid in the enforcement of this section. If during~~  
 53 ~~an investigation the office has reason to believe that any~~  
 54 ~~criminal law of this state has or may have been violated, the~~  
 55 ~~office shall refer any records tending to show such violation to~~  
 56 ~~state or federal law enforcement or prosecutorial agencies and~~  
 57 ~~shall provide investigative assistance to those agencies as~~  
 58 ~~required.~~

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59 (b) The Division of State Fire Marshal.

60 (c) The Division of Risk Management.

61 (d) The Division of Treasury, which shall include a Bureau

62 of Deferred Compensation responsible for administering the

63 Government Employees Deferred Compensation Plan established

64 under s. 112.215 for state employees.

65 (e) The Division of Criminal Investigations, which shall

66 function as a criminal justice agency for purposes of ss.

67 943.045-943.08 Insurance Fraud.

68 (f) The Division of Rehabilitation and Liquidation.

69 (g) The Division of Insurance Agent and Agency Services.

70 (h) The Division of Consumer Services.

71 1. The Division of Consumer Services shall perform the

72 following functions concerning products or services regulated by

73 the department or by the Office of Insurance Regulation:

74 a. Receive inquiries and complaints from consumers.

75 b. Prepare and disseminate such information as the

76 department deems appropriate to inform or assist consumers.

77 c. Provide direct assistance and advocacy for consumers who

78 request such assistance or advocacy.

79 d. With respect to apparent or potential violations of law

80 or applicable rules by a person or entity licensed by the

81 department or office, report apparent or potential violations to

82 the office or the appropriate division of the department, which

83 may take such further action as it deems appropriate.

84 e. Designate an employee of the division as primary contact

85 for consumers on issues relating to sinkholes.

86 2. Any person licensed or issued a certificate of authority

87 by the department or by the Office of Insurance Regulation shall

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88 ~~respond, in writing, to the Division of Consumer Services within~~

89 ~~20 days after receipt of a written request for information from~~

90 ~~the division concerning a consumer complaint. The response must~~

91 ~~address the issues and allegations raised in the complaint. The~~

92 ~~division may impose an administrative penalty for failure to~~

93 ~~comply with this subparagraph of up to \$2,500 per violation upon~~

94 ~~any entity licensed by the department or the office and \$250 for~~

95 ~~the first violation, \$500 for the second violation, and up to~~

96 ~~\$1,000 per violation thereafter upon any individual licensed by~~

97 ~~the department or the office.~~

98 ~~3. The department may adopt rules to administer this~~

99 ~~paragraph.~~

100 ~~4. The powers, duties, and responsibilities expressed or~~

101 ~~granted in this paragraph do not limit the powers, duties, and~~

102 ~~responsibilities of the Department of Financial Services, the~~

103 ~~Financial Services Commission, the Office of Insurance~~

104 ~~Regulation, or the Office of Financial Regulation set forth~~

105 ~~elsewhere in the Florida Statutes.~~

106 (i) The Division of Workers' Compensation.

107 ~~(j) The Division of Administration.~~

108 ~~(k) The Division of Legal Services.~~

109 ~~(l) The Division of Information Systems.~~

110 (j)(m) The Office of Insurance Consumer Advocate.

111 (k)(n) The Division of Funeral, Cemetery, and Consumer

112 Services.

113 (l)(o) The Division of Public Assistance Fraud.

114

115 The Chief Financial Officer may establish any other division,

116 bureau, or office of the department that he or she deems

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117 necessary to promote the efficient and effective operation of  
 118 the department pursuant to s. 20.04.

119 ~~(6) STRATEGIC MARKETS RESEARCH AND ASSESSMENT UNIT. The~~  
 120 ~~Strategic Markets Research and Assessment Unit is established~~  
 121 ~~within the Department of Financial Services. The Chief Financial~~  
 122 ~~Officer or his or her designee shall report on September 1,~~  
 123 ~~2008, and quarterly thereafter, to the Cabinet, the President of~~  
 124 ~~the Senate, and the Speaker of the House of Representatives on~~  
 125 ~~the status of the state's financial services markets. At a~~  
 126 ~~minimum, the report must include a summary of issues, trends,~~  
 127 ~~and threats that broadly impact the condition of the financial~~  
 128 ~~services industries, along with the effect of such conditions on~~  
 129 ~~financial institutions, the securities industries, other~~  
 130 ~~financial entities, and the credit market. The Chief Financial~~  
 131 ~~Officer shall also provide findings and recommendations~~  
 132 ~~regarding regulatory and policy changes to the Cabinet, the~~  
 133 ~~President of the Senate, and the Speaker of the House of~~  
 134 ~~Representatives.~~

135 Section 2. Subsection (3) of section 28.2401, Florida  
 136 Statutes, is amended to read:

137 28.2401 Service charges and filing fees in probate  
 138 matters.—

139 (3) An additional service charge of \$4 on petitions seeking  
 140 summary administration, formal administration, ancillary  
 141 administration, guardianship, curatorship, and conservatorship  
 142 shall be paid to the clerk. The clerk shall transfer \$3.50 to  
 143 the Department of Revenue for deposit into the Court Education  
 144 Trust Fund and shall transfer 50 cents to the Department of  
 145 Revenue for deposit into the Department of Financial Services'

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146 Administrative Trust Fund to fund clerk education provided by  
 147 the Florida Clerks of Court Operations Corporation. No  
 148 additional fees, charges, or costs shall be added to the service  
 149 charges or filing fees imposed under this section, except as  
 150 authorized by general law.

151 Section 3. Paragraph (a) of subsection (1) of section  
 152 28.241, Florida Statutes, is amended to read:

153 28.241 Filing fees for trial and appellate proceedings.—

154 (1) Filing fees are due at the time a party files a  
 155 pleading to initiate a proceeding or files a pleading for  
 156 relief. Reopen fees are due at the time a party files a pleading  
 157 to reopen a proceeding if at least 90 days have elapsed since  
 158 the filing of a final order or final judgment with the clerk. If  
 159 a fee is not paid upon the filing of the pleading as required  
 160 under this section, the clerk shall pursue collection of the fee  
 161 pursuant to s. 28.246.

162 (a)1.a. Except as provided in sub-subparagraph b. and  
 163 subparagraph 2., the party instituting any civil action, suit,  
 164 or proceeding in the circuit court shall pay to the clerk of  
 165 that court a filing fee of up to \$395 in all cases in which  
 166 there are not more than five defendants and an additional filing  
 167 fee of up to \$2.50 for each defendant in excess of five. Of the  
 168 first ~~\$199~~ ~~\$200~~ in filing fees, \$195 must be remitted to the  
 169 Department of Revenue for deposit into the State Courts Revenue  
 170 Trust Fund and, \$4 must be remitted to the Department of Revenue  
 171 for deposit into the Administrative Trust Fund within the  
 172 Department of Financial Services and used to fund the contract  
 173 with the Florida Clerks of Court Operations Corporation created  
 174 in s. 28.35, ~~and \$1 must be remitted to the Department of~~

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175 Revenue for deposit into the Administrative Trust Fund within  
 176 the Department of Financial Services to fund audits of  
 177 individual clerks' court-related expenditures conducted by the  
 178 Department of Financial Services. By the 10th of each month, the  
 179 clerk shall submit that portion of the filing fees collected in  
 180 the previous month which is in excess of one-twelfth of the  
 181 clerk's total budget to the Department of Revenue for deposit  
 182 into the Clerks of the Court Trust Fund.

183 b. The party instituting any civil action, suit, or  
 184 proceeding in the circuit court under chapter 39, chapter 61,  
 185 chapter 741, chapter 742, chapter 747, chapter 752, or chapter  
 186 753 shall pay to the clerk of that court a filing fee of up to  
 187 \$295 in all cases in which there are not more than five  
 188 defendants and an additional filing fee of up to \$2.50 for each  
 189 defendant in excess of five. Of the first \$99 ~~\$100~~ in filing  
 190 fees, \$95 must be remitted to the Department of Revenue for  
 191 deposit into the State Courts Revenue Trust Fund and, \$4 must be  
 192 remitted to the Department of Revenue for deposit into the  
 193 Administrative Trust Fund within the Department of Financial  
 194 Services and used to fund the contract with the Florida Clerks  
 195 of Court Operations Corporation created in s. 28.35, and \$1 must  
 196 be remitted to the Department of Revenue for deposit into the  
 197 Administrative Trust Fund within the Department of Financial  
 198 Services to fund audits of individual clerks' court-related  
 199 expenditures conducted by the Department of Financial Services.

200 c. An additional filing fee of \$4 shall be paid to the  
 201 clerk. The clerk shall remit \$3.50 to the Department of Revenue  
 202 for deposit into the Court Education Trust Fund and shall remit  
 203 50 cents to the Department of Revenue for deposit into the

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204 Administrative Trust Fund within the Department of Financial  
 205 Services to fund clerk education provided by the Florida Clerks  
 206 of Court Operations Corporation. An additional filing fee of up  
 207 to \$18 shall be paid by the party seeking each severance that is  
 208 granted. The clerk may impose an additional filing fee of up to  
 209 \$85 for all proceedings of garnishment, attachment, replevin,  
 210 and distress. Postal charges incurred by the clerk of the  
 211 circuit court in making service by certified or registered mail  
 212 on defendants or other parties shall be paid by the party at  
 213 whose instance service is made. Additional fees, charges, or  
 214 costs may not be added to the filing fees imposed under this  
 215 section, except as authorized in this section or by general law.

216 2.a. Notwithstanding the fees prescribed in subparagraph  
 217 1., a party instituting a civil action in circuit court relating  
 218 to real property or mortgage foreclosure shall pay a graduated  
 219 filing fee based on the value of the claim.

220 b. A party shall estimate in writing the amount in  
 221 controversy of the claim upon filing the action. For purposes of  
 222 this subparagraph, the value of a mortgage foreclosure action is  
 223 based upon the principal due on the note secured by the  
 224 mortgage, plus interest owed on the note and any moneys advanced  
 225 by the lender for property taxes, insurance, and other advances  
 226 secured by the mortgage, at the time of filing the foreclosure.  
 227 The value shall also include the value of any tax certificates  
 228 related to the property. In stating the value of a mortgage  
 229 foreclosure claim, a party shall declare in writing the total  
 230 value of the claim, as well as the individual elements of the  
 231 value as prescribed in this sub-subparagraph.

232 c. In its order providing for the final disposition of the

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233 matter, the court shall identify the actual value of the claim.  
 234 The clerk shall adjust the filing fee if there is a difference  
 235 between the estimated amount in controversy and the actual value  
 236 of the claim and collect any additional filing fee owed or  
 237 provide a refund of excess filing fee paid.

238 d. The party shall pay a filing fee of:

239 (I) Three hundred and ninety-five dollars in all cases in  
 240 which the value of the claim is \$50,000 or less and in which  
 241 there are not more than five defendants. The party shall pay an  
 242 additional filing fee of up to \$2.50 for each defendant in  
 243 excess of five. Of the first \$199 ~~\$200~~ in filing fees, \$195 must  
 244 be remitted by the clerk to the Department of Revenue for  
 245 deposit into the General Revenue Fund and, \$4 must be remitted  
 246 to the Department of Revenue for deposit into the Administrative  
 247 Trust Fund within the Department of Financial Services and used  
 248 to fund the contract with the Florida Clerks of Court Operations  
 249 Corporation created in s. 28.35, ~~and \$1 must be remitted to the~~  
 250 ~~Department of Revenue for deposit into the Administrative Trust~~  
 251 ~~Fund within the Department of Financial Services to fund audits~~  
 252 ~~of individual clerks' court-related expenditures conducted by~~  
 253 ~~the Department of Financial Services;~~

254 (II) Nine hundred dollars in all cases in which the value  
 255 of the claim is more than \$50,000 but less than \$250,000 and in  
 256 which there are not more than five defendants. The party shall  
 257 pay an additional filing fee of up to \$2.50 for each defendant  
 258 in excess of five. Of the first \$704 ~~\$705~~ in filing fees, \$700  
 259 must be remitted by the clerk to the Department of Revenue for  
 260 deposit into the General Revenue Fund and, \$4 must be remitted  
 261 to the Department of Revenue for deposit into the Administrative

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262 Trust Fund within the Department of Financial Services and used  
 263 to fund the contract with the Florida Clerks of Court Operations  
 264 Corporation created in s. 28.35, ~~and \$1 must be remitted to the~~  
 265 ~~Department of Revenue for deposit into the Administrative Trust~~  
 266 ~~Fund within the Department of Financial Services to fund audits~~  
 267 ~~of individual clerks' court-related expenditures conducted by~~  
 268 ~~the Department of Financial Services; or~~

269 (III) One thousand nine hundred dollars in all cases in  
 270 which the value of the claim is \$250,000 or more and in which  
 271 there are not more than five defendants. The party shall pay an  
 272 additional filing fee of up to \$2.50 for each defendant in  
 273 excess of five. Of the first \$1,704 ~~\$1,705~~ in filing fees, \$930  
 274 must be remitted by the clerk to the Department of Revenue for  
 275 deposit into the General Revenue Fund, \$770 must be remitted to  
 276 the Department of Revenue for deposit into the State Courts  
 277 Revenue Trust Fund and, \$4 must be remitted to the Department of  
 278 Revenue for deposit into the Administrative Trust Fund within  
 279 the Department of Financial Services to fund the contract with  
 280 the Florida Clerks of Court Operations Corporation created in s.  
 281 28.35, ~~and \$1 must be remitted to the Department of Revenue for~~  
 282 ~~deposit into the Administrative Trust Fund within the Department~~  
 283 ~~of Financial Services to fund audits of individual clerks'~~  
 284 ~~court-related expenditures conducted by the Department of~~  
 285 ~~Financial Services.~~

286 e. An additional filing fee of \$4 shall be paid to the  
 287 clerk. The clerk shall remit \$3.50 to the Department of Revenue  
 288 for deposit into the Court Education Trust Fund and shall remit  
 289 50 cents to the Department of Revenue for deposit into the  
 290 Administrative Trust Fund within the Department of Financial

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291 Services to fund clerk education provided by the Florida Clerks  
 292 of Court Operations Corporation. An additional filing fee of up  
 293 to \$18 shall be paid by the party seeking each severance that is  
 294 granted. The clerk may impose an additional filing fee of up to  
 295 \$85 for all proceedings of garnishment, attachment, replevin,  
 296 and distress. Postal charges incurred by the clerk of the  
 297 circuit court in making service by certified or registered mail  
 298 on defendants or other parties shall be paid by the party at  
 299 whose instance service is made. Additional fees, charges, or  
 300 costs may not be added to the filing fees imposed under this  
 301 section, except as authorized in this section or by general law.

302 Section 4. Paragraphs (e) through (h) of subsection (2) of  
 303 section 28.35, Florida Statutes, are amended to read:

304 28.35 Florida Clerks of Court Operations Corporation.—

305 (2) The duties of the corporation shall include the  
 306 following:

307 ~~(e) Entering into a contract with the Department of~~  
 308 ~~Financial Services for the department to audit the court-related~~  
 309 ~~expenditures of individual clerks pursuant to s. 17.03-~~

310 (e)(f) Reviewing, certifying, and recommending proposed  
 311 budgets submitted by clerks of the court pursuant to s. 28.36.

312 As part of this process, the corporation shall:

313 1. Calculate the minimum amount of revenue necessary for  
 314 each clerk of the court to efficiently perform the list of  
 315 court-related functions specified in paragraph (3)(a). The  
 316 corporation shall apply the workload measures appropriate for  
 317 determining the individual level of review required to fund the  
 318 clerk's budget.

319 2. Prepare a cost comparison of similarly situated clerks

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320 of the court, based on county population and numbers of filings,  
 321 using the standard list of court-related functions specified in  
 322 paragraph (3)(a).

323 3. Conduct an annual base budget review and an annual  
 324 budget exercise examining the total budget of each clerk of the  
 325 court. The review shall examine revenues from all sources,  
 326 expenses of court-related functions, and expenses of noncourt-  
 327 related functions as necessary to determine that court-related  
 328 revenues are not being used for noncourt-related purposes. The  
 329 review and exercise shall identify potential targeted budget  
 330 reductions in the percentage amount provided in Schedule VIII-B  
 331 of the state's previous year's legislative budget instructions,  
 332 as referenced in s. 216.023(3), or an equivalent schedule or  
 333 instruction as may be adopted by the Legislature.

334 4. Identify those proposed budgets containing funding for  
 335 items not included on the standard list of court-related  
 336 functions specified in paragraph (3)(a).

337 5. Identify those clerks projected to have court-related  
 338 revenues insufficient to fund their anticipated court-related  
 339 expenditures.

340 6. Use revenue estimates based on the official estimate for  
 341 funds accruing to the clerks of the court made by the Revenue  
 342 Estimating Conference.

343 7. Identify and report pay and benefit increases in any  
 344 proposed clerk budget, including, but not limited to, cost of  
 345 living increases, merit increases, and bonuses.

346 8. Provide detailed explanation for increases in  
 347 anticipated expenditures in any clerk budget that exceeds the  
 348 current year budget by more than 3 percent.

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349 9. Identify and report the budget of any clerk which  
350 exceeds the average budget of similarly situated clerks by more  
351 than 10 percent.

352 ~~(f)(g)~~ Developing and conducting clerk education programs.  
353 ~~(g)(h) Before Beginning August 1, 2014, and each August 1~~  
354 ~~of each year thereafter~~, submitting to the Legislative Budget  
355 Commission, as provided in s. 11.90, its proposed budget and the  
356 information described in paragraph ~~(e) (f)~~, as well as the  
357 proposed budgets for each clerk of the court. Before October 1  
358 of each year ~~beginning in 2014~~, the Legislative Budget  
359 Commission shall consider the submitted budgets and shall  
360 approve, disapprove, or amend and approve the corporation's  
361 budget and shall approve, disapprove, or amend and approve the  
362 total of the clerks' combined budgets or any individual clerk's  
363 budget. If the Legislative Budget Commission fails to approve or  
364 amend and approve the corporation's budget or the clerks'  
365 combined budgets before October 1, the clerk shall continue to  
366 perform the court-related functions based upon the clerk's  
367 budget for the previous county fiscal year.

368 Section 5. Paragraph (y) is added to subsection (2) of  
369 section 110.205, Florida Statutes, to read:

370 110.205 Career service; exemptions.-

371 (2) EXEMPT POSITIONS.-The exempt positions that are not  
372 covered by this part include the following:

373 (y) All audit and accounting positions of the Division of  
374 Accounting and Auditing of the Department of Financial Services.

375 Section 6. Subsection (4) of section 624.26, Florida  
376 Statutes, is amended to read:

377 624.26 Collaborative arrangement with the Department of

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378 Health and Human Services.-

379 (4) The department's Division of Consumer Services may  
380 respond to complaints by consumers relating to a requirement of  
381 PPACA ~~as authorized under s. 20.121(2)(h)~~, and report apparent  
382 or potential violations to the office and to the federal  
383 Department of Health and Human Services.

384 Section 7. Subsection (10) is added to section 624.307,  
385 Florida Statutes, to read:

386 624.307 General powers; duties.-

387 (10)(a) The department's Division of Consumer Services  
388 shall perform the following functions concerning products or  
389 services regulated by the department or office:

390 1. Receive inquiries and complaints from consumers.

391 2. Prepare and disseminate such information as the  
392 department deems appropriate to inform or assist consumers.

393 3. Provide direct assistance and advocacy for consumers who  
394 request such assistance or advocacy.

395 4. With respect to apparent or potential violations of law  
396 or applicable rules by a person or entity licensed by the  
397 department or office, report apparent or potential violations to  
398 the office or the appropriate division of the department, which  
399 may take such further action as it deems appropriate.

400 5. Designate an employee of the division as primary contact  
401 for consumers on issues relating to sinkholes.

402 (b) Any person licensed or issued a certificate of  
403 authority by the department or the office shall respond, in  
404 writing, to the division within 20 days after receipt of a  
405 written request for information from the division concerning a  
406 consumer complaint. The response must address the issues and

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407 allegations raised in the complaint. The division may impose an  
 408 administrative penalty for failure to comply with this paragraph  
 409 of up to \$2,500 per violation upon any entity licensed by the  
 410 department or the office and \$250 for the first violation, \$500  
 411 for the second violation, and up to \$1,000 per violation  
 412 thereafter upon any individual licensed by the department or the  
 413 office.

414 (c) The department may adopt rules to administer this  
 415 subsection.

416 (d) The powers, duties, and responsibilities expressed or  
 417 granted in this subsection do not limit the powers, duties, and  
 418 responsibilities of the Department of Financial Services, the  
 419 Financial Services Commission, the Office of Insurance  
 420 Regulation, or the Office of Financial Regulation as otherwise  
 421 provided by law.

422 Section 8. Section 624.502, Florida Statutes, as amended by  
 423 chapter 2014-53, Laws of Florida, is amended to read:

424 624.502 Service of process fee.—In all instances as  
 425 provided in any section of the insurance code and s. 48.151(3)  
 426 in which service of process is authorized to be made upon the  
 427 Chief Financial Officer or the director of the office, the  
 428 plaintiff shall pay to the department or office a fee of \$15 for  
 429 such service of process, which fee shall be deposited into the  
 430 Administrative Trust Fund ~~Insurance Regulatory Trust Fund~~.

431 Section 9. Section 16.59, Florida Statutes, is amended to  
 432 read:

433 16.59 Medicaid fraud control.—The Medicaid Fraud Control  
 434 Unit is created in the Department of Legal Affairs to  
 435 investigate all violations of s. 409.920 and any criminal

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436 violations discovered during the course of those investigations.  
 437 The Medicaid Fraud Control Unit may refer any criminal violation  
 438 so uncovered to the appropriate prosecuting authority. The  
 439 offices of the Medicaid Fraud Control Unit, the Agency for  
 440 Health Care Administration Medicaid program integrity program,  
 441 and the Divisions of Criminal Investigations ~~Insurance Fraud~~ and  
 442 Public Assistance Fraud within the Department of Financial  
 443 Services shall, to the extent possible, be collocated; however,  
 444 positions dedicated to Medicaid managed care fraud within the  
 445 Medicaid Fraud Control Unit shall be collocated with the  
 446 Division of Criminal Investigations ~~Insurance Fraud~~. The Agency  
 447 for Health Care Administration, the Department of Legal Affairs,  
 448 and the Divisions of Criminal Investigations ~~Insurance Fraud~~ and  
 449 Public Assistance Fraud within the Department of Financial  
 450 Services shall conduct joint training and other joint activities  
 451 designed to increase communication and coordination in  
 452 recovering overpayments.

453 Section 10. Subsection (9) of section 400.9935, Florida  
 454 Statutes, is amended to read:

455 400.9935 Clinic responsibilities.—

456 (9) In addition to the requirements of part II of chapter  
 457 408, the clinic shall display a sign in a conspicuous location  
 458 within the clinic readily visible to all patients indicating  
 459 that, pursuant to s. 626.9892, the Department of Financial  
 460 Services may pay rewards of up to \$25,000 to persons providing  
 461 information leading to the arrest and conviction of persons  
 462 committing crimes investigated by the Division of Criminal  
 463 Investigations ~~Insurance Fraud~~ arising from violations of s.  
 464 440.105, s. 624.15, s. 626.9541, s. 626.989, or s. 817.234. An

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465 authorized employee of the Division of Criminal Investigations  
 466 ~~Insurance Fraud~~ may make unannounced inspections of a clinic  
 467 licensed under this part as necessary to determine whether the  
 468 clinic is in compliance with this subsection. A licensed clinic  
 469 shall allow full and complete access to the premises to such  
 470 authorized employee of the division who makes an inspection to  
 471 determine compliance with this subsection.

472 Section 11. Subsection (6) of section 409.91212, Florida  
 473 Statutes, is amended to read:

474 409.91212 Medicaid managed care fraud.—

475 (6) Each managed care plan shall report all suspected or  
 476 confirmed instances of provider or recipient fraud or abuse  
 477 within 15 calendar days after detection to the Office of  
 478 Medicaid Program Integrity within the agency. At a minimum the  
 479 report must contain the name of the provider or recipient, the  
 480 Medicaid billing number or tax identification number, and a  
 481 description of the fraudulent or abusive act. The Office of  
 482 Medicaid Program Integrity in the agency shall forward the  
 483 report of suspected overpayment, abuse, or fraud to the  
 484 appropriate investigative unit, including, but not limited to,  
 485 the Bureau of Medicaid program integrity, the Medicaid fraud  
 486 control unit, the Division of Public Assistance Fraud, the  
 487 Division of Criminal Investigations ~~Insurance Fraud~~, or the  
 488 Department of Law Enforcement.

489 (a) Failure to timely report shall result in an  
 490 administrative fine of \$1,000 per calendar day after the 15th  
 491 day of detection.

492 (b) Failure to timely report may result in additional  
 493 administrative, civil, or criminal penalties.

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494 Section 12. Paragraph (a) of subsection (1) of section  
 495 440.105, Florida Statutes, is amended to read:

496 440.105 Prohibited activities; reports; penalties;  
 497 limitations.—

498 (1) (a) Any insurance carrier, any individual self-insured,  
 499 any commercial or group self-insurance fund, any professional  
 500 practitioner licensed or regulated by the Department of Health,  
 501 except as otherwise provided by law, any medical review  
 502 committee as defined in s. 766.101, any private medical review  
 503 committee, and any insurer, agent, or other person licensed  
 504 under the insurance code, or any employee thereof, having  
 505 knowledge or who believes that a fraudulent act or any other act  
 506 or practice which, upon conviction, constitutes a felony or  
 507 misdemeanor under this chapter is being or has been committed  
 508 shall send to the Division of Criminal Investigations ~~Insurance~~  
 509 ~~Fraud~~, Bureau of Workers' Compensation Fraud, a report or  
 510 information pertinent to such knowledge or belief and such  
 511 additional information relative thereto as the bureau may  
 512 require. The bureau shall review such information or reports and  
 513 select such information or reports as, in its judgment, may  
 514 require further investigation. It shall then cause an  
 515 independent examination of the facts surrounding such  
 516 information or report to be made to determine the extent, if  
 517 any, to which a fraudulent act or any other act or practice  
 518 which, upon conviction, constitutes a felony or a misdemeanor  
 519 under this chapter is being committed. The bureau shall report  
 520 any alleged violations of law which its investigations disclose  
 521 to the appropriate licensing agency and state attorney or other  
 522 prosecuting agency having jurisdiction with respect to any such

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523 violations of this chapter. If prosecution by the state attorney  
524 or other prosecuting agency having jurisdiction with respect to  
525 such violation is not begun within 60 days of the bureau's  
526 report, the state attorney or other prosecuting agency having  
527 jurisdiction with respect to such violation shall inform the  
528 bureau of the reasons for the lack of prosecution.

529 Section 13. Subsections (1) and (2) of section 440.1051,  
530 Florida Statutes, are amended to read

531 440.1051 Fraud reports; civil immunity; criminal  
532 penalties.—

533 (1) The Bureau of Workers' Compensation Insurance Fraud of  
534 the Division of Criminal Investigations ~~Insurance Fraud~~ of the  
535 department shall establish a toll-free telephone number to  
536 receive reports of workers' compensation fraud committed by an  
537 employee, employer, insurance provider, physician, attorney, or  
538 other person.

539 (2) Any person who reports workers' compensation fraud to  
540 the Division of Criminal Investigations ~~Insurance Fraud~~ under  
541 subsection (1) is immune from civil liability for doing so, and  
542 the person or entity alleged to have committed the fraud may not  
543 retaliate against him or her for providing such report, unless  
544 the person making the report knows it to be false.

545 Section 14. Paragraph (c) of subsection (1) of section  
546 440.12, Florida Statutes, is amended to read:

547 440.12 Time for commencement and limits on weekly rate of  
548 compensation.—

549 (1) Compensation is not allowed for the first 7 days of  
550 the disability, except for benefits provided under s. 440.13.  
551 However, if the injury results in more than 21 days of

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552 disability, compensation is allowed from the commencement of the  
553 disability.

554 (c) Each carrier shall keep a record of all payments made  
555 under this subsection, including the time and manner of such  
556 payments, and shall furnish these records or a report based on  
557 these records to the Division of Criminal Investigations  
558 ~~Insurance Fraud~~ and the Division of Workers' Compensation, upon  
559 request.

560 Section 15. Subsection (1) of section 624.521, Florida  
561 Statutes, is amended to read:

562 624.521 Deposit of certain tax receipts; refund of improper  
563 payments.—

564 (1) The department ~~of Financial Services~~ shall promptly  
565 deposit in the State Treasury to the credit of the Insurance  
566 Regulatory Trust Fund all "state tax" portions of agents'  
567 licenses collected under s. 624.501 necessary to fund the  
568 Division of Criminal Investigations ~~Insurance Fraud~~. The balance  
569 of the tax shall be credited to the General Fund. All moneys  
570 received by the department ~~of Financial Services~~ or the office  
571 not in accordance with the provisions of this code or not in the  
572 exact amount as specified by the applicable provisions of this  
573 code shall be returned to the remitter. The records of the  
574 department or office shall show the date and reason for such  
575 return.

576 Section 16. Subsection (4) of section 626.016, Florida  
577 Statutes, is amended to read:

578 626.016 Powers and duties of department, commission, and  
579 office.—

580 (4) Nothing in this section is intended to limit the

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581 authority of the department and the Division of Criminal  
 582 Investigations Insurance Fraud, as specified in s. 626.989.  
 583 Section 17. Subsections (2) and (6) of section 626.989,  
 584 Florida Statutes, are amended to read:  
 585 626.989 Investigation by department or Division of Criminal  
 586 Investigations Insurance Fraud; compliance; immunity;  
 587 confidential information; reports to division; division  
 588 investigator's power of arrest.—  
 589 (2) If, by its own inquiries or as a result of complaints,  
 590 the department or its Division of Criminal Investigations  
 591 Insurance Fraud has reason to believe that a person has engaged  
 592 in, or is engaging in, a fraudulent insurance act, an act or  
 593 practice that violates s. 626.9541 or s. 817.234, or an act or  
 594 practice punishable under s. 624.15, it may administer oaths and  
 595 affirmations, request the attendance of witnesses or proffering  
 596 of matter, and collect evidence. The department shall not compel  
 597 the attendance of any person or matter in any such investigation  
 598 except pursuant to subsection (4).  
 599 (6) Any person, other than an insurer, agent, or other  
 600 person licensed under the code, or an employee thereof, having  
 601 knowledge or who believes that a fraudulent insurance act or any  
 602 other act or practice which, upon conviction, constitutes a  
 603 felony or a misdemeanor under the code, or under s. 817.234, is  
 604 being or has been committed may send to the Division of Criminal  
 605 Investigations Insurance Fraud a report or information pertinent  
 606 to such knowledge or belief and such additional information  
 607 relative thereto as the department may request. Any professional  
 608 practitioner licensed or regulated by the Department of Business  
 609 and Professional Regulation, except as otherwise provided by

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610 law, any medical review committee as defined in s. 766.101, any  
 611 private medical review committee, and any insurer, agent, or  
 612 other person licensed under the code, or an employee thereof,  
 613 having knowledge or who believes that a fraudulent insurance act  
 614 or any other act or practice which, upon conviction, constitutes  
 615 a felony or a misdemeanor under the code, or under s. 817.234,  
 616 is being or has been committed shall send to the Division of  
 617 Criminal Investigations Insurance Fraud a report or information  
 618 pertinent to such knowledge or belief and such additional  
 619 information relative thereto as the department may require. The  
 620 Division of Criminal Investigations Insurance Fraud shall review  
 621 such information or reports and select such information or  
 622 reports as, in its judgment, may require further investigation.  
 623 It shall then cause an independent examination of the facts  
 624 surrounding such information or report to be made to determine  
 625 the extent, if any, to which a fraudulent insurance act or any  
 626 other act or practice which, upon conviction, constitutes a  
 627 felony or a misdemeanor under the code, or under s. 817.234, is  
 628 being committed. The Division of Criminal Investigations  
 629 Insurance Fraud shall report any alleged violations of law which  
 630 its investigations disclose to the appropriate licensing agency  
 631 and state attorney or other prosecuting agency having  
 632 jurisdiction with respect to any such violation, as provided in  
 633 s. 624.310. If prosecution by the state attorney or other  
 634 prosecuting agency having jurisdiction with respect to such  
 635 violation is not begun within 60 days of the division's report,  
 636 the state attorney or other prosecuting agency having  
 637 jurisdiction with respect to such violation shall inform the  
 638 division of the reasons for the lack of prosecution.

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639 Section 18. Subsections (1), (2), and (3) of section  
640 626.9891, Florida Statutes, are amended to read:

641 626.9891 Insurer anti-fraud investigative units; reporting  
642 requirements; penalties for noncompliance.—

643 (1) ~~Each~~ Every insurer admitted to do business in this  
644 state who in the previous calendar year, at any time during that  
645 year, had \$10 million or more in direct premiums written shall:

646 (a) Establish and maintain a unit or division within the  
647 company to investigate possible fraudulent claims by insureds or  
648 by persons making claims for services or repairs against  
649 policies held by insureds; or

650 (b) Contract with others to investigate possible fraudulent  
651 claims for services or repairs against policies held by  
652 insureds.

653  
654 An insurer subject to this subsection shall file with the  
655 Division of Criminal Investigations Insurance Fraud of the  
656 department on or before July 1, 1996, a detailed description of  
657 the unit or division established pursuant to paragraph (a) or a  
658 copy of the contract and related documents required by paragraph  
659 (b).

660 (2) Every insurer admitted to do business in this state,  
661 which in the previous calendar year had less than \$10 million in  
662 direct premiums written, must adopt an anti-fraud plan and file  
663 it with the Division of Criminal Investigations Insurance Fraud  
664 of the department on or before July 1, 1996. An insurer may, in  
665 lieu of adopting and filing an anti-fraud plan, comply with ~~the~~  
666 ~~provisions of~~ subsection (1).

667 (3) Each insurer's insurers anti-fraud plan must plans

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668 ~~shall~~ include all of the following:

669 (a) A description of the insurer's procedures for detecting  
670 and investigating possible fraudulent insurance acts.†

671 (b) A description of the insurer's procedures for the  
672 mandatory reporting of possible fraudulent insurance acts to the  
673 Division of Criminal Investigations Insurance Fraud of the  
674 department.†

675 (c) A description of the insurer's plan for anti-fraud  
676 education and training of its claims adjusters or other  
677 personnel.† ~~and~~

678 (d) A written description or chart outlining the  
679 organizational arrangement of the insurer's anti-fraud personnel  
680 who are responsible for the investigation and reporting of  
681 possible fraudulent insurance acts.

682 Section 19. Subsection (2) of section 626.9892, Florida  
683 Statutes, is amended to read:

684 626.9892 Anti-Fraud Reward Program; reporting of insurance  
685 fraud.—

686 (2) The department may pay rewards of up to \$25,000 to  
687 persons providing information leading to the arrest and  
688 conviction of persons committing crimes investigated by the  
689 Division of Criminal Investigations Insurance Fraud arising from  
690 violations of s. 440.105, s. 624.15, s. 626.9541, s. 626.989, or  
691 s. 817.234.

692 Section 20. Subsection (1) of section 626.9893, Florida  
693 Statutes, is amended to read:

694 626.9893 Disposition of revenues; criminal or forfeiture  
695 proceedings.—

696 (1) The Division of Criminal Investigations Insurance Fraud

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697 of the Department of Financial Services may deposit revenues  
698 received as a result of criminal proceedings or forfeiture  
699 proceedings, other than revenues deposited into the Department  
700 of Financial Services' Federal Law Enforcement Trust Fund under  
701 s. 17.43, into the Insurance Regulatory Trust Fund. Moneys  
702 deposited pursuant to this section shall be separately accounted  
703 for and shall be used solely for the division to carry out its  
704 duties and responsibilities.

705 Section 21. Subsection (2) of section 626.9894, Florida  
706 Statutes, is amended to read:

707 626.9894 Gifts and grants.—

708 (2) All rights to, interest in, and title to such donated  
709 or granted property shall immediately vest in the Division of  
710 Criminal Investigations ~~Insurance Fraud~~ upon donation. The  
711 division may hold such property in coownership, sell its  
712 interest in the property, liquidate its interest in the  
713 property, or dispose of its interest in the property in any  
714 other reasonable manner.

715 Section 22. Paragraph (a) of subsection (1) of section  
716 626.9895, Florida Statutes, is amended to read:

717 626.9895 Motor vehicle insurance fraud direct-support  
718 organization.—

719 (1) DEFINITIONS.—As used in this section, the term:

720 (a) "Division" means the Division of Criminal  
721 Investigations ~~Insurance Fraud~~ of the Department of Financial  
722 Services.

723 Section 23. Section 626.99278, Florida Statutes, is amended  
724 to read:

725 626.99278 Viatical provider anti-fraud plan.—Every licensed

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726 viatical settlement provider and registered life expectancy  
727 provider must adopt an anti-fraud plan and file it with the  
728 Division of Criminal Investigations ~~Insurance Fraud~~ of the  
729 department. Each anti-fraud plan shall include:

730 (1) A description of the procedures for detecting and  
731 investigating possible fraudulent acts and procedures for  
732 resolving material inconsistencies between medical records and  
733 insurance applications.

734 (2) A description of the procedures for the mandatory  
735 reporting of possible fraudulent insurance acts and prohibited  
736 practices set forth in s. 626.99275 to the Division of Criminal  
737 Investigations ~~Insurance Fraud~~ of the department.

738 (3) A description of the plan for anti-fraud education and  
739 training of its underwriters or other personnel.

740 (4) A written description or chart outlining the  
741 organizational arrangement of the anti-fraud personnel who are  
742 responsible for the investigation and reporting of possible  
743 fraudulent insurance acts and for the investigation of  
744 unresolved material inconsistencies between medical records and  
745 insurance applications.

746 (5) For viatical settlement providers, a description of the  
747 procedures used to perform initial and continuing review of the  
748 accuracy of life expectancies used in connection with a viatical  
749 settlement contract or viatical settlement investment.

750 Section 24. Paragraph (k) of subsection (6) of section  
751 627.351, Florida Statutes, is amended to read:

752 627.351 Insurance risk apportionment plans.—

753 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

754 (k)1. The corporation shall establish and maintain a unit

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755 or division to investigate possible fraudulent claims by  
 756 insureds or by persons making claims for services or repairs  
 757 against policies held by insureds; or it may contract with  
 758 others to investigate possible fraudulent claims for services or  
 759 repairs against policies held by the corporation pursuant to s.  
 760 626.9891. The corporation must comply with reporting  
 761 requirements of s. 626.9891. An employee of the corporation  
 762 shall notify the corporation's Office of the Inspector General  
 763 and the Division of Criminal Investigations ~~Insurance-Fraud~~  
 764 within 48 hours after having information that would lead a  
 765 reasonable person to suspect that fraud may have been committed  
 766 by any employee of the corporation.

767 2. The corporation shall establish a unit or division  
 768 responsible for receiving and responding to consumer complaints,  
 769 which unit or division is the sole responsibility of a senior  
 770 manager of the corporation.

771 Section 25. Subsections (4) and (7) of section 627.711,  
 772 Florida Statutes, are amended to read:

773 627.711 Notice of premium discounts for hurricane loss  
 774 mitigation; uniform mitigation verification inspection form.—

775 (4) An authorized mitigation inspector that signs a uniform  
 776 mitigation form, and a direct employee authorized to conduct  
 777 mitigation verification inspections under subsection paragraph  
 778 (3), may not commit misconduct in performing hurricane  
 779 mitigation inspections or in completing a uniform mitigation  
 780 form that causes financial harm to a customer or their insurer;  
 781 or that jeopardizes a customer's health and safety. Misconduct  
 782 occurs when an authorized mitigation inspector signs a uniform  
 783 mitigation verification form that:

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784 (a) Falsely indicates that he or she personally inspected  
 785 the structures referenced by the form;

786 (b) Falsely indicates the existence of a feature which  
 787 entitles an insured to a mitigation discount which the inspector  
 788 knows does not exist or did not personally inspect;

789 (c) Contains erroneous information due to the gross  
 790 negligence of the inspector; or

791 (d) Contains a pattern of demonstrably false information  
 792 regarding the existence of mitigation features that could give  
 793 an insured a false evaluation of the ability of the structure to  
 794 withstand major damage from a hurricane endangering the safety  
 795 of the insured's life and property.

796 (7) An insurer, person, or other entity that obtains  
 797 evidence of fraud or evidence that an authorized mitigation  
 798 inspector or an employee authorized to conduct mitigation  
 799 verification inspections under subsection paragraph (3) has made  
 800 false statements in the completion of a mitigation inspection  
 801 form shall file a report with the Division of Criminal  
 802 Investigations ~~Insurance-Fraud~~, along with all of the evidence  
 803 in its possession that supports the allegation of fraud or  
 804 falsity. An insurer, person, or other entity making the report  
 805 shall be immune from liability, in accordance with s.  
 806 626.989(4), for any statements made in the report, during the  
 807 investigation, or in connection with the report. The Division of  
 808 Criminal Investigations ~~Insurance-Fraud~~ shall issue an  
 809 investigative report if it finds that probable cause exists to  
 810 believe that the authorized mitigation inspector, or an employee  
 811 authorized to conduct mitigation verification inspections under  
 812 subsection paragraph (3), made intentionally false or fraudulent

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813 statements in the inspection form. Upon conclusion of the  
 814 investigation and a finding of probable cause that a violation  
 815 has occurred, the Division of Criminal Investigations ~~Insurance~~  
 816 ~~Fraud~~ shall send a copy of the investigative report to the  
 817 office and a copy to the agency responsible for the professional  
 818 licensure of the authorized mitigation inspector, whether or not  
 819 a prosecutor takes action based upon the report.

820 Section 26. Paragraph (i) of subsection (4) and subsection  
 821 (14) of section 627.736, Florida Statutes, are amended to read:  
 822 627.736 Required personal injury protection benefits;  
 823 exclusions; priority; claims.—

824 (4) PAYMENT OF BENEFITS.—Benefits due from an insurer under  
 825 ss. 627.730-627.7405 are primary, except that benefits received  
 826 under any workers' compensation law must be credited against the  
 827 benefits provided by subsection (1) and are due and payable as  
 828 loss accrues upon receipt of reasonable proof of such loss and  
 829 the amount of expenses and loss incurred which are covered by  
 830 the policy issued under ss. 627.730-627.7405. If the Agency for  
 831 Health Care Administration provides, pays, or becomes liable for  
 832 medical assistance under the Medicaid program related to injury,  
 833 sickness, disease, or death arising out of the ownership,  
 834 maintenance, or use of a motor vehicle, the benefits under ss.  
 835 627.730-627.7405 are subject to the Medicaid program. However,  
 836 within 30 days after receiving notice that the Medicaid program  
 837 paid such benefits, the insurer shall repay the full amount of  
 838 the benefits to the Medicaid program.

839 (i) If an insurer has a reasonable belief that a fraudulent  
 840 insurance act, for the purposes of s. 626.989 or s. 817.234, has  
 841 been committed, the insurer shall notify the claimant, in

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842 writing, within 30 days after submission of the claim that the  
 843 claim is being investigated for suspected fraud. Beginning at  
 844 the end of the initial 30-day period, the insurer has an  
 845 additional 60 days to conduct its fraud investigation.  
 846 Notwithstanding subsection (10), no later than 90 days after the  
 847 submission of the claim, the insurer must deny the claim or pay  
 848 the claim with simple interest as provided in paragraph (d).  
 849 Interest shall be assessed from the day the claim was submitted  
 850 until the day the claim is paid. All claims denied for suspected  
 851 fraudulent insurance acts shall be reported to the Division of  
 852 Criminal Investigations ~~Insurance~~ ~~Fraud~~.

853 (14) FRAUD ADVISORY NOTICE.—Upon receiving notice of a  
 854 claim under this section, an insurer shall provide a notice to  
 855 the insured or to a person for whom a claim for reimbursement  
 856 for diagnosis or treatment of injuries has been filed, advising  
 857 that:

858 (a) Pursuant to s. 626.9892, the Department of Financial  
 859 Services may pay rewards of up to \$25,000 to persons providing  
 860 information leading to the arrest and conviction of persons  
 861 committing crimes investigated by the Division of Criminal  
 862 Investigations ~~Insurance~~ ~~Fraud~~ arising from violations of s.  
 863 440.105, s. 624.15, s. 626.9541, s. 626.989, or s. 817.234.

864 (b) Solicitation of a person injured in a motor vehicle  
 865 crash for purposes of filing personal injury protection or tort  
 866 claims could be a violation of s. 817.234, s. 817.505, or the  
 867 rules regulating The Florida Bar and should be immediately  
 868 reported to the Division of Criminal Investigations ~~Insurance~~  
 869 ~~Fraud~~ if such conduct has taken place.

870 Section 27. Paragraphs (b) and (c) of subsection (1) of

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871 section 627.7401, Florida Statutes, are amended to read:  
 872 627.7401 Notification of insured's rights.—  
 873 (1) The commission, by rule, shall adopt a form for the  
 874 notification of insureds of their right to receive personal  
 875 injury protection benefits under the Florida Motor Vehicle No-  
 876 Fault Law. Such notice shall include:  
 877 (b) An advisory informing insureds that:  
 878 1. Pursuant to s. 626.9892, the Department of Financial  
 879 Services may pay rewards of up to \$25,000 to persons providing  
 880 information leading to the arrest and conviction of persons  
 881 committing crimes investigated by the Division of Criminal  
 882 Investigations Insurance Fraud arising from violations of s.  
 883 440.105, s. 624.15, s. 626.9541, s. 626.989, or s. 817.234.  
 884 2. Pursuant to s. 627.736(5)(e)1., if the insured notifies  
 885 the insurer of a billing error, the insured may be entitled to a  
 886 certain percentage of a reduction in the amount paid by the  
 887 insured's motor vehicle insurer.  
 888 (c) A notice that solicitation of a person injured in a  
 889 motor vehicle crash for purposes of filing personal injury  
 890 protection or tort claims could be a violation of s. 817.234, s.  
 891 817.505, or the rules regulating The Florida Bar and should be  
 892 immediately reported to the Division of Criminal Investigations  
 893 ~~Insurance Fraud~~ if such conduct has taken place.  
 894 Section 28. Subsection (2) of section 631.156, Florida  
 895 Statutes, is amended to read:  
 896 631.156 Investigation by the department; scope of  
 897 authority; sharing of materials.—  
 898 (2) The department may provide documents, books, and  
 899 records; other investigative products, work product, and

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900 analysis; and copies of any or all of such materials to the  
 901 Division of Criminal Investigations ~~Insurance Fraud~~ or any other  
 902 appropriate government agency. The sharing of these materials  
 903 shall not waive any work product or other privilege otherwise  
 904 applicable under law.  
 905 Section 29. Subsection (4) of section 641.30, Florida  
 906 Statutes, is amended to read:  
 907 641.30 Construction and relationship to other laws.—  
 908 (4) The Division of Criminal Investigations ~~Insurance Fraud~~  
 909 of the department is vested with all powers granted to it under  
 910 the Florida Insurance Code with respect to the investigation of  
 911 any violation of this part.  
 912 Section 30. Paragraph (1) of subsection (6) of section  
 913 932.7055, Florida Statutes, is amended to read:  
 914 932.7055 Disposition of liens and forfeited property.—  
 915 (6) If the seizing agency is a state agency, all remaining  
 916 proceeds shall be deposited into the General Revenue Fund.  
 917 However, if the seizing agency is:  
 918 (1) The Division of Criminal Investigations ~~Insurance Fraud~~  
 919 of the Department of Financial Services, the proceeds accrued  
 920 pursuant to the provisions of the Florida Contraband Forfeiture  
 921 Act shall be deposited into the Insurance Regulatory Trust Fund  
 922 as provided in s. 626.9893 or into the Department of Financial  
 923 Services' Federal Law Enforcement Trust Fund as provided in s.  
 924 17.43, as applicable.  
 925 Section 31. This act shall take effect July 1, 2015.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/16

Meeting Date

1402

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name BG Murphy

Job Title Deputy Legislative Affairs Director, DFS

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Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing CFO Atwater

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 (10/14/14)

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: PCS/CS/SB 1444 (654302)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Commerce and Tourism Committee; and Senator Richter

SUBJECT: Consumer Licensing

DATE: April 15, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Blizzard</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Blizzard</u>	<u>Kynoch</u>	<u>AP</u>	<u>Pre-meeting</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/CS/SB 1444 modifies several areas regulated by the Department of Agriculture and Consumer Services (DACS), including:

- Implementing license fee waivers for veterans, veterans' spouses, and veterans' businesses;
- Updating the criminal background check processes for applicants and licensees under ch. 493, F.S., relating to private investigation, private security, and repossession services;
- Transferring the enforcement of the Commercial Weight-Loss Practices Act to the Department of Health;
- Allowing amusement ride operators to provide their own inspection form, and exempting specific rides from inspection requirements;
- Implementing a live-fire requirement for concealed weapon licensure;
- Streamlining renewal of concealed weapons licenses;
- Allowing notice of service to firearm or concealed weapon license holders by mail or e-mail;
- Allowing qualified tax collectors to print and deliver renewal firearm or concealed weapons licenses;
- Reducing application fees for firearm and concealed weapon licenses; and
- Clarifies that "recovery agencies" exclude agencies that refer repossessions to licensed recovery agents or agencies, but do not directly perform repossessions.

The bill has a significant impact on state funds. See Section V.

The bill provides an effective date of July, 1, 2015.

## II. Present Situation:

The Department of Agriculture and Consumer Services (DACS) safeguards the public from unsafe or defective products and deceptive business practices. The Division of Consumer Services within the DACS regulates specific business activities, including commercial weight loss practices, telephone solicitations, pawnshops, health studios, sellers of travel, and telemarketing.<sup>1</sup> The Division of Licensing within the DACS is responsible for investigating and issuing licenses to conduct private security, private investigative, and recovery services pursuant to ch. 493, F.S. The Division of Licensing also issues concealed weapon or firearm licenses pursuant to s. 790.06, F.S.<sup>2</sup>

Florida has more than 1.6 million veteran residents<sup>3</sup> and 176,727 veteran-owned businesses.<sup>4</sup> The Department of Management Services has issued 384 service disabled veteran-owned business certifications.<sup>5</sup> As of July 1, 2014, both the Department of Business and Professional Regulation and the Department of Health implemented initial licensing fee waivers for veterans and their spouses.<sup>6</sup>

## III. Effect of Proposed Changes:

### Licensing Fee Waivers

The bill waives first-time licensing application fees for an honorably discharged veteran of the United States Armed Forces, his or her spouse, or a business entity in which he or she has a majority ownership stake on the following classes of licenses:

License	Current Initial Licensing Fee
Land Surveyor & Mapper	\$180 - \$255
Health Studio	\$300
Commercial Telephone Seller	\$1,500
Telemarketing Salesperson	\$50
Movers & Moving Broker	\$300

<sup>1</sup> See <http://www.freshfromflorida.com/Divisions-Offices/Consumer-Services>, last accessed March 11, 2015.

<sup>2</sup> See <http://www.freshfromflorida.com/Divisions-Offices/Licensing>, last accessed March 11, 2015.

<sup>3</sup> Florida Department of Veterans' Affairs, *Fast Facts*, [http://floridavets.org/?page\\_id=50](http://floridavets.org/?page_id=50) (last accessed March 12, 2015).

<sup>4</sup> Small Business Administration, *Office of Advocacy, Veteran-owned Businesses and their Owners—Data from the Census Bureau's Survey of Business Owners*, (March 2012). Available at <https://www.sba.gov/sites/default/files/393tot.pdf> (last accessed March 12, 2015).

<sup>5</sup> As of March 12, 2015. Florida Department of Management Services, *Certified Vendor Directory*, available at [https://osd.dms.myflorida.com/directories/results?directory%5Bcommodity\\_code%5D=&directory%5Bcommodity\\_description%5D=&directory%5Bcounty%5D=&directory%5Bdesignation%5D=Service+Disabled+Veteran&directory%5Bvendor\\_name%5D=](https://osd.dms.myflorida.com/directories/results?directory%5Bcommodity_code%5D=&directory%5Bcommodity_description%5D=&directory%5Bcounty%5D=&directory%5Bdesignation%5D=Service+Disabled+Veteran&directory%5Bvendor_name%5D=) (last accessed March 12, 2015).

<sup>6</sup> Florida Department of Business and Professional Regulation, *Military and Veteran Spouses*, available at <http://www.myfloridalicense.com/dbpr/MilitarySpouse.html> (last accessed March 12, 2015); see also, Florida Department of Health, *Veterans*, available at <http://www.floridahealth.gov/licensing-and-regulation/armed-forces/veterans/index.html> (last accessed March 12, 2015).

Liquefied Petroleum Gas Related License	\$100 - \$525
Pawnbroker	\$300
Motor Vehicle Repair Shop	\$50 - \$300
Sellers of Travel	\$300-\$2,500

In addition, to qualify for the fee waiver, the veteran, his or her spouse, or business must submit an application for licensure within 60 months after the date of the veteran's discharge from the United States Armed Forces and provide a copy of his or her discharge paperwork; a valid marriage license where applicable; and proof of ownership interest where applicable.

**Section 1** amends s. 472.015, F.S. (surveyors and mappers), **Section 9** amends s. 501.015, F.S. (health studios), **Sections 12 and 13** amend ss. 501.605 and 501.607, F.S. (telemarketing), **Section 14** amends s. 507.03, F.S. (intrastate movers), **Section 15** amends s. 527.02, F.S. (liquefied petroleum gasoline), **Section 16** amends s. 539.001, F.S. (pawnbrokers), **Section 17** amends s. 559.904, F.S. (motor vehicle repair), and **Section 18** amends s. 559.928, F.S. (sellers of travel). The above mentioned sections waive first-time licensing application fees for an honorably discharged veteran of the United States Armed Forces, his or her spouse, or a business entity in which he or she has majority ownership.

### **Fingerprint Retention and Processing**

Private investigators, private security officers, and repossession services officers are regulated by the DACS pursuant to ch. 493, F.S. The DACS has 156,266 currently valid licenses issued pursuant to ch. 493, F.S.<sup>7</sup> Currently, applicants for licensure under ch. 493, F.S., must submit a full set of fingerprints for a background check conducted by the Florida Department of Law Enforcement (FDLE).<sup>8</sup> Once the initial background check has been performed by the FDLE, the licensees' fingerprints are discarded. This makes the DACS' duty to conduct ongoing investigations into its licensees' criminal activity<sup>9</sup> more difficult. The agency must perform a name-based search of arrest records and then perform further checks to ensure accurate identification.<sup>10</sup>

**Section 5** updates the background check processes by requiring the DACS to enroll applicants' fingerprints in the FDLE's Applicant Fingerprint Retention and Notification Program (AFRNP),<sup>11</sup> and in the Federal Bureau of Investigation's (FBI) Next Generation Identification (NGI) project, when the program is fully active.<sup>12</sup> This enables the FDLE to conduct ongoing,

<sup>7</sup> Florida Department of Agriculture and Consumer Services, Division of Licensing, *Number of Licensees by Type*, (February 28, 2015). Available at [http://www.freshfromflorida.com/content/download/7471/118627/Number\\_of\\_Licensees\\_By\\_Type.pdf](http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf) (last accessed March 12, 2015).

<sup>8</sup> Section 493.6105(3)(j), F.S.

<sup>9</sup> Section 493.6118(1), F.S.

<sup>10</sup> Florida Department of Agriculture and Consumer Services, *Legislative Bill Analysis for HB 997* (March 3, 2015).

<sup>11</sup> Section 943.05, F.S. See also Florida Department of Law Enforcement, *Criminal History Record Checks/ Background Checks Fact Sheet* (February 1, 2015). Available at <http://www.fdle.state.fl.us/Content/Criminal-History/FAQ.aspx> (last accessed March 11, 2015).

<sup>12</sup> The FBI's NGI project is in development, but has not yet been implemented. The program will allow applicant's fingerprints to be retained by the FBI and searched against incoming arrest fingerprints nationwide in a manner similar to the

fingerprint-based, state and national background checks on ch. 493, F.S., licensees. The bill also requires the FDLE to report any arrest record it discovers to the DACS. In turn, the DACS must notify the licensee's employing agency of the arrest record.

In accordance with the changes made by section 4, **Section 3** requires initial applicants for licensure under ch. 493, F.S., to submit:

- A full set of fingerprints;
- A one-time fingerprint processing fee;
- An annual fingerprint retention fee to cover the cost of the FDLE's AFRNP;<sup>13</sup> and
- A one-time enrollment fee for enrollment of the fingerprints in the FBI's NGI project.

In addition, applicants for renewal of ch. 493, F.S., license are required by **Section 6** of the bill to submit:

- A full set of fingerprints, if the applicant held a valid license issued under ch. 493, F.S., before January 1, 2016;
- A one-time fingerprint processing fee;
- A renewal fee; and
- An annual fingerprint retention fee to cover the cost of the FDLE'S AFRNP.

Participation at the statewide level requires payment of an annual fee of \$6.00 for each year the license is valid. Participation in the fingerprint retention program at the national level requires payment of a \$13.00 fee at the time of initial application to cover costs of fingerprint retention for as long as the license is valid.

In 2012, the U.S. Department of Justice removed the requirement that a permanent legal resident alien prove his or her residence in the state for 90 days to be able to purchase or own a firearm.<sup>14</sup> **Section 4** conforms s. 493.6106, F.S., specific to applicants for licensure under ch. 493, F.S., to this change.

**Sections 7 and 8** correct statutory cross-references.

### **Commercial Weight-Loss Clinics**

Currently, the DACS enforces the "Commercial Weight-Loss Practices Act (act)."<sup>15</sup> This act requires weight-loss providers to give consumers a Weight Loss Consumer Bill of Rights, disclose information about the provider and program, and provide itemized statements. Currently, dietetics, nutrition practices, and other weight-loss professions are regulated by the Department of Health.<sup>16</sup>

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AFRNP in Florida. Florida Department of Agriculture and Consumer Services, *Legislative Bill Analysis for HB 997* (March 3, 2015).

<sup>13</sup> Under the bill, the DACS must set the retention and enrollment fees by rule. The DACS states the annual retention fee will be \$6.00, and that the FBI enrollment fee will be \$13.00. Florida Department of Agriculture and Consumer Services, *Legislative Bill Analysis for HB 997* (March 3, 2015).

<sup>14</sup> See U.S. Department of Justice, *Questions and Answers – Revised ATF F4473*, (April, 2012), available at <http://www.atf.gov/files/regulations-rulings/rulings/atf-rulings/atf-ruling-2010-6.pdf> (last accessed March 11, 2015).

<sup>15</sup> Sections 501.057 – 501.0583, F.S.

<sup>16</sup> See chapter 468, part X, F.S.

**Sections 10 and 11** transfer enforcement of the Commercial Weight-Loss Practices Act to the Department of Health. The DACS has no enforcement authority or positions associated with the Commercial Weight-Loss Act to transfer to the Department of Health.

### **Amusement Ride Safety Standards**

Florida has approximately 245 amusement parks and 190 traveling amusement companies that are subject to inspection by the DACS.<sup>17</sup> These parks include carnivals, water parks, go-kart courses, and bungee-jumping parks.<sup>18</sup> A temporary amusement ride must be inspected by the DACS each time it is moved or set up in a new location. Permanent rides are inspected semi-annually.<sup>19</sup> Additionally, parks subject to the regulations of the DACS must show proof of sufficient employee training and insurance.

**Section 19** exempts the following venues from s. 616.242, F.S, for amusement rides permitting, inspection, and insurance requirements:

- A water-related amusement ride operated as an incidental amenity to the core business of a lodging and food service establishment or membership campground that does not offer a day rate.
- An amusement ride operated as an incidental amenity to the primary business of a membership-only facility that does not offer a day rate.
- A permanent facility that is not open to the general public, and that is operated by a nonprofit corporation registered under ch. 496, F.S.

These exemptions are targeted at generally smaller water attractions or rides at hotels or campsites, private country clubs or playgrounds, and facilities run by, e.g. the YMCA (two non-profit facilities currently qualify for this exemption).<sup>20</sup>

The bill also allows owners or managers of amusement rides to request to use alternate inspections and employee training forms than those prescribed by departmental rules. This is allowed if the alternate form includes at least the information required by the prescribed form.

### **Recovery Agents and Agencies**

The DACS has approximately 857 licensed recovery agents and agent interns, and 343 licensed recovery agencies.<sup>21</sup> A “recovery agent” is an individual or agency that advertises as providing or performing repossessions.<sup>22</sup> Recovery agents are subject to regulation under part III of ch. 493, F.S. Banks, bank holding companies, credit unions, or small loan companies that operate

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<sup>17</sup> Florida Department of Agriculture and Consumer Services, *Fair Rides Inspection*. Available at <http://www.freshfromflorida.com/Divisions-Offices/Consumer-Services/Business-Services/Fair-Rides> (last accessed March 12, 2015).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Conversation with staff of the Department of Agriculture and Consumer Services, on March 6, 2015.

<sup>21</sup> Florida Department of Agriculture and Consumer Services, Division of Licensing, *Number of Licensees by Type*, (February 28, 2015). Available at [http://www.freshfromflorida.com/content/download/7471/118627/Number\\_of\\_Licensees\\_By\\_Type.pdf](http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf) (last accessed March 12, 2015).

pursuant to ch. 516 and 520; any consumer credit reporting agency regulated by 15 USC 1681; or any collection agency not engaged in repossessions are specifically excluded from the regulations of ch. 493.<sup>23</sup>

**Section 2** clarifies this exclusion in the definition of “recovery agency.”

### **Concealed Weapon and Firearm Licensing**

Under current law, certain concealed weapons or firearms pre-licensing course instructors must maintain records certifying that they observed their student safely handle and discharge a firearm. **Section 20** of this bill clarifies s. 790.06, F.S., to require that the instructor maintain records certifying that *while he or she was physically present*, the instructor observed the student safely handle and *actually* discharge (“live fire”) a firearm *using a firearm and ammunition as defined in s. 790.001, F.S.* This ensures that the instruction occurs in person rather than by video conference.

Subject to this section, application fees for concealed weapon and firearm licensure will be reduced from \$70 to \$60 for initial applicants, and from \$60 to \$50 for renewal applicants.

The bill also provides for notice of the suspension or revocation of a concealed weapon or firearm license by either the first-class mailing to the licensee’s last known mailing address furnished to the DACS, or by e-mail. For purposes of this section, the notice is considered complete at the time the e-mail is sent, or after 20 days from the deposit of the letter providing notice through the mail.

Currently, s. 790.06(11), F.S., requires a licensee who seeks to renew his or her firearm or concealed weapon license to submit a *notarized* affidavit stating that the licensee remains qualified for the license. **Section 20** of the bill amends s. 790.06(11), F.S., to require an affidavit *submitted under oath and under penalty of perjury* instead.

As of July 1, 2014, tax collectors who entered into a memorandum of understanding with the DACS may collect initial and renewal applications for firearms and concealed weapons permits. **Section 21** expands the qualified tax collectors’ capabilities to include the printing and delivery of a concealed weapon or firearm license to an individual who renews his or her license at the tax collector’s office. Tax collectors may collect fees for such services.

**Section 12** requires the owner, operator, officer, director, partner, or manager of a telephone solicitor business (commercial telephone seller) to provide a physical location of its telephone solicitor business on its application for licensure with the DACS, where previously a mail drop address could be provided.

## **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:****Procedural Due Process and Notice Requirements, Generally**

The Due Process Clauses of the Fifth and Fourteenth Amendments contemplate fair process. “An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objection.”<sup>21</sup> Three factors must be weighed to determine the degree to which due process protections apply:

- The private interest that will be affected;
- The risk of erroneous deprivation of such interest through the procedures used; and
- The government’s interest, including fiscal and administrative burdens of additional process.<sup>22</sup>

The DACS seeks to preserve the public records exemption of personal identifying information of an individual who applied for or received a firearm or concealed weapon license by substituting direct mail or e-mail for the publication of such information in general circulation newspapers as a method of notice.<sup>23</sup> Courts have not ruled directly on whether replacing notice by publication with notice by first class mail without proof of knowledge of receipt is sufficient procedural due process.<sup>24</sup>

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

See Private Sector Impact section below.

**B. Private Sector Impact:**

Under PCS/CS/SB 1444, veterans, spouses of veterans, and majority-owned veteran businesses will qualify for initial specific license fee waivers. Specific businesses will be exempt from amusement ride inspections and the costs associated therewith.

<sup>21</sup> *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

<sup>22</sup> *Mathews v. Eldridge*, 424 U.S. 319 (1976); *Hadley v. Dept. of Admin.*, 411 So.2d 184 (Fla. 1982).

<sup>23</sup> See s. 790.0601, F.S.; Florida Department of Agriculture and Consumer Services, *Legislative Bill Analysis for HB 997* (March 3, 2015).

<sup>24</sup> *Anderson v. State*, 87 So. 3d 774, 776 (Fla. 2012).

Private investigators, private security guards, and recovery agents will be subject to additional fees due to fingerprint retention submission requirements.

Individuals seeking a first-time concealed weapon or firearm license will be subject to a \$60 application fee, reduced from \$70; renewal license fees will be \$50, reduced from \$60.

C. Government Sector Impact:

**Military Veterans**

The DACS estimates a reduction in revenue in the General Inspection Trust Fund generated from fee waivers related to military veterans and spouses in the following amounts:

	FY 2015-16	FY 2016-17	FY 2017-18
Military Veteran Fee Waiver	(\$49,350)	(\$49,350)	(\$49,350)

**Amusement Rides**

The department estimates the following reduced revenue from fees that will no longer be collected from organizations made exempt from regulation under this bill.

	FY 2015-16	FY 2016-17	FY 2017-18
Amusement Ride Fee Exemptions	(\$2,280)	(\$2,280)	(\$2,280)

**Fingerprint Retention**

The department estimates the following revenue increases from new fees related to fingerprint retention programs for private investigators, private security guards and recovery agents:

	FY 2015-16	FY 2016-17	FY 2017-18
Federal Fingerprint Retention Fees	\$1,543,406	\$1,543,406	\$471,423
State Fingerprint Retention Fees	\$1,037,166	\$1,037,166	\$689,496
<b>Total</b>	<b>\$2,580,572</b>	<b>\$2,580,572</b>	<b>\$1,160,919</b>

The fingerprint retention program at the state level requires applicants to pay an annual fee of \$6.00 for each year the license is valid. Participation in the fingerprint retention program at the federal level requires applicants to pay a \$13.00 fee at the time of initial application. These fees will be collected by the DACS and deposited into Division of Licensing Trust Fund where they will be disbursed to the FBI and the FDLE for the administration of fingerprint retention programs.

**Concealed Weapon Licenses**

The DACS estimates the following revenue reduction in the Division of Licensing Trust Fund due to the reduction in concealed weapon license (CWL) fees by \$10 each. The Division of Licensing within the DACS indicates that the reduced fee revenue is sufficient to continue to fund the program.

	FY 2015-16	FY 2016-17	FY 2017-18
New CWL Fee Reduction	(\$1,280,000)	(\$1,280,000)	(\$1,280,000)
Renewal CWL Fee Reduction	(\$1,103,050)	(\$1,743,740)	(\$1,397,430)
<b>Total:</b>	<b>(\$2,383,050)</b>	<b>(\$3,023,740)</b>	<b>(\$2,677,430)</b>

**Concealed Weapons License Notice of Service of Process**

The department estimates the following reduced expenditures in the Division of Licensing Trust Fund relating to publishing costs associated with notification of revocation or suspension of concealed weapon licenses:

	FY 2015-16	FY 2016-17	FY 2017-18
CWL Notice of Service of Process	(\$158,948)	(\$158,948)	(\$158,948)

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 472.015, 493.6101, 493.6105, 493.6106, 493.6108, 493.6113, 493.6115, 493.6118, 501.015, 501.0581, 501.0583, 501.605, 501.607, 507.03, 527.02, 539.001, 559.904, 559.928, 616.242, 790.06, and 790.0625.

**IX. Additional Information:**

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

**Recommended CS/CS by Appropriations Subcommittee on General Government on April 2, 2015:**

The committee substitute clarifies that individuals or agencies not directly performing repossessions, but who contract with a licensed recovery agency or agent for performance of repossessions, do not fall under the regulatory authority in ch. 493, F.S. Additionally, the committee substitute requires referral repossession services to state on any advertisement, that they do not directly perform any repossessions.

**CS by Commerce and Tourism on March 16, 2015:**

Reduces initial application fees for concealed weapon and firearm licenses from \$70 to \$60, and renewal fees from \$60 to \$50.

**B. Amendments:**

None.

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

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441324

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/16/2015	.	
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The Committee on Appropriations (Latvala) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 113 and 114

insert:

Section 1. Section 849.095, Florida Statutes, is created to read:

849.095 Ticket distribution programs exempted from chapter.—

(1) The Legislature recognizes that operators of nationally televised sporting events often experience a public demand for



441324

11 tickets to attend or participate in the events which far exceeds  
12 their supply. As a result, the general public's opportunity to  
13 purchase tickets at face value is often severely limited. Random  
14 drawings are often used by these event operators to give the  
15 chance to purchase tickets to those who wish to attend or  
16 participate in a sporting event. Courts have held that this  
17 mechanism is a reasonable and fair method to distribute tickets  
18 that are in limited supply, as opposed to a first-come, first-  
19 serve system; that the mechanism does not constitute the award  
20 of a prize; and that requiring entrants to pay an administrative  
21 fee to enter such drawings is not a violation of antigambling  
22 laws.

23 (2) As used in this section, the term:

24 (a) "Department" means the Department of Agriculture and  
25 Consumer Services.

26 (b) "Sporting event" means any athletic event:

27 1. For which a television program is shown nationally via  
28 any cable, satellite, or broadcast television network; and

29 2. Which has a demonstrated public demand for tickets which  
30 exceeds the supply of tickets.

31 (c) "Ticket distribution program" means a random drawing by  
32 which each entrant pays an administrative fee, not to exceed \$35  
33 per separate entry, for a nontransferable opportunity to win the  
34 right to purchase, at face value, one or more nontransferable  
35 tickets to attend or participate in a sporting event.

36 (3) Nothing contained in this chapter shall be applicable  
37 to participation in or the conduct of a ticket distribution  
38 program in accordance with this section, provided, however, that  
39 a sporting event operator conducts no more than one ticket



441324

40 distribution program during any 12-month period.

41 (4) The department may adopt rules to administer this  
42 section.

43

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

45 And the title is amended as follows:

46 Delete line 2

47 and insert:

48 An act relating to the Department of Agriculture and  
49 Consumer Services; creating s. 849.095, F.S.;  
50 providing legislative findings; defining terms;  
51 exempting ticket distribution programs from Florida  
52 gambling prohibitions; providing guidelines for ticket  
53 distribution programs; providing that violations are  
54 deceptive and unfair trade practices; authorizing the  
55 department to adopt rules; amending s.



127800

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
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The Committee on Appropriations (Montford) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 145 - 159.

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

And the title is amended as follows:

Delete lines 7 - 9

and insert:

by such a veteran or spouse; amending s. 493.6105,  
F.S.; requiring that



507292

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/16/2015	.	
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The Committee on Appropriations (Richter) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 356 - 371.

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

And the title is amended as follows:

Delete lines 42 - 46

and insert:

veteran or spouse; amending s. 501.0583, F.S.;



835492

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
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The Committee on Appropriations (Richter) recommended the following:

1       **Senate Substitute for Amendment (507292) (with title**  
2 **amendment)**

3  
4       Delete lines 356 - 384.

5  
6 ===== T I T L E   A M E N D M E N T =====

7 And the title is amended as follows:

8       Delete lines 42 - 51

9 and insert:

10       veteran or spouse; amending s. 501.605, F.S.;



274948

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
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The Committee on Appropriations (Richter) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 596 and 597

insert:

Section 19. Section 570.695, Florida Statutes, is created to read:

570.695 Florida veteran identification card.-

(1) Beginning January 1, 2016, the department may issue Florida veteran identification cards. Each card must bear a color photograph of the cardholder for verification purposes.



274948

11       (2) The department shall issue a Florida veteran  
12 identification card to any applicant who:  
13       (a) Is a veteran as defined in s. 1.01(14);  
14       (b) Resides in this state;  
15       (c) Submits a completed application provided by the  
16 department with accompanying documents; and  
17       (d) Pays the application fee.  
18       (3) The information to be included on the application is  
19 limited to the following:  
20       (a) Full name, including first, middle or maiden, and last  
21 names;  
22       (b) Mailing address;  
23       (c) Branch of service;  
24       (d) Optional contact telephone number or e-mail address;  
25 and  
26       (e) Florida residency statement.  
27       (4) The applicant shall submit the following documents to  
28 the department:  
29       (a) A completed application signed and verified by the  
30 applicant under oath as provided in s. 92.525(2);  
31       (b) A copy of the applicant's DD Form 214, DD Form 256, or  
32 WD AGO Form, issued by the United States Department of Defense,  
33 which displays the applicant's discharge status. Alternatively,  
34 the applicant may provide a copy of his or her valid Florida  
35 driver license bearing a capital "V" or "Veteran" designation;  
36 and  
37       (c) A fullface color photograph of the applicant taken  
38 within the preceding 90 days in which the head, including hair,  
39 measures 7/8 inches wide and 1-1/8 inches high.



274948

40       (5) The applicant shall submit a fee of \$15 to cover the  
41 cost of issuing the identification card, with any balance  
42 distributed to Friends of Florida State Forests, Inc., for the  
43 sole purpose of supporting the Operation Outdoor Freedom  
44 Program.

45       (6) Upon receipt of the fee and the documents listed in  
46 subsection (4), the department shall:

47           (a) Issue the Florida veteran identification card; or

48           (b) Return the application as incomplete and allow the  
49 applicant to resubmit it. The application fee shall be refunded  
50 to an applicant who requests a refund based on the inability to  
51 submit a completed application. The department's determination  
52 that an application is incomplete is exempt from chapter 120.

53       (7) A Florida veteran identification card does not expire.  
54 If the card is lost, a replacement card shall be issued if the  
55 applicant meets the requirements of this section.

56       (8) All moneys collected pursuant to this section shall be  
57 deposited into the Division of Licensing Trust Fund.

58 Notwithstanding s. 493.6117, moneys collected pursuant to this  
59 section shall not revert to the General Revenue Fund. However,  
60 this does not abrogate the requirement for payment of the  
61 service charge imposed pursuant to chapter 215.

62       Section 20. For the 2015-2016 fiscal year, the sums of  
63 \$114,018 in recurring funds and \$140,282 in nonrecurring funds  
64 are appropriated from the Division of Licensing Trust Fund to  
65 the Department of Agriculture and Consumer Services, and one  
66 full-time equivalent position with associated salary rate of  
67 31,109 is authorized, to implement s. 570.695, Florida Statutes,  
68 as created by this act.



274948

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

And the title is amended as follows:

Delete line 83

and insert:

by such a veteran or spouse; creating s. 570.695,  
F.S.; authorizing the department to issue Florida  
veteran identification cards; providing eligibility,  
application, and fee requirements; requiring that fee  
proceeds be deposited into the Division of Licensing  
Trust Fund; providing an appropriation and authorizing  
a position; amending s. 616.242,



782760

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
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The Committee on Appropriations (Richter) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 879 - 882

and insert:

Notwithstanding s. 120.60(5), when personal service cannot be made or the certified mail notice is returned undelivered for a notice of the suspension or revocation of a concealed weapon or firearm license or the suspension of the processing of an application for such license, the notice may be given by first-



782760

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

12 And the title is amended as follows:

13 Delete lines 2 - 103

14 and insert:

15 An act relating to the Department of Agriculture and  
16 Consumer Services; amending s. 472.015, F.S.; waiving  
17 the initial land surveying and mapping license fee for  
18 certain veterans of the United States Armed Forces,  
19 the spouses of such veterans, or a business entity  
20 that has a majority ownership held by such a veteran  
21 or spouse; amending s. 493.6101, F.S.; revising the  
22 definition of the term "recovery agency"; amending s.  
23 493.6105, F.S.; requiring that the initial license  
24 application for private investigative, private  
25 security, and repossession services include payment of  
26 fingerprint processing and fingerprint retention fees;  
27 amending s. 493.6106, F.S.; deleting a requirement for  
28 additional documentation establishing state residency  
29 for private investigative, private security, and  
30 repossession service licenses; amending s. 493.6108,  
31 F.S.; directing the Department of Law Enforcement to  
32 retain fingerprints submitted for private  
33 investigative, private security, and repossession  
34 service licenses, to enter such fingerprints into the  
35 statewide automated biometric identification system  
36 and the national retained print arrest notification  
37 program, and to report any arrest record information  
38 to the Department of Agriculture and Consumer  
39 Services; directing the Department of Agriculture and



782760

40 Consumer Services to provide information about an  
41 arrest within the state to the agency that employs the  
42 licensee; amending s. 493.6113, F.S.; requiring a  
43 person holding a private investigative, private  
44 security, or repossession service license issued  
45 before a certain date to submit upon first renewal of  
46 the license a full set of fingerprints and a  
47 fingerprint processing fee to cover the cost of  
48 entering the fingerprints in the statewide automated  
49 biometric identification system; amending ss. 493.6115  
50 and 493.6118, F.S.; conforming cross-references;  
51 amending s. 501.015, F.S.; waiving the initial health  
52 studio registration fee for certain veterans of the  
53 United States Armed Forces, the spouses of such  
54 veterans, or a business entity that has a majority  
55 ownership held by such a veteran or spouse; amending  
56 s. 501.0581, F.S.; transferring enforcement authority  
57 of the Florida Commercial Weight-Loss Practices Act  
58 from the Department of Agriculture and Consumer  
59 Services to the Department of Health; amending s.  
60 501.0583, F.S.; transferring enforcement authority of  
61 penalties for selling, delivering, bartering,  
62 furnishing, or giving weight-loss pills to persons  
63 under the age of 18 from the Department of Agriculture  
64 and Consumer Services to the Department of Health;  
65 amending s. 501.605, F.S.; prohibiting the use of a  
66 mail drop as a street address for the principal  
67 location of a commercial telephone seller; amending s.  
68 501.607, F.S.; waiving the initial salesperson license



782760

69 fees for certain veterans of the United States Armed  
70 Forces, the spouses of such veterans, or a business  
71 entity that has a majority ownership held by such a  
72 veteran or spouse; amending s. 507.03, F.S.; waiving  
73 the initial registration fee for an intrastate movers  
74 license for certain veterans of the United States  
75 Armed Forces, the spouses of such veterans, or a  
76 business entity that has a majority ownership held by  
77 such a veteran or spouse; amending s. 527.02, F.S.;  
78 waiving the original liquefied petroleum gas dealer  
79 license fee for certain veterans of the United States  
80 Armed Forces, the spouses of such veterans, or a  
81 business entity that has a majority ownership held by  
82 such a veteran or spouse; amending s. 539.001, F.S.;  
83 waiving the initial pawnbroker license fee for certain  
84 veterans of the United States Armed Forces, the  
85 spouses of such veterans, or a business entity that  
86 has a majority ownership held by such a veteran or  
87 spouse; amending s. 559.904, F.S.; waiving the initial  
88 motor vehicle repair shop registration fee for certain  
89 veterans of the United States Armed Forces, the  
90 spouses of such veterans, or a business entity that  
91 has a majority ownership held by such a veteran or  
92 spouse; amending s. 559.928, F.S.; waiving the initial  
93 seller of travel registration fee for certain veterans  
94 of the United States Armed Forces, the spouses of such  
95 veterans, or a business entity that has a majority  
96 ownership held by such a veteran or spouse; amending  
97 s. 616.242, F.S.; deleting an obsolete provision



782760

98 allowing fair owners to post a bond rather than carry  
99 a certificate of insurance; exempting water-related  
100 amusement rides operated by lodging and food service  
101 establishments and membership campgrounds, amusement  
102 rides at private, membership-only facilities, and  
103 nonprofit permanent facilities from certain safety  
104 standards; authorizing owners or managers of amusement  
105 rides to use alternate forms to record employee  
106 training and ride inspections; amending s. 790.06,  
107 F.S.; requiring firearm course instructors to maintain  
108 records attesting to the use of live fire with  
109 specified firearms and ammunition by students in his  
110 or her physical presence; revising the initial and  
111 renewal fees for a concealed weapon or firearm  
112 license; providing that the notice of the suspension  
113 or revocation of a concealed weapon or firearm license  
114 or the suspension of the processing of an application  
115 for such license may be given by first-class mail or  
116 e-mail if personal service or service by certified  
117 mail is ineffective; requiring concealed weapon or  
118 firearm license



648150

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
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The Committee on Appropriations (Richter) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 934 and 935  
insert:

Section 22. Subsection (4) is added to section 790.15,  
Florida Statutes, to read:

790.15 Discharging firearm in public or on residential  
property.—

(4) Any person who recreationally discharges a firearm  
outdoors, including for target shooting or celebratory shooting,



648150

11 in an area that the person knows or reasonably should know is  
12 primarily residential in nature and that has a residential  
13 density of one or more dwelling units per acre, commits a  
14 misdemeanor of the first degree, punishable as provided in s.  
15 775.082 or s. 775.083. This subsection does not apply:

16 (a) To a person lawfully defending life or property or  
17 performing official duties requiring the discharge of a firearm;  
18 or

19 (b) If, under the circumstances, the discharge does not  
20 pose a reasonably foreseeable risk to life, safety, or property.

21  
22 ===== T I T L E A M E N D M E N T =====

23 And the title is amended as follows:

24 Delete line 110

25 and insert:

26 licenses; amending s. 790.15, F.S.; prohibiting the  
27 recreational discharge of a firearm in certain  
28 residential areas; providing criminal penalties;  
29 providing exceptions; providing an effective date.



576-03404-15

Proposed Committee Substitute by the Committee on Appropriations  
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to consumer licensing; amending s. 472.015, F.S.; waiving the initial land surveying and mapping license fee for certain veterans of the United States Armed Forces, the spouses of such veterans, or a business entity that has a majority ownership held by such a veteran or spouse; amending s. 493.6101, F.S.; revising the definition of the term "recovery agency"; amending s. 493.6105, F.S.; requiring that the initial license application for private investigative, private security, and repossession services include payment of fingerprint processing and fingerprint retention fees; amending s. 493.6106, F.S.; deleting a requirement for additional documentation establishing state residency for private investigative, private security, and repossession service licenses; amending s. 493.6108, F.S.; directing the Department of Law Enforcement to retain fingerprints submitted for private investigative, private security, and repossession service licenses, to enter such fingerprints into the statewide automated biometric identification system and the national retained print arrest notification program, and to report any arrest record information to the Department of Agriculture and Consumer Services; directing the Department of Agriculture and Consumer Services to provide information about an arrest within



576-03404-15

the state to the agency that employs the licensee; amending s. 493.6113, F.S.; requiring a person holding a private investigative, private security, or repossession service license issued before a certain date to submit upon first renewal of the license a full set of fingerprints and a fingerprint processing fee to cover the cost of entering the fingerprints in the statewide automated biometric identification system; amending ss. 493.6115 and 493.6118, F.S.; conforming cross-references; amending s. 501.015, F.S.; waiving the initial health studio registration fee for certain veterans of the United States Armed Forces, the spouses of such veterans, or a business entity that has a majority ownership held by such a veteran or spouse; amending s. 501.0581, F.S.; transferring enforcement authority of the Florida Commercial Weight-Loss Practices Act from the Department of Agriculture and Consumer Services to the Department of Health; amending s. 501.0583, F.S.; transferring enforcement authority of penalties for selling, delivering, bartering, furnishing, or giving weight-loss pills to persons under the age of 18 from the Department of Agriculture and Consumer Services to the Department of Health; amending s. 501.605, F.S.; prohibiting the use of a mail drop as a street address for the principal location of a commercial telephone seller; amending s. 501.607, F.S.; waiving the initial salesperson license fees for certain veterans of the United States Armed Forces, the spouses of such



654302

576-03404-15

57 veterans, or a business entity that has a majority  
58 ownership held by such a veteran or spouse; amending  
59 s. 507.03, F.S.; waiving the initial registration fee  
60 for an intrastate movers license for certain veterans  
61 of the United States Armed Forces, the spouses of such  
62 veterans, or a business entity that has a majority  
63 ownership held by such a veteran or spouse; amending  
64 s. 527.02, F.S.; waiving the original liquefied  
65 petroleum gas dealer license fee for certain veterans  
66 of the United States Armed Forces, the spouses of such  
67 veterans, or a business entity that has a majority  
68 ownership held by such a veteran or spouse; amending  
69 s. 539.001, F.S.; waiving the initial pawnbroker  
70 license fee for certain veterans of the United States  
71 Armed Forces, the spouses of such veterans, or a  
72 business entity that has a majority ownership held by  
73 such a veteran or spouse; amending s. 559.904, F.S.;  
74 waiving the initial motor vehicle repair shop  
75 registration fee for certain veterans of the United  
76 States Armed Forces, the spouses of such veterans, or  
77 a business entity that has a majority ownership held  
78 by such a veteran or spouse; amending s. 559.928,  
79 F.S.; waiving the initial seller of travel  
80 registration fee for certain veterans of the United  
81 States Armed Forces, the spouses of such veterans, or  
82 a business entity that has a majority ownership held  
83 by such a veteran or spouse; amending s. 616.242,  
84 F.S.; deleting an obsolete provision allowing fair  
85 owners to post a bond rather than carry a certificate



654302

576-03404-15

86 of insurance; exempting water-related amusement rides  
87 operated by lodging and food service establishments  
88 and membership campgrounds, amusement rides at  
89 private, membership-only facilities, and nonprofit  
90 permanent facilities from certain safety standards;  
91 authorizing owners or managers of amusement rides to  
92 use alternate forms to record employee training and  
93 ride inspections; amending s. 790.06, F.S.; requiring  
94 firearm course instructors to maintain records  
95 attesting to the use of live fire with specified  
96 firearms and ammunition by students in his or her  
97 physical presence; revising the initial and renewal  
98 fees for a concealed weapon or firearm license;  
99 requiring notice of the suspension or revocation of a  
100 concealed weapon or firearm license or the suspension  
101 of the processing of an application for such license  
102 to be given by personal delivery, first-class mail, or  
103 e-mail; requiring concealed weapon or firearm license  
104 renewals to include an affidavit submitted under oath  
105 and under penalty of perjury; amending s. 790.0625,  
106 F.S.; authorizing certain tax collector offices, upon  
107 approval and confirmation of license issuance by the  
108 Department of Agriculture and Consumer Services, to  
109 print and deliver concealed weapon or firearm  
110 licenses; providing an effective date.

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

113  
114 Section 1. Subsection (3) of section 472.015, Florida



654302

576-03404-15

115 Statutes, is amended to read:

116 472.015 Licensure.—

117 (3) (a) Before the issuance of any license, the department  
118 may charge an initial license fee as determined by rule of the  
119 board. Upon receipt of the appropriate license fee, except as  
120 provided in subsection (6), the department shall issue a license  
121 to any person certified by the board, or its designee, as having  
122 met the applicable requirements imposed by law or rule. However,  
123 an applicant who is not otherwise qualified for licensure is not  
124 entitled to licensure solely based on a passing score on a  
125 required examination.

126 (b) The department shall waive the initial license fee for  
127 an honorably discharged veteran of the United States Armed  
128 Forces, the spouse of such a veteran, or a business entity that  
129 has a majority ownership held by such a veteran or spouse if the  
130 department receives an application, in a format prescribed by  
131 the department, within 60 months after the date of the veteran's  
132 discharge from any branch of the United States Armed Forces. To  
133 qualify for the waiver, a veteran must provide to the department  
134 a copy of his or her DD Form 214 or NGB Form 22; the spouse of a  
135 veteran must provide to the department a copy of the veteran's  
136 DD Form 214 or NGB Form 22 and a copy of a valid marriage  
137 license or certificate verifying that he or she was lawfully  
138 married to the veteran at the time of discharge; or a business  
139 entity must provide to the department proof that a veteran or  
140 the spouse of a veteran holds a majority ownership in the  
141 business, a copy of the veteran's DD Form 214 or NGB Form 22,  
142 and, if applicable, a copy of a valid marriage license or  
143 certificate verifying that the spouse of the veteran was



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144 lawfully married to the veteran at the time of discharge.

145 Section 2. Subsection (20) of section 493.6101, Florida  
146 Statutes, is amended to read:

147 493.6101 Definitions.—

148 (20) "Recovery agency" means any person who, for  
149 consideration, advertises as providing or is engaged in the  
150 business of performing repossessions. The term does not include  
151 a person who does not directly perform repossessions, and who,  
152 pursuant to a contract with a bank, bank holding company, credit  
153 union, or small loan company operating pursuant to chapters 516  
154 and 520, contracts with a licensed recovery agency or a licensed  
155 recovery agent for the performance of repossessions by such  
156 agency or agent, if such person includes a disclaimer in all  
157 advertisements appearing in this state which states that the  
158 person does not directly perform any repossessions, but  
159 contracts with licensed recovery agents or agencies.

160 Section 3. Paragraph (j) of subsection (3) of section  
161 493.6105, Florida Statutes, is amended to read:

162 493.6105 Initial application for license.—

163 (3) The application must contain the following information  
164 concerning the individual signing the application:

165 (j) A full set of fingerprints, a fingerprint processing  
166 fee, and a fingerprint retention fee to cover the cost of  
167 retaining the fingerprints in the statewide automated biometric  
168 identification system pursuant to s. 493.6108(2) (a) and the cost  
169 of enrolling the fingerprints in the national retained print  
170 arrest notification program when the program is operational and  
171 the Department of Law Enforcement begins participation. The  
172 fingerprint processing and retention fees shall ~~to~~ be



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173 established by rule of the department based upon costs  
174 determined by state and federal agency charges and department  
175 processing costs. An applicant who has, within the immediately  
176 preceding 6 months, submitted such fingerprints and fees fee for  
177 licensing purposes under this chapter and who still holds a  
178 valid license is not required to submit another set of  
179 fingerprints or another fingerprint processing fee. An applicant  
180 who holds multiple licenses issued under this chapter is  
181 required to pay only a single fingerprint retention fee.

182 Section 4. Paragraph (f) of subsection (1) of section  
183 493.6106, Florida Statutes, is amended to read:

184 493.6106 License requirements; posting.-

185 (1) Each individual licensed by the department must:

186 (f) Be a citizen or permanent legal resident alien of the  
187 United States or have appropriate authorization issued by the  
188 United States Citizenship and Immigration Services of the United  
189 States Department of Homeland Security.

190 1. An applicant for a Class "C," Class "CC," Class "D,"  
191 Class "DI," Class "E," Class "EE," Class "M," Class "MA," Class  
192 "MB," Class "MR," or Class "RI" license who is not a United  
193 States citizen must submit proof of current employment  
194 authorization issued by the United States Citizenship and  
195 Immigration Services or proof that she or he is deemed a  
196 permanent legal resident alien by the United States Citizenship  
197 and Immigration Services.

198 2. An applicant for a Class "G" or Class "K" license who is  
199 not a United States citizen must submit proof that she or he is  
200 deemed a permanent legal resident alien by the United States  
201 Citizenship and Immigration Services, ~~together with additional~~



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202 ~~documentation establishing that she or he has resided in the~~  
203 ~~state of residence shown on the application for at least 90~~  
204 ~~consecutive days before the date that the application is~~  
205 ~~submitted.~~

206 3. An applicant for an agency or school license who is not  
207 a United States citizen or permanent legal resident alien must  
208 submit documentation issued by the United States Citizenship and  
209 Immigration Services stating that she or he is lawfully in the  
210 United States and is authorized to own and operate the type of  
211 agency or school for which she or he is applying. An employment  
212 authorization card issued by the United States Citizenship and  
213 Immigration Services is not sufficient documentation.

214 Section 5. Subsections (2) and (3) of section 493.6108,  
215 Florida Statutes, are renumbered as subsections (3) and (4),  
216 respectively, and a new subsection (2) is added to that section,  
217 to read:

218 493.6108 Investigation of applicants by Department of  
219 Agriculture and Consumer Services.-

220 (2) (a) The Department of Law Enforcement shall retain and  
221 enter into the statewide automated biometric identification  
222 system authorized under s. 943.05 all fingerprints submitted to  
223 the department pursuant to this chapter. The Department of Law  
224 Enforcement shall enroll such fingerprints in the national  
225 retained print arrest notification program when the program is  
226 operational and the Department of Law Enforcement begins  
227 participation. Thereafter, the fingerprints shall be available  
228 for arrest notifications required by paragraph (b) and all  
229 purposes and uses authorized for arrest fingerprints entered  
230 into the statewide automated biometric identification system.



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231 (b) The Department of Law Enforcement shall search all  
232 arrest fingerprints against fingerprints retained pursuant to  
233 paragraph (a) and report any arrest record identified by the  
234 Department of Law Enforcement or the Federal Bureau of  
235 Investigation to the department. If the department receives  
236 information about an arrest within the state of a person who  
237 holds a valid license issued under this chapter for a crime that  
238 could potentially disqualify the person from holding such a  
239 license, the department shall provide the arrest information to  
240 the agency that employs the licensee.

241 Section 6. Subsection (3) of section 493.6113, Florida  
242 Statutes, is amended to read:

243 493.6113 Renewal application for licensure.-

244 (3) (a) Each licensee is responsible for renewing his or her  
245 license on or before its expiration by filing with the  
246 department an application for renewal accompanied by payment of  
247 the renewal fee and the fingerprint retention fee to cover the  
248 cost of ongoing retention in the statewide automated biometric  
249 identification system prescribed license fee.

250 (b) In addition to the fees specified in paragraph (a), a  
251 person holding a valid license issued under this chapter before  
252 January 1, 2016, must submit upon first renewal of the license a  
253 full set of fingerprints and a fingerprint processing fee to  
254 cover the cost of entering the fingerprints into the statewide  
255 automated biometric identification system pursuant to s.  
256 493.6108(2)(a). Subsequent renewals may be completed without  
257 submission of a set of fingerprints.

258 (c) ~~(a)~~ Each Class "B" licensee shall additionally submit on  
259 a form prescribed by the department a certification of insurance



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260 that evidences that the licensee maintains coverage as required  
261 under s. 493.6110.

262 (d) ~~(b)~~ Each Class "G" licensee shall additionally submit  
263 proof that he or she has received during each year of the  
264 license period a minimum of 4 hours of firearms recertification  
265 training taught by a Class "K" licensee and has complied with  
266 such other health and training requirements that the department  
267 shall adopt by rule. Proof of completion of firearms  
268 recertification training shall be submitted to the department  
269 upon completion of the training. If the licensee fails to  
270 complete the required 4 hours of annual training during the  
271 first year of the 2-year term of the license, the license shall  
272 be automatically suspended. The licensee must complete the  
273 minimum number of hours of range and classroom training required  
274 at the time of initial licensure and submit proof of completion  
275 of such training to the department before the license may be  
276 reinstated. If the licensee fails to complete the required 4  
277 hours of annual training during the second year of the 2-year  
278 term of the license, the licensee must complete the minimum  
279 number of hours of range and classroom training required at the  
280 time of initial licensure and submit proof of completion of such  
281 training to the department before the license may be renewed.  
282 The department may waive the firearms training requirement if:

283 1. The applicant provides proof that he or she is currently  
284 certified as a law enforcement officer or correctional officer  
285 under the Criminal Justice Standards and Training Commission and  
286 has completed law enforcement firearms requalification training  
287 annually during the previous 2 years of the licensure period;

288 2. The applicant provides proof that he or she is currently



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289 certified as a federal law enforcement officer and has received  
290 law enforcement firearms training administered by a federal law  
291 enforcement agency annually during the previous 2 years of the  
292 licensure period; or

293 3. The applicant submits a valid firearm certificate among  
294 those specified in s. 493.6105(6) (a) and provides proof of  
295 having completed requalification training during the previous 2  
296 years of the licensure period.

297 ~~(e)~~ Each Class "DS" or Class "RS" licensee shall  
298 additionally submit the current curriculum, examination, and  
299 list of instructors.

300 ~~(f)~~ Each Class "K" licensee shall additionally submit  
301 one of the certificates specified under s. 493.6105(6) as proof  
302 that he or she remains certified to provide firearms  
303 instruction.

304 Section 7. Subsection (6) of section 493.6115, Florida  
305 Statutes, is amended to read:

306 493.6115 Weapons and firearms.—

307 (6) In addition to any other firearm approved by the  
308 department, a licensee who has been issued a Class "G" license  
309 may carry a .38 caliber revolver; or a .380 caliber or 9  
310 millimeter semiautomatic pistol; or a .357 caliber revolver with  
311 .38 caliber ammunition only; or a .40 caliber handgun; or a .45  
312 ACP handgun while performing duties authorized under this  
313 chapter. A licensee may not carry more than two firearms upon  
314 her or his person when performing her or his duties. A licensee  
315 may only carry a firearm of the specific type and caliber with  
316 which she or he is qualified pursuant to the firearms training  
317 referenced in subsection (8) or s. 493.6113(3) (d)



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318 ~~493.6113(3) (b)~~.

319 Section 8. Paragraph (u) of subsection (1) of section  
320 493.6118, Florida Statutes, is amended to read:

321 493.6118 Grounds for disciplinary action.—

322 (1) The following constitute grounds for which disciplinary  
323 action specified in subsection (2) may be taken by the  
324 department against any licensee, agency, or applicant regulated  
325 by this chapter, or any unlicensed person engaged in activities  
326 regulated under this chapter.

327 (u) For a Class "G" licensee, failing to timely complete  
328 recertification training as required in s. ~~493.6113(3) (d)~~  
329 ~~493.6113(3) (b)~~.

330 Section 9. Subsection (2) of section 501.015, Florida  
331 Statutes, is amended to read:

332 501.015 Health studios; registration requirements and  
333 fees.—Each health studio shall:

334 (2) Remit an annual registration fee of \$300 to the  
335 department at the time of registration for each of the health  
336 studio's business locations. The department shall waive the  
337 initial registration fee for an honorably discharged veteran of  
338 the United States Armed Forces, the spouse of such a veteran, or  
339 a business entity that has a majority ownership held by such a  
340 veteran or spouse if the department receives an application, in  
341 a format prescribed by the department, within 60 months after  
342 the date of the veteran's discharge from any branch of the  
343 United States Armed Forces. To qualify for the waiver, a veteran  
344 must provide to the department a copy of his or her DD Form 214  
345 or NGB Form 22; the spouse of a veteran must provide to the  
346 department a copy of the veteran's DD Form 214 or NGB Form 22



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347 and a copy of a valid marriage license or certificate verifying  
348 that he or she was lawfully married to the veteran at the time  
349 of discharge; or a business entity must provide to the  
350 department proof that a veteran or the spouse of a veteran holds  
351 a majority ownership in the business, a copy of the veteran's DD  
352 Form 214 or NGB Form 22, and, if applicable, a copy of a valid  
353 marriage license or certificate verifying that the spouse of the  
354 veteran was lawfully married to the veteran at the time of  
355 discharge.

356 Section 10. Subsections (1) and (2) of section 501.0581,  
357 Florida Statutes, are amended to read:

358 501.0581 Commercial Weight-Loss Practices Act; civil  
359 remedies.—

360 (1) The Department of ~~Health Agriculture and Consumer~~  
361 ~~Services~~ may bring a civil action in circuit court for temporary  
362 or permanent injunctive relief to enforce ~~the provisions of this~~  
363 act and may seek other appropriate civil relief, including a  
364 civil penalty not to exceed \$5,000 for each violation, for  
365 restitution and damages for injured customers, court costs, and  
366 reasonable ~~attorney attorney's~~ fees.

367 (2) The Department of ~~Health Agriculture and Consumer~~  
368 ~~Services~~ may terminate any investigation or action upon  
369 agreement by the offender to pay a stipulated civil penalty,  
370 make restitution or pay damages to customers, or satisfy any  
371 other relief authorized herein and requested by the department.

372 Section 11. Subsection (3) of section 501.0583, Florida  
373 Statutes, is amended to read:

374 501.0583 Selling, delivering, bartering, furnishing, or  
375 giving weight-loss pills to persons under age 18; penalties;



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376 defense.—

377 (3) A first violation of subsection (2) or this subsection  
378 is punishable by a fine of \$100. A second violation of  
379 subsection (2) or this subsection is punishable by a fine of  
380 \$250. A third violation of subsection (2) or this subsection is  
381 punishable by a fine of \$500. A fourth or subsequent violation  
382 of subsection (2) or this subsection is punishable by a fine as  
383 determined by the Department of ~~Health Agriculture and Consumer~~  
384 ~~Services~~, not to exceed \$1,000.

385 Section 12. Paragraph (j) of subsection (2) and paragraph  
386 (b) of subsection (5) of section 501.605, Florida Statutes, are  
387 amended to read:

388 501.605 Licensure of commercial telephone sellers.—

389 (2) An applicant for a license as a commercial telephone  
390 seller must submit to the department, in such form as it  
391 prescribes, a written application for the license. The  
392 application must set forth the following information:

393 (j) The complete street address of each location,  
394 designating the principal location, from which the applicant  
395 will be doing business. ~~The street address may not be if any~~  
396 ~~location is a mail drop, this shall be disclosed as such.~~

397  
398 The application shall be accompanied by a copy of any: Script,  
399 outline, or presentation the applicant will require or suggest a  
400 salesperson to use when soliciting, or, if no such document is  
401 used, a statement to that effect; sales information or  
402 literature to be provided by the applicant to a salesperson; and  
403 sales information or literature to be provided by the applicant  
404 to a purchaser in connection with any solicitation.



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405 (5) An application filed pursuant to this part must be  
406 verified and accompanied by:

407 (b) A fee for licensing in the amount of \$1,500. The fee  
408 shall be deposited into the General Inspection Trust Fund. The  
409 department shall waive the initial licensing fee for an  
410 honorably discharged veteran of the United States Armed Forces,  
411 the spouse of such a veteran, or a business entity that has a  
412 majority ownership held by such a veteran or spouse if the  
413 department receives an application, in a format prescribed by  
414 the department, within 60 months after the date of the veteran's  
415 discharge from any branch of the United States Armed Forces. To  
416 qualify for the waiver, a veteran must provide to the department  
417 a copy of his or her DD Form 214 or NGB Form 22; the spouse of a  
418 veteran must provide to the department a copy of the veteran's  
419 DD Form 214 or NGB Form 22 and a copy of a valid marriage  
420 license or certificate verifying that he or she was lawfully  
421 married to the veteran at the time of discharge; or a business  
422 entity must provide to the department proof that a veteran or  
423 the spouse of a veteran holds a majority ownership in the  
424 business, a copy of the veteran's DD Form 214 or NGB Form 22,  
425 and, if applicable, a copy of a valid marriage license or  
426 certificate verifying that the spouse of the veteran was  
427 lawfully married to the veteran at the time of discharge.

428 Section 13. Paragraph (b) of subsection (2) of section  
429 501.607, Florida Statutes, is amended to read:

430 501.607 Licensure of salespersons.—

431 (2) An application filed pursuant to this section must be  
432 verified and be accompanied by:

433 (b) A fee for licensing in the amount of \$50 per



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434 salesperson. The fee shall be deposited into the General  
435 Inspection Trust Fund. The fee for licensing may be paid after  
436 the application is filed, but must be paid within 14 days after  
437 the applicant begins work as a salesperson. The department shall  
438 waive the initial licensing fee for an honorably discharged  
439 veteran of the United States Armed Forces, the spouse of such a  
440 veteran, or a business entity that has a majority ownership held  
441 by such a veteran or spouse if the department receives an  
442 application, in a format prescribed by the department, within 60  
443 months after the date of the veteran's discharge from any branch  
444 of the United States Armed Forces. To qualify for the waiver, a  
445 veteran must provide to the department a copy of his or her DD  
446 Form 214 or NGB Form 22; the spouse of a veteran must provide to  
447 the department a copy of the veteran's DD Form 214 or NGB Form  
448 22 and a copy of a valid marriage license or certificate  
449 verifying that he or she was lawfully married to the veteran at  
450 the time of discharge; or a business entity must provide to the  
451 department proof that a veteran or the spouse of a veteran holds  
452 a majority ownership in the business, a copy of the veteran's DD  
453 Form 214 or NGB Form 22, and, if applicable, a copy of a valid  
454 marriage license or certificate verifying that the spouse of the  
455 veteran was lawfully married to the veteran at the time of  
456 discharge.

457 Section 14. Subsection (3) of section 507.03, Florida  
458 Statutes, is amended to read:

459 507.03 Registration.—

460 (3) (a) Registration fees shall be calculated at the rate of  
461 \$300 per year per mover or moving broker. All amounts collected  
462 shall be deposited by the Chief Financial Officer to the credit



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463 of the General Inspection Trust Fund of the department for the  
464 sole purpose of administration of this chapter.

465 (b) The department shall waive the initial registration fee  
466 for an honorably discharged veteran of the United States Armed  
467 Forces, the spouse of such a veteran, or a business entity that  
468 has a majority ownership held by such a veteran or spouse if the  
469 department receives an application, in a format prescribed by  
470 the department, within 60 months after the date of the veteran's  
471 discharge from any branch of the United States Armed Forces. To  
472 qualify for the waiver, a veteran must provide to the department  
473 a copy of his or her DD Form 214 or NGB Form 22; the spouse of a  
474 veteran must provide to the department a copy of the veteran's  
475 DD Form 214 or NGB Form 22 and a copy of a valid marriage  
476 license or certificate verifying that he or she was lawfully  
477 married to the veteran at the time of discharge; or a business  
478 entity must provide to the department proof that a veteran or  
479 the spouse of a veteran holds a majority ownership in the  
480 business, a copy of the veteran's DD Form 214 or NGB Form 22,  
481 and, if applicable, a copy of a valid marriage license or  
482 certificate verifying that the spouse of the veteran was  
483 lawfully married to the veteran at the time of discharge.

484 Section 15. Subsection (3) of section 527.02, Florida  
485 Statutes, is amended to read:

486 527.02 License; penalty; fees.—

487 (3) (a) An Any applicant for an original license who submits  
488 an whose application is submitted during the last 6 months of  
489 the license year may have the original license fee reduced by  
490 one-half for the 6-month period. This provision applies shall  
491 apply only to those companies applying for an original license



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492 and ~~may shall~~ not be applied to licensees who held a license  
493 during the previous license year and failed to renew the  
494 license. The department may refuse to issue an initial license  
495 to an any applicant who is under investigation in any  
496 jurisdiction for an action that would constitute a violation of  
497 this chapter until such time as the investigation is complete.

498 (b) The department shall waive the original license fee for  
499 an honorably discharged veteran of the United States Armed  
500 Forces, the spouse of such a veteran, or a business entity that  
501 has a majority ownership held by such a veteran or spouse if the  
502 department receives an application, in a format prescribed by  
503 the department, within 60 months after the date of the veteran's  
504 discharge from any branch of the United States Armed Forces. To  
505 qualify for the waiver, a veteran must provide to the department  
506 a copy of his or her DD Form 214 or NGB Form 22; the spouse of a  
507 veteran must provide to the department a copy of the veteran's  
508 DD Form 214 or NGB Form 22 and a copy of a valid marriage  
509 license or certificate verifying that he or she was lawfully  
510 married to the veteran at the time of discharge; or a business  
511 entity must provide to the department proof that a veteran or  
512 the spouse of a veteran holds a majority ownership in the  
513 business, a copy of the veteran's DD Form 214 or NGB Form 22,  
514 and, if applicable, a copy of a valid marriage license or  
515 certificate verifying that the spouse of the veteran was  
516 lawfully married to the veteran at the time of discharge.

517 Section 16. Paragraph (c) of subsection (3) of section  
518 539.001, Florida Statutes, is amended to read:

519 539.001 The Florida Pawnbroking Act.—

520 (3) LICENSE REQUIRED.—



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521 (c) Each license is valid for a period of 1 year unless it  
522 is earlier relinquished, suspended, or revoked. Each license  
523 shall be renewed annually, and each licensee shall, initially  
524 and annually thereafter, pay to the agency a license fee of \$300  
525 for each license held. The agency shall waive the initial  
526 license fee for an honorably discharged veteran of the United  
527 States Armed Forces, the spouse of such a veteran, or a business  
528 entity that has a majority ownership held by such a veteran or  
529 spouse if the agency receives an application, in a format  
530 prescribed by the agency, within 60 months after the date of the  
531 veteran's discharge from any branch of the United States Armed  
532 Forces. To qualify for the waiver, a veteran must provide to the  
533 department a copy of his or her DD Form 214 or NGB Form 22; the  
534 spouse of a veteran must provide to the agency a copy of the  
535 veteran's DD Form 214 or NGB Form 22 and a copy of a valid  
536 marriage license or certificate verifying that he or she was  
537 lawfully married to the veteran at the time of discharge; or a  
538 business entity must provide to the agency proof that a veteran  
539 or the spouse of a veteran holds a majority ownership in the  
540 business, a copy of the veteran's DD Form 214 or NGB Form 22,  
541 and, if applicable, a copy of a valid marriage license or  
542 certificate verifying that the spouse of the veteran was  
543 lawfully married to the veteran at the time of discharge.

544 Section 17. Subsection (3) of section 559.904, Florida  
545 Statutes, is amended to read:

546 559.904 Motor vehicle repair shop registration;  
547 application; exemption.-

548 (3) (a) Each application for registration must be  
549 accompanied by a registration fee calculated on a per-year basis



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550 as follows:

- 551 1. ~~(a)~~ If the place of business has 1 to 5 employees: \$50.  
552 2. ~~(b)~~ If the place of business has 6 to 10 employees: \$150.  
553 3. ~~(c)~~ If the place of business has 11 or more employees:  
554 \$300.

555 (b) The department shall waive the initial registration fee  
556 for an honorably discharged veteran of the United States Armed  
557 Forces, the spouse of such a veteran, or a business entity that  
558 has a majority ownership held by such a veteran or spouse if the  
559 department receives an application, in a format prescribed by  
560 the department, within 60 months after the date of the veteran's  
561 discharge from any branch of the United States Armed Forces. To  
562 qualify for the waiver, a veteran must provide to the department  
563 a copy of his or her DD Form 214 or NGB Form 22; the spouse of a  
564 veteran must provide to the department a copy of the veteran's  
565 DD Form 214 or NGB Form 22 and a copy of a valid marriage  
566 license or certificate verifying that he or she was lawfully  
567 married to the veteran at the time of discharge; or a business  
568 entity must provide to the department proof that a veteran or  
569 the spouse of a veteran holds a majority ownership in the  
570 business, a copy of the veteran's DD Form 214 or NGB Form 22,  
571 and, if applicable, a copy of a valid marriage license or  
572 certificate verifying that the spouse of the veteran was  
573 lawfully married to the veteran at the time of discharge.

574 Section 18. Paragraph (c) is added to subsection (2) of  
575 section 559.928, Florida Statutes, to read:

576 559.928 Registration.-

577 (2)

578 (c) The department shall waive the initial registration fee



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579 for an honorably discharged veteran of the United States Armed  
580 Forces, the spouse of such a veteran, or a business entity that  
581 has a majority ownership held by such a veteran or spouse if the  
582 department receives an application, in a format prescribed by  
583 the department, within 60 months after the date of the veteran's  
584 discharge from any branch of the United States Armed Forces. To  
585 qualify for the waiver, a veteran must provide to the department  
586 a copy of his or her DD Form 214 or NGB Form 22; the spouse of a  
587 veteran must provide to the department a copy of the veteran's  
588 DD Form 214 or NGB Form 22 and a copy of a valid marriage  
589 license or certificate verifying that he or she was lawfully  
590 married to the veteran at the time of discharge; or the business  
591 entity must provide to the department proof that a veteran or  
592 the spouse of a veteran holds a majority ownership in the  
593 business, a copy of the veteran's DD Form 214 or NGB Form 22,  
594 and, if applicable, a copy of a valid marriage license or  
595 certificate verifying that the spouse of the veteran was  
596 lawfully married to the veteran at the time of discharge.

597 Section 19. Paragraph (b) of subsection (5), paragraph (a)  
598 of subsection (10), and subsections (15) and (16) of section  
599 616.242, Florida Statutes, are amended to read:

600 616.242 Safety standards for amusement rides.—

601 (5) ANNUAL PERMIT.—

602 (b) To apply for an annual permit, an owner must submit to  
603 the department a written application on a form prescribed by  
604 rule of the department, which must include the following:

605 1. The legal name, address, and primary place of business  
606 of the owner.

607 2. A description, manufacturer's name, serial number, model



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608 number and, if previously assigned, the United States Amusement  
609 Identification Number of the amusement ride.

610 3. A valid certificate of insurance ~~or bond~~ for each  
611 amusement ride.

612 4. An affidavit of compliance that the amusement ride was  
613 inspected in person by the affiant and that the amusement ride  
614 is in general conformance with the requirements of this section  
615 and all applicable rules adopted by the department. The  
616 affidavit must be executed by a professional engineer or a  
617 qualified inspector at least no earlier than 60 days before, but  
618 not later than, the date ~~of the filing of~~ the application is  
619 filed with the department. The owner shall request inspection  
620 and permitting of the amusement ride within 60 days ~~after of~~ the  
621 date ~~of filing~~ the application is filed with the department. The  
622 department shall inspect and permit the amusement ride within 60  
623 days after the date filing the application is filed with the  
624 department.

625 5. If required by subsection (6), an affidavit of  
626 nondestructive testing dated and executed at least no earlier  
627 ~~than~~ 60 days ~~before prior to~~, but not later than, the date ~~of~~  
628 ~~the filing of~~ the application is filed with the department. The  
629 owner shall request inspection and permitting of the amusement  
630 ride within 60 days ~~after of~~ the date ~~of filing~~ the application  
631 is filed with the department. The department shall inspect and  
632 permit the amusement ride within 60 days after the date filing  
633 the application is filed with the department.

634 6. A request for inspection.

635 7. Upon request, the owner shall, at no cost to the  
636 department, provide the department a copy of the manufacturer's



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637 current recommended operating instructions in the possession of  
638 the owner, the owner's operating fact sheet, and any written  
639 bulletins in the possession of the owner concerning the safety,  
640 operation, or maintenance of the amusement ride.

641 (10) EXEMPTIONS.—

642 (a) This section does not apply to:

643 1. Permanent facilities that employ at least 1,000 full-  
644 time employees and that maintain full-time, in-house safety  
645 inspectors. Furthermore, the permanent facilities must file an  
646 affidavit of the annual inspection with the department, on a  
647 form prescribed by rule of the department. Additionally, the  
648 Department of Agriculture and Consumer Services may consult  
649 annually with the permanent facilities regarding industry safety  
650 programs.

651 2. Any playground operated by a school, local government,  
652 or business licensed under chapter 509, if the playground is an  
653 incidental amenity and the operating entity is not primarily  
654 engaged in providing amusement, pleasure, thrills, or  
655 excitement.

656 3. Museums or other institutions principally devoted to the  
657 exhibition of products of agriculture, industry, education,  
658 science, religion, or the arts.

659 4. Conventions or trade shows for the sale or exhibit of  
660 amusement rides if there are a minimum of 15 amusement rides on  
661 display or exhibition, and if any operation of such amusement  
662 rides is limited to the registered attendees of the convention  
663 or trade show.

664 5. Skating rinks, arcades, laser ~~lazer~~ or paint ball war  
665 games, bowling alleys, miniature golf courses, mechanical bulls,



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666 inflatable rides, trampolines, ball crawls, exercise equipment,  
667 jet skis, paddle boats, airboats, helicopters, airplanes,  
668 parasails, hot air or helium balloons whether tethered or  
669 untethered, theatres, batting cages, stationary spring-mounted  
670 fixtures, rider-propelled merry-go-rounds, games, side shows,  
671 live animal rides, or live animal shows.

672 6. Go-karts operated in competitive sporting events if  
673 participation is not open to the public.

674 7. Nonmotorized playground equipment that is not required  
675 to have a manager.

676 8. Coin-actuated amusement rides designed to be operated by  
677 depositing coins, tokens, credit cards, debit cards, bills, or  
678 other cash money and which are not required to have a manager,  
679 and which have a capacity of six persons or less.

680 9. Facilities described in s. 549.09(1)(a) when such  
681 facilities are operating cars, trucks, or motorcycles only.

682 10. Battery-powered cars or other vehicles that are  
683 designed to be operated by children 7 years of age or under and  
684 that cannot exceed a speed of 4 miles per hour.

685 11. Mechanically driven vehicles that pull train cars,  
686 carts, wagons, or other similar vehicles, that are not confined  
687 to a metal track or confined to an area but are steered by an  
688 operator and do not exceed a speed of 4 miles per hour.

689 12. A water-related amusement ride operated by a business  
690 licensed under chapter 509 if the water-related amusement ride  
691 is an incidental amenity and the operating business is not  
692 primarily engaged in providing amusement, pleasure, thrills, or  
693 excitement and does not offer day rates.

694 13. An amusement ride at a private, membership-only



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695 facility if the amusement ride is an incidental amenity and the  
696 facility is not open to the general public, is not primarily  
697 engaged in providing amusement, pleasure, thrills, or  
698 excitement, and does not offer day rates.

699 14. A nonprofit permanent facility registered under chapter  
700 496 which is not open to the general public.

701 (15) INSPECTION BY OWNER OR MANAGER.—~~Before~~ ~~Prior to~~  
702 opening on each day of operation and ~~before~~ ~~prior to~~ any  
703 inspection by the department, the owner or manager of an  
704 amusement ride must inspect and test the amusement ride to  
705 ensure compliance with all requirements of this section. Each  
706 inspection must be recorded on a form prescribed by rule of the  
707 department and signed by the person who conducted the  
708 inspection. In lieu of the form prescribed by rule of the  
709 department, the owner or manager may request approval of an  
710 alternate form if the alternate form includes, at a minimum, the  
711 information required on the form prescribed by rule of the  
712 department. Inspection records of the last 14 daily inspections  
713 must be kept on site by the owner or manager and made  
714 immediately available to the department upon request.

715 (16) TRAINING OF EMPLOYEES.—The owner or manager of ~~an any~~  
716 amusement ride shall maintain a record of employee training for  
717 each employee authorized to operate, assemble, disassemble,  
718 transport, or conduct maintenance on an amusement ride, on a  
719 form prescribed by rule of the department. In lieu of the form  
720 prescribed by rule of the department, the owner or manager may  
721 request approval of an alternate form if the alternate form  
722 includes, at a minimum, the information required on the form  
723 prescribed by rule of the department. The training record must



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724 be kept on site by the owner or manager and made immediately  
725 available to the department upon request. Training may not be  
726 conducted when an amusement ride is open to the public unless  
727 the training is conducted under the supervision of an employee  
728 who is trained in the operation of that ride. The owner or  
729 manager shall certify that each employee is trained, as required  
730 by this section and any rules adopted thereunder, on the  
731 amusement ride for which the employee is responsible.

732 Section 20. Subsection (2), paragraph (b) of subsection  
733 (5), subsection (10), and paragraph (a) of subsection (11) of  
734 section 790.06, Florida Statutes, are amended to read:

735 790.06 License to carry concealed weapon or firearm.—

736 (2) The Department of Agriculture and Consumer Services  
737 shall issue a license if the applicant:

738 (a) Is a resident of the United States and a citizen of the  
739 United States or a permanent resident alien of the United  
740 States, as determined by the United States Bureau of Citizenship  
741 and Immigration Services, or is a consular security official of  
742 a foreign government that maintains diplomatic relations and  
743 treaties of commerce, friendship, and navigation with the United  
744 States and is certified as such by the foreign government and by  
745 the appropriate embassy in this country;

746 (b) Is 21 years of age or older;

747 (c) Does not suffer from a physical infirmity which  
748 prevents the safe handling of a weapon or firearm;

749 (d) Is not ineligible to possess a firearm pursuant to s.  
750 790.23 by virtue of having been convicted of a felony;

751 (e) Has not been committed for the abuse of a controlled  
752 substance or been found guilty of a crime under the provisions



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753 of chapter 893 or similar laws of any other state relating to  
754 controlled substances within a 3-year period immediately  
755 preceding the date on which the application is submitted;

756 (f) Does not chronically and habitually use alcoholic  
757 beverages or other substances to the extent that his or her  
758 normal faculties are impaired. It shall be presumed that an  
759 applicant chronically and habitually uses alcoholic beverages or  
760 other substances to the extent that his or her normal faculties  
761 are impaired if the applicant has been committed under chapter  
762 397 or under the provisions of former chapter 396 or has been  
763 convicted under s. 790.151 or has been deemed a habitual  
764 offender under s. 856.011(3), or has had two or more convictions  
765 under s. 316.193 or similar laws of any other state, within the  
766 3-year period immediately preceding the date on which the  
767 application is submitted;

768 (g) Desires a legal means to carry a concealed weapon or  
769 firearm for lawful self-defense;

770 (h) Demonstrates competence with a firearm by any one of  
771 the following:

772 1. Completion of any hunter education or hunter safety  
773 course approved by the Fish and Wildlife Conservation Commission  
774 or a similar agency of another state;

775 2. Completion of any National Rifle Association firearms  
776 safety or training course;

777 3. Completion of any firearms safety or training course or  
778 class available to the general public offered by a law  
779 enforcement, junior college, college, or private or public  
780 institution or organization or firearms training school,  
781 utilizing instructors certified by the National Rifle



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782 Association, Criminal Justice Standards and Training Commission,  
783 or the Department of Agriculture and Consumer Services;

784 4. Completion of any law enforcement firearms safety or  
785 training course or class offered for security guards,  
786 investigators, special deputies, or any division or subdivision  
787 of law enforcement or security enforcement;

788 5. Presents evidence of equivalent experience with a  
789 firearm through participation in organized shooting competition  
790 or military service;

791 6. Is licensed or has been licensed to carry a firearm in  
792 this state or a county or municipality of this state, unless  
793 such license has been revoked for cause; or

794 7. Completion of any firearms training or safety course or  
795 class conducted by a state-certified or National Rifle  
796 Association certified firearms instructor;

797  
798 A photocopy of a certificate of completion of any of the courses  
799 or classes; ~~or~~ an affidavit from the instructor, school, club,  
800 organization, or group that conducted or taught such ~~said~~ course  
801 or class attesting to the completion of the course or class by  
802 the applicant; or a copy of any document that ~~which~~ shows  
803 completion of the course or class or evidences participation in  
804 firearms competition shall constitute evidence of qualification  
805 under this paragraph. ~~A~~ ~~any~~ person who conducts a course  
806 pursuant to subparagraph 2., subparagraph 3., or subparagraph  
807 7., or who, as an instructor, attests to the completion of such  
808 courses, must maintain records certifying that he or she  
809 observed the student safely handle and discharge the firearm in  
810 his or her physical presence and that the discharge of the



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811 firearm included live fire using a firearm and ammunition as  
812 defined in s. 790.001;

813 (i) Has not been adjudicated an incapacitated person under  
814 s. 744.331, or similar laws of any other state, unless 5 years  
815 have elapsed since the applicant's restoration to capacity by  
816 court order;

817 (j) Has not been committed to a mental institution under  
818 chapter 394, or similar laws of any other state, unless the  
819 applicant produces a certificate from a licensed psychiatrist  
820 that he or she has not suffered from disability for at least 5  
821 years prior to the date of submission of the application;

822 (k) Has not had adjudication of guilt withheld or  
823 imposition of sentence suspended on any felony or misdemeanor  
824 crime of domestic violence unless 3 years have elapsed since  
825 probation or any other conditions set by the court have been  
826 fulfilled, or the record has been sealed or expunged;

827 (l) Has not been issued an injunction that is currently in  
828 force and effect and that restrains the applicant from  
829 committing acts of domestic violence or acts of repeat violence;  
830 and

831 (m) Is not prohibited from purchasing or possessing a  
832 firearm by any other provision of Florida or federal law.

833 (5) The applicant shall submit to the Department of  
834 Agriculture and Consumer Services or an approved tax collector  
835 pursuant to s. 790.0625:

836 (b) A nonrefundable license fee of up to \$60 ~~\$70~~ if he or  
837 she has not previously been issued a statewide license or of up to  
838 to \$50 ~~\$60~~ for renewal of a statewide license. The cost of  
839 processing fingerprints as required in paragraph (c) shall be



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840 borne by the applicant. However, an individual holding an active  
841 certification from the Criminal Justice Standards and Training  
842 Commission as a law enforcement officer, correctional officer,  
843 or correctional probation officer as defined in s. 943.10(1),  
844 (2), (3), (6), (7), (8), or (9) is exempt from the licensing  
845 requirements of this section. If such individual wishes to  
846 receive a concealed ~~weapon weapons~~ or firearm firearms license,  
847 he or she is exempt from the background investigation and all  
848 background investigation fees, but must pay the current license  
849 fees regularly required to be paid by nonexempt applicants.  
850 Further, a law enforcement officer, a correctional officer, or a  
851 correctional probation officer as defined in s. 943.10(1), (2),  
852 or (3) is exempt from the required fees and background  
853 investigation for ~~a period of~~ 1 year after his or her  
854 retirement.

855 (10) A license issued under this section shall be suspended  
856 or revoked pursuant to chapter 120 if the licensee:

857 (a) Is found to be ineligible under the criteria set forth  
858 in subsection (2);

859 (b) Develops or sustains a physical infirmity which  
860 prevents the safe handling of a weapon or firearm;

861 (c) Is convicted of a felony which would make the licensee  
862 ineligible to possess a firearm pursuant to s. 790.23;

863 (d) Is found guilty of a crime under the provisions of  
864 chapter 893, or similar laws of any other state, relating to  
865 controlled substances;

866 (e) Is committed as a substance abuser under chapter 397,  
867 or is deemed a habitual offender under s. 856.011(3), or similar  
868 laws of any other state;



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869 (f) Is convicted of a second violation of s. 316.193, or a  
870 similar law of another state, within 3 years ~~after~~ of a first  
871 ~~previous~~ conviction of such section, or similar law of another  
872 state, even though the first violation may have occurred before  
873 ~~prior to~~ the date on which the application was submitted;  
874 (g) Is adjudicated an incapacitated person under s.  
875 744.331, or similar laws of any other state; or  
876 (h) Is committed to a mental institution under chapter 394,  
877 or similar laws of any other state.  
878  
879 Notwithstanding s. 120.60(5), notice of the suspension or  
880 revocation of a concealed weapon or firearm license or the  
881 suspension of the processing of an application for such license  
882 shall be given by personal delivery to the licensee, by first-  
883 class mail in an envelope, postage prepaid, addressed to the  
884 licensee at his or her last known mailing address furnished to  
885 the department, or by e-mail if the licensee has provided an e-  
886 mail address to the department. Such mailing or sending of e-  
887 mail by the department constitutes notification, and any failure  
888 by the person to receive the mailed or e-mailed notice does not  
889 stay the effective date or term of the suspension or revocation.  
890 The giving of notice by mail is complete upon expiration of 20  
891 days after deposit in the United States mail. Proof of the  
892 giving of notice shall be made by entry in the records of the  
893 department that such notice was given. The entry is admissible  
894 in the courts of this state and constitutes sufficient proof  
895 that such notice was given.  
896 (11) (a) At least ~~No less than~~ 90 days before the expiration  
897 date of the license, the Department of Agriculture and Consumer



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898 Services shall mail to each licensee a written notice of the  
899 expiration and a renewal form prescribed by the Department of  
900 Agriculture and Consumer Services. The licensee must renew his  
901 or her license on or before the expiration date by filing with  
902 the Department of Agriculture and Consumer Services the renewal  
903 form containing an a-notarized affidavit submitted under oath  
904 and under penalty of perjury stating that the licensee remains  
905 qualified pursuant to the criteria specified in subsections (2)  
906 and (3), a color photograph as specified in paragraph (5)(e),  
907 and the required renewal fee. Out-of-state residents must also  
908 submit a complete set of fingerprints and fingerprint processing  
909 fee. The license shall be renewed upon receipt of the completed  
910 renewal form, color photograph, appropriate payment of fees,  
911 and, if applicable, fingerprints. Additionally, a licensee who  
912 fails to file a renewal application on or before its expiration  
913 date must renew his or her license by paying a late fee of \$15.  
914 A license may not be renewed 180 days or more after its  
915 expiration date, and such a license is deemed to be permanently  
916 expired. A person whose license has been permanently expired may  
917 reapply for licensure; however, an application for licensure and  
918 fees under subsection (5) must be submitted, and a background  
919 investigation shall be conducted pursuant to this section. A  
920 person who knowingly files false information under this  
921 subsection is subject to criminal prosecution under s. 837.06.  
922 Section 21. Subsection (8) is added to section 790.0625,  
923 Florida Statutes, to read:  
924 790.0625 Appointment of tax collectors to accept  
925 applications for a concealed weapon or firearm license; fees;  
926 penalties.-



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927 (8) Upon receipt of a completed renewal application, a new  
928 color photograph, and appropriate payment of fees, a tax  
929 collector authorized to accept renewal applications for  
930 concealed weapon or firearm licenses under this section may,  
931 upon approval and confirmation of license issuance by the  
932 department, print and deliver a concealed weapon or firearm  
933 license to a licensee renewing his or her license at the tax  
934 collector's office.

935 Section 22. This act shall take effect July 1, 2015.

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/CS/SB 1444

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Commerce and Tourism Committee; and Senator Richter

SUBJECT: Department of Agriculture and Consumer Services

DATE: April 20, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Blizzard</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Blizzard</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1444 modifies several areas regulated by the Department of Agriculture and Consumer Services (DACS), including:

- Implementing license fee waivers for veterans, veterans' spouses, and veterans' businesses;
- Updating the criminal background check processes for applicants and licensees under ch. 493, F.S., relating to private investigation, private security, and repossession services;
- Allowing amusement ride operators to provide their own inspection form, and exempting specific rides from inspection requirements;
- Implementing a live-fire requirement for concealed weapon licensure;
- Streamlining renewal of concealed weapons licenses;
- Allowing notice of service to firearm or concealed weapon license holders by mail or e-mail when personal service or certified mail is ineffective;
- Allowing qualified tax collectors to print and deliver renewal firearm or concealed weapons licenses;
- Reducing application fees for firearm and concealed weapon licenses;
- Creating the Florida veteran identification card to be issued and administered by the DACS; and
- Provides criminal penalties for the discharge of a firearm in an outdoor area that is primarily residential in nature as a first degree misdemeanor.

The bill has a significant impact on state revenues (see Section V, Government Sector Impact). The bill also authorizes one position and appropriates a total of \$254,300 from the Division of Licensing Trust Fund within the DACS to implement the Florida veteran identification card provision.

The bill provides an effective date of July 1, 2015.

## II. Present Situation:

The Department of Agriculture and Consumer Services (DACs) safeguards the public from unsafe or defective products and deceptive business practices. The Division of Consumer Services within the DACs regulates specific business activities, including commercial weight loss practices, telephone solicitations, pawnshops, health studios, sellers of travel, and telemarketing.<sup>1</sup> The Division of Licensing within the DACs is responsible for investigating and issuing licenses to conduct private security, private investigative, and recovery services pursuant to ch. 493, F.S. The Division of Licensing also issues concealed weapon or firearm licenses pursuant to s. 790.06, F.S.<sup>2</sup>

A veteran is a person who served in the active, military, naval, or air service and who was discharged or released under honorable conditions, or who later received an upgraded discharge under honorable conditions, notwithstanding any action by the United States Department of Veterans Affairs on individuals discharged or released with other than honorable discharges. Florida has more than 1.6 million veteran residents<sup>3</sup> and 176,727 veteran-owned businesses.<sup>4</sup> The Department of Management Services has issued 384 service disabled veteran-owned business certifications.<sup>5</sup> As of July 1, 2014, both the Department of Business and Professional Regulation and the Department of Health implemented initial licensing fee waivers for veterans and their spouses.<sup>6</sup>

## III. Effect of Proposed Changes:

### Licensing Fee Waivers

The bill waives first-time licensing application fees for an honorably discharged veteran of the United States Armed Forces, his or her spouse, or a business entity in which he or she has a majority ownership stake on the following classes of licenses:

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<sup>1</sup> See <http://www.freshfromflorida.com/Divisions-Offices/Consumer-Services>, last accessed March 11, 2015.

<sup>2</sup> See <http://www.freshfromflorida.com/Divisions-Offices/Licensing>, last accessed March 11, 2015.

<sup>3</sup> Florida Department of Veterans' Affairs, *Fast Facts*, [http://floridavets.org/?page\\_id=50](http://floridavets.org/?page_id=50) (last accessed March 12, 2015).

<sup>4</sup> Small Business Administration, *Office of Advocacy, Veteran-owned Businesses and their Owners—Data from the Census Bureau's Survey of Business Owners*, (March 2012). Available at <https://www.sba.gov/sites/default/files/393tot.pdf> (last accessed March 12, 2015).

<sup>5</sup> As of March 12, 2015. Florida Department of Management Services, *Certified Vendor Directory*, available at [https://osd.dms.myflorida.com/directories/results?directory%5Bcommodity\\_code%5D=&directory%5Bcommodity\\_description%5D=&directory%5Bcounty%5D=&directory%5Bdesignation%5D=Service+Disabled+Veteran&directory%5Bvendor\\_name%5D=](https://osd.dms.myflorida.com/directories/results?directory%5Bcommodity_code%5D=&directory%5Bcommodity_description%5D=&directory%5Bcounty%5D=&directory%5Bdesignation%5D=Service+Disabled+Veteran&directory%5Bvendor_name%5D=) (last accessed March 12, 2015).

<sup>6</sup> Florida Department of Business and Professional Regulation, *Military and Veteran Spouses*, available at <http://www.myfloridalicense.com/dbpr/MilitarySpouse.html> (last accessed March 12, 2015); see also, Florida Department of Health, *Veterans*, available at <http://www.floridahealth.gov/licensing-and-regulation/armed-forces/veterans/index.html> (last accessed March 12, 2015).

License	Current Initial Licensing Fee
Land Surveyor & Mapper	\$180 - \$255
Health Studio	\$300
Commercial Telephone Seller	\$1,500
Telemarketing Salesperson	\$50
Movers & Moving Broker	\$300
Liquefied Petroleum Gas Related License	\$100 - \$525
Pawnbroker	\$300
Motor Vehicle Repair Shop	\$50 - \$300
Sellers of Travel	\$300-\$2,500

In addition, to qualify for the fee waiver, the veteran, his or her spouse, or business must submit an application for licensure within 60 months after the date of the veteran's discharge from the United States Armed Forces and provide a copy of his or her discharge paperwork; a valid marriage license where applicable; and proof of ownership interest where applicable.

**Section 1** amends s. 472.015, F.S. (surveyors and mappers), **Section 8** amends s. 501.015, F.S. (health studios), **Sections 9 and 10** amend ss. 501.605 and 501.607, F.S. (telemarketing), **Section 11** amends s. 507.03, F.S. (intrastate movers), **Section 12** amends s. 527.02, F.S. (liquefied petroleum gasoline), **Section 13** amends s. 539.001, F.S. (pawnbrokers), **Section 14** amends s. 559.904, F.S. (motor vehicle repair), and **Section 15** amends s. 559.928, F.S. (sellers of travel). The above mentioned sections waive first-time licensing application fees for an honorably discharged veteran of the United States Armed Forces, his or her spouse, or a business entity in which he or she has majority ownership.

### Fingerprint Retention and Processing

Private investigators, private security officers, and repossession services officers are regulated by the DACS pursuant to ch. 493, F.S. The DACS has 156,266 currently valid licenses issued pursuant to ch. 493, F.S.<sup>7</sup> Currently, applicants for licensure under ch. 493, F.S., must submit a full set of fingerprints for a background check conducted by the Florida Department of Law Enforcement (FDLE).<sup>8</sup> Once the initial background check has been performed by the FDLE, the licensees' fingerprints are discarded. This makes the DACS' duty to conduct ongoing investigations into its licensees' criminal activity<sup>9</sup> more difficult. The agency must perform a name-based search of arrest records and then perform further checks to ensure accurate identification.<sup>10</sup>

<sup>7</sup> Florida Department of Agriculture and Consumer Services, Division of Licensing, *Number of Licensees by Type*, (February 28, 2015). Available at [http://www.freshfromflorida.com/content/download/7471/118627/Number\\_of\\_Licensees\\_By\\_Type.pdf](http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf) (last accessed March 12, 2015).

<sup>8</sup> Section 493.6105(3)(j), F.S.

<sup>9</sup> Section 493.6118(1), F.S.

<sup>10</sup> Florida Department of Agriculture and Consumer Services, *Legislative Bill Analysis for HB 997* (March 3, 2015).

**Section 5** updates the background check processes by requiring the DACS to enroll applicants' fingerprints in the FDLE's Applicant Fingerprint Retention and Notification Program (AFRNP),<sup>11</sup> and in the Federal Bureau of Investigation's (FBI) Next Generation Identification (NGI) project, when the program is fully active.<sup>12</sup> This enables the FDLE to conduct ongoing, fingerprint-based, state and national background checks on ch. 493, F.S., licensees. The bill also requires the FDLE to report any arrest record it discovers to the DACS. In turn, the DACS must notify the licensee's employing agency of the arrest record.

In accordance with the changes made by section 3, **Section 2** requires initial applicants for licensure under ch. 493, F.S., to submit:

- A full set of fingerprints;
- A one-time fingerprint processing fee;
- An annual fingerprint retention fee to cover the cost of the FDLE's AFRNP;<sup>13</sup> and
- A one-time enrollment fee for enrollment of the fingerprints in the FBI's NGI project.

In addition, applicants for renewal of ch. 493, F.S., license are required by **Section 6** of the bill to submit:

- A full set of fingerprints, if the applicant held a valid license issued under ch. 493, F.S., before January 1, 2016;
- A one-time fingerprint processing fee;
- A renewal fee; and
- An annual fingerprint retention fee to cover the cost of the FDLE'S AFRNP.

Participation at the statewide level requires payment of an annual fee of \$6.00 for each year the license is valid. Participation in the fingerprint retention program at the national level requires payment of a \$13.00 fee at the time of initial application to cover costs of fingerprint retention for as long as the license is valid.

In 2012, the U.S. Department of Justice removed the requirement that a permanent legal resident alien prove his or her residence in the state for 90 days to be able to purchase or own a firearm.<sup>14</sup> **Section 4** conforms s. 493.6106, F.S., specific to applicants for licensure under ch. 493, F.S., to this change.

**Sections 6 and 7** correct statutory cross-references.

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<sup>11</sup> Section 943.05, F.S. See also Florida Department of Law Enforcement, *Criminal History Record Checks/ Background Checks Fact Sheet* (February 1, 2015). Available at <http://www.fdle.state.fl.us/Content/Criminal-History/FAQ.aspx> (last accessed March 11, 2015).

<sup>12</sup> The FBI's NGI project is in development, but has not yet been implemented. The program will allow applicant's fingerprints to be retained by the FBI and searched against incoming arrest fingerprints nationwide in a manner similar to the AFRNP in Florida. Florida Department of Agriculture and Consumer Services, *Legislative Bill Analysis for HB 997* (March 3, 2015).

<sup>13</sup> Under the bill, the DACS must set the retention and enrollment fees by rule. The DACS states the annual retention fee will be \$6.00, and that the FBI enrollment fee will be \$13.00. Florida Department of Agriculture and Consumer Services, *Legislative Bill Analysis for HB 997* (March 3, 2015).

<sup>14</sup> See U.S. Department of Justice, *Questions and Answers – Revised ATF F4473*, (April, 2012), available at <http://www.atf.gov/files/regulations-rulings/rulings/atf-rulings/atf-ruling-2010-6.pdf> (last accessed March 11, 2015).

**Section 9** requires the owner, operator, officer, director, partner, or manager of a telephone solicitor business (commercial telephone seller) to provide a physical location of its telephone solicitor business on its application for licensure with the DACS, where previously a mail drop address could be provided.

**Section 16** creates s. 570.695, F.S., to authorize the DACS to issue a Florida veteran identification card, beginning January 1, 2016. Any balance of funds remaining after expenditures for the veteran identification card program will be distributed to Friends of Florida State Forests to support Operation Outdoor Freedom.

**Section 17** appropriates \$254,300 from the Division of Licensing Trust Fund and authorizes one position for the DACS in Fiscal Year 2015-2016, to administer the veteran identification card program.

### **Amusement Ride Safety Standards**

Florida has approximately 245 amusement parks and 190 traveling amusement companies that are subject to inspection by the DACS.<sup>15</sup> These parks include carnivals, water parks, go-kart courses, and bungee-jumping parks.<sup>16</sup> A temporary amusement ride must be inspected by the DACS each time it is moved or set up in a new location. Permanent rides are inspected semi-annually.<sup>17</sup> Additionally, parks subject to the regulations of the DACS must show proof of sufficient employee training and insurance.

**Section 18** exempts the following venues from s. 616.242, F.S, for amusement rides permitting, inspection, and insurance requirements:

- A water-related amusement ride operated as an incidental amenity to the core business of a lodging and food service establishment or membership campground that does not offer a day rate.
- An amusement ride operated as an incidental amenity to the primary business of a membership-only facility that does not offer a day rate.
- A permanent facility that is not open to the general public, and that is operated by a nonprofit corporation registered under ch. 496, F.S.

These exemptions are targeted at generally smaller water attractions or rides at hotels or campsites, private country clubs or playgrounds, and facilities run by, e.g. the YMCA (two non-profit facilities currently qualify for this exemption).<sup>18</sup>

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<sup>15</sup> Florida Department of Agriculture and Consumer Services, *Fair Rides Inspection*. Available at <http://www.freshfromflorida.com/Divisions-Offices/Consumer-Services/Business-Services/Fair-Rides> (last accessed March 12, 2015).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Conversation with staff of the Department of Agriculture and Consumer Services, on March 6, 2015.

<sup>21</sup> Florida Department of Agriculture and Consumer Services, Division of Licensing, *Number of Licensees by Type*, (February 28, 2015). Available at [http://www.freshfromflorida.com/content/download/7471/118627/Number\\_of\\_Licensees\\_By\\_Type.pdf](http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf) (last accessed March 12, 2015).

The bill also allows owners or managers of amusement rides to request to use alternate inspections and employee training forms than those prescribed by departmental rules. This is allowed if the alternate form includes at least the information required by the prescribed form.

### **Concealed Weapon and Firearm Licensing**

Under current law, certain concealed weapons or firearms pre-licensing course instructors must maintain records certifying that they observed their student safely handle and discharge a firearm. **Section 19** of this bill clarifies s. 790.06, F.S., to require that the instructor maintain records certifying that *while he or she was physically present*, the instructor observed the student safely handle and *actually* discharge (“live fire”) a firearm *using a firearm and ammunition as defined in s. 790.001, F.S.* This ensures that the instruction occurs in person rather than by video conference.

Subject to this section, application fees for concealed weapon and firearm licensure will be reduced from \$70 to \$60 for initial applicants, and from \$60 to \$50 for renewal applicants.

The bill also provides for notice of the suspension or revocation of a concealed weapon or firearm license by either the first-class mailing to the licensee’s last known mailing address furnished to the DACS, or by e-mail, if personal service or certified mail is ineffective. For purposes of this section, the notice is considered complete at the time the e-mail is sent, or after 20 days from the deposit of the letter providing notice through the mail.

Currently, s. 790.06(11), F.S., requires a licensee who seeks to renew his or her firearm or concealed weapon license to submit a *notarized* affidavit stating that the licensee remains qualified for the license. **Section 19** of the bill amends s. 790.06(11), F.S., to require an affidavit *submitted under oath and under penalty of perjury* instead.

As of July 1, 2014, tax collectors who entered into a memorandum of understanding with the DACS may collect initial and renewal applications for firearms and concealed weapons permits. **Section 20** expands the qualified tax collectors’ capabilities to include the printing and delivery of a concealed weapon or firearm license to an individual who renews his or her license at the tax collector’s office. Tax collectors may collect fees for such services.

**Section 21** amends s.790.15, F.S., relating to the discharge of firearms in public or on residential property. The bill prohibits the discharge of firearms on property with a residential density of one or more dwelling units per acre. This limitation would not apply to:

- A person lawfully defending life or property;
- A person lawfully performing official duties requiring the discharge of a firearm; or
- If, under certain circumstances, the discharge does not pose a reasonably foreseeable risk to life, safety, or property.

The bill creates a first degree misdemeanor, punishable as provided in ss. 775.082 or 775.083, F.S.

**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:****Procedural Due Process and Notice Requirements, Generally**

The Due Process Clauses of the Fifth and Fourteenth Amendments contemplate fair process. “An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objection.”<sup>19</sup> Three factors must be weighed to determine the degree to which due process protections apply:

- The private interest that will be affected;
- The risk of erroneous deprivation of such interest through the procedures used; and
- The government’s interest, including fiscal and administrative burdens of additional process.<sup>20</sup>

The DACS seeks to preserve the public records exemption of personal identifying information of an individual who applied for or received a firearm or concealed weapon license by substituting direct mail or e-mail for the publication of such information in general circulation newspapers as a method of notice.<sup>21</sup> Courts have not ruled directly on whether replacing notice by publication with notice by first class mail without proof of knowledge of receipt is sufficient procedural due process.<sup>22</sup>

**Single Subject Requirement**

The Florida Constitution requires that every law must address one subject and address only issues and matters logically connected to that single subject.<sup>23</sup> The single subject clause specifically requires that:

- Each provision of the law is naturally germane to the subject expressed in the title;

<sup>19</sup> *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

<sup>20</sup> *Mathews v. Eldridge*, 424 U.S. 319 (1976); *Hadley v. Dept. of Admin.*, 411 So.2d 184 (Fla. 1982).

<sup>21</sup> See s. 790.0601, F.S.; Florida Department of Agriculture and Consumer Services, *Legislative Bill Analysis for HB 997* (March 3, 2015).

<sup>22</sup> *Anderson v. State*, 87 So. 3d 774, 776 (Fla. 2012).

<sup>23</sup> Article III, s., Fla. Const.; *Burch v. State*, 558 So. 2d 1, 59 Ed. Law Rep. 932 (Fla. 1990).

- The several provisions are all necessary to achieve the purpose of the legislation; and
- All provisions are properly, naturally, and logically connected to each other.<sup>24</sup>

The standard of review applied by courts to a single subject question is highly deferential to the Legislature;<sup>25</sup> Courts presume that an act meets the single subject requirement of Article III, section 6 of the Florida Constitution,<sup>26</sup> and any single subject violation must occur beyond a reasonable doubt.<sup>27</sup>

The DACS regulates licensure of concealed weapons and firearm licenses. While the title likely gives proper notice of the criminal penalty provided for in section 21 of the bill, it is unclear whether a criminal penalty for discharging a gun is related to the subject or purpose of the bill, especially because an offender is not required to hold a license granted by the DACS or otherwise be connected to the DACS in any way to be subject to the criminal penalty under that section.

A section of the bill or law is considered to be related if (1) the connection is natural or logical, and (2) there is a reasonable explanation for how the provision is necessary to the subject or tends to make effective or promote the objects and purposes of legislation included in the subject.<sup>28</sup> Sections of a bill are permitted to stray from the purpose provided in the short title, but must still relate to the object of, or purpose to be accomplished by, the bill.<sup>29</sup>

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

See Private Sector Impact section below.

### B. Private Sector Impact:

Under CS/CS/SB 1444, veterans, spouses of veterans, and majority-owned veteran businesses will qualify for initial specific license fee waivers. Specific businesses will be exempt from amusement ride inspections and the costs associated therewith.

Private investigators, private security guards, and recovery agents will be subject to additional fees due to fingerprint retention submission requirements.

Individuals seeking a first-time concealed weapon or firearm license will be subject to a \$60 application fee, reduced from \$70; renewal license fees will be \$50, reduced from \$60.

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<sup>24</sup> *State v. Petruzzelli*, 374 So. 2d 13 (Fla. 1979); *Franklin v. State*, 887 So. 2d 1063 (2004).

<sup>25</sup> *State ex. rel Flink v. Canova*, 94 So. 2d at 184 (Fla. 1957).

<sup>26</sup> *Id.* at 184-85.

<sup>27</sup> *Ex parte Knight*, 52 Fla. 144, 41 So. 786, 788 (1906).

<sup>28</sup> *Franklin v. State*, 887 So. 2d 1063, 1078 (2004).

<sup>29</sup> *Id.*, citing *Nichols v. Yandre*, 151 Fla. 87, 9 So. 2d 157, 158 (1942).

Veterans applying for the Florida veteran identification card will be subject to a \$15 application fee.

C. Government Sector Impact:

**Military Veterans**

The DACS estimates a reduction in revenue in the General Inspection Trust Fund generated from fee waivers related to military veterans and spouses in the following amounts:

	FY 2015-16	FY 2016-17	FY 2017-18
Military Veteran Fee Waiver	(\$49,350)	(\$49,350)	(\$49,350)

**Florida Veteran Identification Card**

The DACS estimates the following additional revenue will be deposited into the Division of Licensing Trust Fund due to the creation of the Florida veteran identification card. This amount reflects processing card applications beginning January 1, 2016; Fiscal Year 2015-2016 revenues are for six months only.

	FY 2015-2016	FY 2016-2017	FY 2017-2018
Veteran ID Card	\$546,729	\$820,094	\$820,094

For Fiscal Year 2015-2016, the bill appropriates \$114,018 in recurring funds and \$140,282 in nonrecurring funds from the Division of Licensing Trust Fund and authorizes one position for the DACS to administer the veteran identification card program. Any balance of funds after expenditures will be distributed to Friends of Florida State Forests to support Operation Outdoor Freedom.

**Amusement Rides**

The department estimates the following reduced revenue from fees that will no longer be collected from organizations made exempt from regulation under this bill.

	FY 2015-16	FY 2016-17	FY 2017-18
Amusement Ride Fee Exemptions	(\$2,280)	(\$2,280)	(\$2,280)

**Fingerprint Retention**

The department estimates the following revenue increases from new fees related to fingerprint retention programs for private investigators, private security guards and recovery agents:

	FY 2015-16	FY 2016-17	FY 2017-18
Federal Fingerprint Retention Fees	\$1,543,406	\$1,543,406	\$471,423

State Fingerprint Retention Fees	\$1,037,166	\$1,037,166	\$689,496
<b>Total</b>	<b>\$2,580,572</b>	<b>\$2,580,572</b>	<b>\$1,160,919</b>

The fingerprint retention program at the state level requires applicants to pay an annual fee of \$6.00 for each year the license is valid. Participation in the fingerprint retention program at the federal level requires applicants to pay a \$13.00 fee at the time of initial application. These fees will be collected by the DACS and deposited into Division of Licensing Trust Fund where they will be disbursed to the FBI and the FDLE for the administration of fingerprint retention programs.

**Concealed Weapon Licenses**

The DACS estimates the following revenue reduction in the Division of Licensing Trust Fund due to the reduction in concealed weapon license (CWL) fees by \$10 each. The Division of Licensing within the DACS indicates that the reduced fee revenue is sufficient to continue to fund the program.

	FY 2015-16	FY 2016-17	FY 2017-18
New CWL Fee Reduction	(\$1,280,000)	(\$1,280,000)	(\$1,280,000)
Renewal CWL Fee Reduction	(\$1,103,050)	(\$1,743,740)	(\$1,397,430)
<b>Total:</b>	<b>(\$2,383,050)</b>	<b>(\$3,023,740)</b>	<b>(\$2,677,430)</b>

**Concealed Weapons License Notice of Service of Process**

The department estimates the following reduced expenditures in the Division of Licensing Trust Fund relating to publishing costs associated with notification of revocation or suspension of concealed weapon licenses:

	FY 2015-16	FY 2016-17	FY 2017-18
CWL Notice of Service of Process	(\$158,948)	(\$158,948)	(\$158,948)

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 472.015, 493.6105, 493.6106, 493.6108, 493.6113, 493.6115, 493.6118, 501.015, 501.605, 501.607, 507.03, 527.02, 539.001, 559.904, 559.928, 616.242, 790.06, 790.0625, and 790.15.

The bill creates section 570.695 of the Florida Statutes.

**IX. Additional Information:**

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

**CS/CS by Appropriations on April 16, 2015:**

The committee substitute:

- Eliminates the transfer of the enforcement of the Commercial Weight Loss Practices Act from the DACS to the Department of Health;
- Allows notice of service to firearm or concealed weapon license holders by mail or e-mail when certified mail is ineffective;
- Authorizes the DACS to issue a Florida veteran identification card;
- Provides an appropriation to the DACS for Fiscal Year 2015-2016 of \$114,018 in recurring funds and \$140,282 in nonrecurring funds from the Division of Licensing Trust Fund and authorizes one position to administer the veteran identification card program; and
- Prohibits the recreational discharge of a firearm in certain residential areas.

**CS by Commerce and Tourism on March 16, 2015:**

Reduces initial application fees for concealed weapon and firearm licenses from \$70 to \$60, and renewal fees from \$60 to \$50.

- B. **Amendments:**

None.

By the Committee on Commerce and Tourism; and Senator Richter

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1 A bill to be entitled  
 2 An act relating to consumer licensing; amending s.  
 3 472.015, F.S.; waiving the initial land surveying and  
 4 mapping license fee for certain veterans of the United  
 5 States Armed Forces, the spouses of such veterans, or  
 6 a business entity that has a majority ownership held  
 7 by such a veteran or spouse; amending s. 493.6105,  
 8 F.S.; requiring that the initial license application  
 9 for private investigative, private security, and  
 10 repossession services include payment of fingerprint  
 11 processing and fingerprint retention fees; amending s.  
 12 493.6106, F.S.; deleting a requirement for additional  
 13 documentation establishing state residency for private  
 14 investigative, private security, and repossession  
 15 service licenses; amending s. 493.6108, F.S.;  
 16 directing the Department of Law Enforcement to retain  
 17 fingerprints submitted for private investigative,  
 18 private security, and repossession service licenses,  
 19 to enter such fingerprints into the statewide  
 20 automated biometric identification system and the  
 21 national retained print arrest notification program,  
 22 and to report any arrest record information to the  
 23 Department of Agriculture and Consumer Services;  
 24 directing the Department of Agriculture and Consumer  
 25 Services to provide information about an arrest within  
 26 the state to the agency that employs the licensee;  
 27 amending s. 493.6113, F.S.; requiring a person holding  
 28 a private investigative, private security, or  
 29 repossession service license issued before a certain

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30 date to submit upon first renewal of the license a  
 31 full set of fingerprints and a fingerprint processing  
 32 fee to cover the cost of entering the fingerprints in  
 33 the statewide automated biometric identification  
 34 system; amending ss. 493.6115 and 493.6118, F.S.;  
 35 conforming cross-references; amending s. 501.015,  
 36 F.S.; waiving the initial health studio registration  
 37 fee for certain veterans of the United States Armed  
 38 Forces, the spouses of such veterans, or a business  
 39 entity that has a majority ownership held by such a  
 40 veteran or spouse; amending s. 501.0581, F.S.;  
 41 transferring enforcement authority of the Florida  
 42 Commercial Weight-Loss Practices Act from the  
 43 Department of Agriculture and Consumer Services to the  
 44 Department of Health; amending s. 501.0583, F.S.;  
 45 transferring enforcement authority of penalties for  
 46 selling, delivering, bartering, furnishing, or giving  
 47 weight-loss pills to persons under the age of 18 from  
 48 the Department of Agriculture and Consumer Services to  
 49 the Department of Health; amending s. 501.605, F.S.;  
 50 prohibiting the use of a mail drop as a street address  
 51 for the principal location of a commercial telephone  
 52 seller; amending s. 501.607, F.S.; waiving the initial  
 53 salesperson license fees for certain veterans of the  
 54 United States Armed Forces, the spouses of such  
 55 veterans, or a business entity that has a majority  
 56 ownership held by such a veteran or spouse; amending  
 57 s. 507.03, F.S.; waiving the initial registration fee  
 58 for an intrastate movers license for certain veterans

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59 of the United States Armed Forces, the spouses of such  
 60 veterans, or a business entity that has a majority  
 61 ownership held by such a veteran or spouse; amending  
 62 s. 527.02, F.S.; waiving the original liquefied  
 63 petroleum gas dealer license fee for certain veterans  
 64 of the United States Armed Forces, the spouses of such  
 65 veterans, or a business entity that has a majority  
 66 ownership held by such a veteran or spouse; amending  
 67 s. 539.001, F.S.; waiving the initial pawnbroker  
 68 license fee for certain veterans of the United States  
 69 Armed Forces, the spouses of such veterans, or a  
 70 business entity that has a majority ownership held by  
 71 such a veteran or spouse; amending s. 559.904, F.S.;  
 72 waiving the initial motor vehicle repair shop  
 73 registration fee for certain veterans of the United  
 74 States Armed Forces, the spouses of such veterans, or  
 75 a business entity that has a majority ownership held  
 76 by such a veteran or spouse; amending s. 559.928,  
 77 F.S.; waiving the initial seller of travel  
 78 registration fee for certain veterans of the United  
 79 States Armed Forces, the spouses of such veterans, or  
 80 a business entity that has a majority ownership held  
 81 by such a veteran or spouse; amending s. 616.242,  
 82 F.S.; deleting an obsolete provision allowing fair  
 83 owners to post a bond rather than carry a certificate  
 84 of insurance; exempting water-related amusement rides  
 85 operated by lodging and food service establishments  
 86 and membership campgrounds, amusement rides at  
 87 private, membership-only facilities, and nonprofit

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88 permanent facilities from certain safety standards;  
 89 authorizing owners or managers of amusement rides to  
 90 use alternate forms to record employee training and  
 91 ride inspections; amending s. 790.06, F.S.; requiring  
 92 firearm course instructors to maintain records  
 93 attesting to the use of live fire with specified  
 94 firearms and ammunition by students in his or her  
 95 physical presence; revising the initial and renewal  
 96 fees for a concealed weapon or firearm license;  
 97 requiring notice of the suspension or revocation of a  
 98 concealed weapon or firearm license or the suspension  
 99 of the processing of an application for such license  
 100 to be given by personal delivery, first-class mail, or  
 101 e-mail; requiring concealed weapon or firearm license  
 102 renewals to include an affidavit submitted under oath  
 103 and under penalty of perjury; amending s. 790.0625,  
 104 F.S.; authorizing certain tax collector offices, upon  
 105 approval and confirmation of license issuance by the  
 106 Department of Agriculture and Consumer Services, to  
 107 print and deliver concealed weapon or firearm  
 108 licenses; providing an effective date.

109  
 110 Be It Enacted by the Legislature of the State of Florida:

111  
 112 Section 1. Subsection (3) of section 472.015, Florida  
 113 Statutes, is amended to read:

114 472.015 Licensure.—

115 (3) (a) Before the issuance of any license, the department  
 116 may charge an initial license fee as determined by rule of the

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117 board. Upon receipt of the appropriate license fee, except as  
 118 provided in subsection (6), the department shall issue a license  
 119 to any person certified by the board, or its designee, as having  
 120 met the applicable requirements imposed by law or rule. However,  
 121 an applicant who is not otherwise qualified for licensure is not  
 122 entitled to licensure solely based on a passing score on a  
 123 required examination.

124 (b) The department shall waive the initial license fee for  
 125 an honorably discharged veteran of the United States Armed  
 126 Forces, the spouse of such a veteran, or a business entity that  
 127 has a majority ownership held by such a veteran or spouse if the  
 128 department receives an application, in a format prescribed by  
 129 the department, within 60 months after the date of the veteran's  
 130 discharge from any branch of the United States Armed Forces. To  
 131 qualify for the waiver, a veteran must provide to the department  
 132 a copy of his or her DD Form 214 or NGB Form 22; the spouse of a  
 133 veteran must provide to the department a copy of the veteran's  
 134 DD Form 214 or NGB Form 22 and a copy of a valid marriage  
 135 license or certificate verifying that he or she was lawfully  
 136 married to the veteran at the time of discharge; or a business  
 137 entity must provide to the department proof that a veteran or  
 138 the spouse of a veteran holds a majority ownership in the  
 139 business, a copy of the veteran's DD Form 214 or NGB Form 22,  
 140 and, if applicable, a copy of a valid marriage license or  
 141 certificate verifying that the spouse of the veteran was  
 142 lawfully married to the veteran at the time of discharge.

143 Section 2. Paragraph (j) of subsection (3) of section  
 144 493.6105, Florida Statutes, is amended to read:  
 145 493.6105 Initial application for license.-

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146 (3) The application must contain the following information  
 147 concerning the individual signing the application:

148 (j) A full set of fingerprints, a fingerprint processing  
 149 fee, and a fingerprint retention fee to cover the cost of  
 150 retaining the fingerprints in the statewide automated biometric  
 151 identification system pursuant to s. 493.6108(2) (a) and the cost  
 152 of enrolling the fingerprints in the national retained print  
 153 arrest notification program when the program is operational and  
 154 the Department of Law Enforcement begins participation. The  
 155 fingerprint processing and retention fees shall ~~to~~ be  
 156 established by rule of the department based upon costs  
 157 determined by state and federal agency charges and department  
 158 processing costs. An applicant who has, within the immediately  
 159 preceding 6 months, submitted such fingerprints and ~~fees~~ fees for  
 160 licensing purposes under this chapter and who still holds a  
 161 valid license is not required to submit another set of  
 162 fingerprints or another fingerprint processing fee. An applicant  
 163 who holds multiple licenses issued under this chapter is  
 164 required to pay only a single fingerprint retention fee.

165 Section 3. Paragraph (f) of subsection (1) of section  
 166 493.6106, Florida Statutes, is amended to read:

167 493.6106 License requirements; posting.-

168 (1) Each individual licensed by the department must:

169 (f) Be a citizen or permanent legal resident alien of the  
 170 United States or have appropriate authorization issued by the  
 171 United States Citizenship and Immigration Services of the United  
 172 States Department of Homeland Security.

173 1. An applicant for a Class "C," Class "CC," Class "D,"  
 174 Class "DI," Class "E," Class "EE," Class "M," Class "MA," Class

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175 "MB," Class "MR," or Class "RI" license who is not a United  
 176 States citizen must submit proof of current employment  
 177 authorization issued by the United States Citizenship and  
 178 Immigration Services or proof that she or he is deemed a  
 179 permanent legal resident alien by the United States Citizenship  
 180 and Immigration Services.

181 2. An applicant for a Class "G" or Class "K" license who is  
 182 not a United States citizen must submit proof that she or he is  
 183 deemed a permanent legal resident alien by the United States  
 184 Citizenship and Immigration Services, ~~together with additional~~  
 185 ~~documentation establishing that she or he has resided in the~~  
 186 ~~state of residence shown on the application for at least 90~~  
 187 ~~consecutive days before the date that the application is~~  
 188 ~~submitted.~~

189 3. An applicant for an agency or school license who is not  
 190 a United States citizen or permanent legal resident alien must  
 191 submit documentation issued by the United States Citizenship and  
 192 Immigration Services stating that she or he is lawfully in the  
 193 United States and is authorized to own and operate the type of  
 194 agency or school for which she or he is applying. An employment  
 195 authorization card issued by the United States Citizenship and  
 196 Immigration Services is not sufficient documentation.

197 Section 4. Subsections (2) and (3) of section 493.6108,  
 198 Florida Statutes, are renumbered as subsections (3) and (4),  
 199 respectively, and a new subsection (2) is added to that section,  
 200 to read:

201 493.6108 Investigation of applicants by Department of  
 202 Agriculture and Consumer Services.—

203 (2) (a) The Department of Law Enforcement shall retain and

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204 enter into the statewide automated biometric identification  
 205 system authorized under s. 943.05 all fingerprints submitted to  
 206 the department pursuant to this chapter. The Department of Law  
 207 Enforcement shall enroll such fingerprints in the national  
 208 retained print arrest notification program when the program is  
 209 operational and the Department of Law Enforcement begins  
 210 participation. Thereafter, the fingerprints shall be available  
 211 for arrest notifications required by paragraph (b) and all  
 212 purposes and uses authorized for arrest fingerprints entered  
 213 into the statewide automated biometric identification system.

214 (b) The Department of Law Enforcement shall search all  
 215 arrest fingerprints against fingerprints retained pursuant to  
 216 paragraph (a) and report any arrest record identified by the  
 217 Department of Law Enforcement or the Federal Bureau of  
 218 Investigation to the department. If the department receives  
 219 information about an arrest within the state of a person who  
 220 holds a valid license issued under this chapter for a crime that  
 221 could potentially disqualify the person from holding such a  
 222 license, the department shall provide the arrest information to  
 223 the agency that employs the licensee.

224 Section 5. Subsection (3) of section 493.6113, Florida  
 225 Statutes, is amended to read:

226 493.6113 Renewal application for licensure.—

227 (3) (a) Each licensee is responsible for renewing his or her  
 228 license on or before its expiration by filing with the  
 229 department an application for renewal accompanied by payment of  
 230 the ~~renewal fee and the fingerprint retention fee to cover the~~  
 231 cost of ongoing retention in the statewide automated biometric  
 232 identification system ~~prescribed license fee.~~

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233 (b) In addition to the fees specified in paragraph (a), a  
 234 person holding a valid license issued under this chapter before  
 235 January 1, 2016, must submit upon first renewal of the license a  
 236 full set of fingerprints and a fingerprint processing fee to  
 237 cover the cost of entering the fingerprints into the statewide  
 238 automated biometric identification system pursuant to s.  
 239 493.6108(2)(a). Subsequent renewals may be completed without  
 240 submission of a set of fingerprints.

241 ~~(c)(a)~~ Each Class "B" licensee shall additionally submit on  
 242 a form prescribed by the department a certification of insurance  
 243 that evidences that the licensee maintains coverage as required  
 244 under s. 493.6110.

245 ~~(d)(b)~~ Each Class "G" licensee shall additionally submit  
 246 proof that he or she has received during each year of the  
 247 license period a minimum of 4 hours of firearms recertification  
 248 training taught by a Class "K" licensee and has complied with  
 249 such other health and training requirements that the department  
 250 shall adopt by rule. Proof of completion of firearms  
 251 recertification training shall be submitted to the department  
 252 upon completion of the training. If the licensee fails to  
 253 complete the required 4 hours of annual training during the  
 254 first year of the 2-year term of the license, the license shall  
 255 be automatically suspended. The licensee must complete the  
 256 minimum number of hours of range and classroom training required  
 257 at the time of initial licensure and submit proof of completion  
 258 of such training to the department before the license may be  
 259 reinstated. If the licensee fails to complete the required 4  
 260 hours of annual training during the second year of the 2-year  
 261 term of the license, the licensee must complete the minimum

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262 number of hours of range and classroom training required at the  
 263 time of initial licensure and submit proof of completion of such  
 264 training to the department before the license may be renewed.  
 265 The department may waive the firearms training requirement if:

266 1. The applicant provides proof that he or she is currently  
 267 certified as a law enforcement officer or correctional officer  
 268 under the Criminal Justice Standards and Training Commission and  
 269 has completed law enforcement firearms requalification training  
 270 annually during the previous 2 years of the licensure period;

271 2. The applicant provides proof that he or she is currently  
 272 certified as a federal law enforcement officer and has received  
 273 law enforcement firearms training administered by a federal law  
 274 enforcement agency annually during the previous 2 years of the  
 275 licensure period; or

276 3. The applicant submits a valid firearm certificate among  
 277 those specified in s. 493.6105(6)(a) and provides proof of  
 278 having completed requalification training during the previous 2  
 279 years of the licensure period.

280 ~~(e)(e)~~ Each Class "DS" or Class "RS" licensee shall  
 281 additionally submit the current curriculum, examination, and  
 282 list of instructors.

283 ~~(f)(d)~~ Each Class "K" licensee shall additionally submit  
 284 one of the certificates specified under s. 493.6105(6) as proof  
 285 that he or she remains certified to provide firearms  
 286 instruction.

287 Section 6. Subsection (6) of section 493.6115, Florida  
 288 Statutes, is amended to read:

289 493.6115 Weapons and firearms.—

290 (6) In addition to any other firearm approved by the

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291 department, a licensee who has been issued a Class "G" license  
 292 may carry a .38 caliber revolver; or a .380 caliber or 9  
 293 millimeter semiautomatic pistol; or a .357 caliber revolver with  
 294 .38 caliber ammunition only; or a .40 caliber handgun; or a .45  
 295 ACP handgun while performing duties authorized under this  
 296 chapter. A licensee may not carry more than two firearms upon  
 297 her or his person when performing her or his duties. A licensee  
 298 may only carry a firearm of the specific type and caliber with  
 299 which she or he is qualified pursuant to the firearms training  
 300 referenced in subsection (8) or s. 493.6113(3)(d)  
 301 ~~493.6113(3)(b)~~.

302 Section 7. Paragraph (u) of subsection (1) of section  
 303 493.6118, Florida Statutes, is amended to read:

304 493.6118 Grounds for disciplinary action.—

305 (1) The following constitute grounds for which disciplinary  
 306 action specified in subsection (2) may be taken by the  
 307 department against any licensee, agency, or applicant regulated  
 308 by this chapter, or any unlicensed person engaged in activities  
 309 regulated under this chapter.

310 (u) For a Class "G" licensee, failing to timely complete  
 311 recertification training as required in s. 493.6113(3)(d)  
 312 ~~493.6113(3)(b)~~.

313 Section 8. Subsection (2) of section 501.015, Florida  
 314 Statutes, is amended to read:

315 501.015 Health studios; registration requirements and  
 316 fees.—Each health studio shall:

317 (2) Remit an annual registration fee of \$300 to the  
 318 department at the time of registration for each of the health  
 319 studio's business locations. The department shall waive the

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320 initial registration fee for an honorably discharged veteran of  
 321 the United States Armed Forces, the spouse of such a veteran, or  
 322 a business entity that has a majority ownership held by such a  
 323 veteran or spouse if the department receives an application, in  
 324 a format prescribed by the department, within 60 months after  
 325 the date of the veteran's discharge from any branch of the  
 326 United States Armed Forces. To qualify for the waiver, a veteran  
 327 must provide to the department a copy of his or her DD Form 214  
 328 or NGB Form 22; the spouse of a veteran must provide to the  
 329 department a copy of the veteran's DD Form 214 or NGB Form 22  
 330 and a copy of a valid marriage license or certificate verifying  
 331 that he or she was lawfully married to the veteran at the time  
 332 of discharge; or a business entity must provide to the  
 333 department proof that a veteran or the spouse of a veteran holds  
 334 a majority ownership in the business, a copy of the veteran's DD  
 335 Form 214 or NGB Form 22, and, if applicable, a copy of a valid  
 336 marriage license or certificate verifying that the spouse of the  
 337 veteran was lawfully married to the veteran at the time of  
 338 discharge.

339 Section 9. Subsections (1) and (2) of section 501.0581,  
 340 Florida Statutes, are amended to read:

341 501.0581 Commercial Weight-Loss Practices Act; civil  
 342 remedies.—

343 (1) The Department of ~~Health Agriculture and Consumer~~  
 344 ~~Services~~ may bring a civil action in circuit court for temporary  
 345 or permanent injunctive relief to enforce ~~the provisions of this~~  
 346 act and may seek other appropriate civil relief, including a  
 347 civil penalty not to exceed \$5,000 for each violation, for  
 348 restitution and damages for injured customers, court costs, and

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349 reasonable ~~attorney~~ attorney's fees.

350 (2) The Department of ~~Health Agriculture and Consumer~~  
351 ~~Services~~ may terminate any investigation or action upon  
352 agreement by the offender to pay a stipulated civil penalty,  
353 make restitution or pay damages to customers, or satisfy any  
354 other relief authorized herein and requested by the department.

355 Section 10. Subsection (3) of section 501.0583, Florida  
356 Statutes, is amended to read:

357 501.0583 Selling, delivering, bartering, furnishing, or  
358 giving weight-loss pills to persons under age 18; penalties;  
359 defense.—

360 (3) A first violation of subsection (2) or this subsection  
361 is punishable by a fine of \$100. A second violation of  
362 subsection (2) or this subsection is punishable by a fine of  
363 \$250. A third violation of subsection (2) or this subsection is  
364 punishable by a fine of \$500. A fourth or subsequent violation  
365 of subsection (2) or this subsection is punishable by a fine as  
366 determined by the Department of ~~Health Agriculture and Consumer~~  
367 ~~Services~~, not to exceed \$1,000.

368 Section 11. Paragraph (j) of subsection (2) and paragraph  
369 (b) of subsection (5) of section 501.605, Florida Statutes, are  
370 amended to read:

371 501.605 Licensure of commercial telephone sellers.—

372 (2) An applicant for a license as a commercial telephone  
373 seller must submit to the department, in such form as it  
374 prescribes, a written application for the license. The  
375 application must set forth the following information:

376 (j) The complete street address of each location,  
377 designating the principal location, from which the applicant

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378 will be doing business. The street address may not be ~~if any~~  
379 ~~location is~~ a mail drop, ~~this shall be disclosed as such.~~

380  
381 The application shall be accompanied by a copy of any: Script,  
382 outline, or presentation the applicant will require or suggest a  
383 salesperson to use when soliciting, or, if no such document is  
384 used, a statement to that effect; sales information or  
385 literature to be provided by the applicant to a salesperson; and  
386 sales information or literature to be provided by the applicant  
387 to a purchaser in connection with any solicitation.

388 (5) An application filed pursuant to this part must be  
389 verified and accompanied by:

390 (b) A fee for licensing in the amount of \$1,500. The fee  
391 shall be deposited into the General Inspection Trust Fund. The  
392 department shall waive the initial licensing fee for an  
393 honorably discharged veteran of the United States Armed Forces,  
394 the spouse of such a veteran, or a business entity that has a  
395 majority ownership held by such a veteran or spouse if the  
396 department receives an application, in a format prescribed by  
397 the department, within 60 months after the date of the veteran's  
398 discharge from any branch of the United States Armed Forces. To  
399 qualify for the waiver, a veteran must provide to the department  
400 a copy of his or her DD Form 214 or NGB Form 22; the spouse of a  
401 veteran must provide to the department a copy of the veteran's  
402 DD Form 214 or NGB Form 22 and a copy of a valid marriage  
403 license or certificate verifying that he or she was lawfully  
404 married to the veteran at the time of discharge; or a business  
405 entity must provide to the department proof that a veteran or  
406 the spouse of a veteran holds a majority ownership in the

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407 business, a copy of the veteran's DD Form 214 or NGB Form 22,  
 408 and, if applicable, a copy of a valid marriage license or  
 409 certificate verifying that the spouse of the veteran was  
 410 lawfully married to the veteran at the time of discharge.

411 Section 12. Paragraph (b) of subsection (2) of section  
 412 501.607, Florida Statutes, is amended to read:

413 501.607 Licensure of salespersons.—

414 (2) An application filed pursuant to this section must be  
 415 verified and be accompanied by:

416 (b) A fee for licensing in the amount of \$50 per  
 417 salesperson. The fee shall be deposited into the General  
 418 Inspection Trust Fund. The fee for licensing may be paid after  
 419 the application is filed, but must be paid within 14 days after  
 420 the applicant begins work as a salesperson. The department shall  
 421 waive the initial licensing fee for an honorably discharged  
 422 veteran of the United States Armed Forces, the spouse of such a  
 423 veteran, or a business entity that has a majority ownership held  
 424 by such a veteran or spouse if the department receives an  
 425 application, in a format prescribed by the department, within 60  
 426 months after the date of the veteran's discharge from any branch  
 427 of the United States Armed Forces. To qualify for the waiver, a  
 428 veteran must provide to the department a copy of his or her DD  
 429 Form 214 or NGB Form 22; the spouse of a veteran must provide to  
 430 the department a copy of the veteran's DD Form 214 or NGB Form  
 431 22 and a copy of a valid marriage license or certificate  
 432 verifying that he or she was lawfully married to the veteran at  
 433 the time of discharge; or a business entity must provide to the  
 434 department proof that a veteran or the spouse of a veteran holds  
 435 a majority ownership in the business, a copy of the veteran's DD

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436 Form 214 or NGB Form 22, and, if applicable, a copy of a valid  
 437 marriage license or certificate verifying that the spouse of the  
 438 veteran was lawfully married to the veteran at the time of  
 439 discharge.

440 Section 13. Subsection (3) of section 507.03, Florida  
 441 Statutes, is amended to read:

442 507.03 Registration.—

443 (3) (a) Registration fees shall be calculated at the rate of  
 444 \$300 per year per mover or moving broker. All amounts collected  
 445 shall be deposited by the Chief Financial Officer to the credit  
 446 of the General Inspection Trust Fund of the department for the  
 447 sole purpose of administration of this chapter.

448 (b) The department shall waive the initial registration fee  
 449 for an honorably discharged veteran of the United States Armed  
 450 Forces, the spouse of such a veteran, or a business entity that  
 451 has a majority ownership held by such a veteran or spouse if the  
 452 department receives an application, in a format prescribed by  
 453 the department, within 60 months after the date of the veteran's  
 454 discharge from any branch of the United States Armed Forces. To  
 455 qualify for the waiver, a veteran must provide to the department  
 456 a copy of his or her DD Form 214 or NGB Form 22; the spouse of a  
 457 veteran must provide to the department a copy of the veteran's  
 458 DD Form 214 or NGB Form 22 and a copy of a valid marriage  
 459 license or certificate verifying that he or she was lawfully  
 460 married to the veteran at the time of discharge; or a business  
 461 entity must provide to the department proof that a veteran or  
 462 the spouse of a veteran holds a majority ownership in the  
 463 business, a copy of the veteran's DD Form 214 or NGB Form 22,  
 464 and, if applicable, a copy of a valid marriage license or

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465 certificate verifying that the spouse of the veteran was  
 466 lawfully married to the veteran at the time of discharge.

467 Section 14. Subsection (3) of section 527.02, Florida  
 468 Statutes, is amended to read:

469 527.02 License; penalty; fees.—

470 (3) (a) An ~~Any~~ applicant for an original license who submits  
 471 an ~~whose~~ application ~~is submitted~~ during the last 6 months of  
 472 the license year may have the original license fee reduced by  
 473 one-half for the 6-month period. This provision applies ~~shall~~  
 474 ~~apply~~ only to those companies applying for an original license  
 475 and may ~~shall~~ not be applied to licensees who held a license  
 476 during the previous license year and failed to renew the  
 477 license. The department may refuse to issue an initial license  
 478 to an ~~any~~ applicant who is under investigation in any  
 479 jurisdiction for an action that would constitute a violation of  
 480 this chapter until such time as the investigation is complete.

481 (b) The department shall waive the original license fee for  
 482 an honorably discharged veteran of the United States Armed  
 483 Forces, the spouse of such a veteran, or a business entity that  
 484 has a majority ownership held by such a veteran or spouse if the  
 485 department receives an application, in a format prescribed by  
 486 the department, within 60 months after the date of the veteran's  
 487 discharge from any branch of the United States Armed Forces. To  
 488 qualify for the waiver, a veteran must provide to the department  
 489 a copy of his or her DD Form 214 or NGB Form 22; the spouse of a  
 490 veteran must provide to the department a copy of the veteran's  
 491 DD Form 214 or NGB Form 22 and a copy of a valid marriage  
 492 license or certificate verifying that he or she was lawfully  
 493 married to the veteran at the time of discharge; or a business

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494 entity must provide to the department proof that a veteran or  
 495 the spouse of a veteran holds a majority ownership in the  
 496 business, a copy of the veteran's DD Form 214 or NGB Form 22,  
 497 and, if applicable, a copy of a valid marriage license or  
 498 certificate verifying that the spouse of the veteran was  
 499 lawfully married to the veteran at the time of discharge.

500 Section 15. Paragraph (c) of subsection (3) of section  
 501 539.001, Florida Statutes, is amended to read:

502 539.001 The Florida Pawnbroking Act.—

503 (3) LICENSE REQUIRED.—

504 (c) Each license is valid for a period of 1 year unless it  
 505 is earlier relinquished, suspended, or revoked. Each license  
 506 shall be renewed annually, and each licensee shall, initially  
 507 and annually thereafter, pay to the agency a license fee of \$300  
 508 for each license held. The agency shall waive the initial  
 509 license fee for an honorably discharged veteran of the United  
 510 States Armed Forces, the spouse of such a veteran, or a business  
 511 entity that has a majority ownership held by such a veteran or  
 512 spouse if the agency receives an application, in a format  
 513 prescribed by the agency, within 60 months after the date of the  
 514 veteran's discharge from any branch of the United States Armed  
 515 Forces. To qualify for the waiver, a veteran must provide to the  
 516 department a copy of his or her DD Form 214 or NGB Form 22; the  
 517 spouse of a veteran must provide to the agency a copy of the  
 518 veteran's DD Form 214 or NGB Form 22 and a copy of a valid  
 519 marriage license or certificate verifying that he or she was  
 520 lawfully married to the veteran at the time of discharge; or a  
 521 business entity must provide to the agency proof that a veteran  
 522 or the spouse of a veteran holds a majority ownership in the

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523 business, a copy of the veteran's DD Form 214 or NGB Form 22,  
 524 and, if applicable, a copy of a valid marriage license or  
 525 certificate verifying that the spouse of the veteran was  
 526 lawfully married to the veteran at the time of discharge.

527 Section 16. Subsection (3) of section 559.904, Florida  
 528 Statutes, is amended to read:

529 559.904 Motor vehicle repair shop registration;  
 530 application; exemption.—

531 (3) (a) Each application for registration must be  
 532 accompanied by a registration fee calculated on a per-year basis  
 533 as follows:

534 1. ~~(a)~~ If the place of business has 1 to 5 employees: \$50.  
 535 2. ~~(b)~~ If the place of business has 6 to 10 employees: \$150.  
 536 3. ~~(c)~~ If the place of business has 11 or more employees:  
 537 \$300.

538 (b) The department shall waive the initial registration fee  
 539 for an honorably discharged veteran of the United States Armed  
 540 Forces, the spouse of such a veteran, or a business entity that  
 541 has a majority ownership held by such a veteran or spouse if the  
 542 department receives an application, in a format prescribed by  
 543 the department, within 60 months after the date of the veteran's  
 544 discharge from any branch of the United States Armed Forces. To  
 545 qualify for the waiver, a veteran must provide to the department  
 546 a copy of his or her DD Form 214 or NGB Form 22; the spouse of a  
 547 veteran must provide to the department a copy of the veteran's  
 548 DD Form 214 or NGB Form 22 and a copy of a valid marriage  
 549 license or certificate verifying that he or she was lawfully  
 550 married to the veteran at the time of discharge; or a business  
 551 entity must provide to the department proof that a veteran or

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552 the spouse of a veteran holds a majority ownership in the  
 553 business, a copy of the veteran's DD Form 214 or NGB Form 22,  
 554 and, if applicable, a copy of a valid marriage license or  
 555 certificate verifying that the spouse of the veteran was  
 556 lawfully married to the veteran at the time of discharge.

557 Section 17. Paragraph (c) is added to subsection (2) of  
 558 section 559.928, Florida Statutes, to read:

559 559.928 Registration.—  
 560 (2)

561 (c) The department shall waive the initial registration fee  
 562 for an honorably discharged veteran of the United States Armed  
 563 Forces, the spouse of such a veteran, or a business entity that  
 564 has a majority ownership held by such a veteran or spouse if the  
 565 department receives an application, in a format prescribed by  
 566 the department, within 60 months after the date of the veteran's  
 567 discharge from any branch of the United States Armed Forces. To  
 568 qualify for the waiver, a veteran must provide to the department  
 569 a copy of his or her DD Form 214 or NGB Form 22; the spouse of a  
 570 veteran must provide to the department a copy of the veteran's  
 571 DD Form 214 or NGB Form 22 and a copy of a valid marriage  
 572 license or certificate verifying that he or she was lawfully  
 573 married to the veteran at the time of discharge; or the business  
 574 entity must provide to the department proof that a veteran or  
 575 the spouse of a veteran holds a majority ownership in the  
 576 business, a copy of the veteran's DD Form 214 or NGB Form 22,  
 577 and, if applicable, a copy of a valid marriage license or  
 578 certificate verifying that the spouse of the veteran was  
 579 lawfully married to the veteran at the time of discharge.

580 Section 18. Paragraph (b) of subsection (5), paragraph (a)

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581 of subsection (10), and subsections (15) and (16) of section  
 582 616.242, Florida Statutes, are amended to read:  
 583 616.242 Safety standards for amusement rides.—  
 584 (5) ANNUAL PERMIT.—  
 585 (b) To apply for an annual permit, an owner must submit to  
 586 the department a written application on a form prescribed by  
 587 rule of the department, which must include the following:  
 588 1. The legal name, address, and primary place of business  
 589 of the owner.  
 590 2. A description, manufacturer's name, serial number, model  
 591 number and, if previously assigned, the United States Amusement  
 592 Identification Number of the amusement ride.  
 593 3. A valid certificate of insurance ~~or bond~~ for each  
 594 amusement ride.  
 595 4. An affidavit of compliance that the amusement ride was  
 596 inspected in person by the affiant and that the amusement ride  
 597 is in general conformance with the requirements of this section  
 598 and all applicable rules adopted by the department. The  
 599 affidavit must be executed by a professional engineer or a  
 600 qualified inspector at least no earlier than 60 days before, but  
 601 not later than, the date ~~of the filing of~~ the application is  
 602 filed with the department. The owner shall request inspection  
 603 and permitting of the amusement ride within 60 days ~~after~~ of the  
 604 date ~~of filing~~ the application is filed with the department. The  
 605 department shall inspect and permit the amusement ride within 60  
 606 days after the date filing the application is filed with the  
 607 department.  
 608 5. If required by subsection (6), an affidavit of  
 609 nondestructive testing dated and executed at least no earlier

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610 ~~than 60 days before prior to~~, but not later than, the date ~~of~~  
 611 ~~the filing of~~ the application is filed with the department. The  
 612 owner shall request inspection and permitting of the amusement  
 613 ride within 60 days ~~after~~ of the date ~~of filing~~ the application  
 614 is filed with the department. The department shall inspect and  
 615 permit the amusement ride within 60 days after the date filing  
 616 the application is filed with the department.  
 617 6. A request for inspection.  
 618 7. Upon request, the owner shall, at no cost to the  
 619 department, provide the department a copy of the manufacturer's  
 620 current recommended operating instructions in the possession of  
 621 the owner, the owner's operating fact sheet, and any written  
 622 bulletins in the possession of the owner concerning the safety,  
 623 operation, or maintenance of the amusement ride.  
 624 (10) EXEMPTIONS.—  
 625 (a) This section does not apply to:  
 626 1. Permanent facilities that employ at least 1,000 full-  
 627 time employees and that maintain full-time, in-house safety  
 628 inspectors. Furthermore, the permanent facilities must file an  
 629 affidavit of the annual inspection with the department, on a  
 630 form prescribed by rule of the department. Additionally, the  
 631 Department of Agriculture and Consumer Services may consult  
 632 annually with the permanent facilities regarding industry safety  
 633 programs.  
 634 2. Any playground operated by a school, local government,  
 635 or business licensed under chapter 509, if the playground is an  
 636 incidental amenity and the operating entity is not primarily  
 637 engaged in providing amusement, pleasure, thrills, or  
 638 excitement.

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639 3. Museums or other institutions principally devoted to the  
640 exhibition of products of agriculture, industry, education,  
641 science, religion, or the arts.

642 4. Conventions or trade shows for the sale or exhibit of  
643 amusement rides if there are a minimum of 15 amusement rides on  
644 display or exhibition, and if any operation of such amusement  
645 rides is limited to the registered attendees of the convention  
646 or trade show.

647 5. Skating rinks, arcades, ~~laser lazer~~ or paint ball war  
648 games, bowling alleys, miniature golf courses, mechanical bulls,  
649 inflatable rides, trampolines, ball crawls, exercise equipment,  
650 jet skis, paddle boats, airboats, helicopters, airplanes,  
651 parasails, hot air or helium balloons whether tethered or  
652 untethered, theatres, batting cages, stationary spring-mounted  
653 fixtures, rider-propelled merry-go-rounds, games, side shows,  
654 live animal rides, or live animal shows.

655 6. Go-karts operated in competitive sporting events if  
656 participation is not open to the public.

657 7. Nonmotorized playground equipment that is not required  
658 to have a manager.

659 8. Coin-actuated amusement rides designed to be operated by  
660 depositing coins, tokens, credit cards, debit cards, bills, or  
661 other cash money and which are not required to have a manager,  
662 and which have a capacity of six persons or less.

663 9. Facilities described in s. 549.09(1)(a) when such  
664 facilities are operating cars, trucks, or motorcycles only.

665 10. Battery-powered cars or other vehicles that are  
666 designed to be operated by children 7 years of age or under and  
667 that cannot exceed a speed of 4 miles per hour.

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668 11. Mechanically driven vehicles that pull train cars,  
669 carts, wagons, or other similar vehicles, that are not confined  
670 to a metal track or confined to an area but are steered by an  
671 operator and do not exceed a speed of 4 miles per hour.

672 12. A water-related amusement ride operated by a business  
673 licensed under chapter 509 if the water-related amusement ride  
674 is an incidental amenity and the operating business is not  
675 primarily engaged in providing amusement, pleasure, thrills, or  
676 excitement and does not offer day rates.

677 13. An amusement ride at a private, membership-only  
678 facility if the amusement ride is an incidental amenity and the  
679 facility is not open to the general public, is not primarily  
680 engaged in providing amusement, pleasure, thrills, or  
681 excitement, and does not offer day rates.

682 14. A nonprofit permanent facility registered under chapter  
683 496 which is not open to the general public.

684 (15) INSPECTION BY OWNER OR MANAGER. ~~Before~~ Prior to  
685 opening on each day of operation and ~~before~~ prior to any  
686 inspection by the department, the owner or manager of an  
687 amusement ride must inspect and test the amusement ride to  
688 ensure compliance with all requirements of this section. Each  
689 inspection must be recorded on a form prescribed by rule of the  
690 department and signed by the person who conducted the  
691 inspection. In lieu of the form prescribed by rule of the  
692 department, the owner or manager may request approval of an  
693 alternate form if the alternate form includes, at a minimum, the  
694 information required on the form prescribed by rule of the  
695 department. Inspection records of the last 14 daily inspections  
696 must be kept on site by the owner or manager and made

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697 immediately available to the department upon request.

698 (16) TRAINING OF EMPLOYEES.—The owner or manager of ~~an any~~  
699 amusement ride shall maintain a record of employee training for  
700 each employee authorized to operate, assemble, disassemble,  
701 transport, or conduct maintenance on an amusement ride~~7~~ on a  
702 form prescribed by rule of the department. In lieu of the form  
703 prescribed by rule of the department, the owner or manager may  
704 request approval of an alternate form if the alternate form  
705 includes, at a minimum, the information required on the form  
706 prescribed by rule of the department. The training record must  
707 be kept on site by the owner or manager and made immediately  
708 available to the department upon request. Training may not be  
709 conducted when an amusement ride is open to the public unless  
710 the training is conducted under the supervision of an employee  
711 who is trained in the operation of that ride. The owner or  
712 manager shall certify that each employee is trained, as required  
713 by this section and any rules adopted thereunder, on the  
714 amusement ride for which the employee is responsible.

715 Section 19. Subsection (2), paragraph (b) of subsection  
716 (5), subsection (10), and paragraph (a) of subsection (11) of  
717 section 790.06, Florida Statutes, are amended to read:

718 790.06 License to carry concealed weapon or firearm.—

719 (2) The Department of Agriculture and Consumer Services  
720 shall issue a license if the applicant:

721 (a) Is a resident of the United States and a citizen of the  
722 United States or a permanent resident alien of the United  
723 States, as determined by the United States Bureau of Citizenship  
724 and Immigration Services, or is a consular security official of  
725 a foreign government that maintains diplomatic relations and

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726 treaties of commerce, friendship, and navigation with the United  
727 States and is certified as such by the foreign government and by  
728 the appropriate embassy in this country;

729 (b) Is 21 years of age or older;

730 (c) Does not suffer from a physical infirmity which  
731 prevents the safe handling of a weapon or firearm;

732 (d) Is not ineligible to possess a firearm pursuant to s.  
733 790.23 by virtue of having been convicted of a felony;

734 (e) Has not been committed for the abuse of a controlled  
735 substance or been found guilty of a crime under the provisions  
736 of chapter 893 or similar laws of any other state relating to  
737 controlled substances within a 3-year period immediately  
738 preceding the date on which the application is submitted;

739 (f) Does not chronically and habitually use alcoholic  
740 beverages or other substances to the extent that his or her  
741 normal faculties are impaired. It shall be presumed that an  
742 applicant chronically and habitually uses alcoholic beverages or  
743 other substances to the extent that his or her normal faculties  
744 are impaired if the applicant has been committed under chapter  
745 397 or under the provisions of former chapter 396 or has been  
746 convicted under s. 790.151 or has been deemed a habitual  
747 offender under s. 856.011(3), or has had two or more convictions  
748 under s. 316.193 or similar laws of any other state, within the  
749 3-year period immediately preceding the date on which the  
750 application is submitted;

751 (g) Desires a legal means to carry a concealed weapon or  
752 firearm for lawful self-defense;

753 (h) Demonstrates competence with a firearm by any one of  
754 the following:

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755 1. Completion of any hunter education or hunter safety  
 756 course approved by the Fish and Wildlife Conservation Commission  
 757 or a similar agency of another state;

758 2. Completion of any National Rifle Association firearms  
 759 safety or training course;

760 3. Completion of any firearms safety or training course or  
 761 class available to the general public offered by a law  
 762 enforcement, junior college, college, or private or public  
 763 institution or organization or firearms training school,  
 764 utilizing instructors certified by the National Rifle  
 765 Association, Criminal Justice Standards and Training Commission,  
 766 or the Department of Agriculture and Consumer Services;

767 4. Completion of any law enforcement firearms safety or  
 768 training course or class offered for security guards,  
 769 investigators, special deputies, or any division or subdivision  
 770 of law enforcement or security enforcement;

771 5. Presents evidence of equivalent experience with a  
 772 firearm through participation in organized shooting competition  
 773 or military service;

774 6. Is licensed or has been licensed to carry a firearm in  
 775 this state or a county or municipality of this state, unless  
 776 such license has been revoked for cause; or

777 7. Completion of any firearms training or safety course or  
 778 class conducted by a state-certified or National Rifle  
 779 Association certified firearms instructor;

780  
 781 A photocopy of a certificate of completion of any of the courses  
 782 or classes; ~~or~~ an affidavit from the instructor, school, club,  
 783 organization, or group that conducted or taught such said course

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784 or class attesting to the completion of the course or class by  
 785 the applicant; or a copy of any document ~~that which~~ shows  
 786 completion of the course or class or evidences participation in  
 787 firearms competition shall constitute evidence of qualification  
 788 under this paragraph. ~~At any~~ person who conducts a course  
 789 pursuant to subparagraph 2., subparagraph 3., or subparagraph  
 790 7., or who, as an instructor, attests to the completion of such  
 791 courses, must maintain records certifying that he or she  
 792 observed the student safely handle and discharge the firearm in  
 793 his or her physical presence and that the discharge of the  
 794 firearm included live fire using a firearm and ammunition as  
 795 defined in s. 790.001;

796 (i) Has not been adjudicated an incapacitated person under  
 797 s. 744.331, or similar laws of any other state, unless 5 years  
 798 have elapsed since the applicant's restoration to capacity by  
 799 court order;

800 (j) Has not been committed to a mental institution under  
 801 chapter 394, or similar laws of any other state, unless the  
 802 applicant produces a certificate from a licensed psychiatrist  
 803 that he or she has not suffered from disability for at least 5  
 804 years prior to the date of submission of the application;

805 (k) Has not had adjudication of guilt withheld or  
 806 imposition of sentence suspended on any felony or misdemeanor  
 807 crime of domestic violence unless 3 years have elapsed since  
 808 probation or any other conditions set by the court have been  
 809 fulfilled, or the record has been sealed or expunged;

810 (l) Has not been issued an injunction that is currently in  
 811 force and effect and that restrains the applicant from  
 812 committing acts of domestic violence or acts of repeat violence;

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813 and

814 (m) Is not prohibited from purchasing or possessing a  
815 firearm by any other provision of Florida or federal law.

816 (5) The applicant shall submit to the Department of  
817 Agriculture and Consumer Services or an approved tax collector  
818 pursuant to s. 790.0625:

819 (b) A nonrefundable license fee of up to ~~\$60~~ \$70 if he or  
820 she has not previously been issued a statewide license or of up  
821 to \$50 ~~\$60~~ for renewal of a statewide license. The cost of  
822 processing fingerprints as required in paragraph (c) shall be  
823 borne by the applicant. However, an individual holding an active  
824 certification from the Criminal Justice Standards and Training  
825 Commission as a law enforcement officer, correctional officer,  
826 or correctional probation officer as defined in s. 943.10(1),  
827 (2), (3), (6), (7), (8), or (9) is exempt from the licensing  
828 requirements of this section. If such individual wishes to  
829 receive a concealed ~~weapon~~ weapons or ~~firearm~~ firearms license,  
830 he or she is exempt from the background investigation and all  
831 background investigation fees, but must pay the current license  
832 fees regularly required to be paid by nonexempt applicants.  
833 Further, a law enforcement officer, a correctional officer, or a  
834 correctional probation officer as defined in s. 943.10(1), (2),  
835 or (3) is exempt from the required fees and background  
836 investigation for ~~a period of~~ 1 year after his or her  
837 retirement.

838 (10) A license issued under this section shall be suspended  
839 or revoked pursuant to chapter 120 if the licensee:

840 (a) Is found to be ineligible under the criteria set forth  
841 in subsection (2);

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842 (b) Develops or sustains a physical infirmity which  
843 prevents the safe handling of a weapon or firearm;

844 (c) Is convicted of a felony which would make the licensee  
845 ineligible to possess a firearm pursuant to s. 790.23;

846 (d) Is found guilty of a crime under the provisions of  
847 chapter 893, or similar laws of any other state, relating to  
848 controlled substances;

849 (e) Is committed as a substance abuser under chapter 397,  
850 or is deemed a habitual offender under s. 856.011(3), or similar  
851 laws of any other state;

852 (f) Is convicted of a second violation of s. 316.193, or a  
853 similar law of another state, within 3 years after ~~of~~ a first  
854 ~~previous~~ conviction of such section, or similar law of another  
855 state, even though the first violation may have occurred before  
856 ~~prior to~~ the date on which the application was submitted;

857 (g) Is adjudicated an incapacitated person under s.  
858 744.331, or similar laws of any other state; or

859 (h) Is committed to a mental institution under chapter 394,  
860 or similar laws of any other state.

861

862 Notwithstanding s. 120.60(5), notice of the suspension or  
863 revocation of a concealed weapon or firearm license or the  
864 suspension of the processing of an application for such license  
865 shall be given by personal delivery to the licensee, by first-  
866 class mail in an envelope, postage prepaid, addressed to the  
867 licensee at his or her last known mailing address furnished to  
868 the department, or by e-mail if the licensee has provided an e-  
869 mail address to the department. Such mailing or sending of e-  
870 mail by the department constitutes notification, and any failure

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871 by the person to receive the mailed or e-mailed notice does not  
 872 stay the effective date or term of the suspension or revocation.  
 873 The giving of notice by mail is complete upon expiration of 20  
 874 days after deposit in the United States mail. Proof of the  
 875 giving of notice shall be made by entry in the records of the  
 876 department that such notice was given. The entry is admissible  
 877 in the courts of this state and constitutes sufficient proof  
 878 that such notice was given.

879 (11) (a) At least ~~No less than~~ 90 days before the expiration  
 880 date of the license, the Department of Agriculture and Consumer  
 881 Services shall mail to each licensee a written notice of the  
 882 expiration and a renewal form prescribed by the Department of  
 883 Agriculture and Consumer Services. The licensee must renew his  
 884 or her license on or before the expiration date by filing with  
 885 the Department of Agriculture and Consumer Services the renewal  
 886 form containing an a-notarized ~~a notarized~~ affidavit submitted under oath  
 887 and under penalty of perjury stating that the licensee remains  
 888 qualified pursuant to the criteria specified in subsections (2)  
 889 and (3), a color photograph as specified in paragraph (5) (e),  
 890 and the required renewal fee. Out-of-state residents must also  
 891 submit a complete set of fingerprints and fingerprint processing  
 892 fee. The license shall be renewed upon receipt of the completed  
 893 renewal form, color photograph, appropriate payment of fees,  
 894 and, if applicable, fingerprints. Additionally, a licensee who  
 895 fails to file a renewal application on or before its expiration  
 896 date must renew his or her license by paying a late fee of \$15.  
 897 A license may not be renewed 180 days or more after its  
 898 expiration date, and such a license is deemed to be permanently  
 899 expired. A person whose license has been permanently expired may

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900 reapply for licensure; however, an application for licensure and  
 901 fees under subsection (5) must be submitted, and a background  
 902 investigation shall be conducted pursuant to this section. A  
 903 person who knowingly files false information under this  
 904 subsection is subject to criminal prosecution under s. 837.06.

905 Section 20. Subsection (8) is added to section 790.0625,  
 906 Florida Statutes, to read:

907 790.0625 Appointment of tax collectors to accept  
 908 applications for a concealed weapon or firearm license; fees;  
 909 penalties.—

910 (8) Upon receipt of a completed renewal application, a new  
 911 color photograph, and appropriate payment of fees, a tax  
 912 collector authorized to accept renewal applications for  
 913 concealed weapon or firearm licenses under this section may,  
 914 upon approval and confirmation of license issuance by the  
 915 department, print and deliver a concealed weapon or firearm  
 916 license to a licensee renewing his or her license at the tax  
 917 collector's office.

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

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The Florida Senate

## Committee Agenda Request

**To:** Senator Tom Lee, Chair  
Committee on Appropriations

**Subject:** Committee Agenda Request

**Date:** April 3<sup>rd</sup>, 2015

---

Dear Chair Lee,

I respectfully request that **Senate Bill # 1444**, relating to Consumer Licensing, be placed on the Appropriations committee agenda at your earliest possible convenience.

The Committee on Appropriations is the third and final committee reference for Senate Bill # 1444. If you have any questions regarding this legislation, please contact me or my staff.

Thank you in advance for your consideration.

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

---

Senator Garrett Richter  
Florida Senate, District 23

cc: Cindy Kynoch, Staff Director  
Alicia Weiss, Committee Administrative Assistant  
Ann Roberts, Committee Administrative Assistant

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4-16

Meeting Date

1444

Bill Number (if applicable)

Topic Dept of Ag

~~127800~~  
only Amendment Barcode (if applicable)

Name Cynthia Henderson

Job Title \_\_\_\_\_

Address 108 E Jefferson St  
Tall FL 32301  
City State Zip

Phone 850-559-0855

Email Cyhenderson@me.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
*dam*  
(The Chair will read this information into the record.)

Representing FLACARS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4.16.15

Meeting Date

1444

Bill Number (if applicable)

\*048150

Amendment Barcode (if applicable)

Topic RELATING TO CONSUMER PROTECTION

Name LAURA YOUMANS

Job Title \_\_\_\_\_

Address 100 N. MONROE ST

Street

Phone 294-1838

TAL

City

FL

State

32301

Zip

Email LYOUMANS@FL-COUNTIES.

COM

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FLORIDA ASSOCIATION OF COUNTIES

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

# APPEARANCE RECORD

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

4/16/15

Meeting Date

1444

Bill Number (if applicable)

L648150

Amendment Barcode (if applicable)

Topic Consumer Licensing  
FIREARM

Name Amy Mercer

Job Title Executive Director

Address PO Box 14038

Street

Phone 8502193631

Tallahassee, FL

City

State

Zip

Email amercer@fpcalga.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Police Chiefs Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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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)

4/16/15  
Meeting Date

1444  
Bill Number (if applicable)

648150  
Amendment Barcode (if applicable)

Topic SB 1444

Name Casey Cook

Job Title Legislative Advocate

Address Po Box 1757  
Street

Phone 850 701 3701

Tallahassee FL 32302  
City State Zip

Email ccook@flcities.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida League of Cities

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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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)

4/16/2015  
Meeting Date

SB 1444  
Bill Number (if applicable)

Topic Discharging a firearm in public

648150  
Amendment Barcode (if applicable)

Name Jennifer C. Pritt

Job Title Assistant Commissioner

Address 2331 Phillips Rd  
Street

Phone 850 410 8246

Tallahassee FL 32306  
City State Zip

Email Jennifer.pritt@fdle.state.fl.us

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FDLE

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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WAIVE IN SUPPORT OF  
BILL and AMENDMENT

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-16-15

Meeting Date

Topic CONSUMER LICENSING

Bill Number SB-1444

Name MARION HAMMER

Amendment Barcode 048150  
(if applicable)

Job Title \_\_\_\_\_

Address P.O. BOX 1387

Phone \_\_\_\_\_

Street

TALLAHASSEE FL 32302

E-mail \_\_\_\_\_

City

State

Zip

WAIVE  
Speaking:

For  Against  Information

Representing NATIONAL Rifle Association of Unified Sportsmen of FLORIDA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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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)

4/16/15

1444

Meeting Date

Bill Number (if applicable)

Topic DACS Legislative Package

Amendment Barcode (if applicable)

Name Carole Jean Jordan

Job Title Tax Collector in and for Indian River County

Address PO Box 1509

Phone 772-226-1337

Street

Vero Beach

FL

32961

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Tax Collectors Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/16/15  
Meeting Date

SB 1444  
Bill Number (if applicable)

Topic Consumer Licensing

Amendment Barcode (if applicable)

Name Jonathan Rees

Job Title Deputy Director, Legislative Affairs

Address 400 S. Monroe St.

Phone (850) 617-7700

Tallahassee FL 32399  
City State Zip

Email Jonathan.Rees@freshfromflorida.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Department of Agriculture and Consumer Services

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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APPEARANCE RECORD

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

4/16/15

Meeting Date

1444

Bill Number (if applicable)

Topic CONSUMER LICENSING

Amendment Barcode (if applicable)

Name Amy Mercer

Job Title EXECUTIVE DIRECTOR

Address P.O. BOX 14038

Phone 8502193631

Street

TALLAHASSEE, FL 32317

City

State

Zip

Email AMERCER@APCA.COM

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FLORIDA POLICE CHIEFS ASSOCIATION

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

---

Prepared By: The Professional Staff of the Committee on Appropriations

---

BILL: PCS/SB 1534 (333636)

INTRODUCER: Appropriations Committee (Recommended by the Appropriations Subcommittee on Criminal and Civil Justice); and Senator Brandes

SUBJECT: Disposition of Liens and Forfeited Property

DATE: April 15, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Recommend: Fav/CS</b>
3.	<u>Clodfelter</u>	<u>Kynoch</u>	<u>AP</u>	<b>Pre-meeting</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

PCS/SB 1534 amends the Florida Contraband Forfeiture Act (sections 932.701 through 932.706, Florida Statutes) (act) by adding a number of new requirements for law enforcement agencies that seize property, including:

- Annual or more frequent review of the agency's seizures, settlements, and forfeitures and prompt correction of any deficiencies;
- Use of written policies, procedures, and training to ensure compliance with applicable legal requirements regarding seizing, maintaining, and forfeiting property;
- A prohibition against making employment, salary, or other compensation of a law enforcement officer dependent upon seizure quotas.
- Prompt review of the probable cause for all seizures by supervisory personnel and prompt notification to the agency's legal counsel for determination of legal sufficiency to proceed with a forfeiture action;
- Use of written policies and procedures to promote the prompt release of seized property when there is no legitimate basis for holding it, and for prompt review of the validity of all asserted claims of interest to the seized property;
- Maintenance of training records to show that every law enforcement officer has completed basic and continuing education forfeiture training required by the act; and
- Completion of a detailed annual report indicating whether the agency has received or forfeited property, to be kept on file and accessible to the public.

The bill revises requirements for the seizure and forfeiture process, the authorized use of forfeited property, and distribution of contraband forfeiture funds. These revisions include:

- Prohibiting the seizing agency from retaining forfeited property for the agency's use.
- Requiring that any revenues received from federal sources that are derived from forfeitures must be deposited in the same manner as forfeiture proceeds received pursuant to the act;
- Requiring a state agency to deposit any forfeiture proceeds remaining after all liens and debts have been paid into the Department of Legal Affairs' Crimes Compensation Trust Fund (rather than into the General Revenue Fund)
- Restricting use of any forfeiture proceeds retained by a local law enforcement agency to providing for school resource officers, crime prevention, safe neighborhood, or drug abuse education and prevention programs, or portable defibrillators.
- Requiring any forfeiture proceeds that are not retained by a local law enforcement agency to be deposited in the Crimes Compensation Trust Fund. Requiring any local law enforcement agency that acquires any forfeiture proceeds under the act within a fiscal year to expend or donate 50 percent of the proceeds for these designated programs (currently a minimum of 15 percent is required).
- Providing procedures for other agencies or organizations to request appropriations of forfeiture proceeds from the seizing agency.
- Requiring the seizing agency to submit a detailed quarterly report of its seizure and forfeiture activities to the Florida Department of Law Enforcement.
- Deleting a provision relating to repayment of funds that were advanced from a municipality's general fund prior to October 1, 2001.

The bill's limitations on the use of forfeiture proceeds will eliminate a source of funds for the activities that are no longer authorized. This may have a significant fiscal impact on local law enforcement agencies to the extent that an agency continues activities currently funded with forfeiture proceeds. Forfeiture proceeds that are currently deposited into agency trust funds by designated state agencies with major law enforcement functions will be redirected into the Crimes Compensation Trust Fund. This will have a fiscal impact on the state to the extent that these state agencies seek appropriations to continue activities currently funded by forfeiture proceeds.

This bill provides an effective date of July 1, 2015.

## II. Present Situation:

The Contraband Forfeiture Act, ss. 932.701 through 932.706, F.S., prescribes procedures for law enforcement agencies to follow when seizing, forfeiting, and disposing of property under the act. Currently, under s. 932.703, F.S., any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of the act, or in, upon, or by means of which any violation of the act has taken or is taking place, may be seized and shall be forfeited subject to the provisions of the act.<sup>1</sup>

---

<sup>1</sup> Section 932.703(1), F.S. The constitutionality of the act was upheld by the Florida Supreme Court in *Department of Law Enforcement v. Real Property*, 588 So.2d 957 (Fla. 1991).

Section 932.704, F.S., requires the Department of Law Enforcement (FDLE), in consultation with the Florida Sheriffs Association and the Florida Police Chiefs Association, to develop guidelines and training procedures to be used by state and local law enforcement agencies and state attorneys in implementing the act. Each agency that seizes property shall periodically review its seizures, settlements, and forfeiture proceedings to determine whether they comply with the act and the adopted guidelines. The determination of whether an agency will file a forfeiture action must be the sole responsibility of the head of the agency or his or her designee. The determination of whether to seize currency must be made by supervisory personnel. The agency's legal counsel must be notified as soon as possible.<sup>2</sup>

Section 932.7055, F.S., provides for the disposition of liens and forfeited property under the act. The seizing agency may do any of the following when a final judgment of forfeiture is granted:

- Retain the property for the agency's use;
- Sell the property at a public auction or by sealed bid to the highest bidder; or
- Salvage, trade, or transfer the property to any public or nonprofit organization.<sup>3</sup>

If the property has a lien attached and the agency sells the property, the proceeds of the sale are to be distributed in this order:

- Payment of the balance due on any lien preserved by the court in the forfeiture proceedings.
- Payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of such property.
- Payment of court costs incurred in the forfeiture proceeding.<sup>4</sup>

The proceeds which remain after all liens and debts against the forfeited property are paid are then deposited into a special law enforcement trust fund and may be used to fund school resource officers, crime prevention, safe neighborhood, drug abuse education and prevention programs, or other law enforcement purposes, including defraying the cost of protracted or complex investigations, providing additional equipment or expertise, purchasing automated external defibrillators for law enforcement vehicles, and providing matching funds to obtain federal grants. These proceeds and interest may not be used to meet normal operation expenses.<sup>5</sup>

Additionally, any local law enforcement agency that acquires at least \$15,000 under the act within a fiscal year must expend or donate no less than 15 percent of these proceeds for the support or operation of any drug treatment, drug abuse education, drug prevention, crime prevention, safe neighborhood, or school resource officer program. The agency has discretion to determine which program receives the funds.<sup>6</sup>

An agency or organization, other than the seizing agency, that wishes to receive such funds must apply to the sheriff or chief of police for an appropriation. If the agency or organization receives funding under the act, it must provide an accounting, indicating that the funds were only used for the above stated purposes.<sup>7</sup>

---

<sup>2</sup> Section 932.704(11), F.S.

<sup>3</sup> Section 932.7055(1), F.S.

<sup>4</sup> Sections 932.7055(3) and (4), F.S.

<sup>5</sup> Section 932.7055(5), F.S.

<sup>6</sup> Section 932.7055(5)(c)3., F.S.

<sup>7</sup> Section 932.7055(5)(c), F.S.

If the seizing agency is a local law enforcement agency, the proceeds are deposited into a special law enforcement trust fund established by the governing body of a county or municipality. The funds may be appropriated only to the sheriff's office by the board of county commissioners or to the police department by the governing body of the municipality when the sheriff or police chief has certified that the request for funds will be used in compliance with the act.<sup>8</sup>

If the seizing agency is a state agency, the remaining proceeds are deposited into the General Revenue Fund, except that some agencies have their own forfeiture trust fund, including:

- FDLE;
- Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation;
- Department of Highway Safety and Motor Vehicles;
- Fish and Wildlife Conservation Commission;
- State Attorney Offices;
- School Board Security Agencies;
- State University System Police Departments;
- Department of Agriculture and Consumer Services;
- Department of Military Affairs;
- Medicaid Fraud Control Unit of the Department of Legal Affairs;
- Division of State Fire Marshal of the Department of Financial Services; and
- Division of Insurance Fraud of the Department of Financial Services.<sup>9</sup>

Section 932.706, F.S., requires the Criminal Justice Standards and Training Commission to develop a standardized course of training which is designed to develop proficiency in the seizure and forfeiture of property under the act. The curriculum must include racial and ethnic sensitivity, search and seizure case law, the use of drug-courier profiles, and the use of an order to stop based on a pretext.

### **III. Effect of Proposed Changes:**

The bill amends the Florida Contraband Forfeiture Act (ss. 932.701 through 932.706, F.S.) in a number of ways relating to the process of seizing property, forfeiting property, and disposing of the proceeds obtained from forfeiture actions.

Section 932.704, F.S., is amended to add the following requirements for law enforcement agencies that seize and forfeit contraband property:

- Annual or more frequent review of the agency's seizures, settlements, and forfeitures and prompt correction of any deficiencies;
- Use of written policies, procedures, and training to ensure compliance with applicable legal requirements regarding seizing, maintaining, and forfeiting property;
- A prohibition against making employment, salary, or other compensation of a law enforcement officer dependent upon seizure quotas.

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<sup>8</sup> Section 932.7055(5), F.S.

<sup>9</sup> Section 932.7055(6), F.S.

- Prompt review of the probable cause for all seizures by supervisory personnel and prompt notification to the agency's legal counsel for determination of legal sufficiency to proceed with a forfeiture action;
- Use of written policies and procedures to promote the prompt release of seized property when there is no legitimate basis for holding it, and for prompt review of the validity of all asserted claims of interest to the seized property; and
- Maintenance of training records to show that every law enforcement officer has completed basic and continuing education forfeiture training required by the act.

Section 932.7055, F.S., is amended to revise the authorized distribution and use of forfeited property and contraband forfeiture funds under the act. This includes:

- Prohibiting the seizing agency from retaining the forfeited property for the agency's use.
- For state agencies, requiring any forfeiture proceeds remaining after all liens and debts are paid to be deposited into the Department of Legal Affairs' Crimes Compensation Trust Fund. Currently, designated state agencies (which are listed in the Present Situation section of this analysis and include most agencies that have significant law enforcement responsibilities) keep all forfeited funds. Other agencies must deposit the funds in the General Revenue Fund.
- For local law enforcement agencies, permitting the agency to deposit all remaining proceeds into a local special law enforcement trust fund to be used for school resource officers, crime prevention, safe neighborhood, or drug abuse education and prevention programs, or portable defibrillators. Current law provides for all remaining funds to be deposited into the local special law enforcement trust fund, and permits additional uses for other law enforcement purposes, including defraying the cost of protracted or complex investigations, providing additional equipment or expertise, or providing matching funds for federal grants.
- Requiring any local law enforcement agency that acquires any property or assets under the act within the fiscal year to expend or donate at least 50 percent of the proceeds for these designated programs (currently a minimum of 15 percent is required).
- Requiring any agency or organization other than the seizing agency that requests to receive such funds to provide a detailed accounting, indicating that the funds will only be used for the above stated purposes. The bill states that these requests are public records as defined in ch. 119, F.S.
- Deleting current provisions establishing forfeiture trust funds for numerous specified state agencies.
- Providing that revenues received from federal sources that are derived from forfeitures are considered to be proceeds obtained pursuant to the act, and that such revenues must be deposited in accordance with the act.
- Requiring the seizing agency to submit a detailed quarterly report of its seizure and forfeiture activities to the Florida Department of Law Enforcement.
- Deleting s. 932.7055(4)(d), F.S., which permits expenditure of funds in a municipality's special law enforcement trust fund to be expended to reimburse the municipality's general fund for moneys advanced from the general fund to the special law enforcement trust fund before October 1, 2001. The paragraph is applicable only for Fiscal Year 2014-2015 and expires July 1, 2015. It was originally enacted as part of the implementing bill for the 2002-2003 General Appropriations Act and was applicable to Fiscal Year 2002-2003, but has been updated in the General Appropriations Act implementing bill each year since that time.

The bill also makes conforming changes and reenacts a statute to incorporate changes made by the bill.

The bill provides an effective date of July 1, 2015.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

As a result of PCS/SB 1534, persons who receive funding from the Crimes Compensation Trust Fund may be positively impacted as a result of the bill's mandate that seizing local law enforcement agencies deposit half of the forfeiture funds into that trust fund. Conversely, the reduction of funds kept by local law enforcement agencies could have a negative impact on organizations that receive grants from local law enforcement agencies.

C. Government Sector Impact:

The bill removes authorization for local law enforcement agencies to use forfeiture proceeds to pay for certain law enforcement equipment and activities. If the local law enforcement agency desires to continue these activities, these funds may need to be replaced from other sources.

The bill prohibits state agencies from retaining any funds from forfeitures. Currently, designated state agencies (which are listed in the Present Situation section of this analysis and include most agencies that have significant law enforcement responsibilities) keep all forfeited funds. The bill directs that these funds be deposited in the Crimes Compensation Trust Fund. Any forfeiture funds acquired by other state agencies are currently deposited into the General Revenue Fund, but the bill also directs that these funds be deposited in the Crimes Compensation Trust Fund.

The FDLE indicates that it deposits approximately \$2 million of forfeiture funds into its Forfeiture and Investigative Support Trust Fund (FIST) each year. FIST funds are appropriated to the FDLE by the Legislature. Redirection of the funds would require appropriation from another source in order to continue current practices. The FDLE is also concerned that the bill will disqualify state agencies from receiving any federal shared forfeitures because deposit of funds into the Crimes Compensation Trust Fund does not meet federal forfeiture sharing guidelines. FDLE receives approximately \$1.2 million annually from federal shared forfeitures.<sup>10</sup>

The Department of Financial Services reports that its Division of Insurance Fraud has deposited approximately \$1.6 million in forfeiture proceeds into agency trust funds from Fiscal Year 2008-2009 to the present. These proceeds were derived from either direct seizures by the agency or joint seizures with federal, state, or local law enforcement agencies. These proceeds have been used to purchase such items as software, new technologies, specialized equipment, and training. The department has a legislative budget request submitted for Fiscal Year 2015-2016 to use more than \$500,000 of these proceeds for purchases including investigative software, maintenance and upgrade or replacement of law enforcement equipment, and training.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 932.704 and 932.7055.

This bill creates section 32.7061 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 27.3451, 381.0081, 874.08, 895.09, and 932.703.

This bill makes conforming amendments to cross references in the following sections of the Florida Statutes: 322.34, 323.001328.07, and 817.625.

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<sup>10</sup> 2015 FDLE Legislative Bill Analysis, SB 1534, March 3, 2015.

**IX. Additional Information:**

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

**Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice on April 8, 2015:**

The committee substitute:

- Incorporates the contents of CS/SB 440 (2015), which adds a number of new requirements to the Florida Contraband Forfeiture Act (the act) relating to the seizure and forfeiture process, training of officers, reporting, and documentation. These changes are detailed in the description of amendments to s. 932.704, F.S., in the “Effects of Proposed Changes” section of this analysis.
- Permits a local law enforcement agency to retain all forfeiture proceeds for designated uses, and requires any non-retained proceeds to be deposited into the Crimes Compensation Trust Fund. The bill required 50 percent of forfeiture proceed to be retained by the agency and 50 percent to be deposited into the Crimes Compensation Trust Fund.
- Requires any local law enforcement agency that acquires property or assets pursuant to the act to expend or donate at least 50 percent of proceeds for designated purposes. The bill limits expenses or donations to 50 percent of proceeds and applies this requirement only to agencies that acquire at least \$15,000 pursuant to the act.
- Restores authorization for local law enforcement agencies to purchase portable defibrillators with forfeiture proceeds.
- Provides that revenues received from federal sources that are derived from forfeitures are considered to be proceeds obtained pursuant to the act, and that such revenues must be deposited in accordance with the act.
- Requiring a seizing agency to submit a detailed quarterly report of its seizure and forfeiture activities to the Florida Department of Law Enforcement.

- B. **Amendments:**

None.



849530

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
	.	
	.	
	.	

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The Committee on Appropriations (Latvala) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 328 - 352

and insert:

(7) If more than one law enforcement agency is acting substantially to effect the forfeiture, the court having jurisdiction over the forfeiture proceedings shall, upon motion, equitably distribute all proceeds and other property among the seizing agencies.

(8) Upon the sale of any motor vehicle, vessel, aircraft,



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11 real property, or other property requiring a title, the  
12 appropriate agency shall issue a title certificate to the  
13 purchaser. Upon the request of any law enforcement agency which  
14 elects to retain titled property after forfeiture, the  
15 appropriate state agency shall issue a title certificate for  
16 such property to said law enforcement agency.

17 (9) A ~~Neither the~~ law enforcement agency, or ~~nor~~ the entity  
18 having budgetary control over the law enforcement agency, may  
19 not shall anticipate future forfeitures or the proceeds from  
20 those forfeitures ~~therefrom~~ in the adoption and approval of the  
21 agency's budget ~~for the law enforcement agency~~.

22 (10) A law enforcement agency participating in forfeiture  
23

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

25 And the title is amended as follows:

26 Delete lines 42 - 44

27 and insert:

28 seizures into the General Revenue Fund; requiring a  
29 law enforcement



202004

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
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	.	
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The Committee on Appropriations (Joyner) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 177 - 327

and insert:

(5) (a) If the seizing agency is a county or municipal agency, the remaining proceeds shall be deposited in a special law enforcement trust fund established by the board of county commissioners or the governing body of the municipality. Such proceeds and interest earned therefrom shall be used for school resource officer, crime prevention, safe neighborhood, drug



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11 abuse education and prevention programs, or for other law  
12 enforcement purposes, which include defraying the cost of  
13 protracted or complex investigations, providing additional  
14 equipment or expertise, purchasing automated external  
15 defibrillators for use in law enforcement vehicles, and  
16 providing matching funds to obtain federal grants. The proceeds  
17 and interest may not be used to meet normal operating expenses  
18 of the law enforcement agency.

19 (b) These funds may be expended upon request by the sheriff  
20 to the board of county commissioners or by the chief of police  
21 to the governing body of the municipality, accompanied by a  
22 written certification that the request complies with the  
23 provisions of this subsection, and only upon appropriation to  
24 the sheriff's office or police department by the board of county  
25 commissioners or the governing body of the municipality.

26 (c) An agency or organization, other than the seizing  
27 agency, that wishes to receive such funds shall apply to the  
28 sheriff or chief of police for an appropriation and its  
29 application shall be accompanied by a written certification that  
30 the moneys will be used for an authorized purpose. Such requests  
31 for expenditures shall include a statement describing  
32 anticipated recurring costs for the agency for subsequent fiscal  
33 years. An agency or organization that receives money pursuant to  
34 this subsection shall provide an accounting for such moneys and  
35 shall furnish the same reports as an agency of the county or  
36 municipality that receives public funds. Such funds may be  
37 expended in accordance with the following procedures:

38 1. Such funds may be used only for school resource officer,  
39 crime prevention, safe neighborhood, drug abuse education, or



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40 drug prevention programs or such other law enforcement purposes  
41 as the board of county commissioners or governing body of the  
42 municipality deems appropriate.

43 2. Such funds shall not be a source of revenue to meet  
44 normal operating needs of the law enforcement agency.

45 3. After July 1, 1992, and during every fiscal year  
46 thereafter, any local law enforcement agency that acquires at  
47 least \$15,000 pursuant to the Florida Contraband Forfeiture Act  
48 within a fiscal year must expend or donate no less than 15  
49 percent of such proceeds for the support or operation of any  
50 drug treatment, drug abuse education, drug prevention, crime  
51 prevention, safe neighborhood, or school resource officer  
52 program(s). The local law enforcement agency has the discretion  
53 to determine which program(s) will receive the designated  
54 proceeds.

55  
56 Notwithstanding the drug abuse education, drug treatment, drug  
57 prevention, crime prevention, safe neighborhood, or school  
58 resource officer minimum expenditures or donations, the sheriff  
59 and the board of county commissioners or the chief of police and  
60 the governing body of the municipality may agree to expend or  
61 donate such funds over a period of years if the expenditure or  
62 donation of such minimum amount in any given fiscal year would  
63 exceed the needs of the county or municipality for such  
64 program(s). Nothing in this section precludes the expenditure or  
65 donation of forfeiture proceeds in excess of the minimum amounts  
66 established herein.

67 (6) If the seizing agency is a state agency, all remaining  
68 proceeds shall be deposited into the General Revenue Fund.



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69 However, if the seizing agency is:

70 (a) The Department of Law Enforcement, the proceeds accrued  
71 pursuant to the provisions of the Florida Contraband Forfeiture  
72 Act shall be deposited into the Forfeiture and Investigative  
73 Support Trust Fund as provided in s. 943.362 or into the  
74 department's Federal Law Enforcement Trust Fund as provided in  
75 s. 943.365, as applicable.

76 (b) The Division of Alcoholic Beverages and Tobacco, the  
77 proceeds accrued pursuant to the Florida Contraband Forfeiture  
78 Act shall be deposited into the Alcoholic Beverage and Tobacco  
79 Trust Fund or into the department's Federal Law Enforcement  
80 Trust Fund as provided in s. 561.027, as applicable.

81 (c) The Department of Highway Safety and Motor Vehicles,  
82 the proceeds accrued pursuant to the Florida Contraband  
83 Forfeiture Act shall be deposited into the Department of Highway  
84 Safety and Motor Vehicles Law Enforcement Trust Fund as provided  
85 in s. 932.705(1)(a) or into the department's Federal Law  
86 Enforcement Trust Fund as provided in s. 932.705(1)(b), as  
87 applicable.

88 (d) The Fish and Wildlife Conservation Commission, the  
89 proceeds accrued pursuant to the provisions of the Florida  
90 Contraband Forfeiture Act shall be deposited into the State Game  
91 Trust Fund as provided in ss. 379.338, 379.339, and 379.3395 or  
92 into the Marine Resources Conservation Trust Fund as provided in  
93 s. 379.337.

94 (e) A state attorney's office acting within its judicial  
95 circuit, the proceeds accrued pursuant to the provisions of the  
96 Florida Contraband Forfeiture Act shall be deposited into the  
97 State Attorney's Forfeiture and Investigative Support Trust Fund



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98 to be used for the investigation of crime and prosecution of  
99 criminals within the judicial circuit.

100 (f) A school board security agency employing law  
101 enforcement officers, the proceeds accrued pursuant to the  
102 provisions of the Florida Contraband Forfeiture Act shall be  
103 deposited into the School Board Law Enforcement Trust Fund.

104 (g) One of the State University System police departments  
105 acting within the jurisdiction of its employing state  
106 university, the proceeds accrued pursuant to the provisions of  
107 the Florida Contraband Forfeiture Act shall be deposited into  
108 that state university's special law enforcement trust fund.

109 (h) The Department of Agriculture and Consumer Services,  
110 the proceeds accrued pursuant to the Florida Contraband  
111 Forfeiture Act shall be deposited into the General Inspection  
112 Trust Fund or into the department's Federal Law Enforcement  
113 Trust Fund as provided in s. 570.205, as applicable.

114 (i) The Department of Military Affairs, the proceeds  
115 accrued from federal forfeiture sharing pursuant to 21 U.S.C.  
116 ss. 881(e)(1)(A) and (3), 18 U.S.C. s. 981(e)(2), and 19 U.S.C.  
117 s. 1616a shall be deposited into the Armory Board Trust Fund and  
118 used for purposes authorized by such federal provisions based on  
119 the department's budgetary authority or into the department's  
120 Federal Law Enforcement Trust Fund as provided in s. 250.175, as  
121 applicable.

122 (j) The Medicaid Fraud Control Unit of the Department of  
123 Legal Affairs, the proceeds accrued pursuant to the provisions  
124 of the Florida Contraband Forfeiture Act shall be deposited into  
125 the Department of Legal Affairs Grants and Donations Trust Fund  
126 to be used for investigation and prosecution of Medicaid fraud,



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127 abuse, neglect, and other related cases by the Medicaid Fraud  
128 Control Unit.

129 (k) The Division of State Fire Marshal in the Department of  
130 Financial Services, the proceeds accrued under the Florida  
131 Contraband Forfeiture Act shall be deposited into the Insurance  
132 Regulatory Trust Fund to be used for the purposes of arson  
133 suppression, arson investigation, and the funding of anti-arson  
134 rewards.

135 (l) The Division of Insurance Fraud of the Department of  
136 Financial Services, the proceeds accrued pursuant to the  
137 provisions of the Florida Contraband Forfeiture Act shall be  
138 deposited into the Insurance Regulatory Trust Fund as provided  
139 in s. 626.9893 or into the Department of Financial Services'  
140 Federal Law Enforcement Trust Fund as provided in s. 17.43, as  
141 applicable.

142  
143 ===== T I T L E A M E N D M E N T =====

144 And the title is amended as follows:

145 Delete lines 27 - 42

146 and insert:

147 for its use; deleting an obsolete provision; providing  
148 for



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Proposed Committee Substitute by the Committee on Appropriations  
(Appropriations Subcommittee on Criminal and Civil Justice)

A bill to be entitled

An act relating to contraband forfeiture; amending s. 932.701, F.S.; conforming a cross-reference to changes made by the act; amending s. 932.704, F.S.; requiring each state or local law enforcement agency that seizes property for the purpose of forfeiture to perform a specified periodic review at least annually and address deficiencies to ensure compliance with this act; prohibiting certain compensation or benefit to any law enforcement officer from being dependent upon attaining a quota of seizures; requiring a seizing agency to have certain written policies, procedures, and training to comply with specified legal requirements; requiring the probable cause for seizure to be promptly reviewed by supervisory personnel; requiring the seizing agency's legal counsel to be timely notified and to conduct a specified review; requiring each seizing agency to have specified written policies and procedures for the prompt release of seized property under certain circumstances; requiring that settlement of any forfeiture actions be consistent with certain mandates and with the seizing agency's policy or directives; requiring specified training and maintenance of records for such training; amending s. 932.7055, F.S.; deleting a provision authorizing a seizing agency to retain seized property for its use; deleting an obsolete provision; revising



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the distribution and the use of proceeds from the sales of forfeited property seized by a county or municipal agency; authorizing an agency or organization, other than a seizing agency, to apply for funds from specified proceeds; requiring that funding requests be made in writing and include a certification that the expenditure meets certain requirements; specifying that such requests are public records; deleting a provision relating to certain expenditure or donation of forfeiture proceeds; requiring certain proceeds to be deposited into the Crimes Compensation Trust Fund, rather than the General Revenue Fund; deleting provisions that exempt certain state agencies from depositing proceeds from seizures into the General Revenue Fund; providing for the distribution and use of certain revenues received from federal sources; requiring a law enforcement agency participating in certain forfeiture proceedings to submit a report to the Department of Law Enforcement on a periodic basis detailing specified information; making technical changes; creating s. 932.7061, F.S.; requiring each state or local law enforcement agency that seizes property for the purpose of forfeiture to complete an annual report; requiring certain information to be included in the annual report; requiring the report to be kept on file with the seizing agency for public access; amending ss. 322.34, 323.001, 328.07, and 817.625, F.S.; conforming cross-references; reenacting ss. 27.3451



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57 and 874.08, F.S., relating to the State Attorney's  
58 Forfeiture and Investigative Support Trust Fund, and  
59 criminal gang activity, recruitment, and forfeiture,  
60 respectively, to incorporate the amendment made to s.  
61 932.704, F.S., in references thereto; reenacting ss.  
62 381.0081(5)(b), 895.09(2)(c), and 932.703(6)(b), F.S.,  
63 relating to the allocations of proceeds from the sales  
64 of property in a migrant labor camp or residential  
65 migrant housing, the disposition of funds obtained  
66 through forfeiture proceedings, and the forfeiture of  
67 contraband articles, respectively, to incorporate the  
68 amendment made to s. 932.7055, F.S., in references  
69 thereto; providing an effective date.

70  
71 Be It Enacted by the Legislature of the State of Florida:

72  
73 Section 1. Subsection (1) of section 932.701, Florida  
74 Statutes, is amended to read:

75 932.701 Short title; definitions.—

76 (1) Sections 932.701-~~932.7061~~ ~~932.706~~ shall be known and  
77 may be cited as the "Florida Contraband Forfeiture Act."

78 Section 2. Subsection (11) of section 932.704, Florida  
79 Statutes, is amended to read:

80 932.704 Forfeiture proceedings.—

81 (11)(a) The Department of Law Enforcement, in consultation  
82 with the Florida Sheriffs Association and the Florida Police  
83 Chiefs Association, shall develop guidelines and training  
84 procedures to be used by state and local law enforcement  
85 agencies and state attorneys in implementing the Florida



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86 Contraband Forfeiture Act. Each state or local law enforcement  
87 agency that seizes property for the purpose of forfeiture shall  
88 periodically review seizures of assets made by the agency's law  
89 enforcement officers, settlements, and forfeiture proceedings  
90 initiated by the agency, to determine whether such seizures,  
91 settlements, and forfeitures comply with the Florida Contraband  
92 Forfeiture Act and the guidelines adopted under this subsection.  
93 Such review must occur at least annually. If the review suggests  
94 deficiencies, the state or local law enforcement agency shall  
95 promptly move to ensure the agency's compliance with this act.

96 (b) The determination of whether an agency will file a  
97 civil forfeiture action must be the sole responsibility of the  
98 head of the agency or his or her designee.

99 (c) ~~(b)~~ The determination of whether to seize currency must  
100 be made by supervisory personnel. The agency's legal counsel  
101 must be notified as soon as possible.

102 (d) The employment, salary, promotion, or other  
103 compensation of any law enforcement officer may not depend on  
104 attaining a quota of seizures.

105 (e) A seizing agency must ensure, through the use of  
106 written policies, procedures, and training, compliance with all  
107 applicable legal requirements regarding seizing, maintaining,  
108 and forfeiting property under this act.

109 (f) When property is seized for forfeiture, the probable  
110 cause supporting the seizure must be promptly reviewed by  
111 supervisory personnel. The seizing agency's legal counsel must  
112 be notified as soon as possible of all seizures and must conduct  
113 a review to determine whether there is legal sufficiency to  
114 proceed with a forfeiture action.



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115 (g) Each seizing agency must have written policies and  
116 procedures promoting, when there is no other legitimate basis  
117 for holding seized property, the prompt release of such property  
118 as may be required by the act or by agency determination. To  
119 help assure that property is not wrongfully held after seizure,  
120 every law enforcement agency must have written policies and  
121 procedures ensuring that all asserted claims of interest in  
122 seized property are promptly reviewed for potential validity.

123 (h) The settlement of any forfeiture action must be  
124 consistent with the mandates of this act and in compliance with  
125 agency policy or directives.

126 (i) Law enforcement agency personnel involved in the  
127 seizure of property for forfeiture shall receive basic training  
128 and continuing education as required by this act. Each agency  
129 shall maintain records documenting every law enforcement  
130 officer's compliance with these training requirements. A portion  
131 of such training must address the legal aspects of forfeiture,  
132 including, but not limited to, search and seizure and other  
133 constitutional considerations.

134 Section 3. Section 932.7055, Florida Statutes, is amended  
135 to read:

136 932.7055 Disposition of liens and forfeited property.—

137 (1) When a seizing agency obtains a final judgment granting  
138 forfeiture of real property or personal property, it may elect  
139 to:

140 ~~(a) Retain the property for the agency's use;~~

141 (a) Sell the property at public auction or by sealed bid  
142 to the highest bidder, except for real property, which must  
143 should be sold in a commercially reasonable manner after



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144 appraisal by listing on the market; or

145 ~~(b)(e) Salvage, trade, or transfer the property to any~~  
146 ~~public or nonprofit organization.~~

147 (2) Notwithstanding subsection (1), a seizing agency must  
148 destroy any image and the medium on which the image is recorded,  
149 including, but not limited to, a photograph, video tape,  
150 diskette, compact disc, or fixed disk made in violation of s.  
151 810.145 when the image and the medium on which it is recorded is  
152 no longer needed for an official purpose. The agency may not  
153 sell or retain any image.

154 (3) If the forfeited property is subject to a lien  
155 preserved by the court as provided in s. 932.703(6)(b), the  
156 agency shall:

157 (a) Sell the property with the proceeds being used towards  
158 satisfaction of any liens; or

159 (b) Have the lien satisfied prior to taking any action  
160 authorized by subsection (1).

161 (4) The proceeds from the sale of forfeited property shall  
162 be disbursed in the following priority:

163 (a) Payment of the balance due on any lien preserved by the  
164 court in the forfeiture proceedings.

165 (b) Payment of the cost incurred by the seizing agency in  
166 connection with the storage, maintenance, security, and  
167 forfeiture of such property.

168 (c) Payment of court costs incurred in the forfeiture  
169 proceeding.

170 ~~(d) Notwithstanding any other provision of this subsection,~~  
171 ~~and for the 2014-2015 fiscal year only, the funds in a special~~  
172 ~~law enforcement trust fund established by the governing body of~~



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173 ~~a municipality may be expended to reimburse the general fund of~~  
174 ~~the municipality for moneys advanced from the general fund to~~  
175 ~~the special law enforcement trust fund before October 1, 2001.~~  
176 ~~This paragraph expires July 1, 2015.~~

177 (5) (a) If the seizing agency is a county or municipal  
178 agency, at least 50 percent of the remaining proceeds shall be  
179 deposited into ~~in~~ a special law enforcement trust fund  
180 established by the board of county commissioners or the  
181 governing body of the municipality. Such proceeds and interest  
182 earned therefrom shall be used for school resource officer,  
183 crime prevention, safe neighborhood, or drug abuse education and  
184 prevention programs or the purchase of portable defibrillators.  
185 Any remaining proceeds shall be deposited into the Crimes  
186 Compensation Trust Fund, or for other law enforcement purposes,  
187 which include defraying the cost of protracted or complex  
188 investigations, providing additional equipment or expertise,  
189 purchasing automated external defibrillators for use in law  
190 enforcement vehicles, and providing matching funds to obtain  
191 federal grants. The proceeds and interest may not be used to  
192 meet normal operating expenses of the law enforcement agency.

193 (b) These funds may be expended upon request by the sheriff  
194 to the board of county commissioners or by the chief of police  
195 to the governing body of the municipality, accompanied by a  
196 written certification that the request complies with the  
197 provisions of this subsection, and only upon appropriation to  
198 the sheriff's office or police department by the board of county  
199 commissioners or the governing body of the municipality.

200 (c) An agency or organization, other than the seizing  
201 agency, which ~~that~~ wishes to receive such funds shall apply to



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202 the sheriff or chief of police for an appropriation. ~~The and its~~  
203 application shall be accompanied by a written certification that  
204 the moneys will be used for an authorized purpose. Such requests  
205 for expenditures shall include a statement describing  
206 anticipated recurring costs for the agency for subsequent fiscal  
207 years. An agency or organization that receives money pursuant to  
208 this subsection shall provide an accounting for such moneys and  
209 shall furnish the same reports as an agency of the county or  
210 municipality that receives public funds. Such funds may be  
211 ~~expended in accordance with the following procedures:~~

212 1. ~~Such funds may be used only for school resource officer,~~  
213 ~~crime prevention, safe neighborhood, drug abuse education, or~~  
214 ~~drug prevention programs or the purchase of portable~~  
215 ~~defibrillators such other law enforcement purposes as the board~~  
216 ~~of county commissioners or governing body of the municipality~~  
217 ~~deems appropriate.~~

218 2. ~~Such funds shall not be a source of revenue to meet~~  
219 ~~normal operating needs of the law enforcement agency.~~

220 ~~(d) 3. After July 1, 1992, and During each every~~ fiscal year  
221 ~~thereafter,~~ any local law enforcement agency that acquires any  
222 property or assets at least \$15,000 pursuant to the Florida  
223 Contraband Forfeiture Act within that a fiscal year must expend  
224 or donate at least 50 ~~no less than 15~~ percent of such proceeds  
225 pursuant to the Florida Contraband Forfeiture Act for the  
226 support or operation of ~~any~~ drug treatment, drug abuse  
227 education, drug prevention, crime prevention, safe neighborhood,  
228 or school resource officer programs ~~program(s)~~. An agency or  
229 organization, other than the seizing agency, which wishes to  
230 receive such funds must apply to the seizing local law



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231 enforcement agency for an appropriation. Funding requests by  
232 such agencies or organizations must be in writing and be  
233 accompanied by a written certification stating that the moneys  
234 will be used for an authorized purpose, detailing how the funds  
235 will be used, and affirming that the expenditure will be used  
236 for only the support of drug treatment, drug abuse education,  
237 drug prevention, crime prevention, safe neighborhood, or school  
238 resource officer programs. Such requests are public records as  
239 defined in chapter 119. The local law enforcement agency has the  
240 discretion to determine which programs ~~program(s)~~ will receive  
241 the designated proceeds.

242 (e) Notwithstanding the drug abuse education, drug  
243 treatment, drug prevention, crime prevention, safe neighborhood,  
244 or school resource officer programs minimum expenditures or  
245 donations, the sheriff and the board of county commissioners or  
246 the chief of police and the governing body of the municipality  
247 may agree to expend or donate such funds over a period of years  
248 if the expenditure or donation of the such minimum amount in any  
249 given fiscal year would exceed the needs of the county or  
250 municipality for such programs ~~program(s)~~. ~~Nothing in this~~  
251 ~~section precludes the expenditure or donation of forfeiture~~  
252 ~~proceeds in excess of the minimum amounts established herein.~~

253 (6) If the seizing agency is a state agency, all remaining  
254 proceeds shall be deposited into the Crimes Compensation Trust  
255 Fund General Revenue Fund. However, if the seizing agency is:

256 ~~(a) The Department of Law Enforcement, the proceeds accrued~~  
257 ~~pursuant to the provisions of the Florida Contraband Forfeiture~~  
258 ~~Act shall be deposited into the Forfeiture and Investigative~~  
259 ~~Support Trust Fund as provided in s. 943.362 or into the~~



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260 ~~department's Federal Law Enforcement Trust Fund as provided in~~  
261 ~~s. 943.365, as applicable.~~

262 ~~(b) The Division of Alcoholic Beverages and Tobacco, the~~  
263 ~~proceeds accrued pursuant to the Florida Contraband Forfeiture~~  
264 ~~Act shall be deposited into the Alcoholic Beverage and Tobacco~~  
265 ~~Trust Fund or into the department's Federal Law Enforcement~~  
266 ~~Trust Fund as provided in s. 561.027, as applicable.~~

267 ~~(c) The Department of Highway Safety and Motor Vehicles,~~  
268 ~~the proceeds accrued pursuant to the Florida Contraband~~  
269 ~~Forfeiture Act shall be deposited into the Department of Highway~~  
270 ~~Safety and Motor Vehicles Law Enforcement Trust Fund as provided~~  
271 ~~in s. 932.705(1)(a) or into the department's Federal Law~~  
272 ~~Enforcement Trust Fund as provided in s. 932.705(1)(b), as~~  
273 ~~applicable.~~

274 ~~(d) The Fish and Wildlife Conservation Commission, the~~  
275 ~~proceeds accrued pursuant to the provisions of the Florida~~  
276 ~~Contraband Forfeiture Act shall be deposited into the State Game~~  
277 ~~Trust Fund as provided in ss. 379.338, 379.339, and 379.3395 or~~  
278 ~~into the Marine Resources Conservation Trust Fund as provided in~~  
279 ~~s. 379.337.~~

280 ~~(e) A state attorney's office acting within its judicial~~  
281 ~~circuit, the proceeds accrued pursuant to the provisions of the~~  
282 ~~Florida Contraband Forfeiture Act shall be deposited into the~~  
283 ~~State Attorney's Forfeiture and Investigative Support Trust Fund~~  
284 ~~to be used for the investigation of crime and prosecution of~~  
285 ~~criminals within the judicial circuit.~~

286 ~~(f) A school board security agency employing law~~  
287 ~~enforcement officers, the proceeds accrued pursuant to the~~  
288 ~~provisions of the Florida Contraband Forfeiture Act shall be~~



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289 ~~deposited into the School Board Law Enforcement Trust Fund.~~  
290 ~~(g) One of the State University System police departments~~  
291 ~~acting within the jurisdiction of its employing state~~  
292 ~~university, the proceeds accrued pursuant to the provisions of~~  
293 ~~the Florida Contraband Forfeiture Act shall be deposited into~~  
294 ~~that state university's special law enforcement trust fund.~~  
295 ~~(h) The Department of Agriculture and Consumer Services,~~  
296 ~~the proceeds accrued pursuant to the Florida Contraband~~  
297 ~~Forfeiture Act shall be deposited into the General Inspection~~  
298 ~~Trust Fund or into the department's Federal Law Enforcement~~  
299 ~~Trust Fund as provided in s. 570.205, as applicable.~~  
300 ~~(i) The Department of Military Affairs, the proceeds~~  
301 ~~accrued from federal forfeiture sharing pursuant to 21 U.S.C.~~  
302 ~~ss. 881(e) (1) (A) and (3), 18 U.S.C. s. 981(e) (2), and 19 U.S.C.~~  
303 ~~s. 1616a shall be deposited into the Armory Board Trust Fund and~~  
304 ~~used for purposes authorized by such federal provisions based on~~  
305 ~~the department's budgetary authority or into the department's~~  
306 ~~Federal Law Enforcement Trust Fund as provided in s. 250.175, as~~  
307 ~~applicable.~~  
308 ~~(j) The Medicaid Fraud Control Unit of the Department of~~  
309 ~~Legal Affairs, the proceeds accrued pursuant to the provisions~~  
310 ~~of the Florida Contraband Forfeiture Act shall be deposited into~~  
311 ~~the Department of Legal Affairs Grants and Donations Trust Fund~~  
312 ~~to be used for investigation and prosecution of Medicaid fraud,~~  
313 ~~abuse, neglect, and other related cases by the Medicaid Fraud~~  
314 ~~Control Unit.~~  
315 ~~(k) The Division of State Fire Marshal in the Department of~~  
316 ~~Financial Services, the proceeds accrued under the Florida~~  
317 ~~Contraband Forfeiture Act shall be deposited into the Insurance~~



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318 ~~Regulatory Trust Fund to be used for the purposes of arson~~  
319 ~~suppression, arson investigation, and the funding of anti-arson~~  
320 ~~rewards.~~  
321 ~~(1) The Division of Insurance Fraud of the Department of~~  
322 ~~Financial Services, the proceeds accrued pursuant to the~~  
323 ~~provisions of the Florida Contraband Forfeiture Act shall be~~  
324 ~~deposited into the Insurance Regulatory Trust Fund as provided~~  
325 ~~in s. 626.9893 or into the Department of Financial Services'~~  
326 ~~Federal Law Enforcement Trust Fund as provided in s. 17.43, as~~  
327 ~~applicable.~~  
328 ~~(7) Notwithstanding any other provision of law, any~~  
329 ~~revenues received from federal sources that are derived from~~  
330 ~~forfeitures are considered to be proceeds from the sale of~~  
331 ~~forfeited property acquired pursuant to the Florida Contraband~~  
332 ~~Forfeiture Act and shall be deposited as required by subsection~~  
333 ~~(5) if received by a county or municipal agency or as required~~  
334 ~~by subsection (6) if received by a state agency.~~  
335 ~~(8)-(7) If more than one law enforcement agency is acting~~  
336 ~~substantially to effect the forfeiture, the court having~~  
337 ~~jurisdiction over the forfeiture proceedings shall, upon motion,~~  
338 ~~equitably distribute all proceeds and other property among the~~  
339 ~~seizing agencies.~~  
340 ~~(9)-(8) Upon the sale of any motor vehicle, vessel,~~  
341 ~~aircraft, real property, or other property requiring a title,~~  
342 ~~the appropriate agency shall issue a title certificate to the~~  
343 ~~purchaser. Upon the request of any law enforcement agency which~~  
344 ~~elects to retain titled property after forfeiture, the~~  
345 ~~appropriate state agency shall issue a title certificate for~~  
346 ~~such property to said law enforcement agency.~~



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347 ~~(10)(9) A Neither the law enforcement agency, or nor the~~  
348 ~~entity having budgetary control over the law enforcement agency,~~  
349 ~~may not shall~~ anticipate future forfeitures or ~~the~~ proceeds ~~from~~  
350 ~~those forfeitures therefrom~~ in the adoption and approval of the  
351 ~~agency's budget for the law enforcement agency.~~

352 (11) A law enforcement agency participating in forfeiture  
353 proceedings pursuant to this act shall submit a report to the  
354 Department of Law Enforcement every 3 months detailing the items  
355 seized through the forfeiture process and, if a final judgment  
356 of forfeiture was issued for any seized property or assets, a  
357 description of how the property or assets were disposed of.

358 Section 4. Section 932.7061, Florida Statutes, is created  
359 to read:

360 932.7061 Each state or local law enforcement agency that  
361 seizes property for the purpose of forfeiture must complete an  
362 annual report indicating whether that agency has received or  
363 forfeited property under this act. The report, to be submitted  
364 on a form designed by the law enforcement agency, must, at a  
365 minimum, specify the type of property, its approximate value,  
366 the court case number, the type of offense for which the  
367 property was seized, disposition of the property, and the dollar  
368 amount of the proceeds received or expended in seizing the  
369 property. This report must be kept on file with the seizing  
370 agency for public access.

371 Section 5. Paragraph (a) of subsection (9) of section  
372 322.34, Florida Statutes, is amended to read:

373 322.34 Driving while license suspended, revoked, canceled,  
374 or disqualified.-

375 (9) (a) A motor vehicle that is driven by a person under the



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376 influence of alcohol or drugs in violation of s. 316.193 is  
377 subject to seizure and forfeiture under ss. 932.701-932.7061  
378 ~~932.706~~ and is subject to liens for recovering, towing, or  
379 storing vehicles under s. 713.78 if, at the time of the offense,  
380 the person's driver license is suspended, revoked, or canceled  
381 as a result of a prior conviction for driving under the  
382 influence.

383 Section 6. Subsection (4) of section 323.001, Florida  
384 Statutes, is amended to read:

385 323.001 Wrecker operator storage facilities; vehicle  
386 holds.-

387 (4) The requirements for a written hold apply when the  
388 following conditions are present:

389 (a) The officer has probable cause to believe the vehicle  
390 should be seized and forfeited under the Florida Contraband  
391 Forfeiture Act, ss. 932.701-932.7061 ~~932.706~~;

392 (b) The officer has probable cause to believe the vehicle  
393 should be seized and forfeited under chapter 379;

394 (c) The officer has probable cause to believe the vehicle  
395 was used as the means of committing a crime;

396 (d) The officer has probable cause to believe that the  
397 vehicle is itself evidence that tends to show that a crime has  
398 been committed or that the vehicle contains evidence, which  
399 cannot readily be removed, which tends to show that a crime has  
400 been committed;

401 (e) The officer has probable cause to believe the vehicle  
402 was involved in a traffic accident resulting in death or  
403 personal injury and should be sealed for investigation and  
404 collection of evidence by a vehicular homicide investigator;



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405 (f) The vehicle is impounded or immobilized pursuant to s.  
406 316.193 or s. 322.34; or

407 (g) The officer is complying with a court order.

408 Section 7. Paragraph (b) of subsection (3) of section  
409 328.07, Florida Statutes, is amended to read:

410 328.07 Hull identification number required.-

411 (3)

412 (b) If any of the hull identification numbers required by  
413 the United States Coast Guard for a vessel manufactured after  
414 October 31, 1972, do not exist or have been altered, removed,  
415 destroyed, covered, or defaced or the real identity of the  
416 vessel cannot be determined, the vessel may be seized as  
417 contraband property by a law enforcement agency or the division,  
418 and shall be subject to forfeiture pursuant to ss. 932.701-  
419 932.7061 ~~932.706~~. Such vessel may not be sold or operated on the  
420 waters of the state unless the division receives a request from  
421 a law enforcement agency providing adequate documentation or is  
422 directed by written order of a court of competent jurisdiction  
423 to issue to the vessel a replacement hull identification number  
424 which shall thereafter be used for identification purposes. No  
425 vessel shall be forfeited under the Florida Contraband  
426 Forfeiture Act when the owner unknowingly, inadvertently, or  
427 neglectfully altered, removed, destroyed, covered, or defaced  
428 the vessel hull identification number.

429 Section 8. Paragraph (c) of subsection (2) of section  
430 817.625, Florida Statutes, is amended to read:

431 817.625 Use of scanning device or reencoder to defraud;  
432 penalties.-

433 (2)



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434 (c) Any person who violates subparagraph (a)1. or  
435 subparagraph (a)2. shall also be subject to the provisions of  
436 ss. ~~932.701-932.7061~~ ~~932.706~~.

437 Section 9. For the purpose of incorporating the amendment  
438 made by this act to section 932.704, Florida Statutes, in a  
439 reference thereto, section 27.3451, Florida Statutes, is  
440 reenacted to read:

441 27.3451 State Attorney's Forfeiture and Investigative  
442 Support Trust Fund.-There is created for each of the several  
443 state attorneys a trust fund to be known as the State Attorney's  
444 Forfeiture and Investigative Support Trust Fund. Revenues  
445 received by a state attorney as a result of forfeiture  
446 proceedings, as provided under s. 932.704, shall be deposited in  
447 such trust fund and shall be used, when authorized by  
448 appropriation or action of the Executive Office of the Governor  
449 pursuant to s. 216.181(11), for the investigation of crime,  
450 prosecution of criminals, or other law enforcement purposes.

451 Section 10. For the purpose of incorporating the amendment  
452 made by this act to section 932.704, Florida Statutes, in a  
453 reference thereto, section 874.08, Florida Statutes, is  
454 reenacted to read:

455 874.08 Criminal gang activity and recruitment; forfeiture.-  
456 All profits, proceeds, and instrumentalities of criminal gang  
457 activity and all property used or intended or attempted to be  
458 used to facilitate the criminal activity of any criminal gang or  
459 of any criminal gang member; and all profits, proceeds, and  
460 instrumentalities of criminal gang recruitment and all property  
461 used or intended or attempted to be used to facilitate criminal  
462 gang recruitment are subject to seizure and forfeiture under the



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463 Florida Contraband Forfeiture Act, s. 932.704.

464 Section 11. For the purpose of incorporating the amendment  
465 made by this act to section 932.7055, Florida Statutes, in a  
466 reference thereto, paragraph (b) of subsection (5) of section  
467 381.0081, Florida Statutes, is reenacted to read:

468 381.0081 Permit required to operate a migrant labor camp or  
469 residential migrant housing; penalties for unlawful  
470 establishment or operation; allocation of proceeds.-

471 (5) SEIZURE.-

472 (b) After satisfying any liens on the property, the  
473 remaining proceeds from the sale of the property seized under  
474 this section shall be allocated as follows if the department  
475 participated in the inspection or investigation leading to  
476 seizure and forfeiture under this section:

477 1. One-third of the proceeds shall be allocated to the law  
478 enforcement agency involved in the seizure, to be used as  
479 provided in s. 932.7055.

480 2. One-third of the proceeds shall be allocated to the  
481 department, to be used for purposes of enforcing the provisions  
482 of this section.

483 3. One-third of the proceeds shall be deposited in the  
484 State Apartment Incentive Loan Fund, to be used for the purpose  
485 of providing funds to sponsors who provide housing for  
486 farmworkers.

487 Section 12. For the purpose of incorporating the amendment  
488 made by this act to section 932.7055, Florida Statutes, in a  
489 reference thereto, paragraph (c) of subsection (2) of section  
490 895.09, Florida Statutes, is reenacted to read:

491 895.09 Disposition of funds obtained through forfeiture



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492 proceedings.-

493 (2)

494 (c) Any funds distributed to an investigating law  
495 enforcement agency under paragraph (a) shall be deposited in the  
496 applicable law enforcement trust fund established for that  
497 agency pursuant to s. 932.7055 and expended for the purposes and  
498 in the manner authorized in that section. In addition, any funds  
499 distributed to an investigating law enforcement agency pursuant  
500 to this section may be used to pay the costs of investigations  
501 of violations of this chapter and the criminal prosecutions and  
502 civil actions related thereto, pursuant to s. 932.7055. Such  
503 costs may include all taxable costs; costs of protecting,  
504 maintaining, and forfeiting the property; employees' base  
505 salaries and compensation for overtime; and such other costs  
506 directly attributable to the investigation, prosecution, or  
507 civil action.

508 Section 13. For the purpose of incorporating the amendment  
509 made by this act to section 932.7055, Florida Statutes, in a  
510 reference thereto, paragraph (b) of subsection (6) of section  
511 932.703, Florida Statutes, is reenacted to read:

512 932.703 Forfeiture of contraband article; exceptions.-

513 (6)

514 (b) A bona fide lienholder's interest that has been  
515 perfected in the manner prescribed by law prior to the seizure  
516 may not be forfeited under the Florida Contraband Forfeiture Act  
517 unless the seizing agency establishes by a preponderance of the  
518 evidence that the lienholder had actual knowledge, at the time  
519 the lien was made, that the property was being employed or was  
520 likely to be employed in criminal activity. If a lienholder's



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521 interest is not subject to forfeiture under the requirements of  
522 this section, such interest shall be preserved by the court by  
523 ordering the lienholder's interest to be paid as provided in s.  
524 932.7055.

525 Section 14. This act shall take effect July 1, 2015.

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/SB 1534

INTRODUCER: Appropriations Committee (Recommended by the Appropriations Subcommittee on Criminal and Civil Justice); and Senator Brandes

SUBJECT: Disposition of Liens and Forfeited Property

DATE: April 20, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Recommend: Fav/CS</b>
3.	<u>Clodfelter</u>	<u>Kynoch</u>	<u>AP</u>	<b>Fav/CS</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1534 amends the Florida Contraband Forfeiture Act (sections 932.701 through 932.706, Florida Statutes) (act) by adding a number of new requirements for law enforcement agencies that seize property, including:

- Annual or more frequent review of the agency's seizures, settlements, and forfeitures and prompt correction of any deficiencies;
- Use of written policies, procedures, and training to ensure compliance with applicable legal requirements regarding seizing, maintaining, and forfeiting property;
- A prohibition against making employment, salary, or other compensation of a law enforcement officer dependent upon seizure quotas.
- Prompt review of the probable cause for all seizures by supervisory personnel and prompt notification to the agency's legal counsel for determination of legal sufficiency to proceed with a forfeiture action;
- Use of written policies and procedures to promote the prompt release of seized property when there is no legitimate basis for holding it, and for prompt review of the validity of all asserted claims of interest to the seized property;
- Maintenance of training records to show that every law enforcement officer has completed basic and continuing education forfeiture training required by the act; and
- Completion of a detailed annual report indicating whether the agency has received or forfeited property, to be kept on file and accessible to the public.

- Prohibiting the seizing agency from retaining forfeited property for the agency's use.
- 
- Requiring the seizing agency to submit a detailed quarterly report of its seizure and forfeiture activities to the Florida Department of Law Enforcement.
- Deleting a provision relating to repayment of funds that were advanced from a municipality's general fund prior to October 1, 2001.

The bill will have an insignificant fiscal impact on seizing agencies related to filing of reports and revision of policies.

This bill provides an effective date of July 1, 2015.

## II. Present Situation:

The Contraband Forfeiture Act, ss. 932.701 through 932.706, F.S., prescribes procedures for law enforcement agencies to follow when seizing, forfeiting, and disposing of property under the act. Currently, under s. 932.703, F.S., any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of the act, or in, upon, or by means of which any violation of the act has taken or is taking place, may be seized and shall be forfeited subject to the provisions of the act.<sup>1</sup>

Section 932.704, F.S., requires the Department of Law Enforcement (FDLE), in consultation with the Florida Sheriffs Association and the Florida Police Chiefs Association, to develop guidelines and training procedures to be used by state and local law enforcement agencies and state attorneys in implementing the act. Each agency that seizes property shall periodically review its seizures, settlements, and forfeiture proceedings to determine whether they comply with the act and the adopted guidelines. The determination of whether an agency will file a forfeiture action must be the sole responsibility of the head of the agency or his or her designee. The determination of whether to seize currency must be made by supervisory personnel. The agency's legal counsel must be notified as soon as possible.<sup>2</sup>

Section 932.7055, F.S., provides for the disposition of liens and forfeited property under the act. The seizing agency may do any of the following when a final judgment of forfeiture is granted:

- Retain the property for the agency's use;
- Sell the property at a public auction or by sealed bid to the highest bidder; or
- Salvage, trade, or transfer the property to any public or nonprofit organization.<sup>3</sup>

If the property has a lien attached and the agency sells the property, the proceeds of the sale are to be distributed in this order:

- Payment of the balance due on any lien preserved by the court in the forfeiture proceedings.
- Payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of such property.

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<sup>1</sup> Section 932.703(1), F.S. The constitutionality of the act was upheld by the Florida Supreme Court in *Department of Law Enforcement v. Real Property*, 588 So.2d 957 (Fla. 1991).

<sup>2</sup> Section 932.704(11), F.S.

<sup>3</sup> Section 932.7055(1), F.S.

- Payment of court costs incurred in the forfeiture proceeding.<sup>4</sup>

The proceeds which remain after all liens and debts against the forfeited property are paid are then deposited into a special law enforcement trust fund and may be used to fund school resource officers, crime prevention, safe neighborhood, drug abuse education and prevention programs, or other law enforcement purposes, including defraying the cost of protracted or complex investigations, providing additional equipment or expertise, purchasing automated external defibrillators for law enforcement vehicles, and providing matching funds to obtain federal grants. These proceeds and interest may not be used to meet normal operation expenses.<sup>5</sup>

Additionally, any local law enforcement agency that acquires at least \$15,000 under the act within a fiscal year must expend or donate no less than 15 percent of these proceeds for the support or operation of any drug treatment, drug abuse education, drug prevention, crime prevention, safe neighborhood, or school resource officer program. The agency has discretion to determine which program receives the funds.<sup>6</sup>

An agency or organization, other than the seizing agency, that wishes to receive such funds must apply to the sheriff or chief of police for an appropriation. If the agency or organization receives funding under the act, it must provide an accounting, indicating that the funds were only used for the above stated purposes.<sup>7</sup>

If the seizing agency is a local law enforcement agency, the proceeds are deposited into a special law enforcement trust fund established by the governing body of a county or municipality. The funds may be appropriated only to the sheriff's office by the board of county commissioners or to the police department by the governing body of the municipality when the sheriff or police chief has certified that the request for funds will be used in compliance with the act.<sup>8</sup>

If the seizing agency is a state agency, the remaining proceeds are deposited into the General Revenue Fund, except that some agencies have their own forfeiture trust fund, including:

- FDLE;
- Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation;
- Department of Highway Safety and Motor Vehicles;
- Fish and Wildlife Conservation Commission;
- State Attorney Offices;
- School Board Security Agencies;
- State University System Police Departments;
- Department of Agriculture and Consumer Services;
- Department of Military Affairs;
- Medicaid Fraud Control Unit of the Department of Legal Affairs;
- Division of State Fire Marshal of the Department of Financial Services; and

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<sup>4</sup> Sections 932.7055(3) and (4), F.S.

<sup>5</sup> Section 932.7055(5), F.S.

<sup>6</sup> Section 932.7055(5)(c)3., F.S.

<sup>7</sup> Section 932.7055(5)(c), F.S.

<sup>8</sup> Section 932.7055(5), F.S.

- Division of Insurance Fraud of the Department of Financial Services.<sup>9</sup>

Section 932.706, F.S., requires the Criminal Justice Standards and Training Commission to develop a standardized course of training which is designed to develop proficiency in the seizure and forfeiture of property under the act. The curriculum must include racial and ethnic sensitivity, search and seizure case law, the use of drug-courier profiles, and the use of an order to stop based on a pretext.

### III. Effect of Proposed Changes:

The bill amends the Florida Contraband Forfeiture Act (ss. 932.701 through 932.706, F.S.). Section 932.704, F.S., is amended to add the following requirements for law enforcement agencies that seize and forfeit contraband property:

- Annual or more frequent review of the agency's seizures, settlements, and forfeitures and prompt correction of any deficiencies;
- Use of written policies, procedures, and training to ensure compliance with applicable legal requirements regarding seizing, maintaining, and forfeiting property;
- A prohibition against making employment, salary, or other compensation of a law enforcement officer dependent upon seizure quotas.
- Prompt review of the probable cause for all seizures by supervisory personnel and prompt notification to the agency's legal counsel for determination of legal sufficiency to proceed with a forfeiture action;
- Use of written policies and procedures to promote the prompt release of seized property when there is no legitimate basis for holding it, and for prompt review of the validity of all asserted claims of interest to the seized property; and
- Maintenance of training records to show that every law enforcement officer has completed basic and continuing education forfeiture training required by the act.

Section 932.7055, F.S., is amended to:

- Prohibit the seizing agency from retaining forfeited property for the agency's use.
- Require the seizing agency to submit a detailed quarterly report of its seizure and forfeiture activities to the Florida Department of Law Enforcement.
- Delete s. 932.7055(4)(d), F.S., which permits funds in a municipality's special law enforcement trust fund to be expended to reimburse the municipality's general fund for moneys advanced from the general fund to the special law enforcement trust fund before October 1, 2001. The paragraph is applicable only for Fiscal Year 2014-2015 and expires July 1, 2015. It was originally enacted as part of the implementing bill for the 2002-2003 General Appropriations Act and was applicable to Fiscal Year 2002-2003, but has been updated in the General Appropriations Act implementing bill each year since that time.

The bill also makes conforming changes and reenacts statutes to incorporate changes made by the bill.

The bill provides an effective date of July 1, 2015.

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<sup>9</sup> Section 932.7055(6), F.S.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

CS/SB 1534 will have an insignificant fiscal impact on seizing agencies related to filing of reports and revision of policies.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 932.701, 932.704, and 932.7055.

This bill creates section 932.7061 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 27.3451, 381.0081, 874.08, 895.09, and 932.703.

This bill makes conforming amendments to cross references in the following sections of the Florida Statutes: 322.34, 323.001, 328.07, and 817.625.

**IX. Additional Information:**

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

**CS by Appropriations on April 16, 2015:**

The committee substitute:

- Incorporates the contents of CS/SB 440 (2015), which adds a number of new requirements to the Florida Contraband Forfeiture Act (the act) relating to the seizure and forfeiture process, training of officers, reporting, and documentation. These changes are detailed in the description of amendments to s. 932.704, F.S., in the “Effects of Proposed Changes” section of this analysis.
- Requires a seizing agency to submit a detailed quarterly report of its seizure and forfeiture activities to the Florida Department of Law Enforcement.

- B. **Amendments:**

None.

By Senator Brandes

22-00308D-15

20151534\_\_

1 A bill to be entitled  
 2 An act relating to the disposition of liens and  
 3 forfeited property; amending s. 932.7055, F.S.;  
 4 deleting a provision authorizing a seizing agency to  
 5 retain seized property for its use; deleting an  
 6 obsolete provision; revising the distribution and the  
 7 use of proceeds from the sales of forfeited property  
 8 seized by a county or municipal agency; authorizing an  
 9 agency or organization, other than a seizing agency,  
 10 to apply for funds from specified proceeds; requiring  
 11 that funding requests be made in writing and include a  
 12 certification that the expenditure meets certain  
 13 requirements; specifying that such requests are public  
 14 records; deleting a provision relating to certain  
 15 expenditure or donation of forfeiture proceeds;  
 16 requiring certain proceeds to be deposited into the  
 17 Crimes Compensation Trust Fund, rather than the  
 18 General Revenue Fund; deleting provisions that exempt  
 19 certain agencies of the state from depositing proceeds  
 20 from seizures into the General Revenue Fund; making  
 21 technical changes; reenacting ss. 381.0081(5)(b),  
 22 895.09(2)(c), and 932.703(6)(b), F.S., relating to the  
 23 allocations of proceeds from the sales of property in  
 24 a migrant labor camp or residential migrant housing,  
 25 the disposition of funds obtained through forfeiture  
 26 proceedings, and the forfeiture of contraband  
 27 articles, respectively, to incorporate the amendment  
 28 made to s. 932.7055, F.S., in references thereto;  
 29 providing an effective date.

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

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30  
 31 Be It Enacted by the Legislature of the State of Florida:  
 32  
 33 Section 1. Section 932.7055, Florida Statutes, is amended  
 34 to read:  
 35 932.7055 Disposition of liens and forfeited property.—  
 36 (1) When a seizing agency obtains a final judgment granting  
 37 forfeiture of real property or personal property, it may elect  
 38 to:  
 39 ~~(a) Retain the property for the agency's use;~~  
 40 (a)(b) Sell the property at public auction or by sealed bid  
 41 to the highest bidder, except for real property, which must  
 42 ~~should~~ be sold in a commercially reasonable manner after  
 43 appraisal by listing on the market; or  
 44 (b)(e) Salvage, trade, or transfer the property to any  
 45 public or nonprofit organization.  
 46 (2) Notwithstanding subsection (1), a seizing agency must  
 47 destroy any image and the medium on which the image is recorded,  
 48 including, but not limited to, a photograph, video tape,  
 49 diskette, compact disc, or fixed disk made in violation of s.  
 50 810.145 when the image and the medium on which it is recorded is  
 51 no longer needed for an official purpose. The agency may not  
 52 sell or retain any image.  
 53 (3) If the forfeited property is subject to a lien  
 54 preserved by the court as provided in s. 932.703(6)(b), the  
 55 agency shall:  
 56 (a) Sell the property with the proceeds being used towards  
 57 satisfaction of any liens; or  
 58 (b) Have the lien satisfied prior to taking any action

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59 authorized by subsection (1).

60 (4) The proceeds from the sale of forfeited property shall  
61 be disbursed in the following priority:

62 (a) Payment of the balance due on any lien preserved by the  
63 court in the forfeiture proceedings.

64 (b) Payment of the cost incurred by the seizing agency in  
65 connection with the storage, maintenance, security, and  
66 forfeiture of such property.

67 (c) Payment of court costs incurred in the forfeiture  
68 proceeding.

69 ~~(d) Notwithstanding any other provision of this subsection,  
70 and for the 2014-2015 fiscal year only, the funds in a special  
71 law enforcement trust fund established by the governing body of  
72 a municipality may be expended to reimburse the general fund of  
73 the municipality for moneys advanced from the general fund to  
74 the special law enforcement trust fund before October 1, 2001.  
75 This paragraph expires July 1, 2015.~~

76 (5) (a) If the seizing agency is a county or municipal  
77 agency, 50 percent of the remaining proceeds shall be deposited  
78 into ~~in~~ a special law enforcement trust fund established by the  
79 board of county commissioners or the governing body of the  
80 municipality. Such proceeds and interest earned therefrom shall  
81 be used for school resource officer, crime prevention, safe  
82 neighborhood, or drug abuse education and prevention programs.  
83 The remaining 50 percent of the proceeds shall be deposited into  
84 the Crimes Compensation Trust Fund, ~~or for other law enforcement~~  
85 purposes, which include defraying the cost of protracted or  
86 complex investigations, providing additional equipment or  
87 expertise, purchasing automated external defibrillators for use

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88 ~~in law enforcement vehicles, and providing matching funds to~~  
89 ~~obtain federal grants. The proceeds and interest may not be used~~  
90 ~~to meet normal operating expenses of the law enforcement agency.~~

91 (b) These funds may be expended upon request by the sheriff  
92 to the board of county commissioners or by the chief of police  
93 to the governing body of the municipality, accompanied by a  
94 written certification that the request complies with the  
95 provisions of this subsection, and only upon appropriation to  
96 the sheriff's office or police department by the board of county  
97 commissioners or the governing body of the municipality.

98 (c) An agency or organization, other than the seizing  
99 agency, which ~~that~~ wishes to receive such funds shall apply to  
100 the sheriff or chief of police for an appropriation. The ~~and its~~  
101 application shall be accompanied by a written certification that  
102 the moneys will be used for an authorized purpose. Such requests  
103 for expenditures shall include a statement describing  
104 anticipated recurring costs for the agency for subsequent fiscal  
105 years. An agency or organization that receives money pursuant to  
106 this subsection shall provide an accounting for such moneys and  
107 shall furnish the same reports as an agency of the county or  
108 municipality that receives public funds. Such funds may be  
109 ~~expended in accordance with the following procedures:~~

110 ~~1. Such funds may be used only for school resource officer,~~  
111 ~~crime prevention, safe neighborhood, drug abuse education, or~~  
112 ~~drug prevention programs ~~or such other law enforcement purposes~~~~  
113 ~~as the board of county commissioners or governing body of the~~  
114 ~~municipality deems appropriate.~~

115 ~~2. Such funds shall not be a source of revenue to meet~~  
116 ~~normal operating needs of the law enforcement agency.~~

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117 ~~(d)3. After July 1, 1992, and During each every~~ fiscal year  
 118 thereafter, any local law enforcement agency that acquires at  
 119 least \$15,000 pursuant to the Florida Contraband Forfeiture Act  
 120 within a fiscal year must expend or donate 50 ~~no less than 15~~  
 121 percent of such proceeds in excess of \$15,000 pursuant to the  
 122 Florida Contraband Forfeiture Act for the support or operation  
 123 of ~~any~~ drug treatment, drug abuse education, drug prevention,  
 124 crime prevention, safe neighborhood, or school resource officer  
 125 programs program(s). An agency or organization, other than the  
 126 seizing agency, which wishes to receive such funds must apply to  
 127 the seizing local law enforcement agency for an appropriation.  
 128 Funding requests by such agencies or organizations must be  
 129 accompanied by a written certification stating that the moneys  
 130 will be used for an authorized purpose, detailing how the funds  
 131 will be used, and affirming that the expenditure will be used  
 132 for only the support of drug treatment, drug abuse education,  
 133 drug prevention, crime prevention, safe neighborhood, or school  
 134 resource officer programs. Such requests are public records as  
 135 defined in chapter 119. The local law enforcement agency has the  
 136 discretion to determine which programs program(s) will receive  
 137 the designated proceeds.

138 (e) Notwithstanding the drug abuse education, drug  
 139 treatment, drug prevention, crime prevention, safe neighborhood,  
 140 or school resource officer programs minimum expenditures or  
 141 donations, the sheriff and the board of county commissioners or  
 142 the chief of police and the governing body of the municipality  
 143 may agree to expend or donate such funds over a period of years  
 144 if the expenditure or donation of the such minimum amount in any  
 145 given fiscal year would exceed the needs of the county or

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146 municipality for such programs program(s). Nothing in this  
 147 section precludes the expenditure or donation of forfeiture  
 148 proceeds in excess of the minimum amounts established herein.

149 (6) If the seizing agency is a state agency, all remaining  
 150 proceeds shall be deposited into the Crimes Compensation Trust  
 151 Fund General Revenue Fund. However, if the seizing agency is:

152 ~~(a) The Department of Law Enforcement, the proceeds accrued~~  
 153 ~~pursuant to the provisions of the Florida Contraband Forfeiture~~  
 154 ~~Act shall be deposited into the Forfeiture and Investigative~~  
 155 ~~Support Trust Fund as provided in s. 943.362 or into the~~  
 156 ~~department's Federal Law Enforcement Trust Fund as provided in~~  
 157 ~~s. 943.365, as applicable.~~

158 ~~(b) The Division of Alcoholic Beverages and Tobacco, the~~  
 159 ~~proceeds accrued pursuant to the Florida Contraband Forfeiture~~  
 160 ~~Act shall be deposited into the Alcoholic Beverage and Tobacco~~  
 161 ~~Trust Fund or into the department's Federal Law Enforcement~~  
 162 ~~Trust Fund as provided in s. 561.027, as applicable.~~

163 ~~(c) The Department of Highway Safety and Motor Vehicles,~~  
 164 ~~the proceeds accrued pursuant to the Florida Contraband~~  
 165 ~~Forfeiture Act shall be deposited into the Department of Highway~~  
 166 ~~Safety and Motor Vehicles Law Enforcement Trust Fund as provided~~  
 167 ~~in s. 932.705(1)(a) or into the department's Federal Law~~  
 168 ~~Enforcement Trust Fund as provided in s. 932.705(1)(b), as~~  
 169 ~~applicable.~~

170 ~~(d) The Fish and Wildlife Conservation Commission, the~~  
 171 ~~proceeds accrued pursuant to the provisions of the Florida~~  
 172 ~~Contraband Forfeiture Act shall be deposited into the State Game~~  
 173 ~~Trust Fund as provided in ss. 379.338, 379.339, and 379.3395 or~~  
 174 ~~into the Marine Resources Conservation Trust Fund as provided in~~

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~~s. 379.337.~~

~~(e) A state attorney's office acting within its judicial circuit, the proceeds accrued pursuant to the provisions of the Florida Contraband Forfeiture Act shall be deposited into the State Attorney's Forfeiture and Investigative Support Trust Fund to be used for the investigation of crime and prosecution of criminals within the judicial circuit.~~

~~(f) A school board security agency employing law enforcement officers, the proceeds accrued pursuant to the provisions of the Florida Contraband Forfeiture Act shall be deposited into the School Board Law Enforcement Trust Fund.~~

~~(g) One of the State University System police departments acting within the jurisdiction of its employing state university, the proceeds accrued pursuant to the provisions of the Florida Contraband Forfeiture Act shall be deposited into that state university's special law enforcement trust fund.~~

~~(h) The Department of Agriculture and Consumer Services, the proceeds accrued pursuant to the Florida Contraband Forfeiture Act shall be deposited into the General Inspection Trust Fund or into the department's Federal Law Enforcement Trust Fund as provided in s. 570.205, as applicable.~~

~~(i) The Department of Military Affairs, the proceeds accrued from federal forfeiture sharing pursuant to 21 U.S.C. ss. 881(c)(1)(A) and (3), 18 U.S.C. s. 981(c)(2), and 19 U.S.C. s. 1616a shall be deposited into the Armory Board Trust Fund and used for purposes authorized by such federal provisions based on the department's budgetary authority or into the department's Federal Law Enforcement Trust Fund as provided in s. 250.175, as applicable.~~

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~~(j) The Medicaid Fraud Control Unit of the Department of Legal Affairs, the proceeds accrued pursuant to the provisions of the Florida Contraband Forfeiture Act shall be deposited into the Department of Legal Affairs Grants and Donations Trust Fund to be used for investigation and prosecution of Medicaid fraud, abuse, neglect, and other related cases by the Medicaid Fraud Control Unit.~~

~~(k) The Division of State Fire Marshal in the Department of Financial Services, the proceeds accrued under the Florida Contraband Forfeiture Act shall be deposited into the Insurance Regulatory Trust Fund to be used for the purposes of arson suppression, arson investigation, and the funding of anti arson rewards.~~

~~(l) The Division of Insurance Fraud of the Department of Financial Services, the proceeds accrued pursuant to the provisions of the Florida Contraband Forfeiture Act shall be deposited into the Insurance Regulatory Trust Fund as provided in s. 626.9893 or into the Department of Financial Services' Federal Law Enforcement Trust Fund as provided in s. 17.43, as applicable.~~

(7) If more than one law enforcement agency is acting substantially to effect the forfeiture, the court having jurisdiction over the forfeiture proceedings shall, upon motion, equitably distribute all proceeds and other property among the seizing agencies.

(8) Upon the sale of any motor vehicle, vessel, aircraft, real property, or other property requiring a title, the appropriate agency shall issue a title certificate to the purchaser. Upon the request of any law enforcement agency which

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233 elects to retain titled property after forfeiture, the  
 234 appropriate state agency shall issue a title certificate for  
 235 such property to said law enforcement agency.

236 (9) ~~A Neither the law enforcement agency, or nor~~ the entity  
 237 having budgetary control over the law enforcement agency, may  
 238 not shall anticipate future forfeitures or the proceeds from  
 239 those forfeitures therefrom in the adoption and approval of the  
 240 agency's budget for the law enforcement agency.

241 Section 2. For the purpose of incorporating the amendment  
 242 made by this act to section 932.7055, Florida Statutes, in a  
 243 reference thereto, paragraph (b) of subsection (5) of section  
 244 381.0081, Florida Statutes, is reenacted to read:

245 381.0081 Permit required to operate a migrant labor camp or  
 246 residential migrant housing; penalties for unlawful  
 247 establishment or operation; allocation of proceeds.—

248 (5) SEIZURE.—

249 (b) After satisfying any liens on the property, the  
 250 remaining proceeds from the sale of the property seized under  
 251 this section shall be allocated as follows if the department  
 252 participated in the inspection or investigation leading to  
 253 seizure and forfeiture under this section:

254 1. One-third of the proceeds shall be allocated to the law  
 255 enforcement agency involved in the seizure, to be used as  
 256 provided in s. 932.7055.

257 2. One-third of the proceeds shall be allocated to the  
 258 department, to be used for purposes of enforcing the provisions  
 259 of this section.

260 3. One-third of the proceeds shall be deposited in the  
 261 State Apartment Incentive Loan Fund, to be used for the purpose

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262 of providing funds to sponsors who provide housing for  
 263 farmworkers.

264 Section 3. For the purpose of incorporating the amendment  
 265 made by this act to section 932.7055, Florida Statutes, in a  
 266 reference thereto, paragraph (c) of subsection (2) of section  
 267 895.09, Florida Statutes, is reenacted to read:

268 895.09 Disposition of funds obtained through forfeiture  
 269 proceedings.—

270 (2)

271 (c) Any funds distributed to an investigating law  
 272 enforcement agency under paragraph (a) shall be deposited in the  
 273 applicable law enforcement trust fund established for that  
 274 agency pursuant to s. 932.7055 and expended for the purposes and  
 275 in the manner authorized in that section. In addition, any funds  
 276 distributed to an investigating law enforcement agency pursuant  
 277 to this section may be used to pay the costs of investigations  
 278 of violations of this chapter and the criminal prosecutions and  
 279 civil actions related thereto, pursuant to s. 932.7055. Such  
 280 costs may include all taxable costs; costs of protecting,  
 281 maintaining, and forfeiting the property; employees' base  
 282 salaries and compensation for overtime; and such other costs  
 283 directly attributable to the investigation, prosecution, or  
 284 civil action.

285 Section 4. For the purpose of incorporating the amendment  
 286 made by this act to section 932.7055, Florida Statutes, in a  
 287 reference thereto, paragraph (b) of subsection (6) of section  
 288 932.703, Florida Statutes, is reenacted to read:

289 932.703 Forfeiture of contraband article; exceptions.—

290 (6)

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291 (b) A bona fide lienholder's interest that has been  
292 perfected in the manner prescribed by law prior to the seizure  
293 may not be forfeited under the Florida Contraband Forfeiture Act  
294 unless the seizing agency establishes by a preponderance of the  
295 evidence that the lienholder had actual knowledge, at the time  
296 the lien was made, that the property was being employed or was  
297 likely to be employed in criminal activity. If a lienholder's  
298 interest is not subject to forfeiture under the requirements of  
299 this section, such interest shall be preserved by the court by  
300 ordering the lienholder's interest to be paid as provided in s.  
301 932.7055.

302 Section 5. This act shall take effect July 1, 2015.



The Florida Senate

## Committee Agenda Request

**To:** Senator Tom Lee, Chair  
Committee on Appropriations

**Subject:** Committee Agenda Request

**Date:** April 8, 2015

---

I respectfully request that **Senate Bill #1534**, relating to **Disposition of Liens and Forfeited Property**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", with a long horizontal line extending to the right.

---

Senator Jeff Brandes  
Florida Senate, District 22

THE FLORIDA SENATE

APPEARANCE RECORD

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

04/16/15  
Meeting Date

1534  
Bill Number (if applicable)  
202004  
Amendment Barcode (if applicable)

Topic Civil Forfeiture

Name Justin Pearson

Job Title Managing Attorney

Address 999 Brickell Ave, Suite 720  
Street

Phone (305) 721-1600

Miami FL 33131  
City State Zip

Email J.Pearson@IJ.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Institute for Justice

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/16/15

Meeting Date

1534

Bill Number (if applicable)

202004

Amendment Barcode (if applicable)

Topic Civil Forfeiture

Name Sheriff Bob Gualtieri

Job Title \_\_\_\_\_

Address Pinellas County Sheriffs Office

Street

Phone \_\_\_\_\_

City

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against

(The Chair will read this information into the record.)

Representing Florida Sheriffs 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.

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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)

April 16, 2015

Meeting Date

1534

Bill Number (if applicable)

202004

Amendment Barcode (if applicable)

Topic Disposition of Liens + Forfeited Property

Name Amy Mercer

Job Title Executive Director

Address 924 N. Gadsden Street

Phone 219-3631

Street

Tallahassee FL 32303

Email amerer@fpca.com

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing The Florida Police Chiefs 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.

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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)

4/16/15

Meeting Date

1534

Bill Number (if applicable)

849530

Amendment Barcode (if applicable)

Topic CIVIL Forfeiture

Name Sheriff Bob Gualtieri

Job Title Sheriff

Address Pinellas County Sheriff's Office Street Phone

City

State

Zip

Email

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against (The Chair will read this information into the record.)

Representing Florida Sheriffs 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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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4/16/15  
Meeting Date

1534  
Bill Number (if applicable)

849530  
Amendment Barcode (if applicable)

Topic Forfeitures

Name Amy Mercer

Job Title Executive Director

Address PO Box 14038  
Street

Phone 8502193631

Tallahassee FL 32317  
City State Zip

Email amercer@fpcfl.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Police Chiefs 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.

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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)

4/16/15

Meeting Date

1534  
Bill Number (if applicable)

Topic Liens and ~~Asset~~ Forfeitures

Amendment Barcode (if applicable)

Name Lorelei Bowden Jacobs

Job Title Director

Address 2008 E 8th Ave

Phone 813 363 0375

Street

Tampa FL 33605

Email L Bowden @ HCSO-tampa fl. us

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Hillsborough County Sheriffs Office

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**

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4/16/15

Meeting Date

1534

Bill Number (if applicable)

Topic Forfeited

Amendment Barcode (if applicable)

Name Greg Powell

Job Title \_\_\_\_\_

Address 9160 Sunrise Dr

Phone \_\_\_\_\_

Street

Henry Pk

City

State

33773

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

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.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

4/16/2015

Meeting Date

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

1534

Bill Number (if applicable)

Topic Civil Asset Forfeiture

Amendment Barcode (if applicable)

Name Jennifer Pritt

Job Title Assistant Commissioner

Address 2331 Phillips Rd

Phone 850 410 8246

Street

Tallahassee FL

32306

Email jennifer.pritt@fdle.state.fl.us

City

State

Zip

Speaking:  For  Against  Information

**Waive Speaking:**  In Support  Against  
(The Chair will read this information into the record.)

Representing FDLE

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)

04/16/15

Meeting Date

1534

Bill Number (if applicable)

Topic Civil Forfeiture

Amendment Barcode (if applicable)

Name Justin Pearson

Job Title Managing Attorney

Address 999 Brickell Ave., Suite 720

Phone (305) 721-1600

Street

Miami

City

FL

State

33131

Zip

Email JPearson@IJ.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Institute for Justice

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

4/16/15  
Meeting Date

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

1534  
Bill Number (if applicable)

Topic Civil Forfeiture

Amendment Barcode (if applicable)

Name Dan Peterson

Job Title Director - Center for Property Rights

Address 2878 S Osceola Ave

Phone 407 758 2491

Orlando FL 32806  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing James Madison Institute

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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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)

4/16/15  
Meeting Date

1534  
Bill Number (if applicable)

Topic ASSET FORFEITURE

Amendment Barcode (if applicable)

Name Sheriff BOB CUALTERRI

Job Title PINELLAS COUNTY SHERIFF

Address 10750 US HWY 90

Phone 727-582-6200

Street

WARGO FL 34607

City

State

Zip

Email Bob.Cualterri@pcsheriff.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FLORIDA SHERIFFS ASSOC.

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)

4/16/15  
Meeting Date

SB 1534  
Bill Number (if applicable)

Topic Dispositions of Liens and Forfeited Prop. Amendment Barcode (if applicable)

Name DENNIS STRAMSE

Job Title Lt.

Address 2500 West Colonial Dr

Phone 407-254-7000

Orlando FL 32804  
City State Zip

Email dennis.stramse@ocfl.net

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Orange County Sheriff's Office

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)

April 16, 2015  
Meeting Date

1534  
Bill Number (if applicable)

Topic Disposition of Liens + Forfeited Property

Amendment Barcode (if applicable)

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City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing The Florida Police Chiefs Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/SB 1536

INTRODUCER: Criminal Justice Committee and Senator Flores

SUBJECT: Public Records/Florida RICO Act Investigations

DATE: April 15, 2015

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Cannon	CJ	<b>Fav/CS</b>
2. Peacock	McVaney	GO	<b>Favorable</b>
3. Clodfelter	Kynoch	AP	<b>Favorable</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1536 makes confidential and exempt from public disclosure information held by an investigative agency pursuant to an investigation of a violation of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act. Because the bill creates a new public record exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

This confidential and exempt information may be disclosed by the investigative agency to a governmental entity in the performance of its official duties and to a court or tribunal.

The information is no longer confidential and exempt once all investigations to which the information pertains are completed, unless the information is otherwise protected by law.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity for the exemption.

It is anticipated that the bill will have a minimal fiscal impact on agencies that hold records subject to the new exemption, and that any costs can be absorbed within existing resources.

This bill does not have a specific effective date because it is contingent on other legislation becoming law. It will take effect on the same date that Senate Bill 1514, or similar legislation relating to racketeering or illegal debts, takes effect.

## II. Present Situation:

### Florida RICO Act

The “Florida RICO Act” is the short title for ss. 895.01-895.06, F.S. “Racketeering activity” means committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any of a number of offenses listed in the definition.<sup>1</sup>

Section 895.04, F.S., punishes as a first degree felony:

- With criminal intent, receiving any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt<sup>2</sup> to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise;<sup>3</sup>
- Through a pattern of racketeering activity or through the collection of an unlawful debt, acquiring or maintaining, directly or indirectly, any interest in or control of any enterprise or real property;
- If employed by, or associated with, any enterprise, conducting or participating, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt; and
- Conspiring or endeavoring to violate any of the aforementioned unlawful acts.<sup>4</sup>

In addition to criminal penalties under s. 895.04, F.S., s. 895.05, F.S., imposes civil liability for violations of the Florida RICO Act, including forfeiture to the state of all property, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of the act.<sup>5</sup>

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<sup>1</sup> Section 895.02(1), F.S. These offenses include violations of specified Florida laws (e.g., Medicaid fraud, kidnapping, human trafficking, and drug offenses) as well as any conduct defined as “racketeering activity” under 18 U.S.C. § 1961(1).

<sup>2</sup> Section 895.02(2), F.S., defines an “unlawful debt” as any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part because the debt was incurred or contracted in violation of specified Florida laws (e.g., various gambling offenses) as well as any gambling activity in violation of federal law or in the business of lending money at a rate usurious under state or federal law.

<sup>3</sup> Section 895.02(3), F.S., defines “enterprise” as any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental, as well as other, entities. A criminal gang as defined in s. 874.03, F.S., constitutes an enterprise.

<sup>4</sup> Section 895.03(4), F.S.

<sup>5</sup> Section 895.05(2), F.S.

## Investigative Subpoenas

Under s. 895.06, F.S., an investigative agency<sup>6</sup> may, during the course of an investigation into civil violations of the act, subpoena witnesses and material if the agency has reason to believe that a person or other enterprise has engaged in conduct that violates the RICO Act. “The purpose of the subpoena power under section 895.06 is to allow an investigative agency to investigate, collect evidence and determine if a RICO violation has occurred.”<sup>7</sup> An investigative agency may apply ex parte to a circuit court for an order directing that a person or entity who has been subpoenaed not disclose the existence of the subpoena for a period of 90 days to anyone except for the attorney for the subpoenaed person or entity.<sup>8</sup> The 90-day time limit may be extended by the court for good cause shown by the investigative agency.<sup>9</sup>

## Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.<sup>10</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>11</sup>

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act<sup>12</sup> guarantees every person’s right to inspect and copy any state or local government public record<sup>13</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>14</sup>

Only the Legislature may create an exemption to public records requirements.<sup>15</sup> This exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>16</sup> Relevant to the bill, there is a difference between records the Legislature designates exempt from public records requirements and those the Legislature designates *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain

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<sup>6</sup> Section 895.02(7), F.S., defines “investigative agency” as the Department of Legal Affairs, the Office of Statewide Prosecution, or the office of a state attorney.

<sup>7</sup> *Check ‘N Go of Florida, Inc. v. State*, 790 So.2d 454, 457 (Fla. 5th DCA 2001), *review denied* 817 So.2d 845 (Fla. 2002).

<sup>8</sup> Section 895.06(3), F.S.

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

<sup>10</sup> FLA. CONST., art. I, s. 24(a).

<sup>11</sup> *Id.*

<sup>12</sup> Chapter 119, F.S.

<sup>13</sup> Section 119.011(12), F.S., defines “public records” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.” The Public Records Act does not apply to legislative or judicial records *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature’s records are public pursuant to section 11.0431, F.S.

<sup>14</sup> Section 119.07(1)(a), F.S.

<sup>15</sup> FLA. CONST., art. I, s. 24(c).

<sup>16</sup> *Id.*

circumstances.<sup>17</sup> If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption.<sup>18</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions<sup>19</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>20</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>21</sup> The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>22</sup>

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than necessary.<sup>23</sup> An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- Allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>24</sup>
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals;<sup>25</sup> or
- Protects trade or business secrets.<sup>26</sup>

The OGSR also requires specified questions to be considered during the review process. In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption. The specified questions are:<sup>27</sup>

<sup>17</sup> See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994), *review denied* 651 So.2d 1192 (Fla. 1995); and *Williams v. City of Minneola*, 575 So.2d 683 (Fla. 5th DCA 1991). See also Attorney General Opinion 85-62 (August 1, 1985).

<sup>18</sup> See *WFTV, Inc. v. The School Board of Seminole*, *supra*, and *Wait v. Florida Power and Light Co.*, 372 So.2d 420 (Fla. 1979).

<sup>19</sup> FLA. CONST. art. I, s. 24. However, the bill may contain multiple exemptions that relate to one subject.

<sup>20</sup> FLA. CONST., art. I, s. 24(c).

<sup>21</sup> Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

<sup>22</sup> Section 119.15(3), F.S.

<sup>23</sup> Section 119.15(6)(b), F.S.

<sup>24</sup> Section 119.15(6)(b)1., F.S.

<sup>25</sup> Section 119.15(6)(b)2., F.S. If this public purpose is cited as the basis of an exemption, only personal identifying information is exempt. *Id.*

<sup>26</sup> Section 119.15(6)(b)3., F.S.

<sup>27</sup> Section 119.15(6)(a)1.-6., F.S.

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>28</sup> If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>29</sup>

### III. Effect of Proposed Changes:

The bill makes confidential and exempt from public disclosure information held by an investigative agency pursuant to an investigation of a violation of the Florida RICO Act. Because the bill creates a new public record exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

This confidential and exempt information may be disclosed by the investigative agency to a governmental entity in the performance of its official duties and to a court or tribunal.

The information is no longer confidential and exempt once all investigations to which the information pertains are completed, unless the information is otherwise protected by law. An investigation is considered complete once the investigative agency either files an action or closes its investigation without filing an action.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity for the exemption.

This bill is linked to SB 1514, which makes substantial changes to civil enforcement provisions of the Florida RICO Act. Relevant to SB 1536, SB 1514 amends s. 895.06, F.S., to make an investigative subpoena issued pursuant to the Florida RICO Act automatically confidential for 120 days after the date of its issuance, unless this period is extended by the court upon a showing of good cause by the investigating agency. SB 1514 also prohibits a subpoenaed person or entity from disclosing the existence of the subpoena to any person or entity other than the attorney of the subpoenaed person or entity during the period in which the subpoena is confidential.

CS/SB 1536 provides a statement of public necessity for the exemption, which includes the following findings:

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<sup>28</sup> FLA. CONST., art. I, s. 24(c).

<sup>29</sup> Section 119.15(7), F.S.

- Because a Florida RICO Act investigation conducted by an investigative agency may lead to the filing of a civil action, the premature release of the information held by such investigative agency could frustrate or thwart the investigation and impair the ability of the investigative agency to effectively and efficiently administer its duties under the act;
- The exemption protects the reputation of the potential defendant in the event the investigation is closed without the filing of a civil action; and

Without the exemption, a potential defendant under the Florida RICO Act may learn of the investigation and dissipate his or her assets and thwart any future enforcement action under the act.

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

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

None.

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

###### **Vote Requirement**

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

###### **Public Necessity Statement**

Article I, Section 24(c) of the Florida Constitution requires a public necessity statement for a newly created public record exemption. The bill creates a public record exemption. The bill includes a public necessity statement.

###### **Breadth of Exemption**

Article I, Section 24(c) of the Florida Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law.

The bill makes confidential and exempt from public disclosure information held by an investigative agency pursuant to an investigation of a violation of the Florida RICO Act. However, the information only remains confidential and exempt until all investigations to which the information pertains are completed, unless the information is otherwise protected by law. An investigation is considered complete once the investigative agency either files an action or closes its investigation without filing an action.

##### C. Trust Funds Restrictions:

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Like any other public records exemption, CS/SB 1536 may lead to a minimal fiscal impact on the affected portions of the government (the Department of Legal Affairs and law enforcement agencies). Staff responsible for complying with public record requests may require training related to the expansion of the public record exemption, and court and clerk offices may incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, should be absorbed, as they are part of the day-to-day responsibilities of the agencies.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 895.06 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Criminal Justice on March 30, 2015:**

Rewords and restructures the bill but does not make any substantive changes except for deleting a finding in the statement of public necessity and correcting a deficient effective date.

**B. Amendments:**

None.

By the Committee on Criminal Justice; and Senator Flores

591-03144-15

20151536c1

1 A bill to be entitled  
 2 An act relating to public records; amending s. 895.06,  
 3 F.S.; providing an exemption from public records  
 4 requirements for certain documents and information  
 5 held by an investigative agency pursuant to an  
 6 investigation relating to an activity prohibited under  
 7 the Florida RICO Act; authorizing disclosure of such  
 8 documents and information under certain conditions;  
 9 providing for future legislative review and repeal of  
 10 the exemption; providing a statement of public  
 11 necessity; providing a contingent effective date.  
 12  
 13 Be It Enacted by the Legislature of the State of Florida:  
 14  
 15 Section 1. Subsection (7) is added to section 895.06,  
 16 Florida Statutes, to read:  
 17 895.06 Civil investigative subpoenas; public records  
 18 exemption.—  
 19 (7) (a) Information held by an investigative agency pursuant  
 20 to an investigation of a violation of s. 895.03 is confidential  
 21 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 22 Constitution.  
 23 (b) Information made confidential and exempt under  
 24 paragraph (a) may be disclosed by the investigative agency to:  
 25 1. A government entity in the performance of its official  
 26 duties.  
 27 2. A court or tribunal.  
 28 (c) Information made confidential and exempt under  
 29 paragraph (a) is no longer confidential and exempt once all

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

591-03144-15

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30 investigations to which the information pertains are completed,  
 31 unless the information is otherwise protected by law.  
 32 (d) For purposes of this subsection, an investigation is  
 33 considered complete once the investigative agency either files  
 34 an action or closes its investigation without filing an action.  
 35 (e) This subsection is subject to the Open Government  
 36 Sunset Review Act in accordance with s. 119.15 and shall stand  
 37 repealed on October 2, 2020, unless reviewed and saved from  
 38 repeal through reenactment by the Legislature.  
 39 Section 2. The Legislature finds that it is a public  
 40 necessity that the information held by an investigative agency  
 41 pursuant to an investigation of a violation of s. 895.03,  
 42 Florida Statutes, relating to an activity prohibited under the  
 43 Florida RICO Act, be made confidential and exempt from s.  
 44 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
 45 State Constitution. Because a Florida RICO Act investigation  
 46 conducted by an investigative agency may lead to the filing of a  
 47 civil action, the premature release of the information held by  
 48 such investigative agency could frustrate or thwart the  
 49 investigation and impair the ability of the investigative agency  
 50 to effectively and efficiently administer its duties under the  
 51 Florida RICO Act, ss. 895.01-895.09, Florida Statutes. This  
 52 exemption also protects the reputation of the potential  
 53 defendant in the event that the investigation is closed without  
 54 the filing of a civil action. Further, without this exemption, a  
 55 potential defendant under the Florida RICO Act may learn of the  
 56 investigation and dissipate his or her assets and thwart any  
 57 future enforcement action under the act. Therefore, the  
 58 Legislature finds that it is a public necessity that the

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20151536c1

59 documents and information held by the investigative agency  
60 pursuant to an investigation of a violation of s. 895.03,  
61 Florida Statutes, relating to an activity prohibited under the  
62 Florida RICO Act, be made confidential and exempt from public  
63 records requirements.

64 Section 3. This act shall take effect on the same date that  
65 SB 1514 or similar legislation relating to offenses concerning  
66 racketeering and illegal debts takes effect, if such legislation  
67 is enacted in the same legislative session or an extension  
68 thereof and becomes law.

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: SB 7046

INTRODUCER: Education Pre-K - 12 Committee

SUBJECT: Education

DATE: April 15, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Hand</u>	<u>Klebacha</u>		<b>ED Submitted as Committee Bill</b>
1.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<b>Favorable</b>
2.	<u>Sikes</u>	<u>Kynoch</u>	<u>AP</u>	<b>Favorable</b>

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**I. Summary:**

SB 7046 modifies fiscal policy aspects relating to education with respect to preeminent state research universities; intensive reading instruction; teacher bonus funding; and performance funding for state universities and Florida colleges.

Specifically, the bill:

- Requires a state university seeking designation as a preeminent state research university to enter into and maintain a formal agreement with the National Merit Scholarship Corporation.
- Extends and expands the requirement of providing an additional hour of intensive reading instruction daily to students enrolled in the 300 lowest performing elementary schools.
- Increases maximum available public school teacher bonus funding, including establishing two new tiers of bonuses available to CAPE industry certification teachers.
- Establishes performance funding models for the State University System (SUS) and Florida College System (FCS) institutions.

The bill contains several provisions which have funds appropriated for their purpose in SB 2500, the Senate's Fiscal Year 2015-2016 proposed General Appropriations Bill. A total of \$90 million is appropriated for intensive reading instruction in the 300 lowest performing elementary schools, \$400 million is appropriated for SUS performance funding, and \$60 million is appropriated for FCS performance funding.

The bill provides an effective date of July 1, 2015.

## II. Present Situation:

### Preeminent State Research Universities

The preeminent state research university program is a collaborative partnership between the Board of Governors (BOG) of the SUS of Florida and the Legislature to elevate the academic and research preeminence of Florida's highest performing state research universities.<sup>1</sup> A state research university that meets at least 11 of the 12 academic and research excellence standards specified in law is designated as a preeminent state research university.<sup>2</sup>

The academic and research excellence standards are:<sup>3</sup>

- An average weighted grade point average of 4.0 or higher on a 4.0 scale and an average SAT score of 1800 or higher for fall semester incoming freshmen, as reported annually.
- A top-50 ranking on at least two well-known and highly respected national public university rankings, reflecting national preeminence, using most recent rankings.
- A freshman retention rate of 90 percent or higher for full-time, first-time-in-college students, as reported annually to the Integrated Postsecondary Education Data System (IPEDS).
- A 6-year graduation rate of 70 percent or higher for full-time, first-time-in-college students, as reported annually to the IPEDS.
- Six or more faculty members at the state university who are members of a national academy, as reported by the Center for Measuring University Performance in the Top American Research Universities (TARU) annual report.
- Total annual research expenditures, including federal research expenditures, of \$200 million or more, as reported annually by the National Science Foundation (NSF).
- Total annual research expenditures in diversified nonmedical sciences of \$150 million or more, based on data reported annually by the NSF.
- A top-100 university national ranking for research expenditures in five or more science, technology, engineering, or mathematics fields of study, as reported annually by the NSF.
- One hundred or more total patents awarded by the United States Patent and Trademark Office for the most recent 3-year period.
- Four hundred or more doctoral degrees awarded annually, as reported in the BOG Annual Accountability Report.
- Two hundred or more postdoctoral appointees annually, as reported in the TARU annual report.
- An endowment of \$500 million or more, as reported in the BOG Annual Accountability Report.

A preeminent research university receives \$5 million in recurring funds annually, subject to appropriation in the General Appropriations Act (GAA).<sup>4</sup> Currently, only the Florida State University and University of Florida meet the standards for preeminent state research university designation and are Florida's only two preeminent state research universities.<sup>5</sup>

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<sup>1</sup> Section 1001.7065(1), F.S.

<sup>2</sup> Section 1001.7065(3), F.S.

<sup>3</sup> Section 1001.7065(2), F.S.

<sup>4</sup> Section 1001.7065, F.S.

<sup>5</sup> Florida Board of Governors, *Preeminent State Research University Benchmark Plans, Board of Governors Strategic Planning Committee*. November 20, 2013, available at

[http://www.flbog.edu/documents\\_meetings/0184\\_0752\\_5480\\_399%20SPC%20Packet.pdf](http://www.flbog.edu/documents_meetings/0184_0752_5480_399%20SPC%20Packet.pdf)

### **Intensive Reading Instruction**

A school district that has one or more of the 300 lowest performing elementary schools based on the state reading assessment is required to provide an additional hour of intensive reading instruction beyond the normal school day for each day of the entire school year in those schools.<sup>6</sup> Funds for this program are designated in the Supplemental Academic Instruction and the Research-Based Reading Instruction Allocation categoricals in the Florida Education Finance Program (FEFP) within the GAA.<sup>7</sup>

### **Bonus Funding**

Bonus funding is authorized for school districts and for teachers if a student earns a qualifying score on the following examinations and certifications: International Baccalaureate (IB) examinations; Advanced International Certificate of Education (AICE) examinations; Advance Placement (AP) examinations; and CAPE industry certifications.<sup>8</sup>

#### ***School District Bonus Funding***

School district bonus funding is awarded as follows:<sup>9</sup>

- 0.16 FTE bonus funding for every qualifying score earned on an IB or AP examination or full-credit AICE examination.
- 0.8 FTE bonus funding for every qualifying score earned on a half-credit AICE examination.
- 0.1, 0.2, 0.3, 0.5, or 1.0 FTE for CAPE industry certifications.

#### ***Teacher Bonus Funding***

Teacher bonus funding is awarded for IB, AICE, and AP examinations, and CAPE industry certifications.<sup>10</sup> For IB examinations, a bonus in the amount of \$50 is awarded for each student taught by the IB teacher who receives a qualifying score on the IB examination.<sup>11</sup> An additional bonus of \$500 is awarded to each IB teacher in a school designated with a grade of “D” or “F” who has at least one student earning a qualifying score on the IB examination.<sup>12</sup> IB bonuses must not exceed \$2,000 given to a teacher in any given school year. However, the maximum bonus is \$3,000 if at least 50 percent of the students enrolled in a teacher’s course earn a qualifying score in a school designated with a grade of “A,” “B,” or “C”; or if at least 25 percent of the students enrolled in a teacher’s course earn a qualifying score in a school designated with a grade of “D” or “F.”<sup>13</sup>

For AICE examinations, a bonus in the amount of \$50 is awarded for each student taught by the AICE teacher in each full-credit AICE course who receives a qualifying score on the AICE

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<sup>6</sup> s. 1011.62 (1)(f), (9), F.S.

<sup>7</sup> ch. 2014-51, L.O.F.

<sup>8</sup> Sections 1011.62 (1)(l)-(o), F.S.

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

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

examination.<sup>14</sup> A bonus in the amount of \$25 is awarded for each student taught by the AICE teacher in each half-credit AICE course who receives a qualifying score on the AICE examination.<sup>15</sup> An additional bonus of \$500 is awarded to each AICE teacher in a school designated with a grade of “D” or “F” who has at least one student earning a qualifying score on the full-credit AICE examination, or \$250 each to teachers of half-credit AICE classes in a school designated with a grade of “D” or “F” which has at least one student earning a qualifying score on the half-credit AICE examination.<sup>16</sup> AICE bonuses must not exceed \$2,000 given to a teacher in any given school year.<sup>17</sup>

For AP examinations, a bonus in the amount of \$50 is awarded for each student taught by the AP teacher who receives a qualifying score on the AP examination.<sup>18</sup> An additional bonus of \$500 is awarded to each AP teacher in a school designated with a grade of “D” or “F” who has at least one student earning a qualifying score on the AP examination.<sup>19</sup> AP bonuses must not exceed \$2,000 given to a teacher in any given school year.<sup>20</sup> However, the maximum bonus is \$3,000 if at least 50 percent of the students enrolled in a teacher’s course earn a qualifying score in a school designated with a grade of “A,” “B,” or “C”; or if at least 25 percent of the students enrolled in a teacher’s course earn a qualifying score in a school designated with a grade of “D” or “F.”<sup>21</sup>

For CAPE Industry Certifications, a bonus in the amount of \$25 is awarded for each student taught by a teacher who provided instruction in a course that led to the attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.1.<sup>22</sup> A bonus in the amount of \$50 is awarded for each student taught by a teacher who provided instruction in a course that led to the attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.2, 0.3, 0.5, and 1.0.<sup>23</sup> CAPE industry certification bonuses must not exceed \$2,000 given to a teacher in any given school year.<sup>24</sup>

### **State University System Performance Funding**

In the 2014-2015 General Appropriations Act (GAA), proviso specifically required performance funding be allocated based on the Board of Governors (BOG) model approved on January 16, 2014.<sup>25</sup> This model is comprised of 10 performance metrics, which include the following:<sup>26</sup>

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

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

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Ch. 2014-51, L.O.F.

<sup>26</sup> Florida Board of Governors, *Meeting Archives Florida Board of Governors Meeting January 15-16 2014 Florida Gulf Coast University*, [http://www.flbog.edu/pressroom/meeting\\_items.php?id=185&agenda=765&type=Past](http://www.flbog.edu/pressroom/meeting_items.php?id=185&agenda=765&type=Past) (last visited March 9, 2015); Florida Board of Governors, *Minutes: Board of Governors January 16, 2014*, available at [http://www.flbog.edu/documents\\_meetings/0187\\_0790\\_5874\\_10.2.2%20BOG%202014\\_01\\_16\\_Board\\_of\\_Governors\\_minutes.pdf](http://www.flbog.edu/documents_meetings/0187_0790_5874_10.2.2%20BOG%202014_01_16_Board_of_Governors_minutes.pdf)

- Percent of bachelor's degree graduates employed and/or continuing their education;
- Average wages of employed baccalaureate graduates;
- Cost per undergraduate degree;
- Six-year graduation rate (full-time and part-time first time in college (FTIC));
- Academic Progress Rate (second year retention with a grade point average above 2.0);
- Bachelor's degrees awarded in areas of strategic emphasis (including Science, Technology, Engineering and Math (STEM) education);
- University access rate (percent of undergraduates with a Pell Grant);
- Graduate degrees awarded in areas of strategic emphasis (including STEM);
- Two additional metrics, one chosen by each of the following:
  - Board of Governors, and
  - University Board of Trustees

State University System institutions will be evaluated for their performance based on benchmarks adopted by the BOG for achievement of excellence or improvement these specified metrics. The 2014-2015 GAA appropriated \$200 million for State University Performance Based Incentives in the 2014-2015 fiscal year, which included \$100 million in new funding and \$100 million redistributed from the state university's base funds.<sup>27</sup> Institutions qualifying for new funding also have their base funding restored. Any institution which fails to meet the minimum threshold set by the BOG will have a portion of its base funding withheld and must submit an improvement plan to the BOG. The BOG must approve the improvement plan and conduct progress monitoring of the improvement plan's implementation. An institution will have its full base funding restored upon BOG approval of the improvement plan monitoring report. Any institution that fails to make satisfactory progress will not have its full base funding restored.

### **Florida College System Performance Funding**

In the 2014-2015 GAA, proviso directed the Commissioner of Education (commissioner) to recommend a performance funding formula that may be used to allocate funds to Florida College System institutions.<sup>28</sup> The commissioner's recommendations were to include up to ten performance measures, appropriate performance benchmarks for each measure, and a detailed methodology for allocating performance funds to the colleges.<sup>29</sup> At a minimum, the measures were to include job placement rates, cost per degree, and graduation/ retention rates.<sup>30</sup> In January 2015, these recommendations were finalized and included the required measures, as well as additional measures for:<sup>31</sup>

- Pell Grant student graduation rate.
- Program completer entry level wages.
- Time to degree.

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<sup>27</sup> ch. 2014-51, L.O.F.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*, Florida Department of Education, *Florida College System Performance Funding Commissioner's Recommendations*, [http://www.floridahighereducation.org/doc\\_meetings/20150223/Senate-Education-Appropriations-Commissioners-FCS-Performance-Funding.pptx](http://www.floridahighereducation.org/doc_meetings/20150223/Senate-Education-Appropriations-Commissioners-FCS-Performance-Funding.pptx) (last visited March 10, 2015).

<sup>30</sup> *Id.*

<sup>31</sup> Florida Department of Education, *Florida College System Performance Funding Commissioner's Recommendations*, [http://www.floridahighereducation.org/doc\\_meetings/20150223/Senate-Education-Appropriations-Commissioners-FCS-Performance-Funding.pptx](http://www.floridahighereducation.org/doc_meetings/20150223/Senate-Education-Appropriations-Commissioners-FCS-Performance-Funding.pptx) (last visited March 10, 2015).

- Credit milestones.
- Local measure selected by each college's board of trustees.

### **III. Effect of Proposed Changes:**

The bill modifies fiscal policy aspects relating to education with regard to preeminent state research universities; intensive reading instruction; teacher bonus funding; and performance funding for state universities and Florida colleges.

Specifically, the bill:

- Requires a state university seeking designation as a preeminent state research university to enter into and maintain a formal agreement with the National Merit Scholarship Corporation.
- Extends and expands the requirement of providing an additional hour of intensive reading instruction daily to students enrolled in the 300 lowest performing elementary schools.
- Increases maximum available public school teacher bonus funding, including establishing two new tiers of bonuses available to CAPE industry certification teachers.
- Establishes performance funding formulas for the State University System and Florida College System institutions.

#### **Preeminent State Research Universities**

The bill specifies that any institution that meets the required academic and research excellence standards for consideration of preeminent status must also enter into, and maintain, a formal agreement with the National Merit Scholarship Corporation to offer College-sponsored Merit Scholarship® awards to be designated as a preeminent state research university.

#### **Intensive Reading Instruction**

The bill amends s. 1011.62(1)(f) and (9), F.S., to extend the requirement of providing an additional hour of intensive reading instruction daily for students enrolled in the 300 lowest performing elementary schools through the 2017-2018 academic year.

The bill also requires participating schools to implement a summer program with an equivalent number of hours of instruction in addition to the hour of instruction provided during the school year. The bill requires participating schools to continue to provide an additional hour of instruction to all students who have Level 1 or Level 2 reading assessment scores in the subsequent year after the school is no longer classified as one of the 300 lowest performing elementary schools.

#### **CAPE Teacher Bonus Funding**

The bill establishes two new tiers of bonuses available to CAPE industry certification teachers under s. 1011.62 (1)(o), F.S. A teacher providing instruction to a student in a course that led to the attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.3 will earn a \$75 bonus, which is \$25 more than currently authorized. A teacher providing instruction to a student in a course that led to the attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.5 or

1.0 will earn a \$100 bonus, which is \$50 more than currently authorized. The maximum total annual bonus for teachers providing instruction in courses leading to these CAPE industry certifications is increased from \$2,000 to \$4,000.

### **State University System Performance Funding**

The bill statutorily establishes a SUS performance funding model, which is based on indicators of institutional attainment of performance metrics adopted by the BOG. These performance metrics include, but are not limited to, metrics that measure graduation and retention rates; degree production; affordability; postgraduation employment, salaries, or further education; student loan default rates; access; and any other metrics approved by the BOG. SUS institutions will be evaluated for their performance based on benchmarks adopted by the BOG for achievement of excellence or improvement on specified metrics.

Each fiscal year, the amount of funds available for allocation to the institutions based upon the performance funding model consists of new funding, plus an amount of funds to be redistributed from the base funding for the SUS, as determined in the GAA. Institutions qualifying for new funding shall also have their base funding restored. Any institution which fails to meet the minimum threshold set by the BOG will have a portion of its base funding withheld and must submit an improvement plan to the BOG. The BOG must approve the improvement plan and conduct progress monitoring of the improvement plan's implementation. An institution will have its full base funding restored upon BOG approval of the improvement plan monitoring report. Any institution that fails to make satisfactory progress will not have its full base funding restored.

### **Florida College System Performance Funding**

The bill establishes a FCS performance funding formula, which is based on indicators of institutional attainment of performance metrics adopted by the State Board of Education (state board). These performance metrics include, but are not limited to, metrics that measure retention; program completion and graduation rates; student loan default rates; job placement; and post-graduation employment, salaries, or further education. FCS institutions will be evaluated for their performance based on benchmarks adopted by the state board for achievement of excellence or improvement on specified metrics.

Each fiscal year, the amount of funds available for allocation to the institutions based upon the performance funding model consists of new funding plus an amount of funds to be redistributed from the base funding for the Florida College System Program Fund, as determined in the GAA. Institutions qualifying for new funding shall also have their base funding restored. Any institution which fails to meet the minimum threshold set by the state board will have a portion of its base funding withheld and must submit an improvement plan to the state board. The state board must approve the improvement plan and conduct progress monitoring of the improvement plan's implementation. An institution will have its full base funding restored upon state board approval of the improvement plan monitoring report. Any institution that fails to make satisfactory progress will not have its full base funding restored.

**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:**

SB 7046 increases the bonus funding for teachers who provide instruction to a student in a course that led to the attainment of a 0.3, 0.5, or 1.0 weighted industry certification. These teachers are eligible for up to an additional \$2,000 annually in bonus funding.

**C. Government Sector Impact:**

The bill extends the requirement of providing an additional hour of intensive reading instruction daily to students enrolled in the 300 lowest performing elementary schools through the 2017-2018 academic year, requires participating schools to also provide the required additional instruction through an equivalent number of hours in a summer program, and requires participating schools to continue to provide the additional hour of instruction to all students who have level 1 or 2 reading assessment scores in the subsequent year after the school is no longer classified as one of the 300 lowest performing. This additional hour of reading instruction is funded through the Supplemental Academic Instruction (SAI) and the Research-Based Reading Instruction Allocation categoricals in the FEFP. A total of \$90 million is provided for this instruction in SB 2500, the Fiscal Year 2015-2016 proposed General Appropriations Bill.

The bill statutorily establishes the SUS performance funding model, which is funded at \$400 million in the Senate's proposed General Appropriations Bill for Fiscal Year 2015-2016, SB 2500. This appropriation consists of \$200 million in new funding and \$200 million redistributed from the base funding for the State University System. The funds received by an individual state university will be contingent upon the university's performance on the established metrics.

The bill establishes the FCS Performance Based Incentive, which is funded at \$60 million in SB 2500. This appropriation consists of \$30 million in new funding and \$30 million

redistributed from the base funding for the Florida College System Program Fund. The funds received by each institution will be contingent upon the institution's performance on the established metrics.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 1001.7065 and 1001.62.

This bill creates undesignated sections of the Florida law.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

By the Committee on Education Pre-K - 12

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1 A bill to be entitled  
 2 An act relating to education; amending s. 1001.7065,  
 3 F.S.; requiring a state research university to enter  
 4 into and maintain a formal agreement with a specified  
 5 organization to offer college-sponsored merit  
 6 scholarship awards as a condition of designation as a  
 7 preeminent state research university; specifying that  
 8 continuation of a state research university's  
 9 institute for online learning is contingent on the  
 10 university entering into and maintaining such an  
 11 agreement; amending s. 1011.62, F.S.; authorizing a  
 12 low-performing elementary school to administer the  
 13 required additional hours of instruction in a summer  
 14 program; requiring a school to continue to provide the  
 15 additional instruction to certain students in the  
 16 subsequent year that the school is no longer  
 17 classified as one of the 300 lowest-performing  
 18 elementary schools; revising the types and amounts of  
 19 bonuses that a teacher may receive in any given school  
 20 year; deleting obsolete language; requiring the Board  
 21 of Governors and the State Board of Education to base  
 22 state performance funds for the State University  
 23 System and the Florida College System, respectively,  
 24 on specified metrics adopted by each board; specifying  
 25 allocation of the funds; requiring the Chancellor of  
 26 the State University System and the Commissioner of  
 27 Education to withhold disbursement of certain funds;  
 28 requiring the boards to submit reports by a specified  
 29 time to the Governor and the Legislature; requiring

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30 the boards to adopt rules; providing an effective  
 31 date.  
 32  
 33 Be It Enacted by the Legislature of the State of Florida:  
 34  
 35 Section 1. Subsections (3) and (4) of section 1001.7065,  
 36 Florida Statutes, are amended to read:  
 37 1001.7065 Preeminent state research universities program.—  
 38 (3) PREEMINENT STATE RESEARCH UNIVERSITY DESIGNATION.—The  
 39 Board of Governors shall designate each state research  
 40 university that meets at least 11 of the 12 academic and  
 41 research excellence standards identified in subsection (2) and  
 42 that enters into and maintains a formal agreement with the  
 43 National Merit Scholarship Corporation to offer college-  
 44 sponsored merit scholarship awards a preeminent state research  
 45 university.  
 46 (4) PREEMINENT STATE RESEARCH UNIVERSITY INSTITUTE FOR  
 47 ONLINE LEARNING.—A state research university that, as of July 1,  
 48 2013, ~~met~~ meets all 12 of the academic and research excellence  
 49 standards identified in subsection (2), as verified by the Board  
 50 of Governors, shall establish an institute for online learning.  
 51 Continuation of the institute for online learning is contingent  
 52 upon a state research university entering into and maintaining a  
 53 formal agreement with the National Merit Scholarship Corporation  
 54 to offer college-sponsored merit scholarship awards. The  
 55 institute shall establish a robust offering of high-quality,  
 56 fully online baccalaureate degree programs at an affordable cost  
 57 in accordance with this subsection.  
 58 (a) By August 1, 2013, the Board of Governors shall convene

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59 an advisory board to support the development of high-quality,  
 60 fully online baccalaureate degree programs at the university.

61 (b) The advisory board shall:

62 1. Offer expert advice, as requested by the university, in  
 63 the development and implementation of a business plan to expand  
 64 the offering of high-quality, fully online baccalaureate degree  
 65 programs.

66 2. Advise the Board of Governors on the release of funding  
 67 to the university upon approval by the Board of Governors of the  
 68 plan developed by the university.

69 3. Monitor, evaluate, and report on the implementation of  
 70 the plan to the Board of Governors, the Governor, the President  
 71 of the Senate, and the Speaker of the House of Representatives.

72 (c) The advisory board shall be composed of the following  
 73 five members:

74 1. The chair of the Board of Governors or the chair's  
 75 permanent designee.

76 2. A member with expertise in online learning, appointed by  
 77 the Board of Governors.

78 3. A member with expertise in global marketing, appointed  
 79 by the Governor.

80 4. A member with expertise in cloud virtualization,  
 81 appointed by the President of the Senate.

82 5. A member with expertise in disruptive innovation,  
 83 appointed by the Speaker of the House of Representatives.

84 (d) The president of the university shall be consulted on  
 85 the advisory board member appointments.

86 (e) A majority of the advisory board shall constitute a  
 87 quorum, elect the chair, and appoint an executive director.

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88 (f) By September 1, 2013, the university shall submit to  
 89 the advisory board a comprehensive plan to expand high-quality,  
 90 fully online baccalaureate degree program offerings. The plan  
 91 shall include:

92 1. Existing on-campus general education courses and  
 93 baccalaureate degree programs that will be offered online.

94 2. New courses that will be developed and offered online.

95 3. Support services that will be offered to students  
 96 enrolled in online baccalaureate degree programs.

97 4. A tuition and fee structure that meets the requirements  
 98 in paragraph (k) for online courses, baccalaureate degree  
 99 programs, and student support services.

100 5. A timeline for offering, marketing, and enrolling  
 101 students in the online baccalaureate degree programs.

102 6. A budget for developing and marketing the online  
 103 baccalaureate degree programs.

104 7. Detailed strategies for ensuring the success of students  
 105 and the sustainability of the online baccalaureate degree  
 106 programs.

107

108 Upon recommendation of the plan by the advisory board and  
 109 approval by the Board of Governors, the Board of Governors shall  
 110 award the university \$10 million in nonrecurring funds and \$5  
 111 million in recurring funds for fiscal year 2013-2014 and \$5  
 112 million annually thereafter, subject to appropriation in the  
 113 General Appropriations Act.

114 (g) Beginning in January 2014, the university shall offer  
 115 high-quality, fully online baccalaureate degree programs that:

116 1. Accept full-time, first-time-in-college students.

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117 2. Have the same rigorous admissions criteria as equivalent  
 118 on-campus degree programs.

119 3. Offer curriculum of equivalent rigor to on-campus degree  
 120 programs.

121 4. Offer rolling enrollment or multiple opportunities for  
 122 enrollment throughout the year.

123 5. Do not require any on-campus courses. However, for  
 124 courses or programs that require clinical training or  
 125 laboratories that cannot be delivered online, the university  
 126 shall offer convenient locational options to the student, which  
 127 may include, but are not limited to, the option to complete such  
 128 requirements at a summer-in-residence on the university campus.  
 129 The university may provide a network of sites at convenient  
 130 locations and contract with commercial testing centers or  
 131 identify other secure testing services for the purpose of  
 132 proctoring assessments or testing.

133 6. Apply the university's existing policy for accepting  
 134 credits for both freshman applicants and transfer applicants.

135 (h) The university may offer a fully online Master's in  
 136 Business Administration degree program and other master's degree  
 137 programs.

138 (i) The university may develop and offer degree programs  
 139 and courses that are competency based as appropriate for the  
 140 quality and success of the program.

141 (j) The university shall periodically expand its offering  
 142 of online baccalaureate degree programs to meet student and  
 143 market demands.

144 (k) The university shall establish a tuition structure for  
 145 its online institute in accordance with this paragraph,

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146 notwithstanding any other provision of law.

147 1. For students classified as residents for tuition  
 148 purposes, tuition for an online baccalaureate degree program  
 149 shall be set at no more than 75 percent of the tuition rate as  
 150 specified in the General Appropriations Act pursuant to s.  
 151 1009.24(4) and 75 percent of the tuition differential pursuant  
 152 to s. 1009.24(16). No distance learning fee, fee for campus  
 153 facilities, or fee for on-campus services may be assessed,  
 154 except that online students shall pay the university's  
 155 technology fee, financial aid fee, and Capital Improvement Trust  
 156 Fund fee. The revenues generated from the Capital Improvement  
 157 Trust Fund fee shall be dedicated to the university's institute  
 158 for online learning.

159 2. For students classified as nonresidents for tuition  
 160 purposes, tuition may be set at market rates in accordance with  
 161 the business plan.

162 3. Tuition for an online degree program shall include all  
 163 costs associated with instruction, materials, and enrollment,  
 164 excluding costs associated with the provision of textbooks  
 165 pursuant to s. 1004.085 and physical laboratory supplies.

166 4. Subject to the limitations in subparagraph 1., tuition  
 167 may be differentiated by degree program as appropriate to the  
 168 instructional and other costs of the program in accordance with  
 169 the business plan. Pricing must incorporate innovative  
 170 approaches that incentivize persistence and completion,  
 171 including, but not limited to, a fee for assessment, a bundled  
 172 or all-inclusive rate, and sliding scale features.

173 5. The university must accept advance payment contracts and  
 174 student financial aid.

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175 6. Fifty percent of the net revenues generated from the  
 176 online institute of the university shall be used to enhance and  
 177 enrich the online institute offerings, and 50 percent of the net  
 178 revenues generated from the online institute shall be used to  
 179 enhance and enrich the university's campus state-of-the-art  
 180 research programs and facilities.

181 7. The institute may charge additional local user fees  
 182 pursuant to s. 1009.24(14) upon the approval of the Board of  
 183 Governors.

184 8. The institute shall submit a proposal to the president  
 185 of the university authorizing additional user fees for the  
 186 provision of voluntary student participation in activities and  
 187 additional student services.

188 Section 2. Paragraphs (f) and (o) of subsection (1) and  
 189 paragraph (a) of subsection (9) of section 1011.62, Florida  
 190 Statutes, are amended to read:

191 1011.62 Funds for operation of schools.—If the annual  
 192 allocation from the Florida Education Finance Program to each  
 193 district for operation of schools is not determined in the  
 194 annual appropriations act or the substantive bill implementing  
 195 the annual appropriations act, it shall be determined as  
 196 follows:

197 (1) COMPUTATION OF THE BASIC AMOUNT TO BE INCLUDED FOR  
 198 OPERATION.—The following procedure shall be followed in  
 199 determining the annual allocation to each district for  
 200 operation:

201 (f) *Supplemental academic instruction; categorical fund.*—

202 1. There is created a categorical fund to provide  
 203 supplemental academic instruction to students in kindergarten

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204 through grade 12. This paragraph may be cited as the  
 205 "Supplemental Academic Instruction Categorical Fund."

206 2. Categorical funds for supplemental academic instruction  
 207 shall be allocated annually to each school district in the  
 208 amount provided in the General Appropriations Act. These funds  
 209 shall be in addition to the funds appropriated on the basis of  
 210 FTE student membership in the Florida Education Finance Program  
 211 and shall be included in the total potential funds of each  
 212 district. These funds shall be used to provide supplemental  
 213 academic instruction to students enrolled in the K-12 program.  
 214 For the 2014-2015, 2015-2016, 2016-2017, and 2017-2018 fiscal  
 215 years year, each school district that has one or more of the 300  
 216 lowest-performing elementary schools based on the state reading  
 217 assessment shall use these funds, together with the funds  
 218 provided in the district's research-based reading instruction  
 219 allocation and other available funds, to provide an additional  
 220 hour of instruction beyond the normal school day for each day of  
 221 the entire school year, and provide the equivalent hours of  
 222 instruction in a summer program, for intensive reading  
 223 instruction for the students in each of these schools. In the  
 224 subsequent year, if a participating school is no longer  
 225 classified as one of the 300 lowest-performing elementary  
 226 schools, the school must continue to provide the additional hour  
 227 of instruction to all students who have Level 1 or Level 2  
 228 reading assessment scores. This additional hour of instruction  
 229 must be provided by teachers or reading specialists who are  
 230 effective in teaching reading or by a K-5 mentoring reading  
 231 program that is supervised by a teacher who is effective at  
 232 teaching reading. Students enrolled in these schools who have

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233 level 5 assessment scores may participate in the additional hour  
 234 of instruction on an optional basis. Exceptional student  
 235 education centers shall not be included in the 300 schools.  
 236 After this requirement has been met, supplemental instruction  
 237 strategies may include, but are not limited to: modified  
 238 curriculum, reading instruction, after-school instruction,  
 239 tutoring, mentoring, class size reduction, extended school year,  
 240 intensive skills development in summer school, and other methods  
 241 for improving student achievement. Supplemental instruction may  
 242 be provided to a student in any manner and at any time during or  
 243 beyond the regular 180-day term identified by the school as  
 244 being the most effective and efficient way to best help that  
 245 student progress from grade to grade and to graduate.

246 3. Effective with the 1999-2000 fiscal year, funding on the  
 247 basis of FTE membership beyond the 180-day regular term shall be  
 248 provided in the FEFP only for students enrolled in juvenile  
 249 justice education programs or in education programs for  
 250 juveniles placed in secure facilities or programs under s.  
 251 985.19. Funding for instruction beyond the regular 180-day  
 252 school year for all other K-12 students shall be provided  
 253 through the supplemental academic instruction categorical fund  
 254 and other state, federal, and local fund sources with ample  
 255 flexibility for schools to provide supplemental instruction to  
 256 assist students in progressing from grade to grade and  
 257 graduating.

258 4. The Florida State University School, as a lab school, is  
 259 authorized to expend from its FEFP or Lottery Enhancement Trust  
 260 Fund allocation the cost to the student of remediation in  
 261 reading, writing, or mathematics for any graduate who requires

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262 remediation at a postsecondary educational institution.

263 5. Beginning in the 1999-2000 school year, dropout  
 264 prevention programs as defined in ss. 1003.52, 1003.53(1)(a),  
 265 (b), and (c), and 1003.54 shall be included in group 1 programs  
 266 under subparagraph (d)3.

267 (o) *Calculation of additional full-time equivalent*  
 268 *membership based on successful completion of a career-themed*  
 269 *course pursuant to ss. 1003.491, 1003.492, and 1003.493, or*  
 270 *courses with embedded CAPE industry certifications or CAPE*  
 271 *Digital Tool certificates, and issuance of industry*  
 272 *certification identified on the CAPE Industry Certification*  
 273 *Funding List pursuant to rules adopted by the State Board of*  
 274 *Education or CAPE Digital Tool certificates pursuant to s.*  
 275 *1003.4203.-*

276 1.a. A value of 0.025 full-time equivalent student  
 277 membership shall be calculated for CAPE Digital Tool  
 278 certificates earned by students in elementary and middle school  
 279 grades.

280 b. A value of 0.1 or 0.2 full-time equivalent student  
 281 membership shall be calculated for each student who completes a  
 282 course as defined in s. 1003.493(1)(b) or courses with embedded  
 283 CAPE industry certifications and who is issued an industry  
 284 certification identified annually on the CAPE Industry  
 285 Certification Funding List approved under rules adopted by the  
 286 State Board of Education. A value of 0.2 full-time equivalent  
 287 membership shall be calculated for each student who is issued a  
 288 CAPE industry certification that has a statewide articulation  
 289 agreement for college credit approved by the State Board of  
 290 Education. For CAPE industry certifications that do not

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291 articulate for college credit, the Department of Education shall  
 292 assign a full-time equivalent value of 0.1 for each  
 293 certification. Middle grades students who earn additional FTE  
 294 membership for a CAPE Digital Tool certificate pursuant to sub-  
 295 subparagraph a. may not use the previously funded examination to  
 296 satisfy the requirements for earning an industry certification  
 297 under this sub-subparagraph. Additional FTE membership for an  
 298 elementary or middle grades student shall not exceed 0.1 for  
 299 certificates or certifications earned within the same fiscal  
 300 year. The State Board of Education shall include the assigned  
 301 values on the CAPE Industry Certification Funding List under  
 302 rules adopted by the state board. Such value shall be added to  
 303 the total full-time equivalent student membership for grades 6  
 304 through 12 in the subsequent year for courses that were not  
 305 provided through dual enrollment. CAPE industry certifications  
 306 earned through dual enrollment must be reported and funded  
 307 pursuant to s. 1011.80.

308 c. A value of 0.3 full-time equivalent student membership  
 309 shall be calculated for student completion of the courses and  
 310 the embedded certifications identified on the CAPE Industry  
 311 Certification Funding List and approved by the commissioner  
 312 pursuant to ss. 1003.4203(5) (a) and 1008.44.

313 d. A value of 0.5 full-time equivalent student membership  
 314 shall be calculated for CAPE Acceleration Industry  
 315 Certifications that articulate for 15 to 29 college credit  
 316 hours, and 1.0 full-time equivalent student membership shall be  
 317 calculated for CAPE Acceleration Industry Certifications that  
 318 articulate for 30 or more college credit hours pursuant to CAPE  
 319 Acceleration Industry Certifications approved by the

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320 commissioner pursuant to ss. 1003.4203(5) (b) and 1008.44.

321 2. Each district must allocate at least 80 percent of the  
 322 funds provided for CAPE industry certification, in accordance  
 323 with this paragraph, to the program that generated the funds.  
 324 This allocation may not be used to supplant funds provided for  
 325 basic operation of the program.

326 3. For CAPE industry certifications earned in the 2013-2014  
 327 school year and in subsequent years, the school district shall  
 328 distribute to each classroom teacher who provided direct  
 329 instruction toward the attainment of a CAPE industry  
 330 certification that qualified for additional full-time equivalent  
 331 membership under subparagraph 1.:

332 a. A bonus in the amount of \$25 for each student taught by  
 333 a teacher who provided instruction in a course that led to the  
 334 attainment of a CAPE industry certification on the CAPE Industry  
 335 Certification Funding List with a weight of 0.1.

336 b. A bonus in the amount of \$50 for each student taught by  
 337 a teacher who provided instruction in a course that led to the  
 338 attainment of a CAPE industry certification on the CAPE Industry  
 339 Certification Funding List with a weight of 0.2, ~~0.3, 0.5, and~~  
 340 ~~1.0~~.

341 c. A bonus in the amount of \$75 for each student taught by  
 342 a teacher who provided instruction in a course that led to the  
 343 attainment of a CAPE industry certification on the CAPE Industry  
 344 Certification Funding List with a weight of 0.3.

345 d. A bonus in the amount of \$100 for each student taught by  
 346 a teacher who provided instruction in a course that led to the  
 347 attainment of a CAPE industry certification on the CAPE Industry  
 348 Certification Funding List with a weight of 0.5 or 1.0.

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349  
350 Bonuses awarded pursuant to this paragraph shall be provided to  
351 teachers who are employed by the district in the year in which  
352 the additional FTE membership calculation is included in the  
353 calculation. Bonuses shall be calculated based upon the  
354 associated weight of a CAPE industry certification on the CAPE  
355 Industry Certification Funding List for the year in which the  
356 certification is earned by the student. Any bonus awarded to a  
357 teacher under sub-subparagraph 3.a. or sub-subparagraph 3.b.  
358 ~~this paragraph~~ may not exceed \$2,000 in any given school year,  
359 and a bonus awarded to a teacher under sub-subparagraph 3.c. or  
360 sub-subparagraph 3.d. may not exceed \$4,000 in a given school  
361 year. The maximum bonus that may be awarded to a teacher under  
362 this paragraph is \$4,000. This bonus ~~and~~ is in addition to any  
363 regular wage or other bonus the teacher received or is scheduled  
364 to receive.

365 (9) RESEARCH-BASED READING INSTRUCTION ALLOCATION.—

366 (a) The research-based reading instruction allocation is  
367 created to provide comprehensive reading instruction to students  
368 in kindergarten through grade 12. For the 2014-2015, 2015-2016,  
369 2016-2017, and 2017-2018 fiscal years year, in each school  
370 district that has one or more of the 300 lowest-performing  
371 elementary schools based on the state reading assessment,  
372 priority shall be given to providing an additional hour per day  
373 of intensive reading instruction beyond the normal school day  
374 for each day of the entire school year, or provide the  
375 equivalent hours of instruction in a summer program, for the  
376 students in each school. In the subsequent year, if a  
377 participating school is no longer classified as one of the 300

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

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378 lowest-performing elementary schools, the school must continue  
379 to provide the additional hour of instruction to all students  
380 who have Level 1 or Level 2 reading assessment scores. Students  
381 enrolled in these schools who have level 5 assessment scores may  
382 participate in the additional hour of instruction on an optional  
383 basis. Exceptional student education centers shall not be  
384 included in the 300 schools. The intensive reading instruction  
385 delivered in this additional hour and for other students shall  
386 include: research-based reading instruction that has been proven  
387 to accelerate progress of students exhibiting a reading  
388 deficiency; differentiated instruction based on student  
389 assessment data to meet students' specific reading needs;  
390 explicit and systematic reading development in phonemic  
391 awareness, phonics, fluency, vocabulary, and comprehension, with  
392 more extensive opportunities for guided practice, error  
393 correction, and feedback; and the integration of social studies,  
394 science, and mathematics-text reading, text discussion, and  
395 writing in response to reading. ~~For the 2012-2013 and 2013-2014~~  
396 ~~fiscal years, a school district may not hire more reading~~  
397 ~~coaches than were hired during the 2011-2012 fiscal year unless~~  
398 ~~all students in kindergarten through grade 5 who demonstrate a~~  
399 ~~reading deficiency, as determined by district and state~~  
400 ~~assessments, including students scoring Level 1 or Level 2 on~~  
401 ~~the statewide, standardized reading assessment or, upon~~  
402 ~~implementation, the English Language Arts assessment, are~~  
403 ~~provided an additional hour per day of intensive reading~~  
404 ~~instruction beyond the normal school day for each day of the~~  
405 ~~entire school year.~~

406 Section 3. (1) State performance funds for the State

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 407 University System shall be based on indicators of institutional  
 408 attainment of performance metrics adopted by the Board of  
 409 Governors. The performance-based funding metrics include, but  
 410 are not limited to, metrics that measure graduation and  
 411 retention rates; degree production; affordability;  
 412 postgraduation employment, salaries, or further education;  
 413 student loan default rates; access; and any other metrics  
 414 approved by the board.

415 (2) The Board of Governors shall evaluate the institutions'  
 416 performance on the metrics based on benchmarks adopted by the  
 417 board which measure the achievement of institutional excellence  
 418 or improvement. Each fiscal year, the amount of funds available  
 419 for allocation to the institutions based upon the performance  
 420 funding model consists of new funding, plus an amount of funds  
 421 to be redistributed from the base funding for the State  
 422 University System, as determined in the General Appropriations  
 423 Act. Base funding shall be restored for all institutions  
 424 eligible for new funding under the performance funding model.  
 425 Any institution that fails to meet the board's minimum  
 426 performance funding threshold will have a portion of its base  
 427 funding withheld and must submit an improvement plan to the  
 428 board that specifies the activities and strategies for improving  
 429 the institution's performance.

430 (3) The Board of Governors must review the improvement  
 431 plan, and if it approves the plan, monitor the institution's  
 432 progress on implementing the activities and strategies.

433 (4) The Chancellor of the State University System shall  
 434 withhold disbursement of the base funds until such time as the  
 435 monitoring report for the institution is approved by the Board

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 436 of Governors. Any institution that fails to make satisfactory  
 437 progress will not have its full base funding restored. If all  
 438 funds are not restored, any remaining funds shall be  
 439 redistributed in accordance with the board's performance funding  
 440 model.

441 (5) By October 1 of each year, the Board of Governors shall  
 442 submit to the Governor, the President of the Senate, and the  
 443 Speaker of the House of Representatives a report on the previous  
 444 year's performance funding allocation which reflects the  
 445 rankings and award distributions.

446 (6) The Board of Governors shall adopt a regulation to  
 447 implement this section.

448 Section 4. (1) State performance funds for the Florida  
 449 College System shall be based on indicators of institutional  
 450 attainment of performance metrics adopted by the State Board of  
 451 Education. The performance-based funding metrics include, but  
 452 are not limited to, metrics that measure retention; program  
 453 completion and graduation rates; student loan default rates; job  
 454 placement; post-graduation employment, salaries, or further  
 455 education; and any other metrics approved by the board.

456 (2) The State Board of Education shall evaluate the  
 457 institutions' performance on the metrics based on benchmarks  
 458 adopted by the board which measure the achievement of  
 459 institutional excellence or improvement. Each fiscal year, the  
 460 amount of funds available for allocation to the institutions  
 461 based upon the performance funding model consists of new funding  
 462 plus an amount of funds to be redistributed from the base  
 463 funding for the Florida College System Program Fund, as  
 464 determined in the General Appropriations Act. Funding shall be

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465 restored for all institutions eligible for new funding under the  
466 performance funding model. Any institution that fails to meet  
467 the board's minimum performance funding threshold will have a  
468 portion of its base funding withheld and must submit an  
469 improvement plan to the board that specifies the activities and  
470 strategies for improving the institution's performance.

471 (3) The State Board of Education must review the  
472 improvement plan, and if it approves the plan, monitor the  
473 institution's progress on implementing the specified activities  
474 and strategies.

475 (4) The Commissioner of Education shall withhold  
476 disbursement of the base funds until such time as the monitoring  
477 report for the institution is approved by the State Board of  
478 Education. Any institution that fails to make satisfactory  
479 progress will not have its full base funding restored. If all  
480 funds are not restored, any remaining funds shall be  
481 redistributed in accordance with the board's performance funding  
482 model.

483 (5) By October 1 of each year, the State Board of Education  
484 shall submit to the Governor, the President of the Senate, and  
485 the Speaker of the House of Representatives a report on the  
486 previous year's performance funding allocation which reflects  
487 the rankings and award distributions.

488 (6) The State Board of Education shall adopt rules to  
489 implement this section.

490 Section 5. This act shall take effect July 1, 2015.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/16/15

Meeting Date

7046

Bill Number (if applicable)

Topic Education / Digital Classrooms

Amendment Barcode (if applicable)

Name Rolland Steele

Job Title Regional Advocate

Address 215 South Monroe

Phone 850-273-4393

Street

Tallahassee

City

FL

State

32301

Zip

Email rolland@floridapromise.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Foundation for Florida's Future

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 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/16/15

Meeting Date

SB 7046

Bill Number (if applicable)

Topic Education

Amendment Barcode (if applicable)

Name Brittney Burch

Job Title Director of Education Policy

Address 136 S. Bronough St.

Phone (850) 521-1279

Street

Tallahassee, FL

32301

Email bburch@flchamber.com

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Chamber of Commerce

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

April 16 2015

Meeting Date

7046

Bill Number (if applicable)

Topic Education

Amendment Barcode (if applicable)

Name Marie-Claire Leman

Job Title parent + school volunteer

Address 1911 Wahalaw Ct

Phone 850 728 7514

Street

Tallahassee

FL

32301

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing -

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/CS/SB 7070

INTRODUCER: Appropriations Committee; Judiciary Committee; and Appropriations Committee

SUBJECT: Mental Health and Substance Abuse

DATE: April 20, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	A. Brown	Kynoch		<b>AP Submitted as Committee Bill</b>
1.	C. Brown	Cibula	JU	<b>Fav/CS</b>
2.	A. Brown	Kynoch	AP	<b>Fav/CS</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 7070 integrates the Marchman Act, which provides substance abuse intervention, clinical treatment, and recovery support services, into the Florida Mental Health Act, more commonly known as the Baker Act.

The bill also establishes the “Mental Health and Substance Abuse Directives Act,” also known as the Jennifer Act. The purpose of the Jennifer Act is to enable persons at risk of need for future services based on mental illness or substance abuse impairment governed under ch. 394, F.S., to establish directives for care and treatment in advance of becoming incapacitated.

The Department of Children and Families (DCF) is directed under the bill to create a Forensic Hospital Diversion Pilot Program in Alachua, Broward, Escambia, Hillsborough and Miami-Dade counties, taking into account local needs and subject to the availability of local resources, which is to be modeled after the Miami-Dade Forensic Alternative Center.

The bill creates the Nonviolent Offender Reentry Program, a diversionary program available to qualifying nonviolent offenders who commit less serious felonies. The program is designed to reduce prison sentences, by replacing part of the sentence an offender would have spent incarcerated with a minimum stay of six months in a reentry program.

The DCF indicates it may incur additional legal costs under the bill and anticipates a need for 12 additional full-time equivalent legal positions with an associated cost of \$1.7 million beginning in the 2016-2017 fiscal year. Other aspects of the bill have an indeterminate fiscal impact.

The bill authorizes counties to fund treatment-based mental health court programs that will allow persons in the justice system assessed with a mental illness to be processed so the severity of the mental illness is properly addressed through treatment services. Each judicial circuit with a treatment-based mental health court program may establish, at a minimum, contingent upon an annual legislative appropriation, one coordinator position to coordinate the responsibilities of participating agencies and service providers.

The bill expands the list of agency representatives that must serve on the Criminal Justice, Mental Health, and Substance Abuse Statewide Grant Review Committee. The committee is designed to serve as the advisory body to review policy and funding issues to reduce the impact of persons with mental illness and substance abuse disorder on communities and the court system. Additionally, the bill allows a not-for-profit community provider designated by a local county planning council to apply for a three year implementation grant or expansion grant.

The bill directs DCF to develop, implement, and maintain standards under which a managing entity is required to collect utilization data for all public receiving facilities within its geographic service area. Managing entities under contract with DCF must comply with the implementation and requirement by August 1, 2015.

Veterans, including those who were discharged or released under a general discharge and are convicted of a criminal offense and who suffer from a military-related mental illness, traumatic brain injury, substance abuse disorder or psychological problem, are eligible to participate in a Military Veterans and Servicemembers Court Program if established by the chief judge in the judicial circuit. Also, the veteran is eligible for voluntary admission into a pretrial veterans' treatment intervention program, and, for a crime committed after July 1, 2015, as probationer or community controllee is eligible to participate in a treatment program.

Except as otherwise expressly provided, the bill provides an effective date of July 1, 2015.

## **II. Present Situation:**

### **Baker Act**

In 1971, the Legislature adopted the Florida Mental Health Act, known as the Baker Act.<sup>1</sup> The Act authorized treatment programs for mental, emotional, and behavioral disorders. The Baker Act required programs to include comprehensive health, social, educational, and rehabilitative services to persons requiring intensive short-term and continued treatment to facilitate recovery. Additionally, the Baker Act provides protections and rights to individuals examined or treated for mental illness. Legal procedures are addressed for mental health examination and treatment, including voluntary admission, involuntary admission, involuntary inpatient treatment, and involuntary outpatient treatment.

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<sup>1</sup> Chapter 71-131, Laws of Fla.; The Baker Act is contained in ch. 394, F.S.

Mental illness creates enormous social and economic costs.<sup>2</sup> Unemployment rates for persons having mental disorders are high relative to the overall population.<sup>3</sup> Rates of unemployment for people having a severe mental illness range between 60 percent and 100 percent.<sup>4</sup> Mental illness increases a person's risk of homelessness in America threefold.<sup>5</sup> Approximately 33 percent of the nation's homeless live with a serious mental disorder, such as schizophrenia, for which they are untreated.<sup>6</sup> Often the combination of homelessness and mental illness leads to incarceration, which further decreases a person's chance of receiving proper treatment and leads to future recidivism.<sup>7</sup>

### **Marchman Act**

In 1993, the Legislature adopted the Hal S. Marchman Alcohol and Other Drug Services Act. The Marchman Act provides a comprehensive continuum of accessible and quality substance abuse prevention, intervention, clinical treatment, and recovery support services. Services must be provided in the least restrictive environment to promote long-term recovery. The Marchman Act includes various protections and rights of patients served.

### ***Comparison of the Marchman Act to the Baker Act***

While the Baker Act is used to initiate approximately 136,000 involuntary examinations annually, the Marchman Act is used to initiate only an estimated 9,000 involuntary admissions per year.<sup>8</sup> This disparity is likely attributable to two factors:

- The Marchman Act is much more complex and difficult to apply. This leads law enforcement, mental health professionals, and the courts to prefer the Baker Act, even when substance abuse impairment may be the chief presenting problem; and
- The Marchman Act allows facilities to turn clients away for a lack of capacity or lack of payor source, whereas Baker Act receiving facilities must accept any individual brought for involuntary examination.<sup>9</sup>

### ***Individual Bill of Rights***

Both the Marchman Act and the Baker Act provide an individual bill of rights.<sup>10</sup> Rights in common include the right to dignity, right to quality of treatment, right to not be refused treatment at a state-funded facility due to an inability to pay, right to communicate with others, right to care and custody of personal effects, and the right to petition the court on a writ of

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<sup>2</sup> MentalMenace.com, *Mental Illness: The Invisible Menace; Economic Impact*, <http://www.mentalmenace.com/economicimpact.php> (last visited April 5, 2015).

<sup>3</sup> MentalMenace.com, *Mental Illness: The Invisible Menace: More impacts and facts*, <http://www.mentalmenace.com/impactsfacts.php> (last visited April 5, 2015).

<sup>4</sup> *Id.*

<sup>5</sup> Family Guidance Center for Behavioral Health Care, *How does Mental Illness Impact Rates of Homelessness?*, (February 4, 2014), <http://www.familyguidance.org/how-does-mental-illness-impact-rates-of-homelessness/>.

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

<sup>7</sup> *Id.*

<sup>8</sup> Proposal to Streamline Baker Act and Marchman Act: Overview, pg. 1 (on file with the Senate Judiciary Committee).

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

<sup>10</sup> Section 397.501, F.S., provides "Rights of Individuals" for individuals served through the Marchman Act; s. 394.459, F.S., provides "Rights of Individuals" for individuals served through the Baker Act.

habeus corpus. The individual bill of rights also imposes liability for damages on persons who violate individual rights.<sup>11</sup> The Marchman Act bill of rights includes the right to confidentiality of clinical records. The individual is the only person who may consent to disclosure.<sup>12</sup> The Baker Act addresses confidentiality in a separate section of law and permits limited disclosure by the individual, a guardian, or a guardian advocate.<sup>13</sup> The Marchman Act ensures the right to habeus corpus, which means that a petition for release may be filed with the court by an individual involuntarily retained or his or her parent or representative.<sup>14</sup> In addition to the petitioners authorized in the Marchman Act, the Baker Act permits the DCF to file a writ for habeus corpus on behalf of the individual.<sup>15</sup>

### ***Transportation to a Facility***

The Marchman Act authorizes an applicant seeking to have a person admitted to a facility, the person's spouse or guardian, a law enforcement officer, or a health officer to transport the individual for an emergency assessment and stabilization.<sup>16</sup>

The Baker Act requires each county to designate a single law enforcement agency to transfer the person in need of services. If the person is in custody based on noncriminal or minor criminal behavior, the law enforcement officer will transport the person to the nearest receiving facility. If, however, the person is arrested for a felony the person must first be processed in the same manner as any other criminal suspect. The law enforcement officer must then transport the person to the nearest facility, unless the facility is unable to provide adequate security.<sup>17</sup>

The Marchman Act allows law enforcement officers, however, to temporarily detain substance-impaired persons in a jail setting. An adult not charged with a crime may be detained for his or her own protection in a municipal or county jail or other appropriate detention facility. Detention in jail is not considered to be an arrest, is temporary, and requires the detention facility to provide if necessary transfer of the detainee to an appropriate licensed service provider with an available bed.<sup>18</sup> However, the Baker Act prohibits the detention in jail of a mentally ill person if he or she has not been charged with a crime.<sup>19</sup>

### ***Voluntary Admission to a Facility***

The Marchman Act authorizes persons who wish to enter treatment for substance abuse to apply to a service provider for voluntary admission. A minor is authorized to consent to treatment for substance abuse.<sup>20</sup> Under the Baker Act, a guardian of a minor must give consent for mental health treatment under a voluntary admission.<sup>21</sup>

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<sup>11</sup> Sections 397.501(10)(a) and 394.459(10), F.S.

<sup>12</sup> Section 397.501(7), F.S.

<sup>13</sup> Section 394.4615(1) and (2), F.S.

<sup>14</sup> Section 397.501(9), F.S.

<sup>15</sup> Section 394.459(8)(a), F.S.

<sup>16</sup> Section 397.6795, F.S.

<sup>17</sup> Section 394.462(1)(f) and (g), F.S.

<sup>18</sup> Section 397.6772(1), F.S.

<sup>19</sup> Section 394.459(1), F.S.

<sup>20</sup> Section 397.601(1) and (4)(a), F.S.

<sup>21</sup> Section 394.4625(1)(a), F.S.

When a person is voluntarily admitted to a facility, the emergency contact for the person must be recorded in the individual record.<sup>22</sup> When a person is involuntarily admitted, contact information for the individual's guardian, guardian advocate, or representative, and the individual's attorney must be entered into the individual record.<sup>23</sup> The Marchman Act does not address emergency contacts.

The Baker Act requires an individualized treatment plan to be provided to the individual within five days after admission to a facility.<sup>24</sup> The Marchman Act does not address individualized treatment plans.

### ***Involuntary Admission to a Facility***

#### Criteria for Involuntary Admission

The Marchman Act provides that a person meets the criteria for involuntary admission if good faith reason exists that the person is substance abuse impaired and because of the impairment:

- Has lost the power of self-control with respect to substance abuse; and either
- Has inflicted, threatened to or attempted to inflict self-harm; or
- Is in need of services and due to the impairment, judgment is so impaired that the person is incapable of appreciating the need for services.<sup>25</sup>

#### Protective Custody

A person who meets the criteria for involuntary admission under the Marchman Act may be taken into protective custody by a law enforcement officer.<sup>26</sup> The person may consent to have the law enforcement officer transport the person to his or her home, a hospital, or a licensed detoxification or addictions receiving facility.<sup>27</sup> If the person does not consent, the law enforcement officer may transport the person without using unreasonable force.<sup>28</sup>

#### Time Limits

A critical 72-hour period applies under both the Marchman and the Baker Act. Under the Marchman Act, a person may only be held in protective custody for a 72-hour period, unless a petition for involuntary assessment or treatment has been timely filed with the court within that timeframe to extend protective custody.<sup>29</sup> The Baker Act provides that a person cannot be held in a receiving facility for involuntary examination for more than 72 hours.<sup>30</sup> Within that 72-hour examination period, or, if the 72 hours ends on a weekend or holiday, no later than the next working day, one of the following must happen:

- The patient must be released, unless he or she is charged with a crime, in which case law enforcement will resume custody;

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<sup>22</sup> Section 394.4597(1), F.S.

<sup>23</sup> Section 394.4597(2), F.S.

<sup>24</sup> Section 394.459(2)(e), F.S.

<sup>25</sup> Section 397.675, F.S.

<sup>26</sup> Section 397.677, F.S.

<sup>27</sup> Section 397.6771, F.S.

<sup>28</sup> Section 397.6772(1), F.S.

<sup>29</sup> Section 397.6773(1) and (2), F.S.

<sup>30</sup> Section 394.463(2)(f), F.S.

- The patient must be released into voluntary outpatient treatment;
- The patient must be asked to give consent to be placed as a voluntary patient if placement is recommended; or
- A petition for involuntary placement must be filed in circuit court for outpatient or inpatient treatment.<sup>31</sup>

Under the Marchman Act, if the court grants the petition for involuntary admission, the person may be admitted for a period of five days to a facility for involuntary assessment and stabilization.<sup>32</sup> If the facility needs more time, the facility may request a seven-day extension from the court.<sup>33</sup> Based on the involuntary assessment, the facility may retain the person pending a court decision on a petition for involuntary treatment.<sup>34</sup>

Under the Baker Act, the court must hold a hearing on involuntary inpatient or outpatient placement within five working days after a petition for involuntary placement is filed.<sup>35</sup> The petitioner must show, by clear and convincing evidence all available less restrictive treatment alternatives are inappropriate and that the individual:

- Is mentally ill and because of the illness has refused voluntary placement for treatment or is unable to determine the need for placement; and
- Is manifestly incapable of surviving alone or with the help of willing and responsible family and friends, and without treatment is likely suffer neglect to such an extent that it poses a real and present threat of substantial harm to his or her well-being, or substantial likelihood exists that in the near future he or she will inflict serious bodily harm on himself or herself or another person.<sup>36</sup>

### ***Notice Requirements***

The Marchman Act requires the nearest relative of a minor to be notified if the minor is taken into protective custody.<sup>37</sup> No time requirement is provided in law. Under the Baker Act, receiving facilities are required to promptly notify a patient's guardian, guardian advocate, attorney, and representative within 24 hours after the patient arrives at the facility on an involuntary basis, unless the patient requests otherwise.<sup>38</sup> In requiring notice on behalf of a patient, current law does not distinguish between adult and minor patients. The facility must provide notice to the Florida local advocacy council no later than the next working day after the patient is admitted.

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<sup>31</sup> Section 394.463(2)(i)4., F.S.

<sup>32</sup> Section 397.6811, F.S.

<sup>33</sup> Section 397.6821, F.S.

<sup>34</sup> Section 397.6822, F.S.

<sup>35</sup> Sections 394.4655(6) and 394.467(6), F.S.

<sup>36</sup> Section 394.467(1), F.S.

<sup>37</sup> Section 397.6772(2), F.S.

<sup>38</sup> Section 394.4599(2)(a) and (b), F.S.

## **Mental Illness and Substance Abuse**

According to the National Alliance on Mental Illness (NAMI), about 50 percent of persons with severe mental health disorders are affected by substance abuse.<sup>39</sup> NAMI also estimates that 29 percent of people diagnosed as mentally ill abuse alcohol or other drugs.<sup>40</sup> When mental health disorders are left untreated, substance abuse likely increases. When substance abuse increases, mental health symptoms often escalate as well or new symptoms are triggered. This could also be due to discontinuation of taking prescribed medications or the contraindications for substance abuse and mental health medications. When taken with other medications, mental health medications can become less effective.<sup>41</sup>

## **Advance Directive for Mental Health or Substance Abuse Treatment**

Florida law currently allows an individual to create an advance directive which designates a surrogate to make health care decisions for the individual and provides a process for the execution of the directive.<sup>42</sup> Current law also allows an individual to designate a separate surrogate to consent to mental health treatment for the individual if the individual is determined by a court to be incompetent to consent to treatment.<sup>43</sup> A mental health or substance abuse treatment advance directive is much like a living will for health care.<sup>44</sup> Acute episodes of mental illness temporarily destroy the capacity required to give informed consent and often prevent people from realizing they are sick, causing them to refuse intervention.<sup>45</sup> Even in the midst of acute episodes, many people do not meet commitment criteria because they are not likely to injure themselves or others and are still able to care for their basic needs.<sup>46</sup> If left untreated, acute episodes may spiral out of control before the person meets commitment criteria.<sup>47</sup>

## **Miami-Dade Forensic Alternative Center**

The Miami-Dade Forensic Alternative Center (MDFAC) opened in 2009 as a community-based, forensic commitment program. The MDFAC serves adults:

- Aged 18 years old and older;
- Who have been found by a court to be incompetent to proceed at trial due to serious mental illness or not guilty by reason of insanity for a second or third degree felony; and
- Who do not have a significant history of violence.<sup>48</sup>

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<sup>39</sup> Donna M. White, OPCI, CACP, *Living with Co-Occurring Mental & Substance Abuse Disorders*, available at <http://psychcentral.com/blog/archives/2013/10/02/living-with-co-occurring-mental-substance>

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Section 765.202, F.S.

<sup>43</sup> Section 765.202(5), F.S.

<sup>44</sup> Washington State Hospital Association, *Mental Health Advance Directives* (on file with the Senate Judiciary Committee).

<sup>45</sup> Judy A. Clausen, *Making the Case for a Model Mental Health Advance Directive Statute*, 14 YALE J. HEALTH POL'Y, L. & ETHICS 1, (Winter 2014).

<sup>46</sup> *Id.* at 17.

<sup>47</sup> *Id.*

<sup>48</sup> Department of Children and Families (DCF), *2015 Agency Legislative Bill Analysis* (March 4 2015) (on file with the Senate Judiciary Committee).

The MDFAC provides competency restoration and a continuum of care during commitment and after reentry into the community.<sup>49</sup> Since the 2011-2012 Fiscal Year, all but two of the persons served in the program were adjudicated incompetent to proceed at trial. The MDFAC currently operates a 16-bed facility at a daily cost of \$284.81 per bed.<sup>50</sup>

### **Reentry Programs for Nonviolent Offenders**

Inmates who enter prison often have shortcomings in one or more areas of education, employment skills, substance abuse-free living, and mental health that contributed to their current situation. For example, while 24.6 percent of the inmates admitted to prison during Fiscal Year 2011-2012 had been convicted of a drug crime,<sup>51</sup> almost two-thirds of inmates who enter prison for any crime also have a substance abuse problem.<sup>52</sup>

Unless addressed, these deficiencies are likely to contribute to re-offending and a return to prison. In the past decade the executive and legislative branches of state government have acknowledged the importance of reentry services and post-release planning and transition. In May 2007, the Department of Corrections (DOC) revised its mission statement to include assisting offenders with reentry into society in order to reduce recidivism and to lower crime rates. The goal was to bring down the three-year, post-release recidivism rate from 32 percent to 20 percent by 2012. The DOC reports that the three-year, post-release recidivism rate for inmates released in 2009 was 27 percent.<sup>53</sup>

### **Mental Health Courts**

Mental health courts are a type of problem-solving court that combines judicial supervision with community mental health treatment and other support services in order to reduce criminal activity and improve the quality of life of participants. Mental health court programs are not established or defined in Florida Statutes. A key objective of mental health courts is to prevent the jailing of offenders with mental illness by diverting them to appropriate community services or to significantly reduce time spent incarcerated. As of October 1, 2014, Florida has 26 mental health courts operating in 16 judicial circuits.

### **The Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program.**

This program currently exists within DCF. The purpose of the program is to provide funding to counties to plan, implement, or expand initiatives that increase public safety, avert increased spending on criminal justice, and improve the accessibility and effectiveness of treatment services for adults and juveniles who have a mental illness, substance abuse disorder, or co-

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<sup>49</sup> Budget Subcommittee on Health and Human Services Appropriations, The Florida Senate, *Interim Report 2012-108, The Forensic Mental Health System* (September 2011).

<sup>50</sup> DCF, *supra* note 46, at 2.

<sup>51</sup> Fla. Dep't of Corrections, *Inmate Admissions*, [http://www.dc.state.fl.us/pub/annual/1112/stats/im\\_admis.html](http://www.dc.state.fl.us/pub/annual/1112/stats/im_admis.html) (last visited April 8, 2015).

<sup>52</sup> Office of Program Policy Analysis and Governmental Accountability (OPPAGA), *Corrections Rehabilitative Programs Effective, But Serve Only a Portion of the Eligible Population*, Report No. 07-14 (February 2007), p. 6. <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=07-14>

<sup>53</sup> Department of Corrections, *2012 Florida Prison Recidivism Study – Releases from 2004 to 2012*, p. 9, <http://www.dc.state.fl.us/pub/recidivism/2012/ratesovertime.html> (last visited on April 8, 2015).

occurring mental health and substance abuse disorders and who are in, or at risk of entering, the criminal or juvenile justice system. The Criminal Justice, Mental Health, and Substance Abuse Statewide Grant Review Committee is comprised of membership from the Department of Children and Families, the Department of Corrections, the Department of Juvenile Justice, the Department of Elderly Affairs, and the Office State Courts Administrator.

### **Crisis Stabilization Units**

Individuals experiencing severe emotional or behavioral problems often require emergency treatment to stabilize their situations before referral for outpatient services or inpatient services can occur. Emergency mental health stabilization services may be provided to individuals on a voluntary or involuntary basis. Individuals receiving services on an involuntary basis must be taken to a facility that has been designated by DCF as a “receiving facility” as defined in Part I of ch. 394, F.S.<sup>54</sup>

Receiving facilities, often referred to as Baker Act Receiving Facilities, are public or private facilities designated by DCF for the purposes of receiving and examining individuals on an involuntary basis under emergency conditions and to provide short-term treatment. Receiving facilities that have a contract with one of the managing entities to provide mental health services to all persons regardless of their ability to pay, and that are receiving state funds for this purpose, are considered public receiving facilities.<sup>55</sup>

Crisis Stabilization Units (CSUs) are public receiving facilities that receive state funding and provide a less intensive and less costly alternative to inpatient psychiatric hospitalization for individuals presenting as acutely mentally ill. CSUs screen, assess, and admit individuals brought to the unit under the Baker Act, as well as those individuals who voluntarily present themselves, for short-term services.<sup>56</sup> CSUs provide services 24 hours a day, seven days a week, through a team of mental health professionals. The purpose of the CSU is to examine, stabilize, and redirect people to the most appropriate and least restrictive treatment settings, consistent with their mental health needs. Individuals often enter the public mental health system through CSUs.<sup>57</sup> Managing entities must follow current statutes and rules that require CSUs to be paid for bed availability rather than utilization.

Section 394.461(4), F.S., directs facilities designated as public receiving or treatment facilities to report to DCF on an annual basis the following data, unless the data is currently being submitted to the Agency for Health Care Administration:

1. Number of licensed beds.
2. Number of contract days.
3. Number of admissions by payor class and diagnosis.
4. Number of bed days by payor class.
5. Average length of stay by payor class.

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<sup>54</sup> Section 394.455(26), F.S.

<sup>55</sup> Section 394.455(25), F.S.

<sup>56</sup> Section 394.875, F.S.

<sup>57</sup> Budget Subcommittee on Health and Human Services Appropriations, the Florida Senate, Crisis Stabilization Units, (Interim Report 2012-109) (September 2011).

6. Total revenues by payor class.

The DCF must issue an annual report based on the data required including individual facility data and statewide totals. The report is submitted to the Governor and the Legislature.

As of December 2014, there are 53 public receiving facilities with 2,040 beds and 67 private receiving facilities with 3,155 beds. Based on the Florida Mental Health Institute's Annual Report of Baker Act Data Summary for 2013, released May 2014, in calendar year 2013, 171,744 involuntary examinations were initiated.

### III. Effect of Proposed Changes:

#### **Marchman Act and Baker Act (Sections of the bill that merge the Marchman and Baker Acts have an effective date of July 1, 2016)**

This bill adds concepts from the Marchman Act which relate to the commitment of a person having a substance abuse impairment into the Baker Act. As a conforming change, the bill repeals all provisions in current law which provide for the voluntary and involuntary civil commitment of a person for substance abuse impairment under the Marchman Act.

Chapter 394, F.S., will now govern the commitment, treatment, and care of persons with mental illness and substance abuse impairment, as the conditions are presented separately or co-occurring.

#### **Service Providers (Sections 7 and 20)**

The bill recognizes that treatment may be provided not just by a state or local provider but also by a facility, mental health professional, or other health care provider affiliated with the United States Department of Veterans Affairs or the United States Department of Defense. Under the bill, a facility owned, operated, or administered by the United States Department of Veterans Affairs which provides mental health services, has authority as granted by the Florida Department of Veterans' Affairs to:

- Initiate and conduct involuntary examinations for treatment;
- Provide voluntary treatment;
- Petition for involuntary inpatient placement; and
- Provide involuntary inpatient placement.

Advanced registered nurse practitioners are included in the list of service providers eligible to serve individuals under ch. 394, F.S.

#### **Individual Bill of Rights (Section 10)**

The bill modifies the individual bill of rights.

***Right to Dignity***

This bill allows persons detained for substance abuse treatment to be detained temporarily in a municipal or county jail. If a person is detained for purposes of protective custody and transfer, the detention facility must:

- Notify the nearest appropriate facility within 8 hours;
- Notify the nearest relative of a minor or of an adult, unless the adult requests otherwise; and
- Arrange for transport to the hospital or other receiving facility.

***Right to Treatment***

This bill clarifies that individuals must be provided the least restrictive appropriate available treatment.

In addition to a physical examination, individuals must be given a mental health or substance abuse evaluation by a psychiatrist, psychologist, psychiatric nurse, or qualified substance abuse professional within 24 hours after arrival if the person has not been released or discharged.

***Right to Express and Informed Consent***

Service providers are required to provide information and assist competent and willing individuals complete an advance directive.

The bill also expands the list of people who may be notified of an individual's admission to a facility to include a health care surrogate or proxy. Facilities providing services will be required to review any incidents resulting in an injury or alleged injury, allegations of sexual battery, and death, or unauthorized departure of an individual being held for involuntary examination or involuntary placement. Advance directives already in place must be honored, or the service provider must request a transfer of the individual to another facility.

***Quality of Treatment***

As soon as is reasonably possible, facilities must report to the Department of Children and Families (DCF) and the entity that manages the facility:

- The death of an individual which occurs while the person is at the facility or which occurs within 72 hours after release;
- An injury sustained, or allegedly sustained by an individual at the facility if it requires medical treatment, whether the injury is caused by an accident, self-inflicted, assault, abuse, neglect, or a suicide attempt;
- The unauthorized departure or absence of an individual from a facility in which he or she has been held involuntarily;
- A natural disaster or crisis situation that jeopardizes individual safety; and
- An allegation of sexual battery on an individual.

***Communication, Abuse Reporting, and Visits***

This bill adds to the list of persons authorized immediate access to the individual, unless access would be detrimental, a health care surrogate or proxy. If access is restricted, the facility must

document the reasons in the individual's record. Facility rules on communication must be the least restrictive possible.

### ***Care and Custody of Personal Effects***

Copies of an inventory of clothing and personal effects and the actual clothing and personal effects if appropriate, must be provided to the representative of the individual, including a health care surrogate or proxy.

### ***Advance Directives***

This bill includes advance directives in the individual bill of rights. A mental health or substance abuse treatment advance directive is a written document in which the principal provides instructions or preferences or appoints a surrogate to make decisions on behalf of the principal regarding mental health or substance abuse treatment, or both. The bill requires service providers to provide information on advance directives to individuals and to help competent and willing individuals complete an advance directive. Service providers must honor the advance directive.

### **Representatives and Notification (Sections 10 and 13)**

A receiving facility must immediately notify a minor's parent, guardian, caregiver, or guardian advocate, in person, by phone, or by electronic communication, after the minor's arrival at the facility. In the event that a report has been provided to the child abuse hotline, notification may be delayed for up to 24 hours. If the facility is unable to successfully provide notification, the facility must repeat attempts to notify until confirmation is received.

Individuals voluntarily admitted to a facility must be asked to identify a person to be notified in case of emergency. If an individual is involuntarily admitted, a health care surrogate or proxy's contact information is required, if appropriate.

The bill prohibits from serving as a representative or guardian advocate:

- A professional providing clinical services to the individual;
- The licensed professional who initiated the involuntary examination of the individual, if initiated by professional certificate;
- An employee, administrator, or board member of the facility providing examination or treatment;
- A person providing any substantial professional services to the individual;
- A creditor of the individual; and
- A person subject to a repeat violence, sexual violence, dating violence, or domestic violence injunction in which the individual is the petitioner.

The bill specifies rights of representatives, including the right to receive certain notices, have immediate access to the individual, and petition on behalf of the individual for a writ of habeas corpus or change of venue.

**Clinical Records (Section 14)**

The bill maintains the confidentiality of clinical records and adds a health care surrogate or proxy to the list of representatives who have access to the records and who may waive consent to confidentiality. The bill adds as another basis for release of records that a petition for involuntary placement is filed and the state attorney needs access to the records, solely to evaluate the allegations in the petition or to prosecute the petition, not for a criminal investigation or prosecution.

**Transportation to a Facility (Section 15)**

This bill requires the nearest receiving facility to accept a person who has engaged in either noncriminal behavior or a felony other than a forcible felony.

If the person has been arrested for a forcible felony, the law enforcement officer must first process the person in the same manner as any other person who is arrested. The nearest receiving facility may not accept the person if the facility does not have adequate security.

A person who meets the criteria for voluntary admission may request transport to a mental health receiving facility, addictions receiving facility, or a detoxification facility.

**Voluntary and Involuntary Admissions, Examinations, and Placement (Sections 11, 13, and 16 through 20)*****Admission and Transfer***

To receive treatment, an adult must provide and be competent to provide express and informed consent. Current law authorizes minors who seek voluntary admission for treatment under the Marchman Act to consent to treatment. Under the Baker Act, a guardian of a minor must provide consent for voluntary admission.

Under the bill, a minor may only be admitted for treatment if the minor's guardian gives express and informed consent along with the minor. A minor may, however, be admitted to an addictions receiving facility or detoxification facility by giving consent without consent of a guardian, if a physician documents in the record that the minor has a substance abuse impairment and that the minor is capable of giving consent. The bill establishes criteria for a clinician to establish consent of a minor. If a minor's consent is not verified, a petition for involuntary inpatient placement must be filed within the court within 1 court working day after arrival or the minor must be released to his or her guardian.

The bill also allows an individual on involuntary status in a facility who has been assessed and certified competent to provide express and informed consent to be transferred to voluntary status immediately. If the individual is on voluntary status and meets the criteria for involuntary placement, he or she must be transferred to a designated receiving facility.

A request for discharge by an individual on voluntary status must be conveyed to a physician, psychologist, or psychiatrist within 12 hours. If the individual meets the criteria for involuntary placement and is transferred to a receiving facility, the facility must file a petition with the court

for involuntary placement within two court working days. Otherwise, the individual must be discharged.

### ***Involuntary Examination***

The bill directs the court to include specific facts in an ex parte order that support its findings that the required criteria for involuntary examination has been met and to designate the most appropriate type of facility for treatment. Any behavior that provides the basis for the order must have occurred within the preceding seven calendar days. Additionally, specified medical personnel may execute a certificate that finds an individual meets the criteria for involuntary examination, and the certificate must specify the most appropriate facility.

Current law allows a person to be held for involuntary examination for 72 hours. The individual must be examined by a physician, clinical psychologist, or a psychiatric nurse operating within established protocol with a psychiatrist at a receiving facility. The bill extends the 72-hour period an additional 48 hours if a physician determines, under specific criteria, that the individual has ongoing symptoms of substance intoxication or substance withdrawal and would likely experience significant clinical benefit from detoxification services. One of the following actions must happen within the time period specified:

- The individual will be approved for release by an appropriate professional;
- The individual will be asked to consent to voluntary admission; or
- The receiving facility for involuntary inpatient or outpatient treatment will file a petition in circuit court.

Within 12 hours after a physician documents that an individual's emergency medical condition has stabilized or does not exist, the individual:

- Must be examined by a medical professional, and if found not to meet criteria for involuntary examination, must be released directly from the hospital providing the emergency medical services; or
- Must be transferred to a receiving facility if appropriate medical and mental health treatment is available, with 2-hours' notice provided to the receiving facility.

### **Crisis Stabilization Units (Section 24)**

This bill lifts the cap in current law on the number of beds authorized in a crisis stabilization unit. A crisis stabilization unit provides emergency response under the Baker Act regardless of ability to pay to persons are involuntarily placed or who voluntarily seek help in stabilizing themselves. Current law limits the number of beds per facility to 30 beds.

### ***Involuntary Outpatient Placement***

An individual in an involuntary outpatient placement proceeding has the right to counsel, appointed by the court within one court working day after the petition is filed. The attorney must advocate the individual's expressed desires or must advocate for liberty and if outpatient treatment is ordered, the least restrictive treatment possible. At a hearing on involuntary outpatient placement, the state attorney has access to the individual's clinical records and witnesses in order to determine the sufficiency of the allegations contained in the petition. The

court must notify the individual or his or her representative of the right to an independent expert examination.

### ***Involuntary Inpatient Placement***

An individual may be retained or involuntarily placed in a mental health receiving facility, an addictions receiving facility, or a detoxification facility, upon recommendation of two psychiatrists or a psychiatrist and a psychologist. If a petition seeks placement for substance abuse impairment only and an addictions receiving facility or a detoxification facility conducts the examination, recommendation may be made by a physician and a substance abuse professional.

The individual has the same right to counsel and level of advocacy as that which apply to individuals facing a petition for involuntary outpatient placement. The court must hold a hearing after a petition is filed within 5 court working days. The individual may waive his or her presence if the court establishes that waiver is knowing, intelligent, and voluntary. The bill clarifies that the state attorney in the case represents the state and not the facility that initiated the petition. The bill grants the state attorney access to the individual's clinical record.

Also, when the petition is for inpatient placement for substance abuse impairment and the individual is examined by an addictions receiving facility or a detoxification facility, a physician may provide the first opinion and a substance abuse qualified professional the second opinion needed to support the petition.

The bill reduces from 6 months to 90 days the length of time an individual may be involuntarily placed without a court order granting a continuance. When a hearing is held on a petition to continue involuntary inpatient placement, the Division of Administrative Hearings must inform the individual of the right to an independent examination, provided by the court if the individual is unable to pay.

### **Treatment based mental health court programs (Section 22)**

The bill creates s. 394.47892, F.S., which authorizes counties to fund treatment-based mental health court programs under which persons in the justice system assessed with a mental illness will be processed in such a manner as to appropriately address the severity of the identified mental health problem through treatment services tailored to meet the individual needs of the participants. The Department of Corrections, the Department of Juvenile Justice, the Department of Children and Families, the Department of Health, the Department of Education, the Department of Law Enforcement, local governments, law enforcement agencies, other interested public or private sources and individuals are encouraged to support the creation and establishment of these problem-solving court programs.

### **The Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program (Section 23)**

The bill adds six (6) new members to the Criminal Justice, Mental Health, and Substance Abuse Statewide Grant Review Committee. The committee will serve as an advisory body to review

policy and funding issues to help reduce the impacts of persons with mental illnesses and substance abuse disorders on communities and the court system, and advise DCF in selecting priorities for applying and reviewing grants and investing awarded grant moneys.

In addition, the bill eliminates the 1-year-planning grants that are currently provided under the Reinvestment Grant Program, and allows not-for-profit community providers designed by the county planning council to apply for the three-year implementation or expansion grant.

### **Crisis Stabilization Services Utilization Database (Section 25 and 26)**

The Department of Children and Families is directed to develop, implement, and maintain standards under which behavioral health managing entities are to collect utilization data from all public receiving facilities within its geographic service area. The DCF is to develop standards and protocols for managing entities and public receiving facilities to use for data collection, storage transmittal, and analysis. The managing entity must require the public receiving facility to submit data, in real time or at least daily for all admissions and discharges of recipients of public receiving facility services who qualify as indigent as defined in s. 394.4787, F.S., and a current active census of clients qualifying as indigent occupying those beds, and the total number of unoccupied licensed beds regardless of funding. To ensure accuracy, the public receiving facility must submit data monthly which aggregates the daily data previously submitted and submit annual data which aggregates the monthly data previously submitted.

The sum of \$175,000 is appropriated from the Alcohol, Drug Abuse, and Mental Health Trust Fund to the Department of Children and Families for the 2015-2016 fiscal year to implement Section 25.

### **Jennifer Act (Sections 28 through 35)**

Part IV of ch. 765, F.S., is redesignated from “Absence of Advance Directive” to “Mental Health and Substance Abuse Directives.” The bill creates s. 765.4015, F.S., to provide that ss. 765.402 through 765.411, as created by the bill, may be cited as the “Jennifer Act.”

A mental health or substance abuse treatment advance directive is a written document in which the principal provides instructions or preferences or appoints a surrogate to make decisions on behalf of the principal regarding mental health or substance abuse treatment, or both.

The Jennifer Act emphasizes the need to allow individuals with capacity to control decisions relating to his or her own treatment. The Jennifer Act recognizes that substance abuse and mental illness cause individuals to fluctuate between capacity and incapacity. An individual in a crisis situation may be unable to provide informed consent in the midst of the crisis to prevent the need for involuntary treatment.

An adult who qualifies for advance directives is an individual who has reached majority or an emancipated minor. A principal is a competent adult who executes a mental health or substance abuse treatment advance directive and on whose behalf treatment decisions are made.

A directive executed under the terms of the Jennifer Act is presumed valid. However, an inability to honor one or more of the provisions of the advance directive does not invalidate the remaining provisions. The directive may address an individual's:

- Preferences and instructions for mental health or substance abuse treatment;
- Refusal to consent to specific types of mental health or substance abuse treatment;
- Consent to admission to and retention in a facility for mental health or substance abuse treatment for up to 14 days, provided that consent is conveyed through an affirmative statement contained in the directive clearly stating whether the consent is revocable by the individual during a mental health or substance abuse crisis;
- Descriptions of situations which may cause the individual to experience a mental health or substance abuse crisis;
- Suggested alternative responses that may supplement or be in lieu of direct mental health or substance abuse treatment, such as treatment approaches from other providers;
- Appointment of a surrogate to make mental health or substance abuse treatment decisions on the individual's behalf; and
- Nomination of a guardian, limited guardian, or guardian advocate.

The directive may be independent of or combined with a nomination of a guardian or other durable power of attorney. The bill addresses the execution, effective date, and expiration of a mental health or substance abuse advance directive.

Advance directives must:

- Be in writing;
- Clearly indicate that the individual intends to create a directive;
- Clearly indicate whether the individual intends for the surrogate to have the authority to consent to the individual's voluntary admission to inpatient mental health or substance abuse treatment and whether consent is revocable;
- Be dated and signed by the individual or, if unable to sign, dated and signed at his or her direction; and
- Be witnessed by two adults who declare they were present when the individual dated and signed the directive and that the individual did not appear incapacitated or acting under fraud, undue influence, or duress. The surrogate named in the directive cannot witness execution of the directive, and at least one witness must be someone other than the spouse or blood relative of the individual executing the directive.

The directive is valid upon execution, but all or part may take effect at a later date as designated in the directive. A directive may be revoked in whole or in part or expire under its own terms. But, an individual may revoke an advance directive only if, at the time of execution he or she elected to be able to revoke when incapacitated. A directive that would have otherwise expired but is effective because the individual is incapacitated remains effective until the individual is no longer incapacitated. An advance directive executed properly in another state is considered valid in this state under the bill.

The bill imposes several restrictions on directives. A directive may not create an entitlement to mental health, substance abuse, or medical treatment or supersede a determination of medical necessity. A directive does not obligate a health care provider, professional person, or facility to

incur costs associated with requested treatment or to be responsible for the non-treatment or personal care of the individual outside a facility's scope of services. Directives may not replace or supersede wills, testamentary documents, or the provision of intestate succession.

An individual's family, the health care facility, attending physician, or other interested person may seek expedited judicial intervention on a surrogate's decision if a surrogate has acted improperly or abused his or her powers or the individual has sufficient capacity to make his or her own health care decisions.

This bill provides immunity from civil and criminal liability to surrogates, health care facilities, and providers who execute mental health care or substance abuse treatment decisions pursuant to the Jennifer Act, on advance directives. Health care facilities and providers who comply with the Act are also deemed not to have engaged in unprofessional conduct. Immunity from liability applies unless a proponent can show by a preponderance of the evidence that the person or entity did not act in good faith.

### **Forensic Hospital Diversion Pilot Program (Section 36)**

This bill directs the DCF to create the Forensic Hospital Diversion Pilot Program to provide, when appropriate, competency-restoration and community-reintegration services in locked residential treatment facilities, subject to the availability of local resources. The DCF is directed to implement the program as pilot projects in Alachua, Broward, Escambia, Hillsborough, and Miami-Dade counties, to be modeled after the Miami-Dade Forensic Alternative Center, taking into account local needs and local resources.

The bill directs the DCF and the respective judicial circuits to implement the pilot projects within available resources and that state funding may be made available through a specific appropriation. The DCF is authorized to adopt rules to facilitate the provisions of the bill relating to the program. The bill requires the Office of Program Policy Analysis and Government Accountability to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2016. The report must examine the efficiency and cost-effectiveness of the program, including its effect on public safety.

### **Nonviolent Offender Reentry Program (Section 37)**

This bill creates the Nonviolent Offender Reentry Program (NORP), a diversionary program available to persons with substance abuse problems who have committed less serious felonies. The NORP is designed to reduce prison sentences by replacing part of the sentence an offender would have spent incarcerated with a minimum stay of six months in a reentry program. Reentry programs will offer intensive substance abuse treatment, GED training, and career education and testing under the bill.

#### ***Disqualifying Offenses***

To qualify for participation, an offender must not be the subject of a pending domestic violence injunction or have committed as a primary offense, a crime more serious than a third-degree felony. Additionally, the NORP excludes from participation offenders who have been convicted of:

- Forcible and other violent felonies, including assault or battery on a person 65 years old or older;
- Felonies involving firearms and other weapons;
- Child abuse or neglect or sexual offenses against children;
- Sexual offenses including computer pornography, obscenity, or a crime that requires the offender to register as a sex offender; or
- Assault or battery of certain public servants, including law enforcement officers, firefighters, emergency responders, code inspectors, or of juvenile detention or commitment facility staff.

### **Department of Corrections (DOC) Screening, Referral, and Reports**

The DOC is required to implement the NORP to the fullest extent using available resources. The DOC may locate reentry programs in a secure area in or next to correctional institutions. Although the DOC may enter into performance-based contracts to provide services under the program, only a court can release an offender from the jurisdiction of a court.

#### ***Screening***

The DOC will screen offenders for eligibility in the NORP. At minimum, offenders must have served at least one-half of the original sentence and be in need of substance abuse treatment. Participation of offenders is voluntary and the program is dependent on available space. In addition to disqualifying offenses, the DOC must consider other factors designed to indicate suitability for reentry and the potential for success in the NORP.

#### ***Referral***

The DOC will request in writing with supporting documentation that the court approve specific offenders' participation in the NORP. The DOC must provide notice and a copy of the request to the state attorney. The state attorney may file an objection with the court within 15 days after receipt of notice from the DOC.

The court must notify the DOC in writing of the decision to approve or disapprove placement in the program within 30 days after the court receives the request from the DOC.

#### ***Reports***

At least 30 days before the offender is scheduled to complete the NORP, the DOC must provide a report to the court which certifies whether the offender satisfactorily completed the program. After the court reviews the report, holds a hearing if necessary, and determines that the offender successfully completed the NORP, the court will issue an order modifying the sentence imposed and ordering drug offender probation.

The DOC must also draft and provide an annual report on the NORP to the Governor, President of the Senate, and the Speaker of the House of Representatives on the success of the program, including recidivism rates. The deadline for the report is unspecified.

***Consequences for Offenders who Fail to Cooperate in the NORP***

If an offender becomes unmanageable in the program, the DOC may revoke gain-time and place the offender in disciplinary confinement. After the offender completes the ordered discipline, the offender will be readmitted to the NORP. The bill also provides grounds for the DOC to terminate an offender from the NORP for more serious behavior or if the offender has a medical condition which precludes participation.

**Pretrial Intervention Program Eligibility for Veterans (Sections 38, 39 and 40)**

Veterans, including a veteran who was discharged or released under general discharge, and servicemembers suffering from a military service-related mental illness, traumatic brain injury, substance abuse disorder or psychological problem charged with a felony or misdemeanor are eligible for voluntary admission into a pretrial veterans' treatment intervention program approved by the chief judge of each circuit.

A probationer or community controlees whose crime was committed on or after July 1, 2015 and is a veteran, including a veteran discharged or released under general discharge, or a servicemember who suffers from a military service-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem may be required to participate in a treatment program established to treat their mental illness, traumatic brain injury, substance abuse disorder, or psychological problem.

**Notice Requirements for Public and Charter School Principals (Sections 41 and 42)**

Public and charter school principals or their designees are required to immediately notify the parent of a student who is removed from school, school transportation, or a school-sponsored activity and taken to a receiving facility for an involuntary examination. Notification may be delayed for no more than 24 hours after the student is removed if it is determined to be in the student's best interest and a report has been submitted to the central abuse hotline, based on knowledge or suspicion of abuse, abandonment, or neglect.

Except as otherwise expressly, the effective date of the bill is July 1, 2015.

**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:

**Public Providers and Sovereign Immunity**

Sovereign immunity originally referred to the English common law concept that the government may not be sued because “the King can do no wrong.” Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents unless the public entity expressly waives immunity.

Article X, s. 13, of the Florida Constitution recognizes sovereign immunity and authorizes the Legislature to provide a waiver of immunity. Section 768.28(1), F.S., provides a broad waiver of sovereign immunity. But by law, liability to pay a claim or judgment is limited to \$200,000 per plaintiff or \$300,000 per incident.<sup>58</sup>

This bill appears to provide absolute immunity to surrogates, health care facilities, and providers who execute in good faith mental health care or substance abuse treatment decisions pursuant to the law on advance directives. Accordingly, this bill creates an exception to the broad waiver of sovereign immunity under s. 768.28, F.S.

**Private Providers and Access to Courts**

The grant of immunity does not specify application to public providers or both public and private providers.

The Florida Supreme Court in *Kluger v. White* reviewed the constitutionality of a statute which abolished the traditional right of action for property vehicle damage in tort from the law unless a narrow exception applied.<sup>59</sup> In striking down the statute, the court held:

where a right of action to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State...the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people...unless the Legislature can show an overpowering public necessity...and no alternative of meeting such public necessity can be shown.<sup>60</sup>

If this bill abolishes a cause of action that existed before the Declaration of Rights was adopted in 1968 by extending immunity to a private provider or facility, this bill may create an access to courts issue.

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<sup>58</sup> Section 768.28(5), F.S.

<sup>59</sup> *Kluger v. White*, 281 So. 2d 1, 2 (Fla. 1973).

<sup>60</sup> *Id.* at 4.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:****Marchman and Baker Act**

The Department of Children and Families (DCF) indicates a potential fiscal impact for legal costs beginning in the 2016-2017 fiscal year. CS/CS/SB 7070 modifies the timeframe for a hearing to determine whether continued involuntary retention under the Baker Act is appropriate. The bill requires a hearing every 90 days until the individual no longer meets criteria for commitment, as opposed to every six months under current law. To handle the increased workload created under the bill's new timeframe, the DCF anticipates the need for 12 full-time equivalent legal positions with an associated recurring cost of approximately \$1.7 million.<sup>61</sup>

The bill could result in more persons having access to substance abuse treatment by including provisions of the Marchman Act in emergency behavioral health care that providers must deliver under the Baker Act. However, some unknown number of persons with substance abuse disorders may already be receiving emergency behavioral health care under the Baker Act. Some costs of those who receive treatment for substance abuse under the bill may already be reflected in the current expenditures for behavioral health care, but the extent is indeterminate.

The bill expands the use of involuntary outpatient care. The state could experience cost savings for behavioral health care if services are diverted from inpatient settings to outpatient settings under the bill.

The Office of the State Courts Administrator (OSCA) indicates that the fiscal impact of the bill is indeterminate due to the unavailability of data needed to quantifiably establish the bill's impact on court and judicial workload. Merging the provisions of the Marchman and Baker Acts addressing voluntary and involuntary intervention may increase judicial workload. More ex-parte orders, appointments for guardian advocates, involuntary placement hearings, and writ of habeas corpus filings may increase workload. The bill authorizes an individual or his or her representative to request an independent expert examination for involuntary outpatient placement, which may also increase expert witness fees for the judicial branch. The bill's provisions for advance directives may result in fewer filings of guardianship petitions, which may reduce state courts revenues

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<sup>61</sup> The Department of Children and Families, *2015 Legislative Bill Analysis* (March 30, 2015) (on file with the Senate Judiciary Committee).

to an indeterminate extent. However, an indeterminate increase in revenues could result from an increase in the number of petitions for the determination of incompetency.<sup>62</sup>

### **Forensic Hospital Diversion Pilot Program**

This bill authorizes the replication the Miami-Dade Forensic Alternative Center Program as separate pilot projects in Alachua, Broward, Escambia, and Hillsborough counties, in addition to Miami-Dade County, taking into account local needs and subject to the availability of local resources. The bill requires that the DCF and the respective judicial circuits may implement the pilot projects within available resources and that state funding may be made available through a specific appropriation.

Cost savings may be realized by implementation of the forensic hospital diversion pilot projects, based on the success of the Miami-Dade program. The program is able to keep individuals whose competency has been restored in the program rather than in jail while awaiting trial. Doing so may shorten the process, as defendants are less likely to decompensate, or lose competency again from the stress and the less-than-optimal treatment provided in a jail setting. Competency is restored more quickly through the program, which requires 103 days on average, than at state facilities, which requires 146 days on average. In the 2011-2012 fiscal year, the average cost for a secure forensic bed was \$333 per day. A bed at the Miami-Dade diversion program costs much less, at \$229 a day.<sup>63</sup> However, the current cost per bed per day at the program is \$285 a day.<sup>64</sup>

### **Nonviolent Offender Reentry Program**

The Department of Corrections (DOC) indicates an indeterminate fiscal impact resulting from the Nonviolent Offender Reentry Program (NORP) created under the bill. The DOC estimates that 760 inmates meet eligibility criteria for participation in the NORP. Of that number, potentially 611 inmates would qualify based on offense history, initial custody, and sentence length. An increase in workload could result for classification officers, institutional release officers, and staff with the Bureau of Admission and Release. Additional correctional educators may be needed. The bill may increase the number of court-ordered referrals to DOC-funded community based residential and outpatient programs. However, the fiscal impact is indeterminate due to unknown variables, such as: how many inmates would be approved for the program by the court; the number of days in prison avoided; the date an inmate would be actually approved for the program; when an inmate would actually be released on supervision during his or her sentence; and the length of the prison sentence.<sup>65</sup>

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<sup>62</sup> Office of the State Courts Administrator, *2015 Judicial Impact Statement* (April 5, 2015).

<sup>63</sup> Budget Subcommittee on Health and Human Services Appropriations, *supra* note 47.

<sup>64</sup> Department of Children and Families (DCF), *2015 Agency Legislative Bill Analysis on SB 1452* (March 4, 2015) (on file with the Senate Judiciary Committee).

<sup>65</sup> Department of Corrections, *2015 Agency Legislative Bill Analysis* (April 8, 2015) (on file with the Senate Judiciary Committee).

### **Treatment-based Mental Health Court Program**

The Office of State Courts Administrator, in the 2015 Judicial Impact Statement dated March 19, 2015, indicates that the fiscal impact cannot be accurately determined due to the unavailability of data needed to quantifiably establish the impact of judicial and court workload resulting from the creation of mental health courts.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

##### **Nonviolent Offender Reentry Program**

This bill creates the Nonviolent Offender Reentry Program. This language was the subject of House Bill 177 from 2012. The Governor vetoed House Bill 177 on the basis that:

Justice to victims is not served when a criminal is permitted to be released early from a sentence imposed by the courts. Florida's sentencing laws have helped reduce Florida's crime rate to a 40-year low. This bill would permit criminals to be released after serving fifty percent of their sentences, thus creating an unwarranted exception to the rule that inmates serve [eighty-five] percent of their imposed sentences.<sup>66</sup>

##### **Independent Expert Examination**

Section 14 provides, in instances of involuntary inpatient placement for an individual with mental illness or substance abuse impairment, that the Division of Administrative Hearings (DOAH) must inform the individual or his or her guardian, guardian advocate, health care surrogate or proxy, or representative, of the right to an independent expert examination, and, if the individual cannot afford such an examination, the bill requires the court to provide one. It is unclear which court is being referenced, since the case is being handled by the DOAH.

#### **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 29.004, 39.001, 39.507, 39.521, 39.407, 381.0056, 394.453, 394.455, 394.457, 394.4573, 394.459, 394.4597, 394.4598, 394.4599, 394.4612, 394.4615, 394.462, 394.4625, 394.463, 394.4655, 394.467, 394.4672, 394.47891, 394.875, 394.495, 394.496, 394.499, 394.656, 394.67, 394.674, 394.9082, 394.9085, 395.0197, 395.1051, 397.311, 397.431, 397.702, 397.94, 402.3057, 409.1757, 409.972, 456.0575, 744.704, 765.101, 765.104, 790.065, 948.08, 948.16, 948.21, 1002.20, and 1002.33.

This bill creates the following sections of the Florida Statutes: 394.47892, 765.4015, 765.402, 765.403, 765.405, 765.406, 765.407, 765.410, 765.411, 916.185, and 944.805.

<sup>66</sup> Executive Office of the Governor, *Veto Message* (April 6, 2012).

This bill transfers and renumbers the following sections of the Florida Statutes: 765.401 and 765.404.

This bill reenacts the following sections of the Florida Statutes: 394.4685 and 394.469.

This bill repeals the following sections of the Florida Statutes: 397.601, 397.675, 397.6751, 397.6752, 397.6758, 397.6759, 397.677, 397.6771, 397.6772, 397.6773, 397.6774, 397.6775, 397.679, 397.6791, 397.6793, 397.6795, 397.6797, 397.6798, 397.6799, 397.681, 397.6811, 397.6814, 397.6815, 397.6818, 397.6819, 397.6821, 397.6822, 397.693, 397.695, 397.6951, 397.6955, 397.6957, 397.697, 397.6971, 397.6975, and 397.6977.

## **IX. Additional Information:**

### **A. Committee Substitute – Statement of Changes:**

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

#### **CS by Appropriations on April 16, 2015:**

The committee substitute:

- Extends the effective date of certain sections of the bill to July 1, 2016;
- Clarifies the role and obligations of the state attorney in petition for involuntary placement proceedings;
- Allows veterans, including veterans discharged or released under a general discharge and suffer from a military-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem to participate in pretrial intervention programs;
- Allows counties to fund treatment-based mental health court programs;
- Expands the list of state agency representative to be members of the Criminal Justice, Mental Health, and Substance Abuse Statewide Grant Review Committee;
- Directs the DCF to develop standards and protocols for managing entities and public receiving facilities to collect utilization data on licensed beds; and
- Requires public and charter school principals or their designee to develop procedures for immediate notification of a parent if the student is removed from school, school transportation, or a school-sponsored activity for an involuntary examination.

#### **CS by Judiciary on April 7, 2015:**

The CS:

- Reinstates current law to prohibit an individual with mental illness who has not been charged with a crime from being detained under the Baker Act in a jail setting;
- Creates the Nonviolent Offender Reentry Program to divert nonviolent offenders with substance abuse impairment from serving lengthy sentences through a partial service of sentence and referral to a reentry program;
- Adds the county of Broward County to the Forensic Hospital Diversion Pilot Program;
- Adds substance abuse evaluations to evaluations that may be performed by a receiving facility within 24 hours after arrival by the individual in need of

intervention and adds substance abuse professionals to the list of professionals who may evaluate the individual;

- Requires a law enforcement officer to notify the nearest relative of a minor taken into protective custody that the minor has been taken into protective custody;
- Requires a public school principal or the principal's designee, including those at charter schools, to immediately notify a student's parent, guardian, guardian advocate, or caregiver if a student is transferred from the school environment to a receiving facility for an involuntary examination, unless a report has been provided to the child abuse hotline, in which case notification may be delayed for up to 24 hours;
- Requires a receiving facility to immediately notify, and repeatedly attempt to notify until contact is successful, a minor's parent, guardian, caregiver, or guardian advocate, in person, by phone, or by electronic communication, unless a report has been provided to the child abuse hotline, in which case notification may be delayed for up to 24 hours;
- Clarifies that a psychiatric nurse may examine an individual held for an involuntary examination at a receiving facility or approve the individual's release during the involuntary examination period, only in coordination with a psychiatrist and within the framework of an established protocol;
- Expands the definition of a psychiatric nurse to additionally require a national advance practice certification as a psychiatric-mental health advance practice nurse; and
- Authorizes an osteopathic physician, as a mental health professional, to provide care and treatment in accordance with an individual's advance directive.

**B. Amendments:**

None.



808402

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
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The Committee on Appropriations (Joyner) recommended the following:

**Senate Amendment**

Delete line 2949  
and insert:  
impairment. The court may not order an individual with traumatic  
brain injury or dementia who lacks a co-occurring mental illness  
to be involuntarily placed in a state treatment facility. The  
facility shall discharge the individual at a



898338

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/16/2015	.	
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The Committee on Appropriations (Joyner) recommended the following:

**Senate Amendment**

Delete lines 546 - 547  
and insert:  
disability as defined in chapter 393, intoxication, or  
conditions manifested only by antisocial



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
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The Committee on Appropriations (Garcia) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 293 - 2364

and insert:

Section 1. Paragraph (e) is added to subsection (10) of section 29.004, Florida Statutes, to read:

29.004 State courts system.—For purposes of implementing s. 14, Art. V of the State Constitution, the elements of the state courts system to be provided from state revenues appropriated by general law are as follows:



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11 (10) Case management. Case management includes:  
12 (e) Service referral, coordination, monitoring, and  
13 tracking for treatment-based mental health court programs under  
14 s. 394.47892.

15  
16 Case management may not include costs associated with the  
17 application of therapeutic jurisprudence principles by the  
18 courts. Case management also may not include case intake and  
19 records management conducted by the clerk of court.

20 Section 2. Subsection (6) of section 39.001, Florida  
21 Statutes, is amended to read:

22 39.001 Purposes and intent; personnel standards and  
23 screening.—

24 (6) MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES.—

25 (a) The Legislature recognizes that early referral and  
26 comprehensive treatment can help combat mental illnesses and  
27 substance abuse disorders in families and that treatment is  
28 cost-effective.

29 (b) The Legislature establishes the following goals for the  
30 state related to mental illness and substance abuse treatment  
31 services in the dependency process:

- 32 1. To ensure the safety of children.
- 33 2. To prevent and remediate the consequences of mental  
34 illnesses and substance abuse disorders on families involved in  
35 protective supervision or foster care and reduce the occurrences  
36 of mental illnesses and substance abuse disorders, including  
37 alcohol abuse or related disorders, for families who are at risk  
38 of being involved in protective supervision or foster care.
- 39 3. To expedite permanency for children and reunify healthy,



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40 intact families, when appropriate.

41 4. To support families in recovery.

42 (c) The Legislature finds that children in the care of the  
43 state's dependency system need appropriate health care services,  
44 that the impact of mental illnesses and substance abuse  
45 disorders on health indicates the need for health care services  
46 to include treatment for mental health and substance abuse  
47 disorders ~~services~~ to children and parents where appropriate,  
48 and that it is in the state's best interest that such children  
49 be provided the services they need to enable them to become and  
50 remain independent of state care. In order to provide these  
51 services, the state's dependency system must have the ability to  
52 identify and provide appropriate intervention and treatment for  
53 children with personal or family-related mental illness and  
54 substance abuse problems.

55 (d) It is the intent of the Legislature to encourage the  
56 use of the treatment-based mental health court program model  
57 established under s. 394.47892 and drug court program model  
58 established by s. 397.334 and authorize courts to assess  
59 children and persons who have custody or are requesting custody  
60 of children where good cause is shown to identify and address  
61 mental illnesses and substance abuse disorders ~~problems~~ as the  
62 court deems appropriate at every stage of the dependency  
63 process. Participation in treatment, including a treatment-based  
64 mental health court program or a treatment-based drug court  
65 program, may be required by the court following adjudication.  
66 Participation in assessment and treatment before ~~prior to~~  
67 adjudication is ~~shall be~~ voluntary, except as provided in s.  
68 39.407(16).



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69 (e) It is therefore the purpose of the Legislature to  
70 provide authority for the state to contract with mental health  
71 service providers and community substance abuse treatment  
72 providers for the development and operation of specialized  
73 support and overlay services for the dependency system, which  
74 will be fully implemented and used as resources permit.

75 (f) Participation in a treatment-based mental health court  
76 program or a ~~the~~ treatment-based drug court program does not  
77 divest any public or private agency of its responsibility for a  
78 child or adult, but is intended to enable these agencies to  
79 better meet their needs through shared responsibility and  
80 resources.

81 Section 3. Subsection (10) of section 39.507, Florida  
82 Statutes, is amended to read:

83 39.507 Adjudicatory hearings; orders of adjudication.—

84 (10) After an adjudication of dependency, or a finding of  
85 dependency where adjudication is withheld, the court may order a  
86 person who has custody or is requesting custody of the child to  
87 submit to a mental health or substance abuse disorder assessment  
88 or evaluation. The assessment or evaluation must be administered  
89 by a qualified professional, as defined in s. 397.311. The court  
90 may also require such person to participate in and comply with  
91 treatment and services identified as necessary, including, when  
92 appropriate and available, participation in and compliance with  
93 a treatment-based mental health court program established under  
94 s. 394.47892 or a treatment-based drug court program established  
95 under s. 397.334. In addition to supervision by the department,  
96 the court, including the treatment-based mental health court  
97 program or treatment-based drug court program, may oversee the



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98 progress and compliance with treatment by a person who has  
99 custody or is requesting custody of the child. The court may  
100 impose appropriate available sanctions for noncompliance upon a  
101 person who has custody or is requesting custody of the child or  
102 make a finding of noncompliance for consideration in determining  
103 whether an alternative placement of the child is in the child's  
104 best interests. Any order entered under this subsection may be  
105 made only upon good cause shown. This subsection does not  
106 authorize placement of a child with a person seeking custody,  
107 other than the parent or legal custodian, who requires mental  
108 health or substance abuse disorder treatment.

109 Section 4. Paragraph (b) of subsection (1) of section  
110 39.521, Florida Statutes, is amended to read:

111 39.521 Disposition hearings; powers of disposition.—

112 (1) A disposition hearing shall be conducted by the court,  
113 if the court finds that the facts alleged in the petition for  
114 dependency were proven in the adjudicatory hearing, or if the  
115 parents or legal custodians have consented to the finding of  
116 dependency or admitted the allegations in the petition, have  
117 failed to appear for the arraignment hearing after proper  
118 notice, or have not been located despite a diligent search  
119 having been conducted.

120 (b) When any child is adjudicated by a court to be  
121 dependent, the court having jurisdiction of the child has the  
122 power by order to:

123 1. Require the parent and, when appropriate, the legal  
124 custodian and the child to participate in treatment and services  
125 identified as necessary. The court may require the person who  
126 has custody or who is requesting custody of the child to submit



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127 to a mental health or substance abuse disorder assessment or  
128 evaluation. The assessment or evaluation must be administered by  
129 a qualified professional, as defined in s. 397.311. The court  
130 may also require such person to participate in and comply with  
131 treatment and services identified as necessary, including, when  
132 appropriate and available, participation in and compliance with  
133 a treatment-based mental health court program established under  
134 s. 394.47892 or treatment-based drug court program established  
135 under s. 397.334. In addition to supervision by the department,  
136 the court, including the treatment-based mental health court  
137 program or treatment-based drug court program, may oversee the  
138 progress and compliance with treatment by a person who has  
139 custody or is requesting custody of the child. The court may  
140 impose appropriate available sanctions for noncompliance upon a  
141 person who has custody or is requesting custody of the child or  
142 make a finding of noncompliance for consideration in determining  
143 whether an alternative placement of the child is in the child's  
144 best interests. Any order entered under this subparagraph may be  
145 made only upon good cause shown. This subparagraph does not  
146 authorize placement of a child with a person seeking custody of  
147 the child, other than the child's parent or legal custodian, who  
148 requires mental health or substance abuse disorder treatment.

149       2. Require, if the court deems necessary, the parties to  
150 participate in dependency mediation.

151       3. Require placement of the child either under the  
152 protective supervision of an authorized agent of the department  
153 in the home of one or both of the child's parents or in the home  
154 of a relative of the child or another adult approved by the  
155 court, or in the custody of the department. Protective



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156 supervision continues until the court terminates it or until the  
157 child reaches the age of 18, whichever date is first. Protective  
158 supervision shall be terminated by the court whenever the court  
159 determines that permanency has been achieved for the child,  
160 whether with a parent, another relative, or a legal custodian,  
161 and that protective supervision is no longer needed. The  
162 termination of supervision may be with or without retaining  
163 jurisdiction, at the court's discretion, and shall in either  
164 case be considered a permanency option for the child. The order  
165 terminating supervision by the department shall set forth the  
166 powers of the custodian of the child and shall include the  
167 powers ordinarily granted to a guardian of the person of a minor  
168 unless otherwise specified. Upon the court's termination of  
169 supervision by the department, no further judicial reviews are  
170 required, so long as permanency has been established for the  
171 child.

172 Section 5. Subsection (2) and paragraph (a) of subsection  
173 (4) of section 381.0056, Florida Statutes, are amended to read:

174 381.0056 School health services program.-

175 (2) As used in this section, the term:

176 (a) "Emergency health needs" means onsite evaluation,  
177 management, and aid for illness or injury pending the student's  
178 return to the classroom or release to a parent, guardian,  
179 designated friend, law enforcement officer, or designated health  
180 care provider.

181 (b) "Entity" or "health care entity" means a unit of local  
182 government or a political subdivision of the state; a hospital  
183 licensed under chapter 395; a health maintenance organization  
184 certified under chapter 641; a health insurer authorized under



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185 the Florida Insurance Code; a community health center; a migrant  
186 health center; a federally qualified health center; an  
187 organization that meets the requirements for nonprofit status  
188 under s. 501(c) (3) of the Internal Revenue Code; a private  
189 industry or business; or a philanthropic foundation that agrees  
190 to participate in a public-private partnership with a county  
191 health department, local school district, or school in the  
192 delivery of school health services, and agrees to the terms and  
193 conditions for the delivery of such services as required by this  
194 section and as documented in the local school health services  
195 plan.

196 (c) "Invasive screening" means any screening procedure in  
197 which the skin or any body orifice is penetrated.

198 (d) "Physical examination" means a thorough evaluation of  
199 the health status of an individual.

200 (e) "School health services plan" means the document that  
201 describes the services to be provided, the responsibility for  
202 provision of the services, the anticipated expenditures to  
203 provide the services, and evidence of cooperative planning by  
204 local school districts and county health departments.

205 (f) "Screening" means presumptive identification of unknown  
206 or unrecognized diseases or defects by the application of tests  
207 that can be given with ease and rapidity to apparently healthy  
208 persons.

209 (4) (a) Each county health department shall develop, jointly  
210 with the district school board and the local school health  
211 advisory committee, a school health services plan. ~~and~~ The plan  
212 must include, at a minimum, provisions for all of the following:

213 1. Health appraisal;



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- 214           2. Records review;
- 215           3. Nurse assessment;
- 216           4. Nutrition assessment;
- 217           5. A preventive dental program;
- 218           6. Vision screening;
- 219           7. Hearing screening;
- 220           8. Scoliosis screening;
- 221           9. Growth and development screening;
- 222           10. Health counseling;
- 223           11. Referral and followup of suspected or confirmed health  
224 problems by the local county health department;
- 225           12. Meeting emergency health needs in each school;
- 226           13. County health department personnel to assist school  
227 personnel in health education curriculum development;
- 228           14. Referral of students to appropriate health treatment,  
229 in cooperation with the private health community whenever  
230 possible;
- 231           15. Consultation with a student's parent or guardian  
232 regarding the need for health attention by the family physician,  
233 dentist, or other specialist when definitive diagnosis or  
234 treatment is indicated;
- 235           16. Maintenance of records on incidents of health problems,  
236 corrective measures taken, and such other information as may be  
237 needed to plan and evaluate health programs; except, however,  
238 that provisions in the plan for maintenance of health records of  
239 individual students must be in accordance with s. 1002.22;
- 240           17. Health information which will be provided by the school  
241 health nurses, when necessary, regarding the placement of  
242 students in exceptional student programs and the reevaluation at



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243 periodic intervals of students placed in such programs; and  
244 18. Notification to the local nonpublic schools of the  
245 school health services program and the opportunity for  
246 representatives of the local nonpublic schools to participate in  
247 the development of the cooperative health services plan.

248 19. Immediate notification to a student's parent, guardian,  
249 or caregiver if the student is removed from school, school  
250 transportation, or a school-sponsored activity and taken to a  
251 receiving facility for an involuntary examination pursuant to s.  
252 394.463, including any requirements established under ss.  
253 1002.20(3) and 1002.33(9), as applicable.

254 Section 6. Section 394.453, Florida Statutes, is amended to  
255 read:

256 394.453 Legislative intent.—It is the intent of the  
257 Legislature to authorize and direct the Department of Children  
258 and Families to evaluate, research, plan, and recommend to the  
259 Governor and the Legislature programs designed to reduce the  
260 occurrence, severity, duration, and disabling aspects of mental,  
261 emotional, and behavioral disorders and substance abuse  
262 impairment. It is the intent of the Legislature that treatment  
263 programs for such disorders shall include, but not be limited  
264 to, comprehensive health, social, educational, and  
265 rehabilitative services for individuals ~~to persons~~ requiring  
266 intensive short-term and continued treatment in order to  
267 encourage them to assume responsibility for their treatment and  
268 recovery. It is intended that such individuals ~~persons~~ be  
269 provided with emergency service and temporary detention for  
270 evaluation if ~~when~~ required; that they be admitted to treatment  
271 facilities if ~~on a voluntary basis when~~ extended or continuing



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272 care is needed and unavailable in the community; that  
273 involuntary placement be provided only if ~~when~~ expert evaluation  
274 determines that it is necessary; that any involuntary treatment  
275 or examination be accomplished in a setting that ~~which~~ is  
276 clinically appropriate and most likely to facilitate the  
277 individual's ~~person's~~ return to the community as soon as  
278 possible; and that ~~individual~~ dignity and human rights be  
279 guaranteed to all individuals ~~persons~~ who are admitted to mental  
280 health and substance abuse treatment facilities or who are being  
281 held under s. 394.463. It is the further intent of the  
282 Legislature that the least restrictive means of intervention be  
283 employed based on the individual's ~~individual~~ needs ~~of each~~  
284 ~~person,~~ within the scope of available services. It is the policy  
285 of this state that the use of restraint and seclusion ~~on clients~~  
286 is justified only as an emergency safety measure to be used in  
287 response to imminent danger to the individual ~~client~~ or others.  
288 It is, therefore, the intent of the Legislature to achieve an  
289 ongoing reduction in the use of restraint and seclusion in  
290 programs and facilities serving individuals ~~persons~~ with mental  
291 illness or with a substance abuse impairment.

292 Section 7. Effective July 1, 2016, section 394.455, Florida  
293 Statutes, is reordered and amended to read:

294 394.455 Definitions.—As used in this part, unless the  
295 context clearly requires otherwise, the term:

296 (1) "Addictions receiving facility" means a secure, acute  
297 care facility that, at a minimum, provides detoxification and  
298 stabilization services; is operated 24 hours per day, 7 days a  
299 week; and is designated by the department to serve individuals  
300 found to have substance abuse impairment as defined in



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301 subsection (44) who qualify for services under this section.

302 (2)-(1) "Administrator" means the chief administrative  
303 officer of a receiving or treatment facility or his or her  
304 designee.

305 (3) "Adult" means an individual who is 18 years of age or  
306 older, or who has had the disability of nonage removed pursuant  
307 to s. 743.01 or s. 743.015.

308 (4) "Advanced registered nurse practitioner" means any  
309 person licensed in this state to practice professional nursing  
310 who is certified in advanced or specialized nursing practice  
311 under s. 464.012.

312 (36)-(2) "Clinical Psychologist" means a psychologist as  
313 defined in s. 490.003(7) with 3 years of postdoctoral experience  
314 in the practice of clinical psychology, inclusive of the  
315 experience required for licensure, or a psychologist employed by  
316 a facility operated by the United States Department of Veterans  
317 Affairs that qualifies as a receiving or treatment facility  
318 under this part.

319 (5)-(3) "Clinical record" means all parts of the record  
320 required to be maintained and includes all medical records,  
321 progress notes, charts, and admission and discharge data, and  
322 all other information recorded by a facility staff which  
323 pertains to an individual's the patient's hospitalization or  
324 treatment.

325 (6)-(4) "Clinical social worker" means a person licensed as  
326 a clinical social worker under s. 491.005 or s. 491.006 or a  
327 person employed as a clinical social worker by a facility  
328 operated by the United States Department of Veterans Affairs or  
329 the United States Department of Defense under chapter 491.



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330            (7)~~(5)~~ "Community facility" means a ~~any~~ community service  
331 provider contracting with the department to furnish substance  
332 abuse or mental health services under part IV of this chapter.

333            (8)~~(6)~~ "Community mental health center or clinic" means a  
334 publicly funded, not-for-profit center that ~~which~~ contracts with  
335 the department for the provision of inpatient, outpatient, day  
336 treatment, or emergency services.

337            (9)~~(7)~~ "Court," unless otherwise specified, means the  
338 circuit court.

339            (10)~~(8)~~ "Department" means the Department of Children and  
340 Families.

341            (11) "Detoxification facility" means a facility licensed to  
342 provide detoxification services under chapter 397.

343            (12) "Electronic means" means a form of telecommunication  
344 that requires all parties to maintain visual as well as audio  
345 communication.

346            (13)~~(9)~~ "Express and informed consent" means consent  
347 voluntarily given in writing, by a competent individual ~~person~~,  
348 after sufficient explanation and disclosure of the subject  
349 matter involved to enable the individual ~~person~~ to make a  
350 knowing and willful decision without any element of force,  
351 fraud, deceit, duress, or other form of constraint or coercion.

352            (14)~~(10)~~ "Facility" means any hospital, community facility,  
353 public or private facility, or receiving or treatment facility  
354 providing for the evaluation, diagnosis, care, treatment,  
355 training, or hospitalization of individuals ~~persons~~ who appear  
356 to have ~~a mental illness~~ or who have been diagnosed as having a  
357 mental illness or substance abuse impairment. The term  
358 "Facility" does not include a ~~any~~ program or entity licensed



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359 ~~under pursuant to~~ chapter 400 or chapter 429.

360 (15) "Governmental facility" means a facility owned,  
361 operated, or administered by the Department of Corrections or  
362 the United States Department of Veterans Affairs.

363 ~~(16)-(11)~~ "Guardian" means the natural guardian of a minor,  
364 or a person appointed by a court to act on behalf of a ward's  
365 person if the ward is a minor or has been adjudicated  
366 incapacitated.

367 ~~(17)-(12)~~ "Guardian advocate" means a person appointed by a  
368 court to make decisions regarding mental health or substance  
369 abuse treatment on behalf of an individual ~~a patient~~ who has  
370 been found incompetent to consent to treatment pursuant to this  
371 part. ~~The guardian advocate may be granted specific additional~~  
372 ~~powers by written order of the court, as provided in this part.~~

373 ~~(18)-(13)~~ "Hospital" means a hospital ~~facility as defined in~~  
374 ~~s. 395.002 and~~ licensed under chapter 395 and part II of chapter  
375 408.

376 ~~(19)-(14)~~ "Incapacitated" means that an individual ~~a person~~  
377 has been adjudicated incapacitated pursuant to part V of chapter  
378 744 and a guardian of the person has been appointed.

379 ~~(20)-(15)~~ "Incompetent to consent to treatment" means that  
380 an individual's ~~a person's~~ judgment is so affected by a his or  
381 ~~her~~ mental illness, a substance abuse impairment, or other  
382 medical or organic cause that he or she ~~the person~~ lacks the  
383 capacity to make a well-reasoned, willful, and knowing decision  
384 concerning his or her medical, ~~or~~ mental health, or substance  
385 abuse treatment.

386 (21) "Involuntary examination" means an examination  
387 performed under s. 394.463 to determine whether an individual



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388 qualifies for involuntary outpatient placement under s. 394.4655  
389 or involuntary inpatient placement under s. 394.467.

390 (22) "Involuntary placement" means involuntary outpatient  
391 placement under s. 394.4655 or involuntary inpatient placement  
392 in a receiving or treatment facility under s. 394.467.

393 (23)~~(16)~~ "Law enforcement officer" means a law enforcement  
394 officer as defined in s. 943.10.

395 (24) "Marriage and family therapist" means a person  
396 licensed to practice marriage and family therapy under s.  
397 491.005 or s. 491.006 or a person employed as a marriage and  
398 family therapist by a facility operated by the United States  
399 Department of Veterans Affairs or the United States Department  
400 of Defense.

401 (25) "Mental health counselor" means a person licensed to  
402 practice mental health counseling under s. 491.005 or s. 491.006  
403 or a person employed as a mental health counselor by a facility  
404 operated by the United States Department of Veterans Affairs or  
405 the United States Department of Defense.

406 (26)~~(17)~~ "Mental health overlay program" means a mobile  
407 service that ~~which~~ provides an independent examination for  
408 voluntary admission ~~admissions~~ and a range of supplemental  
409 onsite services to an individual who has ~~persons with~~ a mental  
410 illness in a residential setting such as a nursing home,  
411 assisted living facility, adult family-care home, or  
412 nonresidential setting such as an adult day care center.  
413 Independent examinations provided ~~pursuant to this part~~ through  
414 a mental health overlay program must ~~only~~ be provided only under  
415 contract with the department ~~for this service~~ or must be  
416 attached to a public receiving facility that is also a community



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417 mental health center.

418 ~~(28)(18)~~ "Mental illness" means an impairment of the mental  
419 or emotional processes that exercise conscious control of one's  
420 actions or of the ability to perceive or understand reality,  
421 which impairment substantially interferes with the individual's  
422 ~~person's~~ ability to meet the ordinary demands of living. For the  
423 purposes of this part, the term does not include a developmental  
424 disability as defined in chapter 393, intoxication, brain  
425 injury, dementia, or conditions manifested only by antisocial  
426 behavior or substance abuse impairment.

427 (29) "Minor" means an individual who is 17 years of age or  
428 younger and who has not had the disabilities of nonage removed  
429 pursuant to s. 743.01 or s. 743.015.

430 ~~(30)(19)~~ "Mobile crisis response service" means a  
431 nonresidential crisis service ~~attached to a public receiving~~  
432 ~~facility and~~ available 24 hours a day, 7 days a week, through  
433 which provides immediate intensive assessments and  
434 interventions, including screening for admission into a mental  
435 health receiving facility, an addictions receiving facility, or  
436 a detoxification facility, ~~take place~~ for the purpose of  
437 identifying appropriate treatment services.

438 ~~(20) "Patient" means any person who is held or accepted for~~  
439 ~~mental health treatment.~~

440 ~~(31)(21)~~ "Physician" means a medical practitioner licensed  
441 under chapter 458 or chapter 459 ~~who has experience in the~~  
442 ~~diagnosis and treatment of mental and nervous disorders~~ or a  
443 physician employed by a facility operated by the United States  
444 Department of Veterans Affairs or the United States Department  
445 of Defense ~~which qualifies as a receiving or treatment facility~~



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446 ~~under this part.~~

447 (32) "Physician assistant" means a person licensed under  
448 chapter 458 or chapter 459 who has experience in the diagnosis  
449 and treatment of mental disorders or a person employed as a  
450 physician assistant by a facility operated by the United States  
451 Department of Veterans Affairs or the United States Department  
452 of Defense.

453 ~~(33)-(22)~~ "Private facility" means any hospital or facility  
454 operated by a for-profit or not-for-profit corporation or  
455 association that provides mental health or substance abuse  
456 services and is not a public facility.

457 ~~(34)-(23)~~ "Psychiatric nurse" means an advanced ~~a~~ registered  
458 nurse practitioner certified under s. 464.012 ~~licensed under~~  
459 ~~part I of chapter 464~~ who has a master's or doctoral degree ~~or a~~  
460 ~~doctorate~~ in psychiatric nursing, holds a national advanced  
461 practice certification as a psychiatric-mental health advanced  
462 practice nurse, and has 2 years of post-master's clinical  
463 experience under the supervision of a physician; or a person  
464 employed as a psychiatric nurse by a facility operated by the  
465 United States Department of Veterans Affairs or the United  
466 States Department of Defense.

467 ~~(35)-(24)~~ "Psychiatrist" means a medical practitioner  
468 licensed under chapter 458 or chapter 459 ~~who has primarily~~  
469 ~~diagnosed and treated mental and nervous disorders for at least~~  
470 ~~a period of not less than 3 years, inclusive of psychiatric~~  
471 residency, or a person employed as a psychiatrist by a facility  
472 operated by the United States Department of Veterans Affairs or  
473 the United States Department of Defense.

474 ~~(37)-(25)~~ "Public facility" means any facility that has



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475 contracted with the department to provide mental health or  
476 substance abuse services to all individuals ~~persons~~, regardless  
477 of their ability to pay, and is receiving state funds for such  
478 purpose.

479 ~~(27)-(26)~~ "Mental health receiving facility" means any  
480 public or private facility designated by the department to  
481 receive and hold individuals in involuntary status ~~involuntary~~  
482 ~~patients under emergency conditions or~~ for psychiatric  
483 evaluation and to provide ~~short-term~~ treatment. The term does  
484 not include a county jail.

485 ~~(38)-(27)~~ "Representative" means a person selected pursuant  
486 to s. 394.4597(2) ~~to receive notice of proceedings during the~~  
487 ~~time a patient is held in or admitted to a receiving or~~  
488 ~~treatment facility.~~

489 ~~(39)-(28)-(a)~~ "Restraint" means a physical device, method, or  
490 drug used to control behavior.

491 (a) A physical restraint is any manual method or physical  
492 or mechanical device, material, or equipment attached or  
493 adjacent to an ~~the~~ individual's body so that he or she cannot  
494 easily remove the restraint and which restricts freedom of  
495 movement or normal access to one's body.

496 (b) A drug used as a restraint is a medication used to  
497 control an individual's ~~the person's~~ behavior or to restrict his  
498 or her freedom of movement and is not part of the standard  
499 treatment regimen for an individual having ~~of a person with a~~  
500 diagnosed mental illness ~~who is a client of the department.~~  
501 Physically holding an individual ~~a person~~ during a procedure to  
502 forcibly administer psychotropic medication is a physical  
503 restraint.



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504 (c) Restraint does not include physical devices, such as  
505 orthopedically prescribed appliances, surgical dressings and  
506 bandages, supportive body bands, or other physical holding ~~when~~  
507 necessary for routine physical examinations and tests; ~~or~~ for  
508 purposes of orthopedic, surgical, or other similar medical  
509 treatment; ~~when used~~ to provide support for the achievement of  
510 functional body position or proper balance; or ~~when used~~ to  
511 protect an individual ~~a person~~ from falling out of bed.

512 (40) "School psychologist" has the same meaning as in s.  
513 490.003.

514 (41) ~~(29)~~ "Seclusion" means the physical segregation ~~of a~~  
515 ~~person in any fashion~~ or involuntary isolation of an individual  
516 ~~a person~~ in a room or area from which the individual person is  
517 prevented from leaving. The prevention may be by physical  
518 barrier or by a staff member who is acting in a manner, or who  
519 is physically situated, so as to prevent the individual person  
520 from leaving the room or area. For purposes of this chapter, the  
521 term does not mean isolation due to an individual's ~~a person's~~  
522 medical condition or symptoms.

523 (42) ~~(30)~~ "Secretary" means the Secretary of Children and  
524 Families.

525 (43) "Service provider" means a mental health receiving  
526 facility, any facility licensed under chapter 397, a treatment  
527 facility, an entity under contract with the department to  
528 provide mental health or substance abuse services, a community  
529 mental health center or clinic, a psychologist, a clinical  
530 social worker, a marriage and family therapist, a mental health  
531 counselor, a physician, a psychiatrist, an advanced registered  
532 nurse practitioner, or a psychiatric nurse.



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533           (44) "Substance abuse impairment" means a condition  
534 involving the use of alcoholic beverages or any psychoactive or  
535 mood-altering substance in such a manner as to induce mental,  
536 emotional, or physical problems and cause socially dysfunctional  
537 behavior.

538           (45) "Substance abuse qualified professional" has the same  
539 meaning as the term "qualified professional" in s. 397.311.

540           (46) ~~(31)~~ "Transfer evaluation" means the process, as  
541 approved by the ~~appropriate district office of the department,~~  
542 in which an individual ~~whereby a person who is being considered~~  
543 ~~for placement in a state treatment facility is first~~ evaluated  
544 for appropriateness of admission to a treatment ~~the~~ facility.  
545 The transfer evaluation shall be conducted by the department, by  
546 a ~~community-based~~ public receiving facility, ~~or~~ by another  
547 service provider as authorized by the department, or by a  
548 community mental health center or clinic ~~if the public receiving~~  
549 ~~facility is not a community mental health center or clinic.~~

550           (47) ~~(32)~~ "Treatment facility" means a any state-owned,  
551 state-operated, or state-supported hospital, center, or clinic  
552 designated by the department for extended treatment and  
553 hospitalization of individuals who have a mental illness, beyond  
554 that provided ~~for~~ by a receiving facility or a, ~~of persons who~~  
555 ~~have a mental illness, including facilities of the United States~~  
556 ~~Government, and any~~ private facility designated by the  
557 department when rendering such services ~~to a person~~ pursuant to  
558 ~~the provisions of~~ this part. Patients treated in facilities of  
559 the United States Government shall be solely those whose care is  
560 the responsibility of the United States Department of Veterans  
561 Affairs.



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562           ~~(33) "Service provider" means any public or private~~  
563 ~~receiving facility, an entity under contract with the Department~~  
564 ~~of Children and Families to provide mental health services, a~~  
565 ~~clinical psychologist, a clinical social worker, a marriage and~~  
566 ~~family therapist, a mental health counselor, a physician, a~~  
567 ~~psychiatric nurse as defined in subsection (23), or a community~~  
568 ~~mental health center or clinic as defined in this part.~~

569           ~~(34) "Involuntary examination" means an examination~~  
570 ~~performed under s. 394.463 to determine if an individual~~  
571 ~~qualifies for involuntary inpatient treatment under s.~~  
572 ~~394.467(1) or involuntary outpatient treatment under s.~~  
573 ~~394.4655(1).~~

574           ~~(35) "Involuntary placement" means either involuntary~~  
575 ~~outpatient treatment pursuant to s. 394.4655 or involuntary~~  
576 ~~inpatient treatment pursuant to s. 394.467.~~

577           ~~(36) "Marriage and family therapist" means a person~~  
578 ~~licensed as a marriage and family therapist under chapter 491.~~

579           ~~(37) "Mental health counselor" means a person licensed as a~~  
580 ~~mental health counselor under chapter 491.~~

581           ~~(38) "Electronic means" means a form of telecommunication~~  
582 ~~that requires all parties to maintain visual as well as audio~~  
583 ~~communication.~~

584           Section 8. Effective July 1, 2016, section 394.457, Florida  
585 Statutes, is amended to read:

586           394.457 Operation and administration.—

587           (1) ADMINISTRATION.—The Department of Children and Families  
588 is designated the "Mental Health Authority" of Florida. The  
589 department and the Agency for Health Care Administration shall  
590 exercise executive and administrative supervision over all



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591 ~~mental health~~ facilities, programs, and services.

592 (2) RESPONSIBILITIES OF THE DEPARTMENT.—The department is  
593 responsible for:

594 (a) The planning, evaluation, and implementation of a  
595 complete and comprehensive statewide ~~program of~~ mental health  
596 and substance abuse program, including community services,  
597 receiving and treatment facilities, child services, research,  
598 and training as authorized and approved by the Legislature,  
599 based on the annual program budget of the department. The  
600 department is also responsible for the coordination of efforts  
601 with other ~~departments~~ and divisions of the state government,  
602 county and municipal governments, and private agencies concerned  
603 with and providing mental health and substance abuse services.  
604 It is responsible for establishing standards, providing  
605 technical assistance, and supervising ~~exercising supervision of~~  
606 mental health and substance abuse programs of, and the treatment  
607 of individuals ~~patients~~ at, community facilities, other  
608 facilities serving individuals ~~for persons~~ who have a mental  
609 illness or substance abuse impairment, and any agency or  
610 facility providing services under ~~to patients pursuant to~~ this  
611 part.

612 (b) The publication and distribution of an information  
613 handbook to facilitate understanding of this part, the policies  
614 and procedures involved in the implementation of this part, and  
615 the responsibilities of the various providers of services under  
616 this part. It shall stimulate research by public and private  
617 agencies, institutions of higher learning, and hospitals in the  
618 interest of the elimination and amelioration of mental illness.

619 (3) POWER TO CONTRACT.—The department may contract to



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620 provide, and be provided with, services and facilities in order  
621 to carry out its responsibilities under this part with the  
622 following agencies: public and private hospitals; receiving and  
623 treatment facilities; clinics; laboratories; departments,  
624 divisions, and other units of state government; the state  
625 colleges and universities; the community colleges; private  
626 colleges and universities; counties, municipalities, and any  
627 other governmental unit, including facilities of the United  
628 States Government; and any other public or private entity which  
629 provides or needs facilities or services. Baker Act funds for  
630 community inpatient, crisis stabilization, short-term  
631 residential treatment, and screening services must be allocated  
632 to each county pursuant to the department's funding allocation  
633 methodology. Notwithstanding s. 287.057(3)(e), contracts for  
634 community-based Baker Act services for inpatient, crisis  
635 stabilization, short-term residential treatment, and screening  
636 provided under this part, other than those with other units of  
637 government, to be provided for the department must be awarded  
638 using competitive sealed bids if the county commission of the  
639 county receiving the services makes a request to the  
640 department's district office by January 15 of the contracting  
641 year. The district may not enter into a competitively bid  
642 contract under this provision if such action will result in  
643 increases of state or local expenditures for Baker Act services  
644 within the district. Contracts for these Baker Act services  
645 using competitive sealed bids are effective for 3 years. The  
646 department shall adopt rules establishing minimum standards for  
647 such contracted services and facilities and shall make periodic  
648 audits and inspections to assure that the contracted services



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649 are provided and meet the standards of the department.

650 (4) APPLICATION FOR AND ACCEPTANCE OF GIFTS AND GRANTS.—The  
651 department may apply for and accept any funds, grants, gifts, or  
652 services made available to it by any agency or department of the  
653 Federal Government or any other public or private agency or  
654 person individual in aid of mental health and substance abuse  
655 programs. All such moneys must ~~shall~~ be deposited in the State  
656 Treasury and ~~shall be~~ disbursed as provided by law.

657 (5) RULES.—The department shall adopt rules:

658 (a) Establishing ~~The department shall adopt rules~~  
659 ~~establishing~~ forms and procedures relating to the rights and  
660 privileges of individuals being examined or treated at patients  
661 ~~seeking mental health treatment from~~ facilities under this part.

662 (b) ~~The department shall adopt rules~~ Necessary for the  
663 implementation and administration of ~~the provisions of this~~  
664 ~~part.~~, and A program subject to ~~the provisions of this part~~ may  
665 ~~shall not be permitted to~~ operate unless rules designed to  
666 ensure the protection of the health, safety, and welfare of the  
667 individuals examined and patients treated under through such  
668 program have been adopted. Such rules ~~adopted under this~~  
669 ~~subsection~~ must include provisions governing the use of  
670 restraint and seclusion which are consistent with recognized  
671 best practices and professional judgment; prohibit inherently  
672 dangerous restraint or seclusion procedures; establish  
673 limitations on the use and duration of restraint and seclusion;  
674 establish measures to ensure the safety of program participants  
675 and staff during an incident of restraint or seclusion;  
676 establish procedures for staff to follow before, during, and  
677 after incidents of restraint or seclusion; establish



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678 professional qualifications ~~of~~ and training for staff who may  
679 order or be engaged in the use of restraint or seclusion; and  
680 establish mandatory reporting, data collection, and data  
681 dissemination procedures and requirements. Such rules ~~adopted~~  
682 ~~under this subsection~~ must require that each instance of the use  
683 of restraint or seclusion be documented in the clinical record  
684 of the individual who has been restrained or secluded patient.

685 (c) Establishing ~~The department shall adopt rules~~  
686 ~~establishing~~ minimum standards for services provided by a mental  
687 health overlay program or a mobile crisis response service.

688 ~~(6) PERSONNEL.—~~

689 ~~(a) The department shall, by rule, establish minimum~~  
690 ~~standards of education and experience for professional and~~  
691 ~~technical personnel employed in mental health programs,~~  
692 ~~including members of a mobile crisis response service.~~

693 ~~(b) The department shall design and distribute appropriate~~  
694 ~~materials for the orientation and training of persons actively~~  
695 ~~engaged in implementing the provisions of this part relating to~~  
696 ~~the involuntary examination and placement of persons who are~~  
697 ~~believed to have a mental illness.~~

698 ~~(6)~~ (7) PAYMENT FOR CARE OF PATIENTS.—Fees and fee  
699 collections for patients in state-owned, state-operated, or  
700 state-supported treatment facilities shall be according to s.  
701 402.33.

702 Section 9. Section 394.4573, Florida Statutes, is amended  
703 to read:

704 394.4573 Continuity of care management system; measures of  
705 performance; reports.—

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



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707 (a) "Case management" means those activities aimed at  
708 assessing ~~client~~ needs, planning services, linking the service  
709 system ~~to a client~~, coordinating the various system components,  
710 monitoring service delivery, and evaluating the effect of  
711 service delivery.

712 (b) "Case manager" means a person ~~an individual~~ who works  
713 with clients, and their families and significant others, to  
714 provide case management.

715 (c) "Client manager" means an employee of the department  
716 who is assigned to specific provider agencies and geographic  
717 areas to ensure that the full range of needed services is  
718 available to clients.

719 ~~(d) "Continuity of care management system" means a system~~  
720 ~~that assures, within available resources, that clients have~~  
721 ~~access to the full array of services within the mental health~~  
722 ~~services delivery system.~~

723 (2) The department shall ensure the establishment of is  
724 ~~directed to implement~~ a continuity of care management system for  
725 the provision of mental health and substance abuse care in  
726 compliance with s. 394.9082. ~~through the provision of client~~  
727 ~~and case management, including clients referred from state~~  
728 ~~treatment facilities to community mental health facilities. Such~~  
729 ~~system shall include a network of client managers and case~~  
730 ~~managers throughout the state designed to:~~

731 ~~(a) Reduce the possibility of a client's admission or~~  
732 ~~readmission to a state treatment facility.~~

733 ~~(b) Provide for the creation or designation of an agency in~~  
734 ~~each county to provide single intake services for each person~~  
735 ~~seeking mental health services. Such agency shall provide~~



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736 ~~information and referral services necessary to ensure that~~  
737 ~~clients receive the most appropriate and least restrictive form~~  
738 ~~of care, based on the individual needs of the person seeking~~  
739 ~~treatment. Such agency shall have a single telephone number,~~  
740 ~~operating 24 hours per day, 7 days per week, where practicable,~~  
741 ~~at a central location, where each client will have a central~~  
742 ~~record.~~

743 ~~(c) Advocate on behalf of the client to ensure that all~~  
744 ~~appropriate services are afforded to the client in a timely and~~  
745 ~~dignified manner.~~

746 ~~(d) Require that any public receiving facility initiating a~~  
747 ~~patient transfer to a licensed hospital for acute care mental~~  
748 ~~health services not accessible through the public receiving~~  
749 ~~facility shall notify the hospital of such transfer and send all~~  
750 ~~records relating to the emergency psychiatric or medical~~  
751 ~~condition.~~

752 ~~(3) The department is directed to develop and include in~~  
753 ~~contracts with service providers measures of performance with~~  
754 ~~regard to goals and objectives as specified in the state plan.~~  
755 ~~Such measures shall use, to the extent practical, existing data~~  
756 ~~collection methods and reports and shall not require, as a~~  
757 ~~result of this subsection, additional reports on the part of~~  
758 ~~service providers. The department shall plan monitoring visits~~  
759 ~~of community mental health facilities with other state, federal,~~  
760 ~~and local governmental and private agencies charged with~~  
761 ~~monitoring such facilities.~~

762 Section 10. Effective July 1, 2016, subsection (1), present  
763 subsections (2) through (6), and present subsection (8) of  
764 section 394.459, Florida Statutes, are amended, present



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765 subsections (2) through (11) of that section are redesignated as  
766 subsections (3) through (12), respectively, present subsection  
767 (12) of that section is redesignated as subsection (14), and new  
768 subsections (2) and (13) are added to that section, to read:

769       394.459 Rights of individuals receiving treatment and  
770 services ~~patients~~.—

771       (1) RIGHT TO ~~INDIVIDUAL~~ DIGNITY.—It is the policy of this  
772 state that the ~~individual~~ dignity of all individuals held for  
773 examination or admitted for mental health or substance abuse  
774 treatment ~~the patient shall~~ be respected at all times and upon  
775 all occasions, including ~~any occasion~~ when the individual  
776 ~~patient~~ is taken into custody, held, or transported. Procedures,  
777 facilities, vehicles, and restraining devices used ~~utilized~~ for  
778 criminals or those accused of a crime may ~~shall~~ not be used in  
779 connection with individuals ~~persons~~ who have a mental illness or  
780 substance abuse impairment, except for the protection of that  
781 individual ~~the patient~~ or others. An individual ~~Persons~~ who has  
782 ~~have~~ a mental illness but who has ~~are~~ not been charged with a  
783 criminal offense may ~~shall~~ not be detained or incarcerated in  
784 the jails of this state. An individual ~~A person~~ who is receiving  
785 treatment for mental illness or substance abuse may ~~shall~~ not be  
786 deprived of his or her ~~any~~ constitutional rights. However, if  
787 such individual ~~a person~~ is adjudicated incapacitated, his or  
788 her rights may be limited to the same extent that the rights of  
789 any incapacitated individual ~~person~~ are limited by law.

790       (2) PROTECTIVE CUSTODY WITHOUT CONSENT FOR SUBSTANCE ABUSE  
791 IMPAIRMENT.—An individual who has a substance abuse impairment  
792 but who has not been charged with a criminal offense may be  
793 placed in protective custody without his or her consent, subject



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794 to the limitations specified in this subsection. If it has been  
795 determined that a hospital, an addictions receiving facility, or  
796 a licensed detoxification facility is the most appropriate  
797 placement for the individual, law enforcement may implement  
798 protective custody measures as specified in this subsection.

799 (a) An individual meets the criteria for placement in  
800 protective custody if there is a good faith reason to believe  
801 that the individual is impaired by substance abuse, has lost the  
802 power of self-control with respect to substance use because of  
803 such impairment, and:

804 1. Has inflicted, or threatened or attempted to inflict, or  
805 unless admitted is likely to inflict, physical harm on himself  
806 or herself or another; or

807 2. Is in need of substance abuse services and, by reason of  
808 substance abuse impairment, is incapacitated and unable to make  
809 a rational decision with regard thereto. However, mere refusal  
810 to seek or obtain such services does not constitute evidence of  
811 lack of judgment with respect to his or her need for such  
812 services.

813 (b) If an individual who is in circumstances that justify  
814 protective custody as described in paragraph (a) fails or  
815 refuses to consent to assistance and a law enforcement officer  
816 has determined that a hospital, an addictions receiving  
817 facility, or a licensed detoxification facility is the most  
818 appropriate place for such individual, the officer may, after  
819 giving due consideration to the expressed wishes of the  
820 individual:

821 1. Take the individual to a hospital, an addictions  
822 receiving facility, or a licensed detoxification facility



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823 against the individual's will but without using unreasonable  
824 force; or

825 2. In the case of an adult, detain the individual for his  
826 or her own protection in any municipal or county jail or other  
827 appropriate detention facility.

828  
829 Detention under this paragraph is not to be considered an arrest  
830 for any purpose, and an entry or other record may not be made to  
831 indicate that the individual has been detained or charged with  
832 any crime. The officer in charge of the detention facility must  
833 notify the nearest appropriate licensed service provider within  
834 8 hours after detention that the individual has been detained.  
835 The detention facility must arrange, as necessary, for  
836 transportation of the individual to an appropriate licensed  
837 service provider with an available bed. Individuals detained  
838 under this paragraph must be assessed by an attending physician  
839 without unnecessary delay and within a 72-hour period to  
840 determine the need for further services.

841 (c) The nearest relative of a minor in protective custody  
842 must be notified by the law enforcement officer, as must the  
843 nearest relative of an adult, unless the adult requests that  
844 there be no notification.

845 (d) An individual who is in protective custody must be  
846 released by a qualified professional when any of the following  
847 circumstances occur:

848 1. The individual no longer meets the protective custody  
849 criteria set out in paragraph (a);

850 2. A 72-hour period has elapsed since the individual was  
851 taken into custody; or



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852 3. The individual has consented voluntarily to readmission  
853 at the facility of the licensed service provider.

854 (e) An individual may be detained in protective custody  
855 beyond the 72-hour period if a petitioner has initiated  
856 proceedings for involuntary assessment or treatment. The timely  
857 filing of the petition authorizes the service provider to retain  
858 physical custody of the individual pending further order of the  
859 court.

860 (3)~~(2)~~ RIGHT TO TREATMENT.—An individual held for  
861 examination or admitted for mental illness or substance abuse  
862 treatment:

863 (a) ~~May A person shall~~ not be denied treatment for mental  
864 illness or substance abuse impairment, and services ~~may shall~~  
865 not be delayed at a mental health receiving facility, addictions  
866 receiving facility, detoxification facility, or treatment  
867 facility because of inability to pay. However, every reasonable  
868 effort to collect appropriate reimbursement for the cost of  
869 providing mental health or substance abuse services from  
870 individuals ~~to persons~~ able to pay for services, including  
871 insurance or ~~third-party~~ payments by third-party payers, shall  
872 be made by facilities providing services under ~~pursuant to~~ this  
873 part.

874 (b) ~~Shall be provided~~ ~~It is further the policy of the state~~  
875 ~~that~~ the least restrictive appropriate available treatment,  
876 which must be ~~utilized~~ based on the individual's individual  
877 needs and best interests ~~of the patient~~ and consistent with the  
878 optimum improvement of the individual's patient's condition.

879 (c) ~~Shall~~ ~~Each person who remains at a receiving or~~  
880 ~~treatment facility for more than 12 hours shall~~ be given a



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881 physical examination by a health practitioner authorized by law  
882 to give such examinations, and a mental health or substance  
883 abuse evaluation, as appropriate, by a psychiatrist,  
884 psychologist, psychiatric nurse, or qualified substance abuse  
885 professional, within 24 hours after arrival at such facility if  
886 the individual has not been released or discharged pursuant to  
887 s. 394.463(2) (h) or s. 394.469. The physical examination and  
888 mental health evaluation must be documented in the clinical  
889 record. The physical and mental health examinations shall  
890 include efforts to identify indicators of substance abuse  
891 impairment, substance abuse intoxication, and substance abuse  
892 withdrawal.

893 (d) Shall ~~Every patient in a facility shall~~ be afforded the  
894 opportunity to participate in activities designed to enhance  
895 self-image and the beneficial effects of other treatments, as  
896 determined by the facility.

897 (e) Shall, not more than 5 days after admission to a  
898 facility, ~~each patient shall~~ have and receive an individualized  
899 treatment plan in writing, which the individual patient has had  
900 an opportunity to assist in preparing and to review before ~~prior~~  
901 ~~to its~~ implementation. The plan must ~~shall~~ include a space for  
902 the individual's patient's comments and signature.

903 (4) ~~(3)~~ RIGHT TO EXPRESS AND INFORMED ~~PATIENT~~ CONSENT.-

904 ~~(a)~~ 1. Each individual patient entering treatment shall be  
905 asked to give express and informed consent for admission or  
906 treatment.

907 (a) If the individual patient has been adjudicated  
908 incapacitated or found to be incompetent to consent to  
909 treatment, express and informed consent must ~~to treatment shall~~



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910 be sought from his or her ~~instead from the patient's~~ guardian,  
911 ~~or~~ guardian advocate, or health care surrogate or proxy. If the  
912 individual patient is a minor, express and informed consent for  
913 admission or treatment must be obtained ~~shall also be requested~~  
914 ~~from the patient's guardian. Express and informed consent for~~  
915 ~~admission or treatment of a patient under 18 years of age shall~~  
916 ~~be required~~ from the minor's patient's guardian, unless the  
917 minor is seeking outpatient crisis intervention services under  
918 s. 394.4784. ~~Express and informed consent for admission or~~  
919 ~~treatment given by a patient who is under 18 years of age shall~~  
920 ~~not be a condition of admission when the patient's guardian~~  
921 ~~gives express and informed consent for the patient's admission~~  
922 ~~pursuant to s. 394.463 or s. 394.467.~~

923 (b)2. Before giving express and informed consent, the  
924 following information shall be provided and explained in plain  
925 language to the individual and patient, ~~or to his or her~~ the  
926 ~~patient's~~ guardian if the individual patient is an adult 18  
927 ~~years of age or older~~ and has been adjudicated incapacitated, ~~or~~  
928 to his or her ~~the patient's~~ guardian advocate if the individual  
929 ~~patient~~ has been found to be incompetent to consent to  
930 treatment, to the health care surrogate or proxy, or to both the  
931 individual patient and the guardian if the individual patient is  
932 a minor: the reason for admission or treatment; the proposed  
933 treatment and ~~;~~ the purpose of such ~~the~~ treatment ~~to be~~  
934 ~~provided~~; the common risks, benefits, and side effects of the  
935 proposed treatment ~~thereof~~; the specific dosage range of ~~for the~~  
936 medication, if ~~when~~ applicable; alternative treatment  
937 modalities; the approximate length of care; the potential  
938 effects of stopping treatment; how treatment will be monitored;



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939 and that any consent given for treatment may be revoked orally  
940 or in writing before or during the treatment period by the  
941 individual receiving the treatment ~~patient~~ or by a person who is  
942 legally authorized to make health care decisions on the  
943 individual's behalf ~~of the patient~~.

944 ~~(b) In the case of medical procedures requiring the use of~~  
945 ~~a general anesthetic or electroconvulsive treatment, and prior~~  
946 ~~to performing the procedure, express and informed consent shall~~  
947 ~~be obtained from the patient if the patient is legally~~  
948 ~~competent, from the guardian of a minor patient, from the~~  
949 ~~guardian of a patient who has been adjudicated incapacitated, or~~  
950 ~~from the guardian advocate of the patient if the guardian~~  
951 ~~advocate has been given express court authority to consent to~~  
952 ~~medical procedures or electroconvulsive treatment as provided~~  
953 ~~under s. 394.4598.~~

954 (5)~~(4)~~ QUALITY OF TREATMENT.-

955 (a) Each individual ~~patient~~ shall receive services,  
956 ~~including, for a patient placed under s. 394.4655~~ shall receive,  
957 ~~those services that are included in the court order which are~~  
958 ~~suited to his or her needs, and which shall be administered~~  
959 ~~skillfully, safely, and humanely with full respect for the~~  
960 individual's ~~patient's~~ dignity and personal integrity. Each  
961 individual ~~patient~~ shall receive such medical, vocational,  
962 social, educational, substance abuse, and rehabilitative  
963 services as his or her condition requires in order to live  
964 successfully in the community. In order to achieve this goal,  
965 the department shall ~~is directed to~~ coordinate its mental health  
966 and substance abuse programs with all other programs of the  
967 department and other state agencies.



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968 (b) Facilities shall develop and maintain, in a form that  
969 is accessible to and readily understandable by individuals held  
970 for examination or admitted for mental health or substance abuse  
971 treatment patients and consistent with rules adopted by the  
972 department, ~~the following:~~

973 1. Criteria, procedures, and required staff training for  
974 the any use of close or elevated levels of supervision, ~~of~~  
975 restraint, seclusion, or isolation, ~~or of~~ emergency treatment  
976 orders, and ~~for the use of~~ bodily control and physical  
977 management techniques.

978 2. Procedures for documenting, monitoring, and requiring  
979 clinical review of all uses of the procedures described in  
980 subparagraph 1. and for documenting and requiring review of any  
981 incidents resulting in injury to individuals receiving services  
982 ~~patients~~.

983 3. A system for investigating, tracking, managing, and  
984 responding to complaints by individuals ~~persons~~ receiving  
985 services or persons ~~individuals~~ acting on their behalf.

986 (c) Facilities shall have written procedures for reporting  
987 events that place individuals receiving services at risk of  
988 harm. Such events must be reported to the managing entity in the  
989 facility's region and the department as soon as reasonably  
990 possible after discovery and include, but are not limited to:

991 1. The death, regardless of cause or manner, of an  
992 individual examined or treated at a facility that occurs while  
993 the individual is at the facility or that occurs within 72 hours  
994 after release, if the death is known to the facility  
995 administrator.

996 2. An injury sustained, or allegedly sustained, at a



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997 facility, by an individual examined or treated at the facility  
998 and caused by an accident, self-inflicted injury, assault, act  
999 of abuse, neglect, or suicide attempt, if the injury requires  
1000 medical treatment by a licensed health care practitioner in an  
1001 acute care medical facility.

1002 3. The unauthorized departure or absence of an individual  
1003 from a facility in which he or she has been held for involuntary  
1004 examination or involuntary placement.

1005 4. A disaster or crisis situation such as a tornado,  
1006 hurricane, kidnapping, riot, or hostage situation that  
1007 jeopardizes the health, safety, or welfare of individuals  
1008 examined or treated in a facility.

1009 5. An allegation of sexual battery upon an individual  
1010 examined or treated in a facility.

1011 (d)(e) A facility may not use seclusion or restraint for  
1012 punishment, to compensate for inadequate staffing, or for the  
1013 convenience of staff. Facilities shall ensure that all staff are  
1014 made aware of these restrictions ~~on the use of seclusion and~~  
1015 ~~restraint and shall make and maintain records that which~~  
1016 demonstrate that this information has been conveyed to each  
1017 individual staff member members.

1018 (6)(5) COMMUNICATION, ABUSE REPORTING, AND VISITS.—

1019 (a) Each individual ~~person receiving services~~ in a facility  
1020 providing mental health services under this part has the right  
1021 to communicate freely and privately with persons outside the  
1022 facility unless it is determined that such communication is  
1023 likely to be harmful to the individual ~~person~~ or others. Each  
1024 facility shall make available ~~as soon as reasonably possible to~~  
1025 ~~persons receiving services~~ a telephone that allows for free



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1026 local calls and access to a long-distance service to the  
1027 individual as soon as reasonably possible. A facility is not  
1028 required to pay the costs of the individual's ~~a patient's~~ long-  
1029 distance calls. The telephone must ~~shall~~ be readily accessible  
1030 ~~to the patient~~ and ~~shall be~~ placed so that the individual  
1031 ~~patient~~ may use it to communicate privately and confidentially.  
1032 The facility may establish reasonable rules for the use of the  
1033 ~~this~~ telephone which, ~~provided that the rules~~ do not interfere  
1034 with an individual's ~~a patient's~~ access to a telephone to report  
1035 abuse pursuant to paragraph (e).

1036 (b) Each individual ~~patient~~ admitted to a facility under  
1037 ~~the provisions of~~ this part shall be allowed to receive, send,  
1038 and mail sealed, unopened correspondence; and the individual's  
1039 ~~no patient's~~ incoming or outgoing correspondence may not ~~shall~~  
1040 be opened, delayed, held, or censored by the facility unless  
1041 there is reason to believe that it contains items or substances  
1042 that ~~which~~ may be harmful to the individual ~~patient~~ or others,  
1043 in which case the administrator may direct reasonable  
1044 examination of such mail and may regulate the disposition of  
1045 such items or substances.

1046 (c) Each facility shall allow ~~must permit~~ immediate access  
1047 to an individual ~~any patient~~, subject to the ~~patient's~~ right to  
1048 deny or withdraw consent at any time, by the individual, or by  
1049 the individual's ~~patient's~~ family members, guardian, guardian  
1050 advocate, health care surrogate or proxy, representative,  
1051 ~~Florida statewide or local advocacy council~~, or attorneys  
1052 ~~attorney~~, unless such access would be detrimental to the  
1053 individual ~~patient~~. If the ~~a patient's~~ right to communicate or  
1054 to receive visitors is restricted by the facility, written



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1055 notice of such restriction and the reasons for the restriction  
1056 shall be served on the individual and patient, the individual's  
1057 patient's attorney, and ~~the patient's~~ guardian, guardian  
1058 advocate, health care surrogate or proxy, or representative; and  
1059 such restriction, and the reasons for the restriction, must  
1060 ~~shall~~ be recorded in on the patient's clinical record ~~with the~~  
1061 ~~reasons therefor~~. The restriction must ~~of a patient's right to~~  
1062 ~~communicate or to receive visitors shall~~ be reviewed at least  
1063 every 7 days. The right to communicate or receive visitors may  
1064 ~~shall~~ not be restricted as a means of punishment. This ~~Nothing~~  
1065 ~~in this~~ paragraph may not ~~shall~~ be construed to limit the  
1066 provisions of paragraph (d).

1067 (d) Each facility shall establish reasonable rules, which  
1068 must be the least restrictive possible, governing visitors,  
1069 visiting hours, and the use of telephones by individuals  
1070 ~~patients in the least restrictive possible manner~~. An individual  
1071 has ~~Patients shall have~~ the right to contact and to receive  
1072 communication from his or her attorney ~~their attorneys~~ at any  
1073 reasonable time.

1074 (e) Each individual ~~patient~~ receiving mental health or  
1075 substance abuse treatment ~~in any facility~~ shall have ready  
1076 access to a telephone in order to report ~~an~~ alleged abuse. The  
1077 facility staff shall orally and in writing inform each  
1078 individual ~~patient~~ of the procedure for reporting abuse and  
1079 shall make every reasonable effort to present the information in  
1080 a language the individual ~~patient~~ understands. A written copy of  
1081 that procedure, including the telephone number of the central  
1082 abuse hotline and reporting forms, must ~~shall~~ be posted in plain  
1083 view.



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1084 (f) The department shall adopt rules providing a procedure  
1085 for reporting abuse. ~~Facility staff shall be required,~~ As a  
1086 condition of employment, facility staff shall ~~to~~ become familiar  
1087 with the requirements and procedures for ~~the~~ reporting ~~of~~ abuse.

1088 (7) (6) CARE AND CUSTODY OF PERSONAL EFFECTS OF PATIENTS. ~~A~~  
1089 facility shall respect the rights of an individual with regard A  
1090 patient's right to the possession of his or her clothing and  
1091 personal effects ~~shall be respected~~. The facility may take  
1092 temporary custody of such effects if ~~when~~ required for medical  
1093 and safety reasons. The A patient's clothing and personal  
1094 effects shall be inventoried upon their removal into temporary  
1095 custody. Copies of this inventory shall be given to the  
1096 individual patient and to his or her ~~the patient's~~ guardian,  
1097 guardian advocate, health care surrogate or proxy, or  
1098 representative and shall be recorded in the ~~patient's~~ clinical  
1099 record. This inventory may be amended upon the request of the  
1100 individual patient or his or her ~~the patient's~~ guardian,  
1101 guardian advocate, health care surrogate or proxy, or  
1102 representative. The inventory and any amendments ~~to it~~ must be  
1103 witnessed by two members of the facility staff and by the  
1104 individual patient, if he or she is able. All of the a patient's  
1105 clothing and personal effects held by the facility shall be  
1106 returned to the individual patient immediately upon his or her  
1107 ~~the~~ discharge or transfer ~~of the patient~~ from the facility,  
1108 unless such return would be detrimental to the individual  
1109 ~~patient~~. If personal effects are not returned ~~to the patient,~~  
1110 the reason must be documented in the clinical record along with  
1111 the disposition of the clothing and personal effects, which may  
1112 be given instead to the individual's patient's guardian,



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1113 guardian advocate, health care surrogate or proxy, or  
1114 representative. As soon as practicable after an emergency  
1115 transfer ~~of a patient~~, the individual's ~~patient's~~ clothing and  
1116 personal effects shall be transferred to the individual's  
1117 ~~patient's~~ new location, together with a copy of the inventory  
1118 and any amendments, unless an alternate plan is approved by the  
1119 individual patient, if he or she is able, and by his or her ~~the~~  
1120 ~~patient's~~ guardian, guardian advocate, health care surrogate or  
1121 proxy, or representative.

1122 (8)(7) VOTING IN PUBLIC ELECTIONS.—A patient who is  
1123 eligible to vote according to the laws of the state has the  
1124 right to vote in the primary and general elections. The  
1125 department shall establish rules to enable patients to obtain  
1126 voter registration forms, applications for absentee ballots, and  
1127 absentee ballots.

1128 (9)(8) HABEAS CORPUS.—

1129 (a) At any time, and without notice, an individual ~~a person~~  
1130 held or admitted for mental health or substance abuse  
1131 examination or placement in a receiving or treatment facility,  
1132 or a relative, friend, guardian, guardian advocate, health care  
1133 surrogate or proxy, representative, or attorney, or the  
1134 department, on behalf of such individual ~~person~~, may petition  
1135 for a writ of habeas corpus to question the cause and legality  
1136 of such detention and request that the court order a return to  
1137 the writ in accordance with chapter 79. Each individual ~~patient~~  
1138 held in a facility shall receive a written notice of the right  
1139 to petition for a writ of habeas corpus.

1140 (b) At any time, and without notice, an individual held or  
1141 admitted for mental health or substance abuse examination or



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1142 ~~placement a person who is a patient~~ in a ~~receiving or treatment~~  
1143 facility, or a relative, friend, guardian, guardian advocate,  
1144 health care surrogate or proxy, representative, or attorney, or  
1145 the department, on behalf of such individual ~~person~~, may file a  
1146 petition in the circuit court in the county where the individual  
1147 ~~patient~~ is being held alleging that he or she ~~the patient~~ is  
1148 being unjustly denied a right or privilege granted under this  
1149 part herein or that a procedure authorized under this part  
1150 ~~herein~~ is being abused. Upon the filing of such a petition, the  
1151 court may ~~shall have the authority to~~ conduct a judicial inquiry  
1152 and ~~to~~ issue an ~~any~~ order ~~needed~~ to correct an abuse of ~~the~~  
1153 ~~provisions of~~ this part.

1154 (c) The administrator of any ~~receiving or treatment~~  
1155 facility receiving a petition under this subsection shall file  
1156 the petition with the clerk of the court on the next court  
1157 working day.

1158 (d) A ~~No~~ fee may not ~~shall~~ be charged for ~~the~~ filing ~~of~~ a  
1159 petition under this subsection.

1160 (10) ~~(9)~~ VIOLATIONS.—The department shall report to the  
1161 Agency for Health Care Administration any violation of the  
1162 rights or privileges of patients, or of any procedures provided  
1163 under this part, by any facility or professional licensed or  
1164 regulated by the agency. The agency is authorized to impose any  
1165 sanction authorized for violation of this part, based solely on  
1166 the investigation and findings of the department.

1167 (11) ~~(10)~~ LIABILITY FOR VIOLATIONS.—Any person who violates  
1168 or abuses any rights or privileges of patients provided by this  
1169 part is liable for damages as determined by law. Any person who  
1170 acts in good faith in compliance with the provisions of this



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1171 part is immune from civil or criminal liability for his or her  
1172 actions in connection with the admission, diagnosis, treatment,  
1173 or discharge of a patient to or from a facility. However, this  
1174 section does not relieve any person from liability if such  
1175 person commits negligence.

1176 (12) ~~(11)~~ RIGHT TO PARTICIPATE IN TREATMENT AND DISCHARGE  
1177 PLANNING.—The patient shall have the opportunity to participate  
1178 in treatment and discharge planning and shall be notified in  
1179 writing of his or her right, upon discharge from the facility,  
1180 to seek treatment from the professional or agency of the  
1181 patient's choice.

1182 (13) ADVANCE DIRECTIVES.—All service providers under this  
1183 part shall provide information concerning advance directives to  
1184 individuals and assist those who are competent and willing to  
1185 complete an advance directive. The directive may include  
1186 instructions regarding mental health or substance abuse care.  
1187 Service providers under this part shall honor the advance  
1188 directive of individuals they serve, or shall request the  
1189 transfer of the individual as required under s. 765.1105.

1190 (14) ~~(12)~~ POSTING OF NOTICE OF RIGHTS OF PATIENTS.—Each  
1191 facility shall post a notice listing and describing, in the  
1192 language and terminology that the persons to whom the notice is  
1193 addressed can understand, the rights provided in this section.  
1194 This notice shall include a statement that provisions of the  
1195 federal Americans with Disabilities Act apply and the name and  
1196 telephone number of a person to contact for further information.  
1197 This notice shall be posted in a place readily accessible to  
1198 patients and in a format easily seen by patients. This notice  
1199 shall include the telephone numbers of the Florida local



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1200 advocacy council and Advocacy Center for Persons with  
1201 Disabilities, Inc.

1202 Section 11. Section 394.4597, Florida Statutes, is amended  
1203 to read:

1204 394.4597 Persons to be notified; appointment of a patient's  
1205 representative.—

1206 (1) VOLUNTARY ADMISSION PATIENTS.—At the time an individual  
1207 ~~a patient~~ is voluntarily admitted to a receiving or treatment  
1208 facility, the individual shall be asked to identify a person to  
1209 be notified in case of an emergency, and the identity and  
1210 contact information of that a person to be notified in case of  
1211 an emergency shall be entered in the individual's patient's  
1212 ~~clinical~~ record.

1213 (2) INVOLUNTARY ADMISSION PATIENTS.—

1214 (a) At the time an individual ~~a patient~~ is admitted to a  
1215 facility for involuntary examination or placement, or when a  
1216 petition for involuntary placement is filed, the names,  
1217 addresses, and telephone numbers of the individual's patient's  
1218 guardian or guardian advocate, health care surrogate, or proxy,  
1219 or representative if he or she ~~the patient~~ has no guardian, and  
1220 the individual's patient's attorney shall be entered in the  
1221 ~~patient's clinical~~ record.

1222 (b) If the individual ~~patient~~ has no guardian, guardian  
1223 advocate, health care surrogate, or proxy, he or she ~~the patient~~  
1224 shall be asked to designate a representative. If the individual  
1225 ~~patient~~ is unable or unwilling to designate a representative,  
1226 the facility shall select a representative.

1227 (c) The individual ~~patient~~ shall be consulted with regard  
1228 to the selection of a representative by the receiving or



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1229 treatment facility and may ~~shall have authority to~~ request that  
1230 the any such representative be replaced.

1231 (d) If ~~When~~ the receiving or treatment facility selects a  
1232 representative, first preference shall be given to a health care  
1233 surrogate, if one has been previously selected ~~by the patient~~.  
1234 If the individual patient has not previously selected a health  
1235 care surrogate, the selection, except for good cause documented  
1236 in the individual's patient's clinical record, shall be made  
1237 from the following list in the order of listing:

- 1238 1. The individual's patient's spouse.
- 1239 2. An adult child of the individual patient.
- 1240 3. A parent of the individual patient.
- 1241 4. The adult next of kin of the individual patient.
- 1242 5. An adult friend of the individual patient.
- 1243 ~~6. The appropriate Florida local advocacy council as~~  
1244 ~~provided in s. 402.166.~~

1245 (e) The following persons are prohibited from selection as  
1246 an individual's representative:

- 1247 1. A professional providing clinical services to the  
1248 individual under this part;
- 1249 2. The licensed professional who initiated the involuntary  
1250 examination of the individual, if the examination was initiated  
1251 by professional certificate;
- 1252 3. An employee, administrator, or board member of the  
1253 facility providing the examination of the individual;
- 1254 4. An employee, administrator, or board member of a  
1255 treatment facility providing treatment of the individual;
- 1256 5. A person providing any substantial professional services  
1257 to the individual, including clinical and nonclinical services;



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- 1258       6. A creditor of the individual;
- 1259       7. A person subject to an injunction for protection against  
1260 domestic violence under s. 741.30, whether the order of  
1261 injunction is temporary or final, and for which the individual  
1262 was the petitioner; and
- 1263       8. A person subject to an injunction for protection against  
1264 repeat violence, sexual violence, or dating violence under s.  
1265 784.046, whether the order of injunction is temporary or final,  
1266 and for which the individual was the petitioner.
- 1267       ~~(e) A licensed professional providing services to the~~  
1268 ~~patient under this part, an employee of a facility providing~~  
1269 ~~direct services to the patient under this part, a department~~  
1270 ~~employee, a person providing other substantial services to the~~  
1271 ~~patient in a professional or business capacity, or a creditor of~~  
1272 ~~the patient shall not be appointed as the patient's~~  
1273 ~~representative.~~
- 1274       (f) The representative selected by the individual or  
1275 designated by the facility has the right to:
- 1276           1. Receive notice of the individual's admission;  
1277           2. Receive notice of proceedings affecting the individual;  
1278           3. Have immediate access to the individual unless such  
1279 access is documented to be detrimental to the individual;  
1280           4. Receive notice of any restriction of the individual's  
1281 right to communicate or receive visitors;  
1282           5. Receive a copy of the inventory of personal effects upon  
1283 the individual's admission and to request an amendment to the  
1284 inventory at any time;  
1285           6. Receive disposition of the individual's clothing and  
1286 personal effects if not returned to the individual, or to



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1287 approve an alternate plan;  
1288 7. Petition on behalf of the individual for a writ of  
1289 habeas corpus to question the cause and legality of the  
1290 individual's detention or to allege that the individual is being  
1291 unjustly denied a right or privilege granted under this part, or  
1292 that a procedure authorized under this part is being abused;  
1293 8. Apply for a change of venue for the individual's  
1294 involuntary placement hearing for the convenience of the parties  
1295 or witnesses or because of the individual's condition;  
1296 9. Receive written notice of any restriction of the  
1297 individual's right to inspect his or her clinical record;  
1298 10. Receive notice of the release of the individual from a  
1299 receiving facility where an involuntary examination was  
1300 performed;  
1301 11. Receive a copy of any petition for the individual's  
1302 involuntary placement filed with the court; and  
1303 12. Be informed by the court of the individual's right to  
1304 an independent expert evaluation pursuant to involuntary  
1305 placement procedures.  
1306 Section 12. Effective July 1, 2016, section 394.4598,  
1307 Florida Statutes, is amended to read:  
1308 394.4598 Guardian advocate.—  
1309 (1) The administrator may petition the court for the  
1310 appointment of a guardian advocate based upon the opinion of a  
1311 psychiatrist that an individual held for examination or admitted  
1312 for mental health or substance abuse treatment ~~the patient~~ is  
1313 incompetent to consent to treatment. If the court finds that the  
1314 individual ~~a patient~~ is incompetent to consent to treatment and  
1315 has not been adjudicated incapacitated and a guardian having



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1316 ~~with the~~ authority to consent to mental health or substance  
1317 abuse treatment has not been appointed, it shall appoint a  
1318 guardian advocate. The individual patient has the right to have  
1319 an attorney represent him or her at the hearing. If the  
1320 individual person is indigent, the court shall appoint the  
1321 office of the public defender to represent him or her at the  
1322 hearing. The individual patient has the right to testify, cross-  
1323 examine witnesses, and present witnesses. The proceeding must  
1324 ~~shall~~ be recorded ~~either~~ electronically or stenographically, and  
1325 testimony shall be ~~provided~~ under oath. One of the professionals  
1326 authorized to give an opinion in support of a petition for  
1327 involuntary placement, as described in s. 394.4655 or s.  
1328 394.467, shall ~~must~~ testify. The A guardian advocate shall ~~must~~  
1329 meet the qualifications of a guardian pursuant to ~~contained in~~  
1330 part IV of chapter 744, ~~except that a professional referred to~~  
1331 ~~in this part, an employee of the facility providing direct~~  
1332 ~~services to the patient under this part, a departmental~~  
1333 ~~employee, a facility administrator, or member of the Florida~~  
1334 ~~local advocacy council shall not be appointed. A person who is~~  
1335 ~~appointed as a guardian advocate must agree to the appointment.~~  
1336 A person may not be appointed as a guardian advocate unless he  
1337 or she agrees to the appointment.

1338 (2) The following persons are prohibited from being  
1339 appointed as an individual's guardian advocate:

1340 (a) A professional providing clinical services to the  
1341 individual under this part;

1342 (b) The licensed professional who initiated the involuntary  
1343 examination of the individual, if the examination was initiated  
1344 by professional certificate;



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1345       (c) An employee, administrator, or board member of the  
1346 facility providing the examination of the individual;  
1347       (d) An employee, administrator, or board member of a  
1348 treatment facility providing treatment of the individual;  
1349       (e) A person providing any substantial professional  
1350 services to the individual, including clinical and nonclinical  
1351 services;  
1352       (f) A creditor of the individual;  
1353       (g) A person subject to an injunction for protection  
1354 against domestic violence under s. 741.30, whether the order of  
1355 injunction is temporary or final, and for which the individual  
1356 was the petitioner; and  
1357       (h) A person subject to an injunction for protection  
1358 against repeat violence, sexual violence, or dating violence  
1359 under s. 784.046, whether the order of injunction is temporary  
1360 or final, and for which the individual was the petitioner.  
1361       (3)(2) A facility requesting appointment of a guardian  
1362 advocate must, prior to the appointment, provide the prospective  
1363 guardian advocate with information about the duties and  
1364 responsibilities of guardian advocates, including the  
1365 information about the ethics of medical decisionmaking. Before  
1366 asking a guardian advocate to give consent to treatment for an  
1367 individual held for examination or admitted for mental health or  
1368 substance abuse treatment a patient, the facility shall provide  
1369 to the guardian advocate sufficient information to allow so that  
1370 the guardian advocate to can decide whether to give express and  
1371 informed consent to the treatment, including information that  
1372 the treatment is essential to the care of the individual  
1373 patient, and that the treatment does not present an unreasonable



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1374 risk of serious, hazardous, or irreversible side effects. Before  
1375 giving consent to treatment, the guardian advocate must meet and  
1376 talk with the individual patient and the individual's patient's  
1377 physician face to face in person, if ~~at all~~ possible, and by  
1378 telephone, if not. The guardian advocate shall make every effort  
1379 to make decisions regarding treatment that he or she believes  
1380 the individual would have made under the circumstances if the  
1381 individual were capable of making such a decision. The decision  
1382 of the guardian advocate may be reviewed by the court, upon  
1383 petition of the individual's patient's attorney, the  
1384 individual's patient's family, or the facility administrator.

1385 (4)(3) Prior to A guardian advocate must attend at least a  
1386 4-hour training course approved by the court before exercising  
1387 his or her authority, ~~the guardian advocate shall attend a~~  
1388 ~~training course approved by the court.~~ This training course, ~~of~~  
1389 ~~not less than 4 hours,~~ must include, at minimum, information  
1390 about an the individual's patient rights, psychotropic  
1391 medications, diagnosis of mental illness or substance abuse  
1392 impairment, the ethics of medical decisionmaking, and the duties  
1393 of guardian advocates. This training course shall take the place  
1394 of the training required for guardians appointed pursuant to  
1395 chapter 744.

1396 (5)(4) The information to be supplied to prospective  
1397 guardian advocates before ~~prior to~~ their appointment and the  
1398 training course for guardian advocates must be developed and  
1399 completed through a course developed by the department and  
1400 approved by the chief judge of the circuit court and taught by a  
1401 court-approved organization. Court-approved organizations may  
1402 include, but need ~~are~~ not be limited to, community ~~or junior~~



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1403 colleges, guardianship organizations, and the local bar  
1404 association or The Florida Bar. The court may, ~~in its~~  
1405 ~~discretion,~~ waive some or all of the training requirements for  
1406 guardian advocates or impose additional requirements. The court  
1407 shall make its decision on a case-by-case basis and, in making  
1408 its decision, shall consider the experience and education of the  
1409 guardian advocate, the duties assigned to the guardian advocate,  
1410 and the needs of the individual subject to involuntary placement  
1411 patient.

1412 (6)~~(5)~~ In selecting a guardian advocate, the court shall  
1413 give preference to a health care surrogate, if one has already  
1414 been designated by the individual held for examination or  
1415 admitted for mental health or substance abuse treatment patient.  
1416 If the individual patient has not previously selected a health  
1417 care surrogate, except for good cause documented in the court  
1418 record, the selection shall be made from the following list in  
1419 the order of listing:

- 1420 (a) The individual's ~~patient's~~ spouse.  
1421 (b) An adult child of the individual patient.  
1422 (c) A parent of the individual patient.  
1423 (d) The adult next of kin of the individual patient.  
1424 (e) An adult friend of the individual patient.  
1425 (f) An adult trained and willing to serve as guardian  
1426 advocate for the individual patient.

1427 (7)~~(6)~~ If a guardian with the authority to consent to  
1428 medical treatment has not already been appointed or if the  
1429 individual held for examination or admitted for mental health or  
1430 substance abuse treatment patient has not already designated a  
1431 health care surrogate, the court may authorize the guardian



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1432 advocate to consent to medical treatment, as well as mental  
1433 health and substance abuse treatment. Unless otherwise limited  
1434 by the court, a guardian advocate with authority to consent to  
1435 medical treatment shall have the same authority to make health  
1436 care decisions and be subject to the same restrictions as a  
1437 proxy appointed under part IV of chapter 765. Unless the  
1438 guardian advocate has sought and received express court approval  
1439 in proceeding separate from the proceeding to determine the  
1440 competence of the patient to consent to medical treatment, the  
1441 guardian advocate may not consent to:

1442 (a) Abortion.

1443 (b) Sterilization.

1444 (c) Electroconvulsive treatment.

1445 (d) Psychosurgery.

1446 (e) Experimental treatments that have not been approved by  
1447 a federally approved institutional review board in accordance  
1448 with 45 C.F.R. part 46 or 21 C.F.R. part 56.

1449  
1450 In making a medical treatment decision under this subsection,  
1451 the court shall ~~must~~ base its decision on evidence that the  
1452 treatment or procedure is essential to the care of the  
1453 individual ~~patient~~ and that the treatment does not present an  
1454 unreasonable risk of serious, hazardous, or irreversible side  
1455 effects. The court shall follow the procedures set forth in  
1456 subsection (1) of this section.

1457 ~~(8)-(7)~~ The guardian advocate shall be discharged when the  
1458 individual for whom he or she is appointed ~~patient~~ is discharged  
1459 from an order for involuntary outpatient ~~placement~~ or  
1460 involuntary inpatient placement or when the individual ~~patient~~



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1461 is transferred from involuntary to voluntary status. The court  
1462 ~~or a hearing officer~~ shall consider the competence of the  
1463 individual patient pursuant to subsection (1) and may consider  
1464 an involuntarily placed individual's patient's competence to  
1465 consent to treatment at any hearing. Upon sufficient evidence,  
1466 the court may restore, or the magistrate or administrative law  
1467 judge hearing officer may recommend that the court restore, the  
1468 individual's patient's competence. A copy of the order restoring  
1469 competence or the certificate of discharge containing the  
1470 restoration of competence shall be provided to the individual  
1471 ~~patient~~ and the guardian advocate.

1472 Section 13. Section 394.4599, Florida Statutes, is amended  
1473 to read:

1474 394.4599 Notice.—

1475 (1) VOLUNTARY ADMISSION PATIENTS.—Notice of an individual's  
1476 ~~a voluntary patient's~~ admission shall ~~only~~ be given only at the  
1477 request of the individual patient, except that, in an emergency,  
1478 notice shall be given as determined by the facility.

1479 (2) INVOLUNTARY ADMISSION PATIENTS.—

1480 (a) Whenever notice is required to be given under this  
1481 part, such notice shall be given to the individual patient and  
1482 the individual's patient's guardian, guardian advocate, health  
1483 care surrogate or proxy, attorney, and representative.

1484 1. When notice is required to be given to an individual a  
1485 ~~patient~~, it shall be given both orally and in writing, in the  
1486 language and terminology that the individual patient can  
1487 understand, and, if needed, the facility shall provide an  
1488 interpreter for the individual patient.

1489 2. Notice to an individual's a patient's guardian, guardian



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1490 advocate, health care surrogate or proxy, attorney, and  
1491 representative shall be given by ~~United States mail and by~~  
1492 ~~registered or certified~~ mail with the date, time, and method of  
1493 notice delivery documented in receipts attached to the patient's  
1494 clinical record. Hand delivery by a facility employee may be  
1495 used as an alternative, with the date and time of delivery  
1496 documented in the clinical record. If notice is given by a state  
1497 attorney or an attorney for the department, a certificate of  
1498 service is ~~shall be~~ sufficient to document service.

1499 (b) A receiving facility shall give prompt notice of the  
1500 whereabouts of an individual ~~a patient~~ who is being  
1501 involuntarily held for examination to the individual's guardian,  
1502 guardian advocate, health care surrogate or proxy, attorney or  
1503 representative, by telephone or in person within 24 hours after  
1504 the individual's patient's arrival at the facility, ~~unless the~~  
1505 ~~patient requests that no notification be made~~. Contact attempts  
1506 shall be documented in the individual's patient's clinical  
1507 record and shall begin as soon as reasonably possible after the  
1508 individual's patient's arrival. ~~Notice that a patient is being~~  
1509 ~~admitted as an involuntary patient shall be given to the Florida~~  
1510 ~~local advocacy council no later than the next working day after~~  
1511 ~~the patient is admitted.~~

1512 (c)1. A receiving facility shall give notice of the  
1513 whereabouts of a minor who is being involuntarily held for  
1514 examination pursuant to s. 394.463 to the minor's parent,  
1515 guardian, caregiver, or guardian advocate, in person or by  
1516 telephone or other form of electronic communication, immediately  
1517 after the minor's arrival at the facility. The facility may not  
1518 delay notification for no more than 24 hours after the minor's



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1519 arrival if the facility has submitted a report to the central  
1520 abuse hotline, pursuant to s. 39.201, based upon knowledge or  
1521 suspicion of abuse, abandonment, or neglect and if the facility  
1522 deems a delay in notification to be in the minor's best  
1523 interest.

1524 2. The receiving facility shall attempt to notify the  
1525 minor's parent, guardian, caregiver, or guardian advocate until  
1526 the receiving facility receives confirmation from the parent,  
1527 guardian, caregiver, or guardian advocate, verbally, by  
1528 telephone or other form of electronic communication, or by  
1529 recorded message, that notification has been received. Attempts  
1530 to notify the parent, guardian, caregiver, or guardian advocate  
1531 must be repeated at least once each hour during the first 12  
1532 hours after the minor's arrival and once every 24 hours  
1533 thereafter and must continue until such confirmation is  
1534 received, unless the minor is released at the end of the 72-hour  
1535 examination period, or until a petition for involuntary  
1536 placement is filed with the court pursuant to s. 394.463(2)(i).  
1537 The receiving facility may seek assistance from a law  
1538 enforcement agency to notify the minor's parent, guardian,  
1539 caregiver, or guardian advocate if the facility has not  
1540 received, within the first 24 hours after the minor's arrival, a  
1541 confirmation by the parent, guardian, caregiver, or guardian  
1542 advocate that notification has been received. The receiving  
1543 facility must document notification attempts in the minor's  
1544 clinical record.

1545 (d)~~(e)~~ The written notice of the filing of the petition for  
1546 involuntary placement of an individual being held must contain  
1547 the following:



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1548           1. Notice that the petition has been filed with the circuit  
1549 court in the county in which the individual patient is  
1550 hospitalized and the address of such court.

1551           2. Notice that the office of the public defender has been  
1552 appointed to represent the individual patient in the proceeding,  
1553 if the individual patient is not otherwise represented by  
1554 counsel.

1555           3. The date, time, and place of the hearing and the name of  
1556 each examining expert and every other person expected to testify  
1557 in support of continued detention.

1558           4. Notice that the individual patient, the individual's  
1559 patient's guardian, guardian advocate, health care surrogate or  
1560 proxy, or representative, or the administrator may apply for a  
1561 change of venue for the convenience of the parties or witnesses  
1562 or because of the condition of the individual patient.

1563           5. Notice that the individual patient is entitled to an  
1564 independent expert examination and, if the individual patient  
1565 cannot afford such an examination, that the court will provide  
1566 for one.

1567           (e)~~(d)~~ A treatment facility shall provide notice of an  
1568 individual's a patient's involuntary admission on the next  
1569 regular working day after the individual's patient's arrival at  
1570 the facility.

1571           (f)~~(e)~~ When an individual a patient is to be transferred  
1572 from one facility to another, notice shall be given by the  
1573 facility where the individual patient is located before ~~prior to~~  
1574 the transfer.

1575           Section 14. Effective July 1, 2016, subsections (1), (2),  
1576 (3), and (10) of section 394.4615, Florida Statutes, are amended



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1577 to read:

1578 394.4615 Clinical records; confidentiality.—

1579 (1) A clinical record shall be maintained for each  
1580 individual held for examination or admitted for treatment under  
1581 this part patient. The record shall include data pertaining to  
1582 admission and such other information as may be required under  
1583 rules of the department. A clinical record is confidential and  
1584 exempt from ~~the provisions of~~ s. 119.07(1). Unless waived by  
1585 express and informed consent of the individual, by the patient  
1586 or his or her the patient's guardian, or guardian advocate,  
1587 health care surrogate or proxy, or, if the individual patient is  
1588 deceased, by his or her guardian, guardian advocate, health care  
1589 surrogate or proxy, by his or her the patient's personal  
1590 representative or the family member who stands next in line of  
1591 intestate succession, the confidential status of the clinical  
1592 record shall not be lost by either authorized or unauthorized  
1593 disclosure to any person, organization, or agency.

1594 (2) The clinical record of an individual held for  
1595 examination or admitted for treatment under this part shall be  
1596 released if when:

1597 (a) The individual patient or the individual's patient's  
1598 guardian, guardian advocate, health care surrogate or proxy, or  
1599 representative authorizes the release. The guardian, ~~or~~ guardian  
1600 advocate, health care surrogate or proxy shall be provided  
1601 access to the appropriate clinical records ~~of the patient~~. The  
1602 individual patient or the patient's guardian, or guardian  
1603 advocate, health care surrogate or proxy may authorize the  
1604 release of information and clinical records to appropriate  
1605 persons to ensure the continuity of the individual's patient's



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1606 health ~~care~~ or mental health or substance abuse care.

1607 (b) The individual patient is represented by counsel and  
1608 the records are needed by the individual's patient's counsel for  
1609 adequate representation.

1610 (c) A petition for involuntary inpatient placement is filed  
1611 and the records are needed by the state attorney to evaluate the  
1612 allegations set forth in the petition or to prosecute the  
1613 petition. However, the state attorney may not use clinical  
1614 records obtained under this part for the purpose of criminal  
1615 investigation or prosecution, or for any other purpose not  
1616 authorized by this part.

1617 (d)(e) The court orders such release. In determining  
1618 whether there is good cause for disclosure, the court shall  
1619 weigh the need for the information to be disclosed against the  
1620 possible harm of disclosure to the individual person to whom  
1621 such information pertains.

1622 (e)(d) The individual patient is committed to, or is to be  
1623 returned to, the Department of Corrections ~~from the Department~~  
1624 ~~of Children and Families,~~ and the Department of Corrections  
1625 requests such records. These records shall be furnished without  
1626 charge to the Department of Corrections.

1627 (3) Information from the clinical record may be released in  
1628 the following circumstances:

1629 (a) When a patient has declared an intention to harm other  
1630 persons. When such declaration has been made, the administrator  
1631 may authorize the release of sufficient information to provide  
1632 adequate warning to law enforcement agencies and to the person  
1633 threatened with harm by the patient.

1634 (b) When the administrator of the facility or secretary of



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1635 the department deems release to a qualified researcher as  
1636 defined in administrative rule, an aftercare treatment provider,  
1637 or an employee or agent of the department is necessary for  
1638 treatment of the patient, maintenance of adequate records,  
1639 compilation of treatment data, aftercare planning, or evaluation  
1640 of programs.

1641  
1642 For the purpose of determining whether a person meets the  
1643 criteria for involuntary outpatient placement or for preparing  
1644 the proposed treatment plan pursuant to s. 394.4655, the  
1645 clinical record may be released to the state attorney, the  
1646 public defender or the patient's private legal counsel, the  
1647 court, and to the appropriate mental health professionals,  
1648 including the service provider identified in s. 394.4655(7)(b)  
1649 ~~s. 394.4655(6)(b)2.~~, in accordance with state and federal law.

1650 (10) An individual held for examination or admitted for  
1651 treatment ~~Patients~~ shall have reasonable access to his or her  
1652 ~~their~~ clinical records, unless such access is determined by the  
1653 individual's ~~patient's~~ physician to be harmful to the individual  
1654 ~~patient~~. If the individual's ~~patient's~~ right to inspect his or  
1655 her clinical record is restricted by the facility, written  
1656 notice of such restriction shall be given to the individual  
1657 ~~patient~~ and the individual's ~~patient's~~ guardian, guardian  
1658 advocate, health care surrogate or proxy, or attorney, and  
1659 representative. In addition, the restriction shall be recorded  
1660 in the clinical record, together with the reasons for it. The  
1661 restriction of an individual's ~~a patient's~~ right to inspect his  
1662 or her clinical record shall expire after 7 days but may be  
1663 renewed, after review, for subsequent 7-day periods.



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1664 Section 15. Effective July 1, 2016, paragraphs (a) through  
1665 (m) of subsection (1) of section 394.462, Florida Statutes, are  
1666 amended, and paragraph (n) is added to that subsection, to read:

1667 394.462 Transportation.—

1668 (1) TRANSPORTATION TO A RECEIVING OR DETOXIFICATION  
1669 FACILITY.—

1670 (a) Each county shall designate a single law enforcement  
1671 agency within the county, or portions thereof, to take an  
1672 individual ~~a person~~ into custody upon the entry of an ex parte  
1673 order or the execution of a certificate for involuntary  
1674 examination by an authorized professional and to transport that  
1675 individual ~~person~~ to the nearest receiving facility for  
1676 examination. The designated law enforcement agency may decline  
1677 to transport the individual ~~person~~ to a receiving or  
1678 detoxification facility only if:

1679 1. The county or jurisdiction designated by the county has  
1680 contracted ~~on an annual basis~~ with an emergency medical  
1681 transport service or private transport company for  
1682 transportation of individuals ~~persons~~ to receiving facilities  
1683 ~~pursuant to this section at the sole cost of the county;~~ and

1684 2. The law enforcement agency and the emergency medical  
1685 transport service or private transport company agree that the  
1686 continued presence of law enforcement personnel is not necessary  
1687 for the safety of the individuals being transported ~~person~~ or  
1688 others.

1689 3. The jurisdiction designated by the county may seek  
1690 reimbursement for transportation expenses. The party responsible  
1691 for payment for such transportation is the person receiving the  
1692 transportation. The county shall seek reimbursement from the



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1693 following sources in the following order:

1694 a. From an insurance company, health care corporation, or  
1695 other source, if the individual being transported ~~person~~  
1696 ~~receiving the transportation~~ is covered by an insurance policy  
1697 or subscribes to a health care corporation or other source for  
1698 payment of such expenses.

1699 b. From the individual being transported ~~person receiving~~  
1700 ~~the transportation~~.

1701 c. From a financial settlement for medical care, treatment,  
1702 hospitalization, or transportation payable or accruing to the  
1703 injured party.

1704 (b) Any company that transports a patient pursuant to this  
1705 subsection is considered an independent contractor and is solely  
1706 liable for the safe and dignified transportation of the patient.  
1707 Such company must be insured and provide no less than \$100,000  
1708 in liability insurance with respect to the transportation of  
1709 patients.

1710 (c) Any company that contracts with a governing board of a  
1711 county to transport patients shall comply with the applicable  
1712 rules of the department to ensure the safety and dignity of the  
1713 patients.

1714 (d) When a law enforcement officer takes custody of a  
1715 person pursuant to this part, the officer may request assistance  
1716 from emergency medical personnel if such assistance is needed  
1717 for the safety of the officer or the person in custody.

1718 (e) When a member of a mental health overlay program or a  
1719 mobile crisis response service is a professional authorized to  
1720 initiate an involuntary examination pursuant to s. 394.463 and  
1721 that professional evaluates a person and determines that



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1722 transportation to a receiving facility is needed, the service,  
1723 at its discretion, may transport the person to the facility or  
1724 may call on the law enforcement agency or other transportation  
1725 arrangement best suited to the needs of the patient.

1726 (f) When a any law enforcement officer has custody of a  
1727 person, based on ~~either noncriminal or minor criminal~~ behavior,  
1728 a misdemeanor, or a felony other than a forcible felony as  
1729 defined in s. 776.08, who ~~that~~ meets the statutory guidelines  
1730 for involuntary examination under this part, the law enforcement  
1731 officer shall transport the individual ~~person~~ to the nearest  
1732 receiving facility for examination.

1733 (g) When any law enforcement officer has arrested a person  
1734 for a forcible felony as defined in s. 776.08 and it appears  
1735 that the person meets the criteria ~~statutory guidelines~~ for  
1736 involuntary examination ~~or placement~~ under this part, such  
1737 person shall first be processed in the same manner as any other  
1738 criminal suspect. The law enforcement agency shall thereafter  
1739 immediately notify the nearest public receiving facility, which  
1740 shall be responsible for promptly arranging for the examination  
1741 and treatment of the person. A receiving facility may not ~~is not~~  
1742 ~~required to~~ admit a person charged with a forcible felony as  
1743 defined in s. 776.08 ~~crime~~ for whom the facility determines and  
1744 documents that it is unable to provide adequate security, but  
1745 shall provide ~~mental health~~ examination and treatment to the  
1746 person at the location where he or she is held.

1747 (h) If the appropriate law enforcement officer believes  
1748 that a person has an emergency medical condition as defined in  
1749 s. 395.002, the person may be first transported to a hospital  
1750 for emergency medical treatment, regardless of whether the



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1751 hospital is a designated receiving facility.

1752 (i) The costs of transportation, evaluation,  
1753 hospitalization, and treatment incurred under this subsection by  
1754 persons who have been arrested for violations of any state law  
1755 or county or municipal ordinance may be recovered as provided in  
1756 s. 901.35.

1757 (j) The nearest receiving facility must accept persons  
1758 brought by law enforcement officers for involuntary examination.

1759 (k) Each law enforcement agency shall develop a memorandum  
1760 of understanding with each receiving facility within the law  
1761 enforcement agency's jurisdiction which reflects a single set of  
1762 protocols for the safe and secure transportation of the person  
1763 and transfer of custody of the person. These protocols must also  
1764 address crisis intervention measures.

1765 (l) When a jurisdiction has entered into a contract with an  
1766 emergency medical transport service or a private transport  
1767 company for transportation of persons to receiving facilities,  
1768 such service or company shall be given preference for  
1769 transportation of persons from nursing homes, assisted living  
1770 facilities, adult day care centers, or adult family-care homes,  
1771 unless the behavior of the person being transported is such that  
1772 transportation by a law enforcement officer is necessary.

1773 (m) Nothing in this section shall be construed to limit  
1774 emergency examination and treatment of incapacitated persons  
1775 provided in accordance with the provisions of s. 401.445.

1776 (n) Upon the request of an individual who appears to meet  
1777 criteria for voluntary admission under s. 394.4625(1)(a), a law  
1778 enforcement officer may transport him or her to a mental health  
1779 receiving facility, addictions receiving facility, or



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1780 detoxification facility.

1781 Section 16. Effective July 1, 2016, subsections (1), (2),  
1782 (4), and (5) of section 394.4625, Florida Statutes, are amended  
1783 to read:

1784 394.4625 Voluntary admissions.—

1785 (1) EXAMINATION AND TREATMENT AUTHORITY TO RECEIVE  
1786 PATIENTS.—

1787 (a) In order to be voluntarily admitted to a facility A  
1788 facility may receive for observation, diagnosis, or treatment:  
1789 any person 18 years of age or older making application by  
1790 express and informed consent for admission or any person age 17  
1791 or under for whom such application is made by his or her  
1792 guardian. If found to

1793 1. An individual must show evidence of mental illness or  
1794 substance abuse impairment, to be competent to provide express  
1795 and informed consent, and to be suitable for treatment, such  
1796 person 18 years of age or older may be admitted to the facility.  
1797 A person age 17 or under may be admitted only after a hearing to  
1798 verify the voluntariness of the consent.

1799 2. An individual must be suitable for treatment by the  
1800 facility.

1801 3. An adult must provide, and be competent to provide,  
1802 express and informed consent.

1803 4. A minor's guardian must provide express and informed  
1804 consent, in conjunction with the consent of the minor. However,  
1805 a minor may be admitted to an addictions receiving facility or  
1806 detoxification facility by his or her own consent without his or  
1807 her guardian's consent, if a physician documents in the clinical  
1808 record that the minor has a substance abuse impairment. If the



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1809 minor is admitted by his or her own consent and without the  
1810 consent of his or her guardian, the facility must request the  
1811 minor's permission to notify an adult family member or friend of  
1812 the minor's voluntary admission into the facility.

1813 a. The consent of the minor is an affirmative agreement by  
1814 the minor to remain at the facility for examination and  
1815 treatment, and failure to object does not constitute consent.

1816 b. The minor's consent must be verified through a clinical  
1817 assessment that is documented in the clinical record and  
1818 conducted within 12 hours after arrival at the facility by a  
1819 licensed professional authorized to initiate an involuntary  
1820 examination pursuant to s. 394.463.

1821 c. In verifying the minor's consent, and using language  
1822 that is appropriate to the minor's age, experience, maturity,  
1823 and condition, the examining professional must provide the minor  
1824 with an explanation as to why the minor will be examined and  
1825 treated, what the minor can expect while in the facility, and  
1826 when the minor may expect to be released. The examining  
1827 professional must determine and document that the minor is able  
1828 to understand the information.

1829 d. Unless the minor's consent is verified pursuant to this  
1830 section, a petition for involuntary inpatient placement shall be  
1831 filed with the court within 1 court working day after his or her  
1832 arrival or the minor must be released to his or her guardian.

1833 (b) A mental health overlay program or a mobile crisis  
1834 response service or a licensed professional who is authorized to  
1835 initiate an involuntary examination pursuant to s. 394.463 and  
1836 is employed by a community mental health center or clinic must,  
1837 pursuant to district procedure approved by the respective



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1838 district administrator, conduct an initial assessment of the  
1839 ability of the following persons to give express and informed  
1840 consent to treatment before such persons may be admitted  
1841 voluntarily:

1842       1. A person 60 years of age or older for whom transfer is  
1843 being sought from a nursing home, assisted living facility,  
1844 adult day care center, or adult family-care home, when such  
1845 person has been diagnosed as suffering from dementia.

1846       2. A person 60 years of age or older for whom transfer is  
1847 being sought from a nursing home pursuant to s. 400.0255(12).

1848       3. A person for whom all decisions concerning medical  
1849 treatment are currently being lawfully made by the health care  
1850 surrogate or proxy designated under chapter 765.

1851       (c) When an initial assessment of the ability of a person  
1852 to give express and informed consent to treatment is required  
1853 under this section, and a mobile crisis response service does  
1854 not respond to the request for an assessment within 2 hours  
1855 after the request is made or informs the requesting facility  
1856 that it will not be able to respond within 2 hours after the  
1857 request is made, the requesting facility may arrange for  
1858 assessment by any licensed professional authorized to initiate  
1859 an involuntary examination pursuant to s. 394.463 who is not  
1860 employed by or under contract with, and does not have a  
1861 financial interest in, either the facility initiating the  
1862 transfer or the receiving facility to which the transfer may be  
1863 made.

1864       (d) A facility may not admit as a voluntary patient a  
1865 person who has been adjudicated incapacitated, unless the  
1866 condition of incapacity has been judicially removed. If a



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1867 facility admits as a voluntary patient a person who is later  
1868 determined to have been adjudicated incapacitated, and the  
1869 condition of incapacity had not been removed by the time of the  
1870 admission, the facility must either discharge the patient or  
1871 transfer the patient to involuntary status.

1872 (e) The health care surrogate or proxy of an individual on  
1873 a voluntary status patient may not consent to the provision of  
1874 mental health treatment or substance abuse treatment for that  
1875 individual the patient. An individual on voluntary status A  
1876 voluntary patient who is unwilling or unable to provide express  
1877 and informed consent to mental health treatment must ~~either~~ be  
1878 discharged or transferred to involuntary status.

1879 (f) Within 24 hours after admission of a voluntary patient,  
1880 the admitting physician shall document in the patient's clinical  
1881 record that the patient is able to give express and informed  
1882 consent for admission. If the patient is not able to give  
1883 express and informed consent for admission, the facility shall  
1884 either discharge the patient or transfer the patient to  
1885 involuntary status pursuant to subsection (5).

1886 (2) RELEASE OR DISCHARGE OF VOLUNTARY PATIENTS.-

1887 (a) A facility shall discharge a voluntary patient:

1888 1. Who has sufficiently improved so that retention in the  
1889 facility is no longer desirable. A patient may also be  
1890 discharged to the care of a community facility.

1891 2. Who revokes consent to admission or requests discharge.  
1892 A voluntary patient or a relative, friend, or attorney of the  
1893 patient may request discharge either orally or in writing at any  
1894 time following admission to the facility. The patient must be  
1895 discharged within 24 hours of the request, unless the request is



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1896 rescinded or the patient is transferred to involuntary status  
1897 pursuant to this section. The 24-hour time period may be  
1898 extended by a treatment facility when necessary for adequate  
1899 discharge planning, but shall not exceed 3 days exclusive of  
1900 weekends and holidays. If the patient, or another on the  
1901 patient's behalf, makes an oral request for discharge to a staff  
1902 member, such request shall be immediately entered in the  
1903 patient's clinical record. If the request for discharge is made  
1904 by a person other than the patient, the discharge may be  
1905 conditioned upon the express and informed consent of the  
1906 patient.

1907 (b) A voluntary patient who has been admitted to a facility  
1908 and who refuses to consent to or revokes consent to treatment  
1909 shall be discharged within 24 hours after such refusal or  
1910 revocation, unless transferred to involuntary status pursuant to  
1911 this section or unless the refusal or revocation is freely and  
1912 voluntarily rescinded by the patient.

1913 (c) An individual on voluntary status who is currently  
1914 charged with a crime shall be returned to the custody of a law  
1915 enforcement officer upon release or discharge from a facility,  
1916 unless the individual has been released from law enforcement  
1917 custody by posting of a bond, by a pretrial conditional release,  
1918 or by other judicial release.

1919 (4) TRANSFER TO VOLUNTARY STATUS.—An individual on  
1920 involuntary status ~~patient~~ who has been assessed and certified  
1921 by a physician or psychologist as competent to provide express  
1922 and informed consent and who applies to be transferred to  
1923 voluntary status shall be transferred to voluntary status  
1924 immediately, ~~unless the individual patient has been charged with~~



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1925 ~~a crime, or~~ has been involuntarily placed for treatment by a  
1926 court pursuant to s. 394.467 and continues to meet the criteria  
1927 for involuntary placement. When transfer to voluntary status  
1928 occurs, notice shall be given as provided in s. 394.4599.

1929 (5) TRANSFER TO INVOLUNTARY STATUS.—If an individual on  
1930 ~~When a voluntary status patient,~~ or an authorized person on the  
1931 individual's patient's behalf, makes a request for discharge,  
1932 the request for discharge, unless freely and voluntarily  
1933 rescinded, must be communicated to a physician, ~~clinical~~  
1934 psychologist, or psychiatrist as quickly as possible within, ~~but~~  
1935 ~~not later than~~ 12 hours after the request is made. If the  
1936 individual patient meets the criteria for involuntary placement,  
1937 the individual must be transferred to a designated receiving  
1938 facility and the administrator of the receiving facility where  
1939 the individual is held must file with the court a petition for  
1940 involuntary placement, ~~within 2 court working days after the~~  
1941 request ~~for discharge~~ is made. If the petition is not filed  
1942 within 2 court working days, the individual must patient shall  
1943 be discharged. Pending the filing of the petition, the  
1944 individual patient may be held and emergency mental health  
1945 treatment rendered in the least restrictive manner, upon the  
1946 written order of a physician, if it is determined that such  
1947 treatment is necessary for the safety of the individual patient  
1948 or others.

1949 Section 17. Effective July 1, 2016, section 394.463,  
1950 Florida Statutes, is amended to read:

1951 394.463 Involuntary examination.—

1952 (1) CRITERIA.—A person may be subject to an ~~taken to a~~  
1953 ~~receiving facility for~~ involuntary examination if there is



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1954 reason to believe that he or she ~~the person~~ has a mental illness  
1955 or substance abuse impairment and because of this ~~his or her~~  
1956 mental illness or substance abuse impairment:

1957 (a)1. The person has refused voluntary examination after  
1958 conscientious explanation and disclosure of the purpose of the  
1959 examination; or

1960 2. The person is unable to determine for himself or herself  
1961 whether examination is necessary; and

1962 (b)1. Without care or treatment, the person is likely to  
1963 suffer from neglect or refuse to care for himself or herself;  
1964 such neglect or refusal poses a real and present threat of  
1965 substantial harm to his or her well-being; and it is not  
1966 apparent that such harm may be avoided through the help of  
1967 willing family members or friends or the provision of other  
1968 services; or

1969 2. There is a substantial likelihood that without care or  
1970 treatment the person will cause serious bodily harm to himself  
1971 or herself or others in the near future, as evidenced by recent  
1972 behavior.

1973 (2) INVOLUNTARY EXAMINATION.—

1974 (a) An involuntary examination may be initiated by any one  
1975 of the following means:

1976 1. A court may enter an ex parte order stating that an  
1977 individual ~~a person~~ appears to meet the criteria for involuntary  
1978 examination, giving the findings on which that conclusion is  
1979 based. The ex parte order for involuntary examination must be  
1980 based on sworn testimony, written or oral, which includes  
1981 specific facts that support the finding that the criteria have  
1982 been met. Any behavior relied on for the issuance of an ex parte



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1983 order must have occurred within the preceding 7 calendar days.  
1984 The order must specify whether the individual must be taken to a  
1985 mental health facility, detoxification facility, or addictions  
1986 receiving facility. ~~If other less restrictive means are not~~  
1987 ~~available, such as voluntary appearance for outpatient~~  
1988 ~~evaluation,~~ A law enforcement officer, or other designated agent  
1989 of the court, shall take the individual person into custody and  
1990 deliver him or her to the nearest ~~receiving~~ facility of the type  
1991 specified in the order for involuntary examination. However, if  
1992 the county in which the individual is taken into custody has a  
1993 transportation exception plan specifying a central receiving  
1994 facility, the law enforcement officer shall transport the  
1995 individual to the central receiving facility pursuant to the  
1996 plan. ~~The order of the court order must shall~~ be made a part of  
1997 the ~~patient's~~ clinical record. A No fee may not shall be charged  
1998 for the filing of an order under this subsection. Any ~~receiving~~  
1999 facility accepting the individual patient based on the court's  
2000 ~~this~~ order must send a copy of the order to the Agency for  
2001 Health Care Administration on the next working day. The order is  
2002 ~~shall be~~ valid only until executed or, if not executed, for the  
2003 period specified in the order itself. If no time limit is  
2004 specified in the order, the order is shall be valid for 7 days  
2005 after the date it that the order was signed.

2006         2. A law enforcement officer shall take a person who  
2007 appears to meet the criteria for involuntary examination into  
2008 custody and deliver ~~the person or have~~ him or her ~~delivered~~ to  
2009 the nearest mental health receiving facility, addictions  
2010 receiving facility, or detoxification facility, whichever the  
2011 officer determines is most appropriate for examination. However,



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2012 if the county in which the individual taken into custody has a  
2013 transportation exception plan specifying a central receiving  
2014 facility, the law enforcement officer shall transport the  
2015 individual to the central receiving facility pursuant to the  
2016 plan. The officer shall complete ~~execute~~ a written report  
2017 detailing the circumstances under which the individual ~~person~~  
2018 was taken into custody. ~~and~~ The report shall be made a part of  
2019 the patient's clinical record. Any receiving facility or  
2020 detoxification facility accepting the individual ~~patient~~ based  
2021 on the ~~this~~ report must send a copy of the report to the Agency  
2022 for Health Care Administration on the next working day.

2023         3. A physician, physician assistant, clinical psychologist,  
2024 advanced registered nurse practitioner certified pursuant to s.  
2025 464.012, psychiatric nurse, mental health counselor, marriage  
2026 and family therapist, or clinical social worker may execute a  
2027 certificate stating that he or she has examined the individual ~~a~~  
2028 person within the preceding 48 hours and finds that the  
2029 individual ~~person~~ appears to meet the criteria for involuntary  
2030 examination and stating the observations upon which that  
2031 conclusion is based. The certificate must specify whether the  
2032 individual is to be taken to a mental health receiving facility,  
2033 an addictions receiving facility, or a detoxification facility,  
2034 and must include specific facts supporting the conclusion that  
2035 the individual would benefit from services provided by the type  
2036 of facility specified. ~~If other less restrictive means are not~~  
2037 available, such as voluntary appearance for outpatient  
2038 evaluation. A law enforcement officer shall take the individual  
2039 ~~person~~ named in the certificate into custody and deliver him or  
2040 her to the nearest ~~receiving~~ facility of the type specified in



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2041 the certificate for involuntary examination. However, if the  
2042 county in which the individual is taken into custody has a  
2043 transportation exception plan specifying a central receiving  
2044 facility, the law enforcement officer shall transport the  
2045 individual to the central receiving facility pursuant to the  
2046 plan. A law enforcement officer may only take an individual into  
2047 custody on the basis of a certificate within 7 calendar days  
2048 after execution of the certificate. The law enforcement officer  
2049 shall complete ~~execute~~ a written report detailing the  
2050 circumstances under which the individual ~~person~~ was taken into  
2051 custody. The report and certificate shall be made a part of the  
2052 ~~patient's~~ clinical record. Any ~~receiving~~ facility accepting the  
2053 individual ~~patient~~ based on the ~~this~~ certificate must send a  
2054 copy of the certificate to the Agency for Health Care  
2055 Administration on the next working day.

2056 (b) An individual may ~~A person shall~~ not be removed from a  
2057 ~~any~~ program or residential placement licensed under chapter 400  
2058 or chapter 429 and transported to a receiving facility for  
2059 involuntary examination unless an ex parte order, a professional  
2060 certificate, or a law enforcement officer's report is first  
2061 prepared. If the condition of the individual ~~person~~ is such that  
2062 preparation of a law enforcement officer's report is not  
2063 practicable before removal, the report must ~~shall~~ be completed  
2064 as soon as possible after removal, but ~~in any case~~ before the  
2065 individual ~~person~~ is transported to a receiving facility. A  
2066 receiving facility admitting an individual ~~a person~~ for  
2067 involuntary examination who is not accompanied by the required  
2068 ex parte order, professional certificate, or law enforcement  
2069 officer's report must ~~shall~~ notify the Agency for Health Care



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2070 Administration of such admission by certified mail by no later  
2071 ~~than~~ the next working day. ~~The provisions of this paragraph do~~  
2072 ~~not apply when transportation is provided by the patient's~~  
2073 ~~family or guardian.~~

2074 (c) A law enforcement officer acting in accordance with an  
2075 ex parte order issued pursuant to this subsection may serve and  
2076 execute such order on any day of the week, at any time of the  
2077 day or night.

2078 (d) A law enforcement officer acting in accordance with an  
2079 ex parte order issued pursuant to this subsection may use such  
2080 reasonable physical force as is necessary to gain entry to the  
2081 premises, and any dwellings, buildings, or other structures  
2082 located on the premises, and to take custody of the person who  
2083 is the subject of the ex parte order.

2084 (e) Petitions and ~~The Agency for Health Care Administration~~  
2085 ~~shall receive and maintain the copies of ex parte orders,~~  
2086 ~~involuntary outpatient placement orders,~~ involuntary outpatient  
2087 placement petitions and orders issued pursuant to s. 394.4655,  
2088 involuntary inpatient placement petitions and orders issued  
2089 pursuant to s. 394.467, professional certificates, and law  
2090 enforcement officers' reports are. ~~These documents shall be~~  
2091 ~~considered part of the clinical record,~~ governed by ~~the~~  
2092 ~~provisions of~~ s. 394.4615. The agency shall prepare annual  
2093 reports analyzing the data obtained from these documents,  
2094 without information identifying individuals held for examination  
2095 or admitted for mental health and substance abuse treatment  
2096 ~~patients,~~ and shall provide copies of reports to the department,  
2097 the President of the Senate, the Speaker of the House of  
2098 Representatives, and the minority leaders of the Senate and the



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2099 House of Representatives.

2100 (f) An individual held for examination ~~A patient~~ shall be  
2101 examined by a physician, a ~~or~~ clinical psychologist, or a  
2102 psychiatric nurse performing within the framework of an  
2103 established protocol with a psychiatrist at a receiving facility  
2104 without unnecessary delay and may, upon the order of a  
2105 physician, be given emergency mental health or substance abuse  
2106 treatment if it is determined that such treatment is necessary  
2107 for the safety of the individual ~~patient~~ or others. ~~The patient~~  
2108 ~~may not be released by the receiving facility or its contractor~~  
2109 ~~without the documented approval of a psychiatrist, a clinical~~  
2110 ~~psychologist, or, if the receiving facility is a hospital, the~~  
2111 ~~release may also be approved by an attending emergency~~  
2112 ~~department physician with experience in the diagnosis and~~  
2113 ~~treatment of mental and nervous disorders and after completion~~  
2114 ~~of an involuntary examination pursuant to this subsection.~~  
2115 ~~However, a patient may not be held in a receiving facility for~~  
2116 ~~involuntary examination longer than 72 hours.~~

2117 (g) An individual may not be held for involuntary  
2118 examination for more than 72 hours from the time of the  
2119 individual's arrival at the facility, except that this period  
2120 may be extended by 48 hours if a physician documents in the  
2121 clinical record that the individual has ongoing symptoms of  
2122 substance intoxication or substance withdrawal and the  
2123 individual would likely experience significant clinical benefit  
2124 from detoxification services. This determination must be made  
2125 based on a face-to-face examination conducted by the physician  
2126 no less than 48 hours and not more than 72 hours after the  
2127 individual's arrival at the facility. Based on the individual's



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2128 needs, one of the following actions must be taken within the  
2129 involuntary examination period:

2130 1. The individual shall be released after consultation with  
2131 the admitting professional and the approval of a psychiatrist,  
2132 psychiatric nurse, psychologist, or substance abuse  
2133 professional. However, if the examination is conducted in a  
2134 hospital, an emergency department physician may approve the  
2135 release or a psychiatric nurse performing within the framework  
2136 of an established protocol with a psychiatrist may also approve  
2137 the release, except when the involuntary examination has been  
2138 initiated by a psychiatrist and the release has not also been  
2139 approved by the initiating psychiatrist. If the examination is  
2140 conducted in an addictions receiving facility or detoxification  
2141 facility, a physician or substance abuse professional may  
2142 approve the release. The professional approving the release must  
2143 have personally conducted the involuntary examination;

2144 2. The individual shall be asked to provide express and  
2145 informed consent for voluntary admission if a physician or  
2146 psychologist has determined that the individual is competent to  
2147 consent to treatment; or

2148 3. A petition for involuntary placement shall be completed  
2149 and filed in the circuit court by the receiving facility  
2150 administrator if involuntary outpatient or inpatient placement  
2151 is deemed necessary. If the 72-hour period ends on a weekend or  
2152 legal holiday, the petition must be filed by the next working  
2153 day. If inpatient placement is deemed necessary, the least  
2154 restrictive treatment consistent with the optimum improvement of  
2155 the individual's condition must be made available.

2156 (h) An individual released from a receiving or treatment



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2157 facility on a voluntary or involuntary basis who is currently  
2158 charged with a crime shall be returned to the custody of law  
2159 enforcement, unless the individual has been released from law  
2160 enforcement custody by posting of a bond, by a pretrial  
2161 conditional release, or by other judicial release.

2162 (i) If an individual ~~A person~~ for whom an involuntary  
2163 examination has been initiated ~~who~~ is being evaluated or treated  
2164 at a hospital for an emergency medical condition specified in s.  
2165 395.002 the involuntary examination period ~~must be examined by a~~  
2166 ~~receiving facility within 72 hours. The 72-hour period begins~~  
2167 ~~when the~~ individual patient arrives at the hospital and ceases  
2168 ~~when a the attending~~ physician documents that the individual  
2169 ~~patient~~ has an emergency medical condition. The 72-hour period  
2170 resumes when the physician documents that the emergency medical  
2171 condition has stabilized or does not exist. ~~If the patient is~~  
2172 ~~examined at a hospital providing emergency medical services by a~~  
2173 ~~professional qualified to perform an involuntary examination and~~  
2174 ~~is found as a result of that examination not to meet the~~  
2175 ~~criteria for involuntary outpatient placement pursuant to s.~~  
2176 ~~394.4655(1) or involuntary inpatient placement pursuant to s.~~  
2177 ~~394.467(1), the patient may be offered voluntary placement, if~~  
2178 ~~appropriate, or released directly from the hospital providing~~  
2179 ~~emergency medical services. The finding by the professional that~~  
2180 ~~the patient has been examined and does not meet the criteria for~~  
2181 ~~involuntary inpatient placement or involuntary outpatient~~  
2182 ~~placement must be entered into the patient's clinical record.~~  
2183 ~~Nothing in this paragraph is intended to prevent A hospital~~  
2184 ~~providing emergency medical services~~ may transfer an individual  
2185 ~~from appropriately transferring a patient to another hospital~~



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2186 before ~~prior to~~ stabilization if, provided the requirements of  
2187 s. 395.1041(3)(c) are ~~have been~~ met. One of the following  
2188 actions must occur within 12 hours after a physician documents  
2189 that the individual's emergency medical condition has stabilized  
2190 or does not exist:

2191 ~~(h) One of the following must occur within 12 hours after~~  
2192 ~~the patient's attending physician documents that the patient's~~  
2193 ~~medical condition has stabilized or that an emergency medical~~  
2194 ~~condition does not exist:~~

2195 1. The individual shall be examined by a physician,  
2196 psychiatric nurse or psychologist and, if found not to meet the  
2197 criteria for involuntary examination pursuant to s. 394.463,  
2198 shall be released directly from the hospital providing the  
2199 emergency medical services. The results of the examination,  
2200 including the final disposition, shall be entered into the  
2201 clinical records; or

2202 2. The individual shall be transferred to a receiving  
2203 facility for examination if appropriate medical and mental  
2204 health treatment is available. However, the receiving facility  
2205 must be notified of the transfer within 2 hours after the  
2206 individual's condition has been stabilized or after  
2207 determination that an emergency medical condition does not  
2208 exist. The patient must be examined by a designated receiving  
2209 facility and released; or

2210 ~~2. The patient must be transferred to a designated~~  
2211 ~~receiving facility in which appropriate medical treatment is~~  
2212 ~~available. However, the receiving facility must be notified of~~  
2213 ~~the transfer within 2 hours after the patient's condition has~~  
2214 ~~been stabilized or after determination that an emergency medical~~



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2215 ~~condition does not exist.~~

2216 ~~(i) Within the 72-hour examination period or, if the 72~~  
2217 ~~hours ends on a weekend or holiday, no later than the next~~  
2218 ~~working day thereafter, one of the following actions must be~~  
2219 ~~taken, based on the individual needs of the patient:~~

2220 ~~1. The patient shall be released, unless he or she is~~  
2221 ~~charged with a crime, in which case the patient shall be~~  
2222 ~~returned to the custody of a law enforcement officer;~~

2223 ~~2. The patient shall be released, subject to the provisions~~  
2224 ~~of subparagraph 1., for voluntary outpatient treatment;~~

2225 ~~3. The patient, unless he or she is charged with a crime,~~  
2226 ~~shall be asked to give express and informed consent to placement~~  
2227 ~~as a voluntary patient, and, if such consent is given, the~~  
2228 ~~patient shall be admitted as a voluntary patient; or~~

2229 ~~4. A petition for involuntary placement shall be filed in~~  
2230 ~~the circuit court when outpatient or inpatient treatment is~~  
2231 ~~deemed necessary. When inpatient treatment is deemed necessary,~~  
2232 ~~the least restrictive treatment consistent with the optimum~~  
2233 ~~improvement of the patient's condition shall be made available.~~  
2234 ~~When a petition is to be filed for involuntary outpatient~~  
2235 ~~placement, it shall be filed by one of the petitioners specified~~  
2236 ~~in s. 394.4655(3)(a). A petition for involuntary inpatient~~  
2237 ~~placement shall be filed by the facility administrator.~~

2238 (3) NOTICE OF RELEASE.—Notice of the release shall be given  
2239 to the individual's patient's guardian, health care surrogate or  
2240 proxy, or representative, to any person who executed a  
2241 certificate admitting the individual patient to the receiving  
2242 facility, and to any court that ~~which~~ ordered the individual's  
2243 examination patient's evaluation.



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2244 Section 18. Effective July 1, 2016, section 394.4655,  
2245 Florida Statutes, is amended to read:

2246 394.4655 Involuntary outpatient placement.—

2247 (1) CRITERIA FOR INVOLUNTARY OUTPATIENT PLACEMENT.—An  
2248 individual ~~A person~~ may be ordered to involuntary outpatient  
2249 placement upon a finding of the court ~~that~~ by clear and  
2250 convincing evidence that:

2251 (a) The individual is an adult ~~person is 18 years of age or~~  
2252 ~~older~~;

2253 (b) The individual ~~person~~ has a mental illness or substance  
2254 abuse impairment;

2255 (c) The individual ~~person~~ is unlikely to survive safely in  
2256 the community without supervision, based on a clinical  
2257 determination;

2258 (d) The individual ~~person~~ has a history of lack of  
2259 compliance with treatment for mental illness or substance abuse  
2260 impairment;

2261 (e) The individual ~~person~~ has:

2262 1. Within ~~At least twice within~~ the immediately preceding  
2263 36 months, been involuntarily admitted to a receiving or  
2264 treatment facility ~~as defined in s. 394.455~~, or has received  
2265 mental health or substance abuse services in a forensic or  
2266 correctional facility. The 36-month period does not include any  
2267 period during which the individual ~~person~~ was admitted or  
2268 incarcerated; or

2269 2. Engaged in one or more acts of serious violent behavior  
2270 toward self or others, or attempts at serious bodily harm to  
2271 himself or herself or others, within the preceding 36 months;

2272 (f) Due to ~~The person is, as a result of~~ his or her mental



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2273 illness or substance abuse impairment, the individual is  
2274 unlikely to voluntarily participate in the recommended treatment  
2275 plan and ~~either he or she~~ has refused voluntary placement for  
2276 treatment after sufficient and conscientious explanation and  
2277 disclosure of the purpose of placement for treatment or ~~he or~~  
2278 ~~she~~ is unable to determine for himself or herself whether  
2279 placement is necessary;

2280 (g) In view of the individual's ~~person's~~ treatment history  
2281 and current behavior, the individual ~~person~~ is in need of  
2282 involuntary outpatient placement in order to prevent a relapse  
2283 or deterioration that would be likely to result in serious  
2284 bodily harm to self ~~himself or herself~~ or others, or a  
2285 substantial harm to his or her well-being as set forth in s.  
2286 394.463(1);

2287 (h) It is likely that the individual ~~person~~ will benefit  
2288 from involuntary outpatient placement; and

2289 (i) All available, less restrictive alternatives that ~~would~~  
2290 offer an opportunity for improvement of his or her condition  
2291 have been judged to be inappropriate or unavailable.

2292 (2) INVOLUNTARY OUTPATIENT PLACEMENT.—

2293 (a)~~1.~~ An individual ~~A patient~~ who is being recommended for  
2294 involuntary outpatient placement by the administrator of the  
2295 receiving facility where he or she ~~the patient~~ has been examined  
2296 may be retained by the facility after adherence to the notice  
2297 procedures provided in s. 394.4599.

2298 1. The recommendation must be supported by the opinion of a  
2299 psychiatrist and the second opinion of a ~~clinical~~ psychologist  
2300 or another psychiatrist, both of whom have personally examined  
2301 the individual ~~patient~~ within the preceding 72 hours, that the



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2302 criteria for involuntary outpatient placement are met. However,  
2303 in a county having a population of fewer than 50,000, if the  
2304 administrator certifies that a psychiatrist or clinical  
2305 psychologist is not available to provide the second opinion, the  
2306 second opinion may be provided by a ~~licensed~~ physician who has  
2307 postgraduate training and experience in diagnosis and treatment  
2308 of mental and nervous disorders or by a psychiatric nurse. Any  
2309 second opinion authorized in this subparagraph may be conducted  
2310 through a face-to-face examination, in person or by electronic  
2311 means. Such recommendation must be entered on an involuntary  
2312 outpatient placement certificate that authorizes the receiving  
2313 facility to retain the individual ~~patient~~ pending completion of  
2314 a hearing. The certificate shall be made a part of the patient's  
2315 clinical record.

2316 2. If the individual ~~patient~~ has been stabilized and no  
2317 longer meets the criteria for involuntary examination pursuant  
2318 to s. 394.463(1), he or she ~~the patient~~ must be released from  
2319 the receiving facility while awaiting the hearing for  
2320 involuntary outpatient placement.

2321 3. Before filing a petition for involuntary outpatient  
2322 treatment, the administrator of the ~~a~~ receiving facility or a  
2323 designated department representative must identify the service  
2324 provider that will have primary responsibility for service  
2325 provision under an order for involuntary outpatient placement,  
2326 unless the individual ~~person~~ is otherwise participating in  
2327 outpatient psychiatric treatment and is not in need of public  
2328 financing for that treatment, in which case the individual, if  
2329 eligible, may be ordered to involuntary treatment pursuant to  
2330 the existing psychiatric treatment relationship.



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2331            ~~4.3.~~ The service provider shall prepare a written proposed  
2332 treatment plan in consultation with the individual being held  
2333 ~~patient~~ or his or her ~~the patient's~~ guardian advocate, if  
2334 appointed, for the court's consideration for inclusion in the  
2335 involuntary outpatient placement order. The service provider  
2336 shall ~~also~~ provide a copy of the proposed treatment plan to the  
2337 individual patient and the administrator of the receiving  
2338 facility. The treatment plan must specify the nature and extent  
2339 of the individual's ~~patient's~~ mental illness or substance abuse  
2340 impairment, address the reduction of symptoms that necessitate  
2341 involuntary outpatient placement, and include measurable goals  
2342 and objectives for the services and treatment that are provided  
2343 to treat the individual's ~~person's~~ mental illness or substance  
2344 abuse impairment and assist the individual ~~person~~ in living and  
2345 functioning in the community or to prevent a relapse or  
2346 deterioration. Service providers may select and supervise other  
2347 providers ~~individuals~~ to implement specific aspects of the  
2348 treatment plan. The services in the treatment plan must be  
2349 deemed clinically appropriate by a physician, ~~clinical~~  
2350 psychologist, psychiatric nurse, mental health counselor,  
2351 marriage and family therapist, or clinical social worker who  
2352 consults with, or is employed or contracted by, the service  
2353 provider. The service provider must certify to the court in the  
2354 proposed treatment plan whether sufficient services for  
2355 improvement and stabilization are currently available and  
2356 whether the service provider agrees to provide those services.  
2357 If the service provider certifies that the services in the  
2358 proposed treatment plan are not available, the petitioner may  
2359 not file the petition.



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2360 (b) If an individual ~~a patient~~ in involuntary inpatient  
2361 placement meets the criteria for involuntary outpatient  
2362 placement, the administrator of the treatment facility may,  
2363 before the expiration of the period during which the treatment  
2364 facility is authorized to retain the individual ~~patient~~,  
2365 recommend involuntary outpatient placement.

2366 1. The recommendation must be supported by the opinion of a  
2367 psychiatrist and the second opinion of a ~~clinical~~ psychologist  
2368 or another psychiatrist, both of whom have personally examined  
2369 the individual ~~patient~~ within the preceding 72 hours, that the  
2370 criteria for involuntary outpatient placement are met. However,  
2371 in a county having a population of fewer than 50,000, if the  
2372 administrator certifies that a psychiatrist or ~~clinical~~  
2373 psychologist is not available to provide the second opinion, the  
2374 second opinion may be provided by a licensed physician who has  
2375 postgraduate training and experience in diagnosis and treatment  
2376 of mental and nervous disorders or by a psychiatric nurse. Any  
2377 second opinion authorized in this subparagraph may be conducted  
2378 through a face-to-face examination, in person or by electronic  
2379 means. Such recommendation must be entered on an involuntary  
2380 outpatient placement certificate, and the certificate must be  
2381 made a part of the individual's ~~patient's~~ clinical record.

2382 ~~2.(c)1.~~ The administrator of the treatment facility shall  
2383 provide a copy of the involuntary outpatient placement  
2384 certificate and a copy of the state mental health discharge form  
2385 to a department representative in the county where the  
2386 individual ~~patient~~ will be residing. ~~For persons who are leaving~~  
2387 ~~a state mental health treatment facility, the petition for~~  
2388 ~~involuntary outpatient placement must be filed in the county~~



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2389 ~~where the patient will be residing.~~

2390       ~~3.2.~~ The service provider that will have primary  
2391 responsibility for service provision shall be identified by the  
2392 designated department representative prior to the order for  
2393 involuntary outpatient placement and must, before ~~prior to~~  
2394 filing a petition for involuntary outpatient placement, certify  
2395 to the court whether the services recommended in the  
2396 individual's ~~patient's~~ discharge plan are available in the local  
2397 community and whether the service provider agrees to provide  
2398 those services. The service provider must develop with the  
2399 individual ~~patient~~, or the patient's guardian advocate, if one  
2400 is appointed, a treatment or service plan that addresses the  
2401 needs identified in the discharge plan. The plan must be deemed  
2402 to be clinically appropriate by a physician, ~~elinical~~  
2403 psychologist, psychiatric nurse, mental health counselor,  
2404 marriage and family therapist, or clinical social worker, ~~as~~  
2405 ~~defined in this chapter~~, who consults with, or is employed or  
2406 contracted by, the service provider.

2407       ~~3. If the service provider certifies that the services in~~  
2408 ~~the proposed treatment or service plan are not available, the~~  
2409 ~~petitioner may not file the petition.~~

2410       (3) PETITION FOR INVOLUNTARY OUTPATIENT PLACEMENT.—

2411       (a) A petition for involuntary outpatient placement may be  
2412 filed by:

2413       1. The administrator of a mental health receiving facility,  
2414 an addictions receiving facility, or a detoxification facility;

2415 or

2416       2. The administrator of a treatment facility.

2417       (b) Each required criterion for involuntary outpatient



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2418 placement must be alleged and substantiated in the petition for  
2419 involuntary outpatient placement. A copy of the certificate  
2420 recommending involuntary outpatient placement completed by a  
2421 qualified professional specified in subsection (2) must be  
2422 attached to the petition. A copy of the proposed treatment plan  
2423 must be attached to the petition. Before the petition is filed,  
2424 the service provider shall certify that the services in the  
2425 proposed treatment plan are available. If the necessary services  
2426 are not available in the patient's local community where the  
2427 individual will reside ~~to respond to the person's individual~~  
2428 ~~needs~~, the petition may not be filed.

2429 (c) A ~~The~~ petition for involuntary outpatient placement  
2430 must be filed in the county where the individual who is the  
2431 subject of the petition ~~patient~~ is located, unless the  
2432 individual ~~patient~~ is being placed from a state treatment  
2433 facility, in which case the petition must be filed in the county  
2434 where the individual ~~patient~~ will reside. When the petition is  
2435 ~~has been~~ filed, the clerk of the court shall provide copies of  
2436 the petition and the proposed treatment plan to the department,  
2437 the individual ~~patient~~, the individual's ~~patient's~~ guardian,  
2438 guardian advocate, health care surrogate or proxy, or  
2439 representative, the state attorney, and the public defender or  
2440 the individual's ~~patient's~~ private counsel. A fee may not be  
2441 charged for filing a petition under this subsection.

2442 (4) APPOINTMENT OF COUNSEL.—Within 1 court working day  
2443 after ~~the~~ filing of a petition for involuntary outpatient  
2444 placement, the court shall appoint the public defender to  
2445 represent the individual ~~person~~ who is the subject of the  
2446 petition, unless the individual ~~person~~ is otherwise represented



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2447 by counsel. The clerk of the court shall immediately notify the  
2448 public defender of the appointment. The public defender shall  
2449 represent the individual ~~person~~ until the petition is dismissed,  
2450 the court order expires, or the individual ~~patient~~ is discharged  
2451 from involuntary outpatient placement. An attorney who  
2452 represents the individual ~~patient~~ shall have access to the  
2453 individual ~~patient~~, witnesses, and records relevant to the  
2454 presentation of the individual's ~~patient's~~ case and shall  
2455 represent the interests of the individual ~~patient~~, regardless of  
2456 the source of payment to the attorney. An attorney representing  
2457 an individual in proceedings under this part shall advocate the  
2458 individual's expressed desires and must be present and actively  
2459 participate in all hearings on involuntary placement. If the  
2460 individual is unable or unwilling to express his or her desires  
2461 to the attorney, the attorney shall proceed as though the  
2462 individual expressed a desire for liberty, opposition to  
2463 involuntary placement and, if placement is ordered, a preference  
2464 for the least restrictive treatment possible.

2465 (5) CONTINUANCE OF HEARING.—The patient is entitled, with  
2466 the concurrence of the patient's counsel, to at least one  
2467 continuance of the hearing. The continuance shall be for a  
2468 period of up to 4 weeks.

2469 (6) HEARING ON INVOLUNTARY OUTPATIENT PLACEMENT.—

2470 (a) ~~1.~~ The court shall hold the hearing on involuntary  
2471 outpatient placement within 5 court working days after the  
2472 filing of the petition, unless a continuance is granted. The  
2473 hearing shall be held in the county where the petition is filed,  
2474 ~~shall~~ be as convenient to the individual who is the subject of  
2475 the petition ~~patient~~ as is consistent with orderly procedure,



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2476 and ~~shall~~ be conducted in physical settings not likely to be  
2477 injurious to the individual's patient's condition. If the court  
2478 finds that the individual's patient's attendance at the hearing  
2479 is not consistent with the best interests of the individual  
2480 ~~patient~~ and if the individual's patient's counsel does not  
2481 object, the court may waive the presence of the individual  
2482 ~~patient~~ from all or any portion of the hearing. The state  
2483 attorney for the circuit in which the individual patient is  
2484 located shall represent the state, rather than the petitioner,  
2485 as the real party in interest in the proceeding. The state  
2486 attorney shall have access to the individual's clinical record  
2487 and witnesses and shall independently evaluate and confirm the  
2488 allegations set forth in the petition for involuntary placement.  
2489 If the allegations are substantiated, the state attorney shall  
2490 prosecute the petition. If the allegations are not  
2491 substantiated, the state attorney shall withdraw the petition.

2492 (b)2- The court may appoint a magistrate ~~master~~ to preside  
2493 at the hearing. One of the professionals who executed the  
2494 involuntary outpatient placement certificate shall be a witness.  
2495 The individual who is the subject of the petition patient and  
2496 his or her the patient's guardian, guardian advocate, health  
2497 care surrogate or proxy, or representative shall be informed by  
2498 the court of the right to an independent expert examination. If  
2499 the individual patient cannot afford such an examination, the  
2500 court shall provide ~~for~~ one. The independent expert's report is  
2501 ~~shall be~~ confidential and not discoverable, unless the expert is  
2502 ~~to be~~ called as a witness for the individual patient at the  
2503 hearing. The court shall allow testimony from persons  
2504 ~~individuals,~~ including family members, deemed by the court to be



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2505 relevant ~~under state law~~, regarding the individual's ~~person's~~  
2506 prior history and how that ~~prior~~ history relates to the  
2507 individual's ~~person's~~ current condition. The testimony in the  
2508 hearing must be ~~given~~ under oath, and the proceedings must be  
2509 recorded. The individual ~~patient~~ may refuse to testify at the  
2510 hearing.

2511 (c) The court shall consider testimony and evidence  
2512 regarding the competence of the individual being held to consent  
2513 to treatment. If the court finds that the individual is  
2514 incompetent to consent, it shall appoint a guardian advocate as  
2515 provided in s. 394.4598.

2516 (7) COURT ORDER.-

2517 (a) ~~(b) 1.~~ If the court concludes that the individual who is  
2518 the subject of the petition ~~patient~~ meets the criteria for  
2519 involuntary outpatient placement under ~~pursuant to~~ subsection  
2520 (1), the court shall issue an order for involuntary outpatient  
2521 placement. The court order may ~~shall~~ be for placement for a  
2522 period of up to 6 months. The order must specify the nature and  
2523 extent of the individual's ~~patient's~~ mental illness or substance  
2524 abuse impairment. The court order ~~of the court~~ and the treatment  
2525 plan must ~~shall~~ be made part of the individual's ~~patient's~~  
2526 clinical record. The service provider shall discharge an  
2527 individual ~~a patient~~ from involuntary outpatient placement when  
2528 the order expires or any time the individual ~~patient~~ no longer  
2529 meets the criteria for involuntary placement. Upon discharge,  
2530 the service provider shall send a certificate of discharge to  
2531 the court.

2532 (b) ~~2.~~ The court may not order the department or the service  
2533 provider to provide services if the program or service is not



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2534 available in the ~~patient's~~ local community of the individual  
2535 being served, if there is no space available in the program or  
2536 service for the individual patient, or if funding is not  
2537 available for the program or service. A copy of the order must  
2538 be sent to the Agency for Health Care Administration by the  
2539 service provider within 1 working day after it is received from  
2540 the court. After the placement order is issued, the service  
2541 provider and the individual patient may modify ~~provisions of~~ the  
2542 treatment plan. For any material modification of the treatment  
2543 plan to which the individual patient or the individual's  
2544 ~~patient's~~ guardian advocate, if appointed, does agree, the  
2545 service provider shall send notice of the modification to the  
2546 court. Any material modifications of the treatment plan which  
2547 are contested by the individual patient or the individual's  
2548 ~~patient's~~ guardian advocate, if appointed, must be approved or  
2549 disapproved by the court consistent with the requirements of  
2550 subsection (2).

2551 (c)3- If, in the clinical judgment of a physician, the  
2552 individual being served patient has failed or has refused to  
2553 comply with the treatment ordered by the court, and, in the  
2554 clinical judgment of the physician, efforts were made to solicit  
2555 compliance and the individual patient may meet the criteria for  
2556 involuntary examination, the individual ~~a person~~ may be brought  
2557 to a receiving facility pursuant to s. 394.463 for involuntary  
2558 examination. If, after examination, the individual patient does  
2559 not meet the criteria for involuntary inpatient placement  
2560 pursuant to s. 394.467, the individual patient must be  
2561 discharged from the receiving facility. The involuntary  
2562 outpatient placement order remains ~~shall remain~~ in effect unless



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2563 the service provider determines that the individual patient no  
2564 longer meets the criteria for involuntary outpatient placement  
2565 or until the order expires. The service provider must determine  
2566 whether modifications should be made to the existing treatment  
2567 plan and must attempt to continue to engage the individual  
2568 ~~patient~~ in treatment. For any material modification of the  
2569 treatment plan to which the individual patient or the  
2570 individual's patient's guardian advocate, if appointed, agrees  
2571 ~~does agree~~, the service provider shall send notice of the  
2572 modification to the court. Any material modifications of the  
2573 treatment plan which are contested by the individual patient or  
2574 the individual's patient's guardian advocate, if appointed, must  
2575 be approved or disapproved by the court consistent with the  
2576 requirements of subsection (2).

2577 (d) ~~(e)~~ If, at any time before the conclusion of the initial  
2578 hearing on involuntary outpatient placement, it appears to the  
2579 court that the individual person does not meet the criteria for  
2580 involuntary outpatient placement under this section but,  
2581 ~~instead~~, meets the criteria for involuntary inpatient placement,  
2582 the court may order the individual person admitted for  
2583 involuntary inpatient examination under s. 394.463. ~~If the~~  
2584 ~~person instead meets the criteria for involuntary assessment,~~  
2585 ~~protective custody, or involuntary admission pursuant to s.~~  
2586 ~~397.675, the court may order the person to be admitted for~~  
2587 ~~involuntary assessment for a period of 5 days pursuant to s.~~  
2588 ~~397.6811. Thereafter, all proceedings shall be governed by~~  
2589 ~~chapter 397.~~

2590 ~~(d) At the hearing on involuntary outpatient placement, the~~  
2591 ~~court shall consider testimony and evidence regarding the~~



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2592 ~~patient's competence to consent to treatment. If the court finds~~  
2593 ~~that the patient is incompetent to consent to treatment, it~~  
2594 ~~shall appoint a guardian advocate as provided in s. 394.4598.~~  
2595 ~~The guardian advocate shall be appointed or discharged in~~  
2596 ~~accordance with s. 394.4598.~~

2597 (e) The administrator of the receiving facility, the  
2598 detoxification facility, or the designated department  
2599 representative shall provide a copy of the court order and  
2600 adequate documentation of an individual's ~~a patient's~~ mental  
2601 illness or substance abuse impairment to the service provider  
2602 for involuntary outpatient placement. Such documentation must  
2603 include any advance directives made by the individual ~~patient~~, a  
2604 psychiatric evaluation of the individual ~~patient~~, and any  
2605 evaluations of the individual ~~patient~~ performed by a ~~clinical~~  
2606 psychologist or a clinical social worker.

2607 ~~(8)(7)~~ PROCEDURE FOR CONTINUED INVOLUNTARY OUTPATIENT  
2608 PLACEMENT.—

2609 (a)~~1~~. If the individual ~~person~~ continues to meet the  
2610 criteria for involuntary outpatient placement, the service  
2611 provider shall, before the expiration of the period during which  
2612 the placement ~~treatment~~ is ordered ~~for the person~~, file in the  
2613 circuit court a petition for continued involuntary outpatient  
2614 placement.

2615 ~~1.2~~. The existing involuntary outpatient placement order  
2616 remains in effect until disposition of ~~on~~ the petition for  
2617 continued involuntary outpatient placement.

2618 ~~2.3~~. A certificate must ~~shall~~ be attached to the petition  
2619 which includes a statement from the individual's ~~person's~~  
2620 physician or ~~clinical~~ psychologist justifying the request, a



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2621 brief description of the individual's ~~patient's~~ treatment during  
2622 the time he or she was involuntarily placed, and a personalized  
2623 ~~an individualized~~ plan of continued treatment.

2624 3.4. The service provider shall develop the ~~individualized~~  
2625 plan of continued treatment in consultation with the individual  
2626 ~~patient~~ or his or her ~~the patient's~~ guardian advocate, if  
2627 appointed. When the petition has been filed, the clerk of the  
2628 court shall provide copies of the certificate and the  
2629 ~~individualized~~ plan of continued treatment to the department,  
2630 the individual ~~patient~~, the individual's ~~patient's~~ guardian  
2631 advocate, the state attorney, and the individual's ~~patient's~~  
2632 private counsel or the public defender.

2633 (b) Within 1 court working day after the filing of a  
2634 petition for continued involuntary outpatient placement, the  
2635 court shall appoint the public defender to represent the  
2636 individual ~~person~~ who is the subject of the petition, unless the  
2637 individual ~~person~~ is otherwise represented by counsel. The clerk  
2638 of the court shall immediately notify the public defender of  
2639 such appointment. The public defender shall represent the  
2640 individual ~~person~~ until the petition is dismissed, ~~or~~ the court  
2641 order expires, or the individual ~~patient~~ is discharged from  
2642 involuntary outpatient placement. Any attorney representing the  
2643 individual ~~patient~~ shall have access to the individual ~~patient~~,  
2644 witnesses, and records relevant to the presentation of the  
2645 individual's ~~patient's~~ case and shall represent the interests of  
2646 the individual ~~patient~~, regardless of the source of payment to  
2647 the attorney.

2648 (c) The court shall inform the individual who is the  
2649 subject of the petition and his or her guardian, guardian



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2650 advocate, health care surrogate or proxy, or representative of  
2651 the individual's right to an independent expert examination. If  
2652 the individual cannot afford such an examination, the court  
2653 shall provide one.

2654 (d)(e) Hearings on petitions for continued involuntary  
2655 outpatient placement are shall be before the circuit court. The  
2656 court may appoint a magistrate master to preside at the hearing.  
2657 The procedures for obtaining an order pursuant to this paragraph  
2658 must shall be in accordance with subsection (6), except that the  
2659 time period included in paragraph (1)(e) is not applicable in  
2660 determining the appropriateness of additional periods of  
2661 involuntary outpatient placement.

2662 (e)(d) Notice of the hearing shall be provided in  
2663 accordance with as set forth in s. 394.4599. The individual  
2664 being served patient and the individual's patient's attorney may  
2665 agree to a period of continued outpatient placement without a  
2666 court hearing.

2667 (f)(e) The same procedure shall be repeated before the  
2668 expiration of each additional period the individual being served  
2669 patient is placed in treatment.

2670 (g)(f) If the individual in involuntary outpatient  
2671 placement patient has previously been found incompetent to  
2672 consent to treatment, the court shall consider testimony and  
2673 evidence regarding the individual's patient's competence.  
2674 Section 394.4598 governs the discharge of the guardian advocate  
2675 if the individual's patient's competency to consent to treatment  
2676 has been restored.

2677  
2678 ===== T I T L E A M E N D M E N T =====



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2679 | And the title is amended as follows:  
2680 |       Between lines 2 and 3  
2681 | insert:  
2682 |       amending ss. 29.004, 39.001, 39.507, and 39.521, F.S.;  
2683 |       conforming provisions to changes made by the act;



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
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	.	
	.	

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The Committee on Appropriations (Garcia) recommended the following:

**Senate Amendment**

Delete lines 2579 - 2891  
and insert:  
participate in all hearings on involuntary placement.

(5) CONTINUANCE OF HEARING.—The individual patient is entitled, with the concurrence of the individual's patient's counsel, to at least one continuance of the hearing. The continuance shall be for a period of up to 4 weeks.

(6) HEARING ON INVOLUNTARY OUTPATIENT PLACEMENT.—



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11 (a)~~1~~. The court shall hold the hearing on involuntary  
12 outpatient placement within 5 court working days after the  
13 filing of the petition, unless a continuance is granted. The  
14 hearing shall be held in the county where the petition is filed,  
15 ~~shall~~ be as convenient to the individual who is the subject of  
16 the petition ~~patient~~ as is consistent with orderly procedure,  
17 and ~~shall~~ be conducted in physical settings not likely to be  
18 injurious to the individual's ~~patient's~~ condition. If the court  
19 finds that the individual's ~~patient's~~ attendance at the hearing  
20 is not consistent with the best interests of the individual  
21 ~~patient~~ and if the individual's ~~patient's~~ counsel does not  
22 object, the court may waive the presence of the individual  
23 ~~patient~~ from all or any portion of the hearing. The state  
24 attorney for the circuit in which the individual ~~patient~~ is  
25 located shall represent the state, rather than the petitioner,  
26 as the real party in interest in the proceeding. The state  
27 attorney shall have access to the individual's clinical record  
28 and witnesses and shall independently evaluate the allegations  
29 set forth in the petition for involuntary placement. If the  
30 allegations are substantiated, the state attorney shall  
31 prosecute the petition. If the allegations are not  
32 substantiated, the state attorney shall withdraw the petition.

33 (b)~~2~~. The court may appoint a magistrate ~~master~~ to preside  
34 at the hearing. One of the professionals who executed the  
35 involuntary outpatient placement certificate shall be a witness.  
36 The individual who is the subject of the petition ~~patient~~ and  
37 his or her ~~the patient's~~ guardian, guardian advocate, health  
38 care surrogate or proxy, or representative shall be informed by  
39 the court of the right to an independent expert examination. If



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40 the individual patient cannot afford such an examination, the  
41 court shall provide ~~for~~ one. The independent expert's report is  
42 ~~shall be~~ confidential and not discoverable, unless the expert is  
43 ~~to be~~ called as a witness for the individual patient at the  
44 hearing. The court shall allow testimony from persons  
45 ~~individuals~~, including family members, deemed by the court to be  
46 relevant ~~under state law~~, regarding the individual's person's  
47 prior history and how that ~~prior~~ history relates to the  
48 individual's person's current condition. The testimony in the  
49 hearing must be ~~given~~ under oath, and the proceedings must be  
50 recorded. The individual patient may refuse to testify at the  
51 hearing.

52 (c) The court shall consider testimony and evidence  
53 regarding the competence of the individual being held to consent  
54 to treatment. If the court finds that the individual is  
55 incompetent to consent, it shall appoint a guardian advocate as  
56 provided in s. 394.4598.

57 (7) COURT ORDER.-

58 (a) ~~(b)~~1. If the court concludes that the individual who is  
59 the subject of the petition patient meets the criteria for  
60 involuntary outpatient placement under ~~pursuant to~~ subsection  
61 (1), the court shall issue an order for involuntary outpatient  
62 placement. The court order may ~~shall~~ be for ~~a period of~~ up to 6  
63 months. The order must specify the nature and extent of the  
64 individual's patient's mental illness or substance abuse  
65 impairment. The court order ~~of the court~~ and the treatment plan  
66 must ~~shall~~ be made part of the individual's patient's clinical  
67 record. The service provider shall discharge an individual a  
68 patient from involuntary outpatient placement when the order



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69 expires or any time the individual patient no longer meets the  
70 criteria for involuntary placement. Upon discharge, the service  
71 provider shall send a certificate of discharge to the court.

72 (b)2- The court may not order the department or the service  
73 provider to provide services if the program or service is not  
74 available in the ~~patient's~~ local community of the individual  
75 being served, if there is no space available in the program or  
76 service for the individual patient, or if funding is not  
77 available for the program or service. A copy of the order must  
78 be sent to the Agency for Health Care Administration by the  
79 service provider within 1 working day after it is received from  
80 the court. After the placement order is issued, the service  
81 provider and the individual patient may modify ~~provisions of~~ the  
82 treatment plan. For any material modification of the treatment  
83 plan to which the individual patient or the individual's  
84 ~~patient's~~ guardian advocate, if appointed, does agree, the  
85 service provider shall send notice of the modification to the  
86 court. Any material modifications of the treatment plan which  
87 are contested by the individual patient or the individual's  
88 ~~patient's~~ guardian advocate, if appointed, must be approved or  
89 disapproved by the court consistent with the requirements of  
90 subsection (2).

91 (c)3- If, in the clinical judgment of a physician, the  
92 individual being served patient has failed or has refused to  
93 comply with the treatment ordered by the court, and, in the  
94 clinical judgment of the physician, efforts were made to solicit  
95 compliance and the individual patient may meet the criteria for  
96 involuntary examination, the individual ~~a person~~ may be brought  
97 to a receiving facility pursuant to s. 394.463 for involuntary



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98 examination. If, after examination, the individual patient does  
99 not meet the criteria for involuntary inpatient placement  
100 pursuant to s. 394.467, the individual patient must be  
101 discharged from the receiving facility. The involuntary  
102 outpatient placement order remains ~~shall remain~~ in effect unless  
103 the service provider determines that the individual patient no  
104 longer meets the criteria for involuntary outpatient placement  
105 or until the order expires. The service provider must determine  
106 whether modifications should be made to the existing treatment  
107 plan and must attempt to continue to engage the individual  
108 ~~patient~~ in treatment. For any material modification of the  
109 treatment plan to which the individual patient or the  
110 individual's patient's guardian advocate, if appointed, agrees  
111 ~~does agree~~, the service provider shall send notice of the  
112 modification to the court. Any material modifications of the  
113 treatment plan which are contested by the individual patient or  
114 the individual's patient's guardian advocate, if appointed, must  
115 be approved or disapproved by the court consistent with the  
116 requirements of subsection (2).

117 (d) ~~(e)~~ If, at any time before the conclusion of the initial  
118 hearing on involuntary outpatient placement, it appears to the  
119 court that the individual person does not meet the criteria for  
120 involuntary outpatient placement under this section but,  
121 ~~instead~~, meets the criteria for involuntary inpatient placement,  
122 the court may order the individual person admitted for  
123 involuntary inpatient examination under s. 394.463. ~~If the~~  
124 ~~person instead meets the criteria for involuntary assessment,~~  
125 ~~protective custody, or involuntary admission pursuant to s.~~  
126 ~~397.675, the court may order the person to be admitted for~~



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127 ~~involuntary assessment for a period of 5 days pursuant to s.~~  
128 ~~397.6811. Thereafter, all proceedings shall be governed by~~  
129 ~~chapter 397.~~

130 ~~(d) At the hearing on involuntary outpatient placement, the~~  
131 ~~court shall consider testimony and evidence regarding the~~  
132 ~~patient's competence to consent to treatment. If the court finds~~  
133 ~~that the patient is incompetent to consent to treatment, it~~  
134 ~~shall appoint a guardian advocate as provided in s. 394.4598.~~  
135 ~~The guardian advocate shall be appointed or discharged in~~  
136 ~~accordance with s. 394.4598.~~

137 (e) The administrator of the receiving facility, the  
138 detoxification facility, or the designated department  
139 representative shall provide a copy of the court order and  
140 adequate documentation of an individual's ~~a patient's~~ mental  
141 illness or substance abuse impairment to the service provider  
142 for involuntary outpatient placement. Such documentation must  
143 include any advance directives made by the individual ~~patient~~, a  
144 psychiatric evaluation of the individual ~~patient~~, and any  
145 evaluations of the individual ~~patient~~ performed by a ~~clinical~~  
146 psychologist or a clinical social worker.

147 ~~(8)-(7) PROCEDURE FOR CONTINUED INVOLUNTARY OUTPATIENT~~  
148 ~~PLACEMENT.-~~

149 ~~(a)1-~~ If the individual ~~person~~ continues to meet the  
150 criteria for involuntary outpatient placement, the service  
151 provider shall, before the expiration of the period during which  
152 the placement ~~treatment~~ is ordered ~~for the person~~, file in the  
153 circuit court a petition for continued involuntary outpatient  
154 placement.

155 ~~1.2-~~ The existing involuntary outpatient placement order



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156 remains in effect until disposition of ~~on~~ the petition for  
157 continued involuntary outpatient placement.

158 ~~2.3.~~ A certificate must ~~shall~~ be attached to the petition  
159 which includes a statement from the individual's ~~person's~~  
160 physician or ~~clinical~~ psychologist justifying the request, a  
161 brief description of the individual's ~~patient's~~ treatment during  
162 the time he or she was involuntarily placed, and a personalized  
163 ~~an individualized~~ plan of continued treatment.

164 ~~3.4.~~ The service provider shall develop the ~~individualized~~  
165 plan of continued treatment in consultation with the individual  
166 ~~patient~~ or his or her ~~the patient's~~ guardian advocate, if  
167 appointed. When the petition has been filed, the clerk of the  
168 court shall provide copies of the certificate and the  
169 ~~individualized~~ plan of continued treatment to the department,  
170 the individual ~~patient~~, the individual's ~~patient's~~ guardian  
171 advocate, the state attorney, and the individual's ~~patient's~~  
172 private counsel or the public defender.

173 (b) Within 1 court working day after the filing of a  
174 petition for continued involuntary outpatient placement, the  
175 court shall appoint the public defender to represent the  
176 individual ~~person~~ who is the subject of the petition, unless the  
177 individual ~~person~~ is otherwise represented by counsel. The clerk  
178 of the court shall immediately notify the public defender of  
179 such appointment. The public defender shall represent the  
180 individual ~~person~~ until the petition is dismissed, ~~or~~ the court  
181 order expires, or the individual ~~patient~~ is discharged from  
182 involuntary outpatient placement. Any attorney representing the  
183 individual ~~patient~~ shall have access to the individual ~~patient~~,  
184 witnesses, and records relevant to the presentation of the



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185 individual's ~~patient's~~ case and shall represent the interests of  
186 the individual ~~patient~~, regardless of the source of payment to  
187 the attorney.

188 (c) The court shall inform the individual who is the  
189 subject of the petition and his or her guardian, guardian  
190 advocate, health care surrogate or proxy, or representative of  
191 the individual's right to an independent expert examination. If  
192 the individual cannot afford such an examination, the court  
193 shall provide one.

194 (d) ~~(e)~~ Hearings on petitions for continued involuntary  
195 outpatient placement are ~~shall be~~ before the circuit court. The  
196 court may appoint a magistrate ~~master~~ to preside at the hearing.  
197 The procedures for obtaining an order pursuant to this paragraph  
198 must ~~shall~~ be in accordance with subsection (6), except that the  
199 time period included in paragraph (1)(e) is not applicable in  
200 determining the appropriateness of additional periods of  
201 involuntary outpatient placement.

202 (e) ~~(d)~~ Notice of the hearing shall be provided in  
203 accordance with as set forth in s. 394.4599. The individual  
204 being served ~~patient~~ and the individual's ~~patient's~~ attorney may  
205 agree to a period of continued outpatient placement without a  
206 court hearing.

207 (f) ~~(e)~~ The same procedure shall be repeated before the  
208 expiration of each additional period the individual being served  
209 ~~patient~~ is placed in treatment.

210 (g) ~~(f)~~ If the individual in involuntary outpatient  
211 placement ~~patient~~ has previously been found incompetent to  
212 consent to treatment, the court shall consider testimony and  
213 evidence regarding the individual's ~~patient's~~ competence.



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214 Section 394.4598 governs the discharge of the guardian advocate  
215 if the individual's ~~patient's~~ competency to consent to treatment  
216 has been restored.

217 Section 15. Effective on July 1, 2016, section 394.467,  
218 Florida Statutes, is amended to read:

219 394.467 Involuntary inpatient placement.—

220 (1) CRITERIA.—An individual ~~A person~~ may be placed in  
221 involuntary inpatient placement for treatment upon a finding of  
222 the court by clear and convincing evidence that:

223 (a) He or she has a mental illness or substance abuse  
224 impairment ~~is mentally ill~~ and because of his or her mental  
225 illness or substance abuse impairment:

226 1.a. He or she has refused voluntary placement for  
227 treatment after sufficient and conscientious explanation and  
228 disclosure of the purpose of placement for treatment; or

229 b. He or she is unable to determine for himself or herself  
230 whether placement is necessary; and

231 2.a. He or she is manifestly incapable of surviving alone  
232 or with the help of willing and responsible family or friends,  
233 including available alternative services, and, without  
234 treatment, is likely to suffer from neglect or refuse to care  
235 for himself or herself, and such neglect or refusal poses a real  
236 and present threat of substantial harm to his or her well-being;  
237 or

238 b. There is substantial likelihood that in the near future  
239 he or she will inflict serious bodily harm on self or others  
240 ~~himself or herself or another person~~, as evidenced by recent  
241 behavior causing, attempting, or threatening such harm; and

242 (b) All available less restrictive treatment alternatives



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243 ~~that which would~~ offer an opportunity for improvement of his or  
244 her condition have been judged to be inappropriate.

245 (2) ADMISSION TO A TREATMENT FACILITY.—An individual ~~A~~  
246 ~~patient~~ may be retained by a mental health receiving facility,  
247 an addictions receiving facility, or a detoxification facility,  
248 or involuntarily placed in a treatment facility upon the  
249 recommendation of the administrator of the receiving facility  
250 where the individual ~~patient~~ has been examined and after  
251 adherence to the notice and hearing procedures provided in s.  
252 394.4599. The recommendation must be supported by the opinion of  
253 a psychiatrist and the second opinion of a ~~clinical~~ psychologist  
254 or another psychiatrist, both of whom have personally examined  
255 the individual ~~patient~~ within the preceding 72 hours, that the  
256 criteria for involuntary inpatient placement are met. However,  
257 in a county that has a population of fewer than 50,000, if the  
258 administrator certifies that a psychiatrist or ~~clinical~~  
259 psychologist is not available to provide the second opinion, the  
260 second opinion may be provided by a licensed physician who has  
261 postgraduate training and experience in diagnosis and treatment  
262 of mental and nervous disorders or by a psychiatric nurse. If  
263 the petition seeks placement for treatment of substance abuse  
264 impairment only and the individual is examined by an addictions  
265 receiving facility or detoxification facility, the first opinion  
266 may be provided by a physician, and the second opinion may be  
267 provided by a qualified professional with respect to substance  
268 abuse treatment. Any second opinion authorized in this  
269 subsection may be conducted through a face-to-face examination,  
270 in person or by electronic means. Such recommendation must ~~shall~~  
271 be entered on an involuntary inpatient placement certificate



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272 that authorizes the receiving facility to retain the individual  
273 being held ~~patient~~ pending transfer to a treatment facility or  
274 completion of a hearing.

275 (3) PETITION FOR INVOLUNTARY INPATIENT PLACEMENT.—The  
276 administrator of the mental health facility, addictions  
277 receiving facility, or detoxification facility shall file a  
278 petition for involuntary inpatient placement in the court in the  
279 county where the individual ~~patient~~ is located. Upon filing, the  
280 clerk of the court shall provide copies to the department, the  
281 individual ~~patient~~, the individual's ~~patient's~~ guardian,  
282 guardian advocate, health care surrogate or proxy, or  
283 representative, and the state attorney and public defender of  
284 the judicial circuit in which the individual ~~patient~~ is located.  
285 A No fee may not ~~shall~~ be charged for the filing of a petition  
286 under this subsection.

287 (4) APPOINTMENT OF COUNSEL.—Within 1 court working day  
288 after the filing of a petition for involuntary inpatient  
289 placement, the court shall appoint the public defender to  
290 represent the individual ~~person~~ who is the subject of the  
291 petition, unless the individual ~~person~~ is otherwise represented  
292 by counsel. The clerk of the court shall immediately notify the  
293 public defender of such appointment. Any attorney representing  
294 the individual ~~patient~~ shall have access to the individual  
295 ~~patient~~, witnesses, and records relevant to the presentation of  
296 the individual's ~~patient's~~ case and shall represent the  
297 interests of the individual ~~patient~~, regardless of the source of  
298 payment to the attorney.

299 (a) An attorney representing an individual in proceedings  
300 under this part shall advocate the individual's expressed



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301 desires and must be present and actively participate in all  
302 hearings on involuntary placement.

303 (b) The state attorney for the judicial circuit in which  
304 the individual is located shall represent the state rather than  
305 the petitioning facility administrator as the real party in  
306 interest in the proceeding. The state attorney shall have access  
307 to the individual's clinical record and witnesses and shall  
308 independently evaluate the allegations set forth in



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
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The Committee on Appropriations (Garcia) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 3063 - 3154

and insert:

Section 16. Effective July 1, 2016, section 394.4672, Florida Statutes, is amended to read:

394.4672 Procedure for placement of veteran with federal agency.—

(1) A facility owned, operated, or administered by the United States Department of Veterans Affairs which provides



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11 mental health services has authority as granted by the  
12 Department of Veterans' Affairs to:

13 (a) Initiate and conduct involuntary examinations pursuant  
14 to s. 394.463.

15 (b) Provide voluntary treatment pursuant to s. 394.4625.

16 (c) Petition for involuntary inpatient placement pursuant  
17 to s. 394.467.

18 (d) Provide involuntary inpatient placement pursuant to  
19 this part.

20 (2)(1) If a ~~Whenever it is determined by the court~~  
21 determines that an individual ~~a person~~ meets the criteria for  
22 involuntary placement and he or she ~~it appears that such person~~  
23 is eligible for care or treatment by the United States  
24 Department of Veterans Affairs or another ~~other~~ agency of the  
25 United States Government, the court, upon receipt of a  
26 certificate from the United States Department of Veterans  
27 Affairs or such other agency showing that facilities are  
28 available and that the individual ~~person~~ is eligible for care or  
29 treatment therein, may place that individual ~~person~~ with the  
30 United States Department of Veterans Affairs or other federal  
31 agency. The individual ~~person whose placement is sought~~ shall be  
32 personally served with notice of the pending placement  
33 proceeding in the manner as provided in this part. ~~and nothing~~  
34 in This section does not shall affect the individual's ~~his or~~  
35 her right to appear and be heard in the proceeding. Upon  
36 placement, the individual is ~~person shall be~~ subject to the  
37 rules and regulations of the United States Department of  
38 Veterans Affairs or other federal agency.

39 (3)(2) The judgment or order of placement issued by a court



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40 of competent jurisdiction of another state or of the District of  
41 Columbia which places an individual, ~~placing a person~~ with the  
42 United States Department of Veterans Affairs or other federal  
43 agency for care or treatment has, ~~shall have~~ the same force and  
44 effect in this state as in the jurisdiction of the court  
45 entering the judgment or making the order. ~~and~~ The courts of  
46 the placing state or of the District of Columbia shall retain ~~be~~  
47 ~~deemed to have retained~~ jurisdiction of the individual ~~person~~ so  
48 placed. Consent is hereby given to the application of the law of  
49 the placing state or district with respect to the authority of  
50 the chief officer of any facility of the United States  
51 Department of Veterans Affairs or other federal agency operated  
52 in this state to retain custody or to transfer, parole, or  
53 discharge the individual ~~person~~.

54 (4) ~~(3)~~ Upon receipt of a certificate of the United States  
55 Department of Veterans Affairs or another ~~such other~~ federal  
56 agency that facilities are available for the care or treatment  
57 of individuals who have mental illness or substance abuse  
58 impairment ~~mentally ill persons~~ and that an individual ~~the~~  
59 ~~person~~ is eligible for that care or treatment, the administrator  
60 of the receiving or treatment facility may ~~cause the transfer of~~  
61 that individual ~~person~~ to the United States Department of  
62 Veterans Affairs or other federal agency. Upon ~~effecting~~ such  
63 transfer, the committing court shall be notified by the  
64 transferring agency. An individual may not ~~No person shall~~ be  
65 transferred ~~to the United States Department of Veterans Affairs~~  
66 ~~or other federal agency~~ if he or she is confined pursuant to the  
67 conviction of any felony or misdemeanor or if he or she has been  
68 acquitted of the charge solely on the ground of insanity, unless



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69 prior to transfer the court placing the individual ~~such person~~  
70 enters an order for the transfer after appropriate motion and  
71 hearing and without objection by the United States Department of  
72 Veterans Affairs.

73 ~~(5)(4)~~ An individual ~~Any person~~ transferred as provided in  
74 this section is ~~shall be~~ deemed to be placed with the United  
75 States Department of Veterans Affairs or other federal agency  
76 pursuant to the original placement.

77 Section 17. Section 394.47891, Florida Statutes, is amended  
78 to read:

79 394.47891 Military veterans and servicemembers court  
80 programs.—The chief judge of each judicial circuit may establish  
81 a Military Veterans and Servicemembers Court Program under which  
82 veterans, as defined in s. 1.01, including veterans who were  
83 discharged or released under a general discharge, and  
84 servicemembers, as defined in s. 250.01, who are convicted of a  
85 criminal offense and who suffer from a military-related mental  
86 illness, traumatic brain injury, substance abuse disorder, or  
87 psychological problem can be sentenced in accordance with  
88 chapter 921 in a manner that appropriately addresses the  
89 severity of the mental illness, traumatic brain injury,  
90 substance abuse disorder, or psychological problem through  
91 services tailored to the individual needs of the participant.  
92 Entry into any Military Veterans and Servicemembers Court  
93 Program must be based upon the sentencing court's assessment of  
94 the defendant's criminal history, military service, substance  
95 abuse treatment needs, mental health treatment needs,  
96 amenability to the services of the program, the recommendation  
97 of the state attorney and the victim, if any, and the



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98 defendant's agreement to enter the program.

99 Section 18. Section 394.47892, Florida Statutes, is created  
100 to read:

101 394.47892 Treatment-based mental health court programs.-

102 (1) Each county may fund a treatment-based mental health  
103 court program under which persons in the justice system assessed  
104 with a mental illness will be processed in such a manner as to  
105 appropriately address the severity of the identified mental  
106 health problem through treatment services tailored to the  
107 individual needs of the participant. The Legislature intends to  
108 encourage the Department of Corrections, the Department of  
109 Children and Families, the Department of Juvenile Justice, the  
110 Department of Health, the Department of Law Enforcement, the  
111 Department of Education, and such agencies, local governments,  
112 law enforcement agencies, other interested public or private  
113 sources, and individuals to support the creation and  
114 establishment of these problem-solving court programs.

115 Participation in the treatment-based mental health court  
116 programs does not divest any public or private agency of its  
117 responsibility for a child or adult, but enables these agencies  
118 to better meet their needs through shared responsibility and  
119 resources.

120 (2) Entry into any pretrial treatment-based mental health  
121 court program is voluntary.

122 (3) (a) Entry into any postadjudicatory treatment-based  
123 mental health court program as a condition of probation or  
124 community control pursuant to s. 948.01 or s. 948.06 must be  
125 based upon the sentencing court's assessment of the defendant's  
126 criminal history, mental health screening outcome, amenability



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127 to the services of the program, the recommendation of the state  
128 attorney and the victim, if any, and the defendant's agreement  
129 to enter the program.

130 (b) An offender who is sentenced to a postadjudicatory  
131 treatment-based mental health court program and who, while a  
132 mental health court program participant, is the subject of a  
133 violation of probation or community control under s. 948.06  
134 shall have the violation of probation or community control heard  
135 by the judge presiding over the postadjudicatory treatment-based  
136 mental health court program. The judge shall dispose of any such  
137 violation, after a hearing on or admission of the violation, as  
138 he or she deems appropriate if the resulting sentence or  
139 conditions are lawful.

140 (4) Treatment-based mental health court programs may  
141 include pretrial intervention programs as provided in s. 948.08,  
142 treatment-based mental health court programs authorized in  
143 chapter 39, postadjudicatory programs as provided in ss. 948.01  
144 and 948.06, and review of the status of compliance or  
145 noncompliance of sentenced offenders through a treatment-based  
146 mental health court program.

147 (5) Contingent upon an annual appropriation by the  
148 Legislature, each judicial circuit with a treatment-based mental  
149 health court program shall establish, at a minimum, one  
150 coordinator position for the treatment-based mental health court  
151 program within the state courts system to coordinate the  
152 responsibilities of the participating agencies and service  
153 providers. Each coordinator shall provide direct support to the  
154 treatment-based mental health court program by providing  
155 coordination between the multidisciplinary team and the



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156 judiciary, providing case management, monitoring compliance of  
157 the participants in the treatment-based mental health court  
158 program with court requirements, and providing program  
159 evaluation and accountability.

160 (6) If a county chooses to fund a treatment-based mental  
161 health court program, the county must secure funding from  
162 sources other than the state for those costs not otherwise  
163 assumed by the state pursuant to s. 29.004. However, this does  
164 not preclude a county from using treatment and other service  
165 funding provided through state executive branch agencies.  
166 Counties may provide, by interlocal agreement, for the  
167 collective funding of these programs.

168 (7) The chief judge of each judicial circuit may appoint an  
169 advisory committee for the treatment-based mental health court  
170 program. The committee shall be composed of the chief judge, or  
171 his or her designee, who shall serve as chair; the judge of the  
172 treatment-based mental health court program, if not otherwise  
173 designated by the chief judge as his or her designee; the state  
174 attorney, or his or her designee; the public defender, or his or  
175 her designee; the treatment-based mental health court program  
176 coordinators; community representatives; treatment  
177 representatives; and any other persons the chair finds are  
178 appropriate.

179 Section 19. Section 394.656, Florida Statutes, is amended  
180 to read:

181 394.656 Criminal Justice, Mental Health, and Substance  
182 Abuse Reinvestment Grant Program.—

183 (1) There is created within the Department of Children and  
184 Families the Criminal Justice, Mental Health, and Substance



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185 Abuse Reinvestment Grant Program. The purpose of the program is  
186 to provide funding to counties with which they can plan,  
187 implement, or expand initiatives that increase public safety,  
188 avert increased spending on criminal justice, and improve the  
189 accessibility and effectiveness of treatment services for adults  
190 and juveniles who have a mental illness, substance abuse  
191 disorder, or co-occurring mental health and substance abuse  
192 disorders and who are in, or at risk of entering, the criminal  
193 or juvenile justice systems.

194 (2) The department shall establish a Criminal Justice,  
195 Mental Health, and Substance Abuse Statewide Grant Review  
196 Committee. The committee shall include:

197 (a) One representative of the Department of Children and  
198 Families;

199 (b) One representative of the Department of Corrections;

200 (c) One representative of the Department of Juvenile  
201 Justice;

202 (d) One representative of the Department of Elderly  
203 Affairs; ~~and~~

204 (e) One representative of the Office of the State Courts  
205 Administrator;

206 (f) One representative of the Department of Veterans'  
207 Affairs;

208 (g) One representative of the Florida Sheriffs Association;

209 (h) One representative of the Florida Police Chiefs  
210 Association;

211 (i) One representative of the Florida Association of  
212 Counties;

213 (j) One representative of the Florida Alcohol and Drug



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214 Abuse Association; and

215 (k) One representative from the Florida Council for  
216 Community Mental Health.

217  
218 The committee shall serve as the advisory body to review policy  
219 and funding issues that help reduce the impact of persons with  
220 mental illness and substance abuse disorders on communities and  
221 the court system. The committee shall advise the department in  
222 selecting priorities for applying and reviewing grants and  
223 investing awarded grant moneys.

224 (3) In addition to the committee established pursuant to  
225 subsection (2), the department shall create a grant review and  
226 selection committee. To the extent possible, the members of the  
227 grant review and selection committee shall have expertise in the  
228 content areas relating to grant applications, including, but not  
229 limited to, substance abuse and mental health disorders,  
230 community corrections, and law enforcement. In addition, members  
231 shall have experience in ~~grant writing,~~ grant reviewing, and  
232 grant application scoring.

233 (4) (a) ~~(3) (a)~~ A county, or a not-for-profit community  
234 provider designated by a local county planning council or  
235 committee described in s. 394.657, may apply for a ~~1-year~~  
236 ~~planning grant or a~~ 3-year implementation or expansion grant.  
237 The purpose of the grants is to demonstrate that investment in  
238 treatment efforts related to mental illness, substance abuse  
239 disorders, or co-occurring mental health and substance abuse  
240 disorders results in a reduced demand on the resources of the  
241 judicial, corrections, juvenile detention, and health and social  
242 services systems.



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243 (b) To be eligible to receive a ~~1-year planning grant or a~~  
244 3-year implementation or expansion grant, a county applicant  
245 must have a county planning council or committee that is in  
246 compliance with the membership requirements set forth in this  
247 section.

248 (5)~~(4)~~ The Criminal Justice, Mental Health, and Substance  
249 Abuse Statewide Grant Review Committee shall notify the  
250 Department of Children and Families in writing of the names of  
251 the applicants who have been selected by the committee to  
252 receive a grant. Contingent upon the availability of funds and  
253 upon notification by the ~~review~~ committee of those applicants  
254 approved to receive ~~planning, implementation, or expansion~~  
255 grants, the Department of Children and Families may transfer  
256 funds appropriated for the grant program to an approved  
257 applicant ~~any county awarded a grant.~~

258 Section 20. Paragraph (a) of subsection (1) of section  
259 394.875, Florida Statutes, is amended to read:

260 394.875 Crisis stabilization units, residential treatment  
261 facilities, and residential treatment centers for children and  
262 adolescents; authorized services; license required.—

263 (1)(a) The purpose of a crisis stabilization unit is to  
264 stabilize and redirect a client to the most appropriate and  
265 least restrictive community setting available, consistent with  
266 the client's needs. Crisis stabilization units may screen,  
267 assess, and admit for stabilization persons who present  
268 themselves to the unit and persons who are brought to the unit  
269 under s. 394.463. Clients may be provided 24-hour observation,  
270 medication prescribed by a physician or psychiatrist, and other  
271 appropriate services. Crisis stabilization units shall provide



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272 services regardless of the client's ability to pay ~~and shall be~~  
273 ~~limited in size to a maximum of 30 beds.~~

274 Section 21. Present subsections (10) and (11) of section  
275 394.9082, Florida Statutes, are redesignated as subsections (11)  
276 and (12), respectively, and a new subsection (10) is added to  
277 that section, to read:

278 394.9082 Behavioral health managing entities.—

279 (10) CRISIS STABILIZATION SERVICES UTILIZATION DATABASE.—

280 The department shall develop, implement, and maintain standards  
281 under which a managing entity shall collect utilization data  
282 from all public receiving facilities situated within its  
283 geographic service area. As used in this subsection, the term  
284 “public receiving facility” means an entity that meets the  
285 licensure requirements of and is designated by the department to  
286 operate as a public receiving facility under s. 394.875 and that  
287 is operating as a licensed crisis stabilization unit.

288 (a) The department shall develop standards and protocols  
289 for managing entities and public receiving facilities to use in  
290 the collection, storage, transmittal, and analysis of data. The  
291 standards and protocols must allow for compatibility of data and  
292 data transmittal between public receiving facilities, managing  
293 entities, and the department for the implementation and  
294 requirements of this subsection. The department shall require  
295 managing entities contracted under this section to comply with  
296 this subsection by August 1, 2015.

297 (b) A managing entity shall require a public receiving  
298 facility within its provider network to submit data to the  
299 managing entity, in real time or at least daily, for:

300 1. All admissions and discharges of clients receiving



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301 public receiving facility services who qualify as indigent, as  
302 defined in s. 394.4787; and

303 2. Current active census of total licensed beds, the number  
304 of beds purchased by the department, the number of clients  
305 qualifying as indigent occupying those beds, and the total  
306 number of unoccupied licensed beds regardless of funding.

307 (c) A managing entity shall require a public receiving  
308 facility within its provider network to submit data, on a  
309 monthly basis, to the managing entity which aggregates the daily  
310 data submitted under paragraph (b). The managing entity shall  
311 reconcile the data in the monthly submission to the data  
312 received by the managing entity under paragraph (b) to check for  
313 consistency. If the monthly aggregate data submitted by a public  
314 receiving facility under this paragraph is inconsistent with the  
315 daily data submitted under paragraph (b), the managing entity  
316 shall consult with the public receiving facility to make  
317 corrections as necessary to ensure accurate data.

318 (d) A managing entity shall require a public receiving  
319 facility within its provider network to submit data, on an  
320 annual basis, to the managing entity which aggregates the data  
321 submitted and reconciled under paragraph (c). The managing  
322 entity shall reconcile the data in the annual submission to the  
323 data received and reconciled by the managing entity under  
324 paragraph (c) to check for consistency. If the annual aggregate  
325 data submitted by a public receiving facility under this  
326 paragraph is inconsistent with the data received and reconciled  
327 under paragraph (c), the managing entity shall consult with the  
328 public receiving facility to make corrections as necessary to  
329 ensure accurate data.



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330       (e) After ensuring accurate data under paragraphs (c) and  
331 (d), the managing entity shall submit the data to the department  
332 on a monthly and an annual basis. The department shall create a  
333 statewide database for the data described under paragraph (b)  
334 and submitted under this paragraph for the purpose of analyzing  
335 the payments for and the use of crisis stabilization services  
336 funded under the Baker Act on a statewide basis and on an  
337 individual public receiving facility basis.

338       (f) The department shall adopt rules to administer this  
339 subsection.

340       (g) The department shall submit a report by January 31,  
341 2016, and annually thereafter, to the Governor, the President of  
342 the Senate, and the Speaker of the House of Representatives  
343 which provides details on the implementation of this subsection,  
344 including the status of the data collection process and a  
345 detailed analysis of the data collected under this subsection.

346       Section 22. For the 2015-2016 fiscal year, the sum of  
347 \$175,000 in nonrecurring funds is appropriated from the Alcohol,  
348 Drug Abuse, and Mental Health Trust Fund to the Department of  
349 Children and Families to implement this subsection.

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

352 And the title is amended as follows:

353       Delete lines 132 - 136

354 and insert:

355       examinations and provide certain treatments; amending  
356       s. 394.47891, F.S.; expanding eligibility criteria for  
357       military veterans' and servicemembers' court programs;  
358       creating s. 394.47892, F.S.; authorizing counties to



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359 fund treatment-based mental health court programs;  
360 providing legislative intent; providing that pretrial  
361 program participation is voluntary; specifying  
362 criteria that a court must consider before sentencing  
363 a person to a postadjudicatory treatment-based mental  
364 health court program; requiring a judge presiding over  
365 a postadjudicatory treatment-based mental health court  
366 program to hear a violation of probation or community  
367 control under certain circumstances; providing that  
368 treatment-based mental health court programs may  
369 include specified programs; requiring a judicial  
370 circuit with a treatment-based mental health court  
371 program to establish a coordinator position, subject  
372 to annual appropriation by the Legislature; providing  
373 county funding requirements for treatment-based mental  
374 health court programs; authorizing the chief judge of  
375 a judicial circuit to appoint an advisory committee  
376 for the treatment-based mental health court program;  
377 specifying membership of the committee; amending s.  
378 394.656, F.S.; revising the composition and duties of  
379 the Criminal Justice, Mental Health, and Substance  
380 Abuse Statewide Grant Review Committee within the  
381 Department of Children and Families; requiring the  
382 department to create a grant review and selection  
383 committee; prescribing duties of the committee;  
384 authorizing a designated not-for-profit community  
385 provider to apply for certain grants; amending s.  
386 394.875, F.S.; removing a limitation on the number of  
387 beds in crisis stabilization units; amending s.



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388 394.9082, F.S.; defining the term "public receiving  
389 facility"; requiring the department to establish  
390 specified standards and protocols with respect to the  
391 administration of the crisis stabilization services  
392 utilization database; directing managing entities to  
393 require public receiving facilities to submit  
394 utilization data on a periodic basis; providing  
395 requirements for the data; requiring managing entities  
396 to periodically submit aggregate data to the  
397 department; requiring the department to adopt rules;  
398 requiring the department to annually submit a report  
399 to the Governor and the Legislature; prescribing  
400 report requirements; providing an appropriation to  
401 implement the database; providing a directive to



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
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The Committee on Appropriations (Garcia) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 3741 - 3824

and insert:

Section 31. Paragraph (a) of subsection (7) of section 948.08, Florida Statutes, is amended to read:

948.08 Pretrial intervention program.—

(7) (a) Notwithstanding any provision of this section, a person who is charged with a felony, other than a felony listed in s. 948.06(8) (c), and identified as a veteran, as defined in



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11 s. 1.01, including a veteran who was discharged or released  
12 under a general discharge, or servicemember, as defined in s.  
13 250.01, who suffers from a military service-related mental  
14 illness, traumatic brain injury, substance abuse disorder, or  
15 psychological problem, is eligible for voluntary admission into  
16 a pretrial veterans' treatment intervention program approved by  
17 the chief judge of the circuit, upon motion of either party or  
18 the court's own motion, except:

19 1. If a defendant was previously offered admission to a  
20 pretrial veterans' treatment intervention program at any time  
21 before trial and the defendant rejected that offer on the  
22 record, the court may deny the defendant's admission to such a  
23 program.

24 2. If a defendant previously entered a court-ordered  
25 veterans' treatment program, the court may deny the defendant's  
26 admission into the pretrial veterans' treatment program.

27 Section 32. Paragraph (a) of subsection (2) of section  
28 948.16, Florida Statutes, is amended to read:

29 948.16 Misdemeanor pretrial substance abuse education and  
30 treatment intervention program; misdemeanor pretrial veterans'  
31 treatment intervention program.—

32 (2) (a) A veteran, as defined in s. 1.01, including a  
33 veteran who was discharged or released under a general  
34 discharge, or servicemember, as defined in s. 250.01, who  
35 suffers from a military service-related mental illness,  
36 traumatic brain injury, substance abuse disorder, or  
37 psychological problem, and who is charged with a misdemeanor is  
38 eligible for voluntary admission into a misdemeanor pretrial  
39 veterans' treatment intervention program approved by the chief



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40 judge of the circuit, for a period based on the program's  
41 requirements and the treatment plan for the offender, upon  
42 motion of either party or the court's own motion. However, the  
43 court may deny the defendant admission into a misdemeanor  
44 pretrial veterans' treatment intervention program if the  
45 defendant has previously entered a court-ordered veterans'  
46 treatment program.

47 Section 33. Section 948.21, Florida Statutes, is amended to  
48 read:

49 948.21 Condition of probation or community control;  
50 military servicemembers and veterans.-

51 (1) Effective for a probationer or community controllee  
52 whose crime was committed on or after July 1, 2012, and who is a  
53 veteran, as defined in s. 1.01, or servicemember, as defined in  
54 s. 250.01, who suffers from a military service-related mental  
55 illness, traumatic brain injury, substance abuse disorder, or  
56 psychological problem, the court may, in addition to any other  
57 conditions imposed, impose a condition requiring the probationer  
58 or community controllee to participate in a treatment program  
59 capable of treating the probationer or community controllee's  
60 mental illness, traumatic brain injury, substance abuse  
61 disorder, or psychological problem.

62 (2) Effective for a probationer or community controllee  
63 whose crime was committed on or after July 1, 2015, and who is a  
64 veteran, as defined in s. 1.01, including a veteran who was  
65 discharged or released under a general discharge, or a  
66 servicemember, as defined in s. 250.01, who suffers from a  
67 military service-related mental illness, traumatic brain injury,  
68 substance abuse disorder, or psychological problem, the court



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69 may impose, in addition to any other conditions imposed, a  
70 condition requiring the probationer or community controllee to  
71 participate in a treatment program established to treat the  
72 probationer or community controllee's mental illness, traumatic  
73 brain injury, substance abuse disorder, or psychological  
74 problem.

75 (3) The court shall give preference to treatment programs  
76 for which the probationer or community controllee is eligible  
77 through the United States Department of Veterans Affairs or the  
78 Florida Department of Veterans' Affairs. The Department of  
79 Corrections is not required to spend state funds to implement  
80 this section.

81 Section 34. Paragraph (1) is added to subsection (3) of  
82 section 1002.20, Florida Statutes, to read:

83 1002.20 K-12 student and parent rights.—Parents of public  
84 school students must receive accurate and timely information  
85 regarding their child's academic progress and must be informed  
86 of ways they can help their child to succeed in school. K-12  
87 students and their parents are afforded numerous statutory  
88 rights including, but not limited to, the following:

89 (3) HEALTH ISSUES.—

90 (1) Notification of involuntary examinations.—The public  
91 school principal or the principal's designee shall immediately  
92 notify the parent of a student who is removed from school,  
93 school transportation, or a school-sponsored activity and taken  
94 to a receiving facility for an involuntary examination pursuant  
95 to s. 394.463. The principal or the principal's designee may  
96 delay notification for no more than 24 hours after the student  
97 is removed from school if the principal or designee deems the



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98 delay to be in the student's best interest and if a report has  
99 been submitted to the central abuse hotline, pursuant to s.  
100 39.201, based upon knowledge or suspicion of abuse, abandonment,  
101 or neglect. Each district school board shall develop a policy  
102 and procedures for notification under this paragraph.

103 Section 35. Paragraph (q) is added to subsection (9) of  
104 section 1002.33, Florida Statutes, to read:

105 1002.33 Charter schools.—

106 (9) CHARTER SCHOOL REQUIREMENTS.—

107 (q) The charter school principal or the principal's  
108 designee shall immediately notify the parent of a student who is  
109 removed from school, school transportation, or a school-  
110 sponsored activity and taken to a receiving facility for an  
111 involuntary examination pursuant to s. 394.463. The principal or  
112 the principal's designee may delay notification for no more than  
113 24 hours after the student is removed from school if the  
114 principal or designee deems the delay to be in the student's  
115 best interest and if a report has been submitted to the central  
116 abuse hotline, pursuant to s. 39.201, based upon knowledge or  
117 suspicion of abuse, abandonment, or neglect. Each charter school  
118 governing board shall develop a policy and procedures for  
119 notification under this paragraph.

120 Section 36. Effective July 1, 2016, paragraph (a) of  
121 subsection (3) of section 39.407, Florida Statutes, is amended  
122 to read:

123 39.407 Medical, psychiatric, and psychological examination  
124 and treatment of child; physical, mental, or substance abuse  
125 examination of person with or requesting child custody.—

126 (3) (a)1. Except as otherwise provided in subparagraph (b)1.



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127 or paragraph (e), before the department provides psychotropic  
128 medications to a child in its custody, the prescribing physician  
129 shall attempt to obtain express and informed consent, as defined  
130 in s. 394.455(13) ~~s. 394.455(9)~~ and as described in s.  
131 394.459(4)(a) ~~s. 394.459(3)(a)~~, from the child's parent or legal  
132 guardian. The department must take steps necessary to facilitate  
133 the inclusion of the parent in the child's consultation with the  
134 physician. However, if the parental rights of the parent have  
135 been terminated, the parent's location or identity is unknown or  
136 cannot reasonably be ascertained, or the parent declines to give  
137 express and informed consent, the department may, after  
138 consultation with the prescribing physician, seek court  
139 authorization to provide the psychotropic medications to the  
140 child. Unless parental rights have been terminated and if it is  
141 possible to do so, the department shall continue to involve the  
142 parent in the decisionmaking process regarding the provision of  
143 psychotropic medications. If, at any time, a parent whose  
144 parental rights have not been terminated provides express and  
145 informed consent to the provision of a psychotropic medication,  
146 the requirements of this section that the department seek court  
147 authorization do not apply to that medication until such time as  
148 the parent no longer consents.

149 2. Any time the department seeks a medical evaluation to  
150 determine the need to initiate or continue a psychotropic  
151 medication for a child, the department must provide to the  
152 evaluating physician all pertinent medical information known to  
153 the department concerning that child.

154 Section 37. Effective July 1, 2016, subsection (2) of  
155 section 394.4612, Florida Statutes, is amended to read:



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156 394.4612 Integrated adult mental health crisis  
157 stabilization and addictions receiving facilities.—

158 (2) An integrated mental health crisis stabilization unit  
159 and addictions receiving facility may provide services under  
160 this section to adults who are 18 years of age or older and who  
161 fall into one ~~or more~~ of the following categories:

162 (a) An adult meeting the requirements for voluntary  
163 admission for mental health treatment under s. 394.4625.

164 (b) An adult meeting the criteria for involuntary  
165 examination for mental illness under s. 394.463.

166

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

168 And the title is amended as follows:

169 Delete line 265

170 and insert:

171 provisions are not severable; amending s. 948.08,  
172 F.S.; expanding the definition of the term "veteran"  
173 for purposes of eligibility requirements for a  
174 pretrial intervention program; amending s. 948.16,  
175 F.S.; expanding the definition of the term "veteran"  
176 for purposes of eligibility requirements for a  
177 misdemeanor pretrial veterans' treatment intervention  
178 program; amending s. 948.21, F.S.; authorizing a court  
179 to impose certain conditions on certain probationers  
180 or community controllees; amending ss. 1002.20 and



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
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The Committee on Appropriations (Garcia) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 3825 - 4392  
and insert:

(c) An adult qualifying for voluntary admission for substance abuse treatment under s. 394.4625 ~~s. 397.601~~.

(d) An adult meeting the criteria for involuntary admission for substance abuse impairment under s. 394.463 ~~s. 397.675~~.

Section 35. Effective July 1, 2016, paragraphs (a) and (c) of subsection (3) of section 394.495, Florida Statutes, are



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11 amended to read:

12 394.495 Child and adolescent mental health system of care;  
13 programs and services.—

14 (3) Assessments must be performed by:

15 (a) A professional as defined in s. 394.455(6), (31), (34),  
16 (35), or (36) ~~s. 394.455(2), (4), (21), (23), or (24);~~

17 (c) A person who is under the direct supervision of a  
18 professional as defined in s. 394.455(6), (31), (34), (35), or  
19 (36) ~~s. 394.455(2), (4), (21), (23), or (24)~~ or a professional  
20 licensed under chapter 491.

21

22 The department shall adopt by rule statewide standards for  
23 mental health assessments, which must be based on current  
24 relevant professional and accreditation standards.

25 Section 36. Effective July 1, 2016, subsection (6) of  
26 section 394.496, Florida Statutes, is amended to read:

27 394.496 Service planning.—

28 (6) A professional as defined in s. 394.455(6), (31), (34),  
29 (35), or (36) ~~s. 394.455(2), (4), (21), (23), or (24)~~ or a  
30 professional licensed under chapter 491 must be included among  
31 those persons developing the services plan.

32 Section 37. Effective July 1, 2016, subsection (2) of  
33 section 394.499, Florida Statutes, is amended to read:

34 394.499 Integrated children's crisis stabilization  
35 unit/juvenile addictions receiving facility services.—

36 (2) Children eligible to receive integrated children's  
37 crisis stabilization unit/juvenile addictions receiving facility  
38 services include:

39 (a) A person under 18 years of age for whom voluntary



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40 application is made by his or her guardian, if such person is  
41 found to show evidence of mental illness and to be suitable for  
42 treatment pursuant to s. 394.4625. A person under 18 years of  
43 age may be admitted for integrated facility services only after  
44 a hearing to verify that the consent to admission is voluntary.

45 (b) A person under 18 years of age who may be taken to a  
46 receiving facility for involuntary examination, if there is  
47 reason to believe that he or she is mentally ill and because of  
48 his or her mental illness, pursuant to s. 394.463:

49 1. Has refused voluntary examination after conscientious  
50 explanation and disclosure of the purpose of the examination; or

51 2. Is unable to determine for himself or herself whether  
52 examination is necessary; and

53 a. Without care or treatment is likely to suffer from  
54 neglect or refuse to care for himself or herself; such neglect  
55 or refusal poses a real and present threat of substantial harm  
56 to his or her well-being; and it is not apparent that such harm  
57 may be avoided through the help of willing family members or  
58 friends or the provision of other services; or

59 b. There is a substantial likelihood that without care or  
60 treatment he or she will cause serious bodily harm to himself or  
61 herself or others in the near future, as evidenced by recent  
62 behavior.

63 (c) A person under 18 years of age who wishes to enter  
64 treatment for substance abuse and applies to a service provider  
65 for voluntary admission, pursuant to s. 394.4625(1)(a) ~~s.~~  
66 ~~397.601.~~

67 ~~(d) A person under 18 years of age who meets the criteria~~  
68 ~~for involuntary admission because there is good faith reason to~~



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69 ~~believe the person is substance abuse impaired pursuant to s.~~  
70 ~~397.675 and, because of such impairment:~~

71 ~~1. Has lost the power of self control with respect to~~  
72 ~~substance use; and~~

73 ~~2.a. Has inflicted, or threatened or attempted to inflict,~~  
74 ~~or unless admitted is likely to inflict, physical harm on~~  
75 ~~himself or herself or another; or~~

76 ~~b. Is in need of substance abuse services and, by reason of~~  
77 ~~substance abuse impairment, his or her judgment has been so~~  
78 ~~impaired that the person is incapable of appreciating his or her~~  
79 ~~need for such services and of making a rational decision in~~  
80 ~~regard thereto; however, mere refusal to receive such services~~  
81 ~~does not constitute evidence of lack of judgment with respect to~~  
82 ~~his or her need for such services.~~

83 ~~(d)(e)~~ A person under 18 years of age who meets the  
84 criteria for examination or admission under paragraph (b) ~~or~~  
85 ~~paragraph (d)~~ and has a coexisting mental health and substance  
86 abuse disorder.

87 Section 38. Effective July 1, 2016, subsection (18) of  
88 section 394.67, Florida Statutes, is amended to read:

89 394.67 Definitions.—As used in this part, the term:

90 (18) "Person who is experiencing an acute substance abuse  
91 crisis" means a child, adolescent, or adult who is experiencing  
92 a medical or emotional crisis because of the use of alcoholic  
93 beverages or any psychoactive or mood-altering substance. The  
94 term includes an individual who meets the criteria for  
95 involuntary admission specified in s. 394.463 ~~s. 397.675~~.

96 Section 39. Effective July 1, 2016, subsection (2) of  
97 section 394.674, Florida Statutes, is amended to read:



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98           394.674 Eligibility for publicly funded substance abuse and  
99 mental health services; fee collection requirements.—

100           (2) Crisis services, as defined in s. 394.67, must, within  
101 the limitations of available state and local matching resources,  
102 be available to each person who is eligible for services under  
103 subsection (1), regardless of the person's ability to pay for  
104 such services. A person who is experiencing a mental health  
105 crisis and who does not meet the criteria for involuntary  
106 examination under s. 394.463(1), or a person who is experiencing  
107 a substance abuse crisis and who does not meet the involuntary  
108 admission criteria in s. 394.463 ~~s. 397.675~~, must contribute to  
109 the cost of his or her care and treatment pursuant to the  
110 sliding fee scale developed under subsection (4), unless  
111 charging a fee is contraindicated because of the crisis  
112 situation.

113           Section 40. Effective July 1, 2016, subsection (6) of  
114 section 394.9085, Florida Statutes, is amended to read:

115           394.9085 Behavioral provider liability.—

116           (6) For purposes of this section, the terms "detoxification  
117 services," "addictions receiving facility," and "receiving  
118 facility" have the same meanings as those provided in ss.  
119 397.311(18)(a)4., 397.311(18)(a)1., and 394.455(27) ~~394.455(26)~~,  
120 respectively.

121           Section 41. Effective July 1, 2016, subsection (11) and  
122 paragraph (a) of subsection (18) of section 397.311, Florida  
123 Statutes, are amended to read:

124           397.311 Definitions.—As used in this chapter, except part  
125 VIII, the term:

126           (11) "Habitual abuser" means a person who is brought to the



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127 attention of law enforcement for being substance impaired, who  
128 meets the criteria for involuntary admission in s.394.463 ~~s.~~  
129 ~~397.675~~, and who has been taken into custody for such impairment  
130 three or more times during the preceding 12 months.

131 (18) Licensed service components include a comprehensive  
132 continuum of accessible and quality substance abuse prevention,  
133 intervention, and clinical treatment services, including the  
134 following services:

135 (a) "Clinical treatment" means a professionally directed,  
136 deliberate, and planned regimen of services and interventions  
137 that are designed to reduce or eliminate the misuse of drugs and  
138 alcohol and promote a healthy, drug-free lifestyle. As defined  
139 by rule, "clinical treatment services" include, but are not  
140 limited to, the following licensable service components:

141 1. "Addictions receiving facility" is a secure, acute care  
142 facility that provides, at a minimum, detoxification and  
143 stabilization services and ~~is~~ operated 24 hours per day, 7 days  
144 per week; and is designated by the department to serve  
145 individuals found to be substance use impaired as described in  
146 s. 394.463 ~~s. 397.675~~ who meet the placement criteria for this  
147 component.

148 2. "Day or night treatment" is a service provided in a  
149 nonresidential environment, with a structured schedule of  
150 treatment and rehabilitative services.

151 3. "Day or night treatment with community housing" means a  
152 program intended for individuals who can benefit from living  
153 independently in peer community housing while participating in  
154 treatment services for a minimum of 5 hours a day for a minimum  
155 of 25 hours per week.



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156           4. "Detoxification" is a service involving subacute care  
157 that is provided on an inpatient or an outpatient basis to  
158 assist individuals to withdraw from the physiological and  
159 psychological effects of substance abuse and who meet the  
160 placement criteria for this component.

161           5. "Intensive inpatient treatment" includes a planned  
162 regimen of evaluation, observation, medical monitoring, and  
163 clinical protocols delivered through an interdisciplinary team  
164 approach provided 24-hours-per-day ~~24 hours per day~~, 7-days-per-  
165 week ~~7 days per week~~, in a highly structured, live-in  
166 environment.

167           6. "Intensive outpatient treatment" is a service that  
168 provides individual or group counseling in a more structured  
169 environment, is of higher intensity and duration than outpatient  
170 treatment, and is provided to individuals who meet the placement  
171 criteria for this component.

172           7. "Medication-assisted treatment for opiate addiction" is  
173 a service that uses methadone or other medication as authorized  
174 by state and federal law, in combination with medical,  
175 rehabilitative, and counseling services in the treatment of  
176 individuals who are dependent on opioid drugs.

177           8. "Outpatient treatment" is a service that provides  
178 individual, group, or family counseling by appointment during  
179 scheduled operating hours for individuals who meet the placement  
180 criteria for this component.

181           9. "Residential treatment" is a service provided in a  
182 structured live-in environment within a nonhospital setting on a  
183 24-hours-per-day, 7-days-per-week basis, and is intended for  
184 individuals who meet the placement criteria for this component.



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185 Section 42. Effective July 1, 2016, paragraph (b) of  
186 subsection (2) of section 397.702, Florida Statutes, is amended  
187 to read:

188 397.702 Authorization of local ordinances for treatment of  
189 habitual abusers in licensed secure facilities.-

190 (2) Ordinances for the treatment of habitual abusers must  
191 provide:

192 (b) That when seeking treatment of a habitual abuser, the  
193 county or municipality, through an officer or agent specified in  
194 the ordinance, must file with the court a petition which alleges  
195 the following information about the alleged habitual abuser (the  
196 respondent):

197 1. The name, address, age, and gender of the respondent.

198 2. The name of any spouse, adult child, other relative, or  
199 guardian of the respondent, if known to the petitioner, and the  
200 efforts, if any, by the petitioner, ~~if any~~, to ascertain this  
201 information.

202 3. The name of the petitioner, the name of the person who  
203 has physical custody of the respondent, and the current location  
204 of the respondent.

205 4. That the respondent has been taken into custody for  
206 impairment in a public place, or has been arrested for an  
207 offense committed while impaired, three or more times during the  
208 preceding 12 months.

209 5. Specific facts indicating that the respondent meets the  
210 criteria for involuntary admission in s. 394.463 ~~s. 397.675~~.

211 6. Whether the respondent was advised of his or her right  
212 to be represented by counsel and to request that the court  
213 appoint an attorney if he or she is unable to afford one, and



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214 whether the respondent indicated to petitioner his or her desire  
215 to have an attorney appointed.

216 Section 43. Effective July 1, 2016, paragraph (a) of  
217 subsection (1) of section 397.94, Florida Statutes, is amended  
218 to read:

219 397.94 Children's substance abuse services; information and  
220 referral network.—

221 (1) The substate entity shall determine the most cost-  
222 effective method for delivering this service and may select a  
223 new provider or utilize an existing provider or providers with a  
224 record of success in providing information and referral  
225 services.

226 (a) The plan must provide assurances that the information  
227 and referral network will include a resource directory that  
228 contains information regarding the children's substance abuse  
229 services available, including, but not limited to:

230 1. Public and private resources by service component,  
231 including resources for involuntary admissions under s. 394.463  
232 ~~s. 397.675~~.

233 2. Hours of operation and hours during which services are  
234 provided.

235 3. Ages of persons served.

236 4. Description of services.

237 5. Eligibility requirements.

238 6. Fee schedules.

239 Section 44. Effective July 1, 2016, paragraph (b) of  
240 subsection (1) of section 409.972, Florida Statutes, is amended  
241 to read:

242 409.972 Mandatory and voluntary enrollment.—



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243 (1) The following Medicaid-eligible persons are exempt from  
244 mandatory managed care enrollment required by s. 409.965, and  
245 may voluntarily choose to participate in the managed medical  
246 assistance program:

247 (b) Medicaid recipients residing in residential commitment  
248 facilities operated through the Department of Juvenile Justice  
249 or mental health treatment facilities as defined by s.  
250 394.455(47) ~~s. 394.455(32)~~.

251 Section 45. Effective July 1, 2016, subsection (7) of  
252 section 744.704, Florida Statutes, is amended to read:

253 744.704 Powers and duties.—

254 (7) A public guardian shall not commit a ward to a mental  
255 health treatment facility, as defined in s. 394.455(47) ~~s.~~  
256 ~~394.455(32)~~, without an involuntary placement proceeding as  
257 provided by law.

258 Section 46. Effective July 1, 2016, paragraph (a) of  
259 subsection (2) of section 790.065, Florida Statutes, is amended  
260 to read:

261 790.065 Sale and delivery of firearms.—

262 (2) Upon receipt of a request for a criminal history record  
263 check, the Department of Law Enforcement shall, during the  
264 licensee's call or by return call, forthwith:

265 (a) Review any records available to determine if the  
266 potential buyer or transferee:

267 1. Has been convicted of a felony and is prohibited from  
268 receipt or possession of a firearm pursuant to s. 790.23;

269 2. Has been convicted of a misdemeanor crime of domestic  
270 violence, and therefore is prohibited from purchasing a firearm;

271 3. Has had adjudication of guilt withheld or imposition of



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272 sentence suspended on any felony or misdemeanor crime of  
273 domestic violence unless 3 years have elapsed since probation or  
274 any other conditions set by the court have been fulfilled or  
275 expunction has occurred; or

276 4. Has been adjudicated mentally defective or has been  
277 committed to a mental institution by a court or as provided in  
278 sub-sub-subparagraph b.(II), and as a result is prohibited by  
279 state or federal law from purchasing a firearm.

280 a. As used in this subparagraph, "adjudicated mentally  
281 defective" means a determination by a court that a person, as a  
282 result of marked subnormal intelligence, or mental illness,  
283 incompetency, condition, or disease, is a danger to himself or  
284 herself or to others or lacks the mental capacity to contract or  
285 manage his or her own affairs. The phrase includes a judicial  
286 finding of incapacity under s. 744.331(6)(a), an acquittal by  
287 reason of insanity of a person charged with a criminal offense,  
288 and a judicial finding that a criminal defendant is not  
289 competent to stand trial.

290 b. As used in this subparagraph, "committed to a mental  
291 institution" means:

292 (I) Involuntary commitment, commitment for mental  
293 defectiveness or mental illness, and commitment for substance  
294 abuse. The phrase includes involuntary inpatient placement as  
295 defined in s. 394.467, involuntary outpatient placement as  
296 defined in s. 394.4655, involuntary assessment and stabilization  
297 under s. 394.463(2)(g) ~~s. 397.6818~~, or and involuntary substance  
298 abuse treatment under s. 394.463 ~~s. 397.6957~~, but does not  
299 include a person in a mental institution for observation or  
300 discharged from a mental institution based upon the initial



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301 review by the physician or a voluntary admission to a mental  
302 institution; or

303 (II) Notwithstanding sub-sub-subparagraph (I), voluntary  
304 admission to a mental institution for outpatient or inpatient  
305 treatment of a person who had an involuntary examination under  
306 s. 394.463, where each of the following conditions have been  
307 met:

308 (A) An examining physician found that the person is an  
309 imminent danger to himself or herself or others.

310 (B) The examining physician certified that if the person  
311 did not agree to voluntary treatment, a petition for involuntary  
312 outpatient or inpatient treatment would have been filed under s.  
313 394.463(2)(g) ~~s. 394.463(2)(i)4.~~, or the examining physician  
314 certified that a petition was filed and the person subsequently  
315 agreed to voluntary treatment prior to a court hearing on the  
316 petition.

317 (C) Before agreeing to voluntary treatment, the person  
318 received written notice of that finding and certification, and  
319 written notice that as a result of such finding, he or she may  
320 be prohibited from purchasing a firearm, and may not be eligible  
321 to apply for or retain a concealed weapon or firearms license  
322 under s. 790.06 and the person acknowledged such notice in  
323 writing, in substantially the following form:

324  
325 "I understand that the doctor who examined me believes I am  
326 a danger to myself or to others. I understand that if I do not  
327 agree to voluntary treatment, a petition will be filed in court  
328 to require me to receive involuntary treatment. I understand  
329 that if that petition is filed, I have the right to contest it.



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330 In the event a petition has been filed, I understand that I can  
331 subsequently agree to voluntary treatment prior to a court  
332 hearing. I understand that by agreeing to voluntary treatment in  
333 either of these situations, I may be prohibited from buying  
334 firearms and from applying for or retaining a concealed weapons  
335 or firearms license until I apply for and receive relief from  
336 that restriction under Florida law.”

337

338 (D) A judge or a magistrate has, pursuant to sub-sub-  
339 subparagraph c.(II), reviewed the record of the finding,  
340 certification, notice, and written acknowledgment classifying  
341 the person as an imminent danger to himself or herself or  
342 others, and ordered that such record be submitted to the  
343 department.

344 c. In order to check for these conditions, the department  
345 shall compile and maintain an automated database of persons who  
346 are prohibited from purchasing a firearm based on court records  
347 of adjudications of mental defectiveness or commitments to  
348 mental institutions.

349 (I) Except as provided in sub-sub-subparagraph (II), clerks  
350 of court shall submit these records to the department within 1  
351 month after the rendition of the adjudication or commitment.  
352 Reports shall be submitted in an automated format. The reports  
353 must, at a minimum, include the name, along with any known alias  
354 or former name, the sex, and the date of birth of the subject.

355 (II) For persons committed to a mental institution pursuant  
356 to sub-sub-subparagraph b.(II), within 24 hours after the  
357 person's agreement to voluntary admission, a record of the  
358 finding, certification, notice, and written acknowledgment must



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359 be filed by the administrator of the receiving or treatment  
360 facility, as defined in s. 394.455, with the clerk of the court  
361 for the county in which the involuntary examination under s.  
362 394.463 occurred. No fee shall be charged for the filing under  
363 this sub-sub-subparagraph. The clerk must present the records to  
364 a judge or magistrate within 24 hours after receipt of the  
365 records. A judge or magistrate is required and has the lawful  
366 authority to review the records ex parte and, if the judge or  
367 magistrate determines that the record supports the classifying  
368 of the person as an imminent danger to himself or herself or  
369 others, to order that the record be submitted to the department.  
370 If a judge or magistrate orders the submittal of the record to  
371 the department, the record must be submitted to the department  
372 within 24 hours.

373 d. A person who has been adjudicated mentally defective or  
374 committed to a mental institution, as those terms are defined in  
375 this paragraph, may petition the circuit court that made the  
376 adjudication or commitment, or the court that ordered that the  
377 record be submitted to the department pursuant to sub-sub-  
378 subparagraph c.(II), for relief from the firearm disabilities  
379 imposed by such adjudication or commitment. A copy of the  
380 petition shall be served on the state attorney for the county in  
381 which the person was adjudicated or committed. The state  
382 attorney may object to and present evidence relevant to the  
383 relief sought by the petition. The hearing on the petition may  
384 be open or closed as the petitioner may choose. The petitioner  
385 may present evidence and subpoena witnesses to appear at the  
386 hearing on the petition. The petitioner may confront and cross-  
387 examine witnesses called by the state attorney. A record of the



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388 hearing shall be made by a certified court reporter or by court-  
389 approved electronic means. The court shall make written findings  
390 of fact and conclusions of law on the issues before it and issue  
391 a final order. The court shall grant the relief requested in the  
392 petition if the court finds, based on the evidence presented  
393 with respect to the petitioner's reputation, the petitioner's  
394 mental health record and, if applicable, criminal history  
395 record, the circumstances surrounding the firearm disability,  
396 and any other evidence in the record, that the petitioner will  
397 not be likely to act in a manner that is dangerous to public  
398 safety and that granting the relief would not be contrary to the  
399 public interest. If the final order denies relief, the  
400 petitioner may not petition again for relief from firearm  
401 disabilities until 1 year after the date of the final order. The  
402 petitioner may seek judicial review of a final order denying  
403 relief in the district court of appeal having jurisdiction over  
404 the court that issued the order. The review shall be conducted  
405 de novo. Relief from a firearm disability granted under this  
406 sub-subparagraph has no effect on the loss of civil rights,  
407 including firearm rights, for any reason other than the  
408 particular adjudication of mental defectiveness or commitment to  
409 a mental institution from which relief is granted.

410 e. Upon receipt of proper notice of relief from firearm  
411 disabilities granted under sub-subparagraph d., the department  
412 shall delete any mental health record of the person granted  
413 relief from the automated database of persons who are prohibited  
414 from purchasing a firearm based on court records of  
415 adjudications of mental defectiveness or commitments to mental  
416 institutions.



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417 f. The department is authorized to disclose data collected  
418 pursuant to this subparagraph to agencies of the Federal  
419 Government and other states for use exclusively in determining  
420 the lawfulness of a firearm sale or transfer. The department is  
421 also authorized to disclose this data to the Department of  
422 Agriculture and Consumer Services for purposes of determining  
423 eligibility for issuance of a concealed weapons or concealed  
424 firearms license and for determining whether a basis exists for  
425 revoking or suspending a previously issued license pursuant to  
426 s. 790.06(10). When a potential buyer or transferee appeals a  
427 nonapproval based on these records, the clerks of court and  
428 mental institutions shall, upon request by the department,  
429 provide information to help determine whether the potential  
430 buyer or transferee is the same person as the subject of the  
431 record. Photographs and any other data that could confirm or  
432 negate identity must be made available to the department for  
433 such purposes, notwithstanding any other provision of state law  
434 to the contrary. Any such information that is made confidential  
435 or exempt from disclosure by law shall retain such confidential  
436 or exempt status when transferred to the department.

437 Section 47. Effective July 1, 2016, part IV of chapter 397,  
438 Florida Statutes, consisting of s. 397.601, Florida Statutes, is  
439 repealed.

440 Section 48. Effective July 1, 2016, part V of chapter 397,  
441 Florida Statutes, consisting of ss. 397.675-397.6977, Florida  
442 Statutes, is repealed.

443 Section 49. For the purpose of incorporating the amendment  
444 made by this act to section 394.4599, Florida Statutes, in a  
445 reference thereto, subsection (1) of section 394.4685, Florida



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446 Statutes, is reenacted to read:

447 394.4685 Transfer of patients among facilities.—

448 (1) TRANSFER BETWEEN PUBLIC FACILITIES.—

449 (a) A patient who has been admitted to a public receiving  
450 facility, or the family member, guardian, or guardian advocate  
451 of such patient, may request the transfer of the patient to  
452 another public receiving facility. A patient who has been  
453 admitted to a public treatment facility, or the family member,  
454 guardian, or guardian advocate of such patient, may request the  
455 transfer of the patient to another public treatment facility.  
456 Depending on the medical treatment or mental health treatment  
457 needs of the patient and the availability of appropriate  
458 facility resources, the patient may be transferred at the  
459 discretion of the department. If the department approves the  
460 transfer of an involuntary patient, notice according to the  
461 provisions of s. 394.4599 shall be given prior to the transfer  
462 by the transferring facility. The department shall respond to  
463 the request for transfer within 2 working days after receipt of  
464 the request by the facility administrator.

465 (b) When required by the medical treatment or mental health  
466 treatment needs of the patient or the efficient utilization of a  
467 public receiving or public treatment facility, a patient may be  
468 transferred from one receiving facility to another, or one  
469 treatment facility to another, at the department's discretion,  
470 or, with the express and informed consent of the patient or the  
471 patient's guardian or guardian advocate, to a facility in  
472 another state. Notice according to the provisions of s. 394.4599  
473 shall be given prior to the transfer by the transferring  
474 facility. If prior notice is not possible, notice of the



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475 transfer shall be provided as soon as practicable after the  
476 transfer.

477 Section 50. For the purpose of incorporating the amendment  
478 made by this act to section 394.4599, Florida Statutes, in a  
479 reference thereto, subsection (2) of section 394.469, Florida  
480 Statutes, is reenacted to read:

481 394.469 Discharge of involuntary patients.—

482 (2) NOTICE.—Notice of discharge or transfer of a patient  
483 shall be given as provided in s. 394.4599.

484 Section 51. Except as otherwise expressly provided in this  
485 act, this act shall take effect July 1, 2015.

486

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

488 And the title is amended as follows:

489 Delete lines 275 - 289

490 and insert:

491 394.496, 394.499, 394.67, 394.674, 394.9085, 397.311,  
492 397.702, 397.94, 409.972, 744.704, and 790.065, F.S.;  
493 conforming cross-references; repealing ss. 397.601,  
494 397.675, 397.6751, 397.6752, 397.6758, 397.6759,  
495 397.677, 397.6771, 397.6772, 397.6773, 397.6774,  
496 397.6775, 397.679, 397.6791, 397.6793, 397.6795,  
497 397.6797, 397.6798, 397.6799, 397.681, 397.6811,  
498 397.6814, 397.6815, 397.6818, 397.6819, 397.6821,  
499 397.6822, 397.693, 397.695, 397.6951, 397.6955,  
500 397.6957, 397.697, 397.6971, 397.6975, and 397.6977,  
501 F.S.; reenacting ss. 394.4685(1), and 394.469(2),  
502 F.S., to incorporate the amendment made to s.  
503 394.4599, F.S., in references thereto; providing



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504

effective dates.



211274

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
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The Committee on Appropriations (Grimsley) recommended the following:

**Senate Amendment to Amendment (250728)**

Delete lines 2023 - 2143  
and insert:

3. A physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker may execute a certificate stating that he or she has examined the individual ~~a person~~ within the preceding 48 hours and finds that the individual ~~person~~ appears to meet the criteria for involuntary examination and stating the



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11 observations upon which that conclusion is based. The  
12 certificate must specify whether the individual is to be taken  
13 to a mental health receiving facility, an addictions receiving  
14 facility, or a detoxification facility, and must include  
15 specific facts supporting the conclusion that the individual  
16 would benefit from services provided by the type of facility  
17 specified. ~~If other less restrictive means are not available,~~  
18 ~~such as voluntary appearance for outpatient evaluation,~~ A law  
19 enforcement officer shall take the individual ~~person~~ named in  
20 the certificate into custody and deliver him or her to the  
21 nearest ~~receiving~~ facility of the type specified in the  
22 certificate for involuntary examination. However, if the county  
23 in which the individual is taken into custody has a  
24 transportation exception plan specifying a central receiving  
25 facility, the law enforcement officer shall transport the  
26 individual to the central receiving facility pursuant to the  
27 plan. A law enforcement officer may only take an individual into  
28 custody on the basis of a certificate within 7 calendar days  
29 after execution of the certificate. The law enforcement officer  
30 shall complete ~~execute~~ a written report detailing the  
31 circumstances under which the individual ~~person~~ was taken into  
32 custody. The report and certificate shall be made a part of the  
33 ~~patient's~~ clinical record. Any ~~receiving~~ facility accepting the  
34 individual ~~patient~~ based on the ~~this~~ certificate must send a  
35 copy of the certificate to the Agency for Health Care  
36 Administration on the next working day.

37 (b) An individual may ~~A person shall~~ not be removed from a  
38 ~~any~~ program or residential placement licensed under chapter 400  
39 or chapter 429 and transported to a receiving facility for



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40 involuntary examination unless an ex parte order, a professional  
41 certificate, or a law enforcement officer's report is first  
42 prepared. If the condition of the individual person is such that  
43 preparation of a law enforcement officer's report is not  
44 practicable before removal, the report must ~~shall~~ be completed  
45 as soon as possible after removal, but ~~in any case~~ before the  
46 individual person is transported to a receiving facility. A  
47 receiving facility admitting an individual ~~a person~~ for  
48 involuntary examination who is not accompanied by the required  
49 ex parte order, professional certificate, or law enforcement  
50 officer's report must ~~shall~~ notify the Agency for Health Care  
51 Administration of such admission by certified mail by no later  
52 ~~than~~ the next working day. ~~The provisions of this paragraph do~~  
53 ~~not apply when transportation is provided by the patient's~~  
54 ~~family or guardian.~~

55 (c) A law enforcement officer acting in accordance with an  
56 ex parte order issued pursuant to this subsection may serve and  
57 execute such order on any day of the week, at any time of the  
58 day or night.

59 (d) A law enforcement officer acting in accordance with an  
60 ex parte order issued pursuant to this subsection may use such  
61 reasonable physical force as is necessary to gain entry to the  
62 premises, and any dwellings, buildings, or other structures  
63 located on the premises, and to take custody of the person who  
64 is the subject of the ex parte order.

65 (e) Petitions and ~~The Agency for Health Care Administration~~  
66 ~~shall receive and maintain the copies of ex parte orders,~~  
67 involuntary outpatient placement orders, involuntary outpatient  
68 placement petitions and orders issued pursuant to s. 394.4655,



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69 involuntary inpatient placement petitions and orders issued  
70 pursuant to s. 394.467, professional certificates, and law  
71 enforcement officers' reports are. ~~These documents shall be~~  
72 ~~considered part of the clinical record,~~ governed by ~~the~~  
73 ~~provisions of s. 394.4615.~~ The agency shall prepare annual  
74 reports analyzing the data obtained from these documents,  
75 without information identifying individuals held for examination  
76 or admitted for mental health and substance abuse treatment  
77 ~~patients,~~ and shall provide copies of reports to the department,  
78 the President of the Senate, the Speaker of the House of  
79 Representatives, and the minority leaders of the Senate and the  
80 House of Representatives.

81 (f) An individual held for examination ~~A patient~~ shall be  
82 examined by a physician, a or clinical psychologist, or a  
83 psychiatric nurse performing within the framework of an  
84 established protocol with a psychiatrist at a receiving facility  
85 without unnecessary delay and may, upon the order of a  
86 physician, be given emergency mental health or substance abuse  
87 treatment if it is determined that such treatment is necessary  
88 for the safety of the individual patient or others. ~~The patient~~  
89 ~~may not be released by the receiving facility or its contractor~~  
90 ~~without the documented approval of a psychiatrist, a clinical~~  
91 ~~psychologist, or, if the receiving facility is a hospital, the~~  
92 ~~release may also be approved by an attending emergency~~  
93 ~~department physician with experience in the diagnosis and~~  
94 ~~treatment of mental and nervous disorders and after completion~~  
95 ~~of an involuntary examination pursuant to this subsection.~~  
96 ~~However, a patient may not be held in a receiving facility for~~  
97 ~~involuntary examination longer than 72 hours.~~



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98           (g) An individual may not be held for involuntary  
99 examination for more than 72 hours from the time of the  
100 individual's arrival at the facility, except that this period  
101 may be extended by 48 hours if a physician documents in the  
102 clinical record that the individual has ongoing symptoms of  
103 substance intoxication or substance withdrawal and the  
104 individual would likely experience significant clinical benefit  
105 from detoxification services. This determination must be made  
106 based on a face-to-face examination conducted by the physician  
107 no less than 48 hours and not more than 72 hours after the  
108 individual's arrival at the facility. Based on the individual's  
109 needs, one of the following actions must be taken within the  
110 involuntary examination period:

111           1. The individual shall be released with the approval of a  
112 psychiatrist or clinical psychologist. However, if the  
113 examination is conducted in a receiving facility that is owned  
114 or operated by a hospital or health system, an emergency  
115 department physician or a psychiatric nurse performing within  
116 the framework of an established protocol with a psychiatrist may  
117 approve the release. A psychiatric nurse may not approve the  
118 release of a patient when the involuntary examination has been  
119 initiated by a psychiatrist, unless the release is approved by  
120 the initiating psychiatrist.



924612

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
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The Committee on Appropriations (Joyner) recommended the following:

**Senate Amendment to Amendment (250728)**

Delete lines 424 - 425

and insert:

disability as defined in chapter 393, intoxication, or  
conditions manifested only by antisocial

By the Committees on Judiciary; and Appropriations

590-03671-15

20157070c1

1 A bill to be entitled  
 2 An act relating to mental health and substance abuse;  
 3 amending s. 381.0056, F.S.; revising the definition of  
 4 the term "emergency health needs"; requiring school  
 5 health services plans to include notification  
 6 requirements when a student is removed from school,  
 7 school transportation, or a school-sponsored activity  
 8 for involuntary examination; amending s. 394.453,  
 9 F.S.; providing legislative intent regarding the  
 10 development of programs related to substance abuse  
 11 impairment by the Department of Children and Families;  
 12 expanding legislative intent related to a guarantee of  
 13 dignity and human rights to all individuals who are  
 14 admitted to substance abuse treatment facilities;  
 15 amending s. 394.455, F.S.; defining and redefining  
 16 terms; deleting defined terms; amending s. 394.457,  
 17 F.S.; adding substance abuse services as a program  
 18 focus for which the Department of Children and  
 19 Families is responsible; deleting a requirement that  
 20 the department establish minimum standards for  
 21 personnel employed in mental health programs and  
 22 provide orientation and training materials; amending  
 23 s. 394.4573, F.S.; deleting a defined term; adding  
 24 substance abuse care as an element of the continuity  
 25 of care management system that the department must  
 26 establish; deleting duties and measures of performance  
 27 of the department regarding the continuity of care  
 28 management system; amending s. 394.459, F.S.;  
 29 extending a right to dignity to all individuals held

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30 for examination or admitted for mental health or  
 31 substance abuse treatment; providing procedural  
 32 requirements that must be followed to detain without  
 33 consent an individual who has a substance abuse  
 34 impairment but who has not been charged with a  
 35 criminal offense; providing that individuals held for  
 36 examination or admitted for treatment at a facility  
 37 have a right to certain evaluation and treatment  
 38 procedures; removing provisions regarding express and  
 39 informed consent for medical procedures requiring the  
 40 use of a general anesthetic or electroconvulsive  
 41 treatment; requiring facilities to have written  
 42 procedures for reporting events that place individuals  
 43 receiving services at risk of harm; requiring service  
 44 providers to provide information concerning advance  
 45 directives to individuals receiving services; amending  
 46 s. 394.4597, F.S.; specifying certain persons who are  
 47 prohibited from being selected as an individual's  
 48 representative; providing certain rights to  
 49 representatives; amending s. 394.4598, F.S.;  
 50 specifying certain persons who are prohibited from  
 51 being appointed as an individual's guardian advocate;  
 52 providing guidelines for decisions of guardian  
 53 advocates; amending s. 394.4599, F.S.; including  
 54 health care surrogates and proxies as individuals who  
 55 may act on behalf of an individual involuntarily  
 56 admitted to a facility; requiring a receiving facility  
 57 to give notice immediately of the whereabouts of a  
 58 minor who is being held involuntarily to the minor's

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59 parent, guardian, caregiver, or guardian advocate;  
 60 providing circumstances when notification may be  
 61 delayed; requiring the receiving facility to make  
 62 continuous attempts to notify; authorizing the  
 63 receiving facility to seek assistance from law  
 64 enforcement under certain circumstances; requiring the  
 65 receiving facility to document notification attempts  
 66 in the minor's clinical record; amending s. 394.4615,  
 67 F.S.; adding a condition under which the clinical  
 68 record of an individual must be released to the state  
 69 attorney; providing for the release of information  
 70 from the clinical record to law enforcement agencies  
 71 under certain circumstances; amending s. 394.462,  
 72 F.S.; providing that a person in custody for a felony  
 73 other than a forcible felony must be transported to  
 74 the nearest receiving facility for examination;  
 75 providing that a law enforcement officer may transport  
 76 an individual meeting the criteria for voluntary  
 77 admission to a mental health receiving facility,  
 78 addictions receiving facility, or detoxification  
 79 facility at the individual's request; amending s.  
 80 394.4625, F.S.; providing criteria for the examination  
 81 and treatment of an individual who is voluntarily  
 82 admitted to a facility; providing criteria for the  
 83 release or discharge of the individual; providing that  
 84 a voluntarily admitted individual who is released or  
 85 discharged and who is currently charged with a crime  
 86 shall be returned to the custody of a law enforcement  
 87 officer; providing procedures for transferring an

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88 individual to voluntary status and involuntary status;  
 89 amending s. 394.463, F.S.; providing for the  
 90 involuntary examination of a person for a substance  
 91 abuse impairment; providing for the transportation of  
 92 an individual for an involuntary examination;  
 93 providing that a certificate for an involuntary  
 94 examination must contain certain information;  
 95 providing criteria and procedures for the release of  
 96 an individual held for involuntary examination from  
 97 receiving or treatment facilities; amending s.  
 98 394.4655, F.S.; adding substance abuse impairment as a  
 99 condition to which criteria for involuntary outpatient  
 100 placement apply; providing guidelines for an attorney  
 101 representing an individual subject to proceedings for  
 102 involuntary outpatient placement; providing guidelines  
 103 for the state attorney in prosecuting a petition for  
 104 involuntary placement; requiring the court to consider  
 105 certain information when determining whether to  
 106 appoint a guardian advocate for the individual;  
 107 requiring the court to inform the individual and his  
 108 or her representatives of the individual's right to an  
 109 independent expert examination with regard to  
 110 proceedings for involuntary outpatient placement;  
 111 amending s. 394.467, F.S.; adding substance abuse  
 112 impairment as a condition to which criteria for  
 113 involuntary inpatient placement apply; adding  
 114 addictions receiving facilities and detoxification  
 115 facilities as identified receiving facilities;  
 116 providing for first and second medical opinions in

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117 proceedings for placement for treatment of substance  
 118 abuse impairment; providing guidelines for attorney  
 119 representation of an individual subject to proceedings  
 120 for involuntary inpatient placement; providing  
 121 guidelines for the state attorney in prosecuting a  
 122 petition for involuntary placement; setting standards  
 123 for the court to accept a waiver of the individual's  
 124 rights; requiring the court to consider certain  
 125 testimony regarding the individual's prior history in  
 126 proceedings; requiring the Division of Administrative  
 127 Hearings to inform the individual and his or her  
 128 representatives of the right to an independent expert  
 129 examination; amending s. 394.4672, F.S.; providing  
 130 authority of facilities of the United States  
 131 Department of Veterans Affairs to conduct certain  
 132 examinations and provide certain treatments; amending  
 133 s. 394.875, F.S.; removing a limitation on the number  
 134 of beds in crisis stabilization units; transferring  
 135 and renumbering s. 765.401, F.S.; transferring and  
 136 renumbering s. 765.404, F.S.; providing a directive to  
 137 the Division of Law Revision and Information; creating  
 138 s. 765.4015, F.S.; providing a short title; creating  
 139 s. 765.402, F.S.; providing legislative findings;  
 140 creating s. 765.403, F.S.; defining terms; creating s.  
 141 765.405, F.S.; authorizing an adult with capacity to  
 142 execute a mental health or substance abuse treatment  
 143 advance directive; providing a presumption of validity  
 144 if certain requirements are met; specifying provisions  
 145 that an advance directive may include; creating s.

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146 765.406, F.S.; providing for execution of the mental  
 147 health or substance abuse treatment advance directive;  
 148 establishing requirements for a valid mental health or  
 149 substance abuse treatment advance directive; providing  
 150 that a mental health or substance abuse treatment  
 151 advance directive is valid upon execution even if a  
 152 part of the advance directive takes effect at a later  
 153 date; allowing a mental health or substance abuse  
 154 treatment advance directive to be revoked, in whole or  
 155 in part, or to expire under its own terms; specifying  
 156 that a mental health or substance abuse treatment  
 157 advance directive does not or may not serve specified  
 158 purposes; creating s. 765.407, F.S.; providing  
 159 circumstances under which a mental health or substance  
 160 abuse treatment advance directive may be revoked;  
 161 providing circumstances under which a principal may  
 162 waive specific directive provisions without revoking  
 163 the advance directive; creating s. 765.410, F.S.;  
 164 prohibiting criminal prosecution of a health care  
 165 facility, provider, or surrogate who acts pursuant to  
 166 a mental health or substance abuse treatment decision;  
 167 creating s. 765.411, F.S.; providing for recognition  
 168 of a mental health and substance abuse treatment  
 169 advance directive executed in another state if it  
 170 complies with the laws of this state; creating s.  
 171 916.185, F.S.; providing legislative findings and  
 172 intent; defining terms; creating the Forensic Hospital  
 173 Diversion Pilot Program; requiring the Department of  
 174 Children and Families to implement a Forensic Hospital

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175 Diversion Pilot Program in five specified judicial  
 176 circuits; providing eligibility criteria for  
 177 participation in the pilot program; providing  
 178 legislative intent concerning the training of judges;  
 179 authorizing the department to adopt rules; directing  
 180 the Office of Program Policy Analysis and Government  
 181 Accountability to submit a report to the Governor and  
 182 the Legislature; creating s. 944.805, F.S.; defining  
 183 the terms "department" and "nonviolent offender";  
 184 requiring the Department of Corrections to develop and  
 185 administer a reentry program for nonviolent offenders  
 186 which is intended to divert nonviolent offenders from  
 187 long periods of incarceration; requiring that the  
 188 program include intensive substance abuse treatment  
 189 and rehabilitation programs; providing for the minimum  
 190 length of service in the program; providing that any  
 191 portion of a sentence before placement in the program  
 192 does not count as progress toward program completion;  
 193 identifying permissible locations for the operation of  
 194 a reentry program; specifying eligibility criteria for  
 195 a nonviolent offender's participation in the reentry  
 196 program; requiring the department to screen and select  
 197 eligible offenders for the program based on specified  
 198 considerations; requiring the department to notify a  
 199 nonviolent offender's sentencing court to obtain  
 200 approval before the nonviolent offender is placed in  
 201 the reentry program; requiring the department to  
 202 notify the state attorney that an offender is being  
 203 considered for placement in the program; authorizing

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204 the state attorney to file objections to placing the  
 205 offender in the reentry program within a specified  
 206 period; authorizing the sentencing court to consider  
 207 certain factors when deciding whether to approve an  
 208 offender for placement in a reentry program; requiring  
 209 the sentencing court to notify the department of the  
 210 court's decision to approve or disapprove the  
 211 requested placement within a specified period;  
 212 requiring a nonviolent offender to undergo an  
 213 educational assessment and a complete substance abuse  
 214 assessment if admitted into the reentry program;  
 215 requiring an offender to be enrolled in an adult  
 216 education program in specified circumstances;  
 217 requiring that assessments of vocational skills and  
 218 future career education be provided to an offender;  
 219 requiring that certain reevaluation be made  
 220 periodically; providing that a participating  
 221 nonviolent offender is subject to the disciplinary  
 222 rules of the department; specifying the reasons for  
 223 which an offender may be terminated from the reentry  
 224 program; requiring that the department submit a report  
 225 to the sentencing court at least 30 days before a  
 226 nonviolent offender is scheduled to complete the  
 227 reentry program; specifying the issues to be addressed  
 228 in the report; authorizing a court to schedule a  
 229 hearing to consider any modification to an imposed  
 230 sentence; requiring the sentencing court to issue an  
 231 order modifying the sentence imposed and placing a  
 232 nonviolent offender on drug offender probation if the

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233 nonviolent offender's performance is satisfactory;  
 234 authorizing the court to revoke probation and impose  
 235 the original sentence in specified circumstances;  
 236 authorizing the court to require an offender to  
 237 complete a postadjudicatory drug court program in  
 238 specified circumstances; directing the department to  
 239 implement the reentry program using available  
 240 resources; authorizing the department to enter into  
 241 contracts with qualified individuals, agencies, or  
 242 corporations for services for the reentry program;  
 243 requiring offenders to abide by department conduct  
 244 rules; authorizing the department to impose  
 245 administrative or protective confinement as necessary;  
 246 providing that the section does not create a right to  
 247 placement in the reentry program or any right to  
 248 placement or early release under supervision of any  
 249 type; providing that the section does not create a  
 250 cause of action related to the program; authorizing  
 251 the department to establish a system of incentives  
 252 within the reentry program which the department may  
 253 use to promote participation in rehabilitative  
 254 programs and the orderly operation of institutions and  
 255 facilities; requiring the department to develop a  
 256 system for tracking recidivism, including, but not  
 257 limited to, rearrests and recommitment of nonviolent  
 258 offenders who successfully complete the reentry  
 259 program, and to report on recidivism in an annual  
 260 report; requiring the department to submit an annual  
 261 report to the Governor and Legislature detailing the

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262 extent of implementation of the reentry program,  
 263 specifying requirements for the report; requiring the  
 264 department to adopt rules; providing that specified  
 265 provisions are not severable; amending ss. 1002.20 and  
 266 1002.33, F.S.; requiring public school and charter  
 267 school principals or their designees to provide notice  
 268 of the whereabouts of a student removed from school,  
 269 school transportation, or a school-sponsored activity  
 270 for involuntary examination; providing circumstances  
 271 under which notification may be delayed; requiring  
 272 district school boards and charter school governing  
 273 boards to develop notification policies and  
 274 procedures; amending ss. 39.407, 394.4612, 394.495,  
 275 394.496, 394.499, 394.67, 394.674, 394.9085, 395.0197,  
 276 395.1051, 397.311, 397.431, 397.702, 397.94, 402.3057,  
 277 409.1757, 409.972, 456.0575, 744.704, 765.101,  
 278 765.104, and 790.065, F.S.; conforming cross-  
 279 references; repealing ss. 397.601, 397.675, 397.6751,  
 280 397.6752, 397.6758, 397.6759, 397.677, 397.6771,  
 281 397.6772, 397.6773, 397.6774, 397.6775, 397.679,  
 282 397.6791, 397.6793, 397.6795, 397.6797, 397.6798,  
 283 397.6799, 397.681, 397.6811, 397.6814, 397.6815,  
 284 397.6818, 397.6819, 397.6821, 397.6822, 397.693,  
 285 397.695, 397.6951, 397.6955, 397.6957, 397.697,  
 286 397.6971, 397.6975, and 397.6977, F.S.; reenacting ss.  
 287 394.4685(1), and 394.469(2), F.S., to incorporate the  
 288 amendment made to s. 394.4599, F.S., in references  
 289 thereto; providing an effective date.  
 290

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

292

293 Section 1. Subsection (2) and paragraph (a) of subsection  
294 (4) of section 381.0056, Florida Statutes, are amended to read:

295 381.0056 School health services program.—

296 (2) As used in this section, the term:

297 (a) "Emergency health needs" means onsite evaluation,  
298 management, and aid for illness or injury pending the student's  
299 return to the classroom or release to a parent, guardian,  
300 designated friend, law enforcement officer, or designated health  
301 care provider.

302 (b) "Entity" or "health care entity" means a unit of local  
303 government or a political subdivision of the state; a hospital  
304 licensed under chapter 395; a health maintenance organization  
305 certified under chapter 641; a health insurer authorized under  
306 the Florida Insurance Code; a community health center; a migrant  
307 health center; a federally qualified health center; an  
308 organization that meets the requirements for nonprofit status  
309 under s. 501(c)(3) of the Internal Revenue Code; a private  
310 industry or business; or a philanthropic foundation that agrees  
311 to participate in a public-private partnership with a county  
312 health department, local school district, or school in the  
313 delivery of school health services, and agrees to the terms and  
314 conditions for the delivery of such services as required by this  
315 section and as documented in the local school health services  
316 plan.

317 (c) "Invasive screening" means any screening procedure in  
318 which the skin or any body orifice is penetrated.

319 (d) "Physical examination" means a thorough evaluation of

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320 the health status of an individual.

321 (e) "School health services plan" means the document that  
322 describes the services to be provided, the responsibility for  
323 provision of the services, the anticipated expenditures to  
324 provide the services, and evidence of cooperative planning by  
325 local school districts and county health departments.

326 (f) "Screening" means presumptive identification of unknown  
327 or unrecognized diseases or defects by the application of tests  
328 that can be given with ease and rapidity to apparently healthy  
329 persons.

330 (4)(a) Each county health department shall develop, jointly  
331 with the district school board and the local school health  
332 advisory committee, a school health services plan, ~~and~~ The plan  
333 must include, at a minimum, provisions for all of the following:

- 334 1. Health appraisal;
- 335 2. Records review;
- 336 3. Nurse assessment;
- 337 4. Nutrition assessment;
- 338 5. A preventive dental program;
- 339 6. Vision screening;
- 340 7. Hearing screening;
- 341 8. Scoliosis screening;
- 342 9. Growth and development screening;
- 343 10. Health counseling;
- 344 11. Referral and followup of suspected or confirmed health  
345 problems by the local county health department;
- 346 12. Meeting emergency health needs in each school;
- 347 13. County health department personnel to assist school  
348 personnel in health education curriculum development;

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349 14. Referral of students to appropriate health treatment,  
350 in cooperation with the private health community whenever  
351 possible;

352 15. Consultation with a student's parent or guardian  
353 regarding the need for health attention by the family physician,  
354 dentist, or other specialist when definitive diagnosis or  
355 treatment is indicated;

356 16. Maintenance of records on incidents of health problems,  
357 corrective measures taken, and such other information as may be  
358 needed to plan and evaluate health programs; except, however,  
359 that provisions in the plan for maintenance of health records of  
360 individual students must be in accordance with s. 1002.22;

361 17. Health information which will be provided by the school  
362 health nurses, when necessary, regarding the placement of  
363 students in exceptional student programs and the reevaluation at  
364 periodic intervals of students placed in such programs; and

365 18. Notification to the local nonpublic schools of the  
366 school health services program and the opportunity for  
367 representatives of the local nonpublic schools to participate in  
368 the development of the cooperative health services plan.

369 19. Immediate notification to a student's parent, guardian,  
370 or caregiver if the student is removed from school, school  
371 transportation, or a school-sponsored activity and taken to a  
372 receiving facility for an involuntary examination pursuant to s.  
373 394.463, including any requirements established under ss.  
374 1002.20(3) and 1002.33(9), as applicable.

375 Section 2. Section 394.453, Florida Statutes, is amended to  
376 read:

377 394.453 Legislative intent.—It is the intent of the

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378 Legislature to authorize and direct the Department of Children  
379 and Families to evaluate, research, plan, and recommend to the  
380 Governor and the Legislature programs designed to reduce the  
381 occurrence, severity, duration, and disabling aspects of mental,  
382 emotional, and behavioral disorders, and substance abuse  
383 impairment. It is the intent of the Legislature that treatment  
384 programs for such disorders shall include, but not be limited  
385 to, comprehensive health, social, educational, and  
386 rehabilitative services for individuals ~~to persons~~ requiring  
387 intensive short-term and continued treatment in order to  
388 encourage them to assume responsibility for their treatment and  
389 recovery. It is intended that such individuals ~~persons~~ be  
390 provided with emergency service and temporary detention for  
391 evaluation if ~~when~~ required; that they be admitted to treatment  
392 facilities if ~~on a voluntary basis when~~ extended or continuing  
393 care is needed and unavailable in the community; that  
394 involuntary placement be provided only if ~~when~~ expert evaluation  
395 determines that it is necessary; that any involuntary treatment  
396 or examination be accomplished in a setting that ~~which~~ is  
397 clinically appropriate and most likely to facilitate the  
398 individual's ~~person's~~ return to the community as soon as  
399 possible; and that ~~individual~~ dignity and human rights be  
400 guaranteed to all individuals ~~persons~~ who are admitted to mental  
401 health and substance abuse treatment facilities or who are being  
402 held under s. 394.463. It is the further intent of the  
403 Legislature that the least restrictive means of intervention be  
404 employed based on the individual's ~~individual~~ needs ~~of each~~  
405 ~~person~~, within the scope of available services. It is the policy  
406 of this state that the use of restraint and seclusion ~~on clients~~

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407 is justified only as an emergency safety measure to be used in  
 408 response to imminent danger to the individual ~~client~~ or others.  
 409 It is, therefore, the intent of the Legislature to achieve an  
 410 ongoing reduction in the use of restraint and seclusion in  
 411 programs and facilities serving individuals ~~persons~~ with mental  
 412 illness or who have a substance abuse impairment.

413 Section 3. Section 394.455, Florida Statutes, is reordered  
 414 and amended to read:

415 394.455 Definitions.—As used in this part, unless the  
 416 context clearly requires otherwise, the term:

417 (1) "Addictions receiving facility" means a secure, acute  
 418 care facility that, at a minimum, provides detoxification and  
 419 stabilization services; is operated 24 hours per day, 7 days per  
 420 week; and is designated by the department to serve individuals  
 421 found to be substance abuse impaired as defined in subsection  
 422 (44) who qualify for services under this section.

423 (2) (1) "Administrator" means the chief administrative  
 424 officer of a receiving or treatment facility or his or her  
 425 designee.

426 (3) "Adult" means an individual who is 18 years of age or  
 427 older, or who has had the disability of nonage removed pursuant  
 428 to s. 743.01 or s. 743.015.

429 (4) "Advanced registered nurse practitioner" means any  
 430 person licensed in this state to practice professional nursing  
 431 who is certified in advanced or specialized nursing practice  
 432 under s. 464.012.

433 (36) (2) "Clinical Psychologist" means a psychologist as  
 434 defined in s. 490.003(7) with 3 years of postdoctoral experience  
 435 in the practice of clinical psychology, inclusive of the

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436 ~~experience required for licensure~~, or a psychologist employed by  
 437 a facility operated by the United States Department of Veterans  
 438 Affairs that qualifies as a receiving or treatment facility  
 439 under this part.

440 (5) (3) "Clinical record" means all parts of the record  
 441 required to be maintained and includes all medical records,  
 442 progress notes, charts, and admission and discharge data, and  
 443 all other information recorded by a facility staff which  
 444 pertains to an individual's ~~the patient's~~ hospitalization or  
 445 treatment.

446 (6) (4) "Clinical social worker" means a person licensed as  
 447 a clinical social worker under s. 491.005 or s. 491.006 or a  
 448 person employed as a clinical social worker by a facility  
 449 operated by the United States Department of Veterans Affairs or  
 450 the United States Department of Defense under chapter 491.

451 (7) (5) "Community facility" means a ~~any~~ community service  
 452 provider contracting with the department to furnish substance  
 453 abuse or mental health services under part IV of this chapter.

454 (8) (6) "Community mental health center or clinic" means a  
 455 publicly funded, not-for-profit center that ~~which~~ contracts with  
 456 the department for the provision of inpatient, outpatient, day  
 457 treatment, or emergency services.

458 (9) (7) "Court," unless otherwise specified, means the  
 459 circuit court.

460 (10) (8) "Department" means the Department of Children and  
 461 Families.

462 (11) "Detoxification facility" means a facility licensed to  
 463 provide detoxification services under chapter 397.

464 (12) "Electronic means" means a form of telecommunication

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465 that requires all parties to maintain visual as well as audio  
466 communication.

467 ~~(13)(9)~~ "Express and informed consent" means consent  
468 voluntarily given in writing, by a competent individual person,  
469 after sufficient explanation and disclosure of the subject  
470 matter involved to enable the individual person to make a  
471 knowing and willful decision without any element of force,  
472 fraud, deceit, duress, or other form of constraint or coercion.

473 ~~(14)(10)~~ "Facility" means any hospital, community facility,  
474 public or private facility, or receiving or treatment facility  
475 providing for the evaluation, diagnosis, care, treatment,  
476 training, or hospitalization of individuals persons who appear  
477 to have a mental illness or who have been diagnosed as having a  
478 mental illness or substance abuse impairment. The term  
479 "Facility" does not include a any program or entity licensed  
480 under pursuant to chapter 400 or chapter 429.

481 (15) "Governmental facility" means a facility owned,  
482 operated, or administered by the Department of Corrections or  
483 the United States Department of Veterans Affairs.

484 ~~(16)(11)~~ "Guardian" means the natural guardian of a minor,  
485 or a person appointed by a court to act on behalf of a ward's  
486 person if the ward is a minor or has been adjudicated  
487 incapacitated.

488 ~~(17)(12)~~ "Guardian advocate" means a person appointed by a  
489 court to make decisions regarding mental health or substance  
490 abuse treatment on behalf of an individual a patient who has  
491 been found incompetent to consent to treatment pursuant to this  
492 part. ~~The guardian advocate may be granted specific additional~~  
493 ~~powers by written order of the court, as provided in this part.~~

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494 ~~(18)(13)~~ "Hospital" means a hospital facility as defined in  
495 ~~s. 395.002 and~~ licensed under chapter 395 and part II of chapter  
496 408.

497 ~~(19)(14)~~ "Incapacitated" means that an individual a person  
498 has been adjudicated incapacitated pursuant to part V of chapter  
499 744 and a guardian of the person has been appointed.

500 ~~(20)(15)~~ "Incompetent to consent to treatment" means that  
501 an individual's a person's judgment is so affected by ~~his or her~~  
502 mental illness, substance abuse impairment, or any medical or  
503 organic cause, that he or she the person lacks the capacity to  
504 make a well-reasoned, willful, and knowing decision concerning  
505 his or her medical, ~~or~~ mental health, or substance abuse  
506 treatment.

507 (21) "Involuntary examination" means an examination  
508 performed under s. 394.463 to determine whether an individual  
509 qualifies for involuntary outpatient placement under s. 394.4655  
510 or involuntary inpatient placement under s. 394.467.

511 (22) "Involuntary placement" means involuntary outpatient  
512 placement pursuant to s. 394.4655 or involuntary inpatient  
513 placement in a receiving or treatment facility pursuant to s.  
514 394.467.

515 ~~(23)(16)~~ "Law enforcement officer" means a law enforcement  
516 officer as defined in s. 943.10.

517 (24) "Marriage and family therapist" means a person  
518 licensed to practice marriage and family therapy under s.  
519 491.005 or s. 491.006 or a person employed as a marriage and  
520 family therapist by a facility operated by the United States  
521 Department of Veterans Affairs or the United States Department  
522 of Defense.

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523 (25) "Mental health counselor" means a person licensed to  
 524 practice mental health counseling under s. 491.005 or s. 491.006  
 525 or a person employed as a mental health counselor by a facility  
 526 operated by the United States Department of Veterans Affairs or  
 527 the United States Department of Defense.

528 (26)(17) "Mental health overlay program" means a mobile  
 529 service that which provides an independent examination for  
 530 voluntary admission admissions and a range of supplemental  
 531 onsite services to an individual who has persons with a mental  
 532 illness in a residential setting such as a nursing home, or  
 533 assisted living facility, adult family-care home, or  
 534 nonresidential setting such as an adult day care center.  
 535 Independent examinations provided pursuant to this part through  
 536 a mental health overlay program must only be provided only under  
 537 contract with the department for this service or must be  
 538 attached to a public receiving facility that is also a community  
 539 mental health center.

540 (28)(18) "Mental illness" means an impairment of the mental  
 541 or emotional processes that exercise conscious control of one's  
 542 actions or of the ability to perceive or understand reality,  
 543 which impairment substantially interferes with the individual's  
 544 person's ability to meet the ordinary demands of living. For the  
 545 purposes of this part, the term does not include a developmental  
 546 disability as defined in chapter 393, intoxication, brain  
 547 injury, dementia, or conditions manifested only by antisocial  
 548 behavior or substance abuse impairment.

549 (29) "Minor" means an individual who is 17 years of age or  
 550 younger and who has not had the disabilities of nonage removed  
 551 pursuant to s. 743.01 or s. 743.015.

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552 (30)(19) "Mobile crisis response service" means a  
 553 nonresidential crisis service attached to a public receiving  
 554 facility and available 24 hours a day, 7 days a week, through  
 555 which provides immediate intensive assessments and  
 556 interventions, including screening for admission into a mental  
 557 health receiving facility, addictions receiving facility, or a  
 558 detoxification facility, take place for the purpose of  
 559 identifying appropriate treatment services.

560 ~~(20) "Patient" means any person who is held or accepted for~~  
 561 ~~mental health treatment.~~

562 (31)(21) "Physician" means a medical practitioner licensed  
 563 under chapter 458 or chapter 459 who has experience in the  
 564 diagnosis and treatment of mental and nervous disorders or a  
 565 physician employed by a facility operated by the United States  
 566 Department of Veterans Affairs or the United States Department  
 567 of Defense which qualifies as a receiving or treatment facility  
 568 under this part.

569 (32) "Physician assistant" means a person licensed under  
 570 chapter 458 or chapter 459 who has experience in the diagnosis  
 571 and treatment of mental disorders or a person employed as a  
 572 physician assistant by a facility operated by the United States  
 573 Department of Veterans Affairs or the United States Department  
 574 of Defense.

575 (33)(22) "Private facility" means any hospital or facility  
 576 operated by a for-profit or not-for-profit corporation or  
 577 association that provides mental health or substance abuse  
 578 services and is not a public facility.

579 (34)(23) "Psychiatric nurse" means an advanced a registered  
 580 nurse practitioner certified under s. 464.012 licensed under

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581 ~~part I of chapter 464~~ who has a master's or doctoral degree ~~or a~~  
 582 ~~doctorate in psychiatric nursing, holds a national advance~~  
 583 ~~practice certification as a psychiatric-mental health advance~~  
 584 ~~practice nurse, and has 2 years of post-master's clinical~~  
 585 ~~experience under the supervision of a physician or a person~~  
 586 ~~employed as a psychiatric nurse by a facility operated by the~~  
 587 ~~United States Department of Veterans Affairs or the United~~  
 588 ~~States Department of Defense.~~

589 ~~(35)(24)~~ "Psychiatrist" means a medical practitioner  
 590 licensed under chapter 458 or chapter 459 ~~who has primarily~~  
 591 ~~diagnosed and treated mental and nervous disorders for at least~~  
 592 ~~a period of not less than 3 years, inclusive of psychiatric~~  
 593 ~~residency, or a person employed as a psychiatrist by a facility~~  
 594 ~~operated by the United States Department of Veterans Affairs or~~  
 595 ~~the United States Department of Defense.~~

596 ~~(37)(25)~~ "Public facility" means any facility that has  
 597 contracted with the department to provide mental health or  
 598 substance abuse services to all individuals ~~persons~~, regardless  
 599 ~~of their~~ ability to pay, and is receiving state funds for such  
 600 purpose.

601 ~~(27)(26)~~ "Mental health receiving facility" means any  
 602 public or private facility designated by the department to  
 603 receive and hold individuals on involuntary status ~~involuntary~~  
 604 ~~patients under emergency conditions ~~or~~~~ for psychiatric  
 605 evaluation and to provide ~~short-term~~ treatment. The term does  
 606 not include a county jail.

607 ~~(38)(27)~~ "Representative" means a person selected pursuant  
 608 to s. 394.4597(2) to receive notice of proceedings during the  
 609 ~~time a patient is held in or admitted to a receiving or~~

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610 ~~treatment facility.~~

611 ~~(39)(28)(a)~~ "Restraint" means a physical device, method, or  
 612 drug used to control behavior.

613 ~~(a)~~ A physical restraint is any manual method or physical  
 614 or mechanical device, material, or equipment attached or  
 615 adjacent to ~~an the~~ individual's body so that he or she cannot  
 616 easily remove the restraint and which restricts freedom of  
 617 movement or normal access to one's body.

618 ~~(b)~~ A drug used as a restraint is a medication used to  
 619 control an individual's ~~the person's~~ behavior or to restrict his  
 620 or her freedom of movement and is not part of the standard  
 621 treatment regimen for an individual having ~~of a person with~~ a  
 622 diagnosed mental illness ~~who is a client of the department.~~  
 623 Physically holding an individual ~~a person~~ during a procedure to  
 624 forcibly administer psychotropic medication is a physical  
 625 restraint.

626 ~~(c)~~ Restraint does not include physical devices, such as  
 627 orthopedically prescribed appliances, surgical dressings and  
 628 bandages, supportive body bands, or other physical holding ~~when~~  
 629 necessary for routine physical examinations and tests; ~~or~~ for  
 630 purposes of orthopedic, surgical, or other similar medical  
 631 treatment; ~~when used~~ to provide support for the achievement of  
 632 functional body position or proper balance; or ~~when used~~ to  
 633 protect an individual ~~a person~~ from falling out of bed.

634 ~~(40)~~ "School psychologist" has the same meaning as in s.  
 635 490.003.

636 ~~(41)(29)~~ "Seclusion" means the physical segregation ~~of a~~  
 637 ~~person in any fashion~~ or involuntary isolation of an individual  
 638 ~~a person~~ in a room or area from which the individual ~~person~~ is

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639 prevented from leaving. The prevention may be by physical  
 640 barrier or by a staff member who is acting in a manner, or who  
 641 is physically situated, so as to prevent the individual person  
 642 from leaving the room or area. For purposes of this chapter, the  
 643 term does not mean isolation due to an individual's ~~a person's~~  
 644 medical condition or symptoms.

645 ~~(42)(30)~~ "Secretary" means the Secretary of Children and  
 646 Families.

647 (43) "Service provider" means a mental health receiving  
 648 facility, any facility licensed under chapter 397, a treatment  
 649 facility, an entity under contract with the department to  
 650 provide mental health or substance abuse services, a community  
 651 mental health center or clinic, a psychologist, a clinical  
 652 social worker, a marriage and family therapist, a mental health  
 653 counselor, a physician, a psychiatrist, an advanced registered  
 654 nurse practitioner, or a psychiatric nurse.

655 (44) "Substance abuse impairment" means a condition  
 656 involving the use of alcoholic beverages or any psychoactive or  
 657 mood-altering substance in such a manner as to induce mental,  
 658 emotional, or physical problems and cause socially dysfunctional  
 659 behavior.

660 (45) "Substance abuse qualified professional" has the same  
 661 meaning as in s. 397.311(26).

662 ~~(46)(31)~~ "Transfer evaluation" means the process, as  
 663 approved by the ~~appropriate district office of the department,~~  
 664 in which an individual ~~whereby a person who is being considered~~  
 665 ~~for placement in a state treatment facility is first evaluated~~  
 666 ~~for appropriateness of admission to a treatment the facility.~~  
 667 The transfer evaluation shall be conducted by the department, by

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668 a ~~community-based~~ public receiving facility, or by another  
 669 service provider as authorized by the department or by a  
 670 community mental health center or clinic ~~if the public receiving~~  
 671 ~~facility is not a community mental health center or clinic.~~

672 ~~(47)(32)~~ "Treatment facility" means a ~~any~~ state-owned,  
 673 state-operated, or state-supported hospital, center, or clinic  
 674 designated by the department for extended treatment and  
 675 hospitalization of individuals who have a mental illness, beyond  
 676 that provided ~~for~~ by a receiving facility or a, of persons who  
 677 have a mental illness, including facilities of the United States  
 678 Government, and any private facility designated by the  
 679 department when rendering such services to a person pursuant to  
 680 ~~the provisions of this part.~~ Patients treated in facilities of  
 681 the United States Government shall be solely those whose care is  
 682 the responsibility of the United States Department of Veterans  
 683 Affairs.

684 ~~(33)~~ "Service provider" means ~~any public or private~~  
 685 ~~receiving facility, an entity under contract with the Department~~  
 686 ~~of Children and Families to provide mental health services, a~~  
 687 ~~clinical psychologist, a clinical social worker, a marriage and~~  
 688 ~~family therapist, a mental health counselor, a physician, a~~  
 689 ~~psychiatric nurse as defined in subsection (23), or a community~~  
 690 ~~mental health center or clinic as defined in this part.~~

691 ~~(34)~~ "Involuntary examination" means ~~an examination~~  
 692 ~~performed under s. 394.463 to determine if an individual~~  
 693 ~~qualifies for involuntary inpatient treatment under s.~~  
 694 ~~394.467(1) or involuntary outpatient treatment under s.~~  
 695 ~~394.4655(1).~~

696 ~~(35)~~ "Involuntary placement" means ~~either involuntary~~

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697 ~~outpatient treatment pursuant to s. 394.4655 or involuntary~~  
 698 ~~inpatient treatment pursuant to s. 394.467.~~

699 ~~(36) "Marriage and family therapist" means a person~~  
 700 ~~licensed as a marriage and family therapist under chapter 491.~~

701 ~~(37) "Mental health counselor" means a person licensed as a~~  
 702 ~~mental health counselor under chapter 491.~~

703 ~~(38) "Electronic means" means a form of telecommunication~~  
 704 ~~that requires all parties to maintain visual as well as audio~~  
 705 ~~communication.~~

706 Section 4. Section 394.457, Florida Statutes, is amended to  
 707 read:

708 394.457 Operation and administration.—

709 (1) ADMINISTRATION.—The Department of Children and Families  
 710 is designated the "Mental Health Authority" of Florida. The  
 711 department and the Agency for Health Care Administration shall  
 712 exercise executive and administrative supervision over all  
 713 ~~mental health~~ facilities, programs, and services.

714 (2) RESPONSIBILITIES OF THE DEPARTMENT.—The department is  
 715 responsible for:

716 (a) The planning, evaluation, and implementation of a  
 717 complete and comprehensive statewide ~~program of~~ mental health  
 718 and substance abuse program, including community services,  
 719 receiving and treatment facilities, child services, research,  
 720 and training as authorized and approved by the Legislature,  
 721 based on the annual program budget of the department. The  
 722 department is also responsible for the coordination of efforts  
 723 with other departments and divisions of the state government,  
 724 county and municipal governments, and private agencies concerned  
 725 with and providing mental health and substance abuse services.

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726 It is responsible for establishing standards, providing  
 727 technical assistance, and supervising ~~exercising supervision of~~  
 728 mental health and substance abuse programs of, and the treatment  
 729 of individuals ~~patients~~ at, community facilities, other  
 730 facilities servicing individuals ~~for persons~~ who have a mental  
 731 illness or substance abuse impairment, and any agency or  
 732 facility providing services under ~~to patients pursuant to~~ this  
 733 part.

734 (b) The publication and distribution of an information  
 735 handbook to facilitate understanding of this part, the policies  
 736 and procedures involved in the implementation of this part, and  
 737 the responsibilities of the various providers of services under  
 738 this part. It shall stimulate research by public and private  
 739 agencies, institutions of higher learning, and hospitals in the  
 740 interest of the elimination and amelioration of mental illness.

741 (3) POWER TO CONTRACT.—The department may contract to  
 742 provide, and be provided with, services and facilities in order  
 743 to carry out its responsibilities under this part with the  
 744 following agencies: public and private hospitals; receiving and  
 745 treatment facilities; clinics; laboratories; departments,  
 746 divisions, and other units of state government; the state  
 747 colleges and universities; the community colleges; private  
 748 colleges and universities; counties, municipalities, and any  
 749 other governmental unit, including facilities of the United  
 750 States Government; and any other public or private entity which  
 751 provides or needs facilities or services. Baker Act funds for  
 752 community inpatient, crisis stabilization, short-term  
 753 residential treatment, and screening services must be allocated  
 754 to each county pursuant to the department's funding allocation

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755 methodology. Notwithstanding s. 287.057(3) (e), contracts for  
 756 community-based Baker Act services for inpatient, crisis  
 757 stabilization, short-term residential treatment, and screening  
 758 provided under this part, other than those with other units of  
 759 government, to be provided for the department must be awarded  
 760 using competitive sealed bids if the county commission of the  
 761 county receiving the services makes a request to the  
 762 department's district office by January 15 of the contracting  
 763 year. The district may not enter into a competitively bid  
 764 contract under this provision if such action will result in  
 765 increases of state or local expenditures for Baker Act services  
 766 within the district. Contracts for these Baker Act services  
 767 using competitive sealed bids are effective for 3 years. The  
 768 department shall adopt rules establishing minimum standards for  
 769 such contracted services and facilities and shall make periodic  
 770 audits and inspections to assure that the contracted services  
 771 are provided and meet the standards of the department.

772 (4) APPLICATION FOR AND ACCEPTANCE OF GIFTS AND GRANTS.—The  
 773 department may apply for and accept any funds, grants, gifts, or  
 774 services made available to it by any agency or department of the  
 775 Federal Government or any other public or private agency or  
 776 person individual in aid of mental health and substance abuse  
 777 programs. All such moneys must shall be deposited in the State  
 778 Treasury and ~~shall be~~ disbursed as provided by law.

779 (5) RULES.—The department shall adopt rules:

780 (a) Establishing ~~The department shall adopt rules~~  
 781 ~~establishing~~ forms and procedures relating to the rights and  
 782 privileges of individuals being examined or treated at patients  
 783 ~~seeking mental health treatment from~~ facilities under this part.

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784 (b) ~~The department shall adopt rules~~ Necessary for the  
 785 implementation and administration of ~~the provisions of this~~  
 786 part, ~~and~~ A program subject to ~~the provisions of this part may~~  
 787 ~~shall not be permitted to~~ operate unless rules designed to  
 788 ensure the protection of the health, safety, and welfare of the  
 789 individuals examined and patients treated under through such  
 790 program have been adopted. Such rules ~~adopted under this~~  
 791 ~~subsection~~ must include provisions governing the use of  
 792 restraint and seclusion which are consistent with recognized  
 793 best practices and professional judgment; prohibit inherently  
 794 dangerous restraint or seclusion procedures; establish  
 795 limitations on the use and duration of restraint and seclusion;  
 796 establish measures to ensure the safety of program participants  
 797 and staff during an incident of restraint or seclusion;  
 798 establish procedures for staff to follow before, during, and  
 799 after incidents of restraint or seclusion; establish  
 800 professional qualifications ~~of~~ and training for staff who may  
 801 order or be engaged in the use of restraint or seclusion; and  
 802 establish mandatory reporting, data collection, and data  
 803 dissemination procedures and requirements. Such rules ~~adopted~~  
 804 ~~under this subsection~~ must require that each instance of the use  
 805 of restraint or seclusion be documented in the clinical record  
 806 of the individual who has been restrained or secluded patient.

807 (c) Establishing ~~The department shall adopt rules~~  
 808 ~~establishing~~ minimum standards for services provided by a mental  
 809 health overlay program or a mobile crisis response service.

810 ~~(6) PERSONNEL.—~~

811 ~~(a) The department shall, by rule, establish minimum~~  
 812 ~~standards of education and experience for professional and~~

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813 ~~technical personnel employed in mental health programs,~~  
814 ~~including members of a mobile crisis response service.~~

815 ~~(b) The department shall design and distribute appropriate~~  
816 ~~materials for the orientation and training of persons actively~~  
817 ~~engaged in implementing the provisions of this part relating to~~  
818 ~~the involuntary examination and placement of persons who are~~  
819 ~~believed to have a mental illness.~~

820 ~~(6)(7) PAYMENT FOR CARE OF PATIENTS.—Fees and fee~~  
821 ~~collections for patients in state-owned, state-operated, or~~  
822 ~~state-supported treatment facilities shall be according to s.~~  
823 ~~402.33.~~

824 Section 5. Section 394.4573, Florida Statutes, is amended  
825 to read:

826 394.4573 Continuity of care management system; measures of  
827 performance; reports.—

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

829 (a) "Case management" means those activities aimed at  
830 assessing ~~client~~ needs, planning services, linking the service  
831 system ~~to a client~~, coordinating the various system components,  
832 monitoring service delivery, and evaluating the effect of  
833 service delivery.

834 (b) "Case manager" means a person ~~an individual~~ who works  
835 with clients, and their families and significant others, to  
836 provide case management.

837 (c) "Client manager" means an employee of the department  
838 who is assigned to specific provider agencies and geographic  
839 areas to ensure that the full range of needed services is  
840 available to clients.

841 ~~(d) "Continuity of care management system" means a system~~

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842 ~~that assures, within available resources, that clients have~~  
843 ~~access to the full array of services within the mental health~~  
844 ~~services delivery system.~~

845 (2) The department shall ensure the establishment of ~~is~~  
846 ~~directed to implement~~ a continuity of care management system for  
847 the provision of mental health and substance abuse care ~~in~~  
848 keeping with s. 394.9082. ~~through the provision of client and~~  
849 ~~case management, including clients referred from state treatment~~  
850 ~~facilities to community mental health facilities. Such system~~  
851 ~~shall include a network of client managers and case managers~~  
852 ~~throughout the state designed to:~~

853 ~~(a) Reduce the possibility of a client's admission or~~  
854 ~~readmission to a state treatment facility.~~

855 ~~(b) Provide for the creation or designation of an agency in~~  
856 ~~each county to provide single intake services for each person~~  
857 ~~seeking mental health services. Such agency shall provide~~  
858 ~~information and referral services necessary to ensure that~~  
859 ~~clients receive the most appropriate and least restrictive form~~  
860 ~~of care, based on the individual needs of the person seeking~~  
861 ~~treatment. Such agency shall have a single telephone number,~~  
862 ~~operating 24 hours per day, 7 days per week, where practicable,~~  
863 ~~at a central location, where each client will have a central~~  
864 ~~record.~~

865 ~~(c) Advocate on behalf of the client to ensure that all~~  
866 ~~appropriate services are afforded to the client in a timely and~~  
867 ~~dignified manner.~~

868 ~~(d) Require that any public receiving facility initiating a~~  
869 ~~patient transfer to a licensed hospital for acute care mental~~  
870 ~~health services not accessible through the public receiving~~

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871 facility shall notify the hospital of such transfer and send all  
872 records relating to the emergency psychiatric or medical  
873 condition.

874 ~~(3) The department is directed to develop and include in~~  
875 ~~contracts with service providers measures of performance with~~  
876 ~~regard to goals and objectives as specified in the state plan.~~  
877 ~~Such measures shall use, to the extent practical, existing data~~  
878 ~~collection methods and reports and shall not require, as a~~  
879 ~~result of this subsection, additional reports on the part of~~  
880 ~~service providers. The department shall plan monitoring visits~~  
881 ~~of community mental health facilities with other state, federal,~~  
882 ~~and local governmental and private agencies charged with~~  
883 ~~monitoring such facilities.~~

884 Section 6. Subsection (1), present subsections (2) through  
885 (6), and present subsection (8) of section 394.459, Florida  
886 Statutes, are amended, present subsections (2) through (11) of  
887 that section are redesignated as subsections (3) through (12),  
888 respectively, present subsection (12) of that section is  
889 redesignated as subsection (14), and new subsections (2) and  
890 (13) are added to that section, to read:

891 394.459 Rights of individuals receiving treatment and  
892 services patients.-

893 (1) RIGHT TO ~~INDIVIDUAL~~ DIGNITY.-It is the policy of this  
894 state that the ~~individual~~ dignity of all individuals held for  
895 examination or admitted for mental health or substance abuse  
896 treatment the patient shall be respected at all times and upon  
897 all occasions, including ~~any occasion~~ when the individual  
898 patient is taken into custody, held, or transported. Procedures,  
899 facilities, vehicles, and restraining devices used ~~utilized~~ for

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900 criminals or those accused of a crime may shall not be used in  
901 connection with individuals persons who have a mental illness or  
902 substance abuse impairment, except for the protection of that  
903 individual the patient or others. An individual Persons who has  
904 have a mental illness but who has are not been charged with a  
905 criminal offense may shall not be detained or incarcerated in  
906 the jails of this state. An individual A person who is receiving  
907 treatment for mental illness or substance abuse may shall not be  
908 deprived of his or her any constitutional rights. However, if  
909 such individual a person is adjudicated incapacitated, his or  
910 her rights may be limited to the same extent that the rights of  
911 any incapacitated individual person are limited by law.

912 (2) PROTECTIVE CUSTODY WITHOUT CONSENT FOR SUBSTANCE ABUSE  
913 IMPAIRMENT.-An individual who has a substance abuse impairment  
914 but who has not been charged with a criminal offense may be  
915 placed in protective custody without his or her consent, subject  
916 to the limitations specified in this subsection. If it has been  
917 determined that a hospital, an addictions receiving facility, or  
918 a licensed detoxification facility is the most appropriate  
919 placement for the individual, law enforcement may implement  
920 protective custody measures as specified in this subsection.

921 (a) An individual meets the criteria for placement in  
922 protective custody if there is a good faith reason to believe  
923 that the individual is impaired by substance abuse, has lost the  
924 power of self-control with respect to substance use because of  
925 such impairment, and:

926 1. Has inflicted, or threatened or attempted to inflict, or  
927 unless admitted is likely to inflict, physical harm on himself  
928 or herself or another; or

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929 2. Is in need of substance abuse services and, by reason of  
 930 substance abuse impairment, is incapacitated and unable to make  
 931 a rational decision with regard thereto. However, mere refusal  
 932 to seek or obtain such services does not constitute evidence of  
 933 lack of judgment with respect to his or her need for such  
 934 services.

935 (b) If an individual who is in circumstances that justify  
 936 protective custody as described in paragraph (a) fails or  
 937 refuses to consent to assistance and a law enforcement officer  
 938 has determined that a hospital, an addictions receiving  
 939 facility, or a licensed detoxification facility is the most  
 940 appropriate place for such individual, the officer may, after  
 941 giving due consideration to the expressed wishes of the  
 942 individual:

943 1. Take the individual to a hospital, an addictions  
 944 receiving facility, or a licensed detoxification facility  
 945 against the individual's will but without using unreasonable  
 946 force; or

947 2. In the case of an adult, detain the individual for his  
 948 or her own protection in any municipal or county jail or other  
 949 appropriate detention facility.

950  
 951 Detention under this paragraph is not to be considered an arrest  
 952 for any purpose, and an entry or other record may not be made to  
 953 indicate that the individual has been detained or charged with  
 954 any crime. The officer in charge of the detention facility must  
 955 notify the nearest appropriate licensed service provider within  
 956 8 hours after detention that the individual has been detained.  
 957 The detention facility must arrange, as necessary, for

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958 transportation of the individual to an appropriate licensed  
 959 service provider with an available bed. Individuals detained  
 960 under this paragraph must be assessed by an attending physician  
 961 without unnecessary delay and within a 72-hour period to  
 962 determine the need for further services.

963 (c) The nearest relative of a minor in protective custody  
 964 must be notified by the law enforcement officer, as must the  
 965 nearest relative of an adult, unless the adult requests that  
 966 there be no notification.

967 (d) An individual who is in protective custody must be  
 968 released by a qualified professional when any of the following  
 969 circumstances occur:

970 1. The individual no longer meets the protective custody  
 971 criteria set out in paragraph (a);

972 2. A 72-hour period has elapsed since the individual was  
 973 taken into custody; or

974 3. The individual has consented voluntarily to readmission  
 975 at the facility of the licensed service provider.

976 (e) An individual may be detained in protective custody  
 977 beyond the 72-hour period if a petitioner has initiated  
 978 proceedings for involuntary assessment or treatment. The timely  
 979 filing of the petition authorizes the service provider to retain  
 980 physical custody of the individual pending further order of the  
 981 court.

982 (3)-(2) RIGHT TO TREATMENT.—An individual held for  
 983 examination or admitted for mental illness or substance abuse  
 984 treatment:

985 (a) ~~May~~ A person shall not be denied treatment for mental  
 986 illness or substance abuse impairment, and services ~~may~~ shall

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987 not be delayed at a mental health receiving facility, addictions  
 988 receiving facility, detoxification facility, or treatment  
 989 facility because of inability to pay. However, every reasonable  
 990 effort to collect appropriate reimbursement for the cost of  
 991 providing mental health or substance abuse services from  
 992 individuals to persons able to pay for services, including  
 993 insurance or ~~third-party~~ payments by third-party payers, shall  
 994 be made by facilities providing services under ~~pursuant to~~ this  
 995 part.

996 (b) ~~Shall be provided~~ It is further the policy of the state  
 997 ~~that the least restrictive appropriate available treatment,~~  
 998 which must be utilized based on the individual's individual  
 999 needs and best interests ~~of the patient~~ and consistent with the  
 1000 optimum improvement of the individual's patient's condition.

1001 (c) ~~Shall~~ Each person who remains at a receiving or  
 1002 treatment facility for more than 12 hours shall be given a  
 1003 physical examination by a health practitioner authorized by law  
 1004 to give such examinations, ~~and a mental health or substance~~  
 1005 abuse evaluation, as appropriate, by a psychiatrist,  
 1006 psychologist, psychiatric nurse, or qualified substance abuse  
 1007 professional, within 24 hours after arrival at such facility if  
 1008 the individual has not been released or discharged pursuant to  
 1009 s. 394.463(2)(h) or s. 394.469. The physical examination and  
 1010 mental health evaluation must be documented in the clinical  
 1011 record. The physical and mental health examinations shall  
 1012 include efforts to identify indicators of substance abuse  
 1013 impairment, substance abuse intoxication, and substance abuse  
 1014 withdrawal.

1015 (d) ~~Shall~~ Every patient in a facility shall be afforded the

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1016 opportunity to participate in activities designed to enhance  
 1017 self-image and the beneficial effects of other treatments, as  
 1018 determined by the facility.

1019 (e) ~~Shall,~~ not more than 5 days after admission to a  
 1020 facility, ~~each patient shall~~ have and receive an individualized  
 1021 treatment plan in writing, which the individual patient has had  
 1022 an opportunity to assist in preparing and to review before prior  
 1023 ~~to its~~ implementation. The plan must shall include a space for  
 1024 the individual's patient's comments and signature.

1025 (4)(3) RIGHT TO EXPRESS AND INFORMED PATIENT CONSENT.--

1026 ~~(a)1.~~ Each individual patient entering treatment shall be  
 1027 asked to give express and informed consent for admission or  
 1028 treatment.

1029 (a) If the individual patient has been adjudicated  
 1030 incapacitated or found to be incompetent to consent to  
 1031 treatment, express and informed consent must to treatment shall  
 1032 be sought from his or her instead from the patient's guardian,  
 1033 ~~or~~ guardian advocate, or health care surrogate or proxy. If the  
 1034 individual patient is a minor, express and informed consent for  
 1035 admission or treatment must be obtained shall also be requested  
 1036 ~~from the patient's guardian. Express and informed consent for~~  
 1037 ~~admission or treatment of a patient under 18 years of age shall~~  
 1038 ~~be required from the minor's patient's~~ guardian, unless the  
 1039 minor is seeking outpatient crisis intervention services under  
 1040 s. 394.4784. ~~Express and informed consent for admission or~~  
 1041 ~~treatment given by a patient who is under 18 years of age shall~~  
 1042 ~~not be a condition of admission when the patient's guardian~~  
 1043 ~~gives express and informed consent for the patient's admission~~  
 1044 ~~pursuant to s. 394.463 or s. 394.467.~~

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1045 ~~(b)2-~~ Before giving express and informed consent, the  
 1046 following information shall be provided and explained in plain  
 1047 language to the individual and patient, ~~or to his or her the~~  
 1048 ~~patient's~~ guardian if the individual patient is an adult 18  
 1049 ~~years of age or older~~ and has been adjudicated incapacitated, ~~or~~  
 1050 to his or her the patient's guardian advocate if the individual  
 1051 ~~patient~~ has been found to be incompetent to consent to  
 1052 treatment, to the health care surrogate or proxy, or to both the  
 1053 individual patient and the guardian if the individual patient is  
 1054 a minor: the reason for admission or treatment; the proposed  
 1055 treatment and ~~+~~ the purpose of such the treatment ~~to be~~  
 1056 ~~provided~~; the common risks, benefits, and side effects of the  
 1057 proposed treatment thereof; the specific dosage range of for the  
 1058 medication, if when applicable; alternative treatment  
 1059 modalities; the approximate length of care; the potential  
 1060 effects of stopping treatment; how treatment will be monitored;  
 1061 and that any consent given for treatment may be revoked orally  
 1062 or in writing before or during the treatment period by the  
 1063 individual receiving the treatment patient or by a person who is  
 1064 legally authorized to make health care decisions on the  
 1065 individual's behalf ~~of the patient~~.

1066 ~~(b) In the case of medical procedures requiring the use of~~  
 1067 ~~a general anesthetic or electroconvulsive treatment, and prior~~  
 1068 ~~to performing the procedure, express and informed consent shall~~  
 1069 ~~be obtained from the patient if the patient is legally~~  
 1070 ~~competent, from the guardian of a minor patient, from the~~  
 1071 ~~guardian of a patient who has been adjudicated incapacitated, or~~  
 1072 ~~from the guardian advocate of the patient if the guardian~~  
 1073 ~~advocate has been given express court authority to consent to~~

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1074 ~~medical procedures or electroconvulsive treatment as provided~~  
 1075 ~~under s. 394.4598.~~

1076 ~~(5)(4)~~ QUALITY OF TREATMENT.-

1077 (a) Each individual patient shall ~~receive services,~~  
 1078 ~~including, for a patient placed~~ under s. 394.4655 shall receive,  
 1079 ~~those services that are included in the court order which are~~  
 1080 ~~suited to his or her needs, and which shall be administered~~  
 1081 skillfully, safely, and humanely with full respect for the  
 1082 individual's patient's dignity and personal integrity. Each  
 1083 individual patient shall receive such medical, vocational,  
 1084 social, educational, substance abuse, and rehabilitative  
 1085 services as his or her condition requires in order to live  
 1086 successfully in the community. In order to achieve this goal,  
 1087 the department shall ~~is directed to~~ coordinate its mental health  
 1088 and substance abuse programs with all other programs of the  
 1089 department and other state agencies.

1090 (b) Facilities shall develop and maintain, in a form that  
 1091 is accessible to and readily understandable by individuals held  
 1092 for examination or admitted for mental health or substance abuse  
 1093 treatment patients and consistent with rules adopted by the  
 1094 department, ~~the following:~~

1095 1. Criteria, procedures, and required staff training for  
 1096 the any use of close or elevated levels of supervision, ~~of~~  
 1097 restraint, seclusion, or isolation, ~~or of~~ emergency treatment  
 1098 orders, and ~~for the use of~~ bodily control and physical  
 1099 management techniques.

1100 2. Procedures for documenting, monitoring, and requiring  
 1101 clinical review of all uses of the procedures described in  
 1102 subparagraph 1. and for documenting and requiring review of any

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1103 incidents resulting in injury to individuals receiving services  
 1104 patients.

1105 3. A system for investigating, tracking, managing, and  
 1106 responding to complaints by individuals ~~persons~~ receiving  
 1107 services or ~~persons~~ individuals acting on their behalf.

1108 (c) Facilities shall have written procedures for reporting  
 1109 events that place individuals receiving services at risk of  
 1110 harm. Such events must be reported to the managing entity in the  
 1111 facility's region and the department as soon as reasonably  
 1112 possible after discovery and include, but are not limited to:

1113 1. The death, regardless of cause or manner, of an  
 1114 individual examined or treated at a facility that occurs while  
 1115 the individual is at the facility or that occurs within 72 hours  
 1116 after release, if the death is known to the facility  
 1117 administrator.

1118 2. An injury sustained, or allegedly sustained, at a  
 1119 facility, by an individual examined or treated at the facility  
 1120 and caused by an accident, self-inflicted injury, assault, act  
 1121 of abuse, neglect, or suicide attempt, if the injury requires  
 1122 medical treatment by a licensed health care practitioner in an  
 1123 acute care medical facility.

1124 3. The unauthorized departure or absence of an individual  
 1125 from a facility in which he or she has been held for involuntary  
 1126 examination or involuntary placement.

1127 4. A disaster or crisis situation such as a tornado,  
 1128 hurricane, kidnapping, riot, or hostage situation that  
 1129 jeopardizes the health, safety, or welfare of individuals  
 1130 examined or treated in a facility.

1131 5. An allegation of sexual battery upon an individual

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1132 examined or treated in a facility.

1133 (d)(e) A facility may not use seclusion or restraint for  
 1134 punishment, to compensate for inadequate staffing, or for the  
 1135 convenience of staff. Facilities shall ensure that all staff are  
 1136 made aware of these restrictions ~~on the use of seclusion and~~  
 1137 ~~restraint and shall make and~~ maintain records that which  
 1138 demonstrate that this information has been conveyed to each  
 1139 individual staff member ~~members~~.

1140 (6)(5) COMMUNICATION, ABUSE REPORTING, AND VISITS.—

1141 (a) Each individual ~~person receiving services~~ in a facility  
 1142 providing mental health services under this part has the right  
 1143 to communicate freely and privately with persons outside the  
 1144 facility unless it is determined that such communication is  
 1145 likely to be harmful to the individual ~~person~~ or others. Each  
 1146 facility shall make available ~~as soon as reasonably possible to~~  
 1147 ~~persons receiving services~~ a telephone that allows for free  
 1148 local calls and access to a long-distance service to the  
 1149 individual as soon as reasonably possible. A facility is not  
 1150 required to pay the costs of the individual's ~~a patient's~~ long-  
 1151 distance calls. The telephone ~~must shall~~ be readily accessible  
 1152 ~~to the patient and shall be~~ placed so that the individual  
 1153 ~~patient~~ may use it to communicate privately and confidentially.  
 1154 The facility may establish reasonable rules for the use of the  
 1155 ~~this~~ telephone ~~which, provided that the rules do not interfere~~  
 1156 with an individual's ~~a patient's~~ access to a telephone to report  
 1157 abuse pursuant to paragraph (e).

1158 (b) Each individual ~~patient~~ admitted to a facility under  
 1159 ~~the provisions of this part~~ shall be allowed to receive, send,  
 1160 and mail sealed, unopened correspondence; and the individual's

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1161 ~~no patient's~~ incoming or outgoing correspondence ~~may not shall~~  
 1162 be opened, delayed, held, or censored by the facility unless  
 1163 there is reason to believe that it contains items or substances  
 1164 ~~that which~~ may be harmful to the individual patient or others,  
 1165 in which case the administrator may direct reasonable  
 1166 examination of such mail and may regulate the disposition of  
 1167 such items or substances.

1168 (c) Each facility ~~shall allow must permit~~ immediate access  
 1169 to an individual any patient, subject to the ~~patient's~~ right to  
 1170 deny or withdraw consent at any time, by the individual, or by  
 1171 the individual's patient's family members, guardian, guardian  
 1172 advocate, health care surrogate or proxy, representative,  
 1173 ~~Florida statewide or local advocacy council, or attorneys~~  
 1174 ~~attorney~~, unless such access would be detrimental to the  
 1175 individual patient. If ~~the a patient's~~ right to communicate or  
 1176 to receive visitors is restricted by the facility, written  
 1177 notice of such restriction and the reasons for the restriction  
 1178 shall be served on the individual and patient, the individual's  
 1179 patient's attorney, and the patient's guardian, guardian  
 1180 advocate, health care surrogate or proxy, or representative; and  
 1181 such restriction, and the reasons for the restriction, must  
 1182 ~~shall~~ be recorded in on the ~~patient's~~ clinical record ~~with the~~  
 1183 ~~reasons therefor~~. The restriction ~~must of a patient's right to~~  
 1184 ~~communicate or to receive visitors shall~~ be reviewed at least  
 1185 every 7 days. The right to communicate or receive visitors may  
 1186 ~~shall~~ not be restricted as a means of punishment. This Nothing  
 1187 ~~in this~~ paragraph ~~may not shall~~ be construed to limit the  
 1188 provisions of paragraph (d).

1189 (d) Each facility shall establish reasonable rules, which

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1190 must be the least restrictive possible, governing visitors,  
 1191 visiting hours, and the use of telephones by individuals  
 1192 ~~patients in the least restrictive possible manner. An individual~~  
 1193 ~~has Patients shall have~~ the right to contact and to receive  
 1194 communication from his or her attorney ~~their attorneys~~ at any  
 1195 reasonable time.

1196 (e) Each individual patient receiving mental health or  
 1197 substance abuse treatment ~~in any facility~~ shall have ready  
 1198 access to a telephone in order to report an alleged abuse. The  
 1199 facility staff shall orally and in writing inform each  
 1200 individual patient of the procedure for reporting abuse and  
 1201 shall make every reasonable effort to present the information in  
 1202 a language the individual patient understands. A written copy of  
 1203 that procedure, including the telephone number of the central  
 1204 abuse hotline and reporting forms, must shall be posted in plain  
 1205 view.

1206 (f) The department shall adopt rules providing a procedure  
 1207 for reporting abuse. ~~Facility staff shall be required,~~ As a  
 1208 condition of employment, facility staff shall ~~to~~ become familiar  
 1209 with the requirements and procedures for ~~the~~ reporting ~~of~~ abuse.

1210 ~~(7)(6) CARE AND CUSTODY OF PERSONAL EFFECTS OF PATIENTS.-A~~  
 1211 facility shall respect the rights of an individual with regard A  
 1212 ~~patient's right~~ to the possession of his or her clothing and  
 1213 personal effects ~~shall be respected~~. The facility may take  
 1214 temporary custody of such effects if when required for medical  
 1215 and safety reasons. ~~The A patient's~~ clothing and personal  
 1216 effects shall be inventoried upon their removal into temporary  
 1217 custody. Copies of this inventory shall be given to the  
 1218 individual patient and to his or her ~~the patient's~~ guardian,

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1219 guardian advocate, health care surrogate or proxy, or  
 1220 representative and shall be recorded in the ~~patient's~~ clinical  
 1221 record. This inventory may be amended upon the request of the  
 1222 individual patient or his or her ~~the patient's~~ guardian,  
 1223 guardian advocate, health care surrogate or proxy, or  
 1224 representative. The inventory and any amendments ~~to it~~ must be  
 1225 witnessed by two members of the facility staff and by the  
 1226 individual patient, if he or she is able. All of ~~the a patient's~~  
 1227 clothing and personal effects held by the facility shall be  
 1228 returned to the individual patient immediately upon his or her  
 1229 ~~the~~ discharge or transfer ~~of the patient~~ from the facility,  
 1230 unless such return would be detrimental to the individual  
 1231 ~~patient~~. If personal effects are not returned ~~to the patient~~,  
 1232 the reason must be documented in the clinical record along with  
 1233 the disposition of the clothing and personal effects, which may  
 1234 be given instead to the individual's patient's guardian,  
 1235 guardian advocate, health care surrogate or proxy, or  
 1236 representative. As soon as practicable after an emergency  
 1237 transfer ~~of a patient~~, the individual's ~~patient's~~ clothing and  
 1238 personal effects shall be transferred to the individual's  
 1239 ~~patient's~~ new location, together with a copy of the inventory  
 1240 and any amendments, unless an alternate plan is approved by the  
 1241 individual patient, if he or she is able, and by his or her ~~the~~  
 1242 ~~patient's~~ guardian, guardian advocate, health care surrogate or  
 1243 proxy, or representative.

1244 ~~(8)(7)~~ VOTING IN PUBLIC ELECTIONS.—A patient who is  
 1245 eligible to vote according to the laws of the state has the  
 1246 right to vote in the primary and general elections. The  
 1247 department shall establish rules to enable patients to obtain

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1248 voter registration forms, applications for absentee ballots, and  
 1249 absentee ballots.

1250 ~~(9)(8)~~ HABEAS CORPUS.—

1251 (a) At any time, and without notice, an individual ~~a person~~  
 1252 held or admitted for mental health or substance abuse  
 1253 examination or placement in a receiving or treatment facility,  
 1254 or a relative, friend, guardian, guardian advocate, health care  
 1255 surrogate or proxy, representative, or attorney, or the  
 1256 department, on behalf of such individual person, may petition  
 1257 for a writ of habeas corpus to question the cause and legality  
 1258 of such detention and request that the court order a return to  
 1259 the writ in accordance with chapter 79. Each individual patient  
 1260 held in a facility shall receive a written notice of the right  
 1261 to petition for a writ of habeas corpus.

1262 (b) At any time, and without notice, an individual held or  
 1263 admitted for mental health or substance abuse examination or  
 1264 placement ~~a person who is a patient in a receiving or treatment~~  
 1265 facility, or a relative, friend, guardian, guardian advocate,  
 1266 health care surrogate or proxy, representative, or attorney, or  
 1267 the department, on behalf of such individual person, may file a  
 1268 petition in the circuit court in the county where the individual  
 1269 ~~patient~~ is being held alleging that he or she ~~the patient~~ is  
 1270 being unjustly denied a right or privilege granted under this  
 1271 ~~part herein~~ or that a procedure authorized under this part  
 1272 ~~herein~~ is being abused. Upon the filing of such a petition, the  
 1273 court ~~may shall have the authority to~~ conduct a judicial inquiry  
 1274 and ~~to~~ issue an any order ~~needed~~ to correct an abuse of ~~the~~  
 1275 ~~provisions of~~ this part.

1276 (c) The administrator of any ~~receiving or treatment~~

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1277 facility receiving a petition under this subsection shall file  
 1278 the petition with the clerk of the court on the next court  
 1279 working day.

1280 (d) ~~A No fee may not shall~~ be charged for ~~the filing of a~~  
 1281 petition under this subsection.

1282 ~~(10)(9)~~ VIOLATIONS.—The department shall report to the  
 1283 Agency for Health Care Administration any violation of the  
 1284 rights or privileges of patients, or of any procedures provided  
 1285 under this part, by any facility or professional licensed or  
 1286 regulated by the agency. The agency is authorized to impose any  
 1287 sanction authorized for violation of this part, based solely on  
 1288 the investigation and findings of the department.

1289 ~~(11)(10)~~ LIABILITY FOR VIOLATIONS.—Any person who violates  
 1290 or abuses any rights or privileges of patients provided by this  
 1291 part is liable for damages as determined by law. Any person who  
 1292 acts in good faith in compliance with the provisions of this  
 1293 part is immune from civil or criminal liability for his or her  
 1294 actions in connection with the admission, diagnosis, treatment,  
 1295 or discharge of a patient to or from a facility. However, this  
 1296 section does not relieve any person from liability if such  
 1297 person commits negligence.

1298 ~~(12)(11)~~ RIGHT TO PARTICIPATE IN TREATMENT AND DISCHARGE  
 1299 PLANNING.—The patient shall have the opportunity to participate  
 1300 in treatment and discharge planning and shall be notified in  
 1301 writing of his or her right, upon discharge from the facility,  
 1302 to seek treatment from the professional or agency of the  
 1303 patient's choice.

1304 ~~(13)~~ ADVANCE DIRECTIVES.—All service providers under this  
 1305 part shall provide information concerning advance directives to

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1306 individuals and assist those who are competent and willing to  
 1307 complete an advance directive. The directive may include  
 1308 instructions regarding mental health or substance abuse care.  
 1309 Service providers under this part shall honor the advance  
 1310 directive of individuals they serve, or shall request the  
 1311 transfer of the individual as required under s. 765.1105.

1312 ~~(14)(12)~~ POSTING OF NOTICE OF RIGHTS OF PATIENTS.—Each  
 1313 facility shall post a notice listing and describing, in the  
 1314 language and terminology that the persons to whom the notice is  
 1315 addressed can understand, the rights provided in this section.  
 1316 This notice shall include a statement that provisions of the  
 1317 federal Americans with Disabilities Act apply and the name and  
 1318 telephone number of a person to contact for further information.  
 1319 This notice shall be posted in a place readily accessible to  
 1320 patients and in a format easily seen by patients. This notice  
 1321 shall include the telephone numbers of the Florida local  
 1322 advocacy council and Advocacy Center for Persons with  
 1323 Disabilities, Inc.

1324 Section 7. Section 394.4597, Florida Statutes, is amended  
 1325 to read:

1326 394.4597 Persons to be notified; appointment of a patient's  
 1327 representative.—

1328 (1) VOLUNTARY ADMISSION PATIENTS.—At the time an individual  
 1329 ~~a patient~~ is voluntarily admitted to a receiving or treatment  
 1330 facility, the individual shall be asked to identify a person to  
 1331 be notified in case of an emergency, and the identity and  
 1332 contact information of ~~that a person to be notified in case of~~  
 1333 ~~an emergency~~ shall be entered in the individual's patient's  
 1334 clinical record.

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1335 (2) INVOLUNTARY ADMISSION PATIENTS.—

1336 (a) At the time an individual a patient is admitted to a  
 1337 facility for involuntary examination or placement, or when a  
 1338 petition for involuntary placement is filed, the names,  
 1339 addresses, and telephone numbers of the individual's patient's  
 1340 guardian or guardian advocate, health care surrogate, or proxy,  
 1341 or representative if he or she the patient has no guardian, and  
 1342 the individual's patient's attorney shall be entered in the  
 1343 patient's clinical record.

1344 (b) If the individual patient has no guardian, guardian  
 1345 advocate, health care surrogate, or proxy, he or she the patient  
 1346 shall be asked to designate a representative. If the individual  
 1347 patient is unable or unwilling to designate a representative,  
 1348 the facility shall select a representative.

1349 (c) The individual patient shall be consulted with regard  
 1350 to the selection of a representative by the receiving or  
 1351 treatment facility and may shall have authority to request that  
 1352 the any such representative be replaced.

1353 (d) If When the receiving or treatment facility selects a  
 1354 representative, first preference shall be given to a health care  
 1355 surrogate, if one has been previously selected by the patient.  
 1356 If the individual patient has not previously selected a health  
 1357 care surrogate, the selection, except for good cause documented  
 1358 in the individual's patient's clinical record, shall be made  
 1359 from the following list in the order of listing:

- 1360 1. The individual's patient's spouse.  
 1361 2. An adult child of the individual patient.  
 1362 3. A parent of the individual patient.  
 1363 4. The adult next of kin of the individual patient.

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1364 5. An adult friend of the individual patient.

1365 6. ~~The appropriate Florida local advocacy council as~~  
 1366 ~~provided in s. 402.166.~~

1367 (e) The following persons are prohibited from selection as  
 1368 an individual's representative:

1369 1. A professional providing clinical services to the  
 1370 individual under this part;

1371 2. The licensed professional who initiated the involuntary  
 1372 examination of the individual, if the examination was initiated  
 1373 by professional certificate;

1374 3. An employee, administrator, or board member of the  
 1375 facility providing the examination of the individual;

1376 4. An employee, administrator, or board member of a  
 1377 treatment facility providing treatment of the individual;

1378 5. A person providing any substantial professional services  
 1379 to the individual, including clinical and nonclinical services;

1380 6. A creditor of the individual;

1381 7. A person subject to an injunction for protection against  
 1382 domestic violence under s. 741.30, whether the order of  
 1383 injunction is temporary or final, and for which the individual  
 1384 was the petitioner; and

1385 8. A person subject to an injunction for protection against  
 1386 repeat violence, sexual violence, or dating violence under s.  
 1387 784.046, whether the order of injunction is temporary or final,  
 1388 and for which the individual was the petitioner.

1389 ~~(e) A licensed professional providing services to the~~  
 1390 ~~patient under this part, an employee of a facility providing~~  
 1391 ~~direct services to the patient under this part, a department~~  
 1392 ~~employee, a person providing other substantial services to the~~

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1393 patient in a professional or business capacity, or a creditor of  
 1394 the patient shall not be appointed as the patient's  
 1395 representative.

1396 (f) The representative selected by the individual or  
 1397 designated by the facility has the right to:

1398 1. Receive notice of the individual's admission;

1399 2. Receive notice of proceedings affecting the individual;

1400 3. Have immediate access to the individual unless such  
 1401 access is documented to be detrimental to the individual;

1402 4. Receive notice of any restriction of the individual's  
 1403 right to communicate or receive visitors;

1404 5. Receive a copy of the inventory of personal effects upon  
 1405 the individual's admission and to request an amendment to the  
 1406 inventory at any time;

1407 6. Receive disposition of the individual's clothing and  
 1408 personal effects if not returned to the individual, or to  
 1409 approve an alternate plan;

1410 7. Petition on behalf of the individual for a writ of  
 1411 habeas corpus to question the cause and legality of the  
 1412 individual's detention or to allege that the individual is being  
 1413 unjustly denied a right or privilege granted under this part, or  
 1414 that a procedure authorized under this part is being abused;

1415 8. Apply for a change of venue for the individual's  
 1416 involuntary placement hearing for the convenience of the parties  
 1417 or witnesses or because of the individual's condition;

1418 9. Receive written notice of any restriction of the  
 1419 individual's right to inspect his or her clinical record;

1420 10. Receive notice of the release of the individual from a  
 1421 receiving facility where an involuntary examination was

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1422 performed;

1423 11. Receive a copy of any petition for the individual's  
 1424 involuntary placement filed with the court; and

1425 12. Be informed by the court of the individual's right to  
 1426 an independent expert evaluation pursuant to involuntary  
 1427 placement procedures.

1428 Section 8. Section 394.4598, Florida Statutes, is amended  
 1429 to read:

1430 394.4598 Guardian advocate.—

1431 (1) The administrator may petition the court for the  
 1432 appointment of a guardian advocate based upon the opinion of a  
 1433 psychiatrist that an individual held for examination or admitted  
 1434 for mental health or substance abuse treatment ~~the patient~~ is  
 1435 incompetent to consent to treatment. If the court finds that the  
 1436 individual ~~a patient~~ is incompetent to consent to treatment and  
 1437 has not been adjudicated incapacitated and a guardian having  
 1438 with the authority to consent to mental health or substance  
 1439 abuse treatment has not been appointed, it shall appoint a  
 1440 guardian advocate. The individual ~~patient~~ has the right to have  
 1441 an attorney represent him or her at the hearing. If the  
 1442 individual ~~person~~ is indigent, the court shall appoint the  
 1443 office of the public defender to represent him or her at the  
 1444 hearing. The individual ~~patient~~ has the right to testify, cross-  
 1445 examine witnesses, and present witnesses. The proceeding must  
 1446 ~~shall~~ be recorded ~~either~~ electronically or stenographically, and  
 1447 testimony shall be ~~provided~~ under oath. One of the professionals  
 1448 authorized to give an opinion in support of a petition for  
 1449 involuntary placement, as described in s. 394.4655 or s.  
 1450 394.467, shall ~~must~~ testify. The A guardian advocate shall ~~must~~

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1451 meet the qualifications of a guardian ~~pursuant to contained in~~  
 1452 part IV of chapter 744, ~~except that a professional referred to~~  
 1453 ~~in this part, an employee of the facility providing direct~~  
 1454 ~~services to the patient under this part, a departmental~~  
 1455 ~~employee, a facility administrator, or member of the Florida~~  
 1456 ~~local advocacy council shall not be appointed. A person who is~~  
 1457 ~~appointed as a guardian advocate must agree to the appointment.~~  
 1458 A person may not be appointed as a guardian advocate unless he  
 1459 or she agrees to the appointment.

1460 (2) The following persons are prohibited from being  
 1461 appointed as an individual's guardian advocate:

1462 (a) A professional providing clinical services to the  
 1463 individual under this part;

1464 (b) The licensed professional who initiated the involuntary  
 1465 examination of the individual, if the examination was initiated  
 1466 by professional certificate;

1467 (c) An employee, administrator, or board member of the  
 1468 facility providing the examination of the individual;

1469 (d) An employee, administrator, or board member of a  
 1470 treatment facility providing treatment of the individual;

1471 (e) A person providing any substantial professional  
 1472 services to the individual, including clinical and nonclinical  
 1473 services;

1474 (f) A creditor of the individual;

1475 (g) A person subject to an injunction for protection  
 1476 against domestic violence under s. 741.30, whether the order of  
 1477 injunction is temporary or final, and for which the individual  
 1478 was the petitioner; and

1479 (h) A person subject to an injunction for protection

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1480 against repeat violence, sexual violence, or dating violence  
 1481 under s. 784.046, whether the order of injunction is temporary  
 1482 or final, and for which the individual was the petitioner.

1483 (3)(2) A facility requesting appointment of a guardian  
 1484 advocate must, prior to the appointment, provide the prospective  
 1485 guardian advocate with information about the duties and  
 1486 responsibilities of guardian advocates, including the  
 1487 information about the ethics of medical decisionmaking. Before  
 1488 asking a guardian advocate to give consent to treatment for an  
 1489 individual held for examination or admitted for mental health or  
 1490 substance abuse treatment a patient, the facility shall provide  
 1491 to the guardian advocate sufficient information to allow so that  
 1492 the guardian advocate to can decide whether to give express and  
 1493 informed consent to the treatment, including information that  
 1494 the treatment is essential to the care of the individual  
 1495 patient, and that the treatment does not present an unreasonable  
 1496 risk of serious, hazardous, or irreversible side effects. Before  
 1497 giving consent to treatment, the guardian advocate must meet and  
 1498 talk with the individual patient and the individual's patient's  
 1499 physician face to face in person, if at all possible, and by  
 1500 telephone, if not. The guardian advocate shall make every effort  
 1501 to make decisions regarding treatment that he or she believes  
 1502 the individual would have made under the circumstances if the  
 1503 individual were capable of making such a decision. The decision  
 1504 of the guardian advocate may be reviewed by the court, upon  
 1505 petition of the individual's patient's attorney, the  
 1506 individual's patient's family, or the facility administrator.

1507 (4)(3) Prior to A guardian advocate must attend at least a  
 1508 4-hour training course approved by the court before exercising

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1509 his or her authority, ~~the guardian advocate shall attend a~~  
 1510 ~~training course approved by the court.~~ This training course, ~~of~~  
 1511 ~~not less than 4 hours,~~ must include, at minimum, information  
 1512 about an the individual's patient rights, psychotropic  
 1513 medications, diagnosis of mental illness or substance abuse  
 1514 impairment, the ethics of medical decisionmaking, and the duties  
 1515 of guardian advocates. This training course shall take the place  
 1516 of the training required for guardians appointed pursuant to  
 1517 chapter 744.

1518 ~~(5)(4)~~ The information to be supplied to prospective  
 1519 guardian advocates before ~~prior to~~ their appointment and the  
 1520 training course for guardian advocates must be developed and  
 1521 completed through a course developed by the department and  
 1522 approved by the chief judge of the circuit court and taught by a  
 1523 court-approved organization. Court-approved organizations may  
 1524 include, but need are not be limited to, community ~~or junior~~  
 1525 colleges, guardianship organizations, and the local bar  
 1526 association or The Florida Bar. The court may, ~~in its~~  
 1527 ~~discretion,~~ waive some or all of the training requirements for  
 1528 guardian advocates or impose additional requirements. The court  
 1529 shall make its decision on a case-by-case basis and, in making  
 1530 its decision, shall consider the experience and education of the  
 1531 guardian advocate, the duties assigned to the guardian advocate,  
 1532 and the needs of the individual subject to involuntary placement  
 1533 patient.

1534 ~~(6)(5)~~ In selecting a guardian advocate, the court shall  
 1535 give preference to a health care surrogate, if one has already  
 1536 been designated by the individual held for examination or  
 1537 admitted for mental health or substance abuse treatment patient.

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1538 If the individual patient has not previously selected a health  
 1539 care surrogate, except for good cause documented in the court  
 1540 record, the selection shall be made from the following list in  
 1541 the order of listing:

- 1542 (a) The individual's patient's spouse.
- 1543 (b) An adult child of the individual patient.
- 1544 (c) A parent of the individual patient.
- 1545 (d) The adult next of kin of the individual patient.
- 1546 (e) An adult friend of the individual patient.
- 1547 (f) An adult trained and willing to serve as guardian
- 1548 advocate for the individual patient.

1549 ~~(7)(6)~~ If a guardian with the authority to consent to  
 1550 medical treatment has not already been appointed or if the  
 1551 individual held for examination or admitted for mental health or  
 1552 substance abuse treatment patient has not already designated a  
 1553 health care surrogate, the court may authorize the guardian  
 1554 advocate to consent to medical treatment, as well as mental  
 1555 health and substance abuse treatment. Unless otherwise limited  
 1556 by the court, a guardian advocate with authority to consent to  
 1557 medical treatment shall have the same authority to make health  
 1558 care decisions and be subject to the same restrictions as a  
 1559 proxy appointed under part IV of chapter 765. Unless the  
 1560 guardian advocate has sought and received express court approval  
 1561 in proceeding separate from the proceeding to determine the  
 1562 competence of the patient to consent to medical treatment, the  
 1563 guardian advocate may not consent to:

- 1564 (a) Abortion.
- 1565 (b) Sterilization.
- 1566 (c) Electroconvulsive treatment.

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1567 (d) Psychosurgery.

1568 (e) Experimental treatments that have not been approved by

1569 a federally approved institutional review board in accordance

1570 with 45 C.F.R. part 46 or 21 C.F.R. part 56.

1571

1572 In making a medical treatment decision under this subsection,

1573 the court ~~shall must~~ base its decision on evidence that the

1574 treatment or procedure is essential to the care of the

1575 individual patient and that the treatment does not present an

1576 unreasonable risk of serious, hazardous, or irreversible side

1577 effects. The court shall follow the procedures set forth in

1578 subsection (1) of this section.

1579 ~~(8)(7)~~ The guardian advocate shall be discharged when the

1580 individual for whom he or she is appointed patient is discharged

1581 from an order for involuntary outpatient ~~placement~~ or

1582 involuntary inpatient placement or when the individual patient

1583 is transferred from involuntary to voluntary status. The court

1584 ~~or a hearing officer~~ shall consider the competence of the

1585 individual patient pursuant to subsection (1) and may consider

1586 an involuntarily placed individual's patient's competence to

1587 consent to treatment at any hearing. Upon sufficient evidence,

1588 the court may restore, or the magistrate or administrative law

1589 judge hearing officer may recommend that the court restore, the

1590 individual's patient's competence. A copy of the order restoring

1591 competence or the certificate of discharge containing the

1592 restoration of competence shall be provided to the individual

1593 patient and the guardian advocate.

1594 Section 9. Section 394.4599, Florida Statutes, is amended

1595 to read:

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1596 394.4599 Notice.—

1597 (1) VOLUNTARY ADMISSION ~~PATIENTS~~.—Notice of an individual's

1598 ~~a voluntary patient's~~ admission shall ~~only~~ be given only at the

1599 request of the individual patient, except that, in an emergency,

1600 notice shall be given as determined by the facility.

1601 (2) INVOLUNTARY ADMISSION ~~PATIENTS~~.—

1602 (a) Whenever notice is required to be given under this

1603 part, such notice shall be given to the individual patient and

1604 the individual's patient's guardian, guardian advocate, health

1605 care surrogate or proxy, attorney, and representative.

1606 1. When notice is required to be given to an individual a

1607 patient, it shall be given both orally and in writing, in the

1608 language and terminology that the individual patient can

1609 understand, and, if needed, the facility shall provide an

1610 interpreter for the individual patient.

1611 2. Notice to an individual's a patient's guardian, guardian

1612 advocate, health care surrogate or proxy, attorney, and

1613 representative shall be given by United States mail and by

1614 registered or certified mail with the date, time, and method of

1615 notice delivery documented in receipts attached to the patient's

1616 clinical record. Hand delivery by a facility employee may be

1617 used as an alternative, with the date and time of delivery

1618 documented in the clinical record. If notice is given by a state

1619 attorney or an attorney for the department, a certificate of

1620 service ~~is shall be~~ sufficient to document service.

1621 (b) A receiving facility shall give prompt notice of the

1622 whereabouts of an individual a patient who is being

1623 involuntarily held for examination to the individual's guardian,

1624 guardian advocate, health care surrogate or proxy, attorney or

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1625 ~~representative, by telephone or in person within 24 hours after~~  
 1626 ~~the individual's patient's arrival at the facility, unless the~~  
 1627 ~~patient requests that no notification be made. Contact attempts~~  
 1628 ~~shall be documented in the individual's patient's clinical~~  
 1629 ~~record and shall begin as soon as reasonably possible after the~~  
 1630 ~~individual's patient's arrival. Notice that a patient is being~~  
 1631 ~~admitted as an involuntary patient shall be given to the Florida~~  
 1632 ~~local advocacy council no later than the next working day after~~  
 1633 ~~the patient is admitted.~~

1634 (c)1. A receiving facility shall give notice of the  
 1635 whereabouts of a minor who is being involuntarily held for  
 1636 examination pursuant to s. 394.463 to the minor's parent,  
 1637 guardian, caregiver, or guardian advocate, in person or by  
 1638 telephone or other form of electronic communication, immediately  
 1639 after the minor's arrival at the facility. The facility may  
 1640 delay notification for no more than 24 hours after the minor's  
 1641 arrival if the facility has submitted a report to the central  
 1642 abuse hotline, pursuant to s. 39.201, based upon knowledge or  
 1643 suspicion of abuse, abandonment, or neglect and if the facility  
 1644 deems a delay in notification to be in the minor's best  
 1645 interest.

1646 2. The receiving facility shall attempt to notify the  
 1647 minor's parent, guardian, caregiver, or guardian advocate until  
 1648 the receiving facility receives confirmation from the parent,  
 1649 guardian, caregiver, or guardian advocate, verbally, by  
 1650 telephone or other form of electronic communication, or by  
 1651 recorded message, that notification has been received. Attempts  
 1652 to notify the parent, guardian, caregiver, or guardian advocate  
 1653 must be repeated at least once every hour during the first 12

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1654 hours after the minor's arrival and once every 24 hours  
 1655 thereafter and must continue until such confirmation is  
 1656 received, unless the minor is released at the end of the 72-hour  
 1657 examination period, or until a petition for involuntary  
 1658 placement is filed with the court pursuant to s. 394.463(2)(i).  
 1659 The receiving facility may seek assistance from a law  
 1660 enforcement agency to notify the minor's parent, guardian,  
 1661 caregiver, or guardian advocate if the facility has not received  
 1662 within the first 24 hours after the minor's arrival a  
 1663 confirmation by the parent, guardian, caregiver, or guardian  
 1664 advocate that notification has been received. The receiving  
 1665 facility must document notification attempts in the minor's  
 1666 clinical record.

1667 (d)(e) The written notice of the filing of the petition for  
 1668 involuntary placement of an individual being held must contain  
 1669 the following:

1670 1. Notice that the petition has been filed with the circuit  
 1671 court in the county in which the individual patient is  
 1672 hospitalized and the address of such court.

1673 2. Notice that the office of the public defender has been  
 1674 appointed to represent the individual patient in the proceeding,  
 1675 if the individual patient is not otherwise represented by  
 1676 counsel.

1677 3. The date, time, and place of the hearing and the name of  
 1678 each examining expert and every other person expected to testify  
 1679 in support of continued detention.

1680 4. Notice that the individual patient, the individual's  
 1681 patient's guardian, guardian advocate, health care surrogate or  
 1682 proxy, or representative, or the administrator may apply for a

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1683 change of venue for the convenience of the parties or witnesses  
1684 or because of the condition of the individual patient.

1685 5. Notice that the individual patient is entitled to an  
1686 independent expert examination and, if the individual patient  
1687 cannot afford such an examination, that the court will provide  
1688 for one.

1689 ~~(e)(d)~~ A treatment facility shall provide notice of an  
1690 individual's a patient's involuntary admission on the next  
1691 regular working day after the individual's patient's arrival at  
1692 the facility.

1693 ~~(f)(e)~~ When an individual a patient is to be transferred  
1694 from one facility to another, notice shall be given by the  
1695 facility where the individual patient is located before ~~prior to~~  
1696 the transfer.

1697 Section 10. Subsections (1), (2), (3), and (10) of section  
1698 394.4615, Florida Statutes, are amended to read:

1699 394.4615 Clinical records; confidentiality.—

1700 (1) A clinical record shall be maintained for each  
1701 individual held for examination or admitted for treatment under  
1702 this part patient. The record shall include data pertaining to  
1703 admission and such other information as may be required under  
1704 rules of the department. A clinical record is confidential and  
1705 exempt from ~~the provisions of~~ s. 119.07(1). Unless waived by  
1706 express and informed consent of the individual, by the patient  
1707 or his or her the patient's guardian, ~~or~~ guardian advocate,  
1708 health care surrogate or proxy, or, if the individual patient is  
1709 deceased, by his or her guardian, guardian advocate, health care  
1710 surrogate or proxy, by his or her the patient's personal  
1711 representative or the family member who stands next in line of

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1712 intestate succession, the confidential status of the clinical  
1713 record shall not be lost by either authorized or unauthorized  
1714 disclosure to any person, organization, or agency.

1715 (2) The clinical record of an individual held for  
1716 examination or admitted for treatment under this part shall be  
1717 released if when:

1718 (a) The individual patient or the individual's patient's  
1719 guardian, guardian advocate, health care surrogate or proxy, or  
1720 representative authorizes the release. The guardian, ~~or~~ guardian  
1721 advocate, health care surrogate or proxy shall be provided  
1722 access to the appropriate clinical records ~~of the patient~~. The  
1723 individual patient or the patient's guardian, ~~or~~ guardian  
1724 advocate, health care surrogate or proxy may authorize the  
1725 release of information and clinical records to appropriate  
1726 persons to ensure the continuity of the individual's patient's  
1727 health care or mental health or substance abuse care.

1728 (b) The individual patient is represented by counsel and  
1729 the records are needed by the individual's patient's counsel for  
1730 adequate representation.

1731 (c) A petition for involuntary inpatient placement is filed  
1732 and the records are needed by the state attorney to evaluate the  
1733 allegations set forth in the petition or to prosecute the  
1734 petition. However, the state attorney may not use clinical  
1735 records obtained under this part for the purpose of criminal  
1736 investigation or prosecution, or for any other purpose not  
1737 authorized by this part.

1738 ~~(d)(c)~~ The court orders such release. In determining  
1739 whether there is good cause for disclosure, the court shall  
1740 weigh the need for the information to be disclosed against the

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1741 possible harm of disclosure to the individual ~~person~~ to whom  
1742 such information pertains.

1743 ~~(e)(d)~~ The individual patient is committed to, or is to be  
1744 returned to, the Department of Corrections ~~from the Department~~  
1745 ~~of Children and Families~~, and the Department of Corrections  
1746 requests such records. These records shall be furnished without  
1747 charge to the Department of Corrections.

1748 (3) Information from the clinical record may be released in  
1749 the following circumstances:

1750 (a) When a patient has declared an intention to harm other  
1751 persons. When such declaration has been made, the administrator  
1752 may authorize the release of sufficient information to provide  
1753 adequate warning to law enforcement agencies and to the person  
1754 threatened with harm by the patient.

1755 (b) When the administrator of the facility or secretary of  
1756 the department deems release to a qualified researcher as  
1757 defined in administrative rule, an aftercare treatment provider,  
1758 or an employee or agent of the department is necessary for  
1759 treatment of the patient, maintenance of adequate records,  
1760 compilation of treatment data, aftercare planning, or evaluation  
1761 of programs.

1762  
1763 For the purpose of determining whether a person meets the  
1764 criteria for involuntary outpatient placement or for preparing  
1765 the proposed treatment plan pursuant to s. 394.4655, the  
1766 clinical record may be released to the state attorney, the  
1767 public defender or the patient's private legal counsel, the  
1768 court, and to the appropriate mental health professionals,  
1769 including the service provider identified in s. 394.4655(7)(b)

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1770 ~~s. 394.4655(6)(b)2.~~, in accordance with state and federal law.

1771 (10) An individual held for examination or admitted for  
1772 treatment ~~Patients~~ shall have reasonable access to his or her  
1773 ~~their~~ clinical records, unless such access is determined by the  
1774 individual's patient's physician to be harmful to the individual  
1775 ~~patient~~. If the individual's patient's right to inspect his or  
1776 her clinical record is restricted by the facility, written  
1777 notice of such restriction shall be given to the individual  
1778 ~~patient~~ and the individual's patient's guardian, guardian  
1779 advocate, health care surrogate or proxy, or attorney, and  
1780 representative. In addition, the restriction shall be recorded  
1781 in the clinical record, together with the reasons for it. The  
1782 restriction of an individual's a patient's right to inspect his  
1783 or her clinical record shall expire after 7 days but may be  
1784 renewed, after review, for subsequent 7-day periods.

1785 Section 11. Paragraphs (a) through (m) of subsection (1) of  
1786 section 394.462, Florida Statutes, are amended, and paragraph  
1787 (n) is added to that subsection, to read:

1788 394.462 Transportation.—

1789 (1) TRANSPORTATION TO A RECEIVING OR DETOXIFICATION  
1790 FACILITY.—

1791 (a) Each county shall designate a single law enforcement  
1792 agency within the county, or portions thereof, to take an  
1793 individual ~~a person~~ into custody upon the entry of an ex parte  
1794 order or the execution of a certificate for involuntary  
1795 examination by an authorized professional and to transport that  
1796 individual person to the nearest receiving facility for  
1797 examination. The designated law enforcement agency may decline  
1798 to transport the individual person to a receiving or

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1799 detoxification facility only if:

- 1800 1. The county or jurisdiction designated by the county has  
 1801 contracted ~~on an annual basis~~ with an emergency medical  
 1802 transport service or private transport company for  
 1803 transportation of individuals ~~persons~~ to receiving facilities  
 1804 ~~pursuant to this section at the sole cost of the county;~~ and  
 1805 2. The law enforcement agency and the emergency medical  
 1806 transport service or private transport company agree that the  
 1807 continued presence of law enforcement personnel is not necessary  
 1808 for the safety of the individuals being transported ~~person~~ or  
 1809 others.  
 1810 3. The jurisdiction designated by the county may seek  
 1811 reimbursement for transportation expenses. The party responsible  
 1812 for payment for such transportation is the person receiving the  
 1813 transportation. The county shall seek reimbursement from the  
 1814 following sources in the following order:  
 1815 a. From an insurance company, health care corporation, or  
 1816 other source, if the individual being transported ~~person~~  
 1817 ~~receiving the transportation~~ is covered by an insurance policy  
 1818 or subscribes to a health care corporation or other source for  
 1819 payment of such expenses.  
 1820 b. From the individual being transported ~~person receiving~~  
 1821 ~~the transportation~~.  
 1822 c. From a financial settlement for medical care, treatment,  
 1823 hospitalization, or transportation payable or accruing to the  
 1824 injured party.  
 1825 (b) Any company that transports a patient pursuant to this  
 1826 subsection is considered an independent contractor and is solely  
 1827 liable for the safe and dignified transportation of the patient.

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- 1828 Such company must be insured and provide no less than \$100,000  
 1829 in liability insurance with respect to the transportation of  
 1830 patients.  
 1831 (c) Any company that contracts with a governing board of a  
 1832 county to transport patients shall comply with the applicable  
 1833 rules of the department to ensure the safety and dignity of the  
 1834 patients.  
 1835 (d) When a law enforcement officer takes custody of a  
 1836 person pursuant to this part, the officer may request assistance  
 1837 from emergency medical personnel if such assistance is needed  
 1838 for the safety of the officer or the person in custody.  
 1839 (e) When a member of a mental health overlay program or a  
 1840 mobile crisis response service is a professional authorized to  
 1841 initiate an involuntary examination pursuant to s. 394.463 and  
 1842 that professional evaluates a person and determines that  
 1843 transportation to a receiving facility is needed, the service,  
 1844 at its discretion, may transport the person to the facility or  
 1845 may call on the law enforcement agency or other transportation  
 1846 arrangement best suited to the needs of the patient.  
 1847 (f) When a ~~any~~ law enforcement officer has custody of a  
 1848 person, based on either noncriminal or minor criminal ~~behavior,~~  
 1849 a misdemeanor, or a felony other than a forcible felony as  
 1850 defined in s. 776.08, who that meets the statutory guidelines  
 1851 for involuntary examination under this part, the law enforcement  
 1852 officer shall transport the individual ~~person~~ to the nearest  
 1853 receiving facility for examination.  
 1854 (g) When any law enforcement officer has arrested a person  
 1855 for a forcible felony as defined in s. 776.08 and it appears  
 1856 that the person meets the criteria ~~statutory guidelines~~ for

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1857 involuntary examination ~~or placement~~ under this part, such  
 1858 person shall first be processed in the same manner as any other  
 1859 criminal suspect. The law enforcement agency shall thereafter  
 1860 immediately notify the nearest public receiving facility, which  
 1861 shall be responsible for promptly arranging for the examination  
 1862 and treatment of the person. A receiving facility ~~may not~~ ~~is not~~  
 1863 ~~required to~~ admit a person charged with a forcible felony as  
 1864 defined in s. 776.08 ~~crime~~ for whom the facility determines and  
 1865 documents that it is unable to provide adequate security, but  
 1866 shall provide ~~mental health~~ examination and treatment to the  
 1867 person at the location where he or she is held.

(h) If the appropriate law enforcement officer believes  
 1868 that a person has an emergency medical condition as defined in  
 1869 s. 395.002, the person may be first transported to a hospital  
 1870 for emergency medical treatment, regardless of whether the  
 1871 hospital is a designated receiving facility.

(i) The costs of transportation, evaluation,  
 1872 hospitalization, and treatment incurred under this subsection by  
 1873 persons who have been arrested for violations of any state law  
 1874 or county or municipal ordinance may be recovered as provided in  
 1875 s. 901.35.

(j) The nearest receiving facility must accept persons  
 1876 brought by law enforcement officers for involuntary examination.

(k) Each law enforcement agency shall develop a memorandum  
 1877 of understanding with each receiving facility within the law  
 1878 enforcement agency's jurisdiction which reflects a single set of  
 1879 protocols for the safe and secure transportation of the person  
 1880 and transfer of custody of the person. These protocols must also  
 1881 address crisis intervention measures.

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1886 (l) When a jurisdiction has entered into a contract with an  
 1887 emergency medical transport service or a private transport  
 1888 company for transportation of persons to receiving facilities,  
 1889 such service or company shall be given preference for  
 1890 transportation of persons from nursing homes, assisted living  
 1891 facilities, adult day care centers, or adult family-care homes,  
 1892 unless the behavior of the person being transported is such that  
 1893 transportation by a law enforcement officer is necessary.

(m) Nothing in this section shall be construed to limit  
 1894 emergency examination and treatment of incapacitated persons  
 1895 provided in accordance with the provisions of s. 401.445.

(n) Upon the request of an individual who appears to meet  
 1896 criteria for voluntary admission under s. 394.4625(1)(a), a law  
 1897 enforcement officer may transport him or her to a mental health  
 1898 receiving facility, addictions receiving facility, or  
 1899 detoxification facility.

Section 12. Subsections (1), (2), (4), and (5) of section  
 1900 394.4625, Florida Statutes, are amended to read:  
 1901 394.4625 Voluntary admissions.—  
 1902 (1) EXAMINATION AND TREATMENT AUTHORITY TO RECEIVE  
 1903 PATIENTS.—  
 1904 (a) In order to be voluntarily admitted to a facility A  
 1905 facility may receive for observation, diagnosis, or treatment:  
 1906 any person 18 years of age or older making application by  
 1907 express and informed consent for admission or any person age 17  
 1908 or under for whom such application is made by his or her  
 1909 guardian. If found to  
 1910 1. An individual must show evidence of mental illness or  
 1911 substance abuse impairment, to be competent to provide express

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1915 ~~and informed consent, and to be suitable for treatment, such~~  
 1916 ~~person 18 years of age or older may be admitted to the facility.~~  
 1917 ~~A person age 17 or under may be admitted only after a hearing to~~  
 1918 ~~verify the voluntariness of the consent.~~

1919 2. An individual must be suitable for treatment by the  
 1920 facility.

1921 3. An adult must provide, and be competent to provide,  
 1922 express and informed consent.

1923 4. A minor's guardian must provide express and informed  
 1924 consent, in conjunction with the consent of the minor. However,  
 1925 a minor may be admitted to an addictions receiving facility or  
 1926 detoxification facility by his or her own consent without his or  
 1927 her guardian's consent, if a physician documents in the clinical  
 1928 record that the minor has a substance abuse impairment. If the  
 1929 minor is admitted by his or her own consent and without the  
 1930 consent of his or her guardian, the facility must request the  
 1931 minor's permission to notify an adult family member or friend of  
 1932 the minor's voluntary admission into the facility.

1933 a. The consent of the minor is an affirmative agreement by  
 1934 the minor to remain at the facility for examination or  
 1935 treatment, and failure to object does not constitute consent.

1936 b. The minor's consent must be verified through a clinical  
 1937 assessment that is documented in the clinical record and  
 1938 conducted within 12 hours after arrival at the facility by a  
 1939 licensed professional authorized to initiate an involuntary  
 1940 examination pursuant to s. 394.463.

1941 c. In verifying the minor's consent, and using language  
 1942 that is appropriate to the minor's age, experience, maturity,  
 1943 and condition, the examining professional must provide the minor

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1944 with an explanation as to why the minor will be examined and  
 1945 treated, what the minor can expect while in the facility, and  
 1946 when the minor may expect to be released. The examining  
 1947 professional must determine and document that the minor is able  
 1948 to understand the information.

1949 d. Unless the minor's consent is verified pursuant to this  
 1950 section, a petition for involuntary inpatient placement shall be  
 1951 filed with the court within 1 court working day after his or her  
 1952 arrival or the minor must be released to his or her guardian.

1953 (b) A mental health overlay program or a mobile crisis  
 1954 response service or a licensed professional who is authorized to  
 1955 initiate an involuntary examination pursuant to s. 394.463 and  
 1956 is employed by a community mental health center or clinic must,  
 1957 pursuant to district procedure approved by the respective  
 1958 district administrator, conduct an initial assessment of the  
 1959 ability of the following persons to give express and informed  
 1960 consent to treatment before such persons may be admitted  
 1961 voluntarily:

1962 1. A person 60 years of age or older for whom transfer is  
 1963 being sought from a nursing home, assisted living facility,  
 1964 adult day care center, or adult family-care home, when such  
 1965 person has been diagnosed as suffering from dementia.

1966 2. A person 60 years of age or older for whom transfer is  
 1967 being sought from a nursing home pursuant to s. 400.0255(12).

1968 3. A person for whom all decisions concerning medical  
 1969 treatment are currently being lawfully made by the health care  
 1970 surrogate or proxy designated under chapter 765.

1971 (c) When an initial assessment of the ability of a person  
 1972 to give express and informed consent to treatment is required

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1973 under this section, and a mobile crisis response service does  
 1974 not respond to the request for an assessment within 2 hours  
 1975 after the request is made or informs the requesting facility  
 1976 that it will not be able to respond within 2 hours after the  
 1977 request is made, the requesting facility may arrange for  
 1978 assessment by any licensed professional authorized to initiate  
 1979 an involuntary examination pursuant to s. 394.463 who is not  
 1980 employed by or under contract with, and does not have a  
 1981 financial interest in, either the facility initiating the  
 1982 transfer or the receiving facility to which the transfer may be  
 1983 made.

1984 (d) A facility may not admit as a voluntary patient a  
 1985 person who has been adjudicated incapacitated, unless the  
 1986 condition of incapacity has been judicially removed. If a  
 1987 facility admits as a voluntary patient a person who is later  
 1988 determined to have been adjudicated incapacitated, and the  
 1989 condition of incapacity had not been removed by the time of the  
 1990 admission, the facility must either discharge the patient or  
 1991 transfer the patient to involuntary status.

1992 (e) The health care surrogate or proxy of an individual on  
 1993 a voluntary status patient may not consent to the provision of  
 1994 mental health treatment or substance abuse treatment for that  
 1995 individual the patient. An individual on voluntary status A  
 1996 voluntary patient who is unwilling or unable to provide express  
 1997 and informed consent to mental health treatment must ~~either~~ be  
 1998 discharged or transferred to involuntary status.

1999 (f) Within 24 hours after admission of a voluntary patient,  
 2000 the admitting physician shall document in the patient's clinical  
 2001 record that the patient is able to give express and informed

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2002 consent for admission. If the patient is not able to give  
 2003 express and informed consent for admission, the facility shall  
 2004 either discharge the patient or transfer the patient to  
 2005 involuntary status pursuant to subsection (5).

2006 (2) ~~RELEASE OR DISCHARGE OF VOLUNTARY PATIENTS.~~-

2007 (a) A facility shall discharge a voluntary patient:

2008 1. Who has sufficiently improved so that retention in the  
 2009 facility is no longer desirable. A patient may also be  
 2010 discharged to the care of a community facility.

2011 2. Who revokes consent to admission or requests discharge.  
 2012 A voluntary patient or a relative, friend, or attorney of the  
 2013 patient may request discharge either orally or in writing at any  
 2014 time following admission to the facility. The patient must be  
 2015 discharged within 24 hours of the request, unless the request is  
 2016 rescinded or the patient is transferred to involuntary status  
 2017 pursuant to this section. The 24-hour time period may be  
 2018 extended by a treatment facility when necessary for adequate  
 2019 discharge planning, but shall not exceed 3 days exclusive of  
 2020 weekends and holidays. If the patient, or another on the  
 2021 patient's behalf, makes an oral request for discharge to a staff  
 2022 member, such request shall be immediately entered in the  
 2023 patient's clinical record. If the request for discharge is made  
 2024 by a person other than the patient, the discharge may be  
 2025 conditioned upon the express and informed consent of the  
 2026 patient.

2027 (b) A voluntary patient who has been admitted to a facility  
 2028 and who refuses to consent to or revokes consent to treatment  
 2029 shall be discharged within 24 hours after such refusal or  
 2030 revocation, unless transferred to involuntary status pursuant to

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2031 this section or unless the refusal or revocation is freely and  
2032 voluntarily rescinded by the patient.

2033 (c) An individual on voluntary status who is currently  
2034 charged with a crime shall be returned to the custody of a law  
2035 enforcement officer upon release or discharge from a facility,  
2036 unless the individual has been released from law enforcement  
2037 custody by posting of a bond, by a pretrial conditional release,  
2038 or by other judicial release.

2039 (4) TRANSFER TO VOLUNTARY STATUS.—An individual on  
2040 involuntary status patient who has been assessed and certified  
2041 by a physician or psychologist as competent to provide express  
2042 and informed consent and who applies to be transferred to  
2043 voluntary status shall be transferred to voluntary status  
2044 immediately, unless the individual patient has been charged with  
2045 a crime, ~~or~~ has been involuntarily placed for treatment by a  
2046 court pursuant to s. 394.467 and continues to meet the criteria  
2047 for involuntary placement. When transfer to voluntary status  
2048 occurs, notice shall be given as provided in s. 394.4599.

2049 (5) TRANSFER TO INVOLUNTARY STATUS.—If an individual on  
2050 ~~When a voluntary status patient,~~ or an authorized person on the  
2051 individual's patient's behalf, makes a request for discharge,  
2052 the request for discharge, unless freely and voluntarily  
2053 rescinded, must be communicated to a physician, ~~clinical~~  
2054 psychologist, or psychiatrist as quickly as possible within, but  
2055 ~~not later than~~ 12 hours after the request is made. If the  
2056 individual patient meets the criteria for involuntary placement,  
2057 the individual must be transferred to a designated receiving  
2058 facility and the administrator of the receiving facility where  
2059 the individual is held must file with the court a petition for

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2060 involuntary placement, within 2 court working days after the  
2061 request ~~for discharge~~ is made. If the petition is not filed  
2062 within 2 court working days, the individual must patient shall  
2063 be discharged. Pending the filing of the petition, the  
2064 individual patient may be held and emergency mental health  
2065 treatment rendered in the least restrictive manner, upon the  
2066 written order of a physician, if it is determined that such  
2067 treatment is necessary for the safety of the individual patient  
2068 or others.

2069 Section 13. Section 394.463, Florida Statutes, is amended  
2070 to read:

2071 394.463 Involuntary examination.—

2072 (1) CRITERIA.—A person may be subject to an taken to a  
2073 ~~receiving facility for~~ involuntary examination if there is  
2074 reason to believe that he or she the person has a mental illness  
2075 or substance abuse impairment and because of this his or her  
2076 mental illness or substance abuse impairment:

2077 (a)1. The person has refused voluntary examination after  
2078 conscientious explanation and disclosure of the purpose of the  
2079 examination; or

2080 2. The person is unable to determine for himself or herself  
2081 whether examination is necessary; and

2082 (b)1. Without care or treatment, the person is likely to  
2083 suffer from neglect or refuse to care for himself or herself;  
2084 such neglect or refusal poses a real and present threat of  
2085 substantial harm to his or her well-being; and it is not  
2086 apparent that such harm may be avoided through the help of  
2087 willing family members or friends or the provision of other  
2088 services; or

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2089 2. There is a substantial likelihood that without care or  
2090 treatment the person will cause serious bodily harm to himself  
2091 or herself or others in the near future, as evidenced by recent  
2092 behavior.

2093 (2) INVOLUNTARY EXAMINATION.—

2094 (a) An involuntary examination may be initiated by any one  
2095 of the following means:

2096 1. A court may enter an ex parte order stating that an  
2097 individual ~~a person~~ appears to meet the criteria for involuntary  
2098 examination, giving the findings on which that conclusion is  
2099 based. The ex parte order for involuntary examination must be  
2100 based on sworn testimony, written or oral, which includes  
2101 specific facts that support the finding that the criteria have  
2102 been met. Any behavior relied on for the issuance of an ex parte  
2103 order must have occurred within the preceding 7 calendar days.  
2104 The order must specify whether the individual must be taken to a  
2105 mental health facility, detoxification facility, or addictions  
2106 receiving facility. If other less restrictive means are not  
2107 available, such as voluntary appearance for outpatient  
2108 evaluation, A law enforcement officer, or other designated agent  
2109 of the court, shall take the individual person into custody and  
2110 deliver him or her to the nearest ~~receiving~~ facility of the type  
2111 specified in the order for involuntary examination. However, if  
2112 the county in which the individual is taken into custody has a  
2113 transportation exception plan specifying a central receiving  
2114 facility, the law enforcement officer shall transport the  
2115 individual to the central receiving facility pursuant to the  
2116 plan. The order of the court order must shall be made a part of  
2117 the ~~patient's~~ clinical record. ~~A No~~ fee may not shall be charged

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2118 for the filing of an order under this subsection. Any ~~receiving~~  
2119 facility accepting the individual patient based on the court's  
2120 ~~this~~ order must send a copy of the order to the Agency for  
2121 Health Care Administration on the next working day. The order is  
2122 ~~shall be~~ valid only until executed or, if not executed, for the  
2123 period specified in the order itself. If no time limit is  
2124 specified in the order, the order is shall be valid for 7 days  
2125 after the date it that the order was signed.

2126 2. A law enforcement officer shall take a person who  
2127 appears to meet the criteria for involuntary examination into  
2128 custody and deliver ~~the person or have him or her delivered~~ to  
2129 the nearest mental health receiving facility, addictions  
2130 receiving facility, or detoxification facility, whichever the  
2131 officer determines is most appropriate for examination. However,  
2132 if the county in which the individual taken into custody has a  
2133 transportation exception plan specifying a central receiving  
2134 facility, the law enforcement officer shall transport the  
2135 individual to the central receiving facility pursuant to the  
2136 plan. The officer shall complete execute a written report  
2137 detailing the circumstances under which the individual person  
2138 was taken into custody, ~~and~~ The report shall be made a part of  
2139 the patient's clinical record. Any receiving facility or  
2140 detoxification facility accepting the individual patient based  
2141 on ~~the this~~ report must send a copy of the report to the Agency  
2142 for Health Care Administration on the next working day.

2143 3. A physician, physician assistant, clinical psychologist,  
2144 advanced registered nurse practitioner certified pursuant to s.  
2145 464.012, psychiatric nurse, mental health counselor, marriage  
2146 and family therapist, or clinical social worker may execute a

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2147 certificate stating that he or she has examined the individual a  
 2148 ~~person~~ within the preceding 48 hours and finds that the  
 2149 individual person appears to meet the criteria for involuntary  
 2150 examination and stating the observations upon which that  
 2151 conclusion is based. The certificate must specify whether the  
 2152 individual is to be taken to a mental health receiving facility,  
 2153 an addictions receiving facility, or a detoxification facility,  
 2154 and must include specific facts supporting the conclusion that  
 2155 the individual would benefit from services provided by the type  
 2156 of facility specified. ~~If other less restrictive means are not~~  
 2157 ~~available, such as voluntary appearance for outpatient~~  
 2158 ~~evaluation,~~ A law enforcement officer shall take the individual  
 2159 ~~person~~ named in the certificate into custody and deliver him or  
 2160 her to the nearest ~~receiving~~ facility of the type specified in  
 2161 the certificate for involuntary examination. However, if the  
 2162 county in which the individual is taken into custody has a  
 2163 transportation exception plan specifying a central receiving  
 2164 facility, the law enforcement officer shall transport the  
 2165 individual to the central receiving facility pursuant to the  
 2166 plan. A law enforcement officer may only take an individual into  
 2167 custody on the basis of a certificate within 7 calendar days  
 2168 after execution of the certificate. The law enforcement officer  
 2169 shall ~~complete~~ execute a written report detailing the  
 2170 circumstances under which the individual person was taken into  
 2171 custody. The report and certificate shall be made a part of the  
 2172 ~~patient's~~ clinical record. Any ~~receiving~~ facility accepting the  
 2173 individual patient based on ~~the~~ this certificate must send a  
 2174 copy of the certificate to the Agency for Health Care  
 2175 Administration on the next working day.

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2176 (b) An individual may ~~A person shall~~ not be removed from a  
 2177 ~~any~~ program or residential placement licensed under chapter 400  
 2178 or chapter 429 and transported to a receiving facility for  
 2179 involuntary examination unless an ex parte order, a professional  
 2180 certificate, or a law enforcement officer's report is first  
 2181 prepared. If the condition of the individual person is such that  
 2182 preparation of a law enforcement officer's report is not  
 2183 practicable before removal, the report ~~must~~ shall be completed  
 2184 as soon as possible after removal, but ~~in any case~~ before the  
 2185 individual person is transported to a receiving facility. A  
 2186 receiving facility admitting an individual a person for  
 2187 involuntary examination who is not accompanied by the required  
 2188 ex parte order, professional certificate, or law enforcement  
 2189 officer's report ~~must~~ shall notify the Agency for Health Care  
 2190 Administration of such admission by certified mail ~~by no later~~  
 2191 ~~than~~ the next working day. ~~The provisions of this paragraph do~~  
 2192 ~~not apply when transportation is provided by the patient's~~  
 2193 ~~family or guardian.~~

2194 (c) A law enforcement officer acting in accordance with an  
 2195 ex parte order issued pursuant to this subsection may serve and  
 2196 execute such order on any day of the week, at any time of the  
 2197 day or night.

2198 (d) A law enforcement officer acting in accordance with an  
 2199 ex parte order issued pursuant to this subsection may use such  
 2200 reasonable physical force as is necessary to gain entry to the  
 2201 premises, and any dwellings, buildings, or other structures  
 2202 located on the premises, and to take custody of the person who  
 2203 is the subject of the ex parte order.

2204 (e) Petitions and ~~The Agency for Health Care Administration~~

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2205 ~~shall receive and maintain the copies of ex parte orders,~~  
 2206 ~~involuntary outpatient placement orders, involuntary outpatient~~  
 2207 ~~placement petitions and orders issued pursuant to s. 394.4655,~~  
 2208 ~~involuntary inpatient placement petitions and orders issued~~  
 2209 ~~pursuant to s. 394.467, professional certificates, and law~~  
 2210 ~~enforcement officers' reports are. These documents shall be~~  
 2211 ~~considered part of the clinical record, governed by the~~  
 2212 ~~provisions of s. 394.4615. The agency shall prepare annual~~  
 2213 ~~reports analyzing the data obtained from these documents,~~  
 2214 ~~without information identifying individuals held for examination~~  
 2215 ~~or admitted for mental health and substance abuse treatment~~  
 2216 ~~patients, and shall provide copies of reports to the department,~~  
 2217 ~~the President of the Senate, the Speaker of the House of~~  
 2218 ~~Representatives, and the minority leaders of the Senate and the~~  
 2219 ~~House of Representatives.~~

2220 (f) An individual held for examination ~~A patient~~ shall be  
 2221 examined by a physician, ~~a~~ clinical psychologist, or a  
 2222 psychiatric nurse performing within the framework of an  
 2223 established protocol with a psychiatrist at a receiving facility  
 2224 without unnecessary delay and may, upon the order of a  
 2225 physician, be given emergency mental health or substance abuse  
 2226 treatment if it is determined that such treatment is necessary  
 2227 for the safety of the individual patient or others. The patient  
 2228 ~~may not be released by the receiving facility or its contractor~~  
 2229 ~~without the documented approval of a psychiatrist, a clinical~~  
 2230 ~~psychologist, or, if the receiving facility is a hospital, the~~  
 2231 ~~release may also be approved by an attending emergency~~  
 2232 ~~department physician with experience in the diagnosis and~~  
 2233 ~~treatment of mental and nervous disorders and after completion~~

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2234 ~~of an involuntary examination pursuant to this subsection.~~  
 2235 ~~However, a patient may not be held in a receiving facility for~~  
 2236 ~~involuntary examination longer than 72 hours.~~

2237 (g) An individual may not be held for involuntary  
 2238 examination for more than 72 hours from the time of the  
 2239 individual's arrival at the facility, except that this period  
 2240 may be extended by 48 hours if a physician documents in the  
 2241 clinical record that the individual has ongoing symptoms of  
 2242 substance intoxication or substance withdrawal and the  
 2243 individual would likely experience significant clinical benefit  
 2244 from detoxification services. This determination must be made  
 2245 based on a face-to-face examination conducted by the physician  
 2246 no less than 48 hours and not more than 72 hours after the  
 2247 individual's arrival at the facility. Based on the individual's  
 2248 needs, one of the following actions must be taken within the  
 2249 involuntary examination period:

2250 1. The individual shall be released after consultation with  
 2251 the admitting professional and the approval of a psychiatrist,  
 2252 psychiatric nurse, psychologist, or substance abuse  
 2253 professional. However, if the examination is conducted in a  
 2254 hospital, an emergency department physician may approve the  
 2255 release or a psychiatric nurse performing within the framework  
 2256 of an established protocol with a psychiatrist may also approve  
 2257 the release, except when the involuntary examination has been  
 2258 initiated by a psychiatrist and the release has not also been  
 2259 approved by the initiating psychiatrist. If the examination is  
 2260 conducted in an addictions receiving facility or detoxification  
 2261 facility, a physician or substance abuse professional may  
 2262 approve the release. The professional approving the release must

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2263 have personally conducted the involuntary examination;

2264 2. The individual shall be asked to provide express and  
 2265 informed consent for voluntary admission if a physician or  
 2266 psychologist has determined that the individual is competent to  
 2267 consent to treatment; or

2268 3. A petition for involuntary placement shall be completed  
 2269 and filed in the circuit court by the receiving facility  
 2270 administrator if involuntary outpatient or inpatient placement  
 2271 is deemed necessary. If the 72-hour period ends on a weekend or  
 2272 legal holiday, the petition must be filed by the next working  
 2273 day. If inpatient placement is deemed necessary, the least  
 2274 restrictive treatment consistent with the optimum improvement of  
 2275 the individual's condition must be made available.

2276 (h) An individual released from a receiving or treatment  
 2277 facility on a voluntary or involuntary basis who is currently  
 2278 charged with a crime shall be returned to the custody of law  
 2279 enforcement, unless the individual has been released from law  
 2280 enforcement custody by posting of a bond, by a pretrial  
 2281 conditional release, or by other judicial release.

2282 (i) If an individual ~~A person~~ for whom an involuntary  
 2283 examination has been initiated who is being evaluated or treated  
 2284 at a hospital for an emergency medical condition specified in s.  
 2285 395.002 the involuntary examination period must be examined by a  
 2286 receiving facility within 72 hours. The 72-hour period begins  
 2287 when the individual patient arrives at the hospital and ceases  
 2288 when a the attending physician documents that the individual  
 2289 patient has an emergency medical condition. The 72-hour period  
 2290 resumes when the physician documents that the emergency medical  
 2291 condition has stabilized or does not exist. If the patient is

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2292 ~~examined at a hospital providing emergency medical services by a~~  
 2293 ~~professional qualified to perform an involuntary examination and~~  
 2294 ~~is found as a result of that examination not to meet the~~  
 2295 ~~criteria for involuntary outpatient placement pursuant to s.~~  
 2296 ~~394.4655(1) or involuntary inpatient placement pursuant to s.~~  
 2297 ~~394.467(1), the patient may be offered voluntary placement, if~~  
 2298 ~~appropriate, or released directly from the hospital providing~~  
 2299 ~~emergency medical services. The finding by the professional that~~  
 2300 ~~the patient has been examined and does not meet the criteria for~~  
 2301 ~~involuntary inpatient placement or involuntary outpatient~~  
 2302 ~~placement must be entered into the patient's clinical record.~~  
 2303 ~~Nothing in this paragraph is intended to prevent A hospital~~  
 2304 ~~providing emergency medical services may transfer an individual~~  
 2305 ~~from appropriately transferring a patient to another hospital~~  
 2306 ~~before prior to stabilization if, provided the requirements of~~  
 2307 ~~s. 395.1041(3)(c) are have been met. One of the following~~  
 2308 ~~actions must occur within 12 hours after a physician documents~~  
 2309 ~~that the individual's emergency medical condition has stabilized~~  
 2310 ~~or does not exist:~~

2311 ~~(h) One of the following must occur within 12 hours after~~  
 2312 ~~the patient's attending physician documents that the patient's~~  
 2313 ~~medical condition has stabilized or that an emergency medical~~  
 2314 ~~condition does not exist:~~

2315 1. The individual shall be examined by a physician,  
 2316 psychiatric nurse or psychologist and, if found not to meet the  
 2317 criteria for involuntary examination pursuant to s. 394.463,  
 2318 shall be released directly from the hospital providing the  
 2319 emergency medical services. The results of the examination,  
 2320 including the final disposition, shall be entered into the

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2321 clinical records; or

2322 2. The individual shall be transferred to a receiving  
 2323 facility for examination if appropriate medical and mental  
 2324 health treatment is available. However, the receiving facility  
 2325 must be notified of the transfer within 2 hours after the  
 2326 individual's condition has been stabilized or after  
 2327 determination that an emergency medical condition does not  
 2328 exist. The patient must be examined by a designated receiving  
 2329 facility and released; or

2330 2. The patient must be transferred to a designated  
 2331 receiving facility in which appropriate medical treatment is  
 2332 available. However, the receiving facility must be notified of  
 2333 the transfer within 2 hours after the patient's condition has  
 2334 been stabilized or after determination that an emergency medical  
 2335 condition does not exist.

2336 (i) Within the 72-hour examination period or, if the 72  
 2337 hours ends on a weekend or holiday, no later than the next  
 2338 working day thereafter, one of the following actions must be  
 2339 taken, based on the individual needs of the patient:

2340 1. The patient shall be released, unless he or she is  
 2341 charged with a crime, in which case the patient shall be  
 2342 returned to the custody of a law enforcement officer;

2343 2. The patient shall be released, subject to the provisions  
 2344 of subparagraph 1., for voluntary outpatient treatment;

2345 3. The patient, unless he or she is charged with a crime,  
 2346 shall be asked to give express and informed consent to placement  
 2347 as a voluntary patient, and, if such consent is given, the  
 2348 patient shall be admitted as a voluntary patient; or

2349 4. A petition for involuntary placement shall be filed in

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2350 ~~the circuit court when outpatient or inpatient treatment is~~  
 2351 ~~deemed necessary. When inpatient treatment is deemed necessary,~~  
 2352 ~~the least restrictive treatment consistent with the optimum~~  
 2353 ~~improvement of the patient's condition shall be made available.~~  
 2354 ~~When a petition is to be filed for involuntary outpatient~~  
 2355 ~~placement, it shall be filed by one of the petitioners specified~~  
 2356 ~~in s. 394.4655(3)(a). A petition for involuntary inpatient~~  
 2357 ~~placement shall be filed by the facility administrator.~~

2358 (3) NOTICE OF RELEASE.—Notice of the release shall be given  
 2359 to the individual's patient's guardian, health care surrogate or  
 2360 proxy, or representative, to any person who executed a  
 2361 certificate admitting the individual patient to the receiving  
 2362 facility, and to any court that which ordered the individual's  
 2363 examination patient's evaluation.

2364 Section 14. Section 394.4655, Florida Statutes, is amended  
 2365 to read:

2366 394.4655 Involuntary outpatient placement.—

2367 (1) CRITERIA FOR INVOLUNTARY OUTPATIENT PLACEMENT.—An  
 2368 individual A person may be ordered to involuntary outpatient  
 2369 placement upon a finding of the court ~~that~~ by clear and  
 2370 convincing evidence that:

2371 (a) The individual is an adult person is 18 years of age or  
 2372 older;

2373 (b) The individual person has a mental illness or substance  
 2374 abuse impairment;

2375 (c) The individual person is unlikely to survive safely in  
 2376 the community without supervision, based on a clinical  
 2377 determination;

2378 (d) The individual person has a history of lack of

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2379 compliance with treatment for mental illness or substance abuse  
 2380 impairment;

2381 (e) The individual person has:

2382 1. ~~Within At least twice within~~ the immediately preceding  
 2383 36 months, been involuntarily admitted to a receiving or  
 2384 treatment facility ~~as defined in s. 394.455~~, or has received  
 2385 mental health or substance abuse services in a forensic or  
 2386 correctional facility. The 36-month period does not include any  
 2387 period during which the individual person was admitted or  
 2388 incarcerated; or

2389 2. Engaged in one or more acts of serious violent behavior  
 2390 toward self or others, or attempts at serious bodily harm to  
 2391 himself or herself or others, within the preceding 36 months;

2392 (f) ~~Due to The person is, as a result of~~ his or her mental  
 2393 illness or substance abuse impairment, the individual is,  
 2394 unlikely to voluntarily participate in the recommended treatment  
 2395 plan and ~~either he or she~~ has refused voluntary placement for  
 2396 treatment after sufficient and conscientious explanation and  
 2397 disclosure of the purpose of placement for treatment or ~~he or~~  
 2398 ~~she~~ is unable to determine for himself or herself whether  
 2399 placement is necessary;

2400 (g) In view of the individual's person's treatment history  
 2401 and current behavior, the individual person is in need of  
 2402 involuntary outpatient placement in order to prevent a relapse  
 2403 or deterioration that would be likely to result in serious  
 2404 bodily harm to self himself or herself or others, or a  
 2405 substantial harm to his or her well-being as set forth in s.  
 2406 394.463(1);

2407 (h) It is likely that the individual person will benefit

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2408 from involuntary outpatient placement; and

2409 (i) All available, less restrictive alternatives that ~~would~~  
 2410 offer an opportunity for improvement of his or her condition  
 2411 have been judged to be inappropriate or unavailable.

2412 (2) INVOLUNTARY OUTPATIENT PLACEMENT.—

2413 (a) ~~An individual A patient~~ who is being recommended for  
 2414 involuntary outpatient placement by the administrator of the  
 2415 receiving facility where he or she the patient has been examined  
 2416 may be retained by the facility after adherence to the notice  
 2417 procedures provided in s. 394.4599.

2418 1. The recommendation must be supported by the opinion of a  
 2419 psychiatrist and the second opinion of a ~~clinical~~ psychologist  
 2420 or another psychiatrist, both of whom have personally examined  
 2421 the individual patient within the preceding 72 hours, that the  
 2422 criteria for involuntary outpatient placement are met. However,  
 2423 in a county having a population of fewer than 50,000, if the  
 2424 administrator certifies that a psychiatrist or clinical  
 2425 psychologist is not available to provide the second opinion, the  
 2426 second opinion may be provided by a ~~licensed~~ physician who has  
 2427 postgraduate training and experience in diagnosis and treatment  
 2428 of mental and nervous disorders or by a psychiatric nurse. Any  
 2429 second opinion authorized in this subparagraph may be conducted  
 2430 through a face-to-face examination, in person or by electronic  
 2431 means. Such recommendation must be entered on an involuntary  
 2432 outpatient placement certificate that authorizes the receiving  
 2433 facility to retain the individual patient pending completion of  
 2434 a hearing. The certificate shall be made a part of the patient's  
 2435 clinical record.

2436 2. If the individual patient has been stabilized and no

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2437 longer meets the criteria for involuntary examination pursuant  
 2438 to s. 394.463(1), ~~he or she the patient~~ must be released from  
 2439 the receiving facility while awaiting the hearing for  
 2440 involuntary outpatient placement.

2441 3. Before filing a petition for involuntary outpatient  
 2442 treatment, the administrator of ~~the~~ a receiving facility or a  
 2443 designated department representative must identify the service  
 2444 provider that will have primary responsibility for service  
 2445 provision under an order for involuntary outpatient placement,  
 2446 unless the individual ~~person~~ is otherwise participating in  
 2447 outpatient psychiatric treatment and is not in need of public  
 2448 financing for that treatment, in which case the individual, if  
 2449 eligible, may be ordered to involuntary treatment pursuant to  
 2450 the existing psychiatric treatment relationship.

2451 ~~4.3.~~ The service provider shall prepare a written proposed  
 2452 treatment plan in consultation with the individual being held  
 2453 patient or his or her the patient's guardian advocate, if  
 2454 appointed, for the court's consideration for inclusion in the  
 2455 involuntary outpatient placement order. The service provider  
 2456 shall ~~also~~ provide a copy of the proposed treatment plan to the  
 2457 individual patient and the administrator of the receiving  
 2458 facility. The treatment plan must specify the nature and extent  
 2459 of the individual's patient's mental illness or substance abuse  
 2460 impairment, address the reduction of symptoms that necessitate  
 2461 involuntary outpatient placement, and include measurable goals  
 2462 and objectives for the services and treatment that are provided  
 2463 to treat the individual's person's mental illness or substance  
 2464 abuse impairment and assist the individual person in living and  
 2465 functioning in the community or to prevent a relapse or

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2466 deterioration. Service providers may select and supervise other  
 2467 providers individuals to implement specific aspects of the  
 2468 treatment plan. The services in the treatment plan must be  
 2469 deemed clinically appropriate by a physician, ~~clinical~~  
 2470 psychologist, psychiatric nurse, mental health counselor,  
 2471 marriage and family therapist, or clinical social worker who  
 2472 consults with, or is employed or contracted by, the service  
 2473 provider. The service provider must certify to the court in the  
 2474 proposed treatment plan whether sufficient services for  
 2475 improvement and stabilization are currently available and  
 2476 whether the service provider agrees to provide those services.  
 2477 If the service provider certifies that the services in the  
 2478 proposed treatment plan are not available, the petitioner may  
 2479 not file the petition.

2480 (b) If an individual a patient in involuntary inpatient  
 2481 placement meets the criteria for involuntary outpatient  
 2482 placement, the administrator of the treatment facility may,  
 2483 before the expiration of the period during which the treatment  
 2484 facility is authorized to retain the individual patient,  
 2485 recommend involuntary outpatient placement.

2486 1. The recommendation must be supported by the opinion of a  
 2487 psychiatrist and the second opinion of a ~~clinical~~ psychologist  
 2488 or another psychiatrist, both of whom have personally examined  
 2489 the individual patient within the preceding 72 hours, that the  
 2490 criteria for involuntary outpatient placement are met. However,  
 2491 in a county having a population of fewer than 50,000, if the  
 2492 administrator certifies that a psychiatrist or ~~clinical~~  
 2493 psychologist is not available to provide the second opinion, the  
 2494 second opinion may be provided by a licensed physician who has

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2495 postgraduate training and experience in diagnosis and treatment  
 2496 of mental and nervous disorders or by a psychiatric nurse. Any  
 2497 second opinion authorized in this subparagraph may be conducted  
 2498 through a face-to-face examination, in person or by electronic  
 2499 means. Such recommendation must be entered on an involuntary  
 2500 outpatient placement certificate, and the certificate must be  
 2501 made a part of the individual's patient's clinical record.

2502 ~~2.(e)1.~~ The administrator of the treatment facility shall  
 2503 provide a copy of the involuntary outpatient placement  
 2504 certificate and a copy of the state mental health discharge form  
 2505 to a department representative in the county where the  
 2506 individual patient will be residing. ~~For persons who are leaving~~  
 2507 ~~a state mental health treatment facility, the petition for~~  
 2508 ~~involuntary outpatient placement must be filed in the county~~  
 2509 ~~where the patient will be residing.~~

2510 ~~3.2.~~ The service provider that will have primary  
 2511 responsibility for service provision shall be identified by the  
 2512 designated department representative prior to the order for  
 2513 involuntary outpatient placement and must, before ~~prior to~~  
 2514 filing a petition for involuntary outpatient placement, certify  
 2515 to the court whether the services recommended in the  
 2516 individual's patient's discharge plan are available in the local  
 2517 community and whether the service provider agrees to provide  
 2518 those services. The service provider must develop with the  
 2519 individual patient, or the patient's guardian advocate, if one  
 2520 is appointed, a treatment or service plan that addresses the  
 2521 needs identified in the discharge plan. The plan must be deemed  
 2522 to be clinically appropriate by a physician, ~~clinical~~  
 2523 psychologist, psychiatric nurse, mental health counselor,

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2524 marriage and family therapist, or clinical social worker, ~~as~~  
 2525 ~~defined in this chapter~~, who consults with, or is employed or  
 2526 contracted by, the service provider.

2527 ~~3. If the service provider certifies that the services in~~  
 2528 ~~the proposed treatment or service plan are not available, the~~  
 2529 ~~petitioner may not file the petition.~~

2530 (3) PETITION FOR INVOLUNTARY OUTPATIENT PLACEMENT.—

2531 (a) A petition for involuntary outpatient placement may be  
 2532 filed by:

2533 1. The administrator of a mental health receiving facility,  
 2534 an addictions receiving facility, or a detoxification facility;  
 2535 or

2536 2. The administrator of a treatment facility.

2537 (b) Each required criterion for involuntary outpatient  
 2538 placement must be alleged and substantiated in the petition for  
 2539 involuntary outpatient placement. A copy of the certificate  
 2540 recommending involuntary outpatient placement completed by a  
 2541 qualified professional specified in subsection (2) must be  
 2542 attached to the petition. A copy of the proposed treatment plan  
 2543 must be attached to the petition. Before the petition is filed,  
 2544 the service provider shall certify that the services in the  
 2545 proposed treatment plan are available. If the necessary services  
 2546 are not available in the ~~patient's~~ local community where the  
 2547 individual will reside to respond to the person's individual  
 2548 needs, the petition may not be filed.

2549 (c) ~~A~~ The petition for involuntary outpatient placement  
 2550 must be filed in the county where the individual who is the  
 2551 subject of the petition ~~patient~~ is located, unless the  
 2552 individual patient is being placed from a state treatment

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2553 facility, in which case the petition must be filed in the county  
 2554 where the individual patient will reside. When the petition is  
 2555 ~~has been~~ filed, the clerk of the court shall provide copies of  
 2556 the petition and the proposed treatment plan to the department,  
 2557 the individual patient, the individual's patient's guardian,  
 2558 guardian advocate, health care surrogate or proxy, or  
 2559 representative, the state attorney, and the public defender or  
 2560 the individual's patient's private counsel. A fee may not be  
 2561 charged for filing a petition under this subsection.

2562 (4) APPOINTMENT OF COUNSEL.—Within 1 court working day  
 2563 after ~~the~~ filing of a petition for involuntary outpatient  
 2564 placement, the court shall appoint the public defender to  
 2565 represent the individual person who is the subject of the  
 2566 petition, unless the individual person is otherwise represented  
 2567 by counsel. The clerk of the court shall immediately notify the  
 2568 public defender of the appointment. The public defender shall  
 2569 represent the individual person until the petition is dismissed,  
 2570 the court order expires, or the individual patient is discharged  
 2571 from involuntary outpatient placement. An attorney who  
 2572 represents the individual patient shall have access to the  
 2573 individual patient, witnesses, and records relevant to the  
 2574 presentation of the individual's patient's case and shall  
 2575 represent the interests of the individual patient, regardless of  
 2576 the source of payment to the attorney. An attorney representing  
 2577 an individual in proceedings under this part shall advocate the  
 2578 individual's expressed desires and must be present and actively  
 2579 participate in all hearings on involuntary placement. If the  
 2580 individual is unable or unwilling to express his or her desires  
 2581 to the attorney, the attorney shall proceed as though the

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2582 individual expressed a desire for liberty, opposition to  
 2583 involuntary placement and, if placement is ordered, a preference  
 2584 for the least restrictive treatment possible.

2585 (5) CONTINUANCE OF HEARING.—The patient is entitled, with  
 2586 the concurrence of the patient's counsel, to at least one  
 2587 continuance of the hearing. The continuance shall be for a  
 2588 period of up to 4 weeks.

2589 (6) HEARING ON INVOLUNTARY OUTPATIENT PLACEMENT.—

2590 (a) ~~1-~~ The court shall hold the hearing on involuntary  
 2591 outpatient placement within 5 court working days after the  
 2592 filing of the petition, unless a continuance is granted. The  
 2593 hearing shall be held in the county where the petition is filed,  
 2594 ~~shall~~ be as convenient to the individual who is the subject of  
 2595 the petition patient as is consistent with orderly procedure,  
 2596 and ~~shall~~ be conducted in physical settings not likely to be  
 2597 injurious to the individual's patient's condition. If the court  
 2598 finds that the individual's patient's attendance at the hearing  
 2599 is not consistent with the best interests of the individual  
 2600 patient and if the individual's patient's counsel does not  
 2601 object, the court may waive the presence of the individual  
 2602 patient from all or any portion of the hearing. The state  
 2603 attorney for the circuit in which the individual patient is  
 2604 located shall represent the state, rather than the petitioner,  
 2605 as the real party in interest in the proceeding. The state  
 2606 attorney shall have access to the individual's clinical record  
 2607 and witnesses and shall independently evaluate and confirm the  
 2608 allegations set forth in the petition for involuntary placement.  
 2609 If the allegations are substantiated, the state attorney shall  
 2610 prosecute the petition. If the allegations are not

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2611 substantiated, the state attorney shall withdraw the petition.  
 2612 (b)2- The court may appoint a magistrate ~~master~~ to preside  
 2613 at the hearing. One of the professionals who executed the  
 2614 involuntary outpatient placement certificate shall be a witness.  
 2615 The individual who is the subject of the petition ~~patient~~ and  
 2616 his or her the patient's guardian, guardian advocate, health  
 2617 care surrogate or proxy, or representative shall be informed by  
 2618 the court of the right to an independent expert examination. If  
 2619 the individual ~~patient~~ cannot afford such an examination, the  
 2620 court shall provide ~~for~~ one. The independent expert's report is  
 2621 ~~shall be~~ confidential and not discoverable, unless the expert is  
 2622 ~~to be~~ called as a witness for the individual ~~patient~~ at the  
 2623 hearing. The court shall allow testimony from persons  
 2624 individuals, including family members, deemed by the court to be  
 2625 relevant ~~under state law,~~ regarding the individual's person's  
 2626 prior history and how that ~~prior~~ history relates to the  
 2627 individual's person's current condition. The testimony in the  
 2628 hearing must be ~~given~~ under oath, and the proceedings must be  
 2629 recorded. The individual ~~patient~~ may refuse to testify at the  
 2630 hearing.  
 2631 (c) The court shall consider testimony and evidence  
 2632 regarding the competence of the individual being held to consent  
 2633 to treatment. If the court finds that the individual is  
 2634 incompetent to consent, it shall appoint a guardian advocate as  
 2635 provided in s. 394.4598.  
 2636 (7) COURT ORDER.-  
 2637 (a)(b)1- If the court concludes that the individual who is  
 2638 the subject of the petition ~~patient~~ meets the criteria for  
 2639 involuntary outpatient placement under ~~pursuant to~~ subsection

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2640 (1), the court shall issue an order for involuntary outpatient  
 2641 placement. The court order may ~~shall~~ be for a ~~period of~~ up to 6  
 2642 months. The order must specify the nature and extent of the  
 2643 individual's patient's mental illness or substance abuse  
 2644 impairment. The court order ~~of the court~~ and the treatment plan  
 2645 ~~must shall~~ be made part of the individual's patient's clinical  
 2646 record. The service provider shall discharge an individual a  
 2647 ~~patient~~ from involuntary outpatient placement when the order  
 2648 expires or any time the individual ~~patient~~ no longer meets the  
 2649 criteria for involuntary placement. Upon discharge, the service  
 2650 provider shall send a certificate of discharge to the court.  
 2651 (b)2- The court may not order the department or the service  
 2652 provider to provide services if the program or service is not  
 2653 available in the ~~patient's~~ local community of the individual  
 2654 being served, if there is no space available in the program or  
 2655 service for the individual ~~patient,~~ or if funding is not  
 2656 available for the program or service. A copy of the order must  
 2657 be sent to the Agency for Health Care Administration by the  
 2658 service provider within 1 working day after it is received from  
 2659 the court. After the placement order is issued, the service  
 2660 provider and the individual ~~patient~~ may modify ~~provisions of~~ the  
 2661 treatment plan. For any material modification of the treatment  
 2662 plan to which the individual ~~patient~~ or the individual's  
 2663 ~~patient's~~ guardian advocate, if appointed, does agree, the  
 2664 service provider shall send notice of the modification to the  
 2665 court. Any material modifications of the treatment plan which  
 2666 are contested by the individual ~~patient~~ or the individual's  
 2667 ~~patient's~~ guardian advocate, if appointed, must be approved or  
 2668 disapproved by the court consistent with the requirements of

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2669 subsection (2).

2670 ~~(c)3-~~ If, in the clinical judgment of a physician, the  
 2671 individual being served patient has failed or has refused to  
 2672 comply with the treatment ordered by the court, and, in the  
 2673 clinical judgment of the physician, efforts were made to solicit  
 2674 compliance and the individual patient may meet the criteria for  
 2675 involuntary examination, ~~the individual a person~~ may be brought  
 2676 to a receiving facility pursuant to s. 394.463 for involuntary  
 2677 examination. If, after examination, the individual patient does  
 2678 not meet the criteria for involuntary inpatient placement  
 2679 pursuant to s. 394.467, the individual patient must be  
 2680 discharged from the receiving facility. The involuntary  
 2681 outpatient placement order remains shall remain in effect unless  
 2682 the service provider determines that the individual patient no  
 2683 longer meets the criteria for involuntary outpatient placement  
 2684 or until the order expires. The service provider must determine  
 2685 whether modifications should be made to the existing treatment  
 2686 plan and must attempt to continue to engage the individual  
 2687 patient in treatment. For any material modification of the  
 2688 treatment plan to which the individual patient or the  
 2689 individual's patient's guardian advocate, if appointed, agrees  
 2690 ~~does agree~~, the service provider shall send notice of the  
 2691 modification to the court. Any material modifications of the  
 2692 treatment plan which are contested by the individual patient or  
 2693 the individual's patient's guardian advocate, if appointed, must  
 2694 be approved or disapproved by the court consistent with the  
 2695 requirements of subsection (2).

2696 ~~(d)(e)~~ If, at any time before the conclusion of the initial  
 2697 hearing on involuntary outpatient placement, it appears to the

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2698 court that the individual person does not meet the criteria for  
 2699 involuntary outpatient placement under this section but,  
 2700 ~~instead~~, meets the criteria for involuntary inpatient placement,  
 2701 the court may order the individual person admitted for  
 2702 involuntary inpatient examination under s. 394.463. ~~If the~~  
 2703 ~~person instead meets the criteria for involuntary assessment,~~  
 2704 ~~protective custody, or involuntary admission pursuant to s.~~  
 2705 ~~397.675, the court may order the person to be admitted for~~  
 2706 ~~involuntary assessment for a period of 5 days pursuant to s.~~  
 2707 ~~397.6811. Thereafter, all proceedings shall be governed by~~  
 2708 ~~chapter 397.~~

2709 ~~(d) At the hearing on involuntary outpatient placement, the~~  
 2710 ~~court shall consider testimony and evidence regarding the~~  
 2711 ~~patient's competence to consent to treatment. If the court finds~~  
 2712 ~~that the patient is incompetent to consent to treatment, it~~  
 2713 ~~shall appoint a guardian advocate as provided in s. 394.4598.~~  
 2714 ~~The guardian advocate shall be appointed or discharged in~~  
 2715 ~~accordance with s. 394.4598.~~

2716 (e) The administrator of the receiving facility, the  
 2717 detoxification facility, or the designated department  
 2718 representative shall provide a copy of the court order and  
 2719 adequate documentation of an individual's a patient's mental  
 2720 illness or substance abuse impairment to the service provider  
 2721 for involuntary outpatient placement. Such documentation must  
 2722 include any advance directives made by the individual patient, a  
 2723 psychiatric evaluation of the individual patient, and any  
 2724 evaluations of the individual patient performed by a ~~clinical~~  
 2725 psychologist or a clinical social worker.

2726 ~~(8)(7) PROCEDURE FOR CONTINUED INVOLUNTARY OUTPATIENT~~

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2727 PLACEMENT.-

2728 (a) ~~1-~~ If the individual person continues to meet the  
 2729 criteria for involuntary outpatient placement, the service  
 2730 provider shall, before the expiration of the period during which  
 2731 the ~~placement treatment~~ is ordered ~~for the person~~, file in the  
 2732 circuit court a petition for continued involuntary outpatient  
 2733 placement.

2734 ~~1.2-~~ The existing involuntary outpatient placement order  
 2735 remains in effect until disposition ~~of~~ ~~or~~ the petition for  
 2736 continued involuntary outpatient placement.

2737 ~~2.3-~~ A certificate must ~~shall~~ be attached to the petition  
 2738 which includes a statement from the individual's person's  
 2739 physician or ~~clinical~~ psychologist justifying the request, a  
 2740 brief description of the individual's patient's treatment during  
 2741 the time he or she was involuntarily placed, and a personalized  
 2742 ~~an individualized~~ plan of continued treatment.

2743 ~~3.4-~~ The service provider shall develop the individualized  
 2744 plan of continued treatment in consultation with the individual  
 2745 patient or his or her the patient's guardian advocate, if  
 2746 appointed. When the petition has been filed, the clerk of the  
 2747 court shall provide copies of the certificate and the  
 2748 ~~individualized~~ plan of continued treatment to the department,  
 2749 the individual patient, the individual's patient's guardian  
 2750 advocate, the state attorney, and the individual's patient's  
 2751 private counsel or the public defender.

2752 (b) Within 1 court working day after the filing of a  
 2753 petition for continued involuntary outpatient placement, the  
 2754 court shall appoint the public defender to represent the  
 2755 individual person who is the subject of the petition, unless the

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2756 individual person is otherwise represented by counsel. The clerk  
 2757 of the court shall immediately notify the public defender of  
 2758 such appointment. The public defender shall represent the  
 2759 individual person until the petition is dismissed, ~~or~~ the court  
 2760 order expires, or the individual patient is discharged from  
 2761 involuntary outpatient placement. Any attorney representing the  
 2762 individual patient shall have access to the individual patient,  
 2763 witnesses, and records relevant to the presentation of the  
 2764 individual's patient's case and shall represent the interests of  
 2765 the individual patient, regardless of the source of payment to  
 2766 the attorney.

2767 (c) The court shall inform the individual who is the  
 2768 subject of the petition and his or her guardian, guardian  
 2769 advocate, health care surrogate or proxy, or representative of  
 2770 the individual's right to an independent expert examination. If  
 2771 the individual cannot afford such an examination, the court  
 2772 shall provide one.

2773 (d) ~~(e)~~ Hearings on petitions for continued involuntary  
 2774 outpatient placement are ~~shall be~~ before the circuit court. The  
 2775 court may appoint a magistrate master to preside at the hearing.  
 2776 The procedures for obtaining an order pursuant to this paragraph  
 2777 must ~~shall~~ be in accordance with subsection (6), except that the  
 2778 time period included in paragraph (1) (e) is not applicable in  
 2779 determining the appropriateness of additional periods of  
 2780 involuntary outpatient placement.

2781 ~~(e)-(d)~~ Notice of the hearing shall be provided in  
 2782 accordance with as set forth in s. 394.4599. The individual  
 2783 being served patient and the individual's patient's attorney may  
 2784 agree to a period of continued outpatient placement without a

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2785 court hearing.

2786 ~~(f)(e)~~ The same procedure shall be repeated before the  
2787 expiration of each additional period the individual being served  
2788 ~~patient~~ is placed in treatment.

2789 ~~(g)(f)~~ If the individual in involuntary outpatient  
2790 placement patient has previously been found incompetent to  
2791 consent to treatment, the court shall consider testimony and  
2792 evidence regarding the individual's patient's competence.  
2793 Section 394.4598 governs the discharge of the guardian advocate  
2794 if the individual's patient's competency to consent to treatment  
2795 has been restored.

2796 Section 15. Section 394.467, Florida Statutes, is amended  
2797 to read:

2798 394.467 Involuntary inpatient placement.—

2799 (1) CRITERIA.—An individual A person may be placed in  
2800 involuntary inpatient placement for treatment upon a finding of  
2801 the court by clear and convincing evidence that:

2802 (a) He or she has a mental illness or substance abuse  
2803 impairment is mentally ill and because of his or her mental  
2804 illness or substance abuse impairment:

2805 1.a. He or she has refused voluntary placement for  
2806 treatment after sufficient and conscientious explanation and  
2807 disclosure of the purpose of placement for treatment; or

2808 b. He or she is unable to determine for himself or herself  
2809 whether placement is necessary; and

2810 2.a. He or she is manifestly incapable of surviving alone  
2811 or with the help of willing and responsible family or friends,  
2812 including available alternative services, and, without  
2813 treatment, is likely to suffer from neglect or refuse to care

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2814 for himself or herself, and such neglect or refusal poses a real  
2815 and present threat of substantial harm to his or her well-being;  
2816 or

2817 b. There is substantial likelihood that in the near future  
2818 he or she will inflict serious bodily harm on self or others  
2819 ~~himself or herself or another person~~, as evidenced by recent  
2820 behavior causing, attempting, or threatening such harm; and

2821 (b) All available less restrictive treatment alternatives  
2822 that which would offer an opportunity for improvement of his or  
2823 her condition have been judged to be inappropriate.

2824 (2) ADMISSION TO A TREATMENT FACILITY.—An individual A  
2825 patient may be retained by a mental health receiving facility,  
2826 an addictions receiving facility, or a detoxification facility,  
2827 or involuntarily placed in a treatment facility upon the  
2828 recommendation of the administrator of the receiving facility  
2829 where the individual patient has been examined and after  
2830 adherence to the notice and hearing procedures provided in s.  
2831 394.4599. The recommendation must be supported by the opinion of  
2832 a psychiatrist and the second opinion of a ~~clinical~~ psychologist  
2833 or another psychiatrist, both of whom have personally examined  
2834 the individual patient within the preceding 72 hours, that the  
2835 criteria for involuntary inpatient placement are met. However,  
2836 in a county that has a population of fewer than 50,000, if the  
2837 administrator certifies that a psychiatrist or ~~clinical~~  
2838 psychologist is not available to provide the second opinion, the  
2839 second opinion may be provided by a licensed physician who has  
2840 postgraduate training and experience in diagnosis and treatment  
2841 of mental and nervous disorders or by a psychiatric nurse. If  
2842 the petition seeks placement for treatment of substance abuse

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2843 impairment only, and the individual is examined by an addictions  
 2844 receiving facility or detoxification facility, the first opinion  
 2845 may be provided by a physician and the second opinion may be  
 2846 provided by a substance abuse qualified professional. Any second  
 2847 opinion authorized in this subsection may be conducted through a  
 2848 face-to-face examination, in person or by electronic means. Such  
 2849 recommendation ~~must shall~~ be entered on an involuntary inpatient  
 2850 placement certificate that authorizes the receiving facility to  
 2851 retain the individual being held patient pending transfer to a  
 2852 treatment facility or completion of a hearing.

2853 (3) PETITION FOR INVOLUNTARY INPATIENT PLACEMENT.—The  
 2854 administrator of the mental health facility, addictions  
 2855 receiving facility, or detoxification facility shall file a  
 2856 petition for involuntary inpatient placement in the court in the  
 2857 county where the individual patient is located. Upon filing, the  
 2858 clerk of the court shall provide copies to the department, the  
 2859 individual patient, the individual's patient's guardian,  
 2860 guardian advocate, health care surrogate or proxy, or  
 2861 representative, and the state attorney and public defender of  
 2862 the judicial circuit in which the individual patient is located.  
 2863 ~~A No~~ fee ~~may not shall~~ be charged for the filing of a petition  
 2864 under this subsection.

2865 (4) APPOINTMENT OF COUNSEL.—Within 1 court working day  
 2866 after the filing of a petition for involuntary inpatient  
 2867 placement, the court shall appoint the public defender to  
 2868 represent the individual person who is the subject of the  
 2869 petition, unless the individual person is otherwise represented  
 2870 by counsel. The clerk of the court shall immediately notify the  
 2871 public defender of such appointment. Any attorney representing

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2872 the individual patient shall have access to the individual  
 2873 ~~patient,~~ witnesses, and records relevant to the presentation of  
 2874 the individual's patient's case and shall represent the  
 2875 interests of the individual patient, regardless of the source of  
 2876 payment to the attorney.

2877 (a) An attorney representing an individual in proceedings  
 2878 under this part shall advocate the individual's expressed  
 2879 desires and must be present and actively participate in all  
 2880 hearings on involuntary placement. If the individual is unable  
 2881 or unwilling to express his or her desires to the attorney, the  
 2882 attorney shall proceed as though the individual expressed a  
 2883 desire for liberty, opposition to involuntary placement, and, if  
 2884 placement is ordered, a preference for the least restrictive  
 2885 treatment possible.

2886 (b) The state attorney for the circuit in which the  
 2887 individual is located shall represent the state rather than the  
 2888 petitioning facility administrator as the real party in interest  
 2889 in the proceeding. The state attorney shall have access to the  
 2890 individual's clinical record and witnesses and shall  
 2891 independently evaluate and confirm the allegations set forth in  
 2892 the petition for involuntary placement. If the allegations are  
 2893 substantiated, the state attorney shall prosecute the petition.  
 2894 If the allegations are not substantiated, the state attorney  
 2895 shall withdraw the petition.

2896 (5) CONTINUANCE OF HEARING.—The individual patient is  
 2897 entitled, with the concurrence of the individual's patient's  
 2898 counsel, to at least one continuance of the hearing. The  
 2899 continuance shall be for ~~a period of~~ up to 4 weeks.

2900 (6) HEARING ON INVOLUNTARY INPATIENT PLACEMENT.—

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2901 (a)~~1~~ The court shall hold the hearing on involuntary  
 2902 inpatient placement within 5 court working days after the  
 2903 petition is filed, unless a continuance is granted.

2904 1. The hearing shall be held in the county where the  
 2905 individual patient is located and shall be as convenient to the  
 2906 individual patient as may be consistent with orderly procedure  
 2907 and shall be conducted in physical settings not likely to be  
 2908 injurious to the individual's patient's condition. If the  
 2909 individual wishes to waive his or her court finds that the  
 2910 patient's attendance at the hearing, the court must determine  
 2911 that the waiver is knowingly, intelligently, and voluntarily  
 2912 being waived and is not consistent with the best interests of  
 2913 the patient, and the patient's counsel does not object, the  
 2914 court may waive the presence of the individual patient from all  
 2915 or any portion of the hearing. The state attorney for the  
 2916 circuit in which the patient is located shall represent the  
 2917 state, rather than the petitioning facility administrator, as  
 2918 the real party in interest in the proceeding.

2919 2. The court may appoint a general or special magistrate to  
 2920 preside at the hearing. One of the two professionals who  
 2921 executed the involuntary inpatient placement certificate shall  
 2922 be a witness. The individual patient and the individual's  
 2923 patient's guardian, guardian advocate, health care surrogate or  
 2924 proxy, or representative shall be informed by the court of the  
 2925 right to an independent expert examination. If the individual  
 2926 patient cannot afford such an examination, the court shall  
 2927 provide for one. The independent expert's report is shall be  
 2928 confidential and not discoverable, unless the expert is to be  
 2929 called as a witness for the individual patient at the hearing.

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2930 The testimony in the hearing must be given under oath, and the  
 2931 proceedings must be recorded. The individual patient may refuse  
 2932 to testify at the hearing.

2933 3. The court shall allow testimony from persons, including  
 2934 family members, deemed by the court to be relevant regarding the  
 2935 individual's prior history and how that prior history relates to  
 2936 the individual's current condition.

2937 (b) If the court concludes that the individual patient  
 2938 meets the criteria for involuntary inpatient placement, it shall  
 2939 order that the individual patient be transferred to a treatment  
 2940 facility or, if the individual patient is at a treatment  
 2941 facility, that the individual patient be retained there or be  
 2942 treated at any other appropriate mental health receiving  
 2943 facility, addictions receiving facility, detoxification  
 2944 facility, or treatment facility, or that the individual patient  
 2945 receive services from such a facility a receiving or treatment  
 2946 facility, on an involuntary basis, for up to 90 days a period of  
 2947 up to 6 months. The order shall specify the nature and extent of  
 2948 the individual's patient's mental illness or substance abuse  
 2949 impairment. The facility shall discharge the individual at a  
 2950 patient any time the individual patient no longer meets the  
 2951 criteria for involuntary inpatient placement, unless the  
 2952 individual patient has transferred to voluntary status.

2953 (c) If at any time before prior to the conclusion of the  
 2954 hearing on involuntary inpatient placement it appears to the  
 2955 court that the individual person does not meet the criteria for  
 2956 involuntary inpatient placement under this section, but instead  
 2957 meets the criteria for involuntary outpatient placement, the  
 2958 court may order the individual person evaluated for involuntary

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2959 outpatient placement pursuant to s. 394.4655, ~~and~~ the petition  
 2960 and hearing procedures set forth in s. 394.4655 shall apply. ~~If~~  
 2961 ~~the person instead meets the criteria for involuntary~~  
 2962 ~~assessment, protective custody, or involuntary admission~~  
 2963 ~~pursuant to s. 397.675, then the court may order the person to~~  
 2964 ~~be admitted for involuntary assessment for a period of 5 days~~  
 2965 ~~pursuant to s. 397.6811. Thereafter, all proceedings shall be~~  
 2966 ~~governed by chapter 397.~~

2967 (d) At the hearing on involuntary inpatient placement, the  
 2968 court shall consider testimony and evidence regarding the  
 2969 individual's patient's competence to consent to treatment. If  
 2970 the court finds that the individual patient is incompetent to  
 2971 consent to treatment, it shall appoint a guardian advocate as  
 2972 provided in s. 394.4598.

2973 (e) The administrator of the petitioning receiving facility  
 2974 shall provide a copy of the court order and adequate  
 2975 documentation of the individual's a patient's mental illness or  
 2976 substance abuse impairment to the administrator of a treatment  
 2977 facility if the individual whenever a patient is ordered for  
 2978 involuntary inpatient placement, whether by civil or criminal  
 2979 court. The documentation must shall include any advance  
 2980 directives made by the individual patient, a psychiatric  
 2981 evaluation of the individual patient, and any evaluations of the  
 2982 individual patient performed by a clinical psychologist, a  
 2983 marriage and family therapist, a mental health counselor, a  
 2984 substance abuse qualified professional or a clinical social  
 2985 worker. The administrator of a treatment facility may refuse  
 2986 admission to an individual any patient directed to its  
 2987 facilities on an involuntary basis, whether by civil or criminal

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2988 court order, who is not accompanied at the same time by adequate  
 2989 orders and documentation.

2990 (7) PROCEDURE FOR CONTINUED INVOLUNTARY INPATIENT  
 2991 PLACEMENT.-

2992 (a) Hearings on petitions for continued involuntary  
 2993 inpatient placement shall be administrative hearings and shall  
 2994 be conducted in accordance with ~~the provisions of~~ s. 120.57(1),  
 2995 except that an any order entered by an the administrative law  
 2996 judge is shall be final and subject to judicial review in  
 2997 accordance with s. 120.68. Orders concerning an individual  
 2998 patients committed after successfully pleading not guilty by  
 2999 reason of insanity are shall be governed by ~~the provisions of~~ s.  
 3000 916.15.

3001 (b) If the individual patient continues to meet the  
 3002 criteria for involuntary inpatient placement, the administrator  
 3003 shall, before prior to the expiration of the period during which  
 3004 the treatment facility is authorized to retain the individual  
 3005 patient, file a petition requesting authorization for continued  
 3006 involuntary inpatient placement. The request must shall be  
 3007 accompanied by a statement from the individual's patient's  
 3008 physician or clinical psychologist justifying the request, a  
 3009 brief description of the individual's patient's treatment during  
 3010 the time he or she was involuntarily placed, and a personalized  
 3011 an individualized plan of continued treatment. Notice of the  
 3012 hearing must shall be provided as set forth in s. 394.4599. If  
 3013 at the hearing the administrative law judge finds that  
 3014 attendance at the hearing is not consistent with the  
 3015 individual's best interests of the patient, the administrative  
 3016 law judge may waive the presence of the individual patient from

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3017 all or any portion of the hearing, unless the individual  
 3018 ~~patient~~, through counsel, objects to the waiver of presence. The  
 3019 testimony in the hearing must be under oath, and the proceedings  
 3020 must be recorded.

3021 (c) Unless the individual patient is otherwise represented  
 3022 or is ineligible, he or she shall be represented at the hearing  
 3023 on the petition for continued involuntary inpatient placement by  
 3024 the public defender of the circuit in which the facility is  
 3025 located.

3026 (d) The Division of Administrative Hearings shall inform  
 3027 the individual and his or her guardian, guardian advocate,  
 3028 health care surrogate or proxy, or representative of the right  
 3029 to an independent expert examination. If the individual cannot  
 3030 afford such an examination, the court shall provide one.

3031 (e)(d) If at a hearing it is shown that the individual  
 3032 ~~patient~~ continues to meet the criteria for involuntary inpatient  
 3033 placement, the administrative law judge shall sign the order for  
 3034 continued involuntary inpatient placement for a period of up to  
 3035 90 days not to exceed 6 months. The same procedure must ~~shall~~ be  
 3036 repeated prior to the expiration of each additional period the  
 3037 individual patient is retained.

3038 (f)(e) If continued involuntary inpatient placement is  
 3039 necessary for an individual a patient admitted while serving a  
 3040 criminal sentence, but whose sentence is about to expire, or for  
 3041 a minor patient involuntarily placed ~~while a minor~~ but who is  
 3042 about to reach the age of 18, the administrator shall petition  
 3043 the administrative law judge for an order authorizing continued  
 3044 involuntary inpatient placement.

3045 (g)(f) If the individual previously patient has been

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3046 ~~previously~~ found incompetent to consent to treatment, the  
 3047 administrative law judge shall consider testimony and evidence  
 3048 regarding the individual's patient's competence. If the  
 3049 administrative law judge finds evidence that the individual  
 3050 ~~patient~~ is now competent to consent to treatment, the  
 3051 ~~administrative law~~ judge may issue a recommended order to the  
 3052 court that found the individual patient incompetent to consent  
 3053 to treatment that the individual's patient's competence be  
 3054 restored and that any guardian advocate previously appointed be  
 3055 discharged.

3056 (8) RETURN TO FACILITY OF PATIENTS.—If an individual held  
 3057 ~~when a patient~~ at a treatment facility involuntarily under this  
 3058 part leaves the facility without the administrator's  
 3059 authorization, the administrator may authorize a search for, ~~the~~  
 3060 ~~patient~~ and the return of, the individual patient to the  
 3061 facility. The administrator may request the assistance of a law  
 3062 enforcement agency ~~in the search for and return of the patient~~.

3063 Section 16. Section 394.4672, Florida Statutes, is amended  
 3064 to read:

3065 394.4672 Procedure for placement of veteran with federal  
 3066 agency.—

3067 (1) A facility owned, operated, or administered by the  
 3068 United States Department of Veterans Affairs which provides  
 3069 mental health services has authority as granted by the  
 3070 Department of Veterans' Affairs to:

3071 (a) Initiate and conduct involuntary examinations pursuant  
 3072 to s. 394.463.

3073 (b) Provide voluntary treatment pursuant to s. 394.4625.

3074 (c) Petition for involuntary inpatient placement pursuant

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3075 to s. 394.467.

3076 (d) Provide involuntary inpatient placement pursuant to  
 3077 this part.

3078 ~~(2)(1) If a~~ Whenever it is determined by the court  
 3079 determines that an individual ~~a person~~ meets the criteria for  
 3080 involuntary placement and he or she ~~it appears that such person~~  
 3081 is eligible for care or treatment by the United States  
 3082 Department of Veterans Affairs or another ~~other~~ agency of the  
 3083 United States Government, the court, upon receipt of a  
 3084 certificate from the United States Department of Veterans  
 3085 Affairs or such other agency showing that facilities are  
 3086 available and that the individual person is eligible for care or  
 3087 treatment therein, may place that individual person with the  
 3088 United States Department of Veterans Affairs or other federal  
 3089 agency. The individual person whose placement is sought shall be  
 3090 personally served with notice of the pending placement  
 3091 proceeding in the manner as provided in this part, ~~and nothing~~  
 3092 ~~in~~ This section does not ~~shall~~ affect the individual's ~~his or~~  
 3093 ~~her~~ right to appear and be heard in the proceeding. Upon  
 3094 placement, the individual is ~~person shall be~~ subject to the  
 3095 ~~rules and~~ regulations of the United States Department of  
 3096 Veterans Affairs or other federal agency.

3097 ~~(3)(2)~~ The judgment or order of placement issued by a court  
 3098 of competent jurisdiction of another state or of the District of  
 3099 Columbia which places an individual, ~~placing a person~~ with the  
 3100 United States Department of Veterans Affairs or other federal  
 3101 agency for care or treatment has, ~~shall have~~ the same force and  
 3102 effect in this state as in the jurisdiction of the court  
 3103 entering the judgment or making the order, ~~and~~ The courts of

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3104 the placing state or of the District of Columbia shall retain ~~be~~  
 3105 ~~deemed to have retained~~ jurisdiction of the individual person ~~so~~  
 3106 placed. Consent is hereby given to the application of the law of  
 3107 the placing state or district with respect to the authority of  
 3108 the chief officer of any facility of the United States  
 3109 Department of Veterans Affairs or other federal agency operated  
 3110 in this state to retain custody or to transfer, parole, or  
 3111 discharge the individual person.

3112 ~~(4)(3)~~ Upon receipt of a certificate of the United States  
 3113 Department of Veterans Affairs or another ~~such other~~ federal  
 3114 agency that facilities are available for the care or treatment  
 3115 of individuals who have mental illness or substance abuse  
 3116 impairment ~~mentally ill persons~~ and that an individual ~~the~~  
 3117 person is eligible for that care or treatment, the administrator  
 3118 of the receiving or treatment facility may ~~cause the transfer of~~  
 3119 that individual person to the United States Department of  
 3120 Veterans Affairs or other federal agency. Upon ~~effecting~~ such  
 3121 transfer, the committing court shall be notified by the  
 3122 transferring agency. An individual may not ~~No person shall~~ be  
 3123 transferred ~~to the United States Department of Veterans Affairs~~  
 3124 ~~or other federal agency~~ if he or she is confined pursuant to the  
 3125 conviction of any felony or misdemeanor or if he or she has been  
 3126 acquitted of the charge solely on the ground of insanity, ~~unless~~  
 3127 prior to transfer the court placing the individual ~~such person~~  
 3128 enters an order for the transfer after appropriate motion and  
 3129 hearing and without objection by the United States Department of  
 3130 Veterans Affairs.

3131 ~~(5)(4)~~ An individual ~~Any person~~ transferred as provided in  
 3132 this section is ~~shall be~~ deemed to be placed with the United

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3133 States Department of Veterans Affairs or other federal agency  
3134 pursuant to the original placement.

3135 Section 17. Paragraph (a) of subsection (1) of section  
3136 394.875, Florida Statutes, is amended to read:

3137 394.875 Crisis stabilization units, residential treatment  
3138 facilities, and residential treatment centers for children and  
3139 adolescents; authorized services; license required.—

3140 (1) (a) The purpose of a crisis stabilization unit is to  
3141 stabilize and redirect a client to the most appropriate and  
3142 least restrictive community setting available, consistent with  
3143 the client's needs. Crisis stabilization units may screen,  
3144 assess, and admit for stabilization persons who present  
3145 themselves to the unit and persons who are brought to the unit  
3146 under s. 394.463. Clients may be provided 24-hour observation,  
3147 medication prescribed by a physician or psychiatrist, and other  
3148 appropriate services. Crisis stabilization units shall provide  
3149 services regardless of the client's ability to pay ~~and shall be~~  
3150 ~~limited in size to a maximum of 30 beds.~~

3151 Section 18. Section 765.401, Florida Statutes, is  
3152 transferred and renumbered as section 765.311, Florida Statutes.

3153 Section 19. Section 765.404, Florida Statutes, is  
3154 transferred and renumbered as section 765.312, Florida Statutes.

3155 Section 20. The Division of Law Revision and Information is  
3156 directed to rename part IV of chapter 765, Florida Statutes, as  
3157 "Mental Health and Substance Abuse Advance Directives."

3158 Section 21. Section 765.4015, Florida Statutes, is created  
3159 to read:

3160 765.4015 Short title.—Sections 765.402–765.411 may be cited  
3161 as the "Jennifer Act."

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3162 Section 22. Section 765.402, Florida Statutes, is created  
3163 to read:

3164 765.402 Legislative findings.—

3165 (1) The Legislature recognizes that an individual with  
3166 capacity has the ability to control decisions relating to his or  
3167 her own mental health care or substance abuse treatment. The  
3168 Legislature finds that:

3169 (a) Substance abuse and some mental illnesses cause  
3170 individuals to fluctuate between capacity and incapacity;

3171 (b) During periods when an individual's capacity is  
3172 unclear, the individual may be unable to provide informed  
3173 consent necessary to access needed treatment;

3174 (c) Early treatment may prevent an individual from becoming  
3175 so ill that involuntary treatment is necessary; and

3176 (d) Individuals with substance abuse impairment or mental  
3177 illness need an established procedure to express their  
3178 instructions and preferences for treatment and provide advance  
3179 consent to or refusal of treatment. This procedure should be  
3180 less expensive and less restrictive than guardianship.

3181 (2) The Legislature further recognizes that:

3182 (a) A mental health or substance abuse treatment advance  
3183 directive must provide the individual with a full range of  
3184 choices.

3185 (b) For a mental health or substance abuse directive to be  
3186 an effective tool, individuals must be able to choose how they  
3187 want their directives to be applied, including the right of  
3188 revocation, during periods when they are incompetent to consent  
3189 to treatment.

3190 (c) There must be a clear process so that treatment

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3191 providers can abide by an individual's treatment choices.  
 3192 Section 23. Section 765.403, Florida Statutes, is created  
 3193 to read:  
 3194 765.403 Definitions.—As used in this part, the term:  
 3195 (1) "Adult" means any individual who has attained the age  
 3196 of majority or is an emancipated minor.  
 3197 (2) "Capacity" means that an adult has not been found to be  
 3198 incapacitated pursuant to s. 394.463.  
 3199 (3) "Health care facility" means a hospital, nursing home,  
 3200 hospice, home health agency, or health maintenance organization  
 3201 licensed in this state, or any facility subject to part I of  
 3202 chapter 394.  
 3203 (4) "Incapacity" or "incompetent" means an adult who is:  
 3204 (a) Unable to understand the nature, character, and  
 3205 anticipated results of proposed treatment or alternatives or the  
 3206 recognized serious possible risks, complications, and  
 3207 anticipated benefits of treatments and alternatives, including  
 3208 nontreatment;  
 3209 (b) Physically or mentally unable to communicate a willful  
 3210 and knowing decision about mental health care or substance abuse  
 3211 treatment;  
 3212 (c) Unable to communicate his or her understanding or  
 3213 treatment decisions; or  
 3214 (d) Determined incompetent pursuant to s. 394.463.  
 3215 (5) "Informed consent" means consent voluntarily given by a  
 3216 person after a sufficient explanation and disclosure of the  
 3217 subject matter involved to enable that person to have a general  
 3218 understanding of the treatment or procedure and the medically  
 3219 acceptable alternatives, including the substantial risks and

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3220 hazards inherent in the proposed treatment or procedures or  
 3221 nontreatment, and to make knowing mental health care or  
 3222 substance abuse treatment decisions without coercion or undue  
 3223 influence.  
 3224 (6) "Interested person" means, for the purposes of this  
 3225 chapter, any person who may reasonably be expected to be  
 3226 affected by the outcome of the particular proceeding involved,  
 3227 including anyone interested in the welfare of an incapacitated  
 3228 person.  
 3229 (7) "Mental health or substance abuse treatment advance  
 3230 directive" means a written document in which the principal makes  
 3231 a declaration of instructions or preferences or appoints a  
 3232 surrogate to make decisions on behalf of the principal regarding  
 3233 the principal's mental health or substance abuse treatment, or  
 3234 both.  
 3235 (8) "Mental health professional" means a psychiatrist,  
 3236 psychologist, psychiatric nurse, or social worker, and such  
 3237 other mental health professionals licensed pursuant to chapter  
 3238 458, chapter 459, chapter 464, chapter 490, or chapter 491.  
 3239 (9) "Principal" means a competent adult who executes a  
 3240 mental health or substance abuse treatment advance directive and  
 3241 on whose behalf mental health care or substance abuse treatment  
 3242 decisions are to be made.  
 3243 (10) "Surrogate" means any competent adult expressly  
 3244 designated by a principal to make mental health care or  
 3245 substance abuse treatment decisions on behalf of the principal  
 3246 as set forth in the principal's mental health or substance abuse  
 3247 treatment advance directive or self-binding arrangement as those  
 3248 terms are defined in this part.

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3249 Section 24. Section 765.405, Florida Statutes, is created  
 3250 to read:  
 3251 765.405 Mental health or substance abuse treatment advance  
 3252 directive; execution; allowable provisions.—  
 3253 (1) An adult with capacity may execute a mental health or  
 3254 substance abuse treatment advance directive.  
 3255 (2) A directive executed in accordance with this section is  
 3256 presumed to be valid. The inability to honor one or more  
 3257 provisions of a directive does not affect the validity of the  
 3258 remaining provisions.  
 3259 (3) A directive may include any provision relating to  
 3260 mental health or substance abuse treatment or the care of the  
 3261 principal. Without limitation, a directive may include:  
 3262 (a) The principal's preferences and instructions for mental  
 3263 health or substance abuse treatment.  
 3264 (b) Consent to specific types of mental health or substance  
 3265 abuse treatment.  
 3266 (c) Refusal to consent to specific types of mental health  
 3267 or substance abuse treatment.  
 3268 (d) Descriptions of situations that may cause the principal  
 3269 to experience a mental health or substance abuse crisis.  
 3270 (e) Suggested alternative responses that may supplement or  
 3271 be in lieu of direct mental health or substance abuse treatment,  
 3272 such as treatment approaches from other providers.  
 3273 (f) The principal's nomination of a guardian, limited  
 3274 guardian, or guardian advocate as provided chapter 744.  
 3275 (4) A directive may be combined with or be independent of a  
 3276 nomination of a guardian, other durable power of attorney, or  
 3277 other advance directive.

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3278 Section 25. Section 765.406, Florida Statutes, is created  
 3279 to read:  
 3280 765.406 Execution of a mental health or substance abuse  
 3281 advance directive; effective date; expiration.—  
 3282 (1) A directive must:  
 3283 (a) Be in writing.  
 3284 (b) Contain language that clearly indicates that the  
 3285 principal intends to create a directive.  
 3286 (c) Be dated and signed by the principal or, if the  
 3287 principal is unable to sign, at the principal's direction in the  
 3288 principal's presence.  
 3289 (d) Be witnessed by two adults, each of whom must declare  
 3290 that he or she personally knows the principal and was present  
 3291 when the principal dated and signed the directive, and that the  
 3292 principal did not appear to be incapacitated or acting under  
 3293 fraud, undue influence, or duress. The person designated as the  
 3294 surrogate may not act as a witness to the execution of the  
 3295 document designating the mental health or substance abuse care  
 3296 treatment surrogate. At least one person who acts as a witness  
 3297 must be neither the principal's spouse nor his or her blood  
 3298 relative.  
 3299 (2) A directive is valid upon execution, but all or part of  
 3300 the directive may take effect at a later date as designated by  
 3301 the principal in the directive.  
 3302 (3) A directive may:  
 3303 (a) Be revoked, in whole or in part, pursuant to s.  
 3304 765.407; or  
 3305 (b) Expire under its own terms.  
 3306 (4) A directive does not or may not:

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3307 (a) Create an entitlement to mental health, substance  
 3308 abuse, or medical treatment or supersede a determination of  
 3309 medical necessity.

3310 (b) Obligate any health care provider, professional person,  
 3311 or health care facility to pay the costs associated with the  
 3312 treatment requested.

3313 (c) Obligate a health care provider, professional person,  
 3314 or health care facility to be responsible for the nontreatment  
 3315 or personal care of the principal or the principal's personal  
 3316 affairs outside the scope of services the facility normally  
 3317 provides.

3318 (d) Replace or supersede any will or testamentary document  
 3319 or supersede the provision of intestate succession.

3320 (e) Be revoked by an incapacitated principal unless that  
 3321 principal selected the option to permit revocation while  
 3322 incapacitated at the time his or her directive was executed.

3323 Section 26. Section 765.407, Florida Statutes, is created  
 3324 to read:

3325 765.407 Revocation; waiver.—

3326 (1) A principal with capacity may, by written statement of  
 3327 the principal or at the principal's direction in the principal's  
 3328 presence, revoke a directive in whole or in part.

3329 (2) The principal shall provide a copy of his or her  
 3330 written statement of revocation to his or her agent, if any, and  
 3331 to each health care provider, professional person, or health  
 3332 care facility that received a copy of the directive from the  
 3333 principal.

3334 (3) The written statement of revocation is effective as to  
 3335 a health care provider, professional person, or health care

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3336 facility upon receipt. The professional person, health care  
 3337 provider, or health care facility, or persons acting under their  
 3338 direction, shall make the statement of revocation part of the  
 3339 principal's medical record.

3340 (4) A directive also may:

3341 (a) Be revoked, in whole or in part, expressly or to the  
 3342 extent of any inconsistency, by a subsequent directive; or

3343 (b) Be superseded or revoked by a court order, including  
 3344 any order entered in a criminal matter. The individual's family,  
 3345 the health care facility, the attending physician, or any other  
 3346 interested person who may be directly affected by the  
 3347 surrogate's decision concerning any health care may seek  
 3348 expedited judicial intervention pursuant to rule 5.900 of the  
 3349 Florida Probate Rules, if that person believes:

3350 1. The surrogate's decision is not in accord with the  
 3351 individual's known desires;

3352 2. The advance directive is ambiguous, or the individual  
 3353 has changed his or her mind after execution of the advance  
 3354 directive;

3355 3. The surrogate was improperly designated or appointed, or  
 3356 the designation of the surrogate is no longer effective or has  
 3357 been revoked;

3358 4. The surrogate has failed to discharge duties, or  
 3359 incapacity or illness renders the surrogate incapable of  
 3360 discharging duties;

3361 5. The surrogate has abused powers; or

3362 6. The individual has sufficient capacity to make his or  
 3363 her own health care decisions.

3364 (5) A directive that would have otherwise expired but is

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3365 effective because the principal is incapacitated remains  
 3366 effective until the principal is no longer incapacitated unless  
 3367 the principal elected to be able to revoke while incapacitated  
 3368 and has revoked the directive.

3369 (6) When a principal with capacity consents to treatment  
 3370 that differs from, or refuses treatment consented to in, his or  
 3371 her directive, the consent or refusal constitutes a waiver of a  
 3372 particular provision and does not constitute a revocation of the  
 3373 provision or the directive unless that principal also revokes  
 3374 the provision or directive.

3375 Section 27. Section 765.410, Florida Statutes, is created  
 3376 to read:

3377 765.410 Immunity from liability; weight of proof;  
 3378 presumption.—

3379 (1) A health care facility, provider, or other person who  
 3380 acts under the direction of a health care facility or provider  
 3381 is not subject to criminal prosecution or civil liability, and  
 3382 may not be deemed to have engaged in unprofessional conduct, as  
 3383 a result of carrying out a mental health care or substance abuse  
 3384 treatment decision made in accordance with this section. The  
 3385 surrogate who makes a mental health care or substance abuse  
 3386 treatment decision on a principal's behalf, pursuant to this  
 3387 section, is not subject to criminal prosecution or civil  
 3388 liability for such action.

3389 (2) This section applies unless it is shown by a  
 3390 preponderance of the evidence that the person authorizing or  
 3391 carrying out a mental health or substance abuse treatment  
 3392 decision did not, in good faith, comply with this section.

3393 Section 28. Section 765.411, Florida Statutes, is created

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3394 to read:

3395 765.411 Recognition of mental health and substance abuse  
 3396 treatment advance directive executed in another state.—A mental  
 3397 health or substance abuse treatment advance directive executed  
 3398 in another state in compliance with the law of that state is  
 3399 validly executed for the purposes of this chapter.

3400 Section 29. Section 916.185, Florida Statutes, is created  
 3401 to read:

3402 916.185 Forensic Hospital Diversion Pilot Program.—

3403 (1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds  
 3404 that many jail inmates who have serious mental illnesses and who  
 3405 are committed to state forensic mental health treatment  
 3406 facilities for restoration of competency to proceed could be  
 3407 served more effectively and at less cost in community-based  
 3408 alternative programs. The Legislature further finds that many  
 3409 individuals who have serious mental illnesses and who have been  
 3410 discharged from state forensic mental health treatment  
 3411 facilities could avoid recidivism in the criminal justice and  
 3412 forensic mental health systems if they received specialized  
 3413 treatment in the community. Therefore, it is the intent of the  
 3414 Legislature to create the Forensic Hospital Diversion Pilot  
 3415 Program to serve individuals who have mental illnesses or co-  
 3416 occurring mental illnesses and substance use disorders and who  
 3417 are admitted to or are at risk of entering state forensic mental  
 3418 health treatment facilities, prisons, jails, or state civil  
 3419 mental health treatment facilities.

3420 (2) DEFINITIONS.—As used in this section, the term:

3421 (a) "Best practices" means treatment services that  
 3422 incorporate the most effective and acceptable interventions

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3423 available in the care and treatment of individuals who are  
 3424 diagnosed as having mental illnesses or co-occurring mental  
 3425 illnesses and substance use disorders.

3426 (b) "Community forensic system" means the community mental  
 3427 health and substance use forensic treatment system, including  
 3428 the comprehensive set of services and supports provided to  
 3429 individuals involved in or at risk of becoming involved in the  
 3430 criminal justice system.

3431 (c) "Evidence-based practices" means interventions and  
 3432 strategies that, based on the best available empirical research,  
 3433 demonstrate effective and efficient outcomes in the care and  
 3434 treatment of individuals who are diagnosed as having mental  
 3435 illnesses or co-occurring mental illnesses and substance use  
 3436 disorders.

3437 (3) CREATION.—There is created a Forensic Hospital  
 3438 Diversion Pilot Program to provide, when appropriate,  
 3439 competency-restoration and community-reintegration services in  
 3440 locked residential treatment facilities, based on considerations  
 3441 of public safety, the needs of the individual, and available  
 3442 resources.

3443 (a) The department shall implement a Forensic Hospital  
 3444 Diversion Pilot Program in Alachua, Broward, Escambia,  
 3445 Hillsborough, and Miami-Dade Counties, in conjunction with the  
 3446 Eighth Judicial Circuit, the Seventeenth Judicial Circuit, the  
 3447 First Judicial Circuit, the Thirteenth Judicial Circuit, and the  
 3448 Eleventh Judicial Circuit, respectively, which shall be modeled  
 3449 after the Miami-Dade Forensic Alternative Center, taking into  
 3450 account local needs and subject to the availability of local  
 3451 resources.

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3452 (b) In creating and implementing the program, the  
 3453 department shall include a comprehensive continuum of care and  
 3454 services which uses evidence-based practices and best practices  
 3455 to treat individuals who have mental health and co-occurring  
 3456 substance use disorders.

3457 (c) The department and the respective judicial circuits  
 3458 shall implement this section within available resources. State  
 3459 funding may be made available through a specific appropriation.

3460 (4) ELIGIBILITY.—Participation in the Forensic Hospital  
 3461 Diversion Pilot Program is limited to individuals who:

3462 (a) Are 18 years of age or older;

3463 (b) Are charged with a felony of the second degree or a  
 3464 felony of the third degree;

3465 (c) Do not have a significant history of violent criminal  
 3466 offenses;

3467 (d) Have been adjudicated incompetent to proceed to trial  
 3468 or not guilty by reason of insanity under this part;

3469 (e) Meet public safety and treatment criteria established  
 3470 by the department for placement in a community setting; and

3471 (f) Would be admitted to a state mental health treatment  
 3472 facility if not for the availability of the Forensic Hospital  
 3473 Diversion Pilot Program.

3474 (5) TRAINING.—The Legislature encourages the Florida  
 3475 Supreme Court, in consultation and cooperation with the Task  
 3476 Force on Substance Abuse and Mental Health Issues in the Courts,  
 3477 to develop educational training on the community forensic system  
 3478 for judges in the pilot program areas.

3479 (6) RULEMAKING.—The department may adopt rules to  
 3480 administer this section.

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3481 (7) REPORT.—The Office of Program Policy Analysis and  
 3482 Government Accountability shall review and evaluate the Forensic  
 3483 Hospital Diversion Pilot Program and submit a report to the  
 3484 Governor, the President of the Senate, and the Speaker of the  
 3485 House of Representatives by December 31, 2016. The report shall  
 3486 examine the efficiency and cost-effectiveness of providing  
 3487 forensic mental health services in secure, outpatient,  
 3488 community-based settings. In addition, the report shall examine  
 3489 the impact of the Forensic Hospital Diversion Pilot Program on  
 3490 public health and safety.

3491 Section 30. Section 944.805, Florida Statutes, is created  
 3492 to read:

3493 944.805 Nonviolent offender reentry program.—

3494 (1) As used in this section, the term:

3495 (a) "Department" means the Department of Corrections.

3496 (b) "Nonviolent offender" means an offender whose primary  
 3497 offense is a felony of the third degree, who is not the subject  
 3498 of a domestic violence injunction currently in force, and who  
 3499 has never been convicted of:

3500 1. A forcible felony as defined in s. 776.08;

3501 2. An offense specified in s. 775.082(9)(a)1.r., regardless  
 3502 of prior incarceration or release;

3503 3. An offense described in chapter 847;

3504 4. An offense under chapter 827;

3505 5. Any offense specified in s. 784.07, s. 784.074, s.  
 3506 784.075, s. 784.076, s. 784.08, s. 784.083, or s. 784.085;

3507 6. Any offense involving the possession or use of a  
 3508 firearm;

3509 7. A capital felony or a felony of the first or second

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3510 degree;

3511 8. Any offense that requires a person to register as a  
 3512 sexual offender pursuant to s. 943.0435.

3513 (2) (a) The department shall develop and administer a  
 3514 reentry program for nonviolent offenders. The reentry program  
 3515 must include prison-based substance abuse treatment, general  
 3516 education development and adult basic education courses,  
 3517 vocational training, training in decisionmaking and personal  
 3518 development, and other rehabilitation programs.

3519 (b) The reentry program is intended to divert nonviolent  
 3520 offenders from long periods of incarceration when a reduced  
 3521 period of incarceration supplemented by participation in  
 3522 intensive substance abuse treatment and rehabilitative  
 3523 programming could produce the same deterrent effect, protect the  
 3524 public, rehabilitate the offender, and reduce recidivism.

3525 (c) The nonviolent offender must serve at least 6 months in  
 3526 the reentry program. The offender may not count any portion of  
 3527 his or her sentence served before placement in the reentry  
 3528 program as progress toward program completion.

3529 (d) A reentry program may be operated in a secure area in  
 3530 or adjacent to a correctional institution.

3531 (3) The department shall screen offenders committed to the  
 3532 department for eligibility to participate in the reentry program  
 3533 using the criteria in this section. To be eligible, an offender  
 3534 must be a nonviolent offender, must have served at least one-  
 3535 half of his or her original sentence, and must have been  
 3536 identified as needing substance abuse treatment.

3537 (4) In addition, the department must consider the following  
 3538 factors when selecting participants for the reentry program:

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3539 (a) The offender's history of disciplinary reports.  
 3540 (b) The offender's criminal history.  
 3541 (c) The severity of the offender's addiction.  
 3542 (d) The offender's history of criminal behavior related to  
 3543 substance abuse.  
 3544 (e) Whether the offender has participated or requested to  
 3545 participate in any general educational development certificate  
 3546 program or other educational, technical, work, vocational, or  
 3547 self-rehabilitation program.  
 3548 (f) The results of any risk assessment of the offender.  
 3549 (g) The outcome of all past participation of the offender  
 3550 in substance abuse treatment programs.  
 3551 (h) The possible rehabilitative benefits that substance  
 3552 abuse treatment, educational programming, vocational training,  
 3553 and other rehabilitative programming might have on the offender.  
 3554 (i) The likelihood that the offender's participation in the  
 3555 program will produce the same deterrent effect, protect the  
 3556 public, save taxpayer dollars, and prevent or delay recidivism  
 3557 to an equal or greater extent than completion of the sentence  
 3558 previously imposed.  
 3559 (5) (a) If an offender volunteers to participate in the  
 3560 reentry program, meets the eligibility criteria, and is selected  
 3561 by the department based on the considerations in subsection (4)  
 3562 and if space is available in the reentry program, the department  
 3563 may request the sentencing court to approve the offender's  
 3564 participation in the reentry program. The request must be made  
 3565 in writing, must include a brief summation of the department's  
 3566 evaluation under subsection (4), and must identify the documents  
 3567 or other information upon which the evaluation is based. The

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3568 request and all accompanying documents may be delivered to the  
 3569 sentencing court electronically.  
 3570 (b)1. The department shall notify the state attorney that  
 3571 the offender is being considered for placement in the reentry  
 3572 program. The notice must include a copy of all documents  
 3573 provided with the request to the court. The notice and all  
 3574 accompanying documents may be delivered to the state attorney  
 3575 electronically and may take the form of a copy of an electronic  
 3576 delivery made to the sentencing court.  
 3577 2. The notice must also state that the state attorney may  
 3578 notify the sentencing court in writing of any objection he or  
 3579 she may have to placement of the nonviolent offender in the  
 3580 reentry program. Such notification must be made within 15 days  
 3581 after receipt of the notice by the state attorney from the  
 3582 department. Regardless of whether an objection is raised, the  
 3583 state attorney may provide the sentencing court with any  
 3584 information supplemental or contrary to the information provided  
 3585 by the department which may assist the court in its  
 3586 determination.  
 3587 (c) In determining whether to approve a nonviolent offender  
 3588 for participation in the reentry program, the sentencing court  
 3589 may consider any facts that the court considers relevant,  
 3590 including, but not limited to, the criteria listed in subsection  
 3591 (4); the original sentencing report and any evidence admitted in  
 3592 a previous sentencing proceeding; the offender's record of  
 3593 arrests without conviction for crimes; any other evidence of  
 3594 allegations of unlawful conduct or the use of violence by the  
 3595 offender; the offender's family ties, length of residence in the  
 3596 community, employment history, and mental condition; the

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3597 likelihood that participation in the program will produce the  
 3598 same deterrent effect, rehabilitate the offender, and prevent or  
 3599 delay recidivism to an equal or greater extent than completion  
 3600 of the sentence previously imposed; and the likelihood that the  
 3601 offender will engage again in criminal conduct.

3602 (d) The sentencing court shall notify the department in  
 3603 writing of the court's decision to approve or disapprove the  
 3604 requested placement of the nonviolent offender no later than 30  
 3605 days after the court receives the department's request to place  
 3606 the offender in the reentry program. If the court approves the  
 3607 placement, the notification must list the factors upon which the  
 3608 court relied in making its determination.

3609 (6) After the nonviolent offender is admitted to the  
 3610 reentry program, he or she shall undergo a complete substance  
 3611 abuse assessment to determine his or her substance abuse  
 3612 treatment needs. The offender shall also receive an educational  
 3613 assessment, which must be accomplished using the Test of Adult  
 3614 Basic Education or any other testing instrument approved by the  
 3615 Department of Education. Each offender who has not obtained a  
 3616 high school diploma shall be enrolled in an adult education  
 3617 program designed to aid the offender in improving his or her  
 3618 academic skills and earning a high school diploma. Additional  
 3619 assessments of the offender's vocational skills and future  
 3620 career education shall be provided to the offender as needed. A  
 3621 periodic reevaluation shall be made to assess the progress of  
 3622 each offender.

3623 (7) (a) If a nonviolent offender in the reentry program  
 3624 becomes unmanageable, the department may revoke the offender's  
 3625 gain-time and place the offender in disciplinary confinement in

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3626 accordance with department rule. Except as provided in paragraph  
 3627 (b), the offender shall be readmitted to the reentry program  
 3628 after completing the ordered discipline. Any period during which  
 3629 the offender cannot participate in the reentry program must be  
 3630 excluded from the specified time requirements in the reentry  
 3631 program.

3632 (b) The department may terminate an offender from the  
 3633 reentry program if:

3634 1. The offender commits or threatens to commit a violent  
 3635 act;

3636 2. The department determines that the offender cannot  
 3637 participate in the reentry program because of the offender's  
 3638 medical condition;

3639 3. The offender's sentence is modified or expires;

3640 4. The department reassigns the offender's classification  
 3641 status; or

3642 5. The department determines that removing the offender  
 3643 from the reentry program is in the best interest of the offender  
 3644 or the security of the reentry program facility.

3645 (8) (a) The department shall submit a report to the  
 3646 sentencing court at least 30 days before the nonviolent offender  
 3647 is scheduled to complete the reentry program. The report must  
 3648 describe the offender's performance in the reentry program and  
 3649 certify whether the performance is satisfactory. The court may  
 3650 schedule a hearing to consider any modification to the imposed  
 3651 sentence. Notwithstanding the eligibility criteria contained in  
 3652 s. 948.20, if the offender's performance is satisfactory to the  
 3653 department and the court, the court shall issue an order  
 3654 modifying the sentence imposed and placing the offender on drug

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3655 offender probation, as described in s. 948.20(2), subject to the  
 3656 department's certification of the offender's successful  
 3657 completion of the remainder of the reentry program. The term of  
 3658 drug offender probation must not be less than the remaining time  
 3659 the offender would have served in prison had he or she not  
 3660 participated in the program. A condition of drug offender  
 3661 probation may include electronic monitoring or placement in a  
 3662 community residential or nonresidential licensed substance abuse  
 3663 treatment facility under the jurisdiction of the department or  
 3664 the Department of Children and Families or any public or private  
 3665 entity providing such services. The order must include findings  
 3666 that the offender's performance is satisfactory, that the  
 3667 requirements for resentencing under this section are satisfied,  
 3668 and that public safety will not be compromised. If the  
 3669 nonviolent offender violates the conditions of drug offender  
 3670 probation, the court may revoke probation and impose any  
 3671 sentence that it might have originally imposed. An offender may  
 3672 not be released from the custody of the department under this  
 3673 section except pursuant to a judicial order modifying his or her  
 3674 sentence.

3675 (b) If an offender released pursuant to paragraph (a)  
 3676 intends to reside in a county that has established a  
 3677 postadjudicatory drug court program as described in s. 397.334,  
 3678 the sentencing court may require the offender to successfully  
 3679 complete the postadjudicatory drug court program as a condition  
 3680 of drug offender probation. The original sentencing court shall  
 3681 relinquish jurisdiction of the offender's case to the  
 3682 postadjudicatory drug court program until the offender is no  
 3683 longer active in the program, the case is returned to the

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3684 sentencing court due to the offender's termination from the  
 3685 program for failure to comply with the terms of the program, or  
 3686 the offender's sentence is completed. An offender who is  
 3687 transferred to a postadjudicatory drug court program shall  
 3688 comply with all conditions and orders of the program.

3689 (9) The department shall implement the reentry program to  
 3690 the fullest extent feasible within available resources.

3691 (10) The department may enter into performance-based  
 3692 contracts with qualified individuals, agencies, or corporations  
 3693 for the provision of any or all of the services for the reentry  
 3694 program. However, an offender may not be released from the  
 3695 custody of the department under this section except pursuant to  
 3696 a judicial order modifying a sentence.

3697 (11) A nonviolent offender in the reentry program is  
 3698 subject to rules of conduct established by the department and  
 3699 may have sanctions imposed, including loss of privileges,  
 3700 restrictions, disciplinary confinement, alteration of release  
 3701 plans, or other program modifications in keeping with the nature  
 3702 and gravity of the program violation. Administrative or  
 3703 protective confinement, as necessary, may be imposed.

3704 (12) This section does not create or confer any right to  
 3705 any offender to placement in the reentry program or any right to  
 3706 placement or early release under supervision of any type. An  
 3707 inmate does not have a cause of action under this section  
 3708 against the department, a court, or the state attorney related  
 3709 to the reentry program.

3710 (13) The department may establish a system of incentives  
 3711 within the reentry program which the department may use to  
 3712 promote participation in rehabilitative programs and the orderly

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3713 operation of institutions and facilities.

3714 (14) The department shall develop a system for tracking  
 3715 recidivism, including, but not limited to, rearrests and  
 3716 recommitment of nonviolent offenders who successfully complete  
 3717 the reentry program, and shall report the recidivism rate in the  
 3718 annual report required under this section.

3719 (15) The department shall submit an annual report to the  
 3720 Governor, the President of the Senate, and the Speaker of the  
 3721 House of Representatives detailing the extent of implementation  
 3722 of the reentry program and the number of participants who are  
 3723 selected by the department, the number of participants who are  
 3724 approved by the court, and the number of participants who  
 3725 successfully complete the program. The report must include a  
 3726 reasonable estimate or description of the additional public  
 3727 costs incurred and any public funds saved with respect to each  
 3728 participant, a brief description of each sentence modification,  
 3729 and a brief description of the subsequent criminal history, if  
 3730 any, of each participant following any modification of sentence  
 3731 under this section. The report must also include future goals  
 3732 and any recommendations that the department has for future  
 3733 legislative action.

3734 (16) The department shall adopt rules as necessary to  
 3735 administer the reentry program.

3736 (17) Nothing in this section is severable from the  
 3737 remaining provisions of this section. If any subsection of this  
 3738 section is determined by any state or federal court to be not  
 3739 fully enforceable, this section shall stand repealed in its  
 3740 entirety.

3741 Section 31. Paragraph (1) is added to subsection (3) of

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3742 section 1002.20, Florida Statutes, to read:

3743 1002.20 K-12 student and parent rights.—Parents of public  
 3744 school students must receive accurate and timely information  
 3745 regarding their child's academic progress and must be informed  
 3746 of ways they can help their child to succeed in school. K-12  
 3747 students and their parents are afforded numerous statutory  
 3748 rights including, but not limited to, the following:

3749 (3) HEALTH ISSUES.—

3750 (1) Notification of involuntary examinations.—The public  
 3751 school principal or the principal's designee shall immediately  
 3752 notify the parent of a student who is removed from school,  
 3753 school transportation, or a school-sponsored activity and taken  
 3754 to a receiving facility for an involuntary examination pursuant  
 3755 to s. 394.463. The principal or the principal's designee may  
 3756 delay notification for no more than 24 hours after the student  
 3757 is removed from school if the principal or designee deems the  
 3758 delay to be in the student's best interest and if a report has  
 3759 been submitted to the central abuse hotline, pursuant to s.  
 3760 39.201, based upon knowledge or suspicion of abuse, abandonment,  
 3761 or neglect. Each district school board shall develop a policy  
 3762 and procedures for notification under this paragraph.

3763 Section 32. Paragraph (q) is added to subsection (9) of  
 3764 section 1002.33, Florida Statutes, to read:

3765 1002.33 Charter schools.—

3766 (9) CHARTER SCHOOL REQUIREMENTS.—

3767 (q) The charter school principal or the principal's  
 3768 designee shall immediately notify the parent of a student who is  
 3769 removed from school, school transportation, or a school-  
 3770 sponsored activity and taken to a receiving facility for an

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3771 involuntary examination pursuant to s. 394.463. The principal or  
 3772 the principal's designee may delay notification for no more than  
 3773 24 hours after the student is removed from school if the  
 3774 principal or designee deems the delay to be in the student's  
 3775 best interest and if a report has been submitted to the central  
 3776 abuse hotline, pursuant to s. 39.201, based upon knowledge or  
 3777 suspicion of abuse, abandonment, or neglect. Each charter school  
 3778 governing board shall develop a policy and procedures for  
 3779 notification under this paragraph.

3780 Section 33. Paragraph (a) of subsection (3) of section  
 3781 39.407, Florida Statutes, is amended to read:

3782 39.407 Medical, psychiatric, and psychological examination  
 3783 and treatment of child; physical, mental, or substance abuse  
 3784 examination of person with or requesting child custody.—

3785 (3)(a)1. Except as otherwise provided in subparagraph (b)1.  
 3786 or paragraph (e), before the department provides psychotropic  
 3787 medications to a child in its custody, the prescribing physician  
 3788 shall attempt to obtain express and informed consent, as defined  
 3789 in s. 394.455(13) ~~s. 394.455(9)~~ and as described in s.  
 3790 394.459(4)(a) ~~s. 394.459(3)(a)~~, from the child's parent or legal  
 3791 guardian. The department must take steps necessary to facilitate  
 3792 the inclusion of the parent in the child's consultation with the  
 3793 physician. However, if the parental rights of the parent have  
 3794 been terminated, the parent's location or identity is unknown or  
 3795 cannot reasonably be ascertained, or the parent declines to give  
 3796 express and informed consent, the department may, after  
 3797 consultation with the prescribing physician, seek court  
 3798 authorization to provide the psychotropic medications to the  
 3799 child. Unless parental rights have been terminated and if it is

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3800 possible to do so, the department shall continue to involve the  
 3801 parent in the decisionmaking process regarding the provision of  
 3802 psychotropic medications. If, at any time, a parent whose  
 3803 parental rights have not been terminated provides express and  
 3804 informed consent to the provision of a psychotropic medication,  
 3805 the requirements of this section that the department seek court  
 3806 authorization do not apply to that medication until such time as  
 3807 the parent no longer consents.

3808 2. Any time the department seeks a medical evaluation to  
 3809 determine the need to initiate or continue a psychotropic  
 3810 medication for a child, the department must provide to the  
 3811 evaluating physician all pertinent medical information known to  
 3812 the department concerning that child.

3813 Section 34. Subsection (2) of section 394.4612, Florida  
 3814 Statutes, is amended to read:

3815 394.4612 Integrated adult mental health crisis  
 3816 stabilization and addictions receiving facilities.—

3817 (2) An integrated mental health crisis stabilization unit  
 3818 and addictions receiving facility may provide services under  
 3819 this section to adults who are 18 years of age or older and who  
 3820 fall into one ~~or more~~ of the following categories:

3821 (a) An adult meeting the requirements for voluntary  
 3822 admission for mental health treatment under s. 394.4625.

3823 (b) An adult meeting the criteria for involuntary  
 3824 examination for mental illness under s. 394.463.

3825 ~~(c) An adult qualifying for voluntary admission for~~  
 3826 ~~substance abuse treatment under s. 397.601.~~

3827 ~~(d) An adult meeting the criteria for involuntary admission~~  
 3828 ~~for substance abuse impairment under s. 397.675.~~

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3829 Section 35. Paragraphs (a) and (c) of subsection (3) of  
 3830 section 394.495, Florida Statutes, are amended to read:  
 3831 394.495 Child and adolescent mental health system of care;  
 3832 programs and services.—  
 3833 (3) Assessments must be performed by:  
 3834 (a) A professional as defined in s. 394.455(6), (31), (34),  
 3835 (35), or (36) s. 394.455(2), (4), (21), (23), or (24);  
 3836 (c) A person who is under the direct supervision of a  
 3837 professional as defined in s. 394.455(6), (31), (34), (35), or  
 3838 (36) s. 394.455(2), (4), (21), (23), or (24) or a professional  
 3839 licensed under chapter 491.  
 3840  
 3841 The department shall adopt by rule statewide standards for  
 3842 mental health assessments, which must be based on current  
 3843 relevant professional and accreditation standards.  
 3844 Section 36. Subsection (6) of section 394.496, Florida  
 3845 Statutes, is amended to read:  
 3846 394.496 Service planning.—  
 3847 (6) A professional as defined in s. 394.455(6), (31), (34),  
 3848 (35), or (36) s. 394.455(2), (4), (21), (23), or (24) or a  
 3849 professional licensed under chapter 491 must be included among  
 3850 those persons developing the services plan.  
 3851 Section 37. Subsection (2) of section 394.499, Florida  
 3852 Statutes, is amended to read:  
 3853 394.499 Integrated children's crisis stabilization  
 3854 unit/juvenile addictions receiving facility services.—  
 3855 (2) Children eligible to receive integrated children's  
 3856 crisis stabilization unit/juvenile addictions receiving facility  
 3857 services include:

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3858 (a) A person under 18 years of age for whom voluntary  
 3859 application is made by his or her guardian, if such person is  
 3860 found to show evidence of mental illness and to be suitable for  
 3861 treatment pursuant to s. 394.4625. A person under 18 years of  
 3862 age may be admitted for integrated facility services only after  
 3863 a hearing to verify that the consent to admission is voluntary.  
 3864 (b) A person under 18 years of age who may be taken to a  
 3865 receiving facility for involuntary examination, if there is  
 3866 reason to believe that he or she is mentally ill and because of  
 3867 his or her mental illness, pursuant to s. 394.463:  
 3868 1. Has refused voluntary examination after conscientious  
 3869 explanation and disclosure of the purpose of the examination; or  
 3870 2. Is unable to determine for himself or herself whether  
 3871 examination is necessary; and  
 3872 a. Without care or treatment is likely to suffer from  
 3873 neglect or refuse to care for himself or herself; such neglect  
 3874 or refusal poses a real and present threat of substantial harm  
 3875 to his or her well-being; and it is not apparent that such harm  
 3876 may be avoided through the help of willing family members or  
 3877 friends or the provision of other services; or  
 3878 b. There is a substantial likelihood that without care or  
 3879 treatment he or she will cause serious bodily harm to himself or  
 3880 herself or others in the near future, as evidenced by recent  
 3881 behavior.  
 3882 ~~(c) A person under 18 years of age who wishes to enter~~  
 3883 ~~treatment for substance abuse and applies to a service provider~~  
 3884 ~~for voluntary admission, pursuant to s. 397.601.~~  
 3885 ~~(d) A person under 18 years of age who meets the criteria~~  
 3886 ~~for involuntary admission because there is good faith reason to~~

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3887 ~~believe the person is substance abuse impaired pursuant to s.~~  
 3888 ~~397.675 and, because of such impairment.~~

3889 ~~1. Has lost the power of self-control with respect to~~  
 3890 ~~substance use; and~~

3891 ~~2.a. Has inflicted, or threatened or attempted to inflict,~~  
 3892 ~~or unless admitted is likely to inflict, physical harm on~~  
 3893 ~~himself or herself or another; or~~

3894 ~~b. Is in need of substance abuse services and, by reason of~~  
 3895 ~~substance abuse impairment, his or her judgment has been so~~  
 3896 ~~impaired that the person is incapable of appreciating his or her~~  
 3897 ~~need for such services and of making a rational decision in~~  
 3898 ~~regard thereto; however, mere refusal to receive such services~~  
 3899 ~~does not constitute evidence of lack of judgment with respect to~~  
 3900 ~~his or her need for such services.~~

3901 (c)(e) A person under 18 years of age who meets the  
 3902 criteria for examination or admission under paragraph (b) ~~or~~  
 3903 ~~paragraph (d)~~ and has a coexisting mental health and substance  
 3904 abuse disorder.

3905 Section 38. Subsection (18) of section 394.67, Florida  
 3906 Statutes, is amended to read:

3907 394.67 Definitions.—As used in this part, the term:

3908 (18) "Person who is experiencing an acute substance abuse  
 3909 crisis" means a child, adolescent, or adult who is experiencing  
 3910 a medical or emotional crisis because of the use of alcoholic  
 3911 beverages or any psychoactive or mood-altering substance. ~~The~~  
 3912 ~~term includes an individual who meets the criteria for~~  
 3913 ~~involuntary admission specified in s. 397.675.~~

3914 Section 39. Subsection (2) of section 394.674, Florida  
 3915 Statutes, is amended to read:

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3916 394.674 Eligibility for publicly funded substance abuse and  
 3917 mental health services; fee collection requirements.—

3918 (2) Crisis services, as defined in s. 394.67, must, within  
 3919 the limitations of available state and local matching resources,  
 3920 be available to each person who is eligible for services under  
 3921 subsection (1), regardless of the person's ability to pay for  
 3922 such services. A person who is experiencing a mental health  
 3923 crisis and who does not meet the criteria for involuntary  
 3924 examination under s. 394.463(1), ~~or a person who is experiencing~~  
 3925 ~~a substance abuse crisis and who does not meet the involuntary~~  
 3926 ~~admission criteria in s. 397.675,~~ must contribute to the cost of  
 3927 his or her care and treatment pursuant to the sliding fee scale  
 3928 developed under subsection (4), unless charging a fee is  
 3929 contraindicated because of the crisis situation.

3930 Section 40. Subsection (6) of section 394.9085, Florida  
 3931 Statutes, is amended to read:

3932 394.9085 Behavioral provider liability.—

3933 (6) For purposes of this section, the terms "detoxification  
 3934 services," "addictions receiving facility," and "receiving  
 3935 facility" have the same meanings as those provided in ss.  
 3936 397.311(18)(a)4., 397.311(18)(a)1., and 394.455(27) ~~394.455(26)~~,  
 3937 respectively.

3938 Section 41. Paragraph (d) of subsection (1) of section  
 3939 395.0197, Florida Statutes, is amended to read:

3940 395.0197 Internal risk management program.—

3941 (1) Every licensed facility shall, as a part of its  
 3942 administrative functions, establish an internal risk management  
 3943 program that includes all of the following components:

3944 (d) A system for informing a patient or an individual

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3945 identified pursuant to s. 765.311(1) ~~s. 765.401(1)~~ that the  
 3946 patient was the subject of an adverse incident, as defined in  
 3947 subsection (5). Such notice shall be given by an appropriately  
 3948 trained person designated by the licensed facility as soon as  
 3949 practicable to allow the patient an opportunity to minimize  
 3950 damage or injury.

3951 Section 42. Section 395.1051, Florida Statutes, is amended  
 3952 to read:

3953 395.1051 Duty to notify patients.—An appropriately trained  
 3954 person designated by each licensed facility shall inform each  
 3955 patient, or an individual identified pursuant to s. 765.311(1)  
 3956 ~~s. 765.401(1)~~, in person about adverse incidents that result in  
 3957 serious harm to the patient. Notification of outcomes of care  
 3958 that result in harm to the patient under this section shall not  
 3959 constitute an acknowledgment or admission of liability, nor can  
 3960 it be introduced as evidence.

3961 Section 43. Subsection (11) and paragraph (a) of subsection  
 3962 (18) of section 397.311, Florida Statutes, are amended to read:

3963 397.311 Definitions.—As used in this chapter, except part  
 3964 VIII, the term:

3965 (11) "Habitual abuser" means a person who is brought to the  
 3966 attention of law enforcement for being substance impaired, ~~who~~  
 3967 ~~meets the criteria for involuntary admission in s. 397.675,~~ and  
 3968 who has been taken into custody for such impairment three or  
 3969 more times during the preceding 12 months.

3970 (18) Licensed service components include a comprehensive  
 3971 continuum of accessible and quality substance abuse prevention,  
 3972 intervention, and clinical treatment services, including the  
 3973 following services:

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3974 (a) "Clinical treatment" means a professionally directed,  
 3975 deliberate, and planned regimen of services and interventions  
 3976 that are designed to reduce or eliminate the misuse of drugs and  
 3977 alcohol and promote a healthy, drug-free lifestyle. As defined  
 3978 by rule, "clinical treatment services" include, but are not  
 3979 limited to, the following licensable service components:

3980 1. "Addictions receiving facility" is a secure, acute care  
 3981 facility that provides, at a minimum, detoxification and  
 3982 stabilization services ~~and~~ is operated 24 hours per day, 7 days  
 3983 per week; and is designated by the department to serve  
 3984 individuals found to be substance use impaired ~~as described in~~  
 3985 ~~s. 397.675~~ who meet the placement criteria for this component.

3986 2. "Day or night treatment" is a service provided in a  
 3987 nonresidential environment, with a structured schedule of  
 3988 treatment and rehabilitative services.

3989 3. "Day or night treatment with community housing" means a  
 3990 program intended for individuals who can benefit from living  
 3991 independently in peer community housing while participating in  
 3992 treatment services for a minimum of 5 hours a day for a minimum  
 3993 of 25 hours per week.

3994 4. "Detoxification" is a service involving subacute care  
 3995 that is provided on an inpatient or an outpatient basis to  
 3996 assist individuals to withdraw from the physiological and  
 3997 psychological effects of substance abuse and who meet the  
 3998 placement criteria for this component.

3999 5. "Intensive inpatient treatment" includes a planned  
 4000 regimen of evaluation, observation, medical monitoring, and  
 4001 clinical protocols delivered through an interdisciplinary team  
 4002 approach provided ~~24-hours-per-day~~ 24 hours per day, 7-days-per-

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4003 ~~week 7 days per week~~, in a highly structured, live-in  
4004 environment.

4005 6. "Intensive outpatient treatment" is a service that  
4006 provides individual or group counseling in a more structured  
4007 environment, is of higher intensity and duration than outpatient  
4008 treatment, and is provided to individuals who meet the placement  
4009 criteria for this component.

4010 7. "Medication-assisted treatment for opiate addiction" is  
4011 a service that uses methadone or other medication as authorized  
4012 by state and federal law, in combination with medical,  
4013 rehabilitative, and counseling services in the treatment of  
4014 individuals who are dependent on opioid drugs.

4015 8. "Outpatient treatment" is a service that provides  
4016 individual, group, or family counseling by appointment during  
4017 scheduled operating hours for individuals who meet the placement  
4018 criteria for this component.

4019 9. "Residential treatment" is a service provided in a  
4020 structured live-in environment within a nonhospital setting on a  
4021 24-hours-per-day, 7-days-per-week basis, and is intended for  
4022 individuals who meet the placement criteria for this component.

4023 Section 44. Subsection (3) of section 397.431, Florida  
4024 Statutes, is amended to read:

4025 397.431 Individual responsibility for cost of substance  
4026 abuse impairment services.—

4027 (3) The parent, legal guardian, or legal custodian of a  
4028 minor is not liable for payment for any substance abuse services  
4029 provided to the minor without parental consent ~~pursuant to s.~~  
4030 ~~397.601(4)~~, unless the parent, legal guardian, or legal  
4031 custodian participates or is ordered to participate in the

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4032 services, and only for the substance abuse services rendered. If  
4033 the minor is receiving services as a juvenile offender, the  
4034 obligation to pay is governed by the law relating to juvenile  
4035 offenders.

4036 Section 45. Paragraph (b) of subsection (2) of section  
4037 397.702, Florida Statutes, is amended to read:

4038 397.702 Authorization of local ordinances for treatment of  
4039 habitual abusers in licensed secure facilities.—

4040 (2) Ordinances for the treatment of habitual abusers must  
4041 provide:

4042 (b) That when seeking treatment of a habitual abuser, the  
4043 county or municipality, through an officer or agent specified in  
4044 the ordinance, must file with the court a petition which alleges  
4045 the following information about the alleged habitual abuser (the  
4046 respondent):

4047 1. The name, address, age, and gender of the respondent.

4048 2. The name of any spouse, adult child, other relative, or  
4049 guardian of the respondent, if known to the petitioner, and the  
4050 efforts, if any, by the petitioner, ~~if any,~~ to ascertain this  
4051 information.

4052 3. The name of the petitioner, the name of the person who  
4053 has physical custody of the respondent, and the current location  
4054 of the respondent.

4055 4. That the respondent has been taken into custody for  
4056 impairment in a public place, or has been arrested for an  
4057 offense committed while impaired, three or more times during the  
4058 preceding 12 months.

4059 ~~5. Specific facts indicating that the respondent meets the~~  
4060 ~~criteria for involuntary admission in s. 397.675.~~

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4061 5.6- Whether the respondent was advised of his or her right  
 4062 to be represented by counsel and to request that the court  
 4063 appoint an attorney if he or she is unable to afford one, and  
 4064 whether the respondent indicated to petitioner his or her desire  
 4065 to have an attorney appointed.

4066 Section 46. Paragraph (a) of subsection (1) of section  
 4067 397.94, Florida Statutes, is amended to read:

4068 397.94 Children's substance abuse services; information and  
 4069 referral network.-

4070 (1) The substate entity shall determine the most cost-  
 4071 effective method for delivering this service and may select a  
 4072 new provider or utilize an existing provider or providers with a  
 4073 record of success in providing information and referral  
 4074 services.

4075 (a) The plan must provide assurances that the information  
 4076 and referral network will include a resource directory that  
 4077 contains information regarding the children's substance abuse  
 4078 services available, including, but not limited to:

4079 1. ~~Public and private resources by service component,~~  
 4080 ~~including resources for involuntary admissions under s. 397.675.~~

4081 1.2- Hours of operation and hours during which services are  
 4082 provided.

4083 2.3- Ages of persons served.

4084 3.4- Description of services.

4085 4.5- Eligibility requirements.

4086 5.6- Fee schedules.

4087 Section 47. Section 402.3057, Florida Statutes, is amended  
 4088 to read:

4089 402.3057 Persons not required to be refingerprinted or

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4090 rescreened.-Any provision of law to the contrary  
 4091 notwithstanding, human resource personnel who have been  
 4092 fingerprinted or screened pursuant to chapters 393, 394, 397,  
 4093 402, and 409, and teachers and noninstructional personnel who  
 4094 have been fingerprinted pursuant to chapter 1012, who have not  
 4095 been unemployed for more than 90 days thereafter, and who under  
 4096 the penalty of perjury attest to the completion of such  
 4097 fingerprinting or screening and to compliance with the  
 4098 provisions of this section and the standards for good moral  
 4099 character as contained in such provisions as ss. 110.1127(2)(c),  
 4100 393.0655(1), ~~394.457(6)~~, 397.451, 402.305(2), and 409.175(6),  
 4101 shall not be required to be refingerprinted or rescreened in  
 4102 order to comply with any caretaker screening or fingerprinting  
 4103 requirements.

4104 Section 48. Section 409.1757, Florida Statutes, is amended  
 4105 to read:

4106 409.1757 Persons not required to be refingerprinted or  
 4107 rescreened.-Any law to the contrary notwithstanding, human  
 4108 resource personnel who have been fingerprinted or screened  
 4109 pursuant to chapters 393, 394, 397, 402, and this chapter,  
 4110 teachers who have been fingerprinted pursuant to chapter 1012,  
 4111 and law enforcement officers who meet the requirements of s.  
 4112 943.13, who have not been unemployed for more than 90 days  
 4113 thereafter, and who under the penalty of perjury attest to the  
 4114 completion of such fingerprinting or screening and to compliance  
 4115 with this section and the standards for good moral character as  
 4116 contained in such provisions as ss. 110.1127(2)(c), 393.0655(1),  
 4117 ~~394.457(6)~~, 397.451, 402.305(2), 409.175(6), and 943.13(7), are  
 4118 not required to be refingerprinted or rescreened in order to

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4119 comply with any caretaker screening or fingerprinting  
4120 requirements.

4121 Section 49. Paragraph (b) of subsection (1) of section  
4122 409.972, Florida Statutes, is amended to read:

4123 409.972 Mandatory and voluntary enrollment.—

4124 (1) The following Medicaid-eligible persons are exempt from  
4125 mandatory managed care enrollment required by s. 409.965, and  
4126 may voluntarily choose to participate in the managed medical  
4127 assistance program:

4128 (b) Medicaid recipients residing in residential commitment  
4129 facilities operated through the Department of Juvenile Justice  
4130 or mental health treatment facilities as defined by s.  
4131 394.455(47) ~~s. 394.455(32)~~.

4132 Section 50. Section 456.0575, Florida Statutes, is amended  
4133 to read:

4134 456.0575 Duty to notify patients.—Every licensed health  
4135 care practitioner shall inform each patient, or an individual  
4136 identified pursuant to s. 765.311(1) ~~s. 765.401(1)~~, in person  
4137 about adverse incidents that result in serious harm to the  
4138 patient. Notification of outcomes of care that result in harm to  
4139 the patient under this section shall not constitute an  
4140 acknowledgment of admission of liability, nor can such  
4141 notifications be introduced as evidence.

4142 Section 51. Subsection (7) of section 744.704, Florida  
4143 Statutes, is amended to read:

4144 744.704 Powers and duties.—

4145 (7) A public guardian shall not commit a ward to a mental  
4146 health treatment facility, as defined in s. 394.455(47) ~~s.~~  
4147 ~~394.455(32)~~, without an involuntary placement proceeding as

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4148 provided by law.

4149 Section 52. Subsection (15) of section 765.101, Florida  
4150 Statutes, is amended to read:

4151 765.101 Definitions.—As used in this chapter:

4152 (15) "Proxy" means a competent adult who has not been  
4153 expressly designated to make health care decisions for a  
4154 particular incapacitated individual, but who, nevertheless, is  
4155 authorized pursuant to s. 765.311 ~~s. 765.401~~ to make health care  
4156 decisions for such individual.

4157 Section 53. Subsection (4) of section 765.104, Florida  
4158 Statutes, is amended to read:

4159 765.104 Amendment or revocation.—

4160 (4) Any patient for whom a medical proxy has been  
4161 recognized under s. 765.311 ~~s. 765.401~~ and for whom any previous  
4162 legal disability that precluded the patient's ability to consent  
4163 is removed may amend or revoke the recognition of the medical  
4164 proxy and any uncompleted decision made by that proxy. The  
4165 amendment or revocation takes effect when it is communicated to  
4166 the proxy, the health care provider, or the health care facility  
4167 in writing or, if communicated orally, in the presence of a  
4168 third person.

4169 Section 54. Paragraph (a) of subsection (2) of section  
4170 790.065, Florida Statutes, is amended to read:

4171 790.065 Sale and delivery of firearms.—

4172 (2) Upon receipt of a request for a criminal history record  
4173 check, the Department of Law Enforcement shall, during the  
4174 licensee's call or by return call, forthwith:

4175 (a) Review any records available to determine if the  
4176 potential buyer or transferee:

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4177 1. Has been convicted of a felony and is prohibited from  
 4178 receipt or possession of a firearm pursuant to s. 790.23;  
 4179 2. Has been convicted of a misdemeanor crime of domestic  
 4180 violence, and therefore is prohibited from purchasing a firearm;  
 4181 3. Has had adjudication of guilt withheld or imposition of  
 4182 sentence suspended on any felony or misdemeanor crime of  
 4183 domestic violence unless 3 years have elapsed since probation or  
 4184 any other conditions set by the court have been fulfilled or  
 4185 expunction has occurred; or  
 4186 4. Has been adjudicated mentally defective or has been  
 4187 committed to a mental institution by a court or as provided in  
 4188 sub-sub-subparagraph b.(II), and as a result is prohibited by  
 4189 state or federal law from purchasing a firearm.

4190 a. As used in this subparagraph, "adjudicated mentally  
 4191 defective" means a determination by a court that a person, as a  
 4192 result of marked subnormal intelligence, or mental illness,  
 4193 incompetency, condition, or disease, is a danger to himself or  
 4194 herself or to others or lacks the mental capacity to contract or  
 4195 manage his or her own affairs. The phrase includes a judicial  
 4196 finding of incapacity under s. 744.331(6)(a), an acquittal by  
 4197 reason of insanity of a person charged with a criminal offense,  
 4198 and a judicial finding that a criminal defendant is not  
 4199 competent to stand trial.

4200 b. As used in this subparagraph, "committed to a mental  
 4201 institution" means:

4202 (I) Involuntary commitment, commitment for mental  
 4203 defectiveness or mental illness, and commitment for substance  
 4204 abuse. The phrase includes involuntary inpatient placement as  
 4205 defined in s. 394.467, or involuntary outpatient placement as

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4206 defined in s. 394.4655, ~~involuntary assessment and stabilization~~  
 4207 ~~under s. 397.6818, and involuntary substance abuse treatment~~  
 4208 ~~under s. 397.6957~~, but does not include a person in a mental  
 4209 institution for observation or discharged from a mental  
 4210 institution based upon the initial review by the physician or a  
 4211 voluntary admission to a mental institution; or

4212 (II) Notwithstanding sub-sub-subparagraph (I), voluntary  
 4213 admission to a mental institution for outpatient or inpatient  
 4214 treatment of a person who had an involuntary examination under  
 4215 s. 394.463, where each of the following conditions have been  
 4216 met:

4217 (A) An examining physician found that the person is an  
 4218 imminent danger to himself or herself or others.

4219 (B) The examining physician certified that if the person  
 4220 did not agree to voluntary treatment, a petition for involuntary  
 4221 outpatient or inpatient treatment would have been filed under s.  
 4222 394.463(2)(g) ~~s. 394.463(2)(i)4~~, or the examining physician  
 4223 certified that a petition was filed and the person subsequently  
 4224 agreed to voluntary treatment prior to a court hearing on the  
 4225 petition.

4226 (C) Before agreeing to voluntary treatment, the person  
 4227 received written notice of that finding and certification, and  
 4228 written notice that as a result of such finding, he or she may  
 4229 be prohibited from purchasing a firearm, and may not be eligible  
 4230 to apply for or retain a concealed weapon or firearms license  
 4231 under s. 790.06 and the person acknowledged such notice in  
 4232 writing, in substantially the following form:

4233

4234 "I understand that the doctor who examined me believes I am

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4235 a danger to myself or to others. I understand that if I do not  
 4236 agree to voluntary treatment, a petition will be filed in court  
 4237 to require me to receive involuntary treatment. I understand  
 4238 that if that petition is filed, I have the right to contest it.  
 4239 In the event a petition has been filed, I understand that I can  
 4240 subsequently agree to voluntary treatment prior to a court  
 4241 hearing. I understand that by agreeing to voluntary treatment in  
 4242 either of these situations, I may be prohibited from buying  
 4243 firearms and from applying for or retaining a concealed weapons  
 4244 or firearms license until I apply for and receive relief from  
 4245 that restriction under Florida law.”

4246

4247 (D) A judge or a magistrate has, pursuant to sub-sub-  
 4248 subparagraph c.(II), reviewed the record of the finding,  
 4249 certification, notice, and written acknowledgment classifying  
 4250 the person as an imminent danger to himself or herself or  
 4251 others, and ordered that such record be submitted to the  
 4252 department.

4253 c. In order to check for these conditions, the department  
 4254 shall compile and maintain an automated database of persons who  
 4255 are prohibited from purchasing a firearm based on court records  
 4256 of adjudications of mental defectiveness or commitments to  
 4257 mental institutions.

4258 (I) Except as provided in sub-sub-subparagraph (II), clerks  
 4259 of court shall submit these records to the department within 1  
 4260 month after the rendition of the adjudication or commitment.  
 4261 Reports shall be submitted in an automated format. The reports  
 4262 must, at a minimum, include the name, along with any known alias  
 4263 or former name, the sex, and the date of birth of the subject.

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4264 (II) For persons committed to a mental institution pursuant  
 4265 to sub-sub-subparagraph b.(II), within 24 hours after the  
 4266 person's agreement to voluntary admission, a record of the  
 4267 finding, certification, notice, and written acknowledgment must  
 4268 be filed by the administrator of the receiving or treatment  
 4269 facility, as defined in s. 394.455, with the clerk of the court  
 4270 for the county in which the involuntary examination under s.  
 4271 394.463 occurred. No fee shall be charged for the filing under  
 4272 this sub-sub-subparagraph. The clerk must present the records to  
 4273 a judge or magistrate within 24 hours after receipt of the  
 4274 records. A judge or magistrate is required and has the lawful  
 4275 authority to review the records ex parte and, if the judge or  
 4276 magistrate determines that the record supports the classifying  
 4277 of the person as an imminent danger to himself or herself or  
 4278 others, to order that the record be submitted to the department.  
 4279 If a judge or magistrate orders the submittal of the record to  
 4280 the department, the record must be submitted to the department  
 4281 within 24 hours.

4282 d. A person who has been adjudicated mentally defective or  
 4283 committed to a mental institution, as those terms are defined in  
 4284 this paragraph, may petition the circuit court that made the  
 4285 adjudication or commitment, or the court that ordered that the  
 4286 record be submitted to the department pursuant to sub-sub-  
 4287 subparagraph c.(II), for relief from the firearm disabilities  
 4288 imposed by such adjudication or commitment. A copy of the  
 4289 petition shall be served on the state attorney for the county in  
 4290 which the person was adjudicated or committed. The state  
 4291 attorney may object to and present evidence relevant to the  
 4292 relief sought by the petition. The hearing on the petition may

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4293 be open or closed as the petitioner may choose. The petitioner  
 4294 may present evidence and subpoena witnesses to appear at the  
 4295 hearing on the petition. The petitioner may confront and cross-  
 4296 examine witnesses called by the state attorney. A record of the  
 4297 hearing shall be made by a certified court reporter or by court-  
 4298 approved electronic means. The court shall make written findings  
 4299 of fact and conclusions of law on the issues before it and issue  
 4300 a final order. The court shall grant the relief requested in the  
 4301 petition if the court finds, based on the evidence presented  
 4302 with respect to the petitioner's reputation, the petitioner's  
 4303 mental health record and, if applicable, criminal history  
 4304 record, the circumstances surrounding the firearm disability,  
 4305 and any other evidence in the record, that the petitioner will  
 4306 not be likely to act in a manner that is dangerous to public  
 4307 safety and that granting the relief would not be contrary to the  
 4308 public interest. If the final order denies relief, the  
 4309 petitioner may not petition again for relief from firearm  
 4310 disabilities until 1 year after the date of the final order. The  
 4311 petitioner may seek judicial review of a final order denying  
 4312 relief in the district court of appeal having jurisdiction over  
 4313 the court that issued the order. The review shall be conducted  
 4314 de novo. Relief from a firearm disability granted under this  
 4315 sub-subparagraph has no effect on the loss of civil rights,  
 4316 including firearm rights, for any reason other than the  
 4317 particular adjudication of mental defectiveness or commitment to  
 4318 a mental institution from which relief is granted.

4319 e. Upon receipt of proper notice of relief from firearm  
 4320 disabilities granted under sub-subparagraph d., the department  
 4321 shall delete any mental health record of the person granted

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4322 relief from the automated database of persons who are prohibited  
 4323 from purchasing a firearm based on court records of  
 4324 adjudications of mental defectiveness or commitments to mental  
 4325 institutions.

4326 f. The department is authorized to disclose data collected  
 4327 pursuant to this subparagraph to agencies of the Federal  
 4328 Government and other states for use exclusively in determining  
 4329 the lawfulness of a firearm sale or transfer. The department is  
 4330 also authorized to disclose this data to the Department of  
 4331 Agriculture and Consumer Services for purposes of determining  
 4332 eligibility for issuance of a concealed weapons or concealed  
 4333 firearms license and for determining whether a basis exists for  
 4334 revoking or suspending a previously issued license pursuant to  
 4335 s. 790.06(10). When a potential buyer or transferee appeals a  
 4336 nonapproval based on these records, the clerks of court and  
 4337 mental institutions shall, upon request by the department,  
 4338 provide information to help determine whether the potential  
 4339 buyer or transferee is the same person as the subject of the  
 4340 record. Photographs and any other data that could confirm or  
 4341 negate identity must be made available to the department for  
 4342 such purposes, notwithstanding any other provision of state law  
 4343 to the contrary. Any such information that is made confidential  
 4344 or exempt from disclosure by law shall retain such confidential  
 4345 or exempt status when transferred to the department.

4346 Section 55. Part IV of chapter 397, Florida Statutes,  
 4347 consisting of s. 397.601, Florida Statutes, is repealed.

4348 Section 56. Part V of chapter 397, Florida Statutes,  
 4349 consisting of ss. 397.675-397.6977, Florida Statutes, is  
 4350 repealed.

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4351 Section 57. For the purpose of incorporating the amendment  
 4352 made by this act to section 394.4599, Florida Statutes, in a  
 4353 reference thereto, subsection (1) of section 394.4685, Florida  
 4354 Statutes, is reenacted to read:

4355 394.4685 Transfer of patients among facilities.—

4356 (1) TRANSFER BETWEEN PUBLIC FACILITIES.—

4357 (a) A patient who has been admitted to a public receiving  
 4358 facility, or the family member, guardian, or guardian advocate  
 4359 of such patient, may request the transfer of the patient to  
 4360 another public receiving facility. A patient who has been  
 4361 admitted to a public treatment facility, or the family member,  
 4362 guardian, or guardian advocate of such patient, may request the  
 4363 transfer of the patient to another public treatment facility.  
 4364 Depending on the medical treatment or mental health treatment  
 4365 needs of the patient and the availability of appropriate  
 4366 facility resources, the patient may be transferred at the  
 4367 discretion of the department. If the department approves the  
 4368 transfer of an involuntary patient, notice according to the  
 4369 provisions of s. 394.4599 shall be given prior to the transfer  
 4370 by the transferring facility. The department shall respond to  
 4371 the request for transfer within 2 working days after receipt of  
 4372 the request by the facility administrator.

4373 (b) When required by the medical treatment or mental health  
 4374 treatment needs of the patient or the efficient utilization of a  
 4375 public receiving or public treatment facility, a patient may be  
 4376 transferred from one receiving facility to another, or one  
 4377 treatment facility to another, at the department's discretion,  
 4378 or, with the express and informed consent of the patient or the  
 4379 patient's guardian or guardian advocate, to a facility in

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4380 another state. Notice according to the provisions of s. 394.4599  
 4381 shall be given prior to the transfer by the transferring  
 4382 facility. If prior notice is not possible, notice of the  
 4383 transfer shall be provided as soon as practicable after the  
 4384 transfer.

4385 Section 58. For the purpose of incorporating the amendment  
 4386 made by this act to section 394.4599, Florida Statutes, in a  
 4387 reference thereto, subsection (2) of section 394.469, Florida  
 4388 Statutes, is reenacted to read:

4389 394.469 Discharge of involuntary patients.—

4390 (2) NOTICE.—Notice of discharge or transfer of a patient  
 4391 shall be given as provided in s. 394.4599.

4392 Section 59. This act shall take effect July 1, 2015.

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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)

4/16/15

Meeting Date

7070

Bill Number (if applicable)

898338

Topic MENTAL HEALTH

Amendment Barcode (if applicable)

Name Dan Hendrickson

Job Title legislative liaison

Address 319 E Park Ave

Phone 850 570 1967

Street

Tallahassee

FL

32301

Email danbhendrickson@comcast.net

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Big Bend Mental Health Coalition, NAMI Tallahassee, North FL Veterans Standdown Legal

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 (10/14/14)

# APPEARANCE RECORD

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

4/16/15

*Meeting Date*

7070

*Bill Number (if applicable)*

808402

*Amendment Barcode (if applicable)*

Topic MENTAL HEALTH

Name Dan Hendrickson

Job Title legislative liaison

Address 319 E Park Ave

Phone 850 570 1967

*Street*

Tallahassee

FL

32301

Email danbhendrickson@comcast.net

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
*(The Chair will read this information into the record.)*

Representing Big Bend Mental Health Coalition, NAMI Tallahassee, North FL Veterans Standdown Legal

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4-16-15  
Meeting Date

7070  
Bill Number (if applicable)

Topic Mental Health

211274  
Amendment Barcode (if applicable)

Name Martha DeCastro

(Grimley)

Job Title VP for Nursing

Address 300 E College Ave

Phone 850-222-9800

Tallah FL 32301  
City State Zip

Email Martha@tha-079

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Hospital Assoc

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/16

Meeting Date

7070

Bill Number (if applicable)

211274

Amendment Barcode (if applicable)

Topic Mental Health

Name Aimee Lyon

Job Title \_\_\_\_\_

Address 215 S. Monroe St.

Phone 205-9000

Street

Tallahassee

FL

32301

Email AIMEEDIAZLYON@METALAW

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Psychiatric 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)

4/16/15

Meeting Date

7070

Bill Number (if applicable)

250728

Amendment Barcode (if applicable)

Topic MENTAL HEALTH

Name Dan Hendrickson

Job Title legislative liaison

Address 319 E Park Ave

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850 570 1967

Email danbhendrickson@comcast.net

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Big Bend Mental Health Coalition, NAMI Tallahassee, North FL Veterans Standdown Legal

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 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4.16.15

Meeting Date

7070

Bill Number (if applicable)

\*632438

Amendment Barcode (if applicable)

Topic MENTAL HEALTH & SUBSTANCE ABUSE

Name LAURA YOUMANS

Job Title LEGISLATIVE ADVOCATE

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Zip

Phone 294-1838

Email LYOUNANSEPL-COUNTIES.COM

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FLORIDA ASSOCIATION OF COUNTIES

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.

# APPEARANCE RECORD

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

4/16/15

Meeting Date

7070

Bill Number (if applicable)

632438

Amendment Barcode (if applicable)

Topic MENTAL HEALTH

Name Dan Hendrickson

Job Title legislative liaison

Address 319 E Park Ave

Phone 850 570 1967

Street

Tallahassee

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32301

Email danbhendrickson@comcast.net

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Big Bend Mental Health Coalition, NAMI Tallahassee, North FL Veterans Standdown Legal

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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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)

4/16/15

Meeting Date

7070

Bill Number (if applicable)

927158

Topic MENTAL HEALTH

Amendment Barcode (if applicable)

Name Dan Hendrickson

Job Title legislative liaison

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Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Big Bend Mental Health Coalition, NAMI Tallahassee, North FL Veterans Standdown Legal

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 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/16/15

Meeting Date

7070

Bill Number (if applicable)

Topic MENTAL HEALTH

Amendment Barcode (if applicable)

Name Dan Hendrickson

Job Title legislative liaison

Address 319 E Park Ave

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Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Big Bend Mental Health Coalition, NAMI Tallahassee, North FL Veterans Standdown Legal

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/16/2015

Meeting Date

SB 7070

Bill Number (if applicable)

N/A

Amendment Barcode (if applicable)

Topic MENTAL HEALTH and Substance Abuse

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

Waive Speaking: [X] In Support [ ] Against (The Chair will read this information into the record.)

Representing Broward County

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

Lobbyist registered with Legislature: [X] Yes [ ] No

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## II. Present Situation:

### The Florida Retirement System

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the FRS, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group.<sup>1</sup> The FRS is a contributory system, with most members contributing three percent of their salaries.<sup>2</sup>

The FRS is a multi-employer, contributory plan, governed by the Florida Retirement System Act in Chapter 121, F.S. As of June 30, 2014, the FRS had 622,089 active members, 363,034 annuitants, 16,137 disabled retirees, and 38,058 active participants of the Deferred Retirement Option Program (DROP).<sup>3</sup> As of June 30, 2014, the FRS consisted of 1,014 total employers; it is the primary retirement plan for employees of state and county government agencies, district school boards, Florida College institutions, and state universities, and also includes the 186 cities and 262 special districts that have elected to join the system.<sup>4</sup>

The membership of the FRS is divided into five membership classes:

- The Regular Class<sup>5</sup> consists of 537,993 active members, plus 5,402 in renewed membership;
- The Special Risk Class<sup>6</sup> includes 68,593 active members;
- The Special Risk Administrative Support Class<sup>7</sup> has 84 active members;
- The Elected Officers' Class<sup>8</sup> has 2,040 active members, plus 147 in renewed membership; and
- The Senior Management Service Class<sup>9</sup> has 7,607 members, plus 184 in renewed membership.<sup>10</sup>

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<sup>1</sup> The Florida Retirement System Pension Plan and Other State Administered Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2014, at p. 29. Available online at: [https://www.rol.frs.state.fl.us/forms/2013-14\\_CAFR.pdf](https://www.rol.frs.state.fl.us/forms/2013-14_CAFR.pdf).

<sup>2</sup> Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class employees or 6 percent for Special Risk Class members. Employees were again required to contribute to the system after July 1, 2011. Members in the Deferred Retirement Option Program do not contribute to the system.

<sup>3</sup> Florida Retirement System Annual Financial Report Fiscal Year Ended June 30, 2014, at 112.

<sup>4</sup> *Id.*, at 146.

<sup>5</sup> The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

<sup>6</sup> The Special Risk Class is for members employed as law enforcement officers, firefighters, correctional officers, probation officers, paramedics and emergency technicians, among others. Section 121.0515, F.S.

<sup>7</sup> The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the Florida Retirement System. Section 121.0515(8), F.S.

<sup>8</sup> The Elected Officers' Class is for elected state and county officers, and for those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.

<sup>9</sup> The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. Section 121.055, F.S.

<sup>10</sup> All figures from Florida Retirement System Annual Financial Report Fiscal Year Ended June 30, 2014, at 115.

### ***Investment Plan***

In 2000, the Legislature created the Public Employee Optional Retirement Program (investment plan), a defined contribution plan offered to eligible employees as an alternative to the FRS Pension Plan.

Benefits under the investment plan accrue in individual member accounts funded by both employee and employer contributions and earnings. Benefits are provided through employee-directed investments offered by approved investment providers.

A member vests immediately in all employee contributions paid to the investment plan.<sup>11</sup> With respect to the employer contributions, a member vests after completing one work year of employment with an FRS employer.<sup>12</sup> Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.<sup>13</sup> The investment plan also provides disability coverage for both in the line of duty and regular disability retirement benefits.<sup>14</sup> An FRS member who qualifies for disability while enrolled in the investment plan must apply for benefits as if the employee were a member of the pension plan. If approved for retirement disability benefits, the member is transferred to the pension plan.<sup>15</sup>

The State Board of Administration (SBA) is primarily responsible for administering the investment plan.<sup>16</sup> The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.<sup>17</sup>

### ***Pension Plan***

The pension plan is administered by the secretary of the Department of Management Services through the Division of Retirement.<sup>18</sup> Investment management is handled by the State Board of Administration.

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing six years of service with an FRS employer.<sup>19</sup> For members enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.<sup>20</sup>

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<sup>11</sup> Section 121.4501(6)(a), F.S.

<sup>12</sup> If a member terminates employment before vesting in the investment plan, the nonvested money is transferred from the member's account to the SBA for deposit and investment by the SBA in its suspense account for up to five years. If the member is not reemployed as an eligible employee within five years, then any nonvested accumulations transferred from a member's account to the SBA's suspense account are forfeited. Section 121.4501(6)(b) – (d), F.S.

<sup>13</sup> Section 121.591, F.S.

<sup>14</sup> See s. 121.4501(16), F.S.

<sup>15</sup> Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability, compensate an in the line of duty disabled member up to 65 percent of the average monthly compensation as of the disability retirement date for special risk class members. Other members may receive up to 42 percent of the member's average monthly compensation for disability retirement benefits. If the disability occurs other than in the line of duty, the monthly benefit may not be less than 25 percent of the average monthly compensation as of the disability retirement date. Section 121.091(4)(f), F.S.

<sup>16</sup> Section 121.4501(8), F.S.

<sup>17</sup> Section 4, Art. IV, Fla. Const.

<sup>18</sup> Section 121.025, F.S.

<sup>19</sup> Section 121.021(45)(a), F.S.

<sup>20</sup> Section 121.021(45)(b), F.S.

Benefits payable under the pension plan are calculated based on the member's years of creditable service multiplied by the service accrual rate multiplied by the member's average final compensation.<sup>21</sup> For most members of the pension plan, normal retirement occurs at the earliest attainment of 30 years of service or age 62.<sup>22</sup> For public safety employees in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earliest of 25 years of service or age 55.<sup>23</sup> Members initially enrolled in the pension plan on or after July 1, 2011, have longer vesting requirements. For members initially enrolled after that date, the member must complete 33 years of service or attain age 65, and members in the Special Risk classes must complete 30 years of service or attain age 60.<sup>24</sup>

### **In the Line of Duty Death Benefits Available under Chapter 121, F.S.**

The FRS currently provides death benefits for surviving spouses and/or eligible dependents of active members of the pension plan.<sup>25</sup> Death benefits may be paid for an active member of the FRS pension plan who dies before retirement due to an injury or illness.<sup>26</sup> Certain health conditions for firefighters, law enforcement, correctional and correctional probation officers are deemed accidental and suffered in the line of duty.<sup>27</sup> If the injury or illness arises out of and in the actual performance of duty required by his or her job, the member's surviving spouse and/or eligible dependent(s) are entitled to in the line of duty death benefits.

If an active FRS member (regardless of vested status) dies in the line of duty, the surviving spouse receives a monthly benefit for her lifetime equal to one-half the member's monthly salary at death.<sup>28</sup> If the spouse dies, the benefit continues until the member's youngest child reaches 18 or is married, whichever occurs first.<sup>29</sup> If the deceased member is entitled to a higher normal retirement benefit based on service credit, the normal retirement benefit is payable to the joint annuitant.<sup>30</sup>

For in the line of duty deaths, the surviving spouse or eligible dependent(s) may purchase credit for any service which could have been claimed by the member at the time of member's death.<sup>31</sup> If a member dies within one year of vesting, the surviving spouse or other eligible dependent may use the member's annual, sick, or compensatory leave, or purchasable service, to purchase enough service credit to vest the member posthumously.<sup>32</sup>

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<sup>21</sup> Section 121.091, F.S.

<sup>22</sup> Section 121.021(29)(a)1., F.S.

<sup>23</sup> Section 121.021(29)(b)1., F.S.

<sup>24</sup> Sections 121.021(29)(a)2. and (b)2., F.S.

<sup>25</sup> Under the investment plan, no minimum death benefit is payable to a surviving spouse or children. Accumulations in the member's account are payable to the designated beneficiary. Section 121.591, F.S.

<sup>26</sup> Section 121.091(7), F.S.

<sup>27</sup> Section 112.18(1)(a), F.S., provides any condition of health caused by tuberculosis, heart disease or hypertension resulting in the total or partial disability or death shall be presumed to have been accidental and suffered in the line of duty.

<sup>28</sup> Section 121.091(7)(d), F.S. If vested posthumously, the surviving spouse or dependent would be entitled to a death benefit.

<sup>29</sup> *Id.*

<sup>30</sup> Section 121.091(7)(b) and (d), F.S.

<sup>31</sup> Section 121.091(7)(e), F.S.

<sup>32</sup> Section 121.091(7)(f), F.S.

The following chart notes the Special Risk Class in the line of duty death benefits for the last five years for the State of Florida and the local governmental entities participating in the FRS:<sup>33</sup>

	2009-10	2010-11	2011-12	2012-13	2013-14	Total
<b>State Count</b>	0	2	2	1	0	5
<b>State Benefits</b>	0	\$49,928	\$37,424	\$25,862	0	\$113,214
<b>Local Count</b>	5	5	4	2	1	17
<b>Local Benefits</b>	\$146,836	\$129,389	\$97,061	\$56,932	\$30,052	\$460,270

**Death Benefits Available under Chapter 112, F.S.**

Chapter 112, F.S., provides death benefits that are supplemental to the benefits afforded under ch. 121, F.S., for law enforcement officers, correctional officers, correctional probation officers, firefighters, instructional staff and school administrators under specified circumstances.<sup>34</sup> The Bureau of Crime Prevention and Training within the Department of Legal Affairs annually adjusts the statutory amounts<sup>35</sup> for price level changes in the Consumer Price Index since 2002.<sup>36</sup> The table below shows the benefit amounts currently provided.<sup>37</sup>

	Law Enforcement	Firefighters	Instructional Personnel
Accidental Death in performance of duties	\$65,773	\$65,773	None
Accidental Death in response to emergency	Additional \$65,773	Additional \$65,773	None
Death by intentional act of another	\$198,272	\$198,272	\$198,272

The payments outlined above for accidental death in performance of duties, accidental death in response to emergency and death by intentional act of another, for firefighters, law enforcement, correctional, and correctional probation officers, are made to the beneficiary designated by the firefighter or officer in writing.<sup>38</sup> If no designation is made, payments are made to the firefighter or officer’s surviving spouse and children in equal amounts.<sup>39</sup> If there is no surviving spouse or

<sup>33</sup> E-mail from Department of Management Services dated Jan. 12, 2015.

<sup>34</sup> For definitions of these terms, see ss. 112.19(1) and 112.1915(1)(b), F.S.

<sup>35</sup> Sections 112.19(2)(a), 112.191(2)(a), 112.19(2)(b), 112.19(2)(c), and 112.1915(3)(a), F.S.

<sup>36</sup> Sections 112.19(2)(j) and 112.191(2)(i), F.S.

<sup>37</sup> Conversation with Rick Nuss, Office of the Attorney General, Bureau of Criminal Justice Programs (Feb. 13, 2015).

<sup>38</sup> Sections 112.191(2)(d) and 112.19(2)(d), F.S.

<sup>39</sup> *Id.*

children, payment is made to the firefighter's or officer's parents.<sup>40</sup> If there is no surviving spouse, child or parent, payment will be made to the firefighter's or officer's estate.<sup>41</sup>

In regards to the payment concerning the death by intentional act of another for instructional personnel, if a beneficiary is not designated, the instructional staff's or school administrator's estate would receive the money.<sup>42</sup>

Other death benefits under ch. 112, F.S., which are available to law enforcement, correctional officers, correctional probation officers, firefighters and instructional staff and school administrators who are killed in the line of duty include the following:

- Funeral and burial expenses (full-time law enforcement, correctional, or correctional probation officer employed by a state agency under specified circumstances;<sup>43</sup> and instructional staff and school administrator employed by school district);<sup>44</sup>
- Surviving family health insurance premiums payment by political subdivision of the state and local school district (full-time law enforcement officer or correctional officer);<sup>45</sup> full-time firefighter;<sup>46</sup> and instructional staff and school administrator);<sup>47</sup>
- Family health insurance premium payments for catastrophic injury (full-time law enforcement, correctional, correctional probation officer,<sup>48</sup> or firefighter<sup>49</sup> employed by state or a political subdivision of state); and
- Educational expenses of surviving spouse and children (law enforcement, correctional, or correctional probation officer;<sup>50</sup> firefighter;<sup>51</sup> and instructional staff or school administrator).<sup>52</sup>

### **Death benefits available under Chapter 185, F.S.**

Chapter 185, F.S., governs municipal police pensions. If a municipal police officer dies before being eligible to retire, the officer's beneficiaries will receive:

- A refund of all contributions made by the officer to the retirement trust fund;<sup>53</sup>
- Death benefits from life insurance or annuity contract if purchased for officer, subject to limitations;<sup>54</sup> and
- Benefits payable to officer at early or normal retirement age (if officer had at least 10 years of service).<sup>55</sup>

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Section 112.1915(1)(f), F.S.

<sup>43</sup> Section 112.19(2)(f), F.S.

<sup>44</sup> Section 112.1915(3)(b), F.S.

<sup>45</sup> Section 112.19(2)(g), F.S.

<sup>46</sup> Section 112.191(2)(f), F.S.

<sup>47</sup> Section 112.1915(3)(c), F.S.

<sup>48</sup> Section 112.19(2)(h), F.S.

<sup>49</sup> Section 112.191(2)(g), F.S.

<sup>50</sup> Section 112.19(3), F.S.

<sup>51</sup> Section 112.191(3), F.S.

<sup>52</sup> Section 112.1915(3)(d), F.S. (surviving children only, not spouse).

<sup>53</sup> Section 185.21(1), F.S.

<sup>54</sup> *Id.*

<sup>55</sup> Section 185.21(2), F.S.

Death benefits provided in accordance with s. 112.19, F.S., are not included in the calculation of death or retirement benefits under this chapter.<sup>56</sup>

### **Death benefits available under Chapter 175, F.S.**

Chapter 175, F.S., governs firefighter pensions. If a firefighter dies before being eligible to retire, the officer's beneficiaries will receive:<sup>57</sup>

- A refund of all contributions made by the firefighter to the pension trust fund;<sup>58</sup>
- Death benefits from life insurance or annuity contract if purchased for firefighter, subject to limitations;<sup>59</sup> and
- Benefits payable to firefighter at early or normal retirement age (if officer had at least 10 years of service).<sup>60</sup>

Death benefits provided in accordance with s. 112.191, F.S., are not included in the calculation of death or retirement benefits under this chapter.

### **Compensation for death under Chapter 440, F.S.**

The Workers' Compensation Law provides that the death of an employee of the state or one of its subdivisions, which results from an injury arising out of and in the course of employment, is a basis for a right to compensation.<sup>61</sup> When a death results within one year of an accident, or within five years following continuous disability, the employer pays:<sup>62</sup>

- Actual funeral expenses up to \$7,500;
- Compensation to enumerated dependents in the form of a percentage of the deceased employee's weekly wages, not to exceed \$150,000; and
- Payment of postsecondary student fees for the surviving spouse.

### **Survivor Death Benefits from the Public Safety Officers' Benefits Program**

The Public Safety Officers' Benefits Program (PSOB), administered by the U.S. Department of Justice, provides education benefits and a one-time death benefit to eligible survivors of federal, state or local public safety officers who die in the line of duty. The amount of the PSOB benefit is \$339,310 for eligible deaths occurring on or after October 1, 2014.<sup>63</sup>

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<sup>56</sup> *Id.*

<sup>57</sup> Section 175.201, F.S., for firefighters employed by any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan.

<sup>58</sup> Section 175.201(1), F.S.

<sup>59</sup> *Id.*

<sup>60</sup> Section 175.201(2), F.S.

<sup>61</sup> Section 440.02, F.S.

<sup>62</sup> Section 440.16(1), F.S.

<sup>63</sup> U.S. Dep't of Justice Office of Justice Programs, *Public Safety Officers' Benefits Programs*, available at <https://www.psob.gov/index.html> (last visited Feb. 13, 2015).

### III. Effect of Proposed Changes:

**Section 1** amends s. 121.091, F.S., to increase the Florida Retirement System (FRS) pension plan's survivor benefits available to the spouse and children of members in the Special Risk Class when killed in the line of duty on or after July 1, 2013. Rather than receiving 50 percent of the member's salary at the time of death, the new survivor benefit is increased to 100 percent of the member's salary at the time of death. This survivor benefit is payable in lieu of the member's normal retirement benefits based on service credits and average final compensation.

The survivor benefits are payable for the life of the surviving spouse. If there is no surviving spouse or the spouse dies, the member's children will receive the benefits until the youngest child's eighteen birthday. The benefits may be extended to the 25<sup>th</sup> birthday of an unmarried child enrolled as a full time student.

These survivor benefits are payable to the surviving spouse and children and supersede any beneficiary designation made by the member.

**Section 2** amends s. 121.571, F.S., to specify that the new employer-paid contribution rates must be embedded in the system-wide blended rates assessed pursuant to s. 121.71, F.S.

**Section 3** amends s. 121.591, F.S., to provide survivor benefits to the spouse and children of investment plan members in the Special Risk Class when killed in the line of duty on or after July 1, 2013. The spouse and children may elect to transfer the balance of the member's investment plan account to the survivor benefits program and receive the survivor benefits described in section 1 above (100 percent of the member's salary at the time of death). In addition to the transfer of moneys from the deceased member's investment account, additional employer-paid contributions into the survivor benefit account of the FRS Trust Fund are used to pay the survivor benefits.

**Section 4** creates s. 121.5912, F.S., to establish legislative intent regarding the implementation of a survivor benefit program for the spouses and children of investment plan members in the Special Risk Class when killed in the line of duty. The program is intended to meet all applicable requirements of a qualified plan under the Internal Revenue Code. If the SBA or Department of Management Services (DMS) receives notification that a portion of this program will cause the FRS to be disqualified for tax purposes, that portion of the program ceases to be applicable.

**Section 5** creates s. 121.735, F.S., to allocate 0.82 percentage points of the employer-paid contribution rate for investment plan members of the Special Risk Class to the survivor benefit program of the FRS investment plan. These contribution rates are applied as a percentage of the investment plan members' gross compensation for the calendar month.

**Section 6** amends s. 121.71, F.S., to make a conforming change relating to the calculation by the system actuary of the contributions required for the FRS.

**Section 7** amends s. 121.74, F.S., to make a technical correction relating to the contributions required by FRS employers to the FRS Trust Fund.

**Section 8** amends s. 121.75, F.S., to make a conforming change relating to the distribution of contributions paid into the FRS Trust Fund.

**Section 9** provides that, for the 2015-2016 fiscal year only, upon notification by the DMS that sufficient funds are not available to make the survivor benefit payments authorized by the bill, the State Board of Administration shall transfer sufficient funds from the Administrative Trust Fund to the survivor benefits account in the FRS Trust Fund, to ensure timely payment of survivor benefits.

**Section 10** increases the employer-paid contributions into the Florida Retirement System by 0.58 percentage points for the Special Risk Class and 0.06 percentage points for the Deferred Retirement Option Program.

**Section 11** provides that the Legislature finds that this act fulfills an important state interest.

**Section 12** appropriates the recurring amounts of \$5,445,337 from the General Revenue Fund and \$1,062,991 from trust funds to Administered Funds, to fund the increased employer contribution rates to be paid under the bill by state agencies, state universities, state colleges, and school districts.

**Section 13** provides that this bill will take effect on July 1, 2015.

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

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

Article VII, s. 18(a) of the Florida Constitution provides in pertinent part that “no county or municipality shall be bound by any general law requiring such county or municipality to spend funds . . . unless the legislature has determined that such law fulfills an important state interest and unless:

- The law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; or
- The expenditure is required to comply with a law that applies to all persons similarly situated.”

This bill includes legislative findings that the bill fulfills an important state interest (see section 8), and the bill applies to all persons similarly situated (those employers participating in the Florida Retirement System with employees in the Special Risk Class and DROP), including state agencies, school boards, community colleges, counties, and municipalities. If this exception does not apply, the bill must be approved by two-thirds vote of each chamber to be binding upon the counties and municipalities participating in the FRS.

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

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article X, s. 14 of the Florida Constitution provides:

A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

An actuarial study has been completed to comply with Art. X, s. 14 of the Florida Constitution. The bill provides adjustments to contribution rates consistent with that actuarial study and concurrent with the adjustments in retirement benefits.<sup>64</sup>

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under CS/SB 7082, spouses and children of members in the Special Risk Class when killed in the line of duty may receive higher benefits than available under current law.

C. Government Sector Impact:

Employers participating the FRS whose employees are members of the Special Risk Class or DROP will incur higher retirement contributions to fund these new benefits. The aggregate employer contributions anticipated to be paid into the Florida Retirement System Trust Fund in Fiscal Year 2015-2016 will increase by approximately \$25 million when compared to the employer contributions paid in Fiscal Year 2014-2015. However, the impacts on particular employers vary significantly based on whether the employers have members in the Special Risk Class or DROP. The impacts by employer group for Fiscal Year 2015-2016 are noted below.

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<sup>64</sup> *Re: Actuarial Study – Special Risk Class In Line of Duty (ILOD) Death Benefits*, from Milliman, Inc., to Dan Drake, State Retirement Director, dated April 1, 2105. (on file with the Senate Committee on Governmental Oversight and Accountability)

<b>Employer Group</b>	<b>Impact on Contributions</b>
<b>State Agencies</b>	\$5.4 m
<b>Universities</b>	\$0.2 m
<b>Colleges</b>	\$0.1 m
<b>School Boards</b>	\$0.8 m
<b>Counties</b>	\$17.2 m
<b>Other</b>	\$1.3 m
<b>Total</b>	\$25.1 m

The bill appropriates the recurring amounts of \$5,445,337 from the General Revenue Fund and \$1,062,991 from trust funds to Administered Funds, to fund the increased employer contribution rates to be paid under the bill by state agencies, state universities, state colleges, and school districts.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 121.091, 121.571, 121.591, and 121.75.

The bill creates the following sections of the Florida Statutes: 121.5912 and 121.735.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

**CS by Appropriations on April 17, 2015:**

The committee substitute:

- Makes a conforming change relating to calculation by the Florida Retirement System (FRS) actuary of the contributions required for the FRS.
- Makes a technical change relating to the contributions required by FRS employers.
- Authorizes transfers by the State Board of Administration from the Administrative Trust Fund, as determined to be necessary by the Department of Management Services, to the survivor benefit account in the FRS System Trust Fund to ensure timely payment of survivor benefits.
- Appropriates the recurring amounts of \$5,445,337 from the General Revenue Fund and \$1,062,991 from trust funds to Administered Funds, to fund the increased

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employer contribution rates to be paid under the bill by state agencies, state universities, state colleges, and school districts.

**B. Amendments:**

None.

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

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446590

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
	.	
	.	
	.	

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The Committee on Appropriations (Ring) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 383 and 384  
insert:

Section 6. Subsection (1) of section 121.71, Florida Statutes, is amended to read:

121.71 Uniform rates; process; calculations; levy.—

(1) In conducting the system actuarial study required under s. 121.031, the actuary shall follow all requirements specified to determine, by Florida Retirement System employee membership



446590

11 class, the dollar contribution amounts necessary for the next  
12 fiscal year for the pension plan. In addition, the actuary shall  
13 determine, by Florida Retirement System membership class, based  
14 on an estimate for the next fiscal year of the gross  
15 compensation of employees participating in the investment plan,  
16 the dollar contribution amounts necessary to make the  
17 allocations required under ss. 121.72, ~~and~~ 121.73, and 121.735.  
18 For each employee membership class and subclass, the actuarial  
19 study must establish a uniform rate necessary to fund the  
20 benefit obligations under both Florida Retirement System  
21 retirement plans by dividing the sum of total dollars required  
22 by the estimated gross compensation of members in both plans.

23 Section 7. Section 121.74, Florida Statutes, is amended to  
24 read:

25 121.74 Administrative and educational expenses.—In addition  
26 to contributions required to fund member accounts under s. ss.  
27 ~~121.71 and 121.73~~, effective July 1, 2010, through June 30,  
28 2014, employers participating in the Florida Retirement System  
29 shall contribute an employer assessment amount equal to 0.03  
30 percent of the payroll reported for each class or subclass of  
31 Florida Retirement System membership. Effective July 1, 2014,  
32 the employer assessment is 0.04 percent of the payroll reported  
33 for each class or subclass of membership. The amount assessed  
34 shall be transferred by the division ~~of Retirement~~ from the  
35 Florida Retirement System Contributions Clearing Trust Fund to  
36 the State Board of Administration's Administrative Trust Fund to  
37 offset the costs of administering the investment plan and the  
38 costs of providing educational services to members of the  
39 Florida Retirement System. Approval of the trustees is required



446590

40 before the expenditure of these funds. Payments for third-party  
41 administrative or educational expenses shall be made only  
42 pursuant to the terms of the approved contracts for such  
43 services.

44 Section 8. For the 2015-2016 fiscal year only, upon  
45 notification by the Department of Management Services that  
46 sufficient funds are not available to make survivor benefit  
47 payments authorized by this act, the State Board of  
48 Administration shall transfer, to the extent necessary, moneys  
49 in the Administrative Trust Fund to the survivor benefits  
50 account in the Florida Retirement System Trust Fund to ensure  
51 the timely payment of survivor benefits.

52  
53 ===== T I T L E A M E N D M E N T =====

54 And the title is amended as follows:

55 Delete line 24

56 and insert:

57 benefits authorized by the act; amending ss. 121.71  
58 and 121.74, F.S.; conforming cross-references to  
59 changes made by the act; requiring the State Board of  
60 Administration to transfer moneys to fund survivor  
61 benefit payments under specified circumstances;  
62 amending s. 121.75,



910698

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
	.	
	.	
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The Committee on Appropriations (Ring) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 422 and 423  
insert:

Section 9. For the 2015-2016 fiscal year, the recurring sums of \$5,445,537 from the General Revenue Fund and \$1,062,991 from trust funds are appropriated to Administered Funds in order to fund the increased employer contribution rates to be paid under this act by state agencies, state universities, state colleges, and school districts.



910698

11  
12  
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17

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

And the title is amended as follows:

Delete line 30

and insert:

important state interest; providing an appropriation;  
providing an effective date.

By the Committee on Governmental Oversight and Accountability

585-03644-15

20157082\_\_

1 A bill to be entitled  
 2 An act relating to death benefits under the Florida  
 3 Retirement System; amending s. 121.091, F.S.;  
 4 authorizing payment of death benefits to the surviving  
 5 spouse or children of a Special Risk Class member  
 6 killed in the line of duty under specified  
 7 circumstances; specifying eligibility; amending s.  
 8 121.571, F.S.; conforming provisions to changes made  
 9 by the act; amending s. 121.591, F.S.; authorizing  
 10 payment of death benefits to the surviving spouse or  
 11 surviving children of a Special Risk Class member in  
 12 the investment plan; establishing qualifications and  
 13 eligibility requirements in order to receive such  
 14 benefits; prescribing the method of calculating the  
 15 benefit; specifying circumstances under which benefit  
 16 payments are terminated; creating s. 121.5912, F.S.;  
 17 providing legislative intent; requiring the State  
 18 Board of Administration or the Division of Retirement  
 19 to take certain action upon receipt of notification of  
 20 disqualification from the Internal Revenue Service;  
 21 authorizing the state board and the Department of  
 22 Management Services to adopt rules; creating s.  
 23 121.735, F.S.; providing for allocations for death  
 24 benefits authorized by the act; amending s. 121.75,  
 25 F.S.; adding a cross-reference to conform to changes  
 26 made by the act; adjusting employer contribution rates  
 27 in order to fund changes made by the act; providing a  
 28 directive to the Division of Law Revision and  
 29 Information; declaring that the act fulfills an

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30 important state interest; providing an effective date.  
 31  
 32 Be It Enacted by the Legislature of the State of Florida:  
 33  
 34 Section 1. Paragraph (d) of subsection (7) of section  
 35 121.091, Florida Statutes, is amended, and paragraph (i) is  
 36 added to that subsection, to read:  
 37 121.091 Benefits payable under the system.—Benefits may not  
 38 be paid under this section unless the member has terminated  
 39 employment as provided in s. 121.021(39)(a) or begun  
 40 participation in the Deferred Retirement Option Program as  
 41 provided in subsection (13), and a proper application has been  
 42 filed in the manner prescribed by the department. The department  
 43 may cancel an application for retirement benefits when the  
 44 member or beneficiary fails to timely provide the information  
 45 and documents required by this chapter and the department's  
 46 rules. The department shall adopt rules establishing procedures  
 47 for application for retirement benefits and for the cancellation  
 48 of such application when the required information or documents  
 49 are not received.  
 50 (7) DEATH BENEFITS.—  
 51 (d) Notwithstanding any other provision in this chapter to  
 52 the contrary, with the exception of the Deferred Retirement  
 53 Option Program, as provided in subsection (13):  
 54 1. The surviving spouse of any member killed in the line of  
 55 duty may receive a monthly pension equal to one-half of the  
 56 monthly salary being received by the member at the time of death  
 57 for the rest of the surviving spouse's lifetime or, if the  
 58 member was vested, such surviving spouse may elect to receive a

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59 benefit as provided in paragraph (b). Benefits provided by this  
60 paragraph shall supersede any other distribution that may have  
61 been provided by the member's designation of beneficiary.

62 2. If the surviving spouse of a member killed in the line  
63 of duty dies, the monthly payments which would have been payable  
64 to such surviving spouse had such surviving spouse lived shall  
65 be paid for the use and benefit of such member's child or  
66 children under 18 years of age and unmarried until the 18th  
67 birthday of the member's youngest child. Beginning July 1, 2015,  
68 such monthly payments may be extended for a child of a member in  
69 the Special Risk Class when killed on or after July 1, 2013,  
70 until the 25th birthday of such child if the child is unmarried  
71 and enrolled as a full-time student.

72 3. If a member killed in the line of duty leaves no  
73 surviving spouse but is survived by a child or children under 18  
74 years of age, the benefits provided by subparagraph 1., normally  
75 payable to a surviving spouse, shall be paid for the use and  
76 benefit of such member's child or children under 18 years of age  
77 and unmarried until the 18th birthday of the member's youngest  
78 child. Beginning July 1, 2015, such monthly payments may be  
79 extended for a child of a member in the Special Risk Class when  
80 killed on or after July 1, 2013, until the 25th birthday of such  
81 child if the child is unmarried and enrolled as a full-time  
82 student.

83 4. The surviving spouse of a member whose benefit  
84 terminated because of remarriage shall have the benefit  
85 reinstated beginning July 1, 1993, at an amount that would have  
86 been payable had the benefit not been terminated.

87 (i) Notwithstanding any other provision in this chapter to

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88 the contrary, with the exception of the Deferred Retirement  
89 Option Program, as provided in subsection (13), for a member in  
90 the Special Risk Class when killed in the line of duty on or  
91 after July 1, 2013, the following benefits are payable in  
92 addition to the benefits provided in paragraph (d) beginning on  
93 or after July 1, 2015:

94 1. The surviving spouse may receive a monthly pension equal  
95 to one-half of the monthly salary being received by the member  
96 at the time of death for the rest of the surviving spouse's  
97 lifetime or, if the member was vested, such surviving spouse may  
98 elect to receive a benefit as provided in paragraph (b).  
99 Benefits provided by this paragraph shall supersede any other  
100 distribution that may have been provided by the member's  
101 designation of beneficiary.

102 2. If the surviving spouse dies, the monthly payments which  
103 would have been payable to such surviving spouse had such  
104 surviving spouse lived shall be paid for the use and benefit of  
105 such member's child or children under 18 years of age and  
106 unmarried until the 18th birthday of the member's youngest  
107 child. Such monthly payments may be extended beyond this period  
108 until the 25th birthday of the member's child if the child is  
109 unmarried and enrolled as a full-time student.

110 3. If the member leaves no surviving spouse but is survived  
111 by a child or children under 18 years of age, the benefits  
112 provided by subparagraph 1., normally payable to a surviving  
113 spouse, shall be paid for the use and benefit of such member's  
114 child or children under 18 years of age and unmarried until the  
115 18th birthday of the member's youngest child. Such monthly  
116 payments may be extended beyond this period until the 25th

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117 birthday of the member's child if the child is unmarried and  
 118 enrolled as a full-time student.

119 Section 2. Subsection (2) of section 121.571, Florida  
 120 Statutes, is amended to read:

121 121.571 Contributions.—Contributions to the Florida  
 122 Retirement System Investment Plan shall be made as follows:

123 (2) CONTRIBUTION RATES GENERALLY.—Contributions to fund the  
 124 retirement, ~~and~~ disability, and line-of-duty death benefits  
 125 provided under this part must be based on the uniform  
 126 contribution rates established by s. 121.71 and on the  
 127 membership class or subclass of the member. Such contributions  
 128 must be allocated as provided in ss. 121.72, ~~and~~ 121.73, and  
 129 121.735.

130 Section 3. Subsection (3) of section 121.591, Florida  
 131 Statutes, is amended, present subsection (4) of that section is  
 132 redesignated as subsection (5), and a new subsection (4) is  
 133 added to that section, to read:

134 121.591 Payment of benefits.—Benefits may not be paid under  
 135 the Florida Retirement System Investment Plan unless the member  
 136 has terminated employment as provided in s. 121.021(39) (a) or is  
 137 deceased and a proper application has been filed as prescribed  
 138 by the state board or the department. Benefits, including  
 139 employee contributions, are not payable under the investment  
 140 plan for employee hardships, unforeseeable emergencies, loans,  
 141 medical expenses, educational expenses, purchase of a principal  
 142 residence, payments necessary to prevent eviction or foreclosure  
 143 on an employee's principal residence, or any other reason except  
 144 a requested distribution for retirement, a mandatory de minimis  
 145 distribution authorized by the administrator, or a required

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146 minimum distribution provided pursuant to the Internal Revenue  
 147 Code. The state board or department, as appropriate, may cancel  
 148 an application for retirement benefits if the member or  
 149 beneficiary fails to timely provide the information and  
 150 documents required by this chapter and the rules of the state  
 151 board and department. In accordance with their respective  
 152 responsibilities, the state board and the department shall adopt  
 153 rules establishing procedures for application for retirement  
 154 benefits and for the cancellation of such application if the  
 155 required information or documents are not received. The state  
 156 board and the department, as appropriate, are authorized to cash  
 157 out a de minimis account of a member who has been terminated  
 158 from Florida Retirement System covered employment for a minimum  
 159 of 6 calendar months. A de minimis account is an account  
 160 containing employer and employee contributions and accumulated  
 161 earnings of not more than \$5,000 made under the provisions of  
 162 this chapter. Such cash-out must be a complete lump-sum  
 163 liquidation of the account balance, subject to the provisions of  
 164 the Internal Revenue Code, or a lump-sum direct rollover  
 165 distribution paid directly to the custodian of an eligible  
 166 retirement plan, as defined by the Internal Revenue Code, on  
 167 behalf of the member. Any nonvested accumulations and associated  
 168 service credit, including amounts transferred to the suspense  
 169 account of the Florida Retirement System Investment Plan Trust  
 170 Fund authorized under s. 121.4501(6), shall be forfeited upon  
 171 payment of any vested benefit to a member or beneficiary, except  
 172 for de minimis distributions or minimum required distributions  
 173 as provided under this section. If any financial instrument  
 174 issued for the payment of retirement benefits under this section

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 175 is not presented for payment within 180 days after the last day  
 176 of the month in which it was originally issued, the third-party  
 177 administrator or other duly authorized agent of the state board  
 178 shall cancel the instrument and credit the amount of the  
 179 instrument to the suspense account of the Florida Retirement  
 180 System Investment Plan Trust Fund authorized under s.  
 181 121.4501(6). Any amounts transferred to the suspense account are  
 182 payable upon a proper application, not to include earnings  
 183 thereon, as provided in this section, within 10 years after the  
 184 last day of the month in which the instrument was originally  
 185 issued, after which time such amounts and any earnings  
 186 attributable to employer contributions shall be forfeited. Any  
 187 forfeited amounts are assets of the trust fund and are not  
 188 subject to chapter 717.

189 (3) DEATH BENEFITS.—Under the Florida Retirement System  
 190 Investment Plan:

191 (a) Survivor benefits are payable in accordance with the  
 192 following terms and conditions, except as provided in subsection  
 193 (4):

194 1. To the extent vested, benefits are payable only to a  
 195 member's beneficiary or beneficiaries as designated by the  
 196 member as provided in s. 121.4501(20).

197 2. Benefits shall be paid by the third-party administrator  
 198 or designated approved providers in accordance with the law, the  
 199 contracts, and any applicable state board rule or policy.

200 3. To receive benefits, the member must be deceased.

201 (b) Except as provided in subsection (4), in the event of a  
 202 member's death, all vested accumulations as described in s.  
 203 121.4501(6), less withholding taxes remitted to the Internal

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 204 Revenue Service, shall be distributed, as provided in paragraph  
 205 (c) or as described in s. 121.4501(20), as if the member retired  
 206 on the date of death. No other death benefits are available for  
 207 survivors of members, except for benefits, or coverage for  
 208 benefits, as are otherwise provided by law or separately  
 209 provided by the employer, at the employer's discretion.

210 (c) Except as provided in subsection (4), upon receipt by  
 211 the third-party administrator of a properly executed application  
 212 for distribution of benefits, the total accumulated benefit is  
 213 payable by the third-party administrator to the member's  
 214 surviving beneficiary or beneficiaries, as:

215 1. A lump-sum distribution payable to the beneficiary or  
 216 beneficiaries, or to the deceased member's estate;

217 2. An eligible rollover distribution, if permitted, on  
 218 behalf of the surviving spouse of a deceased member, whereby all  
 219 accrued benefits, plus interest and investment earnings, are  
 220 paid from the deceased member's account directly to the  
 221 custodian of an eligible retirement plan, as described in s.  
 222 402(c)(8)(B) of the Internal Revenue Code, on behalf of the  
 223 surviving spouse; or

224 3. A partial lump-sum payment whereby a portion of the  
 225 accrued benefit is paid to the deceased member's surviving  
 226 spouse or other designated beneficiaries, less withholding taxes  
 227 remitted to the Internal Revenue Service, and the remaining  
 228 amount is transferred directly to the custodian of an eligible  
 229 retirement plan, if permitted, as described in s. 402(c)(8)(B)  
 230 of the Internal Revenue Code, on behalf of the surviving spouse.  
 231 The proportions must be specified by the member or the surviving  
 232 beneficiary.

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233

This paragraph does not abrogate other applicable provisions of state or federal law providing for payment of death benefits.

236

(4) DEATH BENEFITS FOR SPECIAL RISK CLASS MEMBERS.—Benefits are provided under this subsection to the spouse and child or children of members in the Special Risk Class when killed in the line of duty and are payable in lieu of the benefits that would otherwise be payable under the provisions of subsection (1) or subsection (3). Benefits provided by this subsection shall supersede any other distribution that may have been provided by the member's designation of beneficiary. Such benefits must be funded from employer contributions made under s. 121.571, transferred employee contributions and funds accumulated pursuant to paragraph (a), and interest and earnings thereon.

247

(a) Transfer of funds.—To qualify to receive monthly benefits under this subsection:

249

1. All moneys accumulated in the member's account, including vested and nonvested accumulations as described in s. 121.4501(6), must be transferred from such individual accounts to the division for deposit in the survivor benefit account of the Florida Retirement System Trust Fund. Moneys in the survivor benefit account must be accounted for separately. Earnings must be credited on an annual basis for amounts held in the survivor benefit account of the Florida Retirement System Trust Fund based on actual earnings of the trust fund.

258

2. If the member has retained retirement credit earned under the pension plan as provided in s. 121.4501(3), a sum representing the actuarial present value of such credit within the Florida Retirement System Trust Fund shall be transferred by

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262

the division from the pension plan to the survivor benefit retirement program as implemented under this subsection and shall be deposited in the survivor benefit account of the trust fund.

266

(b) Survivor retirement; entitlement.—An investment plan member who is in the Special Risk Class at the time the member is killed in the line of duty on or after July 1, 2013, regardless of length of creditable service, may have survivor benefits paid as provided in s. 121.091(7)(d) and (i) to:

271

1. The surviving spouse for the spouse's lifetime; or

272

2. If there is no surviving spouse or the surviving spouse dies, the member's child or children under 18 years of age and unmarried until the 18th birthday of the member's youngest child. Such payments may be extended until the 25th birthday of the member's child if the child is unmarried and enrolled as a full-time student as provided in s. 121.091(7)(d) and (i).

278

(c) Survivor benefit retirement effective date.—The effective retirement date for the surviving spouse or eligible child of a Special Risk Class member who is killed in the line of duty shall be:

282

1. The first of the month following the member's death if the member dies on or after July 1, 2015.

284

2. July 1, 2015, for a member of the Special Risk Class when killed in the line of duty on or after July 1, 2013, but before July 1, 2015, if the application is received before July 1, 2015; or the first of the month following the receipt of the application.

288

If the investment plan account balance has already been paid out

289

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291 to the surviving spouse or the eligible unmarried dependent  
 292 child or children, the benefit payable shall be actuarially  
 293 reduced by the amount of the payout.

294 (d) Line-of-duty death benefit.—The surviving spouse, or if  
 295 no surviving spouse or the surviving spouse dies, the member's  
 296 child or children under 18 years of age and unmarried until the  
 297 18th birthday of the member's youngest child, or until the 25th  
 298 birthday of the member's child if the child is unmarried and  
 299 enrolled as a full-time student, is eligible to receive a  
 300 retirement benefit under s. 121.091(7)(d) and (i) if the  
 301 member's account balance is surrendered and an application is  
 302 received and approved. Such surviving spouse or such child or  
 303 children shall receive a monthly survivor benefit that begins  
 304 accruing on the first day of the month of survivor benefit  
 305 retirement, as approved by the division, and is payable on the  
 306 last day of that month and each month thereafter during the  
 307 surviving spouse's lifetime or on behalf of the unmarried  
 308 children until the 18th birthday of the youngest child, or until  
 309 the 25th birthday of any of the member's children enrolled as  
 310 full-time students. All survivor benefits must be paid out of  
 311 the survivor benefit account of the Florida Retirement System  
 312 Trust Fund established under this subsection.

313  
 314 If the investment plan account balance has already been paid out  
 315 to the surviving spouse or the eligible unmarried dependent  
 316 child or children, the benefit payable shall be actuarially  
 317 reduced by the amount of the payout.

318 (e) Computation of survivor benefit retirement benefit.—The  
 319 amount of each monthly payment must be calculated as provided

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320 under s. 121.091(7)(d) and (i).

321 (f) Death of the surviving spouse or children.—

322 1. Upon the death of a surviving spouse, the monthly  
 323 benefits shall be paid through the last day of the month of  
 324 death and shall terminate or be paid on behalf of the unmarried  
 325 child or children until the 18th birthday of the youngest child,  
 326 or the 25th birthday of any of the member's unmarried children  
 327 enrolled as full-time students.

328 2. If the surviving spouse dies and the benefit is being  
 329 paid on behalf of the unmarried children under 18 years of age  
 330 until the youngest, unmarried child reaches his or her 18th  
 331 birthday, or the 25th birthday of any of the member's unmarried  
 332 children enrolled as full time students, benefits shall be paid  
 333 through the last day of the month until the later of the month  
 334 the youngest, unmarried child reaches his or her 18th birthday,  
 335 the month of the 25th birthday of any of the member's unmarried  
 336 children enrolled as full-time students, or the month of the  
 337 death of the youngest child.

338 Section 4. Section 121.5912, Florida Statutes, is created  
 339 to read:

340 121.5912 Survivor benefit retirement program; qualified  
 341 status; rulemaking authority.—It is the intent of the  
 342 Legislature that the survivor benefit retirement program for  
 343 Special Risk Class members of the Florida Retirement System  
 344 investment plan meet all applicable requirements for a qualified  
 345 plan. If the state board or the division receives notification  
 346 from the Internal Revenue Service that this program or any  
 347 portion of this program will cause the retirement system, or any  
 348 portion thereof, to be disqualified for tax purposes under the

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349 Internal Revenue Code, the portion that will cause the  
 350 disqualification does not apply. Upon such notice, the state  
 351 board or the division shall notify the presiding officers of the  
 352 Legislature. The state board and the department may adopt any  
 353 rules necessary to maintain the qualified status of the survivor  
 354 benefit retirement program.

355 Section 5. Section 121.735, Florida Statutes, is created to  
 356 read:

357 121.735 Allocations for member line-of-duty death benefits;  
 358 percentage amounts.—

359 (1) The allocations established in subsection (3) shall be  
 360 used to provide line-of-duty death benefit coverage for Special  
 361 Risk Class members in the investment plan and shall be  
 362 transferred monthly by the Division of Retirement from the  
 363 Florida Retirement System Contributions Clearing Trust Fund to  
 364 the survivor benefit account of the Florida Retirement System  
 365 Trust Fund.

366 (2) The allocations are stated as a percentage of each  
 367 investment plan member’s gross compensation for the calendar  
 368 month. A change in a contribution percentage is effective the  
 369 first day of the month for which retirement contributions may be  
 370 made on or after the beginning date of the change. Contribution  
 371 percentages may be modified by general law.

372 (3) Effective July 1, 2015, allocations from the Florida  
 373 Retirement System Contributions Clearing Trust Fund to provide  
 374 line-of-duty death benefits for Special Risk Class members in  
 375 the investment plan, and to offset the costs of administering  
 376 said coverage, are as follows:

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378	<u>Membership Class</u>	<u>Percentage of Gross</u>
		<u>Compensation</u>
379		

380	<u>Special Risk Class</u>	<u>0.82%</u>
381		
382		
383		

384 Section 6. Section 121.75, Florida Statutes, is amended to  
 385 read:

386 121.75 Allocation for pension plan.—After making the  
 387 transfers required pursuant to ss. 121.71, 121.72, 121.73,  
 388 121.735, and 121.74, the monthly balance of funds in the Florida  
 389 Retirement System Contributions Clearing Trust Fund shall be  
 390 transferred to the Florida Retirement System Trust Fund to pay  
 391 the costs of providing pension plan benefits and plan  
 392 administrative costs under the pension plan.

393 Section 7. (1) In order to fund the benefit changes  
 394 provided in this act, the required employer contribution rates  
 395 for members of the Florida Retirement System established in s.  
 396 121.71(4), Florida Statutes, must be adjusted as follows:

397 (a) The Special Risk Class must be increased by 0.45  
 398 percentage point; and

399 (b) The Deferred Retirement Option Program must be  
 400 increased by 0.06 percentage point.

401 (2) In order to fund the benefit changes provided in this  
 402 act, the required employer contribution rate for the unfunded

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403 actuarial liability of the Florida Retirement System established  
404 in s. 121.71(5), Florida Statutes, for the Special Risk Class is  
405 increased by 0.13 percentage point.

406 (3) The adjustments provided in subsections (1) and (2)  
407 shall be in addition to all other changes to such contribution  
408 rates which may be enacted into law to take effect on July 1,  
409 2015. The Division of Law Revision and Information is directed  
410 to adjust accordingly the contribution rates provided in s.  
411 121.71, Florida Statutes.

412 Section 8. The Legislature finds that a proper and  
413 legitimate state purpose is served when employees and retirees  
414 of the state and of its political subdivisions, and the  
415 dependents, survivors, and beneficiaries of such employees and  
416 retirees, are extended the basic protections afforded by  
417 governmental retirement systems that provide fair and adequate  
418 benefits that are managed, administered, and funded in an  
419 actuarially sound manner, as required by s. 14, Article X of the  
420 State Constitution and part VII of chapter 112, Florida  
421 Statutes. Therefore, the Legislature determines and declares  
422 that this act fulfills an important state interest.

423 Section 9. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/16/15

Meeting Date

7082

Bill Number (if applicable)

Topic Death Benefits FRS

Amendment Barcode (if applicable)

Name Les Cantrell

Job Title State Coordinator

Address \_\_\_\_\_  
Street

Phone 813-335-388

City

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Teamsters Local 2011

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/16/15

Meeting Date

7082

Bill Number (if applicable)

Topic Pension Death Benefit

Amendment Barcode (if applicable)

Name Vinay DeBueseto

Job Title Business Agent

Address 5818 E Mc King Jr. Blvd

Phone 813-335-3535

Street

Tampa, FL

City

State

33619

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Teamsters Local 2011

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 (10/14/14)

APPEARANCE RECORD

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

4.16.15

Meeting Date

7082

Bill Number (if applicable)

Topic Death Benefits

Amendment Barcode (if applicable)

Name Ken Kopczynski "cop-CHEN-ski"

Job Title Lobbyist

Address 300 East Brevard St

Phone 222-3329

Street

Tallahassee FL 32301

City

State

Zip

Email ken@flpba.org

Speaking: [ ] For [ ] Against [ ] Information

Waive Speaking: [X] In Support [ ] Against (The Chair will read this information into the record.)

Representing Fla PBA Inc

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

Lobbyist registered with Legislature: [X] Yes [ ] No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/16/15  
Meeting Date

7082  
Bill Number (if applicable)

Topic Death Benefits under the FRS

Amendment Barcode (if applicable)

Name Rocco Salvatori

Job Title Firefighter

Address 345 W Madison St  
Street

Phone 941-724-5914

Tallahassee FL 32301  
City State Zip

Email roccosalvatori@icbud.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Professional Firefighters

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/16/15

Meeting Date

7082

Bill Number (if applicable)

Topic FRS Death Benefit

Amendment Barcode (if applicable)

Name Lisa Henning

Job Title Legislative Director

Address 242 Office Plaza Dr.

Phone 850-766-8808

Street

Tall, FL 32301

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Fraternal Order of Police

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Military and Veterans Affairs, Space, and Domestic Security, *Chair*  
Children, Families, and Elder Affairs, *Vice-Chair*  
Appropriations  
Appropriations Subcommittee on General Government  
Environmental Preservation and Conservation  
Finance and Tax

**SENATOR THAD ALTMAN**  
16th District

April 14, 2015

The Honorable Tom Lee, Chair  
Senate Committee on Appropriations  
201 The Capitol  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chairman Lee:

I respectfully request an excused absence for the Committee on Appropriations meeting on Thursday April 16, 2015 at 9:00 am. Please contact me or my Legislative Assistants Rick Kendust or Devon West if you have any questions.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Thad Altman".

Thad Altman

Cc: Cindy Kynoch, Staff Director, 201 The Capitol  
Alicia Weiss, Administrative Assistant  
Ann Roberts, Administrative Assistant

A handwritten signature in black ink that reads "Tom Lee".

TA/rk

### REPLY TO:

- 8710 Astronaut Blvd, Cape Canaveral, FL 32920 (321) 752-3138
- 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

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

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

# CourtSmart Tag Report

Room: KN 412

Case:

Type:

Caption: Senate Appropriations Committee

Judge:

Started: 4/16/2015 9:09:59 AM

Ends: 4/16/2015 3:05:40 PM

Length: 05:55:42

9:10:01 AM Sen. Lee (Chair)  
9:10:57 AM Sen. Benacquisto  
9:11:01 AM S 154  
9:11:10 AM Sen. Hays  
9:11:41 AM Sen. Benacquisto  
9:11:46 AM Am. 671800  
9:11:51 AM Sen. Hays  
9:12:05 AM Sen. Benacquisto  
9:12:33 AM Am. 895826  
9:12:41 AM Sen. Hays  
9:12:55 AM Sen. Benacquisto  
9:13:11 AM  
9:13:15 AM Sen. Joyner  
9:14:13 AM Sen. Benacquisto  
9:14:14 AM Sen. Hays  
9:14:18 AM Sen. Benacquisto  
9:14:24 AM Am. 868178  
9:14:53 AM Sen. Benacquisto  
9:15:01 AM Brian Pitts, Trustee, Justice 2 Jesus  
9:16:06 AM Sen. Benacquisto  
9:16:14 AM S 154 (cont.)  
9:16:23 AM Brian Pitts, Trustee, Justice 2 Jesus  
9:18:28 AM Sen. Benacquisto  
9:20:04 AM S 758  
9:20:12 AM Sen. Evers  
9:20:20 AM Sen. Benacquisto  
9:20:23 AM Am. 761094  
9:20:28 AM Sen. Evers  
9:21:35 AM Sen. Benacquisto  
9:21:52 AM Stephen R. Winn, Executive Director, Florida Osteopathic Medical Association (waives in support)  
9:22:00 AM Brian Jogerst, Shatterproof (waives in support)  
9:22:05 AM Beth Labasky, Consultant, Informed Families of Florida (waives in support)  
9:22:13 AM Brian Pitts, Trustee, Justice 2 Jesus (waives in opposition)  
9:22:24 AM Sen. Benacquisto  
9:23:18 AM S 1138  
9:23:37 AM Sen. Brandes  
9:23:50 AM Sen. Benacquisto  
9:24:09 AM BG Murphy, Deputy Legislative Affairs Director of DFS, CFO Atwater (waives in support)  
9:24:10 AM Brian Pitts, Trustee, Justice 2 Jesus  
9:24:50 AM Sen. Benacquisto  
9:24:56 AM Sen. Garcia  
9:25:16 AM Sen. Brandes  
9:25:52 AM Sen. Benacquisto  
9:26:48 AM S 1534  
9:27:02 AM PCS 333636  
9:27:16 AM Sen. Brandes  
9:29:35 AM Sen. Latvala  
9:29:57 AM Sen. Brandes  
9:30:33 AM Sen. Latvala  
9:30:55 AM Sen. Brandes  
9:31:06 AM Sen. Latvala  
9:31:19 AM Sen. Brandes

9:31:25 AM Sen. Latvala  
9:31:40 AM Sen. Brandes  
9:31:45 AM Sen. Latvala  
9:31:55 AM Sen. Brandes  
9:32:02 AM Sen. Latvala  
9:32:13 AM Sen. Brandes  
9:33:41 AM Sen. Latvala  
9:33:49 AM Sen. Brandes  
9:33:59 AM Sen. Latvala  
9:34:23 AM Sen. Brandes  
9:34:43 AM Sen. Latvala  
9:34:57 AM Sen. Brandes  
9:35:28 AM Sen. Joyner  
9:35:48 AM Sen. Brandes  
9:35:54 AM Sen. Joyner  
9:36:26 AM Sen. Brandes  
9:36:30 AM Sen. Joyner  
9:37:19 AM Sen. Brandes  
9:37:27 AM Sen. Joyner  
9:37:51 AM Sen. Brandes  
9:38:16 AM Sen. Joyner  
9:39:43 AM Sen. Brandes  
9:40:14 AM Sen. Margolis  
9:40:14 AM Sen. Benacquisto  
9:40:43 AM Sen. Benacquisto  
9:40:45 AM Sen. Montford  
9:41:46 AM Sen. Brandes  
9:41:48 AM Sen. Montford  
9:42:27 AM Sen. Brandes  
9:42:53 AM Sen. Montford  
9:43:09 AM Sen. Brandes  
9:43:11 AM Sen. Montford  
9:43:13 AM Sen. Brandes  
9:43:20 AM Sen. Montford  
9:43:22 AM Sen. Benacquisto  
9:43:24 AM Sen. Smith  
9:43:31 AM Sen. Brandes  
9:43:45 AM Sen. Benacquisto  
9:43:56 AM Sen. Smith  
9:44:11 AM Sen. Brandes  
9:44:17 AM Sen. Smith  
9:44:52 AM Sen. Brandes  
9:45:32 AM Sen. Smith  
9:46:15 AM Sen. Brandes  
9:46:33 AM Sen. Benacquisto  
9:46:40 AM Am. 849530  
9:46:50 AM Sen. Latvala  
9:47:42 AM Sen. Benacquisto  
9:47:50 AM Bob Gualtieri, Sheriff, Florida Sheriffs Association (waives in support)  
9:47:59 AM Amy Mercer, Executive Director, The Florida Police Chiefs Association (waives in support)  
9:48:22 AM Am. 202004  
9:48:37 AM Sen. Joyner  
9:51:40 AM Sen. Benacquisto  
9:51:50 AM Amy Mercer, Executive Director, The Florida Police Chiefs Association (waives in support)  
9:51:57 AM Bob Gualtieri, Sheriff, Florida Sheriffs Association  
9:56:08 AM Sen. Gaetz  
9:56:47 AM B. Gualtieri  
9:57:35 AM Sen. Gaetz  
9:58:08 AM B. Gualtieri  
9:58:53 AM Sen. Latvala  
9:59:10 AM B. Gualtieri  
9:59:37 AM Sen. Benacquisto

9:59:38 AM Sen. Negron  
10:00:22 AM B. Gualtieri  
10:00:24 AM Sen. Negron  
10:00:57 AM B. Gualtieri  
10:01:31 AM Sen. Negron  
10:02:19 AM B. Gualtieri  
10:02:26 AM Sen. Negron  
10:02:30 AM B. Gualtieri  
10:03:19 AM Sen. Grimsley  
10:03:52 AM B. Gualtieri  
10:04:26 AM Sen. Benacquisto  
10:04:30 AM Justin Pearson, Managing Attorney, Institute for Justice  
10:07:30 AM Sen. Montford  
10:07:41 AM J. Pearson  
10:07:43 AM Sen. Montford  
10:08:34 AM J. Pearson  
10:09:35 AM Sen. Montford  
10:10:08 AM J. Pearson  
10:10:56 AM Sen. Benacquisto  
10:11:05 AM Sen. Negron  
10:15:41 AM Sen. Latvala  
10:19:27 AM Sen. Benacquisto  
10:19:28 AM Sen. Montford  
10:21:19 AM Sen. Benacquisto  
10:21:23 AM Sen. Margolis  
10:23:15 AM Sen. Brandes  
10:24:23 AM Sen. Benacquisto  
10:24:28 AM Sen. Joyner  
10:30:07 AM Sen. Benacquisto  
10:30:22 AM S 1534 (cont.)  
10:30:28 AM Sen. Lee  
10:31:21 AM Sen. Brandes  
10:31:43 AM Sen. Benacquisto  
10:31:53 AM Amy Mercer, Executive Director, The Florida Police Chiefs Association (waives in support)  
10:32:06 AM Dennis Stramse, Lieutenant, Orange County Sheriff's Office (waives in support)  
10:32:15 AM Bob Gualtieri, Sheriff, Florida Sheriffs Association  
10:33:44 AM Sen. Latvala  
10:34:21 AM Sen. Brandes  
10:34:41 AM Sen. Latvala  
10:35:18 AM Dan Peterson, Director of Center for Property Rights, James Madison Institute  
10:35:32 AM Justin Pearson, Managing Attorney, Institute for Justice  
10:35:44 AM Jennifer Pritt, Assistant Commissioner, Florida Department of Law Enforcement (waives in support)  
10:35:56 AM Greg Pound, citizen  
10:36:44 AM Sen. Benacquisto  
10:37:01 AM Sen. Gaetz  
10:37:15 AM Sen. Benacquisto  
10:37:20 AM Lorelei Bowden Jacobs, Director, Hillsborough County Sheriff's Office (waives in support)  
10:37:35 AM Sen. Negron  
10:40:07 AM Sen. Hays  
10:41:52 AM Sen. Benacquisto  
10:41:54 AM Sen. Brandes  
10:42:39 AM Sen. Benacquisto  
10:43:19 AM S 228  
10:43:24 AM Sen. Clemens  
10:44:15 AM Sen. Benacquisto  
10:44:21 AM Am. 950848  
10:44:30 AM Am. 443378  
10:44:46 AM Sen. Clemens  
10:44:53 AM Sen. Benacquisto  
10:44:53 AM Sen. Benacquisto  
10:45:03 AM S 228 (cont.)  
10:45:09 AM Zayne Smith, ASD, AARP (waives in support)

10:45:13 AM Ron Labasky, Florida State Association of Supervisors of Elections  
10:49:13 AM Sen. Benacquisto  
10:49:22 AM Christie Burns, Legislative Affairs Director, Florida Department of State (waives in opposition)  
10:50:12 AM Ken Detznel, Secretary of Staff, Florida Department of State  
10:55:15 AM Sen. Gaetz  
10:56:17 AM K. Detznel  
10:57:55 AM Sen. Benacquisto  
10:57:56 AM Sen. Richter  
10:59:09 AM K. Detznel  
10:59:17 AM Sen. Richter  
10:59:41 AM K. Detznel  
10:59:50 AM Sen. Richter  
11:00:08 AM K. Detznel  
11:00:10 AM Sen. Richter  
11:00:39 AM K. Detznel  
11:00:40 AM Sen. Richter  
11:01:09 AM K. Detznel  
11:01:10 AM Sen. Richter  
11:03:41 AM K. Detznel  
11:06:50 AM Sen. Richter  
11:07:53 AM Sen. Ring  
11:09:14 AM K. Detznel  
11:10:45 AM Sen. Ring  
11:11:54 AM K. Detznel  
11:13:07 AM Sen. Ring  
11:13:55 AM K. Detznel  
11:14:54 AM Sen. Ring  
11:15:36 AM Sen. Gaetz  
11:16:34 AM K. Detznel  
11:19:36 AM Sen. Gaetz  
11:21:01 AM K. Detznel  
11:22:54 AM Sen. Margolis  
11:23:02 AM K. Detznel  
11:24:43 AM Sen. Hukill  
11:24:56 AM K. Detznel  
11:25:43 AM Sen. Hukill  
11:26:05 AM K. Detznel  
11:26:54 AM Sen. Latvala  
11:27:24 AM K. Detznel  
11:30:14 AM Sen. Richter  
11:31:46 AM K. Detznel  
11:32:49 AM Debbie WIS  
11:32:58 AM Brian Pitts, Trustee, Justice-2-Jesus  
11:36:09 AM Sen. Ring  
11:38:46 AM Sen. Clemens  
11:43:18 AM Sen. B  
11:44:08 AM S 382  
11:44:31 AM Sen. Sobel  
11:44:39 AM Am. 377856  
11:45:14 AM  
11:46:30 AM Sen. Benacquisto  
11:46:33 AM  
11:46:42 AM Susan Anderson, Vice President of Public Policy, Florida ALFA (waives in support)  
11:46:53 AM Cynthia Henderson, Atua Senior Living (waives in support)  
11:47:13 AM S 382 (cont.)  
11:47:18 AM Zayne Smith, ASD, AARP (waives in support)  
11:47:21 AM Bobby Bernal, Director of Business Development, Leading Age Florida (waives in support)  
11:47:27 AM Brian Pitts, Trustee, Justice 2 Jesus  
11:49:08 AM Sen. Garcia  
11:49:47 AM Sen. Benacquisto  
11:49:52 AM Sen. Sobel  
11:50:39 AM Sen. Benacquisto

11:54:09 AM S 1306  
11:54:12 AM Sen. Bradley  
11:55:14 AM Sen. Benacquisto  
11:55:18 AM Am. 473280  
11:55:31 AM Sen. Bradley  
11:55:51 AM Sen. Benacquisto  
11:55:54 AM Sen. Joyner  
11:55:59 AM Sen. Bradley  
11:57:23 AM Sen. Benacquisto  
11:57:30 AM S 1306 (cont.)  
11:57:37 AM BG Murphy, Deputy Legislative Affairs Director of DFS, CFO Atwater (waives in support)  
11:57:50 AM Sen. Bradley  
11:58:05 AM Sen. Benacquisto  
11:58:51 AM S 434  
11:59:00 AM Sen. Detert  
11:59:59 AM Sen. Benacquisto  
12:00:07 PM Christie Burrus, Legislative Affairs Director, Florida Department of State  
12:00:17 PM Sen. Benacquisto  
12:00:34 PM  
12:01:06 PM S 496  
12:01:17 PM Sen. Detert  
12:02:09 PM Sen. Benacquisto  
12:02:12 PM Am. 694176  
12:02:21 PM Sen. Detert  
12:03:24 PM Sen. Benacquisto  
12:03:34 PM Am. 514250  
12:03:42 PM Sen. Detert  
12:04:34 PM Sen. Benacquisto  
12:04:39 PM Sen. Detert  
12:04:52 PM Sen. Benacquisto  
12:04:55 PM Alan Abramowitz, Executive Director, Guardian Ad Litem Program (waives in support)  
12:05:05 PM Carl Hill Galloway III, Father, Celandine Life-Prep Academy  
12:06:44 PM Margaret S. Hooper, Public Policy Coordinator (waives in support)  
12:06:46 PM Christina Spudeas, Executive Director, Florida's Children First (waives in support)  
12:06:54 PM S 496 (cont.)  
12:07:02 PM Sen. Detert  
12:07:04 PM Sen. Benacquisto  
12:07:56 PM S 968  
12:08:01 PM Sen Detert  
12:08:29 PM Sen. Benacquisto  
12:10:06 PM S 1296  
12:10:26 PM Sen. Bean  
12:11:18 PM Brian Pitts, Trustee, Justice 2 Jesus  
12:12:54 PM Sen. Benacquisto  
12:12:56 PM Mike Prendergast, Executive Director, The Florida Department of Veterans' Affairs (waives in support)  
12:13:02 PM Sen. Benacquisto  
12:13:19 PM Sen. Bradley  
12:13:39 PM Sen. Margolis  
12:14:47 PM  
12:15:15 PM S 314  
12:15:26 PM PCS 510704  
12:15:43 PM Sen. Simpson  
12:16:54 PM Sen. Benacquisto  
12:16:59 PM Sen. Joyner  
12:17:07 PM Sen. Simpson  
12:18:13 PM Sen. Joyner  
12:18:25 PM Sen. Simpson  
12:19:30 PM Sen. Joyner  
12:19:35 PM Sen. Benacquisto  
12:19:37 PM Am. 753040  
12:19:43 PM Sen. Simpson  
12:20:04 PM Sen. Benacquisto

12:20:20 PM Am. 282746  
12:20:24 PM Sen. Simpson  
12:20:42 PM Sen. Benacquisto  
12:20:53 PM Am. 866006  
12:21:02 PM Sen. Benacquisto  
12:21:05 PM S 314 (cont.)  
12:21:15 PM Sen. Joyner  
12:21:36 PM Sen. Simpson  
12:22:33 PM Sen. Joyner  
12:23:19 PM Sen. Simpson  
12:23:53 PM Sen. Benacquisto  
12:24:01 PM Randy Miller, Executive Vice President, Florida Rental Federation and Florida Petroleum Marketing Association (waives in support)  
12:24:07 PM Brian Pitts, Trustee, Justice 2 Jesus  
12:26:40 PM Sen. Galvano  
12:26:45 PM Sen. Simpson  
12:26:51 PM Sen. Galvano  
12:27:38 PM S 268  
12:27:48 PM Sen. Stargel  
12:28:32 PM Sen. Galvano  
12:28:40 PM Sen. Flores  
12:29:55 PM Sen. Stargel  
12:29:58 PM  
12:30:11 PM Sen. Stargel  
12:30:11 PM Sen. Galvano  
12:30:16 PM Sen. Joyner  
12:30:32 PM Sen. Stargel  
12:31:27 PM Sen. Galvano  
12:31:35 PM Larry Sellers, Dave a Buster's (waives in support)  
12:31:40 PM Richard Turner, General Counsel and Vice President of Government Relations, Florida Restaurant and Lodging Association (waives in support)  
12:31:48 PM Michael H. Wolf, Attorney, Florida Arcade and Bingo Association  
12:39:05 PM Sen. Joyner  
12:39:41 PM M. Wolf  
12:39:50 PM Sen. Joyner  
12:40:03 PM M. Wolf  
12:40:54 PM Sen. Joyner  
12:41:37 PM M. Wolf  
12:41:49 PM Sen. Joyner  
12:41:53 PM M. Wolf  
12:42:25 PM Sen. Joyner  
12:43:25 PM M. Wolf  
12:43:51 PM Sen. Joyner  
12:44:06 PM Sen. Benacquisto  
12:44:13 PM Marc Dunber, Stronach Group  
12:46:49 PM Sen. Joyner  
12:48:00 PM M. Dunber  
12:48:54 PM Thomas Hobbes  
12:48:54 PM Sen. Benacquisto  
12:48:57 PM  
12:49:07 PM Sen. Stargel  
12:51:34 PM Sen. Benacquisto  
12:52:18 PM S 874  
12:52:27 PM Sen. Stargel  
12:52:44 PM Sen. Benacquisto  
12:52:52 PM Am. 517502  
12:52:56 PM Sen. Stargel  
12:53:10 PM Sen. Benacquisto  
12:53:21 PM S 874 (cont.)  
12:53:28 PM James Herzog, Associate Director for Education, Florida Conference of Catholic Bishops (waives in support)  
12:53:35 PM Brenda Dickinson, Lobbyist, Florida Council of Independent Schools (waives in support)

12:53:39 PM Brian Pitts, Trustee, Justice 2 Jesus  
12:55:40 PM Sen. Benacquisto  
12:55:49 PM Sen. Stargel  
12:56:03 PM Sen. Benacquisto  
12:56:55 PM S 1148  
12:57:07 PM PCS 135278  
12:57:17 PM Sen. Stargel  
12:58:15 PM Sen. Benacquisto  
12:58:22 PM Am. 420210  
12:58:27 PM Sen. Stargel  
12:58:42 PM Sen. Benacquisto  
12:58:53 PM  
12:59:01 PM Jonathan Rees, Deputy Director of Legislative Affairs, Florida Department of Agriculture Consumer Services (waives in support)  
12:59:04 PM Adam Basford, Legislative Affairs Director, Florida Farm Bureau (waives in support)  
12:59:10 PM S 1148 (cont.)  
1:00:02 PM Sen. Benacquisto  
1:00:05 PM S 1284  
1:00:14 PM Sen. Soto  
1:01:00 PM Sen. Benacquisto  
1:01:05 PM Daniel Nordby, Florida Bar - Administrative Law Section (waives in support)  
1:01:07 PM S1284 (cont.)  
1:01:09 PM Sen. Soto  
1:01:24 PM Sen. Benacquisto  
1:02:17 PM Sen. Margolis  
1:02:32 PM Sen. Montford  
1:02:42 PM Sen. Hukill  
1:02:58 PM Sen. Grimsley  
1:03:02 PM Sen. Richter  
1:03:11 PM Sen. Galvano  
1:03:20 PM Sen. Flores  
1:03:29 PM Sen. Simmons  
1:03:50 PM Sen. Gaetz  
1:03:58 PM Sen. Smith  
1:04:09 PM Sen. Garcia  
1:04:18 PM Sen. Benacquisto  
1:04:25 PM S 1016  
1:04:44 PM PCS 130614  
1:04:55 PM Shreya Kuntawala, Legislative Aide of Sen. Abruzzo  
1:05:16 PM Sen. B  
1:05:30 PM Brian Pitts, Trustee, Justice 2 Jesus  
1:09:22 PM S 680  
1:09:26 PM PCS 556478  
1:09:38 PM  
1:10:11 PM Am. 261850  
1:10:21 PM Jackie Faule, Legislative Affairs Director, Fish and Wildlife Conservation (waives in support)  
1:10:35 PM Am. 425562  
1:12:11 PM S 942  
1:13:02 PM Brian Pitts, Trustee, Justice 2 Jesus  
1:14:58 PM Sen. Joyner  
1:15:16 PM S 7046  
1:16:09 PM Brittney Burch, Director of Education Policy, Florida Chamber of Commerce (waives in support)  
1:16:22 PM Marie-Claire Leman, Parent and School Volunteer  
1:23:12 PM S 510  
1:24:08 PM Lester Sola, Director, Department of Miami-Dade Water and Sewer  
1:25:17 PM Sen. Garcia  
1:26:56 PM Ernie Barnett, Director, Miami Dade Limerock Products Association  
1:30:19 PM Mike Murtha, President, Florida Concrete and Products Association (waives in support)  
1:33:22 PM S 7070  
1:34:27 PM Am. 808402  
1:35:06 PM Sen. Joyner  
1:35:26 PM Sen. Benacquisto

1:35:52 PM Dan Hendrickson, Legislative Liaison (waives in support)  
1:36:24 PM Am. 898338  
1:36:31 PM Sen. Joyner  
1:36:37 PM Am. 250728  
1:36:38 PM Sen. Benacquisto  
1:36:45 PM Am. 211274  
1:36:58 PM Sen. Grimsley  
1:37:15 PM Sen. Benacquisto  
1:37:20 PM Aimee Lyon, Florida Psychiatric Society (waives in support)  
1:37:25 PM Martha DeCastro, Vice President of Nursing, Florida Hospital Association (waives in support)  
1:37:46 PM Am. 924612  
1:37:50 PM Sen. Joyner  
1:38:38 PM Sen. Benacquisto  
1:39:04 PM Dan Hendrickson, Legislative Liaison (waives in support)  
1:39:50 PM Am. 861910  
1:39:52 PM Sen. Garcia  
1:40:03 PM Sen. Benacquisto  
1:40:09 PM Dan Hendrickson, Legislative Liaison (waives in support)  
1:40:14 PM Laura Youmans, Legislative Advocate, Florida Association of Counties  
1:40:24 PM Am. 927158  
1:40:40 PM Sen. Garcia  
1:41:09 PM Sen. Benacquisto  
1:41:12 PM Dan Hendrickson, Legislative Liaison (waives in support)  
1:41:30 PM Am. 497498  
1:41:37 PM Sen. Garcia  
1:41:44 PM Sen. Benacquisto  
1:41:58 PM S 7070 (cont.)  
1:42:03 PM Dan Hendrickson, Legislative Liaison (waives in support)  
1:42:09 PM Edwards G. Labrador, Director of Intergovernmental Affairs and Professional Standards, Broward County  
1:42:20 PM Sen. Benacquisto  
1:43:05 PM S 7082  
1:43:18 PM Sen. Latvala  
1:44:32 PM Sen. Benacquisto  
1:44:35 PM Am. 446590  
1:44:43 PM Sen. Latvala  
1:44:59 PM Sen. Benacquisto  
1:45:16 PM Am. 910698  
1:45:22 PM Sen. Latvala  
1:45:28 PM Sen. Benacquisto  
1:45:44 PM S 7082 (cont.)  
1:45:45 PM Lisa Heening, Legislative Director, Fraternal Order of Police (waives in support)  
1:45:52 PM Roco Salvatori, Firefighter, Florida Professional Firefighters (waives in support)  
1:45:55 PM Ken Kopczynski, Lobbyist, Florida PBA Inc. (waives in support)  
1:46:09 PM Les Cantrell, Teamsters Local 2011 (waives in support)  
1:47:11 PM S 288  
1:47:11 PM Sen. Latvala  
1:52:43 PM Sen. Benacquisto  
1:52:53 PM Am. 467536  
1:53:01 PM Sen. Latvala  
1:53:35 PM Sen. Benacquisto  
1:53:54 PM Am. 171144  
1:53:58 PM Sen. Latvala  
1:54:25 PM Sen. Benacquisto  
1:54:32 PM Am. 887258  
1:54:37 PM Sen. Latvala  
1:55:27 PM Susan Glickman, Florida Director, Southern Alliance for Clean Energy  
2:00:33 PM Brian Pitts, Trustee, Justice-2-Jesus  
2:02:55 PM Sen. Latvala  
2:03:36 PM Sen. Gaetz  
2:04:20 PM Sen. Lee  
2:05:51 PM Sen. Joyner  
2:08:06 PM Sen. Latvala

2:10:53 PM Sen. Benacquisto  
2:11:41 PM S 662  
2:12:00 PM Sen. Latvala  
2:13:24 PM Sen. Benacquisto  
2:13:35 PM Nancy Stewart, Federation of Manufactures Home Owners of Florida  
2:13:41 PM Sen. Latvala  
2:14:06 PM Sen. Benacquisto  
2:14:54 PM S 1444  
2:14:57 PM Sen. Richter  
2:16:26 PM Sen. B  
2:16:34 PM PCS 654302  
2:16:48 PM Am. 441324  
2:17:04 PM Am. 127800  
2:17:05 PM Sen. Montford  
2:17:21 PM Sen. Benacquisto  
2:17:26 PM Henderson (waives in support)  
2:17:51 PM Am. 507292  
2:18:01 PM Am. 835492  
2:18:04 PM Sen. Richter  
2:18:21 PM Sen. Benacquisto  
2:18:33 PM Am. 274948  
2:18:38 PM Sen. Richter  
2:18:47 PM Sen. Benacquisto  
2:18:53 PM Am. 782760  
2:19:00 PM Sen. Richter  
2:19:18 PM Sen. Benacquisto  
2:19:27 PM Am. 648150  
2:19:33 PM Sen. Richter  
2:20:05 PM Sen. Benacquisto  
2:20:10 PM Jennifer C. Pritt, Assistant Commissioner, FDLE (waives in support)  
2:20:16 PM Casey Cook, Legislative Advocate, Florida League of Cities (waives in support)  
2:20:18 PM Amy Mercer, Executive Director, Florida Police Chiefs Association (waives in support)  
2:20:25 PM Marion Hammer, National Rifle Association and United Sportsmen of Florida (waives in support)  
2:20:32 PM Laura Youmans, Florida Association of Counties (waives in support)  
2:20:35 PM S 1444 (cont.)  
2:20:39 PM Sen. Benacquisto  
2:20:55 PM Marion Hammer, National Rifle Association and United Sportsmen of Florida (waives in support)  
2:21:00 PM Amy Mercer, Executive Director, Florida Police Chiefs Association (waives in support)  
2:21:05 PM Jonathan Rees, Deputy Director of Legislative affairs, Florida Department of Agriculture Consumer Services (waives in support)  
2:21:07 PM Carole Jian Jordan, Tax Collector for Indian River County, Florida Tax Collectors Association  
2:21:22 PM  
2:22:15 PM S 1362  
2:22:21 PM PCS 449620  
2:23:04 PM Sen. Benacquisto  
2:23:12 PM Am. 631416  
2:23:21 PM Am. 159808  
2:24:41 PM Sen. Benacquisto  
2:25:04 PM Jared Ross, SVP of Governmental Affairs, Florida Credit Union Association (waives in support)  
2:25:09 PM Kim Siomkos, Vice President of Governmental Affairs, Florida Bankers Association (waives in support)  
2:25:17 PM Samantha Padgett, General Counsel, Florida Retail Federation (waives in support)  
2:26:44 PM Brain Pitts  
2:26:47 PM Sen. Benacquisto  
2:27:03 PM S 1362 (cont.)  
2:28:34 PM Sen. Simmons  
2:28:40 PM Sen. Benacquisto  
2:29:26 PM S 574  
2:29:29 PM Sen. Montford  
2:29:50 PM Sen. Benacquisto  
2:30:00 PM Cynthia Henderson, Crowne (waives in support)  
2:30:04 PM Brian Pitts, Trustee, Justice 2 Jesus (waives in support)  
2:31:06 PM Sen. Benacquisto

2:31:07 PM S 622  
2:31:14 PM Sen. Montford  
2:31:36 PM Bob Boyd, General Counsel, Independent Colleges and Universities of Florida (waives in support)  
2:31:44 PM Brian Pitts, Trustee, Justice 2 Jesus (waives in support)  
2:31:49 PM Sen. Benacquisto  
2:32:28 PM S 1136  
2:32:39 PM Sen. Hukill  
2:33:16 PM Sen. Benacquisto  
2:33:21 PM Alexandra Overhoff, Executive Director, Florida Land Title Association (waives in support)  
2:33:24 PM Ashley Mayer, Lobbyist, Old Republic National Title (waives in support)  
2:33:37 PM Sen. Benacquisto  
2:34:20 PM Sen. 972  
2:34:28 PM Sen. Flores  
2:35:21 PM Sen. Benacquisto  
2:35:26 PM Am. 196224  
2:35:32 PM Sen. Negron  
2:36:13 PM Sen. Benacquisto  
2:36:20 PM Mat Forrest, Residents of Frenchmen's Creek (waives in support)  
2:36:21 PM  
2:36:26 PM  
2:36:37 PM Am. 840530  
2:36:39 PM Sen. Flores  
2:36:40 PM  
2:37:04 PM Sen. Benacquisto  
2:37:18 PM S 972 (cont.)  
2:37:29 PM Tom Cerra, Executive Director, Greater Florida Consortium of School Board (waives in support)  
2:37:31 PM Eva M. Regueira, Director, Miami-Dade County Public Schools (waives in support)  
2:37:33 PM John Sullican, Duval County Public Schools (waives in support)  
2:37:33 PM Jim Overton, Florida Association of Property Appraiser (waives in support)  
2:37:38 PM Jess McCarty, Miami-Dade County (waives in support)  
2:37:45 PM Diana Ragbeer, Director of Public Policy, The Children's Trust (waives in support)  
2:37:51 PM Sen. Benacquisto  
2:38:48 PM S 1006  
2:38:54 PM PCS 694962  
2:39:05 PM Sen. Flores  
2:40:32 PM Sen. Benacquisto  
2:40:38 PM Sen. Joyner  
2:41:41 PM Sen. Flores  
2:42:24 PM Sen. Benacquisto  
2:42:31 PM Kyle Ulrich, Florida Association of Insurance Agents (waives in support)  
2:42:47 PM Sen. Benacquisto  
2:43:34 PM S 1106  
2:43:42 PM PCS 694962  
2:43:54 PM Sen. Flores  
2:44:31 PM Erin Choy, Chair-Elect, Junior Leagues of Florida (waives in support)  
2:44:31 PM Sen. Benacquisto  
2:44:41 PM Ingrid Delagado, Associate for Social Concerns and Respect Life, Florida Conference of Catholic Bishops  
(waives in support)  
2:45:33 PM S 1108  
2:45:39 PM Sen. Flores  
2:46:03 PM Sen. Benacquisto  
2:46:09 PM Erin Choy, Chair-Elect, Junior Leagues of Florida (waives in support)  
2:46:15 PM Ingrid Delgdo, Association for Social Concerns and Respect Life, Florida Conference of Catholic Bishops  
(waives in support)  
2:46:18 PM Brian Pitts, Trustee, Justice 2 Jesus (waives in support)  
2:46:24 PM Sen. Benacquisto  
2:47:08 PM S 1110  
2:47:23 PM Sen. Flores  
2:47:37 PM Sen. Benacquisto  
2:47:43 PM Erin Choy, Chair-Elect, Junior Leagues of Florida (waives in support)  
2:47:48 PM Brian Pitts, Trustee, Justice 2 Jesus (waives in support)  
2:47:53 PM Sen. Benacquisto

2:48:40 PM S 1536  
2:48:46 PM Sen. Flores  
2:49:04 PM Sen. Benacquisto  
2:50:19 PM S 798  
2:50:25 PM Sen. Lee  
2:50:30 PM PCS 275316  
2:50:37 PM Sen. Lee  
2:52:41 PM Sen. Benacquisto  
2:52:47 PM Jonathan Rees, Deputy Director of Legislative Affairs, Florida Department of Agriculture and Consumer Services (waives in support)  
2:52:53 PM Gloria Pugh, CEO, AMWAT Moving Warehousing Storage (waives in opposition)  
2:53:06 PM Brian Pitts, Trustee, Justice 2 Jesus  
2:54:52 PM Sen. Benacquisto  
2:55:42 PM S 1402  
2:55:49 PM PCS 801726  
2:55:59 PM Sen. Lee  
2:57:30 PM Sen. Benacquisto  
2:57:36 PM Sen. Latvala  
2:57:57 PM Sen. Lee  
2:57:58 PM Sen. Latvala  
2:58:05 PM Sen. Lee  
2:58:42 PM Sen. Latvala  
2:59:53 PM Sen. Lee  
3:00:19 PM Sen. Latvala  
3:00:24 PM Sen. Lee  
3:00:48 PM Sen. Benacquisto  
3:00:54 PM BG Murphy Deputy Legislative Affairs Director of DFS, CFO Atwater  
3:00:59 PM Sen. Latvala  
3:01:10 PM Sen. Benacquisto  
3:02:04 PM BG Murphy  
3:02:26 PM Sen. Hays  
3:03:40 PM Sen. Benacquisto  
3:03:55 PM Sen. Grimsley  
3:04:01 PM Sen. Benacquisto  
3:04:02 PM Sen. Richter  
3:04:10 PM Sen. Negron  
3:04:19 PM Sen. Benacquisto  
3:04:20 PM Sen. Montford  
3:04:37 PM Sen. Joyner  
3:04:49 PM Sen. Benacquisto  
3:04:52 PM Sen. Garcia  
3:05:02 PM Sen. Benacquisto  
3:05:05 PM Sen. Flores  
3:05:09 PM Sen. Benacquisto