

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Simpson, Chair
Senator Brandes, Vice Chair

MEETING DATE: Monday, March 23, 2015
TIME: 1:30 —3:30 p.m.
PLACE: 301 Senate Office Building

MEMBERS: Senator Simpson, Chair; Senator Brandes, Vice Chair; Senators Abruzzo, Bradley, Dean, Diaz de la Portilla, and Thompson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 662 Latvala (Similar 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	Favorable Yeas 7 Nays 0
2	SB 592 Sobel (Similar H 525)	Florida Building Code; Providing that amendments or modifications related to local government water conservation practices or design criteria which are adopted to an edition of the Florida Building Code do not expire and shall be carried forward into the next edition of the code, subject to review or modification, etc. CA 03/23/2015 Fav/CS EP FP	Fav/CS Yeas 7 Nays 0
3	CS/SB 842 Banking and Insurance / Benacquisto (Similar CS/H 715)	Citizens Property Insurance Corporation Eligibility for Coverage; Deleting a provision prohibiting certain improvements to major structures from being eligible for coverage by the Citizens Property Insurance Corporation; prohibiting coverage for major structures rebuilt, repaired, restored, or remodeled to increase the total square footage of finished area by a specified amount, etc. BI 03/10/2015 Fav/CS CA 03/23/2015 Favorable FP	Favorable Yeas 7 Nays 0

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Community Affairs

Monday, March 23, 2015, 1:30 —3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 850 Hays (Identical H 923)	Local Government; Authorizing the use of impact fees to provide, construct, improve, repair, alter, or replace new and existing capital facilities; authorizing a county or municipality to impose a surcharge on documents taxable under s. 201.02, F.S., for the purpose of funding certain capital improvements and capital facilities in lieu of impact fees; prohibiting a county or municipality that imposes a surcharge for an authorized purpose from also assessing an impact fee for the same purpose, etc. CA 03/23/2015 Temporarily Postponed FT FP	Temporarily Postponed
5	CS/SB 1054 Governmental Oversight and Accountability / Evers (Similar CS/H 565)	Retirement; Authorizing local agency employers to reassess designation of positions for inclusion in the Senior Management Service Class; providing for removal of certain positions, etc. GO 03/10/2015 Fav/CS CA 03/23/2015 Favorable AP	Favorable Yeas 6 Nays 0
6	CS/SB 1130 Banking and Insurance / Simmons (Similar CS/H 507)	Windstorm Premium Discounts; Providing that an insurer issuing a policy to a new policyholder may accept as valid only specified uniform mitigation verification inspection forms; providing that such requirement does not apply to certain new policies removed from Citizens Property Insurance Corporation, etc. BI 03/10/2015 Fav/CS CA 03/23/2015 Favorable FP	Favorable Yeas 5 Nays 0
7	CS/SB 42 Judiciary / Braynon (Similar H 3547)	Relief of Javier Soria by Palm Beach County; Providing for the relief of Javier Soria by Palm Beach County; providing for an appropriation to compensate him for injuries sustained as a result of negligence by an employee of Palm Beach County; providing a limitation on the payment of fees and cost, etc. SM 02/09/2015 Recommendation: Fav/2 Amendments JU 02/17/2015 Fav/CS CA 03/23/2015 Favorable FP	Favorable Yeas 6 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 896 Brandes (Similar CS/CS/H 391)	Location of Utilities; Authorizing the board of county commissioners to grant a license to work on or operate specified utility and communications services lines only within the right-of-way limits of certain county or public highways or roads; authorizing the Department of Transportation and certain local governmental entities to prescribe and enforce rules or regulations regarding placing and maintaining specified structures only within the right-of-way limits of roads or publicly owned rail corridors under their respective jurisdictions, etc. CA 03/23/2015 Fav/CS TR AP	Fav/CS Yeas 6 Nays 1
9	CS/SB 934 Governmental Oversight and Accountability / Brandes (Similar CS/H 527)	Public Works Projects; Prohibiting the state and political subdivisions that contract for the construction, maintenance, repair, or improvement of public works from imposing certain conditions on certain contractors, subcontractors, or material suppliers or carriers; prohibiting the state and political subdivisions from imposing certain restrictions on qualified bidders, etc. GO 03/10/2015 Fav/CS CA 03/23/2015 Pending reconsider (Unfavorable) AP	Unfavorable Yeas 1 Nays 6 -Pending Reconsideration
10	CS/SB 1094 Banking and Insurance / Brandes (Similar CS/H 895)	Peril of Flood; Specifying components that must be contained in the coastal management element required for a local government comprehensive plan; requiring a surveyor and mapper to complete an elevation certificate in accordance with a checklist developed by the Division of Emergency Management and to submit a copy of the elevation certificate to the division within a certain time after its completion; deleting a provision that prohibits supplemental flood insurance from including excess coverage over any other insurance covering the peril of flood, etc. BI 03/10/2015 Fav/CS CA 03/23/2015 Fav/CS RC	Fav/CS Yeas 7 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	SB 1272 Abruzzo (Similar CS/H 171)	Public Records/Emergency Information Gathering System; Providing a public records exemption for information furnished to a state, county, or municipal government agency for use in an emergency information gathering system; providing for retroactive application; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CA 03/23/2015 Temporarily Postponed GO RC	Temporarily Postponed

Other Related Meeting Documents

By Senator Latvala

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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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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 curriculums 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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/15

Meeting Date

662

Bill Number (if applicable)

Topic mobile homes

Amendment Barcode (if applicable)

Name Lori Killinger

Job Title Attorney/lobbyist

Address 315 S. Calhoun St. Ste 830

Phone 850 222 5702

Street

Tallahassee

FL

32301

Email lkillinger@llw-law.com

City

State

Zip

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

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

Representing Florida Manufactured Housing Assn.

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

3/23/15

Meeting Date

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

SB 662

Bill Number (if applicable)

Topic mobile homes

Amendment Barcode (if applicable)

Name Nancy Stewart

Job Title _____

Address 1535 Killlearn Center Blvd

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Tallahassee FL 32309

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City

State

Zip

earthlink.net

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 (FMO)

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

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 12, 2015

The Honorable Wilton Simpson, Chair
Senate Committee on Community Affairs
315 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Simpson:

I respectfully request consideration of Senate Bill 662 regarding Mobile Homes. I would greatly appreciate the opportunity to present this legislation to the Senate Committee on Community Affairs as soon as possible. The bill was referred favorably by the Committee on Regulated Industries on March 11.

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,

A handwritten signature in black ink that reads "Jack Latvala".

Jack Latvala
State Senator
District 20

Cc: Tom Yeatman, Staff Director; Ann Whittaker, 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

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 662

INTRODUCER: Senator Latvala

SUBJECT: Mobile Homes

DATE: March 23, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Favorable
2.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 662 relates to the Florida Mobile Home Act, which regulates residential tenancies in which a mobile home is placed on a rented or leased lot in a mobile home park with 10 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 an anticipated fiscal impact of approximately \$176,071 in FY 2015-2016 and \$165,301 annually thereafter.

The bill has 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 1984.¹ 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.²

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.³

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:

¹ Chapter 84-80, L.O.F. Formerly ch. 720, F.S.

² Section 723.004(1), F.S.; *see also Mobile Home Relocation*, Interim Report No. 2007-106, Florida Senate Committee on Community Affairs, October 2006.

³ 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 1984.⁴

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.⁵

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.⁶ 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.⁷

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.⁸

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.⁹ 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.¹⁰

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.¹¹

⁴ See ch. 84-80, L.O.F. The definitions in s. 723.003, F.S., were formerly in s. 720.103, F.S. (1984).

⁵ Section 723.011(3), F.S.

⁶ Section 723.011(1)(a), F.S.

⁷ Section 723.011(1)(d), F.S.

⁸ Section 723.011(2), F.S.

⁹ Section 723.014(1), F.S.

¹⁰ Section 723.014(2), F.S.

¹¹ 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 10 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.¹²

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.¹³ 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.¹⁴

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.¹⁵ 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.¹⁶

Unreasonable lot rental agreements and unreasonable rent increases are unenforceable.¹⁷ A lot rental amount that exceeds market rent shall be considered unreasonable.¹⁸ 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.¹⁹

¹² Section 723.037(1), F.S.

¹³ Section 723.037(4)(a), F.S.

¹⁴ Section 723.037(4)(b), F.S.

¹⁵ Section 723.037(5)(a), F.S.

¹⁶ Section 723.0381, F.S.

¹⁷ Section 723.033(1), F.S.

¹⁸ Section 723.033(5), F.S.

¹⁹ 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.”²⁰ 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.”²¹ These same standards are to be employed by the arbitrator or mediator in any arbitration or mediation under ch. 723, F.S.²²

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.²³ 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.²⁴ 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

²⁰ Section 723.033(5), F.S.

²¹ Section 723.033(6), F.S.

²² Section 723.033(7), F.S.

²³ Sections 718.501(1)(j), and 719.501(1)(k), F.S.

²⁴ 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.²⁵

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.²⁶

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

²⁵ Section 723.0611(1), F.S.

²⁶ 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 7 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.²⁷

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."

²⁷ 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 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 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 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.²⁸ 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 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.

²⁸ 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.

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.²⁹

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 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.

²⁹ See ss. 718.112(2)(b) and (c), 719.106(1)(c), and 720.303(2), F.S.

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.³⁰

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.³¹

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.³²

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 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.

³⁰ See ss. 718.111(1)(d), F.S., and 719.104(8), F.S.

³¹ See ss. 718.112(2)(c) and 719.106(1)(c), F.S.

³² See ss. 718.111(1)(b), 719.104(8)(b), 720.303(5), F.S.

These provisions are not comparable to the amendment of articles of incorporation and bylaws in condominium associations and cooperative associations.³³

Recall of Board Members

The bill amends s. 723.08(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 5 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 5 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 5 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 5-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.³⁴

The bill creates s. 723.1255, F.S., to require the division to adopt rules of procedure that will govern binding recall arbitration proceedings.

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:

³³ See ss. 718.110 and 719.1055(4)(a), F.S.

³⁴ Sections 718.112(2)(j) and 719.106(1)(f), F.S.

- 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 1 year before the election or 90 days after the election or appointment.³⁵ The curriculum must be administered by a condominium education provider approved by the division.³⁶ 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.³⁷ 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 5 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.³⁸

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 7 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.

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

³⁵ *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).

³⁶ Section 718.112(2)(d)3.b., F.S.

³⁷ *Id.*

³⁸ See ss. 718.112(2)(d)4.b., 719.106(1)(d)1.b., and 720.3033(1), F.S.

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 5 days after an election or removal.

This official records provision is comparable to that required for condominium, cooperative, and homeowners' associations.³⁹

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.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

³⁹ Sections 718.111(12), 719.104(2), and 720.303(5), F.S.

B. Private Sector Impact:

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 \$200.⁴⁰

C. Government Sector Impact:

The department estimates that the creation of mobile home arbitration program will have an anticipated fiscal impact of approximately \$176,071 in FY 2015-2016 and \$165,301 annually thereafter.

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, 723.1255, 723.0781, and 723.079.

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

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

None.

B. Amendments:

None.

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

⁴⁰ 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)).



153568

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (d) is added to subsection (4) of
section 553.73, Florida Statutes, to read:

553.73 Florida Building Code.—

(4)

(d) A technical amendment to the Florida Building Code
adopted by a local government pursuant to this subsection and



153568

11 which relates to water conservation practices or design criteria
12 may not be rendered void when the code is updated if the
13 technical amendment is necessary to protect or provide for more
14 efficient use of water resources as provided in s. 373.621.
15 Technical amendments carried forward into the next edition of
16 the code pursuant to this paragraph, however, are subject to
17 review or modification as provided in this part.

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

19
20 ===== T I T L E A M E N D M E N T =====

21 And the title is amended as follows:

22 Delete everything before the enacting clause
23 and insert:

24 A bill to be entitled
25 An act relating to the Florida Building Code; amending
26 s. 553.73, F.S.; prohibiting a technical amendment to
27 the Florida Building Code adopted by a local
28 government from being rendered void in certain
29 circumstances; providing an effective date.

By Senator Sobel

33-00766-15

2015592__

1 A bill to be entitled
2 An act relating to the Florida Building Code; amending
3 s. 553.73, F.S.; providing that amendments or
4 modifications related to local government water
5 conservation practices or design criteria which are
6 adopted to an edition of the Florida Building Code do
7 not expire and shall be carried forward into the next
8 edition of the code, subject to review or
9 modification; providing an effective date.

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

12
13 Section 1. Paragraph (g) of subsection (7) of section
14 553.73, Florida Statutes, is amended, and paragraph (h) is added
15 to that subsection, to read:

16 553.73 Florida Building Code.—

17 (7)

18 (g) Amendments or modifications to the foundation code
19 pursuant to this subsection shall remain effective only until
20 the effective date of a new edition of the Florida Building Code
21 every third year.

22 1. Amendments or modifications related to state agency
23 regulations which are adopted and integrated into an edition of
24 the Florida Building Code shall be carried forward into the next
25 edition of the code, subject to modification as provided in this
26 part.

27 2. Amendments or modifications related to the wind-
28 resistance design of buildings and structures within the high-
29 velocity hurricane zone of Miami-Dade and Broward Counties which

33-00766-15

2015592__

30 are adopted to an edition of the Florida Building Code do not
31 expire and shall be carried forward into the next edition of the
32 code, subject to review or modification as provided in this
33 part.

34 3. Amendments or modifications related to local government
35 water conservation practices or design criteria which are
36 adopted to an edition of the Florida Building Code do not expire
37 and shall be carried forward into the next edition of the code,
38 subject to review or modification as provided in this part.

39 (h) If amendments that expire pursuant to ~~this~~ paragraph
40 (g) are resubmitted through the Florida Building Commission code
41 adoption process, the amendments must specifically address
42 whether:

43 1. The provisions contained in the proposed amendment are
44 addressed in the applicable international code.

45 2. The amendment demonstrates by evidence or data that the
46 geographical jurisdiction of Florida exhibits a need to
47 strengthen the foundation code beyond the needs or regional
48 variations addressed by the foundation code, and why the
49 proposed amendment applies to this state.

50 3. The proposed amendment was submitted or attempted to be
51 included in the foundation codes to avoid resubmission to the
52 Florida Building Code amendment process.

53
54 If the proposed amendment has been addressed in the
55 international code in a substantially equivalent manner, the
56 Florida Building Commission may not include the proposed
57 amendment in the foundation code.

58 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)

3/23/15
Meeting Date

SB 992
Bill Number (if applicable)

Topic Fla. Building Code Amendment

Amendment Barcode (if applicable)

Name Deborah Lawson

Job Title

Address 4125 Pecan Branch

Phone 570-0033

Tallahassee FL 32309
City State Zip

Email lawson.deborah.e@gmail.com

Speaking: For Against Information

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

Representing Florida Roof Deck 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.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 592

INTRODUCER: Community Affairs Committee and Senator Sobel

SUBJECT: Florida Building Code

DATE: March 23, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Yeatman	CA	Fav/CS
2.			EP	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 592 prevents the automatic rescission of any technical amendments adopted to the Florida Building Code by local governments that relate to water conservation practices or design criteria. Technical amendments adopted through the local adoption process would still remain subject to review or modification.

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

II. Present Situation:

Chapter 553, F.S., titled the "Florida Building Codes Act," establishes the Florida Building Commission (FBC). The FBC updates the Florida Building Code (code) every 3 years by selecting the most current versions of model codes to serve as the basis for the new edition of Florida's code. During the triennial code adoption process, FBC staff integrates provisions that have been previously adopted by the commission in prior code editions that are related to state

agency regulation,¹ wind-resistance design of buildings in the high velocity hurricane zone² and other provisions required for consistency with statute.

The Florida Building Commission has never adopted any amendments or modifications to the code related to local government water conservation practice or design criteria.

Local Government Amendments

Local governments may adopt amendments to the administrative provisions of the FBC, subject to these limitations:³

- Local amendments must be more stringent than the minimum standards of the code;
- Local amendments must be transmitted to the FBC within 30 days after enactment; and
- The local government must make the amendments available to the general public in a usable format.

Pursuant to s. 553.73(4)(b), F.S., local governments may adopt amendments to the technical provisions of the code which apply solely within the jurisdiction of the local government. To adopt a technical amendment, a local government:

- Must provide that the amendment has more stringent requirements than those specified in the code;
- May not make technical amendments more than once every 6 months;
- Must make a determination, following a public hearing which has been advertised in a newspaper of general circulation at least 10 days before the hearing, that there is a need to strengthen the requirements of the code;⁴
- Cannot make additional requirements that are discriminatory against materials, products, or construction techniques of demonstrated capabilities;
- Cannot make additional requirements that introduce a new subject not addressed in the code;⁵
- Must include a fiscal impact statement which documents the costs and benefits of the proposed amendment;⁶ and
- Must transmit any amendment to the FBC within 30 days. The commission shall maintain copies of all such amendments in a format that is usable and obtainable by the public. Local technical amendments shall not become effective until 30 days after the amendment has been received and published by the commission.

¹ Section 553.73(7)(g), F.S., provides that “Amendments or modifications related to state agency regulations which are adopted and integrated into an edition of the Florida Building Code shall be carried forward into the next edition of the code, subject to modification as provided in this part.”

² *Id.* Amendments or modifications related to the wind-resistance design of buildings and structures within the high-velocity hurricane zone of Miami-Dade and Broward Counties which are adopted to the code do not expire, but are carried forward into the next edition of the code, subject to review or modification.

³ Section 553.73(4)(a), F.S.

⁴ “The determination must be based upon a review of local conditions by the local governing body, which review demonstrates by evidence or data that the geographical jurisdiction governed by the local governing body exhibits a local need to strengthen the Florida Building Code beyond the needs or regional variation addressed by the Florida Building Code, that the local need is addressed by the proposed local amendment, and that the amendment is no more stringent than necessary to address the local need.” Section 553.73(4)(b)(1), F.S.

⁵ Section 553.73(4)(b)(3), F.S.

⁶ Section 553.73(4)(b)(9), F.S.

Local government amendments do not apply to state or school district owned buildings, manufactured buildings or factory-built school buildings approved by the commission, or prototype buildings approved pursuant to s. 553.77(3), F.S.⁷

Rescission of Modifications

Modifications adopted in the prior versions of the code are discarded unless resubmitted by a proponent with supporting information required by statute. Pursuant to s. 553.73(7)(g), F.S., if amendments that expire are resubmitted through the FBC code adoption process, the amendments must specifically address whether:

- The proposed amendment's provisions are addressed in the applicable international code;⁸
- The amendment demonstrates that the geographical jurisdiction of Florida exhibits a need to strengthen the foundation code beyond the needs or regional variations addressed by the foundation code, and why the proposed amendment applies to this state; and
- The proposed amendment was submitted or attempted to be included in the foundation codes to avoid resubmission to the code amendment process.

Similarly, s. 553.73(4)(b)(6.), F.S., states that any amendment to the code adopted by a local government:

shall be effective only until the adoption by the commission of the new edition of the Florida Building Code every third year. At such time, the commission shall review such amendment for consistency with the criteria in paragraph (9)(a) and adopt such amendment as part of the Florida Building Code or rescind the amendment. The commission shall immediately notify the respective local government of the rescission of any amendment. After receiving such notice, the respective local government may readopt the rescinded amendment pursuant to the provisions of this paragraph.

III. Effect of Proposed Changes:

Section 1 amends s. 553.73, F.S., to provide that technical amendments to the Florida Building Code adopted through the local adoption process outlined in s. 553.73(4)(b), F.S., are not rendered void when the code is updated if the amendments are specifically related to water conservation practices or design criteria. Any such amendments would be rolled forward into successive editions of the code, subject to review or modification, without any action necessary by the proponents.

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

⁷ Section 553.73(4)(c), F.S.

⁸ Id. If the proposed amendment has been addressed in the international code in a substantially equivalent manner, the FBC may not include the proposed amendment in the foundation code.

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 DBPR analyzed the bill and noted the effect on local governments if the FBC adopts water conservation requirements within the code.⁹ If adopted within the code, the water conservation requirements would restrict a local government's ability to amend or modify those requirements, such that:¹⁰

- Any amendment must be more stringent than that contained within the code;
- Provisions may only be modified once every 6 months; and
- The local government must adhere to the designated procedures to adopt the modification.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Any proposed modifications to the building code relating to water conservation will be required to meet all criteria for inclusion within the Florida Building Code, in particular, that the modification is required to accommodate the specific needs of the state.¹¹

⁹ Dep't of Business and Professional Regulation, *Legislative Bill Analysis of SB 592*, at 4 (Feb. 13, 2015).

¹⁰ Section 553.73(4)(b), F.S.

¹¹ Dep't of Business and Professional Regulation, *Legislative Bill Analysis of SB 592*, at 4 (Feb. 13, 2015).

VIII. Statutes Affected:

This bill substantially amends section 553.73 of the Florida Statutes.

IX. Additional Information:

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

CS by Community Affairs on March 23, 2015:

Clarifies that the types of amendments to be rolled forward are technical amendments adopted by local governments relating to water conservation practices or design criteria.

- B. **Amendments:**

None.

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

By the Committee on Banking and Insurance; and Senator Benacquisto

597-02119-15

2015842c1

1 A bill to be entitled
2 An act relating to Citizens Property Insurance
3 Corporation eligibility for coverage; amending s.
4 627.351, F.S.; deleting a provision prohibiting
5 certain improvements to major structures from being
6 eligible for coverage by the Citizens Property
7 Insurance Corporation; prohibiting coverage for major
8 structures rebuilt, repaired, restored, or remodeled
9 to increase the total square footage of finished area
10 by a specified amount; reenacting s. 627.712(1), F.S.,
11 relating to residential windstorm coverage, to
12 incorporate the amendment made by this act to s.
13 627.351, F.S.; providing an effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. Paragraph (a) of subsection (6) of section
18 627.351, Florida Statutes, is amended to read:

19 627.351 Insurance risk apportionment plans.—

20 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

21 (a) The public purpose of this subsection is to ensure that
22 there is an orderly market for property insurance for residents
23 and businesses of this state.

24 1. The Legislature finds that private insurers are
25 unwilling or unable to provide affordable property insurance
26 coverage in this state to the extent sought and needed. The
27 absence of affordable property insurance threatens the public
28 health, safety, and welfare and likewise threatens the economic
29 health of the state. The state therefore has a compelling public

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30 interest and a public purpose to assist in assuring that
31 property in the state is insured and that it is insured at
32 affordable rates so as to facilitate the remediation,
33 reconstruction, and replacement of damaged or destroyed property
34 in order to reduce or avoid the negative effects otherwise
35 resulting to the public health, safety, and welfare, to the
36 economy of the state, and to the revenues of the state and local
37 governments which are needed to provide for the public welfare.
38 It is necessary, therefore, to provide affordable property
39 insurance to applicants who are in good faith entitled to
40 procure insurance through the voluntary market but are unable to
41 do so. The Legislature intends, therefore, that affordable
42 property insurance be provided and that it continue to be
43 provided, as long as necessary, through Citizens Property
44 Insurance Corporation, a government entity that is an integral
45 part of the state, and that is not a private insurance company.
46 To that end, the corporation shall strive to increase the
47 availability of affordable property insurance in this state,
48 while achieving efficiencies and economies, and while providing
49 service to policyholders, applicants, and agents which is no
50 less than the quality generally provided in the voluntary
51 market, for the achievement of the foregoing public purposes.
52 Because it is essential for this government entity to have the
53 maximum financial resources to pay claims following a
54 catastrophic hurricane, it is the intent of the Legislature that
55 the corporation continue to be an integral part of the state and
56 that the income of the corporation be exempt from federal income
57 taxation and that interest on the debt obligations issued by the
58 corporation be exempt from federal income taxation.

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59 2. The Residential Property and Casualty Joint Underwriting
60 Association originally created by this statute shall be known as
61 the Citizens Property Insurance Corporation. The corporation
62 shall provide insurance for residential and commercial property,
63 for applicants who are entitled, but, in good faith, are unable
64 to procure insurance through the voluntary market. The
65 corporation shall operate pursuant to a plan of operation
66 approved by order of the Financial Services Commission. The plan
67 is subject to continuous review by the commission. The
68 commission may, by order, withdraw approval of all or part of a
69 plan if the commission determines that conditions have changed
70 since approval was granted and that the purposes of the plan
71 require changes in the plan. For the purposes of this
72 subsection, residential coverage includes both personal lines
73 residential coverage, which consists of the type of coverage
74 provided by homeowner, mobile home owner, dwelling, tenant,
75 condominium unit owner, and similar policies; and commercial
76 lines residential coverage, which consists of the type of
77 coverage provided by condominium association, apartment
78 building, and similar policies.

79 3. With respect to coverage for personal lines residential
80 structures:

81 a. Effective January 1, 2014, a structure that has a
82 dwelling replacement cost of \$1 million or more, or a single
83 condominium unit that has a combined dwelling and contents
84 replacement cost of \$1 million or more is not eligible for
85 coverage by the corporation. Such dwellings insured by the
86 corporation on December 31, 2013, may continue to be covered by
87 the corporation until the end of the policy term. The office

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88 shall approve the method used by the corporation for valuing the
89 dwelling replacement cost for the purposes of this subparagraph.
90 If a policyholder is insured by the corporation before being
91 determined to be ineligible pursuant to this subparagraph and
92 such policyholder files a lawsuit challenging the determination,
93 the policyholder may remain insured by the corporation until the
94 conclusion of the litigation.

95 b. Effective January 1, 2015, a structure that has a
96 dwelling replacement cost of \$900,000 or more, or a single
97 condominium unit that has a combined dwelling and contents
98 replacement cost of \$900,000 or more, is not eligible for
99 coverage by the corporation. Such dwellings insured by the
100 corporation on December 31, 2014, may continue to be covered by
101 the corporation only until the end of the policy term.

102 c. Effective January 1, 2016, a structure that has a
103 dwelling replacement cost of \$800,000 or more, or a single
104 condominium unit that has a combined dwelling and contents
105 replacement cost of \$800,000 or more, is not eligible for
106 coverage by the corporation. Such dwellings insured by the
107 corporation on December 31, 2015, may continue to be covered by
108 the corporation until the end of the policy term.

109 d. Effective January 1, 2017, a structure that has a
110 dwelling replacement cost of \$700,000 or more, or a single
111 condominium unit that has a combined dwelling and contents
112 replacement cost of \$700,000 or more, is not eligible for
113 coverage by the corporation. Such dwellings insured by the
114 corporation on December 31, 2016, may continue to be covered by
115 the corporation until the end of the policy term.
116

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117 The requirements of sub-subparagraphs b.-d. do not apply in
118 counties where the office determines there is not a reasonable
119 degree of competition. In such counties a personal lines
120 residential structure that has a dwelling replacement cost of
121 less than \$1 million, or a single condominium unit that has a
122 combined dwelling and contents replacement cost of less than \$1
123 million, is eligible for coverage by the corporation.

124 4. It is the intent of the Legislature that policyholders,
125 applicants, and agents of the corporation receive service and
126 treatment of the highest possible level but never less than that
127 generally provided in the voluntary market. It is also intended
128 that the corporation be held to service standards no less than
129 those applied to insurers in the voluntary market by the office
130 with respect to responsiveness, timeliness, customer courtesy,
131 and overall dealings with policyholders, applicants, or agents
132 of the corporation.

133 5.a. Effective January 1, 2009, a personal lines
134 residential structure that is located in the "wind-borne debris
135 region," as defined in s. 1609.2, International Building Code
136 (2006), and that has an insured value on the structure of
137 \$750,000 or more is not eligible for coverage by the corporation
138 unless the structure has opening protections as required under
139 the Florida Building Code for a newly constructed residential
140 structure in that area. A residential structure is deemed to
141 comply with this sub-subparagraph if it has shutters or opening
142 protections on all openings and if such opening protections
143 complied with the Florida Building Code at the time they were
144 installed.

145 b. Any major structure, as defined in s. 161.54(6)(a),

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146 which is newly constructed or rebuilt, repaired, restored, or
147 remodeled to increase the total square footage of finished area
148 by more than 25 percent pursuant to ~~for which~~ a permit ~~is~~
149 applied for ~~on or~~ after July 1, 2015, ~~for new construction or~~
150 ~~substantial improvement as defined in s. 161.54(12)~~ is not
151 eligible for coverage by the corporation if the structure is
152 seaward of the coastal construction control line established
153 pursuant to s. 161.053 or is within the Coastal Barrier
154 Resources System as designated by 16 U.S.C. ss. 3501-3510.

155 6. With respect to wind-only coverage for commercial lines
156 residential condominiums, effective July 1, 2014, a condominium
157 shall be deemed ineligible for coverage if 50 percent or more of
158 the units are rented more than eight times in a calendar year
159 for a rental agreement period of less than 30 days.

160 Section 2. For the purpose of incorporating the amendment
161 made by this act to section 627.351, Florida Statutes, in a
162 reference thereto, subsection (1) of section 627.712, Florida
163 Statutes, is reenacted to read:

164 627.712 Residential windstorm coverage required;
165 availability of exclusions for windstorm or contents.-

166 (1) An insurer issuing a residential property insurance
167 policy must provide windstorm coverage. Except as provided in
168 paragraph (2)(c), this section does not apply to risks that are
169 eligible for wind-only coverage from Citizens Property Insurance
170 Corporation under s. 627.351(6), and risks that are not eligible
171 for coverage from Citizens Property Insurance Corporation under
172 s. 627.351(6)(a)3. or 5. A risk ineligible for coverage by the
173 corporation under s. 627.351(6)(a)3. or 5. is exempt from this
174 section only if the risk is located within the boundaries of the

597-02119-15

2015842c1

175 coastal account of the corporation.

176 Section 3. 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)

3/23/15
Meeting Date

SB 842
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jay Liles

Job Title _____

Address POB 6870
Street

Phone 850/294-5004

Tallahassee FL 32317
City State Zip

Email _____

Speaking: For Against Information

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

Representing Florida Wildlife 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

Tallahassee, Florida 32399-1100

COMMITTEES:

Banking and Insurance, *Chair*
Appropriations, *Vice Chair*
Appropriations Subcommittee on Health
and Human Services
Education Pre-K-12
Higher Education
Judiciary
Rules

SENATOR LIZBETH BENACQUISTO

30th District

JOINT COMMITTEE:

Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

March 23, 2015

The Honorable Wilton Simpson
Community Affairs, Chair
315 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

RE: CS/SB 842 – Citizens Property Insurance Corporation Eligibility for Coverage

Dear Mr. Chair:

Please allow my legislative aide, Dane Bennett, to present CS/SB 842 on my behalf. As I will be Chairing the Banking & Insurance Committee.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

A handwritten signature in black ink that reads "Lizbeth Benacquisto".

Lizbeth Benacquisto
Senate District 30

REPLY TO:

- 2310 First Street, Suite 305, Fort Myers, Florida 33901 (239) 338-2570
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Banking and Insurance, *Chair*
Appropriations, *Vice Chair*
Appropriations Subcommittee on Health
and Human Services
Education Pre-K-12
Higher Education
Judiciary
Rules

SENATOR LIZBETH BENACQUISTO

30th District

JOINT COMMITTEE:

Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

March 10, 2013

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

RE: SB842- Citizen's Property Insurance

Dear Mr. Chair:

Please allow this letter to serve as my respectful request to agenda SB 842, Relating to Citizen's Property Insurance, for a public hearing at your earliest convenience.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

A handwritten signature in black ink that reads "Lizbeth Benacquisto".

Lizbeth Benacquisto
Senate District 30

Cc: Tom Yeatman

REPLY TO:

- 2310 First Street, Suite 305, Fort Myers, Florida 33901 (239) 338-2570
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 842

INTRODUCER: Banking and Insurance Committee and Senator Benacquisto

SUBJECT: Citizens Property Insurance Corporation Eligibility for Coverage

DATE: March 20, 2015 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	Fav/CS
2.	Stearns	Yeatman	CA	Favorable
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 842 revises current law which makes ineligible for Citizens Property Insurance Corporation (Citizens) coverage structures located seaward of the Coastal Construction Control Line or within a Coastal Barrier Resources System for which, after July 1, 2015, a permit application is made for new construction or substantial improvement of the structure. The bill allows Citizens to provide coverage on structures built before July 1, 2015, and remodeled or rebuilt after July 1, 2015, to a size of more than 25 percent greater than the original building's square footage of finished area.

II. Present Situation:

Citizens Property Insurance Corporation

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.¹ Citizens is not a private insurance company.² 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 and the Florida Windstorm Underwriting Association. Citizens operates in accordance with the provisions of s. 627.351(6), F.S., and is governed by an eight-

¹ Admitted market means insurance companies licensed to transact insurance in Florida.

² Section 627.351(6)(a)1., F.S.

member Board of Governors (board) that administers its Plan of Operations, which 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 (OIR).

Citizens offers property insurance in three separate accounts. Each account is a separate statutory account with separate calculations of surplus and deficits.³ Assets may not be commingled or used to fund losses in another account.⁴

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.

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.⁵

Eligibility for Insurance in Citizens

Current law requires Citizens to provide a procedure for determining the eligibility of a potential risk for insurance in Citizens and provides specific eligibility requirements based on premium amounts, value of the property insured, and the location of the property. Risks not meeting the statutory eligibility requirements cannot be insured by Citizens. Citizens has additional eligibility requirements set out in their underwriting rules. These rules, which are approved by the OIR, give flexibility for Citizens to denote some risks as uninsurable based on factors not enumerated in statute, such as age of home, condition and age of roof, vacant property, certain seasonal occupancy, and type of electrical wiring.

³ The Personal Lines Account and the Commercial Lines Account are combined for credit and Florida Hurricane Catastrophe Fund coverage.

⁴ Section 627.351(6)(b)2b., F.S.

⁵ 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.

Eligibility Based on Premium Amount

Under current law, an applicant for residential insurance cannot buy insurance in Citizens if an admitted insurer in the private market offers the applicant insurance for a premium that does not exceed the Citizens premium by 15 percent or more,⁶ so long as the coverage offered by the private insurer is comparable to Citizens' coverage.

Under current law, a residential policyholder cannot renew insurance in Citizens if an insurer in the private market offers to insure the property at a premium equal to or less than the Citizens' renewal premium. The insurance from the private market insurer must be comparable to the insurance from Citizens in order for the renewal premium eligibility requirement to apply.⁷

Eligibility Based on Value of Property Insured

In addition to the eligibility restrictions based on premium amount, current law provides eligibility restrictions for homes and condominium units based on the value of the property insured.⁸ Structures with a dwelling replacement cost or a condominium unit that has a dwelling and contents replacement cost of:

- \$1 million or more cannot obtain insurance in Citizens starting January 1, 2014, but property insured by Citizens for \$1 million or more on December 31, 2013, can remain insured in Citizens until the policy expires in 2014, but cannot be renewed.
- \$900,000 or more cannot obtain insurance in Citizens starting January 1, 2015, but property insured for \$900,000 or more on December 31, 2014, can remain insured in Citizens until the policy expires in 2015, but cannot be renewed.
- \$800,000 or more cannot obtain insurance in Citizens starting January 1, 2016, but property insured for \$800,000 or more on December 31, 2015, can remain insured in Citizens until the policy expires in 2016, but cannot be renewed.
- \$700,000 or more cannot obtain insurance in Citizens starting January 1, 2017, but property insured for \$700,000 or more on December 31, 2016, can remain insured in Citizens until the policy expires in 2017, but cannot be renewed.

However, Citizens is allowed to insure structures with a dwelling replacement cost or a condominium unit with a dwelling and contents replacement cost of \$1 million or less in Miami-Dade and Monroe counties, after the OIR determined these counties to be non-competitive.

Citizens does not have any eligibility restrictions based on the value of the property insured for condominium associations, homeowner associations, or apartment building policies. Citizens has multiple eligibility and coverage restrictions for commercial businesses, depending on where the business is located and the type of policy the business purchases from Citizens. These restrictions are contained in the underwriting rules of Citizens, not in the statute.

Eligibility Based on Location of Property

Current law also provides an eligibility restriction for insurance in Citizens based on the location of the property. Major structures for which a building permit for new construction or a

⁶ Section 627.351(6)(c)5., F.S.

⁷ Section 627.351(6)(c)5., F.S.

⁸ Section 627.351(6)(a)3., F.S.

substantial improvement of the structure is applied for on or after July 1, 2015, and which are located seaward of the Coastal Construction Control Line (CCCL) or within the Coastal Barrier Resources System (CBRS) are ineligible for insurance in Citizens. The definition of “major structure” in s. 161.54, F.S., applies to Citizens’ eligibility and is very broad, encompassing all residential and commercial buildings including houses, mobile homes, apartment buildings, condominiums, hotels, motels, and restaurants. The definition of “substantial improvement” in s. 161.54, F.S., applies to Citizens’ eligibility. Generally, this definition makes any repair, reconstruction, rehabilitation, or improvement to a structure that costs 50 percent or more of the market value of the structure a “substantial improvement.” The statutory definition contains additional parameters and guidance and exclusions.

Coastal Construction Control Line

The CCCL establishes an area of jurisdiction in which special siting and design criteria are applied to construction and related activities along the coast. Due to the potential environmental impacts and greater risk of hazards from wind and flood, the standards for construction within the CCCL are often more stringent than those applied in the rest of the state. Chapter 62B-33, Florida Administrative Code, provides the design and siting requirements for obtaining a CCCL permit. Approval or denial of a permit application is based upon a review of the siting of structures relative to their proximity to the beach and the potential impacts to the beach dune system, adjacent properties, native salt resistant vegetation, and marine turtles. While most permit requests are approved as submitted, some are modified during the permitting process. The CCCL starts on the northeast coast of Florida near Fernandina Beach and runs south along the coast, ending approximately at Key Biscayne. On the west coast it extends from Crystal Beach in Pinellas County south along the coast to Marco Island in Collier County. There are very small pockets of CCCL areas north of Pinellas County until you reach the western border of Wakulla County. The CCCL then begins again in Franklin County in the panhandle and extends west to the Florida and Alabama border on the coast near Perdido Bay.

Coastal Barrier Resources System

The Coastal Barrier Resources Act (CBRA) was passed by Congress in 1982. The CBRA restricted federal spending and financial assistance in an effort to discourage development within a CBRS. The CBRS is composed of designated barrier areas that protect the inland area. While the CBRA does not prohibit privately financed development, it does prohibit new federal financial assistance, including the purchasing of federal flood insurance from FEMA. In 1990, Congress passed the Coastal Barrier Improvement Act (CBIA). The CBIA tripled the size of the CBRS but allowed buildings constructed before 1982 to be covered by the federal flood insurance program. The CBRS consists of many of the coastal barriers in the state, including the entirety of the Florida Keys. There are 128 designated coastal barriers within Florida.

III. Effect of Proposed Changes:

CS/SB 842 revises current law which makes ineligible for Citizens coverage structures located seaward of the Coastal Construction Control Line or within a Coastal Barrier Resources System for which, after July, 1, 2015, a permit application is made for new construction or substantial improvement of the structure. The bill allows Citizens to provide coverage on structures built

before July 1, 2015, located seaward of the Coastal Construction Control Line or within a Coastal Barrier Resources System, and remodeled or rebuilt after July 1, 2015, to a size of more than 25 percent greater than the original building's square footage of finished area.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Property owners in the Florida Keys and other areas along the coast, who rebuild or remodel structures seaward of the CCCL or within a CBRS can remain eligible for coverage by Citizens as long as the structure is rebuilt or remodeled to a size no greater than 125 percent of the original building's square footage of finished area. This will prevent certain circumstances where an insured is unable to obtain coverage for their property, particularly in coastal areas for which Citizens may be the only option for obtaining insurance. Under current law, a Citizens policyholder in these areas could incur a major loss, rebuild their home to the same or similar size, and be ineligible for coverage by Citizens.

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 by Banking and Insurance on March 10, 2015:

Clarified the square footage limitations of the bill apply to total square footage of finished space as defined by the American National Standard Institute.⁹

- B. **Amendments:**

None.

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

⁹ American National Standards Institute, *Z765-Square Footage-Method for Calculating*, 2003.



462250

LEGISLATIVE ACTION

Senate

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. .

House

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

Senate Amendment

Delete line 37
and insert:
municipality, or special district, if such county, municipality,
or special district has existing impact fees, to provide,
construct,



331404

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment

Delete lines 45 - 55

and insert:

201.032 Discretionary surcharge on deeds and other instruments in lieu of impact fees.-

(1) In lieu of an impact fee, a county or municipality may impose a discretionary surcharge on documents taxable under s. 201.02 for the purpose of financing capital improvements or facilities authorized under subsection (5). A county or



331404

11 municipality may impose more than one surcharge pursuant to this
12 section; however, the combined total of all surcharges imposed
13 by a county and each municipality within such county may not
14 exceed the rate of \$1 for each \$100, or fractional part thereof,
15 of the consideration for the real property interest transferred.



467102

LEGISLATIVE ACTION

Senate

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. .

House

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

Senate Amendment

Delete lines 66 - 69
and insert:
the county or municipality. The ordinance may take effect only
on January 1 of any given year and may terminate only on
December 31 of any given year. The county shall notify the
department within 10 days after final adoption of the ordinance
imposing, terminating, or changing the rate of a surcharge, but
no later than September 1 prior to the effective date.



134762

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment

Delete line 103
and insert:
surcharge on documents pursuant to this section

By Senator Hays

11-00685-15

2015850__

1 A bill to be entitled
2 An act relating to local government; amending s.
3 163.31801, F.S.; authorizing the use of impact fees to
4 provide, construct, improve, repair, alter, or replace
5 new and existing capital facilities; creating s.
6 201.032, F.S.; authorizing a county or municipality to
7 impose a surcharge on documents taxable under s.
8 201.02, F.S., for the purpose of funding certain
9 capital improvements and capital facilities in lieu of
10 impact fees; restricting the amount of the surcharge;
11 specifying procedures to enact an ordinance to impose
12 the surcharge and specifying the effective date of
13 such ordinance; requiring that a copy of the notice be
14 provided to the Department of Revenue; requiring the
15 department to pay certain moneys to a county or
16 municipality that imposes the surcharge; requiring a
17 county or municipality to deposit revenues from the
18 surcharge into a special trust fund and to annually
19 provide certain information about such fund to the
20 department; specifying authorized uses of surcharge
21 revenues; prohibiting a county or municipality that
22 imposes a surcharge for an authorized purpose from
23 also assessing an impact fee for the same purpose;
24 providing applicability; providing for construction;
25 providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Present subsections (4) and (5) of section

11-00685-15

2015850__

30 163.31801, Florida Statutes, are redesignated as subsections (5)
31 and (6) respectively, and a new subsection (4) is added to that
32 section, to read:

33 163.31801 Impact fees; short title; intent; definitions;
34 ordinances levying impact fees.—

35 (4) Notwithstanding any other provision of law, a charter,
36 or an ordinance, an impact fee may be used by a county,
37 municipality, or special district to provide, construct,
38 improve, repair, alter, or replace new and existing capital
39 facilities, including, but not limited to, transportation
40 facilities, utilities, water and sewer systems, parks and
41 recreational facilities, libraries, educational facilities, and
42 health systems and facilities.

43 Section 2. Section 201.032, Florida Statutes, is created to
44 read:

45 201.032 Discretionary surcharge on real property
46 transactions in lieu of impact fees.—

47 (1) In lieu of an impact fee, a county or municipality may
48 impose a discretionary surcharge on documents taxable under s.
49 201.02 for the purpose of financing capital improvements or
50 facilities authorized under subsection (5). A county or
51 municipality may impose more than one surcharge pursuant to this
52 section; however, the combined total of all surcharges imposed
53 by a county and each municipality within such county may not
54 exceed the rate of \$1 for each \$100, or fractional part thereof,
55 of the consideration therefor.

56 (2) A discretionary surcharge imposed pursuant to this
57 section must be established by ordinance. The ordinance must be
58 proposed at a regular meeting of the governing authority of the

11-00685-15

2015850__

59 county or municipality at least 2 weeks before formal adoption,
60 must explicitly state the purpose under subsection (5) for which
61 the surcharge is imposed, and must restrict the use of the
62 revenues of the surcharge, including penalties and accrued
63 interest thereon, for such purpose. Formal adoption of such
64 ordinance is not effective unless approved on a final vote by a
65 majority of the total membership of the governing authority of
66 the county or municipality. The ordinance may not take effect
67 until 90 days after formal adoption. Within 10 days after formal
68 adoption, the county or municipality must provide a copy of the
69 ordinance to the Department of Revenue.

70 (3) The Department of Revenue shall pay to the governing
71 authority of a county or municipality that imposes a
72 discretionary surcharge all moneys, penalties, and interest
73 collected under this section, less any administrative costs.

74 (4) The county or municipality shall deposit revenues from
75 the imposition of a discretionary surcharge into a trust fund
76 created solely for that purpose. Revenues from each individual
77 discretionary surcharge must be deposited into a separate trust
78 fund, except revenues from the imposition of surcharges for the
79 same purpose which may be deposited into one trust fund. The
80 county or municipality shall include in the financial report
81 required under s. 218.32 information showing the revenues and
82 expenses of each trust fund of a discretionary surcharge for the
83 fiscal year.

84 (5) The revenues of a discretionary surcharge imposed
85 pursuant to this section, including penalties and accrued
86 interest thereon, may be used only to provide, construct,
87 improve, repair, alter, or replace any of the following:

11-00685-15

2015850__

88 (a) Utilities and water and sewer systems.

89 (b) Transportation facilities.

90 (c) Park, recreational, library, and health system
91 facilities.

92 (d) Educational facilities.

93 1. Funds from the surcharge revenues trust fund may be
94 transferred to the local school district pursuant to an
95 interlocal agreement, which shall govern the authorized use of
96 the funds and required financial reporting.

97 2. A school district receiving funds pursuant to this
98 section shall prepare and submit an annual report to the
99 governing authority of the county detailing the expenditure of
100 funds transferred to the school district pursuant to this
101 section.

102 (6) A county or municipality that imposes a discretionary
103 surcharge on real property transactions pursuant to this section
104 for a purpose authorized under subsection (5) may not also
105 assess an impact fee for the same purpose while the surcharge is
106 in effect.

107 (7) All provisions of this chapter, except s. 201.15, apply
108 to a discretionary surcharge imposed pursuant to this section.

109 (8) The imposition of a discretionary surcharge pursuant to
110 this section shall be construed as being authorized by general
111 law in accordance with ss. 1 and 9, Art. VII of the State
112 Constitution.

113 Section 3. 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)

3/23/15

Meeting Date

SB 850

Bill Number (if applicable)

Topic SB 850

Amendment Barcode (if applicable)

Name Jerry Kinder

Job Title President of Florida Home Builders

Address 2600 Centennial Pl

Phone 904-655-8899

Street

Tallahassee FL 32308

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing Florida Home Builders

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)

3/23/15

Meeting Date

850

Bill Number (if applicable)

Topic Local Government Taxes

Amendment Barcode (if applicable)

Name Troy Price

Job Title Public Policy Representative

Address 200 S. Monroe St

Phone 224-1400

Street

Tallahassee FL 32301

City

State

Zip

Email TroyP@floridarealtors.org

Speaking: For Against Information

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

Representing Florida Realtors

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ALAN HAYS

11th District

March 20, 2015

The Honorable Wilton Simpson
322 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Simpson,

Due to a prior commitment in the district, I will not be in Tallahassee in time to present SB 850, Local Government, in the Community Affairs committee. Please allow my legislative aide, Nanci Cornwell, to present this bill in my absence.

Thank you for your kind consideration of this matter.

Sincerely,

A handwritten signature in cursive script that reads "D. Alan Hays".

D. Alan Hays

COMMITTEES:

Appropriations Subcommittee on General Government, *Chair*
Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Environmental Preservation and Conservation
Ethics and Elections
Fiscal Policy

JOINT COMMITTEE:

Joint Select Committee on Collective Bargaining, *Alternating Chair*

REPLY TO:

- 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
- 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
- 685 West Montrose Street, Suite 210, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on General Government, *Chair*
Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Environmental Preservation and Conservation
Ethics and Elections
Fiscal Policy

JOINT COMMITTEE:

Joint Select Committee on Collective Bargaining, *Alternating Chair*

SENATOR ALAN HAYS

11th District

MEMORANDUM

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

From: Senator D. Alan Hays

Subject: Request to agenda SB 850 – Local Government

Date: February 24, 2015

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

Sincerely,

A handwritten signature in cursive script that reads "D. Alan Hays, DMD".

D. Alan Hays, DMD
State Senator, District 11

REPLY TO:

- 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
- 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
- 685 West Montrose Street, Suite 210, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 850

INTRODUCER: Senator Hays

SUBJECT: Local Government

DATE: March 20, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stearns	Yeatman	CA	Pre-meeting
2.			FT	
3.			FP	

I. Summary:

SB 850 authorizes the use of impact fees to construct, repair or replace new or existing capital facilities. The bill authorizes counties and municipalities to impose a surcharge on documents taxable under s. 201.02, F.S., in lieu of imposing an impact fee. The proceeds from the documentary surcharge must be used to fund certain capital improvements. The bill places a limit on the total amount of surcharges that may be levied under this section. The bill provides procedural and reporting requirements and mandates that funds from a documentary surcharge be maintained in a separate trust fund.

II. Present Situation:

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.¹ Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.² Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.³

The Florida Statutes enumerate the powers and duties of all county governments, unless preempted on a particular subject by general or special law.⁴ Those powers include the provision of fire protection, ambulance services, parks and recreation, libraries, museums and other cultural facilities, waste and sewage collection and disposal, and water and alternative water

¹ FLA. CONST. art VIII, s. 1(f).

² FLA. CONST. art VIII, s. 1(g).

³ FLA. CONST. art VIII, s. 2(b). *See also* s. 166.021(1), F.S.

⁴ Section 125.01, F.S.

supplies. Article VIII, Section 2 of the State Constitution and s. 166.021, F.S., grant municipalities broad home rule powers.

Given these constitutional and statutory powers, local governments may use a variety of revenue sources to fund services and improvements without express statutory authorization.⁵ Special assessments, impact fees, franchise fees, and user fees or service charges are examples of these home rule revenue sources.⁶

Impact Fees

Impact fees are enacted by local ordinance. These fees are tailored to pay the cost of additional infrastructure necessitated by new development. As a result, impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee. Impact fees also vary extensively depending on local costs, capacity needs, resources, and the local government's determination to charge the full cost or only part of the cost of the infrastructure improvement through utilization of the impact fee.

Statutory Authority for Impact Fees

In 2006, the Legislature enacted s. 163.31801, F.S., to provide requirements and procedures to be followed by a county, municipality, or special district when it adopts an impact fee. An impact fee ordinance adopted by local government must:

- Require that the calculation of the impact fee be based on the most recent and localized data;
- Provide for accounting and reporting of impact fee collections and expenditures; if a local government imposes an impact fee to address its infrastructure needs, the entity must account for the revenues and expenditures of such impact fee in a separate accounting fund;
- Limit administrative charges for the collection of impact fees to actual costs; and
- Require that notice be provided at least 90 days before the effective date of a new or amended impact fee.⁷

The Dual Rational Nexus Test

Impact fees have their roots in the common law. A number of court decisions have addressed challenges to the legality of impact fees.⁸ In *Hollywood, Inc. v. Broward County*,⁹ the Fourth District Court of Appeal addressed the validity of a county ordinance that required a developer, as a condition of plat approval, to dedicate land or pay a fee for the expansion of the county level

⁵ The exercise of home rule powers by local governments is constrained by whether an inconsistent provision or outright prohibition exists in the constitution or a general law or special law regarding the power at issue. Article VII, s. 1 of the State Constitution prohibits counties and municipalities from levying a tax without express statutory authorization. However, local governments may levy special assessments and a variety of fees absent any general law prohibition, provided such home rule funding source meets the relevant legal sufficiency tests.

⁶ For a catalogue of such revenue sources, see the most recent editions of the Florida Legislature's *Local Government Financial Information Handbook* and the *Florida Tax Handbook*.

⁷ Section 163.31801, F.S. Other sections of law also address the ability of local governments or special districts to levy impact fees. See ss. 163.3202(3), 191.009(4), and 380.06, F.S.

⁸ See, e.g., *Contractors & Builders Ass'n v. City of Dunedin*, 329 So. 2d 314 (Fla. 1976); *Home Builders and Contractors' Association v. Board of County Commissioners of Palm Beach County*, 446 So. 2d 140 (Fla. 4th DCA 1983).

⁹ *Hollywood, Inc. v. Broward County*, 431 So. 2d 606 (Fla. 4th DCA 1983).

park system to accommodate the new residents of the proposed development. The court found that a reasonable dedication or impact fee requirement is permissible if (1) it offsets needs that are sufficiently attributable to the new development and (2) the fees collected are adequately earmarked for the benefit of the residents of the new development.¹⁰ These two requirements are called the dual rational nexus test. In order to show the impact fee meets those requirements, the local government must demonstrate a rational relationship between the need for additional public facilities and the proposed development. In addition, the local government must show the funds are earmarked for the provision of public facilities to benefit the new residents.¹¹

In *Volusia County v. Aberdeen at Ormond Beach*, the Florida Supreme Court ruled that when a residential development has no potential to increase school enrollment, public school impact fees may not be imposed.¹² The county in that case had imposed a school impact fee on a deed-restricted community for adults 55 years old and older. In *City of Zephyrhills v. Wood*, the district court upheld an impact fee on a recently purchased and renovated building, finding that structural changes had corresponding impacts on the city's water and sewer system.¹³

As developed under case law, an impact fee must have the following characteristics to be legal:

- The fee is levied on new development, the expansion of existing development, or a change in land use that requires additional capacity for public facilities;
- The fee represents a proportional share of the cost of public facilities needed to serve new development;
- The fee is earmarked and expended for the benefit of those in the new development who have paid the fee;
- The fee is a one-time charge, although collection may be spread over a period of time;
- The fee is earmarked for capital outlay only and is not expended for operating costs; and
- The fee-payers receive credit for the contributions toward the cost of the increased capacity for public facilities.

The Documentary Stamp Tax

Section 201.02, F.S., levies a tax on deeds and other instruments relating to real property or interests in real property. The tax is due when the deed or other paper is delivered, regardless of when the sale occurs.¹⁴ When a deed is deposited in escrow the tax is not due until its delivery to the grantee. The tax must be paid on all taxable conveyances, regardless of where the document was made, executed, or delivered.¹⁵

III. Effect of Proposed Changes:

Section 1 amends s. 163.31801, F.S., to provide that an impact fee may be used by a county, municipality or special district to construct, improve, repair or replace new and existing capital facilities.

¹⁰ *Id.* at 611.

¹¹ *Id.* at 611-12.

¹² *Volusia County v. Aberdeen at Ormond Beach*, 760 So. 2d 126, 134 (Fla. 2000).

¹³ *City of Zephyrhills v. Wood*, 831 So. 2d 223, 225 (Fla. 2d DCA 2002).

¹⁴ Fla. Admin. Code R. 12B-4.011(1).

¹⁵ Fla. Admin. Code R. 12B-4.011(2).

Section 2 creates s. 201.032, F.S., to authorize a county or municipality to impose a discretionary surcharge on documents taxable under s. 201.02, F.S.,¹⁶ in lieu of an impact fee. The surcharge on documents must be for the purpose of financing capital improvements or the following facilities:

- Utilities and water and sewer systems.
- Transportation facilities.
- Park, recreational, library, and health system facilities.
- Educational facilities.

A county or municipality may impose more than one surcharge under this bill, however the combined total of all surcharges may not exceed the rate of \$1 for each \$100, or fractional part thereof.

A discretionary surcharge imposed pursuant to this section must be established by ordinance. The bill provides procedural requirements for adoption of the ordinance. The purpose of the surcharge must be expressed prior to its enactment and the proceeds of the surcharge must be restricted to that purpose.

The Department of Revenue (DOR) is directed to pay to the governing body of a county or municipality that enacts such a surcharge all moneys, penalties, and interest collected under this section, minus any administrative costs.

The revenue from the surcharge must be maintained in a trust fund created solely for that purpose. Revenues from individual surcharges must be maintained in separate trust funds, except revenues from surcharges levied for the same purpose may be deposited into the same trust fund. The county or municipality is required to include information showing the revenues and expenses of each such trust fund for the fiscal year in the financial report that it must submit pursuant to s. 218.32, F.S.

Revenue in the trust funds may be transferred to the local school district pursuant to an interlocal agreement, which must govern the authorized use of the funds and the required financial reporting. A school district receiving such funds must prepare and submit an annual report to the governing body of the county or municipality levying the surcharge detailing the expenditure of the funds.

A county or municipality that imposes a discretionary surcharge may not also assess an impact fee for the same purpose while the surcharge is in effect.

All provisions of ch. 201, F.S., apply to a discretionary surcharge under this bill except for s. 201.15, F.S.¹⁷

¹⁶ Section 201.02, F.S., applies to deeds and other instruments relating to real property or interests in real property.

¹⁷ Section 201.15, F.S., relates to the distribution of taxes collected.

The bill provides that the imposition of a discretionary surcharge pursuant to this section shall be construed as being authorized by general law in accordance with Art. VII, ss. 1 and 9 of the State Constitution.

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.

D. Other Constitutional Issues:

The bill authorizes the use of impact fees for repairing or replacing existing capital facilities, in addition to the construction of new facilities. However, as discussed above, Florida courts have ruled that impact fees must be used to pay for infrastructure improvements necessitated by the new development. Furthermore, they must be used specifically to benefit the citizens subject to the tax and cannot be used to provide a benefit that instead goes to the general public, even though the general public includes those citizens required to pay the impact fee.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DOR bill analysis states that the agency will be charged a one-time fee of \$15,000 by the outside e-services vendor to update the web application to facilitate collection of the new documentary stamp tax. The bill also requires the DOR to have the ability to make monthly rate changes within the schedule based on local ordinances. The vendor agreed to a one-time cost of \$4,000 to build a website console to allow individual rates to be continuously updated and maintained.

The DOR analysis states that implementation of the bill will require 290 contractor hours at a cost of \$26,970 and 244 in-house hours to provide necessary modifications to the DOR Unified Tax System.

The DOR also opines that a “significant amount of administrative time will need to be allocated to tracking of ordinances at the city level;” however, the costs associated with this duty will be absorbed by the DOR.

Altogether, the bill is estimated to have a \$45,970 impact on the agency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

There may be an internal inconsistency in the bill. Subsection (1) of Section 2 of the bill states that a documentary surcharge may be utilized for the purpose of financing capital improvements *or* facilities authorized under subsection (5). Subsection (5) states that the revenues derived from a documentary surcharge may be used only for specific types of capital improvements. The broader language of subsection (1) may lead to confusion as to whether the funds can be used to pay for other types of capital improvements.

Limitation on Surcharges

The bill states that the combined total of all surcharges imposed by a county and each municipality within the county may not exceed the rate of \$1 for each \$100, or fractional part thereof, of the consideration paid for the property interest. The bill does not clarify how the portions of this \$1 surcharge will be meted out to the municipal and county governments. As the bill is currently written, the first governmental entity could levy the full \$1, thereby preventing the county from utilizing the surcharge.

Frequency of Adoption of Surcharges

The DOR analysis discusses the lack of a limit on the frequency with which a county or municipality may adopt or modify an ordinance applying a surcharge on documents. The DOR recommends inserting language to require the effective date of such ordinances to be January 1 and the termination date to be December 31. The DOR also recommends that a jurisdiction enacting a surcharge be required to notify the DOR of the surcharge change by September 1 of the year prior to the surcharge effective date. In the alternative, the DOR suggests granting the DOR permanent emergency rulemaking authority to allow for implementation of surcharges enacted at various times throughout the year.

VIII. Statutes Affected:

This bill substantially amends section 163.31801 of the Florida Statutes.

This bill creates section 201.032 of the Florida Statutes.

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

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

By the Committee on Governmental Oversight and Accountability;
and Senator Evers

585-02130-15

20151054c1

1 A bill to be entitled
2 An act relating to retirement; amending s. 121.055,
3 F.S.; authorizing local agency employers to reassess
4 designation of positions for inclusion in the Senior
5 Management Service Class; providing for removal of
6 certain positions; providing an effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Subsection (2) of section 121.055, Florida
11 Statutes, is amended to read:

12 121.055 Senior Management Service Class.—There is hereby
13 established a separate class of membership within the Florida
14 Retirement System to be known as the "Senior Management Service
15 Class," which shall become effective February 1, 1987.

16 (2) (a) Participation in this class shall cease when the
17 member terminates employment in an eligible position. Once a
18 position is designated as eligible for inclusion in the class,
19 that position may ~~shall~~ not be removed from the class unless the
20 duties and responsibilities of the position change substantially
21 and therefore no longer meet the requirements provided in this
22 section for participation in the class, except as provided in
23 paragraph (b).

24 (b) Beginning ~~Effective~~ July 1, 2015 ~~1997~~, and every 5
25 years thereafter, each local agency employer may, between July
26 1, ~~1997~~, and December 31, ~~1997~~, reassess its designation of
27 positions for inclusion in the Senior Management Service Class
28 as provided in paragraph (1) (b), and may request removal from
29 the class of any such positions that it deems appropriate. The

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30 ~~such~~ removal of any previously designated positions is ~~shall be~~
31 effective on the first day of the month following written
32 notification of removal to the division before ~~prior to~~ January
33 ~~1, 1998~~.

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



The Florida Senate

Committee Agenda Request

To: Senator Simpson
Chair, Community Affairs

Subject: Committee Agenda Request

Date: March 12, 2015

I respectfully request that **Senate Bill #1054** relating to Retirement, 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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1054

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Evers

SUBJECT: Retirement

DATE: March 23, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1054 grants local government employers the authority to reassess its designation of positions in, and remove positions from, the Senior Management Service Class of the Florida Retirement System. The first period during which positions may be reassessed is July 1, 2015, through December 31, 2015, and every 5 years thereafter.

II. Present Situation:

The Senior Management Service Class (SMSC) of the Florida Retirement System (FRS) was established initially on February 1, 1987.¹ The SMSC consists of state and local government employees who are statutorily defined as members of the SMSC or fill full-time positions designated by the local employers as having managerial or policymaking responsibilities. As of June 30, 2014, there were 7,607 active members in the SMSC² comprising roughly 1.2 percent of the active FRS membership.

The SMSC includes the following local government positions:

- Presidents of each community college;³

¹ Section 121.055, F.S.

² Florida Dep't of Management Services, *The Florida Retirement System Pension Plan and Other State Administered Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2014*, at p. 115, available online at: https://www.rol.frs.state.fl.us/forms/2013-14_CAFR.pdf.

³ Section 121.055(1)(b), F.S.

- Managers of each participating municipality or county;⁴
- Appointed district school superintendents;⁵
- Executive director or staff director of any metropolitan planning organization participating in the FRS;⁶
- Up to 10 nonelective full-time positions to be designated by each local agency employer;⁷ and
- For local agencies with 100 or more regularly established positions, additional nonelective full-time positions to be designated but not to exceed 1 percent of the regularly established positions within the agency.⁸

To be included in the SMSC, the positions designated by the local agency employer must be managerial or policymaking positions. The employee filling the position must serve at the pleasure of the local agency employer without civil service protection, and who either (a) heads an organizational unit or (b) has responsibility to effect or recommend personnel, budget, expenditure, or policy decisions in his or her areas of responsibility.

The local agency employer must publish the intent to designate positions for inclusion in the Senior Management Service Class once a week for two consecutive weeks in a newspaper of general circulation published in the county or counties affected, as provided in ch. 50, F.S. The SMSC eligibility then belongs to the position and the incumbent filling that position.

Once a position is designated as a SMSC position, it is not removed from the SMSC unless the duties and responsibilities of the position change substantially and it no longer meets the requirements for participation in this class of membership.

A local agency employer includes a board of county commissioners; an elected clerk of the circuit court, sheriff, property appraiser, tax collector, or supervisor of elections; a community college board of trustees; a district school board; the governing body of a municipality, metropolitan planning organization, or special district.⁹

The table below shows the differences between Regular Class membership and SMSC membership in the FRS. If the position is no longer in the SMSC, it will, by default, be within the Regular Class.

	Regular Class	SMSC
Annual Service Credit	1.6 percent to 1.68 percent for each year of service	2 percent for each year of service
Investment Plan Contribution into member account	6.3 percent of salary (including 3 percent of member contribution)	7.67 percent of salary (including 3 percent of member contribution)

⁴ *Id.*

⁵ *Id.*

⁶ Section 121.055(1)(l), F.S.

⁷ Section 121.055(1)(b)1.b., F.S.

⁸ *Id.*

⁹ Section 121.021(42)(a), F.S.

III. Effect of Proposed Changes:

CS/SB 1054 allows local agency employers to reassess positions previously designated as SMSC positions. The local employers may request removal of the reviewed positions from the SMSC if done within the 6-month period. The change in the designated SMSC positions is effective beginning the month after the notification is received by the division. The bill establishes a SMSC redesignation window every 5 years.

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

The bill allows local governments to review and redesignate their positions covered by the SMSC. It does not change the total number of positions that can be designated and does not require local agency employers to reassess any positions. All changes are prospective.

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 6-month window in 2015 and each 5 years thereafter creates a temporary increase in agency workload. The time to process these requests for removal, redesignation and other related SMSC changes is estimated at 20 hours per week for the 6-month processing period. The estimated cost is \$18,900 in staff overtime to accommodate this periodic increase in workload.¹⁰

¹⁰ Dep't of Management Services, *Legislative Bill Analysis for SB 1054*, at 3 (Feb. 27, 2015).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 121.055 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 Governmental Oversight and Accountability on March 10, 2015:

Eliminates the restriction that the position be vacant at the time the position is removed from the Senior Management Service Class.

- B. **Amendments:**

None.

By the Committee on Banking and Insurance; and Senator Simmons

597-02121-15

20151130c1

1 A bill to be entitled
2 An act relating to windstorm premium discounts;
3 amending s. 627.711, F.S.; providing that an insurer
4 issuing a policy to a new policyholder may accept as
5 valid only specified uniform mitigation verification
6 inspection forms; providing that such requirement does
7 not apply to certain new policies removed from
8 Citizens Property Insurance Corporation; providing an
9 effective date.

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

12
13 Section 1. Paragraph (a) of subsection (2) of section
14 627.711, Florida Statutes, is amended, and paragraph (c) is
15 added to that subsection, to read:

16 627.711 Notice of premium discounts for hurricane loss
17 mitigation; uniform mitigation verification inspection form.—

18 (2) (a) The Financial Services Commission shall develop by
19 rule a uniform mitigation verification inspection form that
20 shall be used by all insurers when submitted by policyholders
21 for the purpose of factoring discounts for wind insurance. In
22 developing the form, the commission shall seek input from
23 insurance, construction, and building code representatives.
24 Further, the commission shall provide guidance as to the length
25 of time the inspection results are valid. An insurer shall
26 accept as valid a uniform mitigation verification inspection
27 form signed by the following authorized mitigation inspectors:

28 1. A home inspector licensed under s. 468.8314 who has
29 completed at least 3 hours of hurricane mitigation training

597-02121-15

20151130c1

30 approved by the Construction Industry Licensing Board which
31 includes hurricane mitigation techniques and compliance with the
32 uniform mitigation verification inspection form and completion
33 of a proficiency exam;

34 2. A building code inspector certified under s. 468.607;

35 3. A general, building, or residential contractor licensed
36 under s. 489.111;

37 4. A professional engineer licensed under s. 471.015;

38 5. A professional architect licensed under s. 481.213; or

39 6. Any other individual or entity recognized by the insurer
40 as possessing the necessary qualifications to properly complete
41 a uniform mitigation verification inspection form.

42 (c) An insurer issuing a policy to a new policyholder may
43 accept as valid only the uniform mitigation verification
44 inspection form:

45 1. Most recently adopted by the commission by rule; or

46 2. Previously adopted by the commission by rule if the form
47 was completed within 5 years preceding the effective date of the
48 new policy.

49
50 This paragraph does not apply to a new policy that was removed
51 from Citizens Property Insurance Corporation through a take-out
52 or assumption agreement.

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



The Florida Senate

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Community Affairs

Subject: Committee Agenda Request

Date: March 10, 2015

I respectfully request that **Senate Bill 1130**, relating to Windstorm Premium Discounts, be placed on the:

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

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

Senator David Simmons
Florida Senate, District 10

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1130

INTRODUCER: Banking and Insurance Committee and Senator Simmons

SUBJECT: Windstorm Premium Discounts

DATE: March 20, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable</u>
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1130 requires insurers, when writing new policies and applying mitigation discounts, to only accept as valid the most recently approved uniform wind mitigation verification inspection form or a previously approved form completed within 5 years of the effective date of the new policy. The provisions of the bill do not apply to a new policy that was removed from Citizens Property Insurance Corporation through a take-out or assumption agreement.

II. Present Situation:

Uniform Mitigation Verification Inspection Form

Section 627.0629, F.S., requires rate filings for residential property insurance to include actuarially reasonable discounts, credits, or other rate differentials, or appropriate reductions in deductibles to consumers who implement windstorm damage mitigation techniques to their properties. The windstorm mitigation measures that must be evaluated for purposes of mitigation discounts include fixtures or construction techniques that enhance roof strength; roof covering performance; roof-to-wall strength; wall-to-floor foundation strength; opening protections; and window, door, and skylight strength.

Section 627.711, F.S., requires insurers to clearly notify an applicant or policyholder of a personal lines residential property insurance policy of the availability and range of each premium discount, credit, other rate differential, or reduction in deductibles, for wind mitigation. The

notice must be provided when the policy is issued and upon each renewal. The notification must be done on a form developed by the Office of Insurance Regulation, known as the Notice of Premium Discounts for Hurricane Loss Mitigation.

To qualify for a hurricane premium discount, consumers must submit a completed Uniform Mitigation Verification Inspection Form developed by rule by the Financial Services Commission.¹ Changes to the most current uniform wind mitigation verification inspection form were adopted in January of 2012.² The current uniform wind mitigation verification inspection form states that it is valid for up to 5 years provided no material changes have been made to the structure. However, an insurer issuing a policy to a new policyholder can request a new inspection be completed prior to issuing a new policy if the completed form is more than 5 years old. Furthermore, an insurer at its own expense may at any time require a uniform wind mitigation verification inspection form to be independently verified by a qualified inspector, inspection company or third party quality assurance provider.³

Certified Wind Mitigation Inspector

Under current law an insurer must accept a uniform mitigation verification form signed by an authorized mitigation inspector. Those who qualify as an authorized mitigation inspector include:

- A home inspector licensed under s. 468.8314, F.S., who has completed at least 3 hours of hurricane mitigation training approved by the Construction Industry Licensing Board which includes hurricane mitigation techniques and compliance with the uniform mitigation verification form and completion of a proficiency exam;
- A building code inspector certified under s. 468.607, F.S.;
- A general, building, or residential contractor licensed under s. 489.111, F.S.;
- A professional engineer licensed under s. 471.015, F.S.;
- A professional architect licensed under s. 481.213, F.S.; or
- Any other individual or entity recognized by the insurer as possessing the necessary qualifications to properly complete a uniform mitigation verification form.

A person who is authorized to sign a mitigation verification form must personally inspect the structures referenced by the form, not through employees or other persons, and must certify or attest to personal inspection of the structures referenced by the form. However, licensed engineers under s. 471.015, F.S., and licensed contractors under s. 489.111, F.S., may authorize a direct employee, who is not an independent contractor, and who possesses the requisite skill, knowledge and experience, to conduct a mitigation verification inspection. Insurers have the right to request and obtain information regarding any authorized employee's qualifications prior to accepting a mitigation verification form.

An authorized mitigation inspector that signs a uniform mitigation form and a direct employee authorized to conduct mitigation verification inspections may not commit misconduct when performing an inspection. Misconduct occurs when an authorized mitigation inspector signs a uniform mitigation verification form that:

¹ Rule 69O-170.0155, F.A.C.

² *Id.*

³ Section 627.711(8), F.S.

- Falsely indicates that he or she personally inspected the structures referenced by the form;
- Falsely indicates the existence of a feature which entitles an insured to a mitigation discount which the inspector knows does not exist or did not personally inspect;
- Contains erroneous information due to the gross negligence of the inspector; or
- Contains a pattern of demonstrably false information regarding the existence of mitigation features that could give an insured a false evaluation of the ability of the structure to withstand major damage from a hurricane endangering the safety of the insured's life and property.

The licensing board of an authorized mitigation inspector may commence disciplinary proceedings and impose administrative fines and other sanctions for such misconduct violations.

III. Effect of Proposed Changes:

Section 1 amends s. 627.711, F.S., to require insurers, when writing new policies and applying mitigation discounts, to only accept as valid the most recently approved uniform wind mitigation verification inspection form or a previously approved form completed within 5 years of the effective date of the new policy. The provisions of the bill do not apply to a new policy that was removed from Citizens Property Insurance Corporation through a take-out or assumption agreement.

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:

Except for a Citizens Property Insurance Corporation takeout or assumption agreement, a policyholder who switched insurers and previously had a mitigation inspection that was

completed more than 5 years ago on a previously approved form will need to pay for a new inspection in order for their new insurer to allow the mitigation credits.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.711 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Banking and Insurance on March 10, 2015:

Exempts a new policy that was removed from Citizens Property Insurance Corporation through a take-out or assumption agreement from the provisions of the bill.

B. Amendments:

None.

By the Committee on Judiciary; and Senator Braynon

590-01683-15

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1 A bill to be entitled
2 An act for the relief of Javier Soria by Palm Beach
3 County; providing for an appropriation to compensate
4 him for injuries sustained as a result of negligence
5 by an employee of Palm Beach County; providing a
6 limitation on the payment of fees and costs; providing
7 an effective date.

8
9 WHEREAS, on April 17, 2007, 36-year-old Javier Soria was
10 lawfully traveling on his motorcycle northbound in the center
11 lane on SR 807 in Delray Beach in the 200 block of South
12 Congress Avenue, and

13 WHEREAS, at the same time, an employee of Palm Beach
14 County, Juan Sepeda Casas, was driving a Palm Beach County dump
15 truck with a utility trailer in tow, and

16 WHEREAS, as Mr. Casas exited the Palm Beach County
17 maintenance complex, he failed to stop at a stop sign, pulling
18 out into the path of Mr. Soria and causing a violent collision
19 between the two vehicles, and

20 WHEREAS, the Palm Beach County truck continued forward,
21 dragging Mr. Soria and the motorcycle under the dump truck for
22 approximately 12 feet, and

23 WHEREAS, Mr. Casas was charged in the accident by the
24 investigating law enforcement agency, the Delray Beach Police
25 Department, and

26 WHEREAS, as a result of the collision, Mr. Soria sustained
27 severe head trauma, including a subarachnoid hemorrhage, a
28 right-elbow fracture, deep lacerations requiring wound
29 debridement, multiple abrasions to his face, hands, legs, and

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30 arms, upper-back pain, low-back disc herniation, left-hip pain,
31 right-wrist pain, right-shoulder pain, and a right-knee linear
32 tear that required bracing, physical therapy, and surgery, and

33 WHEREAS, Mr. Soria has undergone numerous surgical
34 procedures, including irrigation debridement with placement of a
35 temporary external fixator across the elbow joint, subsequent
36 removal of the external fixator, and open reduction internal
37 fixation on ulnar fractures, and

38 WHEREAS, Mr. Soria needs additional surgery to his right
39 elbow, including elbow fusion or total elbow replacement;
40 surgeries to his right wrist and shoulder; and arthroscopic
41 surgery to his right knee; and is a candidate for total knee
42 replacement in the future, and

43 WHEREAS, Mr. Soria suffers from multiple neurological
44 injuries that cause chronic headaches, low-back pain, vision
45 problems, sleep disturbance, depression, memory loss, anxiety,
46 dizziness, tiredness, buzzing in the ears, numbness, tingling,
47 and knee pain, which limit his routine daily activities, and

48 WHEREAS, according to American Medical Association
49 guidelines, Mr. Soria's treating neurologist, Dr. Waden Emery,
50 has assigned him a 31 percent impairment rating with 5 percent
51 for headaches, 14 percent for lumbar radiculopathy, 5 percent
52 for insomnia, and 10 percent for anxiety, and

53 WHEREAS, Mr. Soria's treating orthopedist, Dr. Fernando
54 Moya, has assigned him a 39 percent whole person orthopedic
55 disability impairment rating, which includes 36 percent for
56 injuries to the right elbow, 6 percent for injuries to the right
57 knee, 6 percent for injuries to the lumbar spine, and 5 percent
58 for injuries to the right wrist, and

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59 WHEREAS, Mr. Soria's medical expenses have totaled
60 approximately \$200,254, and experts in life care planning and
61 economics have determined that his future medical expenses are
62 approximately \$640,000, and past and future lost earnings total
63 approximately \$478,000, with total economic damages exceeding
64 \$1.3 million, and

65 WHEREAS, Mr. Soria's injuries resulted in permanent
66 cognitive impairment, with the neuropsychological assessment of
67 Dr. Robert Brick concluding that Mr. Soria suffers from post-
68 traumatic stress disorder, memory loss, poor management and
69 organizational skills, mood swings, daily headaches, constant
70 ringing in his ears, insomnia, panic attacks, and amnesia that
71 require cognitive therapy, and

72 WHEREAS, Mr. Soria continues to suffer from pain and
73 instability in his head, neck, back, body, and limbs and, in
74 addition, continues to suffer from severe depression brought
75 about by his pain, suffering, disability, and limitations, all
76 of which are a direct result of the accident, and

77 WHEREAS, before the accident, Mr. Soria was in excellent
78 physical condition and had dreams of one day opening his own
79 martial arts studio and becoming a certified martial arts
80 instructor, and

81 WHEREAS, Mr. Soria's three children have a corresponding
82 right of action and claim given that Mr. Soria is now
83 permanently disabled with physical limitations and injuries and
84 cognitive restrictions and depression that limit his ability to
85 provide the companionship and support that he was once capable
86 of providing his family, and

87 WHEREAS, a settlement was reached between Mr. Soria, his

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88 three children, and Palm Beach County in the amount of \$300,000,
89 which is in addition to an \$1,800 property damage claim
90 previously paid by Palm Beach County related to the accident,
91 and

92 WHEREAS, Palm Beach County paid the claimants a total of
93 \$200,000 under the statutory limits of liability per occurrence
94 set forth in s. 768.28, Florida Statutes, which fully satisfied
95 the loss of consortium claims of each of the three children, and

96 WHEREAS, Palm Beach County has agreed to and pledged its
97 support for a claim bill in the amount of \$101,800, NOW,
98 THEREFORE,

99

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

101

102 Section 1. The facts stated in the preamble to this act are
103 found and declared to be true.

104 Section 2. Palm Beach County is authorized and directed to
105 appropriate from funds of the county not otherwise appropriated
106 and to draw a warrant in the sum of \$101,800, payable to Javier
107 Soria as compensation for injuries and damages sustained.

108 Section 3. The amount paid by Palm Beach County pursuant to
109 s. 768.28, Florida Statutes, and the amount awarded under this
110 act are intended to provide the sole compensation for all
111 present and future claims against Palm Beach County arising out
112 of the factual situation described in this act which resulted in
113 the injuries to Javier Soria. The total amount paid for attorney
114 fees, lobbying fees, costs, and other similar expenses relating
115 to this claim may not exceed 25 percent of the total amount
116 awarded under this act.

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117

Section 4. This act shall take effect upon becoming a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on General
Government, *Vice Chair*
Ethics and Elections
Health Policy
Higher Education
Regulated Industries
Transportation

JOINT COMMITTEE:

Joint Legislative Budget Commission

SENATOR OSCAR BRAYNON II

Democratic Leader Pro Tempore
36th District

March 10, 2015

Senator Wilton Simpson, Chair
Community Affairs
322 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Simpson:

This letter is to request that **Senate Bill #**, relating to ***Relief of Javier Soria by Palm Beach County*** be placed on the agenda of the next scheduled meeting of the committee.

CS/SB 42 Relief of Javier Soria by Palm Beach County; Providing for the relief of Javier Soria by Palm Beach County; providing for an appropriation to compensate him for injuries sustained as a result of negligence by an employee of Palm Beach County; providing a limitation on the payment of fees and cost, etc. CLAIM: \$101,800.00

Thank you for consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Oscar Braynon II".

Senator Braynon
District 36

cc. *Tom Yeatman, Staff Director*
Ann Whittaker, Committee Administrative Assistant – Room 315 K

REPLY TO:

- 606 NW 183rd Street, Miami Gardens, Florida 33169 (305) 654-7150 FAX: (305) 654-7152
- 213 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5036

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
302 Capitol Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
12/3/14	SM	Fav/2 amendments
02/17/15	JU	Fav/CS
03/23/15	CA	Favorable
	FP	

December 3, 2014

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 42** – Judiciary Committee and Senator Oscar Braynon, II
Relief of Javier Soria

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF \$100,000 BASED ON A SETTLEMENT AGREEMENT BETWEEN JAVIER SORIA, ET. AL., AND PALM BEACH COUNTY, WHICH RESOLVED A CIVIL ACTION THAT AROSE FROM THE NEGLIGENT OPERATION OF A COUNTY TRUCK THAT CAUSED SERIOUS BODILY INJURY TO JAVIER SORIA.

FINDINGS OF FACT:

On April 17, 2007, Javier Soria was traveling on his motorcycle northbound on SR 807 (near the 200 block of S. Congress Avenue) in Delray Beach, Palm Beach County, Florida. According to the police report prepared by the Delray Beach Police Department and an eye witness, Mr. Soria was traveling approximately 35-40 miles per hour in a 45 mph posted speed zone in the center of three lanes of northbound traffic. The eye witness was driving an automobile in the right lane of northbound traffic, alongside Mr. Soria, prior to her attempt to make a right turn into the Palm Beach County Complex at or near 225 S. Congress Avenue.

Mr. Juan Sepeda Casas, an employee of Palm Beach County, was driving a Ford dump truck with a utility trailer in tow that is owned by Palm Beach County. Mr. Casas exited the Palm Beach County complex, at or near 225 S. Congress Avenue,

from the east, which is controlled by a stop sign. Mr. Casas traveled westbound crossing the northbound lanes, violating Mr. Soria's right-of-way and causing Mr. Soria to strike the door of the county dump truck. Mr. Casas continued forward, dragging Mr. Soria who was still on his motorcycle underneath the dump truck, approximately 12 feet. The initial impact occurred in the left lane of northbound traffic as Mr. Soria attempted to avoid the collision.

The accident occurred at approximately 8:06 a.m., on a clear, dry day. Mr. Casas was charged with the accident for failure to yield the right-of-way. Mr. Soria was not cited in the police report as a contributing cause of the accident.

As a result of the collision, Mr. Soria suffered serious injuries, despite wearing a helmet. These injuries include: head trauma including a subarachnoid hemorrhage; right elbow fracture which required irrigation debridement with surgical placement of a temporary external fixator across the elbow joint, subsequent removal of the external fixator, and open reduction internal ulnar fixation; right arm swelling and deep lacerations requiring wound debridement; multiple abrasions to his face, hands, legs, and arms; upper back pain; aggravated disc herniation in lower back at L5-S1,¹ left hip pain; right wrist pain; right shoulder pain; right knee medial meniscus tear and articular cartilage damage; and cognitive impairments.

Delray Beach Fire-Rescue responded and provided emergency treatment to Mr. Soria at the scene, then transported him to Delray Medical Center, where he was admitted to trauma ICU. Mr. Soria remained in Delray Medical Center from April 17, until April 26, 2007. During that time he received a series of diagnostic and surgical procedures, including CT scans of his brain and other body parts, additional radiological imaging, and multiple operations to address the right elbow fracture. Medical expenses through discharge totaled \$171,900.

Subsequent medical expenses through November 13, 2009, totaled \$28,354. These expenses primarily arise from orthopedic medical care relating to post-operative treatment on the right elbow; physical therapy; pain in the lower lumbar, thoracic spine, right elbow, right shoulder, right arm, right wrist, right knee, and right leg; and neurological treatment for

the after-effects of the accident and concussion, including mental health counseling for nightmares, flashbacks, hypervigilance, depression, anxiety, insomnia, headaches, panic attacks, ringing in ears, difficulty coping with physical limitations, irritability, and memory loss.

Overall, counsel for Mr. Soria documented medical expenses in Florida totaling \$200,254. According to counsel for Mr. Soria, these medical expenses have been satisfied, and no further medical bills have been incurred in Florida.

Three of Mr. Soria's medical doctors assessed his injury-related disabilities as between 30% - 39% whole person impairment. The physician retained by Palm Beach County assessed Mr. Soria's physical disabilities at 39% whole person impairment, which is consistent with the assessments of the claimant's orthopedist. Mr. Soria's neurologist assessed Mr. Soria's neurological impairment (headaches, lumbar radiculopathy, insomnia, and anxiety) based on the combined values chart of the American Medical Association Guides to the Evaluation of Permanent Impairment as a 31 percent impairment to the body as a direct result of this accident.

Future medical care, with which the County's orthopedic physician concurs, is likely to include, among other things: surgery to address carpal tunnel syndrome in the right wrist, fusion or total elbow replacement in the right elbow, surgery on the lumbar spine, total knee replacement on the right knee, knee and shoulder arthroscopy, physical therapy, and medications for each of these joints.

A professional disability management specialist prepared a Life Care Plan based on a review of reports of the orthopedic and neurological medical specialists who had treated Mr. Soria, and concluded future medical expenses to be approximately \$641,905.

The disability management specialist also assessed Mr. Soria in order to perform a Vocational / Earning Capacity Assessment. She determined that his earning capacity had diminished by more than 50 percent as a result of his injuries and projected a loss of earning capacity of between \$474,104 and \$478,503 to age 67.

Mr. Soria is currently living in Argentina, his homeland, and receives minimal governmental medical care in Argentina. He is in the process of applying for more extensive state benefits due to his disability arising from this collision. However, according to counsel's representation, there are no assurances that Mr. Soria will obtain these additional benefits and he has not been provided with a definitive time frame on whether he will qualify for the supplemental medical coverage.

At the time of the accident, Mr. Soria was 36 years of age. Prior to the accident, Mr. Soria was employed in various manual-labor, physically demanding jobs, primarily as a construction worker. He was physically fit, having achieved the status of a master in taekwondo, enjoyed spending time with his children, and teaching them and others the art of taekwondo. Subsequent to the accident, he has not been able to resume these physical activities due to the injuries he suffered from the collision. Additionally, Mr. Soria is permanently cognitively impaired as a result of the accident.

Mr. Soria has three children. At the time of the accident, his eldest daughter was 17 years of age, less than one month from turning 18; his son was 13; and his youngest daughter was 7 years of age.

The third amended complaint, filed on March 23, 2009, alleged that Palm Beach County was vicariously liable for the negligence of its employee, Mr. Casas, in the operation of the county's truck; that Palm Beach County negligently retained Mr. Casas, and that Palm Beach County negligently supervised Mr. Casas. Mr. Casas had been involved in a series of prior motor vehicle accidents with county vehicles while employed with Palm Beach County as follows:

- August 28, 1989 – Palm Beach County determined the accident to be avoidable and serious. No specific facts of the accident were available.
- May 17, 1996 – Palm Beach County determined the accident to be avoidable. Mr. Casas had not thoroughly secured the trailer hitch onto the hitch ball. The trailer separated as equipment was loaded and the trailer struck the tailgate of the pick-up truck.
- July 7, 1997 – Palm Beach County determined the accident to be avoidable and a minor violation. The county truck Mr. Casas was driving struck a fixed object. No further details of the incident were provided.

- April 3, 2002 – Palm Beach County determined the accident to be avoidable and a minor violation. Mr. Casas was operating a loader, placing shellrock along the sidewalk and water's edge. He backed into an above ground hose bib.
- May 8, 2002 – Palm Beach County determined the accident to be avoidable. Mr. Casas struck a park entrance sign while backing a dump truck into a plant bed to dump mulch.

The complaint further alleged that in addition to the monetary damages suffered by Mr. Soria, as dependent children of Mr. Soria, the three children were deprived of the services, support, comfort, society, companionship and attention of their father as a result of the negligence of Mr. Casas.

Prior to the case proceeding to trial the parties agreed to settle the matter. Staff of the Palm Beach County Board of County Commissioners recommended that the board approve the settlement agreement, inclusive of attorney fees and costs, in the total amount of \$300,000. Justification to support this recommendation noted that the County's medical experts agreed that Mr. Soria sustained multiple orthopedic injuries and the County's neurologist diagnosed a permanent nerve injury to Mr. Soria's right brachial plexus, which innervates his right upper extremity. Furthermore, the justification noted, "Based upon the totality of Mr. Soria's injuries, medical bills, potential future medical care, pain and suffering, as well as the consortium claims of his three (3) children, exposure from a jury verdict could exceed \$1,000,000." The justification also acknowledged that settlement would save the County a significant amount of money in terms of litigation costs, and the County would only be required to pay its sovereign immunity limit of \$200,000 absent the Florida Legislature passing a claim bill in favor of the Plaintiffs for the additional sum of \$101,800. On August 17, 2010, the Palm Beach County Board of County Commissioners approved the settlement agreement in the amount of \$300,000.

In the Settlement Agreement and Release, Plaintiffs Javier Soria, Pamela Soria (eldest daughter who had reached majority at the time of the settlement agreement), Lucas Soria, a minor, by and through his father and next friend, and Agustina Soria, a minor, by and through her father and next

friend, and Defendant Palm Beach County agreed to entry of a Consent Final Judgment in the amount of \$300,000.

The settlement agreement indicated that Palm Beach County had already paid Javier Soria the sum of \$1,800 in full and final satisfaction of the property damage claim and that Palm Beach County would pay a total sum of \$198,200, subject to satisfaction of any liens, under the settlement agreement as follows:

- \$100,000 to Javier Soria
- \$ 39,280 to Pamela Soria, adult daughter
- \$ 29,460 to Lucas Soria, minor son
- \$ 29,460 to Agustina Soria, minor daughter.

Prior to distributing the \$198,200, Palm Beach County would pay the outstanding liens of the Palm Beach County Health Care District (lien amount of \$11,015.12, resolved for \$5,948.11) and an attorney lien (\$3,000) asserted by the plaintiff's prior attorney. The County would allocate satisfaction of the liens on a pro-rata basis among the plaintiffs based on the above allocation.

Finally, the settlement agreement provided that in order for the plaintiffs to be entitled to receive the remaining sum of \$101,800, the plaintiffs must obtain a claim bill from the Florida Legislature. Palm Beach County agreed not to oppose a claim bill seeking \$101,800.

Accordingly, Palm Beach County does not oppose the claim bill in an amount up to \$101,800 and has a self-insured retention of \$500,000 on this claim in the Casualty and Property Self-Insurance Fund from which the claim bill, if enacted, will be paid.

Recommended Amendments

As previously noted, the settlement agreement for \$300,000 was in addition to the \$1,800 property claim previously paid by Palm Beach County.² Accordingly, the settlement agreement provided for \$101,800 to be paid through a claim bill. Senate Bill 42 as filed, provides for Palm Beach County to pay \$100,000. Claimant's counsel has indicated a willingness to stipulate to the amount in the claim bill as filed.

Under the settlement agreement, all four plaintiffs are defined as the "First Party". The settlement agreement provides, "In

order for First Party to be entitled to receive the remaining sum of \$101,800, First Party shall be required to ... obtain a claim bill from the Florida Legislature. Further, the Consent Final Judgment refers to plaintiffs (in the plural) when providing for the claim bill in the amount of \$101,800. One of the whereas clauses in Senate Bill 42 refers to the right of action for loss of consortium for Mr. Soria's three children. Another whereas clause refers to the settlement agreement reached between Mr. Soria only and Palm Beach County. Senate Bill 42 also refers to payment under the claim bill to Mr. Soria only. According to counsel for all four plaintiffs, the consortium claims of the three children were fully satisfied in the settlement agreement prior to the claim bill and that the compensation under the claim bill is to be directed to Mr. Soria only. In order to eliminate any ambiguity between the settlement agreement, consent final order, and the claim bill, the whereas clauses in the claim bill should be amended to reflect the fact that the three children were a party to the settlement agreement and that their claims have been fully compensated by Palm Beach County from the \$200,000 paid under the waiver of sovereign immunity limit.

The first whereas clause in SB 42 indicates that Mr. Soria was traveling on SR 807 in West Palm Beach. The accident occurred in Delray Beach and the claim bill should be amended to correct this fact. Other technical corrections are necessary to conform the facts in the whereas clauses to the evidence presented to the Special Master.

CONCLUSIONS OF LAW:

Section 316.123, F.S., requires a driver of a vehicle approaching a stop intersection indicated by a stop sign to stop before entering the intersection. After stopping, the driver is to yield the right-of-way to any vehicle which ... is approaching so closely on the highway as to constitute an immediate hazard during the time when the driver is moving across or within the intersection. Mr. Casas had a statutory duty to yield the right-of-way to Mr. Soria's vehicle, which he negligently failed to do. This breach was the direct cause of the collision between the two vehicles and the serious bodily injuries suffered by Mr. Soria as a result of the collision. Furthermore, the serious bodily injuries suffered by Mr. Soria as a result of the collision, support the claim for loss of consortium by Mr. Soria's three children pursuant to s. 768.0415, F.S.

Under the doctrine of respondeat superior, Palm Beach County is vicariously liable for the negligence of its agents and employees, when such acts are within the course and scope of the agency or employment. See Mallory v. O'Neil, 69 So.2d 313 (Fla.1954), and s. 768.28, F.S. At the time of the accident, Mr. Casas was an employee of Palm Beach County who was acting within the course and scope of his employment and operating a county vehicle which caused the collision and resulting injuries. Accordingly, the negligence of Mr. Casas is attributable to Palm Beach County.

This Special Master is not persuaded that the evidence supports the remaining two counts, relating to Palm Beach County negligently retaining and supervising Mr. Casas. Nevertheless, the evidence does support a claim upon which relief may be granted as discussed above and the parties have reasonably and thoughtfully executed a settlement agreement to resolve the matter.

Palm Beach County, as respondeat superior, is 100 percent responsible for the damages suffered by Mr. Soria and his three children. The sum of \$300,000 in the settlement agreement, which was agreed to prior to lengthy litigation, is a reasonable and responsible resolution for all parties given the medical expenses incurred prior to settlement and the probable medical expenses and other financial exposure the county might face upon an adverse trial verdict and judgment.

As provided in s. 768.28, F.S. (2010), when the settlement agreement was executed, sovereign immunity shields Palm Beach County against tort liability in excess of \$200,000 per occurrence, absent Legislative enactment of a claim bill. Unless a claim bill is enacted, Mr. Soria will not be able to realize the full benefit of the settlement agreement.

ATTORNEYS FEES:

Section 768.28(8), F.S., states that no attorney may charge, demand, receive, or collect for services rendered, fees in excess of 25 percent of any judgment or settlement. Claimant's counsel, Diana Santa Maria, Esq., has submitted an affidavit that her fees, as well as the lobbying fees, costs, and other similar expenses relating to this claim will not exceed 25 percent of the total amount awarded under the claim bill.

RECOMMENDATIONS: Based upon the foregoing, I recommend that Senate Bill 42 be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Sandra R. Stovall
Senate Special Master

cc: Debbie Brown, Secretary of the Senate

CS by Judiciary on February 17, 2015:

The committee substitute corrects several factual errors in the “whereas clauses” of the original bill based on information presented to the special master. Specifically, the committee substitute:

- Corrects the location of the accident, which occurred in Delray Beach, not West Palm Beach.
- Corrects the claimant’s disability impairment ratings.
- Clarifies that the consortium claims of the claimant’s three children have been fully satisfied and that the claim bill is for the relief of Javier Soria only.

The committee substitute also increases the amount of the appropriation in the underlying claim bill by \$1,800 for a total appropriation of \$101,800. According to the special master, the increased amount reflects the full amount of the settlement between the claimant and Palm Beach County.

¹ Mr. Soria had a pre-existing L5-S1 injury due to a motor vehicle accident (not a motorcycle) that occurred approximately one year earlier. According to counsel, Mr. Soria had sought chiropractic care and was doing well at the time of this accident.

² All payments made by Palm Beach County, prior to a Legislatively enacted claim bill, totaled \$200,000, in accordance with the waiver of sovereign immunity limit per occurrence.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 125.42, Florida Statutes, is amended to
read:

125.42 Water, sewage, gas, power, telephone, other utility,
and television lines within the right-of-way limits of ~~along~~
county roads and highways.—

(1) The board of county commissioners, with respect to



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11 property located without the corporate limits of any
12 municipality, is authorized to grant a license to any person or
13 private corporation to construct, maintain, repair, operate, and
14 remove lines for the transmission of water, sewage, gas, power,
15 telephone, other public utilities, ~~and television,~~ or other
16 communications services under, on, over, across or within the
17 right-of-way limits of ~~and along~~ any county highway or any
18 public road or highway acquired by the county or public by
19 purchase, gift, devise, dedication, or prescription. However,
20 the board of county commissioners shall include in any
21 instrument granting such license adequate provisions:

22 (a) To prevent the creation of any obstructions or
23 conditions which are or may become dangerous to the traveling
24 public;

25 (b) To require the licensee to repair any damage or injury
26 to the road or highway by reason of the exercise of the
27 privileges granted in any instrument creating such license and
28 to repair the road or highway promptly, restoring it to a
29 condition at least equal to that which existed immediately prior
30 to the infliction of such damage or injury;

31 (c) Whereby the licensee shall hold the board of county
32 commissioners and members thereof harmless from the payment of
33 any compensation or damages resulting from the exercise of the
34 privileges granted in any instrument creating the license; and

35 (d) As may be reasonably necessary, for the protection of
36 the county and the public.

37 (2) A license may be granted in perpetuity or for a term of
38 years, subject, however, to termination by the licensor, in the
39 event the road or highway is closed, abandoned, vacated,



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40 discontinued, or reconstructed.

41 (3) The board of county commissioners is authorized to
42 grant exclusive or nonexclusive licenses for the purposes stated
43 herein for television.

44 (4) This law is intended to provide an additional method
45 for the granting of licenses and shall not be construed to
46 repeal any law now in effect relating to the same subject.

47 (5) In the event of widening, repair, or reconstruction of
48 any such road, the licensee shall move or remove such water,
49 sewage, gas, power, telephone, and other utility lines and
50 television lines at no cost to the county should they be found
51 by the county to be unreasonably interfering, except as provided
52 in s. 337.403(1)(d)-(j) ~~s. 337.403(1)(d)-(i)~~.

53 Section 2. Paragraph (a) of subsection (1), subsection (2),
54 and paragraph (b) of subsection (3) of section 337.401, Florida
55 Statutes, are amended to read:

56 337.401 Use of right-of-way for utilities subject to
57 regulation; permit; fees.—

58 (1) (a) The department and local governmental entities,
59 referred to in this section and in ss. 337.402, 337.403, and
60 337.404 ~~ss. 337.401-337.404~~ as the "authority," that have
61 jurisdiction and control of public roads or publicly owned rail
62 corridors are authorized to prescribe and enforce reasonable
63 rules or regulations with reference to the placing and
64 maintaining ~~along,~~ across, or on, or within the right-of-way
65 limits of any road or publicly owned rail corridors under their
66 respective jurisdictions any electric transmission, telephone,
67 telegraph, or other communications services lines; pole lines;
68 poles; railways; ditches; sewers; water, heat, or gas mains;



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69 pipelines; fences; gasoline tanks and pumps; or other structures
70 referred to in this section and in ss. 337.402, 337.403, and
71 337.404 ~~this section~~ as the "utility." The department may enter
72 into a permit-delegation agreement with a governmental entity if
73 issuance of a permit is based on requirements that the
74 department finds will ensure the safety and integrity of
75 facilities of the Department of Transportation; however, the
76 permit-delegation agreement does not apply to facilities of
77 electric utilities as defined in s. 366.02(2).

78 (2) The authority may grant to any person who is a resident
79 of this state, or to any corporation which is organized under
80 the laws of this state or licensed to do business within this
81 state, the use of a right-of-way for the utility in accordance
82 with such rules or regulations as the authority may adopt. No
83 utility shall be installed, located, or relocated unless
84 authorized by a written permit issued by the authority. However,
85 for public roads or publicly owned rail corridors under the
86 jurisdiction of the department, a utility relocation schedule
87 and relocation agreement may be executed in lieu of a written
88 permit. The permit shall require the permit holder to be
89 responsible for any damage resulting from the issuance of such
90 permit. In exercising its authority over a utility under this
91 section, a municipality or county may not require a utility to
92 provide proprietary maps of facilities where such facilities
93 have been previously subject to a permit from the authority. The
94 authority may initiate injunctive proceedings as provided in s.
95 120.69 to enforce provisions of this subsection or any rule or
96 order issued or entered into pursuant thereto.

97 (3)



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98 (b) Registration described in paragraph (a) does not
99 establish a right to place or maintain, or priority for the
100 placement or maintenance of, a communications facility in roads
101 or rights-of-way of a municipality or county. Each municipality
102 and county retains the authority to regulate and manage
103 municipal and county roads or rights-of-way in exercising its
104 police power. Any rules or regulations adopted by a municipality
105 or county which govern the occupation of its roads or rights-of-
106 way by providers of communications services must be related to
107 the placement or maintenance of facilities in such roads or
108 rights-of-way, must be reasonable and nondiscriminatory, and may
109 include only those matters necessary to manage the roads or
110 rights-of-way of the municipality or county. In exercising its
111 authority over providers of communications services under this
112 section, a municipality or county may not require a provider of
113 communications services to provide proprietary maps of
114 facilities where such facilities have been previously subject to
115 a permit from the authority.

116 Section 3. Subsection (1) of section 337.403, Florida
117 Statutes, is amended to read:

118 337.403 Interference caused by utility; expenses.—

119 (1) If a utility that is placed upon, under, over, or
120 within the right-of-way limits of ~~along~~ any public road or
121 publicly owned rail corridor is found by the authority to be
122 unreasonably interfering in any way with the convenient, safe,
123 or continuous use, or the maintenance, improvement, extension,
124 or expansion, of such public road or publicly owned rail
125 corridor, the utility owner shall, upon 30 days' written notice
126 to the utility or its agent by the authority, initiate the work



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127 necessary to alleviate the interference at its own expense
128 except as provided in paragraphs (a)-(j) ~~(a)-(i)~~. The work must
129 be completed within such reasonable time as stated in the notice
130 or such time as agreed to by the authority and the utility
131 owner. If an authority requires the relocation of a utility for
132 purposes not described in this subsection, the authority shall
133 bear the cost of relocating the utility. If the relocation is
134 required as a condition or result of a project by an entity
135 other than an authority, the entity other than the authority
136 shall bear the costs of relocating the utility.

137 (a) If the relocation of utility facilities, as referred to
138 in s. 111 of the Federal-Aid Highway Act of 1956, Pub. L. No.
139 84-627, is necessitated by the construction of a project on the
140 federal-aid interstate system, including extensions thereof
141 within urban areas, and the cost of the project is eligible and
142 approved for reimbursement by the Federal Government to the
143 extent of 90 percent or more under the Federal Aid Highway Act,
144 or any amendment thereof, ~~then in that event~~ the utility owning
145 or operating such facilities shall perform any necessary work
146 upon notice from the department, and the state shall pay the
147 entire expense properly attributable to such work after
148 deducting therefrom any increase in the value of a new facility
149 and any salvage value derived from an old facility.

150 (b) When a joint agreement between the department and the
151 utility is executed for utility work to be accomplished as part
152 of a contract for construction of a transportation facility, the
153 department may participate in those utility work costs that
154 exceed the department's official estimate of the cost of the
155 work by more than 10 percent. The amount of such participation



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156 is limited to the difference between the official estimate of
157 all the work in the joint agreement plus 10 percent and the
158 amount awarded for this work in the construction contract for
159 such work. The department may not participate in any utility
160 work costs that occur as a result of changes or additions during
161 the course of the contract.

162 (c) When an agreement between the department and utility is
163 executed for utility work to be accomplished in advance of a
164 contract for construction of a transportation facility, the
165 department may participate in the cost of clearing and grubbing
166 necessary to perform such work.

167 (d) If the utility facility was initially installed to
168 exclusively serve the authority or its tenants, or both, the
169 authority shall bear the costs of the utility work. However, the
170 authority is not responsible for the cost of utility work
171 related to any subsequent additions to that facility for the
172 purpose of serving others. For a county or municipality, if such
173 utility facility was installed in the right-of-way as a means to
174 serve a county or municipal facility on a parcel of property
175 adjacent to the right-of-way and if the intended use of the
176 county or municipal facility is for a use other than
177 transportation purposes, the obligation of the county or
178 municipality to bear the costs of the utility work shall extend
179 only to utility work on the parcel of property on which the
180 facility of the county or municipality originally served by the
181 utility facility is located.

182 (e) If, under an agreement between a utility and the
183 authority entered into after July 1, 2009, the utility conveys,
184 subordinates, or relinquishes a compensable property right to



185 the authority for the purpose of accommodating the acquisition
186 or use of the right-of-way by the authority, without the
187 agreement expressly addressing future responsibility for the
188 cost of necessary utility work, the authority shall bear the
189 cost of removal or relocation. This paragraph does not impair or
190 restrict, and may not be used to interpret, the terms of any
191 such agreement entered into before July 1, 2009.

192 (f) If the utility is an electric facility being relocated
193 underground in order to enhance vehicular, bicycle, and
194 pedestrian safety and in which ownership of the electric
195 facility to be placed underground has been transferred from a
196 private to a public utility within the past 5 years, the
197 department shall incur all costs of the necessary utility work.

198 (g) An authority may bear the costs of utility work
199 required to eliminate an unreasonable interference when the
200 utility is not able to establish that it has a compensable
201 property right in the particular property where the utility is
202 located if:

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

205 2. The utility demonstrates that it has a compensable
206 property right in adjacent properties along the alignment of the
207 utility or, after due diligence, certifies that the utility does
208 not have evidence to prove or disprove that it has a compensable
209 property right in the particular property where the utility is
210 located; and

211 3. The information available to the authority does not
212 establish the relative priorities of the authority's and the
213 utility's interests in the particular property.



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214 (h) If a municipally owned utility or county-owned utility
215 is located in a rural area of critical economic concern, as
216 defined in s. 288.0656(2), and the department determines that
217 the utility is unable, and will not be able within the next 10
218 years, to pay for the cost of utility work necessitated by a
219 department project on the State Highway System, the department
220 may pay, in whole or in part, the cost of such utility work
221 performed by the department or its contractor.

222 (i) If the relocation of utility facilities is necessitated
223 by the construction of a commuter rail service project or an
224 intercity passenger rail service project and the cost of the
225 project is eligible and approved for reimbursement by the
226 Federal Government, then in that event the utility owning or
227 operating such facilities located by permit on a department-
228 owned rail corridor shall perform any necessary utility
229 relocation work upon notice from the department, and the
230 department shall pay the expense properly attributable to such
231 utility relocation work in the same proportion as federal funds
232 are expended on the commuter rail service project or an
233 intercity passenger rail service project after deducting
234 therefrom any increase in the value of a new facility and any
235 salvage value derived from an old facility. In no event shall
236 the state be required to use state dollars for such utility
237 relocation work. This paragraph does not apply to any phase of
238 the Central Florida Commuter Rail project, known as SunRail.

239 (j) If a utility is located within an existing and valid
240 utility easement granted by recorded plat, regardless of whether
241 such land was subsequently acquired by the authority by
242 dedication, transfer of fee, or otherwise, the authority shall



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243 bear the cost of the utility work required to eliminate an
244 unreasonable interference.

245 Section 4. The Legislature finds that a proper and
246 legitimate state purpose is served by clarifying a utility's
247 responsibility for relocating its facilities within the right-
248 of-way or within a utility easement granted by recorded plat.
249 Therefore, the Legislature determines and declares that this act
250 fulfills an important state interest.

251 Section 5. This act shall take effect upon becoming a law.

252
253 ===== T I T L E A M E N D M E N T =====

254 And the title is amended as follows:

255 Delete everything before the enacting clause
256 and insert:

257 A bill to be entitled
258 An act relating to the location of utilities; amending
259 s. 125.42, F.S.; authorizing the board of county
260 commissioners to grant a license to work on or operate
261 communications services within the right-of-way limits
262 of certain county or public highways or roads;
263 conforming a cross-reference; amending s. 337.401,
264 F.S.; authorizing the Department of Transportation and
265 certain local governmental entities to prescribe and
266 enforce rules or regulations regarding placing and
267 maintaining specified structures within the right-of-
268 way limits of roads or publicly owned rail corridors
269 under their respective jurisdictions; prohibiting a
270 municipality or county from requiring a utility to
271 provide proprietary maps of facilities under certain



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272 circumstances; prohibiting a municipality or county
273 from requiring a provider of communications services
274 to provide proprietary maps of facilities under
275 certain circumstances; amending s. 337.403, F.S.;
276 requiring a utility owner, under certain
277 circumstances, to initiate at its own expense the work
278 necessary to alleviate an interference to a public
279 road or publicly owned rail corridor which is caused
280 by a utility if it is placed within the right-of-way
281 limits of the public road or publicly owned rail
282 corridor; requiring an authority or an entity other
283 than the authority to bear the costs of relocating a
284 utility in certain circumstances; requiring the
285 authority to bear the cost of the utility work
286 necessary to eliminate an unreasonable interference if
287 the utility is located within a certain utility
288 easement; conforming a cross-reference; providing
289 legislative findings; providing an effective date.
290

By Senator Brandes

22-00424B-15

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1 A bill to be entitled
2 An act relating to the location of utilities; amending
3 s. 125.42, F.S.; authorizing the board of county
4 commissioners to grant a license to work on or operate
5 specified utility and communications services lines
6 only within the right-of-way limits of certain county
7 or public highways or roads; conforming a cross-
8 reference; amending s. 337.401, F.S.; authorizing the
9 Department of Transportation and certain local
10 governmental entities to prescribe and enforce rules
11 or regulations regarding placing and maintaining
12 specified structures only within the right-of-way
13 limits of roads or publicly owned rail corridors under
14 their respective jurisdictions; prohibiting a
15 municipality or county from requiring a provider of
16 communications services to resubmit information
17 already in the possession of, or previously provided
18 to, the municipality or county; amending s. 337.403,
19 F.S.; requiring a utility owner, under certain
20 circumstances, to initiate at its own expense the work
21 necessary to alleviate an interference to a public
22 road or publicly owned rail corridor which is caused
23 by a utility if it is within the right-of-way limits
24 of the public road or publicly owned rail corridor;
25 requiring an authority or an entity other than the
26 authority to bear the costs of relocating a utility in
27 certain circumstances; requiring the authority to bear
28 the cost of the utility work necessary to eliminate an
29 unreasonable interference if the utility is located

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30 within a certain utility easement; conforming a cross-
31 reference; providing an effective date.

32
33 Be It Enacted by the Legislature of the State of Florida:

34
35 Section 1. Section 125.42, Florida Statutes, is amended to
36 read:

37 125.42 Water, sewage, gas, power, telephone, other utility,
38 and television lines within the right-of-way limits of along
39 county roads and highways.-

40 (1) The board of county commissioners, with respect to
41 property located without the corporate limits of any
42 municipality, is authorized to grant a license to any person or
43 private corporation to construct, maintain, repair, operate, and
44 remove lines for the transmission of water, sewage, gas, power,
45 telephone, other public utilities, ~~and television,~~ or other
46 communications services within the right-of-way limits of under,
47 ~~on, over, across and along~~ any county highway or any public road
48 or highway acquired by the county or public by purchase, gift,
49 devise, dedication, or prescription. However, the board of
50 county commissioners shall include in any instrument granting
51 such license adequate provisions:

52 (a) To prevent the creation of any obstructions or
53 conditions which are or may become dangerous to the traveling
54 public;

55 (b) To require the licensee to repair any damage or injury
56 to the road or highway by reason of the exercise of the
57 privileges granted in any instrument creating such license and
58 to repair the road or highway promptly, restoring it to a

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59 condition at least equal to that which existed immediately prior
60 to the infliction of such damage or injury;

61 (c) Whereby the licensee shall hold the board of county
62 commissioners and members thereof harmless from the payment of
63 any compensation or damages resulting from the exercise of the
64 privileges granted in any instrument creating the license; and

65 (d) As may be reasonably necessary, for the protection of
66 the county and the public.

67 (2) A license may be granted in perpetuity or for a term of
68 years, subject, however, to termination by the licensor, in the
69 event the road or highway is closed, abandoned, vacated,
70 discontinued, or reconstructed.

71 (3) The board of county commissioners is authorized to
72 grant exclusive or nonexclusive licenses for the purposes stated
73 herein for television.

74 (4) This law is intended to provide an additional method
75 for the granting of licenses and shall not be construed to
76 repeal any law now in effect relating to the same subject.

77 (5) In the event of widening, repair, or reconstruction of
78 any such road, the licensee shall move or remove such water,
79 sewage, gas, power, telephone, and other utility lines and
80 television lines at no cost to the county should they be found
81 by the county to be unreasonably interfering, except as provided
82 in s. 337.403(1)(d)-(j) ~~s. 337.403(1)(d)-(i)~~.

83 Section 2. Paragraph (a) of subsection (1) and paragraph
84 (b) of subsection (3) of section 337.401, Florida Statutes, are
85 amended to read:

86 337.401 Use of right-of-way for utilities subject to
87 regulation; permit; fees.-

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88 (1) (a) The department and local governmental entities,
89 referred to in this section and in ss. 337.402, 337.403, and
90 337.404 ~~ss. 337.401-337.404~~ as the "authority," that have
91 jurisdiction and control of public roads or publicly owned rail
92 corridors are authorized to prescribe and enforce reasonable
93 rules or regulations with reference to the placing and
94 maintaining within the right-of-way limits of ~~along, across, or~~
95 ~~on~~ any road or publicly owned rail corridors under their
96 respective jurisdictions any electric transmission, telephone,
97 telegraph, or other communications services lines; pole lines;
98 poles; railways; ditches; sewers; water, heat, or gas mains;
99 pipelines; fences; gasoline tanks and pumps; or other structures
100 referred to in this section and in ss. 337.402, 337.403, and
101 337.404 ~~this section~~ as the "utility." The department may enter
102 into a permit-delegation agreement with a governmental entity if
103 issuance of a permit is based on requirements that the
104 department finds will ensure the safety and integrity of
105 facilities of the Department of Transportation; however, the
106 permit-delegation agreement does not apply to facilities of
107 electric utilities as defined in s. 366.02(2).

108 (3)

109 (b) Registration described in paragraph (a) does not
110 establish a right to place or maintain, or priority for the
111 placement or maintenance of, a communications facility in roads
112 or rights-of-way of a municipality or county. Each municipality
113 and county retains the authority to regulate and manage
114 municipal and county roads or rights-of-way in exercising its
115 police power. Any rules or regulations adopted by a municipality
116 or county which govern the occupation of its roads or rights-of-

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117 way by providers of communications services must be related to
118 the placement or maintenance of facilities in such roads or
119 rights-of-way, must be reasonable and nondiscriminatory, and may
120 include only those matters necessary to manage the roads or
121 rights-of-way of the municipality or county. In exercising its
122 authority over providers of communications services under this
123 section, a municipality or county may not require a provider of
124 communications services to resubmit information already in the
125 possession of the municipality or county or previously provided
126 to the municipality or county.

127 Section 3. Subsection (1) of section 337.403, Florida
128 Statutes, is amended to read:

129 337.403 Interference caused by utility; expenses.—

130 (1) If a utility that is within the right-of-way limits of
131 ~~placed upon, under, over, or along~~ any public road or publicly
132 owned rail corridor is found by the authority to be unreasonably
133 interfering in any way with the convenient, safe, or continuous
134 use, or the maintenance, improvement, extension, or expansion,
135 of such public road or publicly owned rail corridor, the utility
136 owner shall, upon 30 days' written notice to the utility or its
137 agent by the authority, initiate the work necessary to alleviate
138 the interference at its own expense except as provided in
139 paragraphs (a)-(j) ~~(a)-(i)~~. The work must be completed within
140 such reasonable time as stated in the notice or such time as
141 agreed to by the authority and the utility owner. If an
142 authority requires the relocation of a utility for purposes not
143 described in this subsection, the authority shall bear the cost
144 of relocating the utility. If the relocation is required as a
145 condition or result of a project by an entity other than an

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146 authority, then that entity shall bear the costs of relocating
147 the utility.

148 (a) If the relocation of utility facilities, as referred to
149 in s. 111 of the Federal-Aid Highway Act of 1956, Pub. L. No.
150 84-627, is necessitated by the construction of a project on the
151 federal-aid interstate system, including extensions thereof
152 within urban areas, and the cost of the project is eligible and
153 approved for reimbursement by the Federal Government to the
154 extent of 90 percent or more under the Federal Aid Highway Act,
155 or any amendment thereof, ~~then in that event~~ the utility owning
156 or operating such facilities shall perform any necessary work
157 upon notice from the department, and the state shall pay the
158 entire expense properly attributable to such work after
159 deducting therefrom any increase in the value of a new facility
160 and any salvage value derived from an old facility.

161 (b) When a joint agreement between the department and the
162 utility is executed for utility work to be accomplished as part
163 of a contract for construction of a transportation facility, the
164 department may participate in those utility work costs that
165 exceed the department's official estimate of the cost of the
166 work by more than 10 percent. The amount of such participation
167 is limited to the difference between the official estimate of
168 all the work in the joint agreement plus 10 percent and the
169 amount awarded for this work in the construction contract for
170 such work. The department may not participate in any utility
171 work costs that occur as a result of changes or additions during
172 the course of the contract.

173 (c) When an agreement between the department and utility is
174 executed for utility work to be accomplished in advance of a

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175 contract for construction of a transportation facility, the
176 department may participate in the cost of clearing and grubbing
177 necessary to perform such work.

178 (d) If the utility facility was initially installed to
179 exclusively serve the authority or its tenants, or both, the
180 authority shall bear the costs of the utility work. However, the
181 authority is not responsible for the cost of utility work
182 related to any subsequent additions to that facility for the
183 purpose of serving others. For a county or municipality, if such
184 utility facility was installed in the right-of-way as a means to
185 serve a county or municipal facility on a parcel of property
186 adjacent to the right-of-way and if the intended use of the
187 county or municipal facility is for a use other than
188 transportation purposes, the obligation of the county or
189 municipality to bear the costs of the utility work shall extend
190 only to utility work on the parcel of property on which the
191 facility of the county or municipality originally served by the
192 utility facility is located.

193 (e) If, under an agreement between a utility and the
194 authority entered into after July 1, 2009, the utility conveys,
195 subordinates, or relinquishes a compensable property right to
196 the authority for the purpose of accommodating the acquisition
197 or use of the right-of-way by the authority, without the
198 agreement expressly addressing future responsibility for the
199 cost of necessary utility work, the authority shall bear the
200 cost of removal or relocation. This paragraph does not impair or
201 restrict, and may not be used to interpret, the terms of any
202 such agreement entered into before July 1, 2009.

203 (f) If the utility is an electric facility being relocated

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204 underground in order to enhance vehicular, bicycle, and
205 pedestrian safety and in which ownership of the electric
206 facility to be placed underground has been transferred from a
207 private to a public utility within the past 5 years, the
208 department shall incur all costs of the necessary utility work.

209 (g) An authority may bear the costs of utility work
210 required to eliminate an unreasonable interference when the
211 utility is not able to establish that it has a compensable
212 property right in the particular property where the utility is
213 located if:

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

216 2. The utility demonstrates that it has a compensable
217 property right in adjacent properties along the alignment of the
218 utility or, after due diligence, certifies that the utility does
219 not have evidence to prove or disprove that it has a compensable
220 property right in the particular property where the utility is
221 located; and

222 3. The information available to the authority does not
223 establish the relative priorities of the authority's and the
224 utility's interests in the particular property.

225 (h) If a municipally owned utility or county-owned utility
226 is located in a rural area of critical economic concern, as
227 defined in s. 288.0656(2), and the department determines that
228 the utility is unable, and will not be able within the next 10
229 years, to pay for the cost of utility work necessitated by a
230 department project on the State Highway System, the department
231 may pay, in whole or in part, the cost of such utility work
232 performed by the department or its contractor.

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233 (i) If the relocation of utility facilities is necessitated
234 by the construction of a commuter rail service project or an
235 intercity passenger rail service project and the cost of the
236 project is eligible and approved for reimbursement by the
237 Federal Government, then in that event the utility owning or
238 operating such facilities located by permit on a department-
239 owned rail corridor shall perform any necessary utility
240 relocation work upon notice from the department, and the
241 department shall pay the expense properly attributable to such
242 utility relocation work in the same proportion as federal funds
243 are expended on the commuter rail service project or an
244 intercity passenger rail service project after deducting
245 therefrom any increase in the value of a new facility and any
246 salvage value derived from an old facility. In no event shall
247 the state be required to use state dollars for such utility
248 relocation work. This paragraph does not apply to any phase of
249 the Central Florida Commuter Rail project, known as SunRail.

250 (j) If a utility is located within an existing and valid
251 utility easement granted by recorded plat, regardless of whether
252 such land was subsequently acquired by the authority by
253 dedication, transfer of fee, or otherwise, the authority shall
254 bear the cost of the utility work required to eliminate an
255 unreasonable interference.

256 Section 4. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/15 Meeting Date

896 Bill Number (if applicable)

Topic Utility Relocation

Amendment Barcode (if applicable)

Name Steve Griffin

Job Title Asst. City Atty., Cape Coral

Address Street

Phone

City

State

Zip

Email

Speaking: For [] Against [x] Information []

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

Representing Cape Coral

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)

3/23/15

Meeting Date

SB 896

Bill Number (if applicable)

Topic SB 896

Amendment Barcode (if applicable)

Name MARNI SAWICKI

Job Title MAYOR OF CAPE CORAL

Address 2245 SW 28th St

Phone 239 220 2917

Street

CAPE CORAL

FL

33914

City

State

Zip

Email msawicki@capecoral.net

Speaking: For [] Against [x] Information []

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

Representing CITY OF CAPE CORAL

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

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.

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)

3/23/15

Meeting Date

896

Bill Number (if applicable)

Topic Relocation of Utilities

Amendment Barcode (if applicable)

Name Chris Carmody

Job Title Attorney

Address 301 E. Pine St. Suite 1400

Phone 352-514-2196

Street Orlando FL 32801

Email chris.carmody@gray-robinson.com

City State Zip

Speaking: For [] Against [x] Information []

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

Representing City of Orlando

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

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.

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)

3.23.15

Meeting Date

SB 894

Bill Number (if applicable)

Topic LOCATION OF UTILITIES

Amendment Barcode (if applicable)

Name MEGAN SIRYANE-SAMPLES

Job Title LEGISLATIVE ADVOCATE

Address D.O. Box 1757
Street

Phone 850.701.3455

TAWAHASSEE FL 32301
City State Zip

Email MSIRYANESAMPLES@
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

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)

3/23
Meeting Date

896
Bill Number (if applicable)

Topic Rights of Way

Amendment Barcode (if applicable)

Name Doug Mannheim

Job Title City

Address 215 S. Monroe St. Suite 400

Phone 681-6810

Street Tall.

City Fl State 32301 Zip

Email dmannheimer@broadbandasset.com

Speaking: For Against Information

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

Representing Sprint

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

3/23/15

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

896

Meeting Date

Bill Number (if applicable)

Topic Location of Utilities

Amendment Barcode (if applicable)

Name Dan Peterson

Job Title Director

Address 2878 S Osceola Ave

Phone 407-758-2491

Street Orlando FL 32806

Email dpeterson@jamesmadison.org

City State Zip

Speaking: For Against Information

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

Representing James Madison Institute - Property Rights Center

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)

3/23/15
Meeting Date

896
Bill Number (if applicable)

Topic Row / Utilities

Amendment Barcode (if applicable)

Name ERIC POOLE

Job Title Asst. Leg. Director

Address 100 Maple St
Street

Phone

T-11 FL
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)

3/23/15
Meeting Date

896
Bill Number (if applicable)

Topic Utility Locations

Amendment Barcode (if applicable)

Name J.C. Flores

Job Title VP Gov. Affairs

Address 150 S. Monroe
Street

Phone 850-577-7700

Tallahassee FL 32307
City State Zip

Email JCF323W@att.com

Speaking: For Against Information

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

Representing AT&T

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)

3/28/15

Meeting Date

896

Bill Number (if applicable)

Topic Rights of way / Retention

Amendment Barcode (if applicable)

Name Charles Dudley

Job Title

Address 108 S Monroe St.

Phone 681 0024

Tallahassee FL 32301

Email cdudley@FlaPartners.com

Speaking: For Against Information

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

Representing FL Cable Telecommunications 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)

3/23/15
Meeting Date

896
~~896~~
Bill Number (if applicable)

Topic Public works projects - Utilities

Amendment Barcode (if applicable)

Name JEFF STARKY

Job Title PRES., CAPITAL ALLIANCE GROUP

Address 100 E. College Ave
Street
City State Zip
RH AL 32301

Phone 850 224 1060

Email jeffstarky@gmail.com

Speaking: For Against Information

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

Representing LEON 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

3/23/2015

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

Meeting Date

Topic UTILITY EASEMENTS

Bill Number SB 896
(if applicable)

Name TRACY HATCH

Amendment Barcode _____
(if applicable)

Job Title GENERAL ATTORNEY

Address 150 S. MONROE ST SUITE 400
Street

Phone 850-425-6360

TALLAHASSEE FL 32301
City State Zip

E-mail th9467@att.com

Speaking: For Against Information

Representing AT&T

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/15

Meeting Date

906 996

Bill Number (if applicable)

Topic Location of Utilities

Amendment Barcode (if applicable)

Name David Fifer

Job Title Legislative Analyst

Address 106 E College Ave

Phone 705-605-9146

Street

Tallahassee FL 32301

City

State

Zip

Email David.Fifer@akerman.com

Speaking: For Against Information

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

Representing City of Lake Worth

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)

3/23/15
Meeting Date

896
Bill Number (if applicable)

Topic Utilities

Amendment Barcode (if applicable)

Name G. David Rogers

Job Title President

Address 301 S Monroe St

Phone 509-6760

Street

Tall City

FL State

32301 Zip

Email

Speaking: For Against Information

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

Representing Florida Natural Gas 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)

3/23/15
Meeting Date

896
Bill Number (if applicable)

Topic Location of Utilities

Amendment Barcode (if applicable)

Name Brian Musselwhite

Job Title Vice President State Gov't Affairs

Address 350 West Pensacola Street
Street

Phone 850-528-0561

TLH FL
City State Zip

Email brianmusselwhite@cable.comcast.com

Speaking: For Against Information

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

Representing Comcast

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)

3-23-15

Meeting Date

SB 986

Bill Number (if applicable)

Topic utilities relocation

Amendment Barcode (if applicable)

Name JIM BRAINERD

Job Title Attorney

Address 2814 Rabbit Hill Rd

Phone (850) 508-6716

Street

Tallahassee FL 32308

City

State

Zip

Email BraimerdLaw@comcast.net

Speaking: For Against Information

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

Representing Polk 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)

2/23/15
Meeting Date

SB 896
Bill Number (if applicable)

Topic SB 896

Amendment Barcode (if applicable)

Name JERRY McDAULFD

Job Title GOVERN. CONSULTANT

Address 123 ADAMS ST.

Phone 850-560-6068

TALLAHASSEE FL

Email MCDAULFD@SOS.TLHRSBY.COM

City State Zip

Speaking: For Against Information

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

Representing CITY OF MIAMI BRACH

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)

3/23/15
Meeting Date

894
Bill Number (if applicable)

Topic Location of Utilities

Amendment Barcode (if applicable)

Name Katie Kelly

Job Title

Address 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 FI Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/23/15

Meeting Date

SB 896

Bill Number (if applicable)

Topic Location of Utilities

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Phone 850-224-7173

Street

Tallahassee

FL

32312

Email bbevis@aif.com

City

State

Zip

Speaking: For Against Information

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

Representing Associated Industries 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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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)

3-23-15

Meeting Date

896

Bill Number (if applicable)

Topic Location of Utilities

Amendment Barcode (if applicable)

Name Carole Green

Job Title Lobbyist

Address PO Box 07463

Phone 850-590-2206

Street

Fort Myers, FL 33907

City

State

Zip

Email carole@capitolstrategies inc.com

Speaking: For Against Information

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

Representing City of Bonita Springs

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)

3/23/15
Meeting Date

896
Bill Number (if applicable)

Topic Utilities Relocation

Amendment Barcode (if applicable)

Name MARK Jeffries

Job Title

Address 201 S. Rosalind Ave.

Phone

Street
Orlando FL 32801

Email

City State Zip

Speaking: For Against Information

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

Representing Orange 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)

3/23/15

Meeting Date

SB 896

Bill Number (if applicable)

Topic Location of Utilities

Amendment Barcode (if applicable)

Name Christie Pontis

Job Title Government Affairs Manager

Address 315 S. Calhoun Street, Suite 500

Phone 850-599-1073

Street

Tallahassee, FL 32301

Email Christie.A.Pontis@centurylink.com

City

State

Zip

Speaking: For Against Information

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

Representing CenturyLink

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)

3/23

Meeting Date

896

Bill Number (if applicable)

Topic Location of Utilities

Amendment Barcode (if applicable)

Name Frank Bernardino

Job Title _____

Address 201 West Park Ave, Suite 100

Phone (561) 718-2345

Street

Tallahassee

FL

32301

City

State

Zip

Email Frank@antfieldFlorida.com

Speaking: For Against Information

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

Representing City of Miami

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)

3/23/15
Meeting Date

896
Bill Number (if applicable)

Topic Location of Utilities

Amendment Barcode (if applicable)

Name Doug Bell

Job Title _____

Address 101 W. Monroe St

Phone _____

Street

Tallahassee

City

State

Zip

Email douglas.bell@vip.com

Speaking: For Against Information

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

Representing City of Ormond Beach; City of Palm Coast; City of South Daytona

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)

3/23/2015

Meeting Date

SB 846

Bill Number (if applicable)

Topic Rights of Way

Amendment Barcode (if applicable)

Name Woody Simmons

Job Title VP Govt Affairs

Address 106 East College Street 710

Phone 850-222-6300

Street

Tallahassee FL 32312

Email Woodrow.Simmons@verizon.com

City

State

Zip

Speaking: For Against Information

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

Representing Verizon Communications

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

MARCH 23 15

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

896

Meeting Date

Bill Number (if applicable)

Topic LOCATION OF UTILITIES

Amendment Barcode (if applicable)

Name SCREVEN WATSON

Job Title

Address 3478 GARDENVIEW WAY

Phone 850-566-3905

Street

TALLAHASSEE, FL 32309

Email SCREVEN@SCREVENWATSON.COM

City

State

Zip

Speaking: For Against Information

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

Representing Village of Wellington, 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.

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The Florida Senate

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Community Affairs

Subject: Committee Agenda Request

Date: February 26, 2015

I respectfully request that **Senate Bill #896**, relating to **Location of Utilities**, 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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 896

INTRODUCER: Community Affairs Committee and Senator Brandes

SUBJECT: Location of Utilities

DATE: March 23, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Yeatman	CA	Fav/CS
2.			TR	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 896 shifts the responsibility to bear the cost of relocating utility facilities in a public easement for certain road projects from the utility to the state or local government requiring the facilities to be relocated. Utilities that pose an unreasonable interference will be liable for relocation costs if their lines and facilities are in the “right-of-way” rather than “under, on, over, across and along” any public road or highway. Public easements are typically located adjacent to the existing road or highway right-of-way. Despite a recent court decision to the contrary, utilities argue that they have historically placed their lines and facilities in public easements, outside of the right-of-way, relying on agreements and other legal protections that limit the utilities’ relocation costs. Under existing law, when a utility is located on a private easement and they are required to move because of a road project, the state or local government pays.

Additionally, the bill prohibits a municipality or county from requiring utilities to resubmit proprietary maps of facilities if the facilities have previously been subject to a permit.

II. Present Situation:

Specific Grant of Authority to Counties to Issue Licenses to Utilities

Section 125.42, F.S., gives counties specific authority to grant a license to any person or private corporation to construct, maintain, repair, operate, and remove, within the unincorporated areas of a county, water, sewage, gas, power, telephone, other utility, and television transmission lines

located “under, on, over, across and along” any county roads or highways.¹ The statutory phrase “under, on, over, across and along” county roads or highways has been in the statute since 1947.²

Specific Grant of Authority to Regulate the Placement and Maintenance of Utility Lines

Chapter 337, F.S., relates to public contracts and the acquisition, disposal, and use of property. The Florida Department of Transportation (DOT) and local governmental entities³ prescribe and enforce reasonable rules or regulations related to the placement and maintenance of the utility lines along, across, or on any public road or rail corridor.⁴ “Utility” in this context means any electric transmission, telephone, telegraph, or other communication services lines; pole lines; poles; railways; ditches; sewers; water, heat or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures that the statute refers to as a “utility.”⁵ Florida local governments have enacted ordinances regulating utilities located within city rights-of-way or easements.⁶

Payment of Moving or Removing Utilities and Exceptions

Since 1957, Florida law expressly has provided that in the event of widening, repair or reconstruction of a county’s public road or highway, the licensee must move or remove the lines at no cost to the county.⁷ In 2009, that requirement was made subject to a provision in s. 337.403(1), F.S., relating to agreements entered into after July 1, 2009.⁸ In 2014, it was made subject to an additional requirement that the authority⁹ find the utility is “unreasonably interfering” with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion, of such public road or publicly owned rail corridor.¹⁰

Additionally, beginning in 1957, Florida statutorily required utilities to bear the costs of relocating a utility placed upon, under, over, or along any public road the authority finds unreasonably interferes in any way with the convenient, safe, or continuous use, or the maintenance, improvement, extension or expansion of a road.¹¹ In 1994, that law was amended to include utilities placed upon, under, over, or along any publicly owned rail corridor.¹² Utility owners, upon 30 days notice, must eliminate the unreasonable interference within a reasonable time or an agreed time, at their own expense.¹³ However, since 1987, numerous exceptions to that general rule have been statutorily carved out, and can be found in s. 337.403(1), F.S., as follows:

¹ Section 125.42, F.S.

² Ch. 23850, ss. 1-3, Laws of Fla., now codified at s. 125.42, F.S.

³ These are referred in ss. 337.401-337.404, F.S., as an “authority.” S. 337.401(1)(a), F.S.

⁴ Section 337.401, F.S.

⁵ Section 337.401(a), F.S.

⁶ See City of Cape Coral Code of Ordinances, Ch. 25; City of Jacksonville Code of Ordinances, Title XXI, Ch. 711; City of Orlando Code of Ordinances, Ch. 23.

⁷ Ch. 57-777, s. 1, Laws of Fla., now codified at s. 125.42(5), F.S.

⁸ Ch. 2009-85, s. 2, Laws of Fla., now codified at s. 125.42(5), F.S.

⁹ “[A]uthority” means DOT and local governmental entities. Section 337.401(1), F.S.

¹⁰ Ch. 2014-169, s. 1, Laws of Fla., now codified at s. 125.42, F.S.

¹¹ Ch. 57-1978, s. 1, Laws of Fla., now codified at s. 337.403, F.S.

¹² Ch. 1994-247, s. 28, Laws of Fla., now codified at s. 337.403, F.S.]

¹³ Section 337.403, F.S.

- When the project is on the federal aid interstate system and federal funding is identified for at least 90 percent of the cost, DOT pays for the removal or relocation with federal funds.¹⁴
- When utility work is performed as part of a transportation facility construction contract, DOT may participate in those costs in an amount limited to the difference between the official estimate of all the work in the agreement plus 10 percent of the amount awarded for the utility work in the construction contract.¹⁵
- When utility work is performed in advance of a construction contract, DOT may participate in the cost of clearing and grubbing necessary for relocation.¹⁶
- If the utility being removed or relocated was initially installed to serve an authority or its tenants, or both, the authority bears the cost of the utility work but is not responsible for the cost of removal or relocation of any subsequent additions to the facility for the purpose of serving others.¹⁷
- If, in an agreement between the utility and an authority entered into after July 1, 2009, the utility conveys, subordinates, or relinquishes a compensable property right to the authority for the purpose of accommodating the acquisition or use of the right-of-way by the authority without the agreement expressly addressing future responsibility for cost of removal or relocation, the authority bears the cost of the utility work, but nothing impairs or restricts, or may be used to interpret, the terms of any agreement entered into prior to July 1, 2009.¹⁸
- If the utility is an electric facility being relocated underground to enhance vehicular, bicycle, and pedestrian safety, and if ownership of the electric facility to be placed underground has been transferred from a private to a public utility within the past 5 years, DOT bears the cost of the necessary utility work.¹⁹
- An authority may bear the cost of utility work when the utility is not able to establish a compensable property right in the property where the utility is located:
 - If the utility was physically located on the particular property before the authority acquired rights in the property,
 - The information available to the authority does not establish the relative priorities of the authority's and the utility's interest in the property, and
 - The utility demonstrates that it has a compensable property right in all adjacent properties along the alignment of the utility²⁰ or, pursuant to a 2014 amendment, after due diligence, the utility certifies that it does not have evidence to prove or disprove it has a compensable property right in the particular property where the utility is located.²¹
- Municipally-owned or county-owned utility located in a rural area of critical economic concern²² and DOT determines that the utility is unable, and will not be able within the next 10 years to pay for the cost of utility work necessitated by a DOT project on the State

¹⁴ Ch. 1987-100, s. 12, Laws of Fla., now codified at s. 337.403(1)(a), F.S.

¹⁵ Ch. 1987-100, s. 12, Laws of Fla., now codified at s. 337.403(1)(b), F.S.

¹⁶ Ch. 1999-385, s. 25, Laws of Fla., now codified at s. 337.403(1)(c), F.S.

¹⁷ Ch. 2009-85, s. 10, Laws of Fla., now codified at s. 337.403(1)(d), F.S.

¹⁸ Ch. 2009-85, s. 10, Laws of Fla., now codified at s. 337.403(1)(e), F.S.

¹⁹ Ch. 2009-85, s.10, Laws of Fla., now codified at s. 337.403(1)(f), F.S.

²⁰ Ch. 2012-174, s. 35, Laws of Fla., now codified at s. 337.403(1)(g), F.S.

²¹ Ch. 2014-169, s. 5, Laws of Fla., now codified at s. 337.403(1)(g)2., F.S.

²² Section 288.0656(2)(d) defines "rural area of critical economic concern" as "a rural community, or a region composed of rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact."

Highway System, DOT may pay, in whole or in part, the cost of such utility work performed by DOT or its contractor.

- If the relocation of utility facilities is needed for the construction of a commuter rail service project or an intercity passenger rail service project, and the cost of the project is reimbursable by the Federal Government, then the utility that owns or operates the facilities located by permit on a DOT owned rail corridor shall perform all necessary utility relocation work after notice from DOT, and DOT must pay the expense for the utility relocation work in the same proportion as federal funds are expended on the rail project after deducting any increase in the value of a new facility and any salvage value derived from an old facility.²³

Utility Relocation under Common Law and the *Cape Coral* Decision

Legal scholarship has addressed the common law implications of utility relocation.²⁴ Generally, under common law, a utility will bear the costs of moving or relocating its utility lines or facilities, if they are within the right-of-way or a public utility easement, unless there exists an agreement providing otherwise or a private easement pursuant to which the utility locates and runs its lines or facilities. A right-of-way differs from an easement. The term right-of-way “has been construed to mean ... a right of passage over the land of another It does not necessarily mean a legal and enforceable incorporeal [or intangible] right such as an easement.”²⁵ An easement gives someone else a reserved right to use property in a specified manner,²⁶ but “does not involve title to or an estate in the land itself.”²⁷

In 2014, the Florida Second District Court of Appeal (DCA) ruled in *Lee County Electric Coop., Inc. v. City of Cape Coral* that the requirement for utilities to pay for relocation within a right-of-way is well established in the common law.²⁸ That court found that, absent another arrangement by agreement between a governmental entity and the utility, or a statute dictating otherwise, the common law principle governs.²⁹ This case involved a platted public utility easement, on each side of the boundary for each home site in the subdivision, in which the electric utility had installed lines and other equipment. The municipality and the utility had a franchise agreement granting the utility the right to operate its electric utility in the public easement, but the agreement did not address who would be responsible for the cost of moving the utility’s equipment if the municipality required the utility to do so. The Second DCA held that the utility

²³ Ch. 2014-169, s. 5, Laws of Fla., now codified at s. 337.403(1)(i), F.S. The exception expressly provides that in no event is the state required to use state dollars for such utility relocation work and that it does not apply to any phase of the Central Florida Rail Corridor project known as SunRail. Section 337.403(1)(i), F.S.

²⁴ Michael L. Stokes, *Moving the Lines: The Common Law of Utility Relocation*, 45 Val. U.L. Rev. 457 (Winter, 2011).

²⁵ *City of Miami Beach v. Carner*, 579 So. 2d 248, 253 (Fla. 3d DCA 1991).

²⁶ *Southeast Seminole Civic Ass'n v. Adkins*, 604 So. 2d 523, 527 (Fla. 5th DCA 1992) (“[E]asements are mere rights to make certain limited use of lands and at common law, they did not have, and in the absence of contractual provisions, do not have, obligations corollary to the easement rights.”).

²⁷ *Estate of Johnston v. TPE Hotels, Inc.*, 719 So. 2d 22, 26 (Fla. 5th DCA 1998) (citations omitted).

²⁸ *Lee County Electric Coop., Inc. v. City of Cape Coral*, No. 2D10-3781, 2014 WL 2218972, at *4 (Fla. 2d DCA May 23, 2014), *cert. denied*, 151 So. 3d 1226 (Fla. 2014), quoting *Norfolk Redevelopment & Hous. Auth. v. Chesapeake & Potomac Tel. Co. of Va.*, 464 U.S. 30, 35 (1983).

²⁹ *Id.*

would bear the burden of the cost of moving a utility line located within a public utility easement to another public utility easement as part of the municipality's expansion of an existing road.³⁰

III. Effect of Proposed Changes:

Section 1 amends s. 125.42, F.S., relating to licenses for water, sewage, gas, power, telephone, other utility and television lines. The bill reduces a county's authority to grant licenses for lines to only locations within the right-of-way limits of a county highway or public road, as opposed to "under, on, over, across and along" such highways or roads. Specifically, the bill provides that the authority of a county to grant a license to construct, maintain, repair, operate, or remove, within the unincorporated areas of the county, lines for the transmission of water, sewage, gas, power, telephone, other utility, television lines, and other communications services³¹ is limited to those lines located within the right-of-way limits of any county roads or highways. Accordingly, this change narrows a county's ability to grant licenses to construct such lines within a public easement, running along a road or highway but not within the actual right-of-way.

The bill also makes a conforming change, substituting a reference to s. 337.403(1)(d)-(i), F.S., with s. 337.403(1)(d)-(j), F.S., to correspond with the new exception set forth in Section 3 of the bill.

Section 2 amends s. 337.401, F.S., relating to rules or regulations concerning specified structures within public roads or rail corridors. The bill reduces the ability of defined government authorities to grant licenses to only locations within the right-of-way limits of a county highway or public road, as opposed to "under, on, over, across and along" such highways or roads. Specifically, the bill narrows the authority of DOT and local governmental entities to prescribe and enforce rules or regulations related to the placing and maintaining of a utility³² to only within the right-of-way limits of any public road or publicly owned rail corridors. By changing the language to "right-of-way," the bill reduces the authority of DOT and local governments to prescribe and enforce rules and regulations regarding the placement and maintenance of utilities within a public easement. The bill also changes the expression "other structures referred to as a utility" to mean those structures referred to in ss. 337.401-337.404, F.S., instead of just those found in s. 337.401, F.S.

Additionally, the bill prohibits municipalities or counties exercising authority over a utility from requiring the utility to provide proprietary maps of facilities if the facilities have previously been

³⁰ *Id.* In reaching this conclusion, the Second District distinguished *Panhandle E. Pipe Line Co.*, noting that case concerned "a private easement the utility purchased from a property owner, rather than pursuant to a franchise agreement that allows the utility to use public property." *Lee County Electric Coop., Inc.*, 2014 WL 2218972, at *3. The Second District in its opinion also distinguished an earlier Second District case, *Pinellas County v. General Tel. Co. of Fla.*, 229 So. 2d 9 (Fla. 2d DCA 1969). In *Pinellas County*, without citing or discussing relevant cases or statutes, the court determined that the utility, which had a franchise agreement with the City, had a property right in the agreement, and held that the County had to pay the utility's costs in moving its telephone lines located within a right-of-way of an alley dedicated to the City and which was within property the County was purchasing as part of a County building construction.

³¹ The bill adds "other communications services" to the list of utilities in current law.

³² Section 337.401(1)(a), F.S., provides that utilities include "electric transmission, telephone, telegraph, or other communication services lines; pole lines; poles; railways; ditches; sewers; water, heat or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in this section as the "utility"."

subject to a permit from the authority; and separately prohibits municipalities or counties from requiring providers of communication services to provide proprietary maps of such facilities.

Section 3 amends s. 337.403, F.S., relating to alleviating an interference that a utility causes to a public road or publicly owned rail corridor. The bill limits the responsibility of utility providers to pay for relocating their lines and facilities under certain circumstances and requires defined governmental authorities to pay for such relocation. Specifically, the bill establishes that the utility is not required to bear relocation costs if a governmental authority requires relocation:

- For any purpose other than unreasonable interference with the safe continuous use, maintenance, improvement, extension, or expansion of a public road or publicly owned rail corridor; or as a condition or result of a project by a different entity;³³ and
- Where the utility is located *within the right-of-way limits* of the road or rail corridor, rather than *upon, under, over, or along* the road or rail corridor; or where a utility is located within an existing and valid utility easement granted by recorded plat, regardless of whether such land was subsequently acquired by the governmental authority, by dedication, transfer of fee, or otherwise.

This change contravenes the Second DCA holding in *Lee County Electric Cooperative, Inc. v. City of Cape Coral*.³⁴

Section 4 provides that the Legislature finds that the bill fulfills an important state interest by clarifying a utility's responsibility for relocation of its facilities.

Section 5 provides that the act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (a) of s. 18, Art. VII 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 expenditure is required to comply with a law that applies to all persons similarly situated.”

The bill applies to all persons similarly situated, including the state and local governments. The bill includes a legislative finding that the bill fulfills an important state interest.

B. Public Records/Open Meetings Issues:

None.

³³ The other entity would be responsible for payment.

³⁴ *Lee County Electric Coop., Inc.*, 2014 WL 2218972, at *4.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill would have an indeterminate positive impact on the private sector, depending upon the number of eligible reimbursements for relocation made to utilities by DOT, local governments, or other entities.

C. Government Sector Impact:

State and local governments would bear the cost of relocation if they require the relocation of a utility, with certain exceptions. If the relocation is required by an entity other than the authority, the other entity bears the cost of relocation. State and local governments would be required to bear the cost of utility work when a utility is located within an existing and valid utility easement granted by recorded plat, regardless of whether such land was subsequently acquired by the local government.

The DOT states that the bill would have an indeterminate negative fiscal impact on state expenditures relating to the cost of utility relocation on state roads.³⁵ To the extent funds are expended for such relocations, projects currently planned in the Work Program may need to be adjusted.

The bill will have an indeterminate negative fiscal impact on local governments, based on the number of situations in which local governments will be responsible for the cost of relocation on roads within their jurisdictions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 125.42, 337.401, and 337.403.

³⁵ Florida Dep't of Transportation, *Legislative Bill Analysis of SB 896*, at 3 (Feb. 13, 2015).

IX. Additional Information:

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

CS by Community Affairs on March 23, 2015:

Clarifies that proprietary maps are the type of information that local governments may not require from a utility if their facilities have been previously subject to a permit; and includes a statement of important state interest.

- B. **Amendments:**

None.



142696

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/23/2015	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 52
and insert:
improvement of public works in which 30 percent or more of the
cost will be paid from state-appropriated funds may not require
that a contractor,

By the Committee on Governmental Oversight and Accountability;
and Senator Brandes

585-02129-15

2015934c1

1 A bill to be entitled
2 An act relating to public works projects; providing
3 definitions; prohibiting the state and political
4 subdivisions that contract for the construction,
5 maintenance, repair, or improvement of public works
6 from imposing certain conditions on certain
7 contractors, subcontractors, or material suppliers or
8 carriers; providing an exception; prohibiting the
9 state and political subdivisions from imposing certain
10 restrictions on qualified bidders; providing an
11 effective date.

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

14
15 Section 1. Project labor agreements for certain publicly
16 funded public works projects.—

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

18 (a) "Political subdivision" means a separate agency or unit
19 of local government created or established by law or ordinance
20 and the officers thereof. The term includes, but is not limited
21 to, a county; a city, town, or other municipality; or a
22 department, commission, authority, school district, tax
23 district, water management district, board, public corporation,
24 institution of higher education, or other public agency or body
25 authorized to expend public funds for construction, maintenance,
26 repair, or improvement of public works.

27 (b) "Project labor agreement" means an arrangement
28 mentioned, detailed, or outlined within the project plans, the
29 specifications, or any bidding document of a public works

585-02129-15

2015934c1

30 project that:

31 1. Imposes requirements, controls, or limitations on
32 staffing, sources of employee referrals, assignments of work,
33 sources of insurance or benefits, including health, life, and
34 disability insurance and retirement pensions, training programs
35 or standards, or wages; or

36 2. Requires a contractor to enter into any sort of
37 agreement as a condition of submitting a bid that directly or
38 indirectly limits or requires the contractor to recruit, train,
39 or hire employees from a particular source to perform work on
40 public works or a public works project.

41 (c) "Public works" or "public works project" means a
42 building, road, street, sewer, storm drain, water system, site
43 development, irrigation system, reclamation project, gas or
44 electrical distribution system, gas or electrical substation, or
45 other facility, project, or portion thereof, including repair,
46 renovation, or remodeling, owned, in whole or in part, by any
47 political subdivision that is to be paid for in whole or in part
48 with state funds.

49 (2) (a) Except as provided in paragraph (b) or as required
50 by federal or state law, the state or any political subdivision
51 that contracts for the construction, maintenance, repair, or
52 improvement of public works may not require that a contractor,
53 subcontractor, or material supplier or carrier engaged in the
54 construction, maintenance, repair, or improvement of public
55 works:

56 1. Pay employees a predetermined amount of wages or wage
57 rate;

58 2. Provide employees a specified type, amount, or rate of

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2015934c1

59 employee benefits;

60 3. Control or limit staffing;

61 4. Recruit, train, or hire employees from a designated or
62 single source;

63 5. Designate any particular assignment of work for
64 employees;

65 6. Participate in proprietary training programs, unless
66 such training is a condition of a product warranty or guarantee;

67 or

68 7. Enter into any type of project labor agreement.

69 (b) Paragraph (a) does not apply if the payment of
70 prevailing or minimum wages to persons working on projects
71 funded in whole or in part by federal funds is required under
72 federal law.

73 (3) The state or any political subdivision that contracts
74 for the construction, maintenance, repair, or improvement of
75 public works shall not require that a contractor, subcontractor,
76 or material supplier or carrier engaged in the construction,
77 maintenance, repair, or improvement of public works execute or
78 otherwise become a party to any agreement with employees, their
79 representatives, or any labor organization as described in 29
80 U.S.C. s. 152(5) and 42 U.S.C. s. 2000e(d), including any area-
81 wide, regional, or state building or construction trade or
82 crafts council, organization, association, or similar body, as a
83 condition of bidding, negotiating, being awarded any bid or
84 contract, or performing work on a public works project.

85 (4) The state or any political subdivision that contracts
86 for the construction, maintenance, repair, or improvement of any
87 public works project may not prohibit any contractor,

585-02129-15

2015934c1

88 subcontractor, or material supplier or carrier engaged in the
89 construction, maintenance, repair, or improvement of public
90 works who is qualified, licensed, or certified as required by
91 state law to perform such work from submitting a bid, being
92 awarded a bid or contract upon being selected, negotiating a
93 contract upon being awarded, or performing work on a public
94 works project.

95 Section 2. This act shall take effect upon becoming a law.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-23-15
Meeting Date

934
Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Andrew Bott

Job Title Director, Business Development

Address 2153 W. Oak Ridge Rd
Street

Phone 407-432-4616

Orlando FL 32809
City State Zip

Email _____

Speaking: For Against Information

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

Representing IUPAT

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)

3/23/15
Meeting Date

934
Bill Number (if applicable)

Topic Public Works

Amendment Barcode (if applicable)

Name Eric Poole

Job Title Asst. Leg. Director

Address 100 Monroe St

Phone 922-3000

T-11

City State Zip

Email

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.

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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)

3-23-15

Meeting Date

Topic PUBLIC WORKS PROJECTS

Bill Number 934

(if applicable)

Name ANTHONY MARCIANO

Amendment Barcode

(if applicable)

Job Title SERGEANT (BSO)

Address 10221 DORCHESTER DR.

Phone 954 632 6878

Street

BOCA RATON FL 33428

City

State

Zip

E-mail AKTOM@ATT.NET

Speaking: For Against Information

Representing MYSELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-23-15

Meeting Date

Topic PUBLIC WORKS PROJECTS

Bill Number 934
(if applicable)

Name FRANK BULGER

Amendment Barcode _____
(if applicable)

Job Title Sergeant

Address 11012 Prestwich Drive E.
Street

Phone 561-373-3064

LOXAHATCHEE FL. 33470
City State Zip

E-mail Frank_Bulger@SHERIFF.org

Speaking: For Against Information

Representing MYSELF

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)

3-23-15
Meeting Date

Topic Public Works Projects

Bill Number 934
(if applicable)

Name JoAnne Alvarez

Amendment Barcode _____
(if applicable)

Job Title 911 Dispatcher

Address 14659 SW 4 Street

Phone 954 629 9970

Pembroke Pines FL 33027
City State Zip

E-mail joanne.alvarez@federationmembers.org

Speaking: For Against Information

Representing myself

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)

~~3123~~ 3123
Meeting Date

934
Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Carol BOWEN

Job Title Deputy Chief Lobbyist

Address 3730 Coconut Creek Pkwy, Suite 200
Street

Phone (954) 465-6811

Coconut Creek FL 33066
City State Zip

Email cbowen@abcaofl.com

Speaking: For Against Information

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

Representing Associated Builders and Contractors 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)

3/23/15

Meeting Date

934

Bill Number (if applicable)

Topic 934

Amendment Barcode (if applicable)

Name Casey Cook

Job Title Legislative Advocate

Address Po Box 1757

Phone 850 701 3701

Street

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

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)

3/23/15
Meeting Date

SB-934
Bill Number (if applicable)

Topic PUBLIC WORKS PROJECTS

Amendment Barcode (if applicable)

Name J.B. CLARK

Job Title DIRECTOR - LEGISLATIVE AFFAIRS

Address 2071 CYNTHIA DRIVE
Street

Phone 850-556-8143

TALLAHASSEE, FLORIDA 32303
City State Zip

Email JBCCLARK5@AIZTHLINK.NET

Speaking: For Against Information

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

Representing FLORIDA ELECTRICAL WORKERS / FLORIDA BUILDING TRADES COUNCIL

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)

3-23-15

Meeting Date

934

Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Russell Leggette

Job Title Marketing Director

Address 6352 32 Ave H

Phone 813 918 4931

Street

St. Petersburg FL 33710

City

State

Zip

Email rleggette@tempabay.com

Speaking: For Against Information

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

Representing Florida Pipe Trades

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)

3/23/15
Meeting Date

SB 934
Bill Number (if applicable)

Topic Project Labor Agreements

Amendment Barcode (if applicable)

Name Rich Templin

Job Title _____

Address 135 S. Monroe
Street

Phone 850-224-6926

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 Florida AFL-CIO

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)

03-23-2015
Meeting Date

Topic Public Work Project

Bill Number SB 934
(if applicable)

Name Joseph Tate

Amendment Barcode _____
(if applicable)

Job Title Retiree

Address 5973 Copper Creek Dr
Street
Jacksonville FL 32218
City State Zip

Phone 904-765-3746

E-mail jojo.tate@bellsouth.net

Speaking: For Against Information

Representing Myself

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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Com App 3015

THE FLORIDA SENATE APPEARANCE RECORD

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

3/23/15
Meeting Date

934
Bill Number (if applicable)

Topic Public Works Project

Amendment Barcode (if applicable)

Name Richard Watson WATSON

Job Title Legislative Counsel

Address P.O. Box 10038

Phone 850 227-0000

Street
Tallahassee FL 32302

City State Zip

Email rick@rwatsonand
associates.com

Speaking: For Against Information

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

Representing FL Surety Association, FL Wood & Ceiling Contractors

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)

3-23-15

Meeting Date

934

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name JESS MCCARTY

Job Title ASST COUNTY ATTY

Address 111 NW 1ST ST. 2810

Phone 305-979-7110

Street

MIAMI

33128

City

State

Zip

Email JMM2@MIAMI.DCF.GOV

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)

03/23/2015

Meeting Date

SB 934

Bill Number (if applicable)

Topic PROMOTION OF PROTECT LABOR AGREEMENTS

Amendment Barcode (if applicable)

Name ROBERT CHAPMAN

Job Title STATE EMPLOYEE

Address ^{HOME} 41219 LEMBROOK DRIVE

Phone 813-313-8913

Street

ZEPHYRUS

FLORIDA

33540

Email chapmanr1@yahoo.com

City

State

Zip

Speaking: For Against Information

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

(CITIZEN)

Representing SELF - AFFILIATED w/FLORIDA AFL-CIO

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)

3/23/2015
Meeting Date

934
Bill Number (if applicable)

Topic PERJECT LABOR AGREEMENTS

Amendment Barcode (if applicable)

Name GAIL MARY PERRY

Job Title CHAIR

Address PO Box 1766

Phone 954 857 4055

POMP BEACH, FL 33061
Street City State Zip

Email workingfolk@hotmail.com

Speaking: For Against Information

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

Representing CWA COUNCIL 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)

3/23/15

Meeting Date

SB 934

Bill Number (if applicable)

Topic Relating to Public Works Projects

Amendment Barcode (if applicable)

Name Greg Black

Job Title Lobbyist

Address 215 S. Monroe Street | Suite 505

Phone 850-205-9000

Street

Tallahassee

FL

32301

Email greg.black@Metzlaw.com

City

State

Zip

Speaking: For Against Information

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

Representing Associated General Contractors - AGC

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)

3/23/15

Meeting Date

SB 934

Bill Number (if applicable)

Topic PLA

Amendment Barcode (if applicable)

Name Earnest Champion

Job Title Mechanic

Address 110 North Sipprell Rd

Street

Phone 386 655 2245

Floralhome

City

Fla

State

32140

Zip

Email

Speaking: For Against Information

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

Representing Fla State Council of Machinists

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)

3-23-15

Meeting Date

SB 934

Bill Number (if applicable)

Topic P.L.E.

Amendment Barcode (if applicable)

Name JACK SIMS

Job Title MACHINIST

Address 108 PARK RD.
Street

Phone 386-385-4951

INTERLACHEN FL 32148
City State Zip

Email DEEJAY 787 @ COMCAST.NET

Speaking: For Against Information

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

Representing FLORIDA 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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APPEARANCE RECORD

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

3-23-15

Meeting Date

SB934
Bill Number (if applicable)

Topic Project Labor Agreement

Amendment Barcode (if applicable)

Name Karen Houston

Job Title Communicator

Address 237 Lemon St.
Street

Phone 321-205-6989

Cocoa FL 32922
City State Zip

Email mzkah@aol.com

Speaking: For Against Information

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

Representing The Florida State Council of Machinists

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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3-23-15

Meeting Date

SB 934

Bill Number (if applicable)

Topic PROJECT LABOR AGREEMENT

Amendment Barcode (if applicable)

Name JOHN GALL

Job Title LABOR LEADER

Address 13398 53RD N. CT.

Street

Phone 561 308-0339

W.P. BCH

City

FL.

State

33411

Zip

Email john.galle@prodigy.net

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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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)

9341

Bill Number (if applicable)

Amendment Barcode (if applicable)

Meeting Date

Topic RPLA

Name Greg Thompson

Job Title Power Plant Operator

Address 308 Flagler Street

Street

Chewiston Fl. 33440

City

State

Zip

Phone

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

3-23-15

Meeting Date

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

5B 934

Bill Number (if applicable)

Topic Project Labor Agreement

Amendment Barcode (if applicable)

Name Roger Simmermaker

Job Title Electronics Technician

Address 13112 Aronomink Lane

Phone 407-234-4626

Street

Orlando FL 32828

City

State

Zip

Email buyamerican1@comcast.net

Speaking: For Against Information

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

Representing IAM & AW 610

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)

March 24, 2015
Meeting Date

SB 934
Bill Number (if applicable)

Topic PLA

Amendment Barcode (if applicable)

Name Robert Livingston

Job Title Crane Operator

Address 274 Galbraith AV,
Street

Phone 904-669-8699

Oak Hill FL 32759
City State Zip

Email rlivingston7@fl.senate.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.

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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)

3/23/15
Meeting Date

S/B 934
Bill Number (if applicable)

Topic PLA

Amendment Barcode (if applicable)

Name Frank C. Ortis

Job Title Pres. Florida Machinists

Address 1321 NW 114 Ave

Phone 954-224-4477

Street

Pembroke Pines FL 33026

City

State

Zip

Email UNIONIZERC98@a

Speaking: For Against Information

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

Representing Machinists

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)

3/23/2014
Meeting Date

SB 939
Bill Number (if applicable)

Topic SB 939

Amendment Barcode (if applicable)

Name David Shepp

Job Title Lobbyist Southern Strategy Group

Address _____
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 City of Lakeland

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)

3/23/15

Meeting Date

SB934

Bill Number (if applicable)

Topic Project Labor Agreement

Amendment Barcode (if applicable)

Name Michael Kimmel

Job Title Millwright

Address 9128 Hampton Cove Court South

Phone 904 745 5062

Street

Jacksonville Florida 32225

Email markkimmel@hotmail.com

City

State

Zip

Speaking: [] For [] Against [] Information

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

Representing Machinist Union

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.

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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)

3-23-15

Meeting Date

934

Bill Number (if applicable)

Topic PLA's with local governments

Amendment Barcode (if applicable)

Name Jeremiah Tattersall

Job Title Field Rep

Address 206 NE 2nd Ave

Phone 352-222-1991

Street

Gainesville

FL

32601

City

State

Zip

Email Jeremiah.Tattersall@gmail.com

Speaking: For Against Information

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

Representing Myself

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)

3/23/15

Meeting Date

934

Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Frank Bernardino

Job Title

Address 201 West Park Ave, Suite 100

Phone (561) 718-2345

Street

Tallahassee FL 32301

City

State

Zip

Email frank@antfieldflorida.com

Speaking: [] For [] Against [] Information

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

Representing City of Miami

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

Lobbyist registered with Legislature: [x] 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)

23 MAR 15
Meeting Date

S.B. 934
Bill Number (if applicable)

Topic P.L.A.'s

Amendment Barcode (if applicable)

Name WILLIAM THEODORE

Job Title AIRCRAFT MECHANIC

Address 9002 TARAWYND CT
Street

Phone 813 323 4871

ODESSA FL 33556
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

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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)

3/23/15
Meeting Date

SB 934
Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name R. Bruce Kershner

Job Title

Address 230 W Bay Ave
Street

Phone 407-788-5570

Longwood FL
City State Zip

Email rbkershner@att.net

Speaking: For Against Information

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

Representing NUCA Under Ground Utility Contractors 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.

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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)

3/23/15

Meeting Date

SB 934

Bill Number (if applicable)

Topic Public Works Project

Amendment Barcode (if applicable)

Name Teresa Skales

Job Title Wardrobe Dresser

Address 4791 SW 82nd Ave #8

Phone (904) 478-4004

Street

Davie, FL 33328

City

State

Zip

Email teresaskales@gmail.com

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

2/23/15
Meeting Date

SB 934
Bill Number (if applicable)

Topic PLA project Labor Agreement

Amendment Barcode (if applicable)

Name Wayne R. Mason

Job Title _____

Address 8517 John Hamm Rd.

Phone 850-776-2796

Street Milton State FL Zip _____
City

Email waymason@aol.com

Speaking: For Against Information

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

Representing F.A.M.

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)

3/23/15

Meeting Date

SB 934

Bill Number (if applicable)

Topic PLA

Amendment Barcode (if applicable)

Name Charles S. Pate II

Job Title _____

Address 6594 Arlingwood Dr
Street

Phone _____

Milton FL 32570
City State Zip

Email CPATEII@netscape.net

Speaking: For Against Information

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

Representing I AM

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)

3/23/15

Meeting Date

SB 934

Bill Number (if applicable)

Topic PLA

Amendment Barcode (if applicable)

Name REGINA HOLMES

Job Title AVIATION TB57 PLANE CAPTAIN

Address 4845 GREENWOOD RD

Phone 850 910 5071

Street

JAY

City

FL

State

32565

Zip

Email YLRICH.HOLMES@gmail.com

Speaking: For Against Information

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

Representing IAM

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)

3/23/2015

Meeting Date

934

Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Edward b. Labrador

Job Title Director, Intergovernmental Affairs

Address 115 S. Andrews Ave., Room 426

Phone (954) 357-7575

Street

Ft. Lauderdale

FL

33301

City

State

Zip

Email elabrador@broward.org

Speaking: For Against Information

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

Representing Broward 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

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Community Affairs

Subject: Committee Agenda Request

Date: March 10, 2015

I respectfully request that **Senate Bill #934**, relating to **Public Works Projects**, 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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 934

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Brandes

SUBJECT: Public Works Projects

DATE: March 20, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	<u>Pre-meeting</u>
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 934 creates an unnumbered section of law relating to public works projects. The bill defines the terms “political subdivision,” “project labor agreement,” and “public works” or “public works project.” The bill prohibits state and political subdivisions that contract for construction, maintenance, repair, or improvement of public works from imposing certain conditions on contractors, subcontractors, or material suppliers or carriers.

Except as required by federal or state law, the bill prohibits the state or a political subdivision from requiring a contractor, subcontractor, or material supplier or carrier to become a party to any agreement with employees, their representatives, or any labor organization, including any area-wide, regional, or state building or construction trade or crafts council, organization, association, or similar body, as a condition of bidding, negotiating, being awarded any bid or contract, or performing work on a public works project.

CS/SB 934 also prohibits the state or a political subdivision from restricting a qualified contractor, subcontractor, or material supplier or carrier from submitting bids, being awarded a bid or contract, or performing work on a public works project.

II. Present Situation:

The Consultants' Competitive Negotiation Act

In 1972, Congress passed the Brooks Act (Public Law 92-582), which codified Qualifications-Based Selection (QBS) as the federal procurement method for design professional services. The QBS process entails first soliciting statements of qualifications from licensed architectural and engineering providers, selecting the most qualified respondent, and then negotiating a fair and reasonable price. The vast majority of states currently require a QBS process when selecting the services of design professionals.

Florida's Consultants' Competitive Negotiation Act (CCNA), was enacted by the Legislature in 1973¹ to specify the procedures to be followed when procuring professional services by an agency.²

Currently, the CCNA, codified in s. 287.055, F.S., specifies the process to be followed when state and local government agencies procure the professional services of an architect, professional engineer, landscape architect, or registered surveyor and mapper. The CCNA requires that state agencies publicly announce, in a consistent and uniform manner, each occasion when professional services must be purchased for one of the following:³

- A project, when the basic construction cost is estimated by the agency to exceed \$325,000.
- A planning or study activity, when the fee for professional services exceeds \$35,000.

The public notice must provide a general description of the project and describe how the interested consultants may apply for consideration.

The CCNA provides a two-phase selection process.⁴ In the first phase, the "competitive selection," the agency evaluates the qualifications and past performance of no fewer than three bidders. The agency selects the bidders, ranked in order of preference, and considers the most highly qualified to perform the required services. The CCNA requires consideration of several factors in determining the most highly qualified bidders.⁵

The CCNA prohibits the agency from requesting, accepting, and considering, during the selection process, proposals for the compensation to be paid.⁶ Section 287.055(2)(d), F.S., defines the term "compensation" to mean "the amount paid by the agency for professional services regardless of whether stated as compensation" or as other types of rates.

¹ Chapter 73-19, L.O.F.

² Section 287.055(2)(b), F.S., defines "Agency" as "the state, a state agency, a municipality, a political subdivision, a school district, or a school board. The term "agency" does not extend to a nongovernmental developer that contributes public facilities to a political subdivision under s. 380.06, F.S., or ss. 163.3220-163.3243, F.S."

³ Section 287.055(3)(a)1., F.S.

⁴ Sections 287.055(4) and (5), F.S.

⁵ The following is a full listing of the factors that s. 287.055(4)(b), F.S., requires agencies to consider: the ability of professional personnel; whether a firm is a certified minority business enterprise; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firms; and, the volume of work previously awarded to each firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms.

⁶ Section 287.055(4)(b), F.S.

In the second phase, the “competitive negotiation,” the agency then negotiates compensation with the most qualified of the three selected firms for professional services at compensation which the agency determines is “fair, competitive, and reasonable.”⁷ If a satisfactory contract cannot be negotiated, the agency must formally terminate negotiations with that firm and must then negotiate with the second most qualified firm. The agency must negotiate with the third most qualified firm if the negotiation with the second most qualified firm fails to produce a satisfactory contract.⁸ If a satisfactory contract cannot be negotiated with any of the three selected, the agency must select additional firms in order of their competence and qualifications and continue negotiations until a contract is reached.⁹ Once negotiations with a firm are terminated, the agency cannot resume negotiations with that firm for the project.

In October 2011, the Attorney General opined that local governments could not create a hybrid procurement process for awarding projects but instead is limited to utilizing the statutorily defined procedures.¹⁰

Procurement of Construction Services for Public Property and Publicly Owned Buildings

Chapter 255, F.S., specifies the procedures to be followed in the procurement of construction services for public property and publicly owned buildings. Section 255.29, F.S., requires the Department of Management Services (DMS) establish, through the adoption of rules,¹¹ the following construction contract procedures:

- For determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of bids for building construction contracts, including procedures for the rejection of bidders who are reasonably determined from prior experience to be unqualified or irresponsible to perform the work required by a proposed contract.
- For awarding each state agency construction project to the lowest qualified bidder as well as procedures to be followed in cases in which DMS declares a valid emergency to exist which would necessitate the waiver of the rules governing the award of state construction contracts to the lowest qualified bidder.
- For governing negotiations for construction contracts and modifications to contract documents when such negotiations are determined by the DMS secretary to be in the best interest of the state.
- For entering into performance-based contracts for the development of public facilities when DMS determines the use of such contracts to be in the best interest of the state.

These procedures must include, but are not limited to:¹²

- Prequalification of bidders;

⁷ Section 287.055(5)(a), F.S.

⁸ Section 287.055(5)(b), F.S.

⁹ Section 287.055(5)(c), F.S.

¹⁰ Op. Att’y Gen. Fla. 2011-21 (2011).

¹¹ Chapter 60D-5, F.A.C., establishes the procedures for s. 255.29, F. S., which requires procedures be followed in advertising for bids for construction contracts; in determining the eligibility of potential bidders to submit proposals for construction contracts; in awarding construction contracts; for waiver of non-material bid deviations; for rejection of bids; for disqualification of contractors; and in requesting authority to negotiate contracts and in negotiating contracts.

¹² Section 255.29(4)(a)-(d), F.S.

- Criteria to be used in developing requests for proposals which may provide for singular responsibility for design and construction, developer flexibility in material selection, construction techniques, and application of state-of-the-art improvements;
- Accelerated scheduling, including the development of plans, designs, and construction simultaneously; and
- Evaluation of proposals and award of contracts considering such factors as price, quality, and concept of the proposal.

State contracts for construction projects that are projected to cost in excess of \$200,000 must be competitively bid.¹³ County, municipal, or other political subdivision contracts for construction projects that are projected to cost in excess of \$200,000 must also be competitively bid.¹⁴ Counties, municipalities, special districts,¹⁵ or other political subdivisions seeking to construct or improve a public building must competitively bid the project if the projected cost is in excess of \$300,000.¹⁶

The solicitation of competitive bids or proposals for any state construction project that is projected to cost more than \$200,000 must be publicly advertised in the Florida Administrative Register (FAR) at least 21 days prior to the established bid opening.¹⁷ If the construction project is projected to exceed \$500,000, the advertisement must be published in the FAR at least 30 days prior to the bid opening, and at least once in a newspaper of general circulation in the county where the project is located 30 days prior to the bid opening.¹⁸

Preference for Employment of State Residents in Construction Contracts Funded By State Funds

Florida law provides a preference for the employment of state residents in construction contracts funded by money appropriated with state funds.¹⁹ Such contracts must contain a provision requiring the contractor to give preference to the employment of state residents in the performance of the work if state residents have substantially equal qualifications²⁰ to those of non-residents.²¹ If a construction contract is funded by local funds, the contract may contain such a provision.²² In addition, a contractor required to employ state residents must contact the Department of Economic Opportunity to post the contractor's employment needs in the state's job bank system.²³

¹³ Section 255.0525(1), F.S. Also, see Rules 60D-5.002(2) and 60D-5.0073, F.A.C.

¹⁴ Section 255.0525(2), F.S.

¹⁵ Section 255.20(1), F.S. (Special district as defined in ch. 189, F.S.).

¹⁶ *Id.* For electrical work, local governments must competitively bid projects estimated to cost more than \$75,000.

¹⁷ Section 255.0525(1), F.S.

¹⁸ *Id.* Similar publishing provisions apply to construction projects projected to cost more than \$200,000 for counties, municipalities, and political subdivisions. *See* Section 255.0525(2), F.S.

¹⁹ Section 255.099(1), F.S.

²⁰ Section 255.099(1)(a), F.S., defines "substantially equal qualifications" as the "qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are better suited for the position than the qualifications held by the other person or persons."

²¹ Section 255.099(1), F.S.

²² *Id.*

²³ Section 255.099(1)(b), F.S.

Department of Transportation Construction Projects

Chapter 337, F.S., governs contracting by the Department of Transportation (DOT). Any person who wants to bid for a construction contract in excess of \$250,000 must be certified by DOT as qualified.²⁴ Certification is also required to bid on road, bridge, or public transportation construction projects of more than \$250,000.²⁵ The purpose of certification is to ensure professional and financial competence relating to the performance of construction contracts by evaluating bidders “with respect to equipment, past record, experience, financial resources, and organizational personnel of the applicant necessary to perform the specific class of work for which the person seeks certification.”²⁶

Each application for certification of qualification must be accompanied by the latest annual financial statement of the applicant completed within the last 12 months.²⁷ If the application or the annual financial statement shows the financial condition of the applicant more than 4 months prior to the date on which the application is received by DOT, then an audited interim financial statement must be submitted and accompanied by an updated application.²⁸ If the applicant meets the qualifications, DOT issues a certificate of qualification that is valid for 18 months after the date of the applicant’s financial statement, or shorter time period as DOT prescribes.²⁹ Such certificate of qualification may be revoked by DOT for a contractor who is deemed delinquent on a previously awarded contract.³⁰

DOT does not prohibit a qualified, licensed or certified contractor from bidding; however, a contract may not be awarded if the bid is determined to be irregular or non-responsive. DOT does require training for certain work categories, such as bridge work and other technical road and bridge areas.

Federal Labor and Wage Laws

The National Labor Relations Act of 1935³¹ and the Labor Management Relations Act of 1947³² constitute a comprehensive scheme of regulations guaranteeing employees the right to organize, to bargain collectively through chosen representatives, and to engage in concerted activities to secure their rights in industries involved in or affected by interstate commerce.

²⁴ Section 337.14(1), F.S. and ch. 14-22, F.A.C.

²⁵ Section 337.14(2), F.S.

²⁶ Section 337.14(1), F.S.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Section 337.14(4), F.S.

³⁰ Section 337.16, F.S.

³¹ 29 U.S.C. ss. 151 to 169 (encouraging the practice and procedure of collective bargaining and protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection).

³² 29 U.S.C. ss. 141 to 187 (prescribing the rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce).

The Fair Labor Standards Act (FLSA) establishes a federal minimum wage, which is the lowest hourly wage that can be paid in the United States.³³ A state may set the rate higher than the federal minimum, but not lower.³⁴ It also requires employers to pay time and a half to its employees for overtime hours worked,³⁵ and establishes standards for recordkeeping³⁶ and child labor.³⁷ Over 135 million workers are covered under the act,³⁸ most jobs are covered by the FLSA, but not all jobs are covered. In addition, some jobs are covered, but are considered “exempt” from the FLSA overtime requirements.³⁹

On February 12, 2014, President Obama signed Executive Order 13658, which establishes a minimum wage for certain federal contractors.⁴⁰ The Executive Order requires parties who contract with the federal government to pay workers performing work on or in connection with covered federal contracts at least \$10.10 per hour beginning on January 1, 2015. Beginning January 1, 2016, and annually thereafter, such workers must be paid an amount determined by the Secretary of Labor in accordance with the Executive Order. The order stated that “[r]aising the pay of low-wage workers increases their morale and the productivity and quality of their work, lowers turnover and its accompanying costs, and reduces supervisory costs.”⁴¹

State Labor and Wage Regulations

Article I, Section 6 of the State Constitution creates a constitutional right to collectively bargain for public sector employees. It provides, in pertinent part, that “[t]he right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged.” The Florida Supreme Court has held that public employees maintain the same rights to collectively bargain as do private employees.⁴²

In addition, the State Constitution provides that “[a]ll working Floridians are entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families, that protects their employers from unfair low-wage competition, and that does not force them to rely on taxpayer-funded public services in order to avoid economic hardship.”⁴³ The State Constitution requires that employers pay employees no less than the minimum wage for all hours

³³ 29 U.S.C. s. 206.

³⁴ 29 U.S.C. s. 218(a).

³⁵ 29 U.S.C. s. 207.

³⁶ 29 U.S.C. s. 211.

³⁷ 29 U.S.C. s. 212.

³⁸ <http://www.dol.gov/whd/workers.htm> (last visited March 18, 2015).

³⁹ 29 U.S.C. s. 213; www.dol.gov/whd/regs/compliance/whdfs14.pdf (last visited March 18, 2015).

⁴⁰ A copy of the Executive Order can be found online at: <http://www.whitehouse.gov/the-press-office/2014/02/12/executive-order-minimum-wage-contractors> (last visited March 18, 2015).

⁴¹ *Id.*

⁴² See *Hillsborough Cnty. Gov'tl Emps. Ass'n, Inc. v. Hillsborough Cnty. Aviation Auth.*, 522 So.2d 358 (Fla. 1988); *City of Tallahassee v. Public Employees Relations Comm'n*, 410 So.2d 487 (Fla. 1981); *Dade Cnty. Classroom Teachers Ass'n v. Legislature of Fla.*, 269 So.2d 684 (Fla. 1972).

⁴³ Article X, s. 24(a), FLA. CONST. and s. 448.110, F.S.

worked in Florida.⁴⁴ The current state minimum wage is \$8.05 per hour,⁴⁵ which is higher than the federal rate.⁴⁶

Federal Project Labor Agreements

In 2009, President Barack Obama signed Executive Order 13502 authorizing the use of project labor agreements for federal construction projects.⁴⁷ The Executive Order defines the term “project labor agreement” as “a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. 158(f).” The Executive Order provides that executive agencies may, on a project-by-project basis, require the use of a project labor agreement by a contractor where such an agreement will advance the federal government’s goal of achieving economy and efficiency in procurement, produce labor-management stability, and ensure compliance with laws and regulations concerning safety, health, equal employment opportunity, and labor and employment standards.

Federal Prevailing Wage Requirements

The Davis-Bacon Act applies to contractors and subcontractors performing work on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair of public works projects or public buildings.⁴⁸ The United States Department of Labor, Wage and Hour Division, issues two types of wage determinations: general determinations (also known as area determinations) and project determinations. The wage and fringe benefits⁴⁹ in the applicable Davis-Bacon wage determination must be the minimum paid by contractors and subcontractors to laborers and mechanics.⁵⁰

III. Effect of Proposed Changes:

Section 1 creates an unnumbered section of law relating to public works projects. The following terms are defined:

- “Political subdivision” means a separate agency or unit of local government created or established by law or ordinance and the officers thereof⁵¹ and is authorized to expend public funds for construction, maintenance, repair, or improvement of public works.

⁴⁴ Article X, s. 24(c), FLA. CONST.

⁴⁵ <http://www.floridajobs.org/business-growth-and-partnerships/for-employers/display-posters-and-required-notice> (last visited March 18, 2015).

⁴⁶ The federal minimum wage is \$7.25 per hour. For more information about federal minimum wage provisions, see <http://www.dol.gov/whd/minimumwage.htm> (last visited March 18, 2015).

⁴⁷ A copy of the Executive Order can be found online at:

http://www.whitehouse.gov/the_press_office/ExecutiveOrderUseofProjectLaborAgreementsforFederalConstructionProjects (last visited March 18, 2015); the Executive Order is codified in subpart 22.5 of the Federal Acquisition Regulation.

⁴⁸ 40 U.S.C. s. 3142(a).

⁴⁹ Examples of fringe benefits include life insurance, health insurance, pension, vacation, holidays, sick leave, and other “bona fide” fringe benefits. <http://www.dol.gov/whd/programs/dbra/faqs/fringes.htm#Fringe> (last visited March 18, 2015).

⁵⁰ 40 U.S.C. s. 3142(b).

⁵¹ The bill notes that the term “political subdivision” includes, but is not limited to, a county; a city, town, or other municipality; or a department, commission, authority, school district, tax district, water management district, board, public corporation, institution of higher education, or other public agency or body.

- “Project labor agreement” means an arrangement mentioned, detailed, or outlined within the project plans, the specifications, or any bidding document of a public works project that:
 - Imposes requirements, controls, or limitations on:
 - Staffing,
 - Sources of employee referrals,
 - Assignments of work,
 - Sources of insurance or benefits, including health, life, and disability insurance and retirement pensions, training programs or standards, or wages; or
 - Requires a contractor to enter into any sort of agreement as a condition of submitting a bid that directly or indirectly limits or requires the contractor to recruit, train, or hire employees from a particular source to perform work on public works or a public works project.
- “Public works” or “public works project” means a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof, including repair, renovation, or remodeling, owned, in whole or in part, by any political subdivision that is to be paid in whole or in part with state funds.

This section prohibits the state or any political subdivision from requiring a contractor, subcontractor, or material supplier or carrier engaged in the construction, maintenance, repair, or improvement of public works to:

- Pay employees a predetermined amount of wages or wage rate;
- Provide employees a specified type, amount, or rate of employee benefits;
- Control or limit staffing;
- Recruit, train, or hire employees from a designated or single source;
- Designate any particular assignment of work for employees;
- Participate in proprietary training programs unless such training is a condition or a product warranty or guarantee; or
- Enter into any type of project labor agreement.

However, the prohibition on the imposition of certain conditions by a state or any political subdivision does not apply if the payment of prevailing or minimum wages to persons working on projects funded in whole or in part by federal funds is required by federal law. The prohibition also does not apply if it would conflict with the requirements of another federal or state law.

The bill also prohibits the state or a political subdivision that contracts for a public works project from requiring a contractor, subcontractor, or material supplier or carrier to become a party to any agreement with employees, their representatives, or any labor organization, including any area-wide, regional, or state building or construction trade or crafts council, organization, association, or similar body, as a condition of bidding, negotiating, being awarded any bid or contract, or performing work on a public works project.

Additionally, the bill provides that the state or a political subdivision that contracts for a public works project may not prohibit a contractor, subcontractor, or material supplier or carrier who is

qualified, licensed, or certified as required by state law from submitting bids, being awarded a bid or contract, negotiating a contract, or performing work on a public works project.

Section 2 provides that this act shall 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.

D. Other Constitutional Issues:

Right to Work

Florida is a “right to work” state. Article I, Section 6 of the State Constitution protects Florida citizens from employers’ actions relating to their membership, or non-membership, in a labor union. This section also protects employees’ right to collectively bargain and prohibits public employees from striking. The Florida Supreme Court has stated that “[t]here is little question that Article I, section 6 was intended to, and does, benefit all employees, public or private.”⁵² The right to collectively bargain is a fundamental right vested in all Florida employees by the State Constitution and any government action attempting to restrict the enjoyment thereof is subject to strict scrutiny and must be justified by a compelling state interest.⁵³

The bill may impact existing agreements that local government subdivisions have with labor organizations.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

⁵² *Hillsborough*, 522 So.2d at 362.

⁵³ *Coastal Fla. Police Benevolent Ass’n, Inc. v. Williams*, 838 So.2d 543 (Fla. 2003).

B. Private Sector Impact:

Indeterminate. The bill appears to conflict with Florida's law providing a preference for employment of state residents in construction projects funded by state funds,⁵⁴ and this could potentially result in fewer qualified Floridians being hired for these projects.

C. Government Sector Impact:

Significant. Fiscal impacts could be realized by DOT due to the proposed relief from certain warranty requirements imposed by suppliers since the bill would operate to prohibit DOT from requiring specific training certifications from designated or single sources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill appears to conflict with Florida's law providing a preference for employment of state residents in construction projects funded by state funds,⁵⁵ and this could potentially result in fewer qualified Floridians being hired for these projects.

Impact on DOT

DOT noted the following concerns regarding this legislation.⁵⁶

- The bill imposes a wide-ranging and general prohibition against DOT placing any requirement upon a bidding contractor or supplier beyond simply being either qualified, licensed or certified in order for that contractor or supplier to submit bids, to be awarded any bid or contract, or to perform work on a public works project. Given the nature of DOT projects, simply being a qualified, licensed or certified contractor or supplier is not necessarily sufficient; e.g., a general contractor should not be qualified to bid on a bridge contract. Currently, DOT does not award contracts in response to non-compliant bidders for any number of reasons, including the failure of the bidder to meet specification requirements crucial to the safe and effective completion of transportation projects. The broad provision within the bill removes the authority of DOT to impose these requirements.
- Also, the bill is inconsistent with pre-certification requirements found in ch. 337, F.S., which require that bidders must first be certified by DOT as qualified pursuant to statute and rules of the agency. The existing mandated pre-qualification process set forth in ch. 14-22, F.A.C., imposes more stringent requirements than the bill's requirements that the contractor be qualified, licensed or certified.
- Additionally, the bill will impact DOT procurement and contract procedures with its suppliers and contractors. The potential elimination of the pre-qualification process will have

⁵⁴ Section 255.099, F.S.

⁵⁵ Section 255.099, F.S.

⁵⁶ See DOT legislative bill analysis dated February 12, 2015. A copy of this analysis is on file with the Governmental Oversight and Accountability Committee.

effects on the quality and durability of DOT projects. The specific bidding and certification requirements of ch. 14-22, F.A.C., could be abrogated by the bill. The bill expands the number of contractors and suppliers that will be eligible to bid on public works projects by reducing or eliminating certain pre-qualification standards. The bill appears to be less stringent in its requirements than current procurement methods, contract administration and governance used by DOT.

- The legislation may impede DOT's ability to provide a quality and safe product. Contractors or subcontractors may be authorized to work or provide a product without the proper training. Also, the contractor may prevail in a contract award bid protest whereby the bid did not meet the advertisement criteria or specifications of the project. A contractor using this bill as a result of not being awarded a contract would delay projects and jeopardize the safety, health and welfare of the traveling public.
- Further, the provision contained in subsection (4) of section 1 of the bill in which the state or a political subdivision cannot prohibit any contractor, subcontractor, or material supplier or carrier from negotiating a contract upon being awarded a public works contract concerns DOT as ch. 337, F.S., does not allow such negotiation after a contract is awarded.⁵⁷

Impact on State Agencies and Local Government

The bill allows “any” bidder to submit a bid and this would make it difficult for DMS or state agencies to compare bids because it prevents DMS from coordinating scopes of work in bid packages, and effectively eliminate the authority of DMS and all agencies to prequalify bidders as required under ss. 255.29(1) and 287.055, F. S. The lack of tangible qualifications may also create a significant increase in workload for agencies due to an increase in the receipt of bids from “unqualified” bidders.

VIII. Statutes Affected:

This bill creates an unnumbered section of law relating to public works projects.

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 Governmental Oversight and Accountability on March 10, 2015:

Provides that participation in proprietary training programs cannot be prohibited if such training is a condition of a product warranty or guarantee. Also, the committee substitute clarifies that the requirement for certification is “as required by state law.” Additionally, the state or political subdivision cannot prohibit any contractor, subcontractor, or material supplier or carrier from negotiating a contract upon being awarded a public works contract.

⁵⁷ Meeting with DOT and Government Oversight and Accountability Committee Staff on March 11, 2015.

B. Amendments:

None.

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



300284

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 69 and 70

insert:

4. Be consistent with, or more stringent than, the flood-resistant construction requirements in the Florida Building Code and applicable flood plain management regulations set forth in 44 C.F.R. part 60.

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



300284

11 And the title is amended as follows:
12 Delete lines 3 - 4
13 and insert:
14 163.3178, F.S.; specifying requirements for the
15 coastal management element required



764602

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 147 - 149.

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

And the title is amended as follows:

Delete lines 14 - 16

and insert:

insurance; specifying coverage requirements;

By the Committee on Banking and Insurance; and Senator Brandes

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1 A bill to be entitled
2 An act relating to the peril of flood; amending s.
3 163.3178, F.S.; specifying components that must be
4 contained in the coastal management element required
5 for a local government comprehensive plan; creating s.
6 472.0366, F.S.; defining terms; requiring a surveyor
7 and mapper to complete an elevation certificate in
8 accordance with a checklist developed by the Division
9 of Emergency Management and to submit a copy of the
10 elevation certificate to the division within a certain
11 time after its completion; authorizing the redaction
12 of certain personal information from the copy;
13 amending s. 627.715, F.S.; authorizing flexible flood
14 insurance; specifying coverage requirements; requiring
15 such insurance to be acceptable to the mortgage lender
16 if intended to satisfy a mortgage requirement;
17 deleting a provision that prohibits supplemental flood
18 insurance from including excess coverage over any
19 other insurance covering the peril of flood; revising
20 the information that must be prominently noted on a
21 certain page of a flood insurance policy; requiring
22 the Office of Insurance Regulation to require an
23 insurer to provide appropriate credit to affected
24 insureds if the office determines that a rate of the
25 insurer is excessive or unfairly discriminatory;
26 revising the notice that must be provided to and
27 acknowledged by an applicant for flood coverage from
28 an authorized or surplus lines insurer if the
29 applicant's property is receiving flood insurance

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30 under the National Flood Insurance Program; allowing
31 an authorized insurer to request a certification from
32 the office which indicates that a policy, contract, or
33 endorsement issued by the insurer provides coverage
34 for the peril of flood which equals or exceeds the
35 flood coverage offered by the National Flood Insurance
36 Program; specifying requirements for such
37 certification; authorizing such insurer or its agent
38 to reference or include the certification in specified
39 advertising, communications, and documentation;
40 providing that misrepresenting that a flood policy,
41 contract, or endorsement is certified is an unfair or
42 deceptive act; providing an effective date.

43
44 Be It Enacted by the Legislature of the State of Florida:

45
46 Section 1. Paragraph (f) of subsection (2) of section
47 163.3178, Florida Statutes, is amended to read:

48 163.3178 Coastal management.—

49 (2) Each coastal management element required by s.
50 163.3177(6)(g) shall be based on studies, surveys, and data; be
51 consistent with coastal resource plans prepared and adopted
52 pursuant to general or special law; and contain:

53 (f) A redevelopment component that ~~which~~ outlines the
54 principles that must ~~which shall~~ be used to eliminate
55 inappropriate and unsafe development in the coastal areas when
56 opportunities arise. The component must:

57 1. Include development and redevelopment principles,
58 strategies, and engineering solutions that reduce the flood risk

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59 in coastal areas which results from high-tide events, storm
60 surge, flash floods, stormwater runoff, and the related impacts
61 of sea-level rise.

62 2. Encourage the use of best practices development and
63 redevelopment principles, strategies, and engineering solutions
64 that will result in the removal of coastal real property from
65 flood zone designations established by the Federal Emergency
66 Management Agency.

67 3. Identify site development techniques and best practices
68 that may reduce losses due to flooding and claims made under
69 flood insurance policies issued in this state.

70 Section 2. Section 472.0366, Florida Statutes, is created
71 to read:

72 472.0366 Elevation certificates; requirements for surveyors
73 and mappers.-

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

75 (a) "Division" means the Division of Emergency Management
76 established within the Executive Office of the Governor under s.
77 14.2016.

78 (b) "Elevation certificate" means the certificate used to
79 demonstrate the elevation of property which has been developed
80 by the Federal Emergency Management Agency pursuant to federal
81 floodplain management regulation and which is completed by a
82 surveyor and mapper.

83 (2) An elevation certificate must be completed by a
84 surveyor and mapper in accordance with the checklist developed
85 by the division. Within 30 days after the completion of an
86 elevation certificate, a surveyor and mapper must submit a copy
87 of the certificate to the division. The copy must be unaltered,

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88 except that the surveyor and mapper may redact the name of the
89 property owner.

90 Section 3. Section 627.715, Florida Statutes, is amended to
91 read:

92 627.715 Flood insurance.—An authorized insurer may issue an
93 insurance policy, contract, or endorsement providing personal
94 lines residential coverage for the peril of flood on any
95 structure or the contents of personal property contained
96 therein, subject to this section. This section does not apply to
97 commercial lines residential or commercial lines nonresidential
98 coverage for the peril of flood. This section also does not
99 apply to coverage for the peril of flood that is excess coverage
100 over any other insurance covering the peril of flood. An insurer
101 may issue flood insurance policies, contracts, or endorsements
102 on a standard, preferred, customized, or supplemental basis.

103 (1) (a) 1. Standard flood insurance must cover only losses
104 from the peril of flood, as defined in paragraph (b), equivalent
105 to that provided under a standard flood insurance policy under
106 the National Flood Insurance Program. Standard flood insurance
107 issued under this section must provide the same coverage,
108 including deductibles and adjustment of losses, as that provided
109 under a standard flood insurance policy under the National Flood
110 Insurance Program.

111 2. Preferred flood insurance must include the same coverage
112 as standard flood insurance but:

113 a. Include, within the definition of "flood," losses from
114 water intrusion originating from outside the structure that are
115 not otherwise covered under the definition of "flood" provided
116 in paragraph (b).

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117 b. Include coverage for additional living expenses.

118 c. Require that any loss under personal property or
119 contents coverage that is repaired or replaced be adjusted only
120 on the basis of replacement costs up to the policy limits.

121 3. Customized flood insurance must include coverage that is
122 broader than the coverage provided under standard flood
123 insurance.

124 4. Flexible flood insurance must cover losses from the
125 peril of flood, as defined in paragraph (b), and may also
126 include coverage for losses from water intrusion originating
127 from outside the structure which is not otherwise covered by the
128 definition of flood. Flexible flood insurance must include one
129 or more of the following provisions:

130 a. An agreement between the insurer and the insured that
131 the flood coverage is in a specified amount, such as coverage
132 that is limited to the total amount of each outstanding mortgage
133 applicable to the covered property.

134 b. A requirement for a deductible in an amount authorized
135 under s. 627.701, including a deductible in an amount authorized
136 for hurricanes.

137 c. A requirement that flood loss to a dwelling be adjusted
138 in accordance with s. 627.7011(3) or adjusted only on the basis
139 of the actual cash value of the property.

140 d. A restriction limiting flood coverage to the principal
141 building defined in the policy.

142 e. A provision including or excluding coverage for
143 additional living expenses.

144 f. A provision excluding coverage for personal property or
145 contents as to the peril of flood.

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146

147 Flexible flood insurance must be acceptable to the mortgage
148 lender if such policy, contract, or endorsement is intended to
149 satisfy a mortgage requirement.

150 ~~5.4.~~ Supplemental flood insurance may provide coverage
151 designed to supplement a flood policy obtained from the National
152 Flood Insurance Program or from an insurer issuing standard or
153 preferred flood insurance pursuant to this section. Supplemental
154 flood insurance may provide, but need not be limited to,
155 coverage for jewelry, art, deductibles, and additional living
156 expenses. ~~Supplemental flood insurance does not include coverage~~
157 ~~for the peril of flood that is excess coverage over any other~~
158 ~~insurance covering the peril of flood.~~

159 (b) "Flood" means a general and temporary condition of
160 partial or complete inundation of two or more acres of normally
161 dry land area or of two or more properties, at least one of
162 which is the policyholder's property, from:

- 163 1. Overflow of inland or tidal waters;
- 164 2. Unusual and rapid accumulation or runoff of surface
165 waters from any source;
- 166 3. Mudflow; or
- 167 4. Collapse or subsidence of land along the shore of a lake
168 or similar body of water as a result of erosion or undermining
169 caused by waves or currents of water exceeding anticipated
170 cyclical levels that result in a flood as defined in this
171 paragraph.

172 (2) ~~Any limitations on~~ Flood coverage deductibles and or
173 policy limits pursuant to this section, ~~including, but not~~
174 ~~limited to, deductibles,~~ must be prominently noted on the policy

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175 declarations page or face page.

176 (3) (a) An insurer may establish and use flood coverage
177 rates in accordance with the rate standards provided in s.
178 627.062.

179 (b) For flood coverage rates filed with the office before
180 October 1, 2019, the insurer may also establish and use such
181 rates in accordance with the rates, rating schedules, or rating
182 manuals filed by the insurer with the office which allow the
183 insurer a reasonable rate of return on flood coverage written in
184 this state. Flood coverage rates established pursuant to this
185 paragraph are not subject to s. 627.062(2) (a) and (f). An
186 insurer shall notify the office of any change to such rates
187 within 30 days after the effective date of the change. The
188 notice must include the name of the insurer and the average
189 statewide percentage change in rates. Actuarial data with regard
190 to such rates for flood coverage must be maintained by the
191 insurer for 2 years after the effective date of such rate change
192 and is subject to examination by the office. The office may
193 require the insurer to incur the costs associated with an
194 examination. Upon examination, the office, in accordance with
195 generally accepted and reasonable actuarial techniques, shall
196 consider the rate factors in s. 627.062(2) (b), (c), and (d), and
197 the standards in s. 627.062(2) (e), to determine if the rate is
198 excessive, inadequate, or unfairly discriminatory. If the office
199 determines that a rate is excessive or unfairly discriminatory,
200 the office shall require the insurer to provide appropriate
201 credit to affected insureds.

202 (4) A surplus lines agent may export a contract or
203 endorsement providing flood coverage to an eligible surplus

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204 lines insurer without making a diligent effort to seek such
205 coverage from three or more authorized insurers under s.
206 626.916(1) (a). This subsection expires July 1, 2017.

207 (5) In addition to any other applicable requirements, an
208 insurer providing flood coverage in this state must:

209 (a) Notify the office at least 30 days before writing flood
210 insurance in this state; and

211 (b) File a plan of operation and financial projections or
212 revisions to such plan, as applicable, with the office.

213 (6) Citizens Property Insurance Corporation may not provide
214 insurance for the peril of flood.

215 (7) The Florida Hurricane Catastrophe Fund may not provide
216 reimbursement for losses proximately caused by the peril of
217 flood, including losses that occur during a covered event as
218 defined in s. 215.555(2) (b).

219 (8) An agent must, upon receiving ~~obtaining~~ an application
220 for flood coverage from an authorized or surplus lines insurer
221 for a property receiving flood insurance under the National
222 Flood Insurance Program, ~~must~~ obtain an acknowledgment signed by
223 the applicant before placing the coverage with the authorized or
224 surplus lines insurer. The acknowledgment must notify the
225 applicant that, if the applicant discontinues coverage under the
226 National Flood Insurance Program which is provided at a
227 subsidized rate, the full risk rate for flood insurance may
228 apply to the property if the applicant ~~such insurance is~~ later
229 seeks to reinstate coverage ~~obtained~~ under the ~~National Flood~~
230 ~~Insurance~~ program.

231 (9) With respect to the regulation of flood coverage
232 written in this state by authorized insurers, this section

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233 supersedes any other provision in the Florida Insurance Code in
234 the event of a conflict.

235 (10) If federal law or rule requires a certification by a
236 state insurance regulatory official as a condition of qualifying
237 for private flood insurance or disaster assistance, the
238 Commissioner of Insurance Regulation may provide the
239 certification, and such certification is not subject to review
240 under chapter 120.

241 (11) (a) An authorized insurer offering flood insurance may
242 request the office to certify that a policy, contract, or
243 endorsement provides coverage for the peril of flood which
244 equals or exceeds the flood coverage offered by the National
245 Flood Insurance Program. To be eligible for certification, such
246 policy, contract, or endorsement must contain a provision
247 stating that it meets the private flood insurance requirements
248 specified in 42 U.S.C. s. 4012a(b) and may not contain any
249 provision that is not in compliance with 42 U.S.C. s. 4012a(b).

250 (b) The authorized insurer or its agent may reference or
251 include a certification under paragraph (a) in advertising or
252 communications with an agent, a lending institution, an insured,
253 or a potential insured only for a policy, contract, or
254 endorsement that is certified under this subsection. The
255 authorized insurer may include a statement that notifies an
256 insured of the certification on the declarations page or other
257 policy documentation related to flood coverage certified under
258 this subsection.

259 (c) An insurer or agent who knowingly misrepresents that a
260 flood policy, contract, or endorsement is certified under this
261 subsection commits an unfair or deceptive act under s. 626.9541.

597-02117A-15

20151094c1

262

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)

Meeting Date _____

1094
Bill Number (if applicable)

300284
Amendment Barcode (if applicable)

Topic _____

Name _____

Job Title Jay Liles

Address PO Box 6870

Street

Phone 850/294-5004

City

Tallahassee FL

State

Zip

Email jiles@fwfonkne.org

Speaking: For Against Information

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

Representing Florida Wildlife 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

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Community Affairs

Subject: Committee Agenda Request

Date: March 10, 2015

I respectfully request that **Senate Bill #1094**, relating to **Peril of Flood**, 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 flourish extending to the right.

Senator Jeff Brandes
Florida Senate, District 22

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 1094

INTRODUCER: Community Affairs Committee; Banking and Insurance Committee; and Senator Brandes

SUBJECT: Peril of Flood

DATE: March 23, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow/Knudson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1094 requires coastal management plans to include the reduction of flood risks and losses, creates new requirements related to flood elevation certificates, and revises requirements related to flood insurance.

The bill requires local governments to include development and redevelopment principles, strategies, and engineering solutions that reduce flood risks and losses within coastal areas in their comprehensive coastal management plan.

The bill requires surveyors or mappers that complete an elevation certificate to submit a copy of the certificate to the Division of Emergency Management within 30 days of its completion.

The bill allows insurers to sell flexible flood insurance coverage which is defined as coverage for the peril of flood that may include water intrusion coverage and differs from standard or preferred coverage by:

- Being in an agreed upon amount between the insurer and policyholder.
- Including a deductible as authorized in s. 627.701, F.S.
- Being adjusted in accordance with s. 627.7011(3), F.S., or adjusted only on the basis of the actual cash value of the property.
- Covering only the principal building, as defined in the policy.
- Including or excluding coverage for additional living expenses.

- Excluding coverage for personal property or contents.

The bill removes current law prohibiting a supplemental flood insurance policy from being used for excess coverage over any other insurance policy covering the peril of flood. The bill clarifies that the declarations page or face page of a flood insurance policy must prominently note the deductibles and coverage limits of the policy.

The bill also allows an insurer to request from the Office of Insurance Regulation a certification that acknowledges that the insurer provides a flood policy, contract, or endorsement that equals or exceeds flood coverage by the National Flood Insurance Program.

II. Present Situation:

National Flood Insurance Program

The National Flood Insurance Program (NFIP) was created by passage of the National Flood Insurance Act of 1968.¹ The NFIP is administered by the Federal Emergency Management Agency (FEMA) and provides property owners located in flood-prone areas the ability to purchase flood insurance protection from the federal government. Flood insurance through the NFIP is only available in communities that adopt and enforce federal floodplain management criteria.²

Standard NFIP Flood Insurance

The standard flood insurance policy dwelling form offered by the NFIP³ is a single peril flood policy that pays for direct physical damage to the insured residential property up to the replacement cost value,⁴ actual cash value, or the policy limit.⁵ The maximum coverage limit for a NFIP standard flood insurance policy is \$250,000. The NFIP also offers up to \$100,000 in personal property (contents) coverage, which is always valued at the actual cash value.⁶ Most NFIP policies also include Increased Cost of Compliance coverage of up to \$30,000 of the cost to comply with state or community floodplain management laws or ordinances after a flood in

¹ <http://www.fema.gov/media-library/assets/documents/7277?id=2216> (Last accessed by staff on March 18, 2015).

² *National Flood Insurance Program: Program Description*, pgs. 2-4., Federal Emergency Management Agency/Federal Insurance and Mitigation Administration (August 1, 2002) <http://www.fema.gov/media-library/assets/documents/1150?id=1480> (Last accessed by staff on March 18, 2015).

³ The standard form insures one-to-four family residential buildings and single-family dwelling units in a condominium building. The NFIP also offers (a) a general property form that is used to insure five-or-more-family residential buildings and non-residential buildings and (b) a residential condominium building association policy form that insures residential condominium association buildings.

⁴ To obtain RCV coverage under the NFIP dwelling form, the building must be a single-family dwelling, be the principal residence of the insured at the time of loss (the insured lives there at least 80 percent of the year), and the building coverage of at least 80 percent of the full replacement cost of the building or its the maximum available for the property under the NFIP.

⁵ *National Flood Insurance Program: Summary of Coverage*, Federal Emergency Management Agency (FEMA F-679/November 2012) http://www.fema.gov/media-library-data/20130726-1620-20490-4648/f_679_summaryofcoverage_11_2012.pdf (Last accessed by staff on March 18, 2015).

⁶ See footnote 4.

which a building has been declared substantially damaged or repetitively damaged.⁷ The maximum coverage available to a condominium association is \$250,000 per unit multiplied by the total number of units.⁸ The limits of coverage for NFIP flood insurance on non-residential buildings are \$500,000 in coverage to the building and \$500,000 in contents coverage.⁹

Flood is defined in the standard NFIP policy as a general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties from:

- Overflow of inland or tidal waters;
- Unusual and rapid accumulation or runoff of surface waters from any source;
- Mudflow; or
- Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined above.¹⁰

The minimum deductibles for NFIP flood coverage are:

- For properties built before the effective date of the first Flood Insurance Rate Map¹¹ (FIRM) for a community, the minimum deductible is:
 - \$1,500 if the property is insured for \$100,000 or less.
 - \$2,000 if the property is insured for over \$100,000.
- For properties built after the effective date of the first FIRM for a community, the minimum deductible is:
 - \$1,000 if the property is insured for \$100,000 or less.
 - \$1,250 if the property is insured for over \$100,000.

Elevation Certificates

The NFIP elevation certificate is used to provide elevation information necessary to ensure compliance to community floodplain management ordinances, to determine the proper insurance premium rate, or to support a request for a Letter of Map Amendment.¹² As part of the agreement for making flood insurance available in a community, the NFIP requires each community to adopt floodplain management regulations that specify minimum requirements for reducing flood losses.¹³ One such requirement is for the community to obtain the elevation of the lowest floor (including basement) of all new and substantially improved buildings, and maintain a record of

⁷ The total amount of a building claim and ICC claim cannot exceed the maximum limit for building property coverage. For a single-family home, this is the \$250,000 maximum limit on coverage to the building. See footnote 4 and footnote 5 at page 26.

⁸ *FDIC Compliance Manual*, V – 6.8. <http://www.fdic.gov/regulations/compliance/manual/index.html> (Last accessed by staff on March 18, 2015).

⁹ *Reducing Damage from Localized Flooding: A Guide for Communities*, 11-2. <http://www.fema.gov/media-library/assets/documents/1012> (Last accessed by staff on March 18, 2015).

¹⁰ <http://www.fema.gov/national-flood-insurance-program/definitions> (Last accessed by staff on March 18, 2015).

¹¹ The effective date of the first FIRM for Florida communities can be found at <http://www.fema.gov/cis/FL.pdf> (Last accessed by staff on March 18, 2015).

¹² <https://www.fema.gov/media-library/assets/documents/160> (Last accessed by staff on March 18, 2015).

¹³ Federal Emergency Management Agency, *National Flood Insurance Program Elevation Certificate and Instructions Form 086-0-33* (2012).

such information.¹⁴ The elevation certificate provides a way for a community to document compliance with the community's floodplain management ordinance.

Federal Requirements to Obtain Flood Insurance

The U.S. Congress passed the Flood Disaster Protection Act in 1973.¹⁵ The Act mandated property owners with mortgages issued by federally regulated or insured lenders must purchase flood insurance if their properties are located in Special Flood Hazard Areas. Special Flood Hazard Areas are defined by FEMA as high-risk areas where there is at least a one in four chance of flooding during a 30-year mortgage.¹⁶

The National Flood Insurance Reform Act of 1994¹⁷ (1994 Reform Act) required federal financial regulatory agencies¹⁸ to revise their flood insurance regulations. The 1994 Reform Act applied flood insurance requirements to loans purchased by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation and to agencies that provide government insurance or guarantees such as the Small Business Administration, the Federal Housing Administration, and the Veterans Administration. Lending institutions regulated by federal agencies are prohibited from offering loans on properties located in a Special Flood Hazard Area of a community participating in the NFIP unless the property is covered by flood insurance.¹⁹ The amount of flood insurance required by lending institutions must be at least equal to the outstanding principal balance of the loan, or the maximum amount available under the NFIP, whichever is less.

The Biggert-Waters Flood Insurance Reform Act

In 2012²⁰ the United States Congress passed the Biggert-Waters Flood Insurance Reform Act (Biggert-Waters Act). The Biggert-Waters Act reauthorized the NFIP for 5 years. Key provisions of the legislation require the NFIP to raise rates to reflect true flood risk, make the program more financially stable, and change how FIRM updates impact policyholders. These changes by Congress have resulted in premium rate increases for approximately 20 percent of NFIP policyholders nationwide.

The Biggert-Waters Act increases flood insurance premiums purchased through the program for second homes, business properties, severe repetitive loss properties, and substantially improved damaged properties by requiring premium increases of 25 percent per year until premiums meet the full actuarial cost of flood coverage. Most residences immediately lose their subsidized rates if the property is sold, the policy lapses, repeated and severe flood losses occur, or a new policy

¹⁴ See id.

¹⁵ http://www.fema.gov/media-library-data/20130726-1545-20490-9247/frm_acts.pdf (Last accessed by staff on March 18, 2015).

¹⁶ http://www.floodsmart.gov/floodsmart/pages/flooding_flood_risks/defining_flood_risks.jsp (Last accessed by staff on March 18, 2015).

¹⁷ Title V of the Riegle Community Development and Regulatory Improvement Act of 1994. Pub. L. 103-325, Title V, 108 Stat. 2160, 2255-87 (September 23, 1994).

¹⁸ Office of Comptroller of Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, Farm Credit Administration and Federal Reserve.

¹⁹ *FDIC Compliance Manual*, V – 6.1. <http://www.fdic.gov/regulations/compliance/manual/index.html> (Last accessed by staff on March 18, 2015).

²⁰ <http://www.fema.gov/flood-insurance-reform-act-2012> (Last accessed by staff on March 18, 2015).

is purchased. Policyholders whose communities adopt a new, updated FIRM that results in higher rates will experience a 5-year phase in of rate increases to achieve rates that incorporate the full actuarial cost of coverage.

2014 Federal Flood Reform Bills

The Consolidated Appropriations Act of 2014 and the Homeowner Flood Insurance Affordability Act of 2014 repealed and modified some provisions of the Biggert-Waters Act. The new law reduced the mandatory rate increases for subsidized properties from 25 percent annually to no less than 5 percent, generally not to increase more than 18 percent annually.²¹ Properties that remain subject to the 25 percent annual increase include older business properties, older non-primary residences, severe repetitive loss properties, and pre-FIRM properties. The 20 percent annual phase in of premium increases after adoption of a new or updated FIRM was reduced to a maximum of no more than an 18 percent annual premium increase. The policyholder refunds were provided to policyholders whose rate increases were revised by the 2014 changes. Additional revisions included increasing the maximum flood insurance deductibles, directing FEMA to consider property specific flood mitigation in determining a full-risk rate, and creating the position of a Flood Insurance Advocate.

Flood Insurance in Florida

NFIP Flood Insurance in Florida

Over two million NFIP policies are written on Florida properties, with approximately 268,500 policies receiving subsidized rates.²² This accounts for approximately 37 percent of the total policies written by the NFIP.

Historically, properties insured in Florida have paid approximately \$3.60 in premium for NFIP flood coverage for every \$1 received in claims payments.²³ The rate impact of the Biggert-Waters Act on subsidized policies in Florida is approximately as follows:

- Approximately 50,000 secondary residences, businesses, and severe repetitive loss properties are subject to immediate, annual 25 percent increases until their premiums are full risk premiums.
- Approximately 103,000 primary residences will lose their subsidy if the property is sold, the policy lapses, the property suffers severe, repeated flood losses, or a new policy is purchased.
- Approximately 115,000 non-primary residences, business properties, and severe repetitive loss properties are subject to the elimination of subsidies once FEMA develops guidance for their removal.

²¹ Federal Emergency Management Agency, Homeowner Flood Insurance Affordability Act Overview (April 3, 2014). (Last accessed by staff on March 9, 2015).

²² Office of Insurance Regulation, *The Biggert-Waters Flood Insurance Reform Act of 2012*, (Presentation to the Florida Senate Banking and Insurance Committee on October 8, 2013). http://flsenate.gov/PublishedContent/Committees/2012-2014/BI/MeetingRecords/MeetingPacket_2346.pdf (Last accessed by staff on March 18, 2015).

²³ Wharton Center for Risk Management and Decision Processes, *Who's Paying and Who's Benefiting Most From Flood Insurance Under the NFIP? A Financial Analysis of the U.S. National Flood Insurance Program (NFIP)*, (Issue Brief, Fall 2011).

Private Market Flood Insurance in Florida

The 2014 Legislature enacted CS/CS/CS/SB 542, governing the sale of personal lines residential flood insurance. Authorized insurers may sell four different types of flood insurance products:

- Standard coverage, which covers only losses from the peril of flood as defined in the bill (which is the same definition used by the NFIP). The policy must be the same as coverage offered from the NFIP regarding the definition of flood, coverage, deductibles, and loss adjustment.
- Preferred coverage, which includes the same coverage as standard flood insurance and also must cover flood losses caused by water intrusion from outside the structure that are not otherwise covered under the definition of flood in the bill.
- Customized coverage, which is coverage that is broader than standard flood coverage.
- Supplemental coverage, which supplements an NFIP flood policy or a standard or preferred policy from a private market insurer. Supplemental coverage may provide coverage for jewelry, art, deductibles, and additional living expenses. It does not include excess flood coverage over other flood policies.

Insurers must provide prominent notice on the policy declarations page or face page of deductibles and any other limitations on flood coverage or policy limits. Insurance agents that receive a flood insurance application must obtain a signed acknowledgement from the applicant stating that the full risk rate for flood insurance may apply to the property if flood insurance is later obtained under the NFIP.

An insurer may establish flood rates through the standard process in s. 627.062, F.S. Alternatively, rates filed before October 1, 2019, may be established through a rate filing with the Office of Insurance Regulation (OIR) that is not required to be reviewed by the OIR before implementation of the rate (“file and use” review) or shortly after implementation of the rate (“use and file” review). Specifically, the flood rate is exempt from the “file and use” and “use and file” requirements of s. 627.062(2)(a), F.S. Such filings are also exempt from the requirement to provide information necessary to evaluate the company and the reasonableness of the rate. The OIR may, however, examine a rate filing at its discretion. To enable the office to conduct such examinations, insurers must maintain actuarial data related to flood coverage for two years after the effective date of the rate change. Upon examination, the OIR will use actuarial techniques and the standards of the rating law to determine if the rate is excessive, inadequate or unfairly discriminatory. The bill allows projected flood losses for personal residential property insurance to be a rating factor. Flood losses may be estimated using a model or straight average of models found reliable by the Florida Commission on Hurricane Loss Projection Methodology.

Insurers that seek to write flood coverage in Florida must notify the OIR at least 30 days before doing so and file a plan of operation, financial projections, and any such revisions with the OIR. Surplus lines agents may export flood insurance without making a diligent effort to seek coverage from three or more authorized insurers until July 1, 2017. Citizens Property Insurance Corporation is prohibited from providing flood insurance and the Florida Hurricane Catastrophe Fund is prohibited from reimbursing flood losses.

Local Government Comprehensive Planning and Coastal Management

The Local Government Comprehensive Planning and Land Development Regulation Act (the Act),²⁴ also known as Florida's Growth Management Act, was adopted by the 1985 Legislature. Significant changes have been made to the Act since 1985 including major growth management bills in 2005, 2009 and 2011. The Act requires all of Florida's 67 counties and 413 municipalities to adopt local government comprehensive plans that guide future growth and development. "Each local government comprehensive plan must include at least two planning periods, one covering at least the first 5-year period occurring after the plan's adoption and one covering at least a 10-year period."²⁵ Comprehensive plans contain chapters or "elements" that address future land use, housing, transportation, water supply, drainage, potable water, natural groundwater recharge, coastal management, conservation, recreation and open space, intergovernmental coordination, capital improvements, and public schools. A key component of the Act is its "concurrency" provision that requires facilities and services to be available concurrent with the impacts of development. The state land planning agency that administers these provisions is the Department of Economic Opportunity.

Local governments in coastal areas or contiguous to specified waters must include a coastal management element in their comprehensive plan.²⁶ The coastal management element must set forth the principles, guidelines, standards, and strategies that shall guide the local government's decisions and program implementation. Section 163.3178, F.S., requires coastal management to be based on studies, surveys, and data. The plan must contain a redevelopment component which outlines the principles which shall be used to eliminate inappropriate and unsafe development in coastal areas.²⁷

III. Effect of Proposed Changes:

Section 1 amends s. 163.3178(2)(f), F.S., to require local governments when drafting their comprehensive coastal management plans to:

- Include development and redevelopment principles, strategies, and engineering solutions that reduce the flood risk in coastal areas which results from high-tide events, storm surge, flash floods, stormwater runoff, and the related impacts of sea-level rise.
- Encourage the use of best practices development and redevelopment principles, strategies, and engineering solutions that will result in the removal of coastal real property from flood zone designations established by the FEMA.
- Identify site development techniques and best practices that may reduce losses due to flooding and claims made under flood insurance policies issued in this state.
- Be consistent with, or more stringent than, the flood-resistant construction requirements in the Florida Building Code and applicable flood plain management regulations set forth in 44 C.F.R. part 60.

Section 2 creates s. 195.088, F.S., to require surveyors and mappers to submit elevation certificates to the Division of Emergency Management (DEM). The bill defines an elevation

²⁴ See Chapter 163, Part II, F.S.

²⁵ Section 163.3177(5), F.S.

²⁶ Section 163.3177(6)(g), F.S.

²⁷ Section 163.3178(2)(g), F.S.

certificate as the certificate used to demonstrate the elevation of property which has been developed by FEMA under federal floodplain management regulation or which is completed by a surveyor and mapper. The surveyor and mapper must complete the elevation certificate in accordance with the checklist adopted by DEM. A surveyor and mapper who completes an elevation certificate must submit a copy of the certificate to the DEM within 30 days of its completion.

Section 3 amends s. 627.715, F.S., to allow insurers to sell flexible flood insurance, which is defined as coverage for the peril of flood that may include water intrusion coverage and differs from standard or preferred coverage by:

- Being in an agreed upon amount between the insurer and policyholder.
- Including a deductible as authorized in s. 627.701, F.S.
- Being adjusted in accordance with s. 627.7011(3), F.S., or adjusted only on the basis of the actual cash value of the property.
- Covering only the principal building, as defined in the policy.
- Including or excluding coverage for additional living expenses.
- Excluding coverage for personal property or contents.

The section removes language in statute that specifies a supplemental flood insurance policy does not include flood coverage for the purpose of excess coverage over any other insurance policy covering the peril of flood. Removing this language from law could allow a supplemental flood insurance policy to provide coverage in excess of other coverage that is insuring for the peril of flood.

The section clarifies that deductibles for flood coverage and flood insurance policy limits must be prominently noted on a policy's declarations page or face page.

The bill also clarifies the signed acknowledgement that a licensed insurance agent must obtain notifying the applicant about the potential loss of subsidized rates when discontinuing coverage from the NFIP. The notice is revised to specify that the policyholders who might lose subsidies are those who have subsidized NFIP policies.

Lastly, the section allows an insurer to request from the OIR a certification that acknowledges that the insurer provides a policy, contract, or endorsement for the flood insurance that provides coverage equaling or exceeding the flood coverage offered by the NFIP. A certified policy must be in compliance with 42 U.S.C. s. 1042a(b), which requires federally regulated lending institutions to accept private flood insurance that insures the building and personal property securing the loan for the term of the loan in an amount not less than the outstanding principal balance of the loan or the limit of NFIP flood insurance coverage, whichever is less. An insurer or its agent may reference or include such certification in advertising and communications with an agent, a lending institution, an insured, and a potential insured. The authorized insurer may also include a statement that notifies an insured of the certification on the declarations page or other policy documentation related to flood coverage. A knowing misrepresentation that a flood insurance policy is certified is an unfair or deceptive act.

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:

Policyholders will have greater flexibility when purchasing flood insurance.

C. Government Sector Impact:

Local governments must include flood risks within their coastal management plan. There could be added costs to local governments for the added development of the plan and its enforcement.

Licensed surveyors and mappers must regularly submit elevation certificates to the DEM. The DEM must establish the schedule for regular submission of elevation certificates. The added cost to the department is unknown.

The OIR must establish a flood certification that is to be issued to companies that sell private flood insurance policies that are equal to or greater than the coverages in a policy sold by the NFIP.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.3178 and 627.715.

This bill creates section 195.088 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Community Affairs on March 23, 2015:

Requires a redevelopment component of a coastal management element of a comprehensive plan to be consistent with, or more stringent than, the flood-resistant construction requirements of the Florida Building Code and applicable flood plain management regulations set forth in 44 C.F.R. part 60.

Deletes a requirement that flexible flood insurance be acceptable to the mortgage lender if the policy is intended to satisfy a mortgage requirement.

CS by Banking and Insurance on March 10, 2015:

Authorizes insurers to sell flexible flood insurance and specifies the requirements for such coverage.

- Specifies that insurers must credit excessive or unfairly discriminatory flood rates back to policyholders.
- Removes a requirement that county property appraisers submit elevation certificates to DEM; instead surveyors and mappers will make the submission.
- Deletes a bill provision that would have required agents to quote a flood policy for properties in Special Flood Hazard Areas.
- Specifies that it is an unfair and deceptive practice for an insurer or agent to knowingly falsely claim a flood insurance policy is certified by the OIR as complying with federal mortgage requirements when it is not.

- B. **Amendments:**

None.

By Senator Abruzzo

25-00971A-15

20151272__

1 A bill to be entitled
2 An act relating to public records; amending s.
3 119.071, F.S., providing a public records exemption
4 for information furnished to a state, county, or
5 municipal government agency for use in an emergency
6 information gathering system; providing for
7 retroactive application; providing for future
8 legislative review and repeal of the exemption;
9 providing a statement of public necessity; providing
10 an effective date.

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

13
14 Section 1. Paragraph (k) is added to subsection (5) of
15 section 119.071, Florida Statutes, to read:

16 119.071 General exemptions from inspection or copying of
17 public records.—

18 (5) OTHER PERSONAL INFORMATION.—

19 (k)1. Information furnished by a person to a state, county,
20 or municipal government agency for the purpose of registering
21 emergency residential or business information for the agency's
22 emergency information gathering system, including, but not
23 limited to, the person's name, address, telephone number, e-mail
24 address, health and other personal information, or other
25 electronic communication address, is exempt from s. 119.07(1)
26 and s. 24(a), Art. I of the State Constitution. This exemption
27 applies to information held by an agency before, on, or after
28 the effective date of this exemption.

29 2. This paragraph is subject to the Open Government Sunset

25-00971A-15

20151272__

30 Review Act in accordance with s. 119.15 and shall stand repealed
31 on October 2, 2020, unless reviewed and saved from repeal
32 through reenactment by the Legislature.

33 Section 2. The Legislature finds that it is a public
34 necessity that information furnished to a state, county, or
35 municipal government agency for use in emergency information
36 gathering systems be exempt from s. 119.07(1), Florida Statutes,
37 and s. 24(a), Article I of the State Constitution. Emergency
38 information gathering systems act to provide information to
39 first responders in the event of an emergency. The Legislature
40 finds that public access to such information could lead to
41 misuse, fraud, or harm. The Legislature recognizes that
42 protection is needed for individuals who provide personal and
43 medical history information to first responders.

44 Section 3. 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)

3-23-15

Meeting Date

1272

Bill Number (if applicable)

Topic PUBLIC RECORDS/ EMERGENCY INFO

Amendment Barcode (if applicable)

Name LAURA YOUMANS (YO-MANS)

Job Title ADVOCATE

Address 100 N. MONROE ST

Phone 291-1838

Street

TAL

City

FL

State

32301

Zip

Email YOUMANS@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

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:

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

March 12th, 2015

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

Dear Chairman Simpson:

I respectfully request that Senate Bill 1272, Public Records/Emergency Information Gathering System, be considered for placement on the Community Affairs committee agenda. This piece of legislation will require a public records exemption for information furnished by a person to a state, county, or municipal government agency collected by their information gathering system. These systems collect and house voluntarily provided information about persons within the government's jurisdiction to assist first responders in the event of an emergency.

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: Tom Yeatman, 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

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1272

INTRODUCER: Senator Abruzzo

SUBJECT: Public Records/Emergency Information Gathering System

DATE: March 20, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stearns	Yeatman	CA	Pre-meeting
2.			GO	
3.			RC	

I. Summary:

SB 1272 creates a public records exemption for information held by a state, county or municipal government agency for the purpose of operating an emergency information gathering system. The exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a statement of public necessity for the exemption.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.² The Legislature's meetings must also be open and noticed to the public, unless there is an exemption provided by the Constitution.³

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁴ guarantees every person's right to inspect and copy any state or local government public record.⁵

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(b).

³ FLA. CONST., art. I, s. 24(b).

⁴ Chapter 119, F.S.

⁵ Section 119.011(12), F.S., defines "public record" 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

The Sunshine Law⁶ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.⁷

The Legislature may create an exemption to public records or open meetings requirements.⁸ An exemption must specifically state the public necessity justifying the exemption⁹ and must be tailored to accomplish the stated purpose of the law.¹⁰

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.¹¹ The OGSR provides that an exemption automatically repeals on October 2 of the fifth year after creation or substantial amendment. In order to save an exemption from repeal, the Legislature must reenact the exemption.¹²

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.¹³ 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;¹⁴

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 s. 11.0431, F.S.

⁶ Section 286.011, F.S.

⁷ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, s. 4(e) of the Florida Constitution provides that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

⁸ 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. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ 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.

¹² Section 119.15(3), F.S.

¹³ Section 119.15(6)(b), F.S.

¹⁴ Section 119.15(6)(b)1., F.S.

- Protects sensitive personal information that would either be defamatory, jeopardize an individual's safety, or cause unwarranted damage to the good name or reputation of such individual(s) if the information was released. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁵ or
- Protects trade or business secrets.¹⁶

The OGSR also requires specified questions to be considered during the review process.¹⁷ 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.¹⁸ 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.¹⁹

Emergency Information Gathering Systems

Some state and local governments across the country use emergency information gathering systems to collect information about a person to assist first responders in helping the person in an emergency.²⁰ Information used in the system is voluntarily provided by the individual and varies depending on the relevant circumstances or condition. For example, the information may include details about certain allergies, a disability, a previous medical condition, or even the floor plans of the person's home. Once a person's information is in the emergency information gathering system, the information is integrated with the government's 9-1-1 system and is automatically displayed to a 9-1-1 operator or administrator during emergency calls.²¹

Companies have entered into public private partnerships with state and local governments to provide the technology and administration necessary to successfully implement emergency information gathering systems.²²

¹⁵ Section 119.15(6)(b)2., F.S.

¹⁶ Section 119.15(6)(b)3., F.S.

¹⁷ 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?

¹⁸ FLA. CONST., art. I, s. 24(c).

¹⁹ Section 119.15(7), F.S.

²⁰ Article regarding Arkansas using an emergency gathering system statewide at: <http://safety.smart911.com/arkansas-becomes-first-state-deploy-smart911-enhance-public-safety/> (last visited March 19, 2015).

²¹ Information obtained from websites of two companies that contract with state and local governments to implement emergency gathering systems at: <http://safety.smart911.com/smart911/>; and <http://www.savingminutes.com/> (both websites last visited on March 19, 2015).

²² *Id.*

III. Effect of Proposed Changes:

Section 1 amends s. 119.071, F.S., to create a public records exemption for information held by a state, county or municipal government agency for the purpose of operating an emergency information gathering system. The exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 provides a statement of public necessity for the exemption.

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:

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 or public meeting 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 or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, Section 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 a public record exemption for information furnished by a person to a state, county, or municipal government agency for the purpose of registering emergency information for the agency's emergency information gathering system. The exemption does not appear to be in conflict with the constitutional requirement that the exemptions be no broader than necessary to accomplish the 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:**Prohibition from Collecting Firearm Data**

Section 790.335, F.S., provides, with certain exceptions, that “[n]o state governmental agency or local government, special district, or other political subdivision . . . shall knowingly and willfully keep or cause to be kept, any list, record, or registry of privately owned firearms” or their owners.²³ Any person who, or entity that, violates such provision commits a felony of the third degree, punishable as provided in ss. 775.082 or 775.083, F.S.²⁴

The stated purpose of such law is to protect the right of individuals to keep and bear arms as guaranteed under both the United States Constitution and State Constitution and to protect the privacy rights of law-abiding firearm owners.²⁵

If a person provides information regarding a privately owned firearm to a local government’s emergency information gathering system and that information is catalogued and maintained by the governmental entity, the government’s action may be in violation of s. 790.335, F.S.

VIII. Statutes Affected:

This bill substantially amends section 119.071 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.

²³ Section 790.335(1)(c), F.S.

²⁴ Section 790.335(4), F.S.

²⁵ Section 790.335(1)(b), F.S.

B. Amendments:

None.

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

CourtSmart Tag Report

Room: SB 301

Case:

Type:

Caption: Senate Community Affairs Committee Judge:

Started: 3/23/2015 1:34:06 PM

Ends: 3/23/2015 3:04:33 PM

Length: 01:30:28

1:34:12 PM Call to order
1:35:08 PM SB 1272 TP'd
1:35:43 PM SB 850 TP'd
1:35:56 PM Tab 7 SB 42 Senator Braynon
1:36:30 PM Roll call on SB 42
1:36:42 PM Bill reported favorably
1:37:00 PM Tab 5 SB 1054 Senator Evers
1:38:22 PM Roll call on SB 1054
1:38:34 PM Bill reported favorably
1:38:56 PM Tab 2 SB 592 Senator Sobel
1:39:12 PM Senator Sobel LA Jeremy Shir
1:40:02 PM Amendment Barcode 153568
1:40:09 PM Late-filed introduced
1:41:11 PM Deborah Lawson, Florida Roof Deck Assoc.
1:42:25 PM Mr. Shir close
1:42:32 PM Amendment adopted
1:42:48 PM Senator Abruzzo
1:43:07 PM Roll call SB 592
1:43:18 PM Bill reported favorably
1:43:48 PM Tab 1 SB 662 Senator Latvala
1:43:56 PM Senator Latvala LA Brenda Johnson
1:44:41 PM Roll call on SB 662
1:44:51 PM Bill reported favorably
1:45:12 PM Tab 3 SB 842 Senator Benacquisto
1:45:30 PM Senator Benacquisto LA Dane Bennett
1:47:02 PM Roll call on SB 842
1:47:10 PM Bill reported favorably
1:47:30 PM Tab 10 SB 1094 Senator Brandes
1:48:25 PM Amendment 1 Barcode 300284
1:49:05 PM Jay Liles, Florida Wildlife Federation
1:49:47 PM Amendment adopted
1:50:01 PM Amendment 2 Barcode 764602
1:50:18 PM Amendment adopted
1:50:34 PM Roll call on SB 1094
1:50:47 PM Bill reported favorably
1:51:03 PM Tab 8 SB 896 Senator Brandes
1:51:43 PM Amendment Barcode 885778
1:52:10 PM Amendment adopted
1:52:26 PM Senator Abruzzo
1:52:30 PM Senator Brandes
1:53:01 PM Senator Thompson
1:53:26 PM Senator Brandes
1:53:51 PM Senator Thompson
1:55:10 PM Steve Griffin, City of Cape Coral
1:59:26 PM Senator Brandes
1:59:40 PM Mr. Griffin
2:01:59 PM Marni Sawicki, City of Cape Coral
2:05:30 PM Megan Sirjane-Samples, Florida League of Cities
2:07:08 PM Senator Brandes
2:08:37 PM Dan Peterson, James Madison Institute - Property Rights Center
2:09:40 PM Senator Abruzzo
2:09:58 PM Eric Poole, Florida Assoc. of Counties

2:11:41 PM Senator Brandes
2:12:26 PM Charles Dudley, Florida Cable Telecommunications Assoc.
2:13:31 PM Senator Simpson
2:14:14 PM Tracy Hatch, AT&T
2:18:12 PM Senator Thompson
2:21:17 PM Senator Abruzzo
2:24:00 PM Senator Thompson
2:24:41 PM Senator Abruzzo
2:25:35 PM Senator Brandes close
2:27:06 PM Roll call on SB 896
2:27:14 PM Bill reported favorably
2:27:43 PM Tab 9 SB 934 Senator Brandes
2:28:09 PM Senator Thompson
2:28:42 PM Senator Diaz de la Portilla
2:29:10 PM Amendment Barcode 142696
2:29:27 PM Senator Bradley
2:29:41 PM Amendment withdrawn
2:30:22 PM Eric Poole, Florida Assoc. of Counties
2:31:42 PM Senator Abruzzo
2:32:17 PM Senator Brandes
2:32:53 PM Senator Abruzzo
2:33:37 PM Carol Bowen, Associated Builders and Contractors
2:36:01 PM Senator Abruzzo
2:36:25 PM Senator Simpson
2:37:55 PM J. B. Clark, Florida Electrical Worker
2:40:00 PM Senator Simpson
2:40:51 PM Russell Leggette, Florida Pipe Trades
2:41:50 PM Rich Templin, Florida AFL-CIO
2:46:49 PM Jess McCarty, Miami-Dade County
2:48:17 PM Senator Diaz de la Portilla
2:48:38 PM Senator Brandes
2:49:38 PM Amendment 1 Barcode 142696
2:49:44 PM Amendment introduced
2:49:49 PM Senator Bradley on amendment
2:50:32 PM Amendment adopted
2:53:01 PM Senator Abruzzo
2:54:03 PM Senator Diaz de la Portilla
2:57:25 PM Senator Thompson
2:59:44 PM Senator Brandes close
3:01:30 PM Roll call on SB 934
3:01:52 PM Bill reported unfavorably
3:02:12 PM Senator Brandes motion to reconsider
3:02:19 PM SB 934 TP'd
3:02:47 PM Tab 6 SB 1130 Senator Simmons
3:02:51 PM Senator Simmons LA Jean Van Smith
3:03:07 PM Roll call on SB 1130
3:03:21 PM Bill reported favorably
3:03:29 PM Senator Dean
3:04:07 PM Senator Bradley
3:04:29 PM Adjourned