

Bill Number

Tab 1	CS/SB 128 by BI, Rodriguez ; (Compare to H 00113) Contacting Consumer Debtors					
Tab 2	CS/SB 180 by BI, Gruters ; (Similar to CS/CS/H 00253) Regulation of Securities					
Tab 3	CS/SB 406 by RI, Hooper ; (Compare to H 00083) Yacht and Ship Brokers					
Tab 4	SB 410 by Garcia (CO-INTRODUCERS) Hutson ; (Similar to H 00793) Collateral Protection Insurance					
Tab 5	CS/SB 580 by BI, Gruters ; (Similar to CS/CS/H 01267) Consumer Finance Loans					
Tab 6	CS/SB 622 by BI, Yarborough ; (Similar to CS/CS/H 01573) Continuing Care Contracts					
Tab 7	CS/SB 714 by RI, DiCeglie ; (Similar to CS/H 00833) Vacation Rentals					
399510	A	S	RCS	AEG, DiCeglie	Delete L.397 - 425:	04/19 09:27 AM
630374	A	S	UNFAV	AEG, Berman	Delete L.503 - 510:	04/19 09:27 AM
494166	A	S	RCS	AEG, DiCeglie	btw L.808 - 809:	04/19 09:27 AM
Tab 8	SB 734 by Polsky ; (Identical to H 01079) Saltwater Intrusion Vulnerability Assessments					
Tab 9	CS/SB 782 by RI, Hooper ; (Compare to CS/CS/H 00869) Department of Business and Professional Regulation					
Tab 10	CS/SB 902 by AG, Thompson ; (Similar to CS/H 01241) Safety Standards for Amusement Rides					
441816	A	S	RCS	AEG, Thompson	Delete L.60 - 384:	04/19 09:27 AM
Tab 11	SB 904 by Thompson ; (Identical to H 01243) Public Records/Active Amusement Ride Investigation					
200150	A	S	RCS	AEG, Thompson	Delete L.56:	04/19 09:27 AM
Tab 12	SB 1020 by Wright ; (Similar to CS/H 01189) Monuments					
Tab 13	CS/SB 1030 by EN, Trumbull (CO-INTRODUCERS) Stewart ; (Similar to H 00691) Recycling of Covered Electronic Devices					
Tab 14	SB 1056 by Gruters ; (Compare to CS/H 00959) Dosage Form Animal Health Products					
724178	D	S	RCS	AEG, Gruters	Delete everything after	04/19 09:27 AM
Tab 15	SB 1106 by Hooper ; (Identical to H 01523) Household Moving Services					
Tab 16	CS/SB 1108 by CM, Hooper ; (Identical to H 01525) Fees/Moving Brokers					
Tab 17	CS/SB 1262 by RI, Martin ; (Similar to CS/CS/H 00639) Issuance of Special Beverage Licenses					
656138	A	S	RCS	AEG, Martin	Delete L.60:	04/19 09:27 AM

Bill Number

Tab 18	CS/SB 1364 by RI, Collins (CO-INTRODUCERS) Burgess, Calatayud; (Similar to H 01333) Interstate-Mobility and Universal-Recognition Occupational Licensing Act					
749536	A	S	RCS	AEG, Collins	Delete L.67 - 255:	04/19 09:27 AM
Tab 19	CS/SB 1366 by RI, Collins; (Compare to H 01333) Fees/Interstate-Mobility and Universal-Recognition Occupational Licensing Act					
642672	A	S	RCS	AEG, Collins	Delete L.15:	04/19 09:27 AM
Tab 20	CS/SB 1398 by BI, DiCeglie; (Similar to CS/H 01185) Consumer Protection					
932278	D	S	RCS	AEG, DiCeglie	Delete everything after	04/19 09:27 AM
Tab 21	CS/SB 1418 by RI, Bradley; (Similar to CS/CS/H 00745) Emergency Communications					
347904	D	S	RCS	AEG, Bradley	Delete everything after	04/19 09:27 AM
Tab 22	CS/SB 1476 by EN, Simon; (Similar to H 01271) State Acquisition of Lands					
Tab 23	SB 1502 by Rodriguez; (Identical to H 01385) Vessel Owner and Operation Requirements					
Tab 24	CS/SB 1538 by EN, Stewart; (Compare to H 00423) Implementation of the Recommendations of the Blue-Green Algae Task Force					
Tab 25	CS/SB 1632 by EN, Brodeur (CO-INTRODUCERS) Avila; (Similar to CS/CS/H 01379) Environmental Protection					
608352	A	S	WD	AEG, Brodeur	Delete L.574 - 1603:	04/17 09:02 AM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

**APPROPRIATIONS COMMITTEE ON AGRICULTURE,
ENVIRONMENT, AND GENERAL GOVERNMENT**

Senator Brodeur, Chair
Senator Berman, Vice Chair

MEETING DATE: Tuesday, April 18, 2023
TIME: 12:00 noon—3:00 p.m.
PLACE: Toni Jennings Committee Room, 110 Senate Building

MEMBERS: Senator Brodeur, Chair; Senator Berman, Vice Chair; Senators Albritton, Boyd, DiCeglie, Garcia, Grall, Gruters, Mayfield, Osgood, Polsky, Rodriguez, Stewart, and Trumbull

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 128 Banking and Insurance / Rodriguez (Compare H 113)	Contacting Consumer Debtors; Prohibiting creditors from contacting debtors regarding specified types of debt under certain circumstances, to conform to federal regulations; requiring the Office of Financial Regulation of the Financial Services Commission to inform and furnish relevant information to the appropriate regulatory body of the state, the Federal Government, or The Florida Bar if a person has been named in a certain consumer complaint alleging specified violations of law, etc. BI 03/29/2023 Fav/CS AEG 04/18/2023 Favorable FP	Favorable Yeas 14 Nays 0
2	CS/SB 180 Banking and Insurance / Gruters (Similar CS/CS/H 253)	Regulation of Securities; Requiring the Financial Services Commission to define the term "accredited investor" by rule; revising requirements for the registration of securities; revising grounds on which the office may revoke, suspend, or deny the registration of securities; specifying continuing education requirements for associated persons of investment advisers and federal covered advisers; authorizing the commission to establish rules of conduct and prohibited business practices for intermediaries, etc. BI 03/29/2023 Fav/CS AEG 04/18/2023 Favorable FP	Favorable Yeas 13 Nays 0
3	CS/SB 406 Regulated Industries / Hooper (Compare H 83)	Yacht and Ship Brokers; Exempting a visiting broker from licensure for specified transactions; requiring, rather than authorizing, the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation to deny licenses for applicants who fail to meet certain requirements; revising requirements for licensure as a broker; removing a provision requiring the division to adopt rules relating to temporary licenses, etc. RI 03/29/2023 Fav/CS AEG 04/18/2023 Favorable FP	Favorable Yeas 14 Nays 0

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Appropriations Committee on Agriculture, Environment, and General Government
Tuesday, April 18, 2023, 12:00 noon—3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 410 Garcia (Similar H 793)	Collateral Protection Insurance; Defining terms; specifying requirements for collateral protection insurance policy terms; providing for the calculation of collateral protection insurance coverages and premiums; specifying prohibited practices by insurers and insurance agents relating to collateral protection insurance; specifying requirements for the filing of policy forms and rates, etc. BI 03/22/2023 Favorable AEG 04/18/2023 Favorable FP	Favorable Yeas 14 Nays 0
5	CS/SB 580 Banking and Insurance / Gruters (Similar CS/H 1267)	Consumer Finance Loans; Prohibiting a person from operating a branch of a business making consumer finance loans before obtaining a license from the Office of Financial Regulation; revising the maximum interest rate and the calculation of interest rates on consumer finance loans; requiring licensees offering an assistance program to borrowers after a federally declared major disaster to send a specified notice to the office within a certain timeframe; requiring certain licensees to suspend specified actions for a certain timeframe after a federally declared disaster, etc. BI 03/29/2023 Fav/CS AEG 04/18/2023 Favorable FP	Favorable Yeas 10 Nays 3
6	CS/SB 622 Banking and Insurance / Yarborough (Similar CS/H 1573)	Continuing Care Contracts; Revising a requirement for specified information that must be submitted by a provider applying for expansion of a certificated continuing care facility; revising financial institutions in which escrow accounts must be established; revising the timeframe during which the office may exempt certain providers from certain regulatory actions; providing that certain documents relating to a provider's debt service reserve must require certain notice to the office before the withdrawal of debt service reserve funds; specifying the authority of residents' councils and the eligibility of persons to participate in residents' council matters, etc. BI 04/05/2023 Fav/CS AEG 04/18/2023 Favorable FP	Favorable Yeas 14 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	CS/SB 714 Regulated Industries / DiCeglie (Similar CS/H 833, Compare H 105, S 92)	Vacation Rentals; Requiring advertising platforms to collect and remit specified taxes for certain vacation rental transactions; defining the term “advertising platform”; revising the regulated activities of public lodging establishments and public food service establishments preempted to the state to include licensing; requiring advertising platforms to require that persons placing advertisements for vacation rentals include certain information in the advertisements and attest to certain information; authorizing the division to revoke, refuse to issue or renew, or suspend vacation rental licenses under certain circumstances, etc. RI 03/07/2023 Not Considered RI 03/14/2023 Fav/CS AEG 04/18/2023 Fav/CS FP	Fav/CS Yeas 9 Nays 5
8	SB 734 Polsky (Identical H 1079)	Saltwater Intrusion Vulnerability Assessments; Authorizing the Department of Environmental Protection to provide grants to coastal counties for saltwater intrusion vulnerability assessments; requiring the department to update the comprehensive statewide flood vulnerability and sea level rise data set and make certain information received from the saltwater intrusion vulnerability assessments available on its website; requiring the department to provide cost-share funding up to a specified amount for awarded grants, etc. EN 03/14/2023 Favorable AEG 04/18/2023 Favorable AP	Favorable Yeas 14 Nays 0
9	CS/SB 782 Regulated Industries / Hooper (Similar CS/H 869)	Department of Business and Professional Regulation; Requiring the department to certify for licensure qualified individuals who practice mold assessment or mold remediation and hold certain licenses issued by other states or territories; revising requirements for the issuance of an asbestos consultant’s license; removing a time limitation for applying for certain contracting licenses under certain provisions; requiring certain individuals related to public lodging establishments and public food service establishments to maintain a division online account and provide the division with specified information, etc. RI 03/29/2023 Fav/CS AEG 04/18/2023 Favorable FP	Favorable Yeas 14 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	CS/SB 902 Agriculture / Thompson (Similar CS/H 1241, Compare H 1243, Linked S 904)	Safety Standards for Amusement Rides; Citing this act as the "Tyre Sampson Act"; requiring permanent amusement rides operated for the first time in this state after a specified date to have a ride commissioning and certification report on file with the Department of Agriculture and Consumer Services within a specified timeframe; authorizing the department to conduct unannounced inspections for specified purposes; revising the circumstances under which the owner or manager of an amusement ride is required to report an accident and under which the department may impound an amusement ride involved in an accident, etc. AG 03/13/2023 Fav/CS AEG 04/18/2023 Fav/CS FP	Fav/CS Yeas 14 Nays 0
11	SB 904 Thompson (Identical H 1243, Compare CS/H 1241, Linked CS/S 902)	Public Records/Active Amusement Ride Investigation; Providing an exemption from public records requirements for all investigatory records made or received by the Department of Agriculture and Consumer Services pursuant to an active amusement ride investigation for a specified timeframe; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. AG 03/13/2023 Favorable AEG 04/18/2023 Fav/CS FP	Fav/CS Yeas 14 Nays 0
12	SB 1020 Wright (Similar CS/H 1189)	Monuments; Providing legislative intent; establishing the Florida Space Exploration Monument; providing for administration of the monument by the Department of Management Services; providing for the creation of a design contest and selection committee; requiring the department to develop a plan for the design, placement, and cost of the monument; requiring the plan to be submitted to the Governor and the Legislature by a specified date, etc. MS 03/21/2023 Favorable AEG 04/18/2023 Favorable FP	Favorable Yeas 14 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	CS/SB 1030 Environment and Natural Resources / Trumbull (Similar H 691, Linked S 1032)	Recycling of Covered Electronic Devices; Establishing the statewide Covered Electronic Device Recovery Program within the Department of Environmental Protection; authorizing the department to use specified funds to administer the program; specifying requirements for a statewide plan for the recycling of covered electronic devices; prohibiting any person from disposing of covered electronic devices except at a permitted reclamation facility beginning on a specified date; requiring the department to deposit any funds received pursuant to the program into the Solid Waste Management Trust Fund to be used for specified purposes, etc. EN 03/14/2023 Fav/CS AEG 04/18/2023 Temporarily Postponed AP	Temporarily Postponed
14	SB 1056 Gruters (Compare CS/H 959)	Dosage Form Animal Health Products; Requiring a manufacturer or distributor of dosage form animal health products to register with the Department of Agriculture and Consumer Services; authorizing the department to waive the registration requirement under certain conditions and to require specified information for registration applications; providing conditions under which dosage form animal health products are considered misbranded or adulterated, etc. AG 03/13/2023 Favorable AEG 04/18/2023 Fav/CS FP	Fav/CS Yeas 14 Nays 0
15	SB 1106 Hooper (Identical H 1523, Compare H 1525, Linked CS/S 1108)	Household Moving Services; Revising requirements for estimates, contracts, and advertisements; prohibiting certain persons from operating as or holding themselves out to be a mover or moving broker without registering with the department; requiring the Department of Agriculture and Consumer Services to immediately suspend a mover's or moving broker's registration under certain circumstances, etc. CM 03/27/2023 Favorable AEG 04/18/2023 Favorable FP	Favorable Yeas 14 Nays 0
16	CS/SB 1108 Commerce and Tourism / Hooper (Identical H 1525, Compare H 1523, Linked S 1106)	Fees/Moving Brokers; Revising registration fees for moving brokers, etc. CM 03/27/2023 Fav/CS AEG 04/18/2023 Favorable FP	Favorable Yeas 14 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
17	CS/SB 1262 Regulated Industries / Martin (Similar CS/CS/H 639)	Issuance of Special Beverage Licenses; Revising requirements relating to the issuance of special food service licenses and certain club licenses, etc. RI 04/04/2023 Fav/CS AEG 04/18/2023 Fav/CS FP	Fav/CS Yeas 14 Nays 0
18	CS/SB 1364 Regulated Industries / Collins (Similar H 1333, Linked CS/S 1366)	Interstate-Mobility and Universal-Recognition Occupational Licensing Act; Designating the "Interstate-Mobility and Universal-Recognition Occupational Licensing Act"; requiring certain agencies, boards, departments, and other governmental entities to issue an occupational license or a government certification to applicants under certain circumstances; authorizing such entities to require an applicant to pass a specified examination under certain circumstances; requiring licensing entities to provide a written decision to an applicant within a specified timeframe; authorizing the Governor to take certain actions relating to occupational licenses during declared states of emergency, etc. RI 03/21/2023 Fav/CS AEG 04/18/2023 Fav/CS FP	Fav/CS Yeas 14 Nays 0
19	CS/SB 1366 Regulated Industries / Collins (Compare H 1333, Linked CS/S 1364)	Fees/Interstate-Mobility and Universal-Recognition Occupational Licensing Act; Authorizing applicable boards to charge a fee for applications under the Interstate-Mobility and Universal-Recognition Occupational Licensing Act, etc. RI 03/21/2023 Fav/CS AEG 04/18/2023 Fav/CS FP	Fav/CS Yeas 14 Nays 0
20	CS/SB 1398 Banking and Insurance / DiCeglie (Similar CS/H 1185, Compare CS/CS/CS/S 418)	Consumer Protection; Defining the term "remote location"; authorizing a licensee under ch. 494, F.S., to allow loan originators to work from remote locations if specified conditions are met; providing requirements for organizers of crowd-funding campaigns related to disasters and for crowd-funding platforms; prohibiting public adjusters from contracting with anyone other than the named insured without the insured's written consent; revising the definition of the term "hurricane," and defining the term "hurricane deductible," as used in policies providing residential coverage; deleting a debt obligation rating requirement for certain service warranty associations or parent corporations, etc. BI 03/22/2023 Fav/CS AEG 04/18/2023 Fav/CS FP	Fav/CS Yeas 14 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
21	CS/SB 1418 Regulated Industries / Bradley (Similar CS/CS/H 745)	Emergency Communications; Renaming the E911 Board as the Emergency Communications Board; authorizing the board to establish schedules for implementing certain wireless systems and improvements; revising the composition of a committee that reviews requests for proposals from the board regarding independent accounting firm selection; extending the date by which the Division of Telecommunications within the Department of Management Services is required to develop a plan to upgrade 911 public safety answering points, etc. RI 04/04/2023 Fav/CS AEG 04/18/2023 Fav/CS FP	Fav/CS Yeas 14 Nays 0
22	CS/SB 1476 Environment and Natural Resources / Simon (Similar H 1271, Compare H 7047)	State Acquisition of Lands; Requiring, rather than authorizing, the Department of Environmental Protection and the Department of Agriculture and Consumer Services to disclose appraisal reports to private landowners or their representatives during acquisition negotiations; requiring private landowners and their representatives to maintain the confidentiality of such reports or information disclosed by the Department of Agriculture and Consumer Services, etc. EN 03/20/2023 Fav/CS AEG 04/18/2023 Favorable FP	Favorable Yeas 14 Nays 0
23	SB 1502 Rodriguez (Identical H 1385, Compare CS/CS/CS/H 261)	Vessel Owner and Operation Requirements; Revising anchoring limitation areas in certain sections of Biscayne Bay in Miami-Dade County; revising the timeframe during which a person may anchor a vessel in an anchoring limitation area within which such anchoring would otherwise be unlawful; requiring law enforcement officers to conduct national criminal background checks for vessel owners who are issued citations for specified violations, etc. EN 03/27/2023 Favorable AEG 04/18/2023 Temporarily Postponed FP	Temporarily Postponed
24	CS/SB 1538 Environment and Natural Resources / Stewart (Compare H 423)	Implementation of the Recommendations of the Blue-Green Algae Task Force; Requiring the Department of Environmental Protection to assess certain projects; providing requirements for the assessments, etc. EN 04/04/2023 Fav/CS AEG 04/18/2023 Favorable FP	Favorable Yeas 14 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
25	CS/SB 1632 Environment and Natural Resources / Brodeur (Similar CS/H 1379, Compare H 7047)	Environmental Protection; Revising the required components of a local government comprehensive plan capital improvements element and general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element; revising the real property purchase agreements that must be submitted to and approved by the Board of Trustees of the Internal Improvement Trust Fund; providing the components of the Indian River Lagoon Protection Program; prohibiting new onsite sewage treatment and disposal systems within basin management action plans in effect for Outstanding Florida Springs under certain circumstances, etc. EN 03/20/2023 Fav/CS AEG 04/18/2023 Favorable FP	Favorable Yeas 14 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Committee on Agriculture, Environment, and General Government

BILL: CS/SB 128

INTRODUCER: Banking and Insurance Committee and Senator Rodriguez

SUBJECT: Contacting Consumer Debtors

DATE: April 17, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Moody</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Sanders</u>	<u>Betta</u>	<u>AEG</u>	<u>Favorable</u>
3.	<u> </u>	<u> </u>	<u>FP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 128 creates s. 559.721, Florida Statutes, to prohibit consumer collection agencies from contacting, for the purpose of collecting a debt, victims of human trafficking and economic abuse and a debtor whose debt arose when the debtor was in foster care.

The bill's prohibition on consumer debt collection requires victims of human trafficking to provide copies of official documentation to creditors as proof they are a crime victim. Such victims and a debtor whose debt arose when he or she was in foster care also must provide the creditor with an affidavit confirming certain information regarding the debt and how it was incurred.

Victims of human trafficking who comply with these requirements may not be contacted by creditors for one year from the date the affidavit is provided or indefinitely if the perpetrator of the crime has been convicted of the reported offense.

The Office of Financial Regulation (OFR) is required to report certain information regarding consumer complaints of an alleged violation of the new section to the appropriate regulatory body, the Federal Government, or the Florida Bar.

The bill does not impact state revenues or expenditures.

The bill is effective July 1, 2023.

II. Present Situation:

Debt Collection Laws

Federal Fair Debt Collection Practices Act (FDCPA)

The FDCPA was established as a result of abusive, deceptive, and unfair debt collection practices.¹ The FDCPA is aimed at eliminating abusive debt collection practices by debt collectors,² to ensure those that do not engage in abusive practices are not competitively disadvantaged, and to promote consistent state action to protect consumers.^{3,4}

A debt collector who is attempting to acquire location information of the consumer must comply with certain requirements, such as identify himself, state he is confirming or correcting location information, and identify his employer only if expressly asked.⁵ With limited exceptions, the FDCPA limits circumstances under which a debt collector may communicate with a consumer⁶ with respect to collecting any debt,^{7,8} and restricts the individuals with whom a debt collector may communicate about any debt.⁹ If a consumer notifies a debt collector in writing that he or she refuses to pay a debt or wishes to cease communication, the debt collector must not communicate with the consumer except to notify the consumer of specified information.¹⁰ Except if the information is relayed during initial communications or the consumer paid the debt, within five days after the initial communication with a consumer, a debt collector must provide the consumer with a written notice containing information related to the debt.¹¹

The FDCPA prohibits a debt collector from engaging in any conduct that results in harassment, oppression, or abuse of any person in collection of a debt, and specifies certain conduct which constitutes a violation of this provision.¹² A debt collector is also prohibited from using any false, deceptive, or misleading representation or means in the collection of any debt, and the FDCPA specifies conduct which constitutes a violation of this provision.¹³

¹ 15 U.S.C. s. 1692(a).

² 15 U.S.C. s. 1692a(6) defines “debt collector” as any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding certain exclusions, the term included any creditor who, in the process of collecting his debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For purposes of s. 1692f(6), the term includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interest. The term excludes certain persons, such as any officer or employee of a creditor.

³ 15 U.S.C. s. 1692a(3) defines “consumer” as any natural person obligated or allegedly obligated to pay any debt.

⁴ 15 U.S.C. s. 1692(c).

⁵ 15 U.S.C. s. 1692b(1).

⁶ 15 U.S.C. s. 1692b(d) defines “consumer,” for purposes of this section, to include the consumer’s spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

⁷ 15 U.S.C. s. 1692a(5) defines “debt” as any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

⁸ 15 U.S.C. s. 1692c(a) (for instance, providing the time or place in which the communication may take place, and prohibiting contact with the consumer who is represented by an attorney except for certain circumstances).

⁹ 15 U.S.C. s. 1692c(b).

¹⁰ 15 U.S.C. s. 1692c(c).

¹¹ 15 U.S.C. s. 1692g(a).

¹² 15 U.S.C. s. 1692d.

¹³ 15 U.S.C. s. 1692e.

Any debt collector who violates these provisions is liable for actual damages, additional damages up to \$1,000 as a court allows, or certain amounts for class action suits.¹⁴ When determining liability, a court must consider, at a minimum, certain specified factors, such as the frequency and persistence of noncompliance by the debt collector and the nature of noncompliance.¹⁵

The Consumer Financial Protection Bureau (CFPB) must by regulation exempt from requirements of the FDCPA any class of debt collection practices within any state if the CFPB determines the laws of such state are substantially similar to the provision of FDCPA and have adequate provisions of enforcement.¹⁶

Florida Consumer Collection Practices Act

The Office of Financial Regulation (OFR) is responsible for the regulation of banks, credit unions, other financial institutions, finance companies, and securities.¹⁷ The OFR has three divisions, including a Division of Consumer Finance which is responsible for the administration and enforcement of ch. 559, F.S.,¹⁸ known as the Florida Consumer Collection Practices Act (FCCPA). The OFR registers and regulates consumer collection agencies.^{19,20} A person is prohibited from engaging in business as a consumer collection agency without registering with the OFR and must renew such registration annually.²¹ The following persons or entities are not required to register with the OFR:

- An original creditor, that is any person who offers or extends credit creating a debt²² or to whom a debt is owed, but does not include any person to the extent they receive an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another;²³
- A member of the Florida Bar;
- A financial institution authorized to do business in this state and any wholly owned subsidiary and affiliate;
- A licensed real estate broker;

¹⁴ 15 U.S.C. s. 1692k(a).

¹⁵ 15 U.S.C. s. 1692k(b).

¹⁶ 15 U.S.C. s. 1692o.

¹⁷ Section 20.121(3)(a)2., F.S.

¹⁸ Section 494.0011(1), F.S.

¹⁹ Section 559.55(3), F.S., defines “consumer collection agency” as any debt collector or business entity engaged in the business of soliciting consumer debts for collection or of collecting consumer debts, which debt collector or business is not expressly exempted under s. 559.553(3), F.S. Section 559.55(7), F.S., defines “debt collector” as any person who uses any instrumentality of commerce within this state, whether initiated from within or outside this state, in any business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. The term “debt collection” includes any creditor who, in the process of collecting her or his own debts, uses any name other than her or his own which would indicate that a person is collecting or attempting to collect such debts. The term does not include specified persons.

²⁰ Section 559.554(1), F.S.

²¹ Section 559.553(1) and (2), F.S.

²² Section 559.55(7), F.S., defines “debt” or “consumer debt” as any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

²³ Section 559.55(5), F.S.

- An insurance real estate broker;
- An insurance company authorized to do business in this state;
- A consumer finance company and any wholly owned subsidiary and affiliate;
- A person licensed pursuant to ch. 520, F.S.;
- Certain out-of-state consumer debt collectors;²⁴ and
- An FDIC-insured institution or subsidiary or affiliate.²⁵

An out-of-state consumer debt collector who is not exempt and who fails to register is subject to an enforcement action by the state.²⁶

A person collecting consumer debts is prohibited from engaging in certain conduct, such as to:

- Simulate a law enforcement officer or a representative of any governmental agency;
- Use or threaten force or violence;
- Tell a debtor who disputes a consumer debt that the person will disclose to another information affecting the debtor's reputation for credit worthiness without also informing the debtor of certain information;
- Communicate or threaten to communicate with a debtor's employer before obtaining final judgment against the debtor, unless certain circumstances exist;
- Use profane, obscene, vulgar, or willfully abuse language in communicating with the debtor or any of the debtor's family members; and
- Claim, attempt, or threaten to enforce a debt when such person knows that the debt is not legitimate.²⁷

A debtor²⁸ may bring a civil action against a person who violated any of the specified prohibited acts.²⁹ Further a person who engages in any of the prohibited acts is liable for actual damages and for additional statutory damages as the court may allow, but not exceeding \$1,000 plus court costs and reasonable attorney fees.³⁰ A court may order additional statutory damages for class action suits, punitive damages, or other equitable relief as it deems necessary or proper.³¹ The court must consider the nature of the defendant's noncompliance, the frequency and persistence of the noncompliance, and the extent to which the noncompliance was intentional.³² A person may not be held liable if the person shows by a preponderance of the evidence the violation was

²⁴ Section 559.55(11), F.S., defines "out-of-state consumer debt collector" as any person whose business activities in Florida involve both collecting or attempting to collect consumer debt from debtors located in Florida by means of interstate communication originating from outside this state and soliciting consumer debt accounts for collection from creditors who have a business presence in Florida. For purposes of this subsection, a creditor has a business presence in Florida if either the creditor or an affiliate or subsidiary of the creditor has an office in Florida.

²⁵ Section 559.553(6), F.S.

²⁶ Section 559.553(4), F.S. An out-of-state consumer debt collector who is the subject of an enforcement action is liable up to \$10,000, reasonable attorney fees, and court costs. Section 559.565(1), F.S.

²⁷ Section 559.72, F.S.

²⁸ Section 559.55(8), F.S., defines "debtor" or "consumer" as any natural person obligated or allegedly obligated to pay any debt.

²⁹ Section 559.77(1), F.S.

³⁰ Section 559.77(2), F.S.

³¹ *Id.*

³² *Id.*

not intentional and resulted from a bona fide error.³³ Any suit brought under s. 559.77(4), F.S., must commence within two years after the date of the alleged violation.³⁴

A person who is registered or required to be registered in Florida as a consumer collection agency is subject to disciplinary action for engaging in specified acts, such as fraud, misrepresentation, concealment, or dishonest dealing by trick.³⁵ Potential penalties include, for instance, issuance of a reprimand, suspension of registration, revocation of a registration, denial of a registration, imposition of a fine of up to \$10,000 for each count or separate offense, and an administrative fine of up to \$1,000 per day for each day that a person engages as a consumer collection agency without a valid registration.³⁶

The OFR is responsible for receiving and maintaining records of complaints from consumers concerning all persons who collect debts, including consumer collection agencies.³⁷ The OFR must inform and furnish any relevant information to the appropriate regulatory body of Florida, the federal government, or the Florida Bar, if a person has been named in a consumer complaint alleging a violation of s. 559.72, F.S.³⁸

Human Trafficking

Human trafficking is a form of modern-day slavery.³⁹ Human trafficking victims are young children, teenagers, and adults who may be citizens that are trafficked domestically within the borders of the United States or smuggled across international borders worldwide.⁴⁰ Many human trafficking victims are induced with false promises of financial or emotional security, but are forced or coerced into commercial sex, domestic servitude, or other types of forced labor.⁴¹ Any person who is younger than 18 years old and who is induced to perform a commercial sex act is a human trafficking victim even if there is no forced fraud or coercion.⁴² Increasingly, criminal organizations, such as gangs, are enticing local school children into commercial sexual exploitation or trafficking.⁴³ The average ages of youth who are trafficked are 11-13 years old.⁴⁴

The United States Congress passed the Victims of Trafficking and Violence Protection Act (Act) of 2000 to combat human trafficking by establishing several methods of prosecuting traffickers,

³³ Section 559.77(3), F.S.

³⁴ Section 559.77(4).

³⁵ Section 559.730(1), F.S.

³⁶ Section 559.730(2), F.S.

³⁷ Section 559.725(1), F.S.

³⁸ Section 559.772(2), F.S.

³⁹ Section 787.06(1)(a), F.S.

⁴⁰ *Id.*

⁴¹ The Department of Education (the DOE), *Healthy Schools – Human Trafficking*, available at <http://www.fldoe.org/schools/healthy-schools/human-trafficking.stml> (last visited April 4, 2023) (hereinafter cited as “DOE Human Trafficking”).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ The DOE, Presentation to the State Board of Education, *Child Trafficking Prevention Education*, p. 3, September 20, 2019, available at <http://www.fldoe.org/core/fileparse.php/5575/urlt/ChildTraffickingPres.pdf> (last visited April 4, 2023).

preventing trafficking, and protecting victims.⁴⁵ The Act contains severe penalties and mandates restitution for victims of human trafficking.⁴⁶

The United States Department of Justice reports that every two minutes a child is trafficked for the purpose of sexual exploitation in the United States.⁴⁷ Approximately 24.9 million people are human trafficking victims in the world.⁴⁸ There are approximately 2.5 million victims of human trafficking in the United States.⁴⁹ Since 2007, the U.S. National Human Trafficking Hotline (NHTH) has identified 82,301 cases of human trafficking with 164,839 victims being identified in the cases.⁵⁰

Federal Regulation

In cases of human trafficking victims, the Code of Federal Regulation (regulation) prohibits the inclusion of adverse information in consumer reporting.⁵¹ The regulation prohibits consumer reporting agencies from furnishing any consumer report that contains adverse information about a consumer that resulted from a severe form of trafficking in persons or sex trafficking if certain specified documents is provided to the consumer reporting agency.⁵² Examples of acceptable documentation include a determination made by a court of competent jurisdiction or a signed statement by the consumer attesting the consumer is a victim of trafficking if the document is certified by specified certain entities (e.g. federal or state entity).⁵³

Human Trafficking in Florida

Florida law defines “human trafficking” as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining,⁵⁴ purchasing, patronizing, procuring, or obtaining⁵⁵ another person for the purpose of exploitation of that person.⁵⁶ In Florida, any person who knowingly, or in reckless disregard of the facts, engages in human trafficking, or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking for labor or services, or commercial sexual activity, commits a crime.⁵⁷ Florida law sets out several circumstances which give rise to human trafficking and specified penalties including, in part:

⁴⁵ Pub. L. No. 106-386 (2000).

⁴⁶ *Id.*

⁴⁷ DOE Human Trafficking.

⁴⁸ National Human Trafficking Hotline, *What is Human Trafficking?*, available at <https://humantraffickinghotline.org/what-human-trafficking> (last visited April 4, 2023).

⁴⁹ DOE Human Trafficking.

⁵⁰ National Human Trafficking Hotline (NHTH), *Hotline Statistics*, available at <https://humantraffickinghotline.org/states> (last visited April 4, 2023).

⁵¹ 12 C.F.R. s. 1022.142

⁵² 12 C.F.R. s. 1022.142(c).

⁵³ 12 C.F.R. s. 1022.142(b)(6).

⁵⁴ Section 787.06(2)(f), F.S., provides “maintain” means, in relation to labor or services, to secure or make possible continued performance thereof, regardless of any initial agreement on the part of the victim to perform such type service.

Section 787.06(2)(h), F.S., defines “services” as any act committed at the behest of, under the supervision of, or for the benefit of another, including forced marriage, servitude, or the removal of organs.

⁵⁵ Section 787.06(2)(g), F.S., provides “obtain” means, in relation to labor, commercial sexual activity, or services, to receive, take possession of, or take custody of another person or secure performance thereof.

⁵⁶ Section 787.06(2)(d), F.S.

⁵⁷ Section 787.06(3), F.S.

- Labor⁵⁸ or services⁵⁹ of any child under the age of 18 or adult believed to be a child younger than 18 years old commits a first degree felony;⁶⁰
- Labor or services of any child under the age of 18 or adult believed to be a child younger than 18 years old who is an unauthorized alien⁶¹ commits a first degree felony;⁶²
- Labor or services who does so by the transfer or transport of any child under the age of 18 or an adult believed to be a child younger than 18 years old from outside of Florida to within Florida commits a first degree felony;⁶³
- Commercial sexual activity⁶⁴ who does so by the transfer or transport of any child under the age of 18 or an adult believed to be a child younger than 18 years old from outside of Florida to within Florida commits a first degree felony;⁶⁵ or
- Commercial sexual activity⁶⁶ in which any child under the age of 18 or an adult believed to be a child younger than 18 years old, or in which any person who is mentally defective⁶⁷ or mentally incapacitated⁶⁸ is involved commits a life felony.⁶⁹

First degree felonies are reclassified as a life felony if a person causes great bodily harm, permanent disability, or permanent disfigurement to another person during the commission of the offense.⁷⁰ Ignorance of the human trafficking victim's age, the victim's misrepresentation of his or her age, or a bona fide belief of the victim's age cannot be raised as a defense by a defendant.⁷¹

⁵⁸ Section 787.06(2)(e), F.S., provides "labor" means work of economic or financial value.

⁵⁹ Section 787.06(2)(h), F.S., provides "services" means any act committed at the behest of, under the supervision of, or for the benefit of another. The term includes, but is not limited to, forced marriage, servitude, or the removal of organs.

⁶⁰ Section 787.06(3)(a)1., F.S.

⁶¹ Section 787.06(2)(j), F.S., defines "unauthorized alien" as an alien who is not authorized under federal law to be employed in the United States, as provided in 8 U.S.C. s. 1324a(h)(3).

⁶² Section 787.06(3)(c)1., F.S.

⁶³ Section 787.06(3)(e)1., F.S.

⁶⁴ Section 787.06(2)(b), F.S., defines "commercial sexual activity" as any violation of ch. 796, F.S., or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography. Section 787.06(2)(i), F.S., defines "sexual explicit performance" as an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy the sexual desires or appeal to the prurient interest.

⁶⁵ Section 787.06(3)(f)1., F.S., provides that an offense committed under these circumstances is punishable by a term of imprisonment not exceeding life or as provided in ss. 775.082, 775.083, or 775.084, F.S.

⁶⁶ Section 787.06(2)(b), F.S., defines "commercial sexual activity" as any violation of ch. 796, F.S., or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography. Section 787.06(2)(i), F.S., defines "sexual explicit performance" as an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy the sexual desires or appeal to the prurient interest.

⁶⁷ Section 794.011(1)(b), F.S., defines "mentally defective" as a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.

⁶⁸ Section 794.011(1)(c), F.S., defines "mental incapacitated" as temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.

⁶⁹ A life felony is punishable by a term of life imprisonment, \$15,000 fine, or both as provided in ss. 775.082(3)(a)6., 775.083, or 775.084, F.S.

⁷⁰ Section 787.06(8)(b), F.S.

⁷¹ Section 787.06(9), F.S.

Foster Care

The child welfare system identifies families whose children⁷² are in danger of suffering or have suffered abuse,⁷³ abandonment,⁷⁴ or neglect⁷⁵ and works with those families to address the problems that are endangering children. If the problems cannot be ameliorated, the child welfare system finds other caregivers for children, such as foster care, relative and nonrelative caregivers, or adoptive families.⁷⁶ “Foster care” is defined as care provided a child in a foster family or boarding home, group home, agency boarding home, child care institution, or any combination thereof.⁷⁷

Action Letters for Foster Children

In 2014, the CFPB released action letters for child welfare case workers to send to credit bureaus for debt incurred by foster children.⁷⁸ The three letters address credit reports that: (a) should not exist for the child in foster care,⁷⁹ (b) has errors from before the youth turned 18,⁸⁰ and (c) has

⁷² See s. 39.01(14), F.S., for the definition of “child who is found to be dependent.”

⁷³ Section 39.01(2), F.S. The term “abuse” means any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child’s physical, mental, or emotional health to be significantly impaired. Abuse of a child includes the birth of a new child into a family during the course of an open dependency case when the parent or caregiver has been determined to lack the protective capacity to safely care for the children in the home and has not substantially complied with the case plan towards successful reunification or met the conditions for return of the children into the home. Abuse of a child includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.

⁷⁴ Section 39.01(1), F.S. The term “abandoned” or “abandonment” means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child’s care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both.

⁷⁵ Sections 39.01(50) and 39.201(2)(a), F.S. “Neglect” occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child’s physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired. The foregoing circumstances shall not be considered neglect if caused primarily by financial inability unless actual services for relief have been offered to and rejected by such person. A parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child may not, for that reason alone, be considered a negligent parent or legal custodian; however, such an exception does not preclude a court from ordering necessary services.

⁷⁶ See s. 39.001(1), F.S.

⁷⁷ Section 39.01(29), F.S.

⁷⁸ The Consumer Financial Protection Bureau (CFPB), *CFPB Releases Tools to Protect Foster Care Children from Credit Reporting Problems*, May 1, 2014, available at [CFPB Releases Tools To Protect Foster Care Children From Credit Reporting Problems | Consumer Financial Protection Bureau \(consumerfinance.gov\)](https://www.consumerfinance.gov/about-us/blog/how-to-protect-vulnerable-children-from-identity-theft/#dispute) (hereinafter cited as “CFPB Tools to Protect Foster Care Children”) (last visited April 4, 2023).

⁷⁹ The CFPB, *Credit Report Dispute Template for Youth in Foster Care*, available at <https://www.consumerfinance.gov/about-us/blog/how-to-protect-vulnerable-children-from-identity-theft/#dispute> (last visited April 4, 2023).

⁸⁰ The CFPB, *How to protect vulnerable children from credit reporting problems, Credit Report Dispute Template for Youth 18 or Older in Foster Care – Activity Occurred When Minor*, available at <https://www.consumerfinance.gov/about-us/blog/how-to-protect-vulnerable-children-from-identity-theft/#dispute> (last visited April 4, 2023).

errors for foster care youth over 18.⁸¹ Case workers are encouraged to send the relevant letters to the credit bureaus if they find errors on foster children's credit reports.⁸²

III. Effect of Proposed Changes:

Section 1 of the bill creates s. 559.721, F.S., which prohibits consumer collection agencies from contacting certain debtors once the consumer collection agency receives specified evidence. A creditor may not contact a debtor regarding a debt that arises from documented human trafficking and economic abuse or a debt that arose when the debtor was in foster care.

For the no contact provision to apply to victims of human trafficking and economic abuse, the debtor must provide to the creditor: (a) official documentation⁸³ that shows at least one incident of human trafficking has occurred in which the debtor is listed as a victim or in which the debtor received relocation assistance,⁸⁴ and (b) a signed affidavit swearing under penalty of perjury that the following are true:

- The debtor was the victim of human trafficking as documented in a police report, or there has been a determination that the debtor should receive relocation assistance;
- As a result of the human trafficking, the debtor was compelled to incur debt or was provided credit that the debtor would not otherwise have incurred in the absence of the abuse, such as the debtor's identity being stolen; and
- The debt was incurred solely because of and during the period of human trafficking.

If the debtor complies with these requirements, the no contact provision applies either (a) for one year after the affidavit is provided, or (b) indefinitely, if the perpetrator has been convicted of a crime relating to human trafficking as alleged in the police report.

For the no contact provision to apply to children who were in foster care, the debtor must provide to the creditor a signed affidavit, swearing under penalty of perjury, the debtor was in foster care and the debt was incurred during the time when the debtor was in foster care.

Section 2 requires the Office of Financial Regulation to inform and furnish relevant information to specified entities if a person has been named in a consumer complaint alleging a violation of s. 559.721, F.S.

Section 3 provides the bill is effective July 1, 2023.

⁸¹ The CFPB, *Credit Report Dispute Template for Youth 18 or Older in Foster Care*, available at <https://www.consumerfinance.gov/about-us/blog/how-to-protect-vulnerable-children-from-identity-theft/#dispute> (last visited April 4, 2023).

⁸² The CFPB Tools to Protect Foster Care Children.

⁸³ Section 943.0583(1)(b), F.S., defines "official documentation" as any documentation issued by a federal, state, or local agency tending to show a person's status as a victim of human trafficking.

⁸⁴ Section 960.196(2), F.S., provides that a victim may be granted an award for relocation assistance if there is proof that a human trafficking offense was committed as provided in s. 787.06(3)(b), (d), (f), and (g), and that the crime was reported to the proper authorities and filed within specified timeframes depending on when the crime occurred.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Federal law and Florida law provide that, in the event any inconsistency between any provision of Fair Debt Collection Practices Act and the Florida's Consumer Protection Practices Act, the provision which is more protective of the consumer or debtor must prevail.⁸⁵ The bill would add provisions that are more protective of certain categories of persons and therefore should prevail.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁸⁵ 15 U.S.C. s. 1692n; Section 559.552, F.S.

VIII. Statutes Affected:

This bill substantially amends section 559.725 of the Florida Statutes.

This bill creates section 559.721 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 Committee on March 29, 2023:

The committee substitute makes the following changes:

- Removes the provisions that prohibit a creditor from contacting:
 - A victim of elder and economic abuse;
 - A victim of identity theft; and
 - A debtor upon receiving notice that the debtor is protected by an injunction for protection against exploitation of a vulnerable adult under s. 825.1035, F.S.;
- Modifies the provisions that prohibit a “creditor” to prohibit a “consumer collection agency” from making contact with specified groups of individuals;
- Removes the provision that s. 559.721, F.S., applies to out-of-state consumer debt collectors, even if they are exempted from registering with the Office of Financial Regulation;
- Removes the provision that such section may not be construed to mean that the debtor is discharged from the debt that he or she may have incurred as a result of the crime; and
- Removes the modification to s. 559.77, F.S., in the bill that makes a creditor who violates the provisions prohibiting contact with the specified categories of persons subject to civil remedies.

- B. **Amendments:**

None.

By the Committee on Banking and Insurance; and Senator Rodriguez

597-03288-23

2023128c1

A bill to be entitled

An act relating to contacting consumer debtors; creating s. 559.721, F.S.; prohibiting creditors from contacting debtors regarding specified types of debt under certain circumstances, to conform to federal regulations; amending s. 559.725, F.S.; requiring the Office of Financial Regulation of the Financial Services Commission to inform and furnish relevant information to the appropriate regulatory body of the state, the Federal Government, or The Florida Bar if a person has been named in a certain consumer complaint alleging specified violations of law; providing an effective date.

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

Section 1. Section 559.721, Florida Statutes, is created to read:

559.721 Prohibitions on contacting debtors who are victims of certain crimes.—In collecting consumer debts, a consumer collection agency may not:

(1) Contact a debtor regarding a debt that arises from documented human trafficking and economic abuse.

(a) Documented human trafficking and economic abuse occur when:

1. Official documentation as defined in s. 943.0583 shows at least one incident of human trafficking has occurred in which the debtor is listed as a victim or in which the debtor received relocation assistance under s. 960.196; and

597-03288-23

2023128c1

2. The debtor provides the consumer collection agency with a signed affidavit, swearing under penalty of perjury that the following are true:

a. The debtor was the victim of human trafficking as documented in a police report, or there has been a determination that the debtor should receive relocation assistance under s. 960.196;

b. As a result of human trafficking, the debtor was compelled to incur debt or was provided credit that the debtor would not otherwise have incurred in the absence of the abuse, including instances in which the debtor's identity has been stolen; and

c. The debt that is the subject of the consumer collection agency contact with the debtor was incurred solely because of and during the period of human trafficking.

(b) The prohibition in this subsection applies:

1. For 1 year after the affidavit under subparagraph (a)2. is provided to the consumer collection agency; or

2. Indefinitely, if the perpetrator has been convicted of a crime relating to human trafficking as alleged in the police report.

(2) Contact a debtor regarding debts that arose when the debtor was in foster care. This prohibition applies after the debtor provides the consumer collection agency with a signed affidavit, swearing under penalty of perjury that the following are true:

(a) The debtor was in foster care as defined in s. 39.01;

and

(b) The debt that is the subject of the consumer collection

597-03288-23

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59 agency contact with the debtor was incurred during the time when
60 the debtor was in foster care.

61 Section 2. Subsection (2) of section 559.725, Florida
62 Statutes, is amended to read:

63 559.725 Consumer complaints; administrative duties.—

64 (2) The office shall inform and furnish relevant
65 information to the appropriate regulatory body of the state or
66 the Federal Government, or The Florida Bar in the case of
67 attorneys, if a person has been named in a consumer complaint
68 pursuant to subsection (3) alleging violations of s. 559.72 or
69 s. 559.721. The Attorney General may take action against any
70 person in violation of this part.

71 Section 3. This act shall take effect July 1, 2023.



The Florida Senate

Committee Agenda Request

To: Senator Jason Brodeur, Chair
Appropriations Committee on Agriculture, Environment, and General
Government

Subject: Committee Agenda Request

Date: March 29, 2023

I respectfully request that **CS/SB 128**, relating to Contacting Consumer Debtors, be placed on the:

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

A handwritten signature in black ink, appearing to read "Ana Maria Rodriguez".

Senator Ana Maria Rodriguez
Florida Senate, District 40

The Florida Senate

APPEARANCE RECORD

4/18/23

Meeting Date

SB 128

Bill Number or Topic

Approps on Ag, Environ GG

Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name Angela Bonds

Phone 850 999 4100

Address 106 E College

Street

Email abonds@deanmead.com

Tall

City

FL

State

32301

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:
Lexington Law

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf flsenate.gov](#)

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

S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4/18/23

Meeting Date

AE GG

Committee

128

Bill Number or Topic

Amendment Barcode (if applicable)

Name Chase Mitchell

Phone 850 413 2866

Address PL 11 The Capitol
Street

Email Chase.Mitchell@myfloridacfo.com

Tallahassee FL 52399
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

CFO Jimmy Patronis

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf](#) ([flsenate.gov](#))

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

S-001 (08/10/2021)

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 Appropriations Committee on Agriculture, Environment, and General Government

BILL: CS/SB 180

INTRODUCER: Banking and Insurance Committee and Senator Gruters

SUBJECT: Regulation of Securities

DATE: April 17, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Fav/CS
2.	Sanders	Betta	AEG	Favorable
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 180 revises provisions of ch. 517, F.S., the Securities and Investor Protection Act (Act), which regulates securities transactions. The Office of Financial Regulation (OFR) regulates and registers the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals associated with these firms in accordance with the act. The Division of Securities within the OFR is responsible for administering the act.

The bill provides many technical, clarifying, and conforming changes to ch. 517, F.S. Many provisions of ch. 517, F.S., are outdated or do not incorporate recent model acts or federal rule changes, which are designed to promote capital formation for small businesses and provide more investment opportunities for investors.

The bill decreases the \$1,000 filing fee to \$200 for offerings that do not exceed the maximum amount provided in s. 3(b) of the Securities Act of 1933 (Act of 1933). The maximum amount currently provided in s. 3(b) of the Act of 1933 is five million dollars.

The bill eliminates the requirement for an issuer to register with the OFR. Currently, issuers are required to disclose all material facts about themselves when registering an offering of securities.

The bill incorporates provisions of the following model acts and rules:

- The North American Securities Administrators Association's (NASAA's) Model Rule to Require Continuing Education by Investment Adviser Representatives. An associate or representative would be required to complete 12 hours of continuing education content.
- The Uniform Securities Act of the Uniform Law Commission.

The bill adds failure to pay, or attempting to avoid paying, certain final judgments, arbitration awards, fines, and civil penalties, orders of restitution and disgorgement, or similar monetary payment obligations as grounds for denying, suspending, or revoking a registration.

The bill has an insignificant negative impact on state revenues and expenditures. See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2023.

II. Present Situation:

Federal Regulation of Securities

Securities Act of 1933 (Act of 1933)

Following the stock market crash of 1929, the Act of 1933¹ (Act) was enacted to regulate the offers and sales of securities. The Act of 1933 requires issuers to disclose financial and other significant information on securities offered for public sale and prohibits deceit, misrepresentations, and other kinds of fraud in the sale of securities. The Act of 1933 requires issuers to disclose information deemed germane to investors as part of the mandatory United States Securities and Exchange Commission (SEC) registration of the securities that those companies offer for sale to the public.² For example, potential investors must be given an offering prospectus containing registration data. Registered securities offerings, often called public offerings, are available to all types of investors and have more rigorous disclosure requirements.

By contrast, securities offerings that are exempt from the SEC registration are referred to as private offerings and are mainly available to more sophisticated investors. The SEC exempts certain small offerings from registration requirements to foster capital formation by lowering the cost of offering securities to the public. Examples of exempt offerings³ include:

- Rule 506(b) Private Placement Offerings allow companies to raise unlimited capital from investors with whom the company has a relationship and who meet certain wealth thresholds or have certain professional credentials;⁴
- Rule 506(c) General Solicitation Offerings allow companies to raise unlimited capital by broadly soliciting investors who meet certain wealth thresholds or have certain professional credentials;⁵

¹ Public Law 73-22, as amended through P.L. 117-268, enacted December 23, 2022.

² *Id.*

³ Security offerings of municipal, state, and the federal government are exempt from registration. U.S. Securities and Exchange Commission (SEC), *The Laws That Govern the Securities Industry*, <https://www.sec.gov/about/about-securities-laws> (last visited April 12, 2023)

⁴ 17 C.F.R. s. 230.506(b).

⁵ 17 C.F.R. s. 230.506(c).

- Rule 504 Limited Offerings allow companies to raise up to \$10 million in a 12-month period, in many cases from investors with whom the company has a relationship;⁶
- Regulation Crowdfunding Offerings allow eligible companies to raise up to five million dollars in investment capital in a 12-month period from investors via an online portal;⁷
- Intrastate offerings⁸ allow companies to raise capital within a single state according to state law. Many states limit the offering to between one million dollars and five million dollars in a 12-month period; and
- Regulation A Offerings allow eligible companies to raise up to \$20 million in a 12-month period in a Tier I offering and up to \$75 million through a similar, but less extensive registered offering.⁹

Securities and Exchange Act of 1934 (Act of 1934)

The Act of 1934 created the SEC as an independent agency to enforce federal securities laws.¹⁰ The SEC oversees federal securities laws¹¹ broadly aimed at (1) protecting investors; (2) maintaining fair, orderly, and efficient markets; and (3) facilitating capital formation.¹² The SEC has broad regulatory authority over significant parts of the securities industry, including stock exchanges, mutual funds, investment advisers, brokerage firms, as well as securities self-regulatory organizations (SROs).

Besides regulating market participants, the SEC plays an important role in the regulation of other regulatory bodies, such as the Financial Industry Regulatory Authority, Inc. (FINRA), which is a SRO¹³ registered with the SEC as a national securities association, the Municipal Securities Rulemaking Board (MSRB), the Securities Investor Protection Corporation, the Public Company Accounting Oversight Board, and the Financial Accounting Standards Board. With regard to broader marketplace regulation, the SEC coordinates with the Commodity Futures Trading Commission (CFTC), a separate federal financial regulator overseeing derivatives and commodities markets, regarding issues involving securities-based derivatives.¹⁴

Florida Regulation of Securities

The federal securities acts expressly allow for concurrent state regulation under blue sky laws,¹⁵ which are designed to protect investors against fraudulent sales practices and activities. Most

⁶ 17 C.F.R. s. 230.504.

⁷ 17 C.F.R. s. 227.100. Florida's intrastate crowdfunding law, s. 517.0611, F.S., has not been updated since it was created to reflect the increase in the maximum offering from one million dollars to five million dollars.

⁸ 17 C.F.R. s. 230.147 and 17 C.F.R. s. 230.147A

⁹ 17 C.F.R. s. 230.251, *et seq.*

¹⁰ Public Law 73-291, as amended through P.L. 117-328, enacted December 29, 2022.

¹¹ Section 15, Securities and Exchange Act of 1934.

¹² The SEC, *What We Do*, <https://www.sec.gov/about/what-we-do> (last visited April 12, 2023).

¹³ National securities exchanges (e.g., the New York Stock Exchange) and clearing and settlement systems may register as self-regulatory organizations (SROs) with the SEC or Commodity Futures Trading Commission (CFTC), making them subject to the SEC or the CFTC oversight. The SEC maintains a list of registered SROs. *available at* <https://www.sec.gov/rules/sro.shtml> (last visited April 12, 2023).

¹⁴ The CFTC, *The Commission*, <https://www.cftc.gov/About/AboutTheCommission> (last visited April 12, 2023).

¹⁵ The term "blue sky" derives from the characterization of baseless and broad speculative investment schemes, which such laws targeted. Cornell Law School, *Blue Sky Laws*,

state laws typically require companies making offerings of securities to register their offerings before they can be sold in a particular state, unless a specific state exemption is available. The laws also license brokerage firms, their brokers, and investment adviser representatives.¹⁶

The Office of Financial Regulation (OFR) regulates and registers the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals associated with these firms in accordance with the Securities and Investor Protection Act (Act).¹⁷ The Division of Securities (Division) within the OFR is responsible for administering the Act.¹⁸

The Act prohibits dealers, associated persons, and issuers from offering or selling securities in this state unless registered with the OFR or specifically exempted.¹⁹ Additionally, all securities in Florida must be registered with the OFR unless they meet one of the exemptions in ss. 517.051 or 517.061, F.S., or are federally covered (i.e., under the exclusive jurisdiction of the SEC).

The below chart provides the category and number of registrants registered with the Division as of December 31, 2022.²⁰

Registrant Category	Number of Registrants
Dealers	2,421
Investment Advisers	8,096
Branches	11,435
Associated Persons	361,200

Model Acts and Model Rules

*Uniform Securities Act*²¹

The Uniform Law Commission (ULC, also known as the National Conference of Commissioners on Uniform State Laws), established in 1892, provides states with non-partisan uniform model acts.²² In 2002, the ULC updated the Uniform Securities Act,²³ which provides basic investor

https://www.law.cornell.edu/wex/blue_sky_law#:~:text=In%20the%20early%201900s%2C%20decades,schemes%20which%20such%20laws%20targeted (last visited April 12, 2023).

¹⁶ U.S. Securities and Exchange Commission, Blue Sky Laws, <http://www.sec.gov/answers/bluesky.htm> (last visited Mar. 1, 2023).

¹⁷ Pursuant to s. 20.121(3)(a), F.S., the Financial Services Commission (commission), comprised of the Governor and Cabinet, serves as the Office of Financial Regulation's (OFR) agency head for purposes of rulemaking and appoints the OFR's commissioner, who serves as the agency head for purposes of final agency action for all areas within the OFR's regulatory authority.

¹⁸ Chapter 517, F.S.

¹⁹ Section 517.12, F.S.

²⁰ Office of Financial Regulation, *Senate Bill 180 Agency Legislative Bill Analysis* (Jan. 25, 2023) (on file with Senate Committee on Banking and Insurance).

²¹ Uniform Law Commission (ULC), *Securities Act*, <https://www.uniformlaws.org/committees/community-home?CommunityKey=8c3c2581-0fea-4e91-8a50-27eee58da1cf> (last visited April 12, 2023).

²² The ULC, *About Us*, <https://www.uniformlaws.org/aboutulc/overview> (last visited April 12, 2023).

²³ National Conference of Commissioners on Uniform State Laws, *Uniform Securities Act*, Approved by the American Bar Association (Feb. 10, 2003), <https://higherlogicdownload.s3-external-1.amazonaws.com/UNIFORMLAWS/2540665f-9320-6d13-dda3->

protection from securities fraud, complementing the federal Securities and Exchange Act, and only applies to securities not regulated by the SEC.

Model Rule to Require Continuing Education by Investment Adviser Representatives

The North American Securities Administrators Association (NASAA) is a voluntary, international, association whose membership consists of 67 state, provincial, and territorial securities administrators in the 50 states, Puerto Rico, the District of Columbia, the U.S. Virgin Islands, Canada and Mexico.²⁴ Formed in 1919, the NASAA is the “oldest international organization devoted to investor protection.”²⁵ The NASAA advocates on behalf of state securities agencies in North America that are responsible for capital formation and investor protection.²⁶ The NASAA also coordinates training and education seminars for securities agency staff²⁷ and creates model rules for implementation amongst its members.²⁸

In 2020, the North American Securities Administrators Association (NASAA) approved the *Model Rule to Require Continuing Education by Investment Adviser Representatives (Model Rule)*.²⁹ Twelve states have adopted the Model Rule.³⁰ The Model Rule establishes parameters for NASAA members to implement continuing education programs for investment adviser representatives (IAR). The Model Rule incorporates a product and practices component and an ethics component and is compatible with other continuing education programs.³¹

Under the Model Rule, IARs are responsible for ensuring completed continuing education credits are reported to FINRA, the NASAA’s vendor for program tracking.³² The NASAA has instituted a three dollar course reporting fee per credit hour.³³ Individual course costs will vary depending upon the course and provider selected.

[f31c7eac656d_file.pdf?AWSAccessKeyId=AKIAVRD07IEREB57R7MT&Expires=1681304682&Signature=nr4k5xSDIA%2BX9mu%2BBDpKuSJZybQ%3D](https://www.nasaa.org/wp-content/uploads/2020/10/NASAA-IAR-CE-Model-Rule.pdf?AWSAccessKeyId=AKIAVRD07IEREB57R7MT&Expires=1681304682&Signature=nr4k5xSDIA%2BX9mu%2BBDpKuSJZybQ%3D) (last visited April 12, 2023).

²⁴ North American Securities Administrators Association (NASAA), *Welcome to NASAA*, <https://www.nasaa.org/about-us/> (last visited April 12, 2023).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ NASAA Model Rule on Investment Adviser Representative Continuing Education, *Model Rule 2002-411(h) or 1956-204(b)(6)-CE* (adopted November 24, 2020), available at <https://www.nasaa.org/wp-content/uploads/2020/10/NASAA-IAR-CE-Model-Rule.pdf> (last visited April 12, 2023).

²⁹ *Id.*

³⁰ Arkansas, Colorado, Kentucky, Maryland, Michigan, Mississippi, Oklahoma, Oregon, South Carolina, Vermont, Wisconsin, and the District of Columbia; NASAA, *Jurisdictions*, <https://www.nasaa.org/industry-resources/investment-advisers/investment-adviser-representative-continuing-education/iar-ce-map/> (last visited April 12, 2023).

³¹ NASAA, *Frequently Asked Questions: Investment Adviser Representative Continuing Education*, <https://www.nasaa.org/industry-resources/investment-advisers/resources/iar-ce-faq/> (last visited April 12, 2023).

³² *Frequently Asked Questions: Investment Adviser Representative Continuing Education, General, Is there a reporting fee?* <https://www.nasaa.org/industry-resources/investment-advisers/resources/iar-ce-faq/> (last visited April 12, 2023).

³³ *Frequently Asked Questions: Investment Adviser Representative Continuing Education, General, Who Reports Course Completion?* <https://www.nasaa.org/industry-resources/investment-advisers/resources/iar-ce-faq/> (last visited April 12, 2023). The IAR continuing education reporting fee is also referred to as the roster fee.

Chapter 517 Task Force of the Florida Bar Business Law Section

In 2022, the Business Law Section of the Florida Bar created the Chapter 517 Task Force. The Task Force is tasked with reviewing and making legislative recommendations to ch. 517, F.S. In particular, the Task Force's mission is to review Florida's securities laws and to propose a revision with the purpose of bringing Chapter 517 in line with the Uniform Securities Act and address current issues presented by the existing statutes.

III. Effect of Proposed Changes:

Section 1 reorders and amends s. 517.021, F.S., to revise the following definitions:

- “Accredited investor” is currently defined each time it is used throughout ch. 517, F.S. The purpose of the change is to eliminate redundancy and maintain consistency. Subsection (1) directs the Financial Services Commission to define by rule the definition of “accredited investor” in accordance with the Securities and Exchange Commission Rule 501, 17 C.F.R. s. 230.501;
- “Associated person” is clarified to define what “associated person” means as the term relates to a dealer or to an investment adviser;
- “Dealer” includes, unless otherwise specified, a person, other than an associated person of a dealer, that engages, for all or part of the person's time, directly or indirectly, as agent or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person;
- The terms “guaranty” and “intermediary” are amended for clarity; and
- “Investment adviser” is amended to have a parallel structure to the definition of “dealer” in this section.

Other terms in the section are amended to provide technical changes.

Section 2 amends s. 517.072, F.S., to transfer provisions previously in s. 517.081, F.S., relating to viatical settlements, and to provide technical changes. The bill authorizes the commission to specify by rule, requirements and standards for disclosures to purchasers of viatical settlement investments and recordkeeping requirements for sellers of viatical settlement investments.

Section 3 amends s. 517.081, F.S., related to registration procedures, to allow all issuers meeting certain criteria, not only corporations, to use a simplified offering circular to register securities. The bill decreases the filing fee of \$1,000 to \$200 for offerings which do not exceed the maximum amount provided in s. 3(b) of the Securities Act of 1933. The maximum amount currently provided in s. 3(b) of the Securities Act of 1933 is five million dollars.

The bill authorizes the commission to specify by rule the time period for completing an application to register securities. If the application is not timely completed, the application shall be deemed abandoned. The bill provides conforming changes to transfer provisions to s. 517.072, F.S., relating to viatical settlements.

Section 4 amends s. 517.082, F.S., relating to registration by notification and federal registration statements, to authorize the Office of Financial Regulation (OFR) to deem an application abandoned if an applicant's federal registration statement is not declared effective by the

U.S. Securities and Exchange Commission (SEC) within 180 days of the filing of such application for registration by notification with the OFR.

Section 5 amends s. 517.111, F.S., relating to revocation or denial of registration of securities, to:

- Remove “failure to timely complete an application” as grounds for denial as this provision is incorporated in the registration sections amended in Sections 2 and 3 above;
- Replace the term “insolvent” with “[t]he issuer cannot pay its debts as they become due in the usual course of business” for clarity;
- Include “investigation” in addition to “examination” in various provisions as these provisions are applicable to both examinations and investigations conducted by the OFR;
- Include limited liability companies and provides other technical, conforming changes;
- Remove the phrase “is in any other way dishonest or” because the standard is too vague;
- Eliminate the phrase “demonstrated any evidence of unworthiness,” a vague standard, and replaces it with “has engaged in any action that would be grounds for revocation, denial, or suspension under s. 517.161(1),” a clearer standard; and
- Update language to allow the OFR, upon the entry of an order suspending the right to sell securities, to provide notice personally or by mail to the issuer, thereby eliminating the need to notice by telephone confirmed in writing or by telegraph to the insurer.

Section 6 amends and renumbers s. 517.12, F.S., relating to registration of dealers, associated persons, intermediaries, and investment advisers, to provide the following changes:

- Eliminates the requirement issuers register with the OFR. This registration requirement is not necessary because issuers are required to disclose all material facts about themselves when registering an offering of securities. Further, the majority of states do not have this requirement;
- Clarifies which exempt transactions the registration requirements apply to and the meaning of “securities business”;
- Removes the term “small loan companies” as the term is not defined;
- Eliminates the requirement the OFR find an applicant is of “good repute and character” and instead requires the OFR to verify the applicant has complied with the applicable registration provisions. If the applicant has complied, the bill authorizes the OFR to register the applicant “unless the applicant is otherwise disqualified for registration pursuant to law”;
- Replaces the phrase “any person directly or indirectly controlling the applicant” with “control person”;
- Amends the section to specifically include limited liability companies; and
- Provides technical changes.

Section 7 creates s. 517.1214, F.S., relating to continuing education requirements for associated persons of investment advisers and federal covered advisers, and defines the following terms:

- “Approved continuing education content” to mean materials, written, oral or otherwise, which have been approved by the North American Securities Administrators Association’s (NASAA) or its designee and which make up the educational program provided to an associated person;
- “Credit” to mean a unit designated by the NASAA or its designee as at least 50 minutes of educational instruction;

- “Home state” to mean the state in which an associated person or an investment advisor or a federal covered adviser has his or her principal office of place of business;
- “NASSA” to mean the North American Securities Administrators Association, Inc.; and
- “Reporting period” to mean one 12-month period beginning January 1 and ending December 31.

The bill adopts the North American Securities Administrators Association’s (NASAA) Model Rule on Investment Adviser Representative Continuing Education. By December 24, 2024, the bill requires associated persons of investment advisers and federal covered advisers seeking registration or renewal of registration with the OFR to complete 12 continuing education (CE) credits each year.

An associated person must complete at least six credits of continuing education content that address ethical and regulatory obligations and at least six credits of continuing education content that address product knowledge and industry practices. Associated persons of investment advisers and federal covered advisers who are also registered as associated persons of Financial Industry Regulatory Authority (FINRA) member dealers and who comply with FINRA’s continuing education requirements are considered to be in compliance with the products and practices requirement, as long as such education content is approved continuing education content.

The bill provides an associated person who was awarded and currently holds a credential that qualifies for an examination waiver by passing any tests in s. 15(b)(7) of the Securities Exchange Act of 1934, as amended, complies with the provisions of the bill, as long as certain conditions are met or completed. Further, credits of continuing education completed by an associated person who completes such credits as a condition of maintaining certain professional designations or associated persons in compliance with their home state’s continuing education requirements may satisfy the continuing education requirements of this section.

Each associated person is responsible for ensuring an authorized provider of continuing education content reports their completion of continuing education requirements. The bill provides continuing education credits in excess of the required 12 units cannot be carried forward.

An associated person who fails to comply with this section by the end of each year will renew as “CE inactive” at the close of the calendar year in Florida until the associated person completes and reports all required continuing education required for all reporting periods. An associated person who is “CE inactive” at the close of the next calendar year is not eligible for associated person registration or renewal of associated person registration until such time as the required continuing education for all reporting periods between the time when the associated person became unregistered and when they became registered again is complete.

Section 8 revises s. 517.1217, F.S., relating to rules of conduct and prohibited business practices for dealers and their associated persons, to include intermediaries.

Section 9 amends s. 517.161, F.S., relating to revocation, denial, or suspension of registration of dealer, investment adviser, intermediary, or associated person, to replace the phrase “person

directly or indirectly controlling” with “control person” and removes the term “broker” for consistency. Due to the vagueness of current language, the bill also removes the “unworthiness to transact business” and the “of bad business repute” standards. Section 9 clarifies the meaning of “insolvent” as “unable to pay its debts as they become due in the usual course of business” and removes the term “small loan companies” as it is undefined and its meaning is unclear.

Furthermore, the bill add failure to pay, or attempting to avoid paying, certain final judgments, arbitration awards, fines, civil penalties, orders of restitution and disgorgement, or similar monetary payment obligations as grounds for denying, suspending, or revoking a registration.

Finally, amends the section to include limited liability companies, and other entities.

Section 10 repeals s. 517.181, F.S., relating to escrow agreement, as it is not utilized, and no federal counterpart exists. This section requires the securities to be delivered to the office in escrow for issuance contingent on a milestone being reached, such as receipt of a patent.

Section 11 amends s. 517.201, F.S., relating to investigations; examinations; subpoenas; hearings; witnesses, to provide clarity and to specifically include limited liability companies and other entities.

Section 12 revises s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart, to provide technical changes.

Section 13 amends s. 517.1215, F.S., relating to requirements, rules of conduct, and prohibited business acts, to provide technical changes.

Section 14 amends s. 517.061, F.S., relating to exempt transactions to provide technical, conforming changes.

Section 15 amends s. 517.0611, F.S., relating to intrastate crowdfunding, to provide technical, conforming changes.

Section 16 amends s. 517.075, F.S., relating to Cuba, prospectus disclosure of doing business with, required, to provide technical, conforming changes.

Section 17 amends s. 517.131, F.S., relating to Securities Guaranty Fund, to provide technical, conforming changes.

Section 18 amends s. 517.211, F.S., relating to, remedies available in cases of unlawful sales to provide technical, conforming changes.

Section 19 amends s. 517.315, F.S., relating to fees, to provide technical, conforming changes.

Section 20 amends s. 626.9911, F.S., relating to definitions to provide technical, conforming changes.

Section 21 amends s. 744.351, F.S., relating to bond of guardian to provide a technical, conforming change.

Section 22 amends s. 1205, F.S., related to registration of associated persons specific as to a securities dealer, or federal covered adviser identified at time of registration approval, to revise legislative intent to provide that while approval of an application “requires a finding of compliance with the applicable registration provisions of this chapter and applicable rules, such finding is precluded by a determination that the applicant may be denied registration on grounds provided by law.” The current provision requires a finding of the applicant’s good repute and character. This standard is not defined and the meaning is unclear.

Section 23 provides the bill takes effect October 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Many of the provisions in the bill are designed to promote capital formation for small businesses and opportunities for Florida investors.

An issuer filing an application to register securities is currently required to pay a filing fee of \$1,000 per application. The bill maintains the \$1,000 filing fee for offerings that exceed the amount provided in s. 3(b) of the Securities Act of 1933, as amended, which is

five million dollars, but reduces the fee to \$200 per application for each offering that does not exceed the amount provided in s. 3(b) of the Securities Act of 1933, as amended.

The bill eliminates the requirement for an issuer to register with the Office of Financial Regulation (OFR). Currently, issuers are required to disclose all material facts about themselves when registering an offering of securities.

The bill allows all issuers meeting certain criteria, not only corporations, to use a simplified offering circular to register securities.

The bill requires associated persons of investment advisers to attain at least 12 continuing education credits each year to maintain their registration and will incur continuing education reporting fee of three dollars per credit hour.³⁴

C. Government Sector Impact:

An issuer filing an application to register securities is currently required to pay a filing fee of \$1,000 per application. The bill maintains the \$1,000 filing fee for offerings that exceed the amount provided in s. 3(b) of the Securities Act of 1933, as amended, which is five million dollars, but reduces the fee to \$200 per application for each offering that does not exceed the amount provided in s. 3(b) of the Securities Act of 1933, as amended.

While the bill reduces the issuer fee for certain transactions, the fiscal impact is insignificant negative.

The OFR has indicated implementation of the bill will require updates to the Regulatory Enforcement and Licensing (REAL). The range of costs for updates, based on the technology impact is between \$30,000 and \$150,000 depending on which path is chosen. Any changes up to the upper limit of the estimate can be absorbed within the OFR's existing budget.³⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 517.021, 517.061, 517.0611, 517.072, 517.081, 517.082, 517.111, 517.12, 517.1205, 517.1215, 517.1217, 517.161,

³⁴ [IAR Continuing Education FAQ - NASAA](#) (Oct. 8, 2021) (last visited Mar. 20, 2023).

³⁵ The Office of Financial Regulation, *Senate Bill 180 Agency Legislative Bill Analysis* (Jan. 25, 2023) (on file with Senate Committee on Banking and Insurance).

517.181, 517.201, 921.0022, 517.1215, 517.075, 517.131, 517.211, 517.315, 626.9911, and 744.351.

This bill creates section 517.1214 of the Florida Statutes.

This bill repeals section 517.181, 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 30, 2023:

The CS makes the following changes:

- Eliminates new definitions (angel investor group, business accelerator, business incubator, target offering amount, Tier I dealers, and Tier II dealers).
- Eliminates proposed changes relating to registration exemptions, exempt securities, and crowdfunding.
- Eliminates proposed new provisions relating to Tier I and Tier II dealers and pre-offering communications.
- Removes the proposed changes to the definition of “control.”
- Removes the proposed changes relating to control person liability and authorizing the Office of Financial Regulation to impose costs associated with an investigation in certain situations.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Gruters

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1 A bill to be entitled
 2 An act relating to regulation of securities;
 3 reordering and amending s. 517.021, F.S.; requiring
 4 the Financial Services Commission to define the term
 5 "accredited investor" by rule; revising definitions;
 6 amending s. 517.072, F.S.; authorizing the commission
 7 to adopt certain rules relating to viatical settlement
 8 investments; making technical changes; amending s.
 9 517.081, F.S.; revising requirements for the
 10 registration of securities; revising application fees
 11 for certain securities registrations; requiring the
 12 Office of Financial Regulation to deem an application
 13 abandoned under certain circumstances; conforming
 14 provisions to changes made by the act; amending s.
 15 517.082, F.S.; making technical changes; requiring the
 16 office to deem an application for registration by
 17 notification abandoned under certain circumstances;
 18 amending s. 517.111, F.S.; revising grounds on which
 19 the office may revoke, suspend, or deny the
 20 registration of securities; specifying the office's
 21 powers in investigations of issuers; revising the
 22 methods by which the office may enter an order
 23 suspending an issuer's right to sell securities;
 24 amending s. 517.12, F.S.; revising applicability of
 25 registration requirements; revising requirements for
 26 applying for registration as a dealer, an associated
 27 person of a dealer, or an investment adviser;
 28 conforming a cross-reference and provisions to changes
 29 made by the act; making technical changes; creating s.

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

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30 517.1214, F.S.; defining terms; specifying continuing
 31 education requirements for associated persons of
 32 investment advisers and federal covered advisers;
 33 providing that certain education credits satisfy such
 34 requirements if certain conditions are met;
 35 prohibiting associated persons from carrying forward
 36 credits to subsequent reporting periods; specifying a
 37 restriction on associated persons who fail to meet
 38 such requirements; specifying requirements for certain
 39 previously registered associated persons; amending s.
 40 517.1217, F.S.; authorizing the commission to
 41 establish rules of conduct and prohibited business
 42 practices for intermediaries; amending s. 517.161,
 43 F.S.; revising grounds on which the office may deny,
 44 revoke, restrict, or suspend registrations of dealers,
 45 investment advisers, intermediaries, and associated
 46 persons; providing causes for denial of applications
 47 or revocation of registrations of certain entities and
 48 persons under certain circumstances; repealing s.
 49 517.181, F.S., relating to escrow agreements; amending
 50 s. 517.201, F.S.; conforming a provision to changes
 51 made by the act; amending s. 921.0022, F.S.; revising
 52 applicability of a criminal penalty for certain
 53 registration violations; amending s. 517.1215, F.S.;
 54 making technical changes; amending ss. 517.061,
 55 517.0611, 517.075, 517.131, 517.211, 517.315,
 56 626.9911, and 744.351, F.S.; conforming cross-
 57 references and making technical changes; amending s.
 58 517.1205, F.S.; revising legislative intent; providing

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an effective date.

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

Section 1. Section 517.021, Florida Statutes, is reordered and amended to read:

517.021 Definitions.—When used in this chapter, unless the context otherwise indicates, the following terms have the following respective meanings:

(1) “Accredited investor” shall be defined by rule of the commission in accordance with the Securities and Exchange Commission Rule 501, 17 C.F.R. s. 230.501.

(2) “Affiliate” means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with an applicant or registrant.

(3) ~~(2)~~ “Associated person” means:

(a) 1. With respect to a dealer, a natural person who is employed, appointed, or authorized by a dealer and who represents the dealer in effecting or attempting to effect purchases or sales of securities.

2. The term does not include the following:

a. A dealer.

b. A partner, an officer, or a director of a dealer or a person having a similar status or performing similar functions as a dealer, unless such person is specified in subparagraph 1.

c. A dealer’s employee whose function is only clerical or ministerial.

d. A person whose transactions in this state are limited to those transactions described in s. 15(i)(3) of the Securities

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Exchange Act of 1934, as amended.

(b) 1. With respect to an investment adviser, a natural person, including, but not limited to, a partner, an officer, a director, or a branch manager, or a person occupying a similar status or performing similar functions, who:

a. Is employed by or associated with, or is subject to the supervision and control of, an investment adviser registered or required to be registered under this chapter; and

b. Does any of the following:

(I) Makes any recommendation or otherwise gives investment advice regarding securities.

(II) Manages accounts or portfolios of clients.

(III) Determines which recommendations or advice regarding securities should be given.

(IV) Receives compensation to solicit, offer, or negotiate for the sale of investment advisory services.

(V) Supervises employees who perform a function under this sub-subparagraph.

2. The term does not include the following:

a. An investment adviser.

b. An employee whose function is only clerical or ministerial or investment adviser, any of the following:

1. Any partner, officer, director, or branch manager of a dealer or investment adviser or any person occupying a similar status or performing similar functions;

2. Any natural person directly or indirectly controlling or controlled by such dealer or investment adviser, other than an employee whose function is only clerical or ministerial; or

3. Any natural person, other than a dealer, employed,

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~~appointed, or authorized by a dealer, investment adviser, or issuer to sell securities in any manner or act as an investment adviser as defined in this section.~~

~~The partners of a partnership and the executive officers of a corporation or other association registered as a dealer, and any person whose transactions in this state are limited to those transactions described in s. 15(h)(2) of the Securities Exchange Act of 1934, are not "associated persons" within the meaning of this definition.~~

(c)(b) With respect to a federal covered adviser, a natural any person who is an investment adviser representative and who has a place of business in this state, as such terms are defined in Rule 203A-3 of the Securities and Exchange Commission adopted under the Investment Advisers Act of 1940, as amended.

(4)(3) "Boiler room" means an enterprise in which two or more persons engage in telephone communications with members of the public using two or more telephones at one location, or at more than one location in a common scheme or enterprise.

(5)(4) "Branch office" means any location in this state of a dealer or investment adviser at which one or more associated persons regularly conduct the business of rendering investment advice or effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security or any location that is held out as such. The commission may adopt by rule exceptions to this definition for dealers in order to maintain consistency with the definition of a branch office used by self-regulatory organizations authorized by the Securities and Exchange Commission, including, but not limited to, the

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Financial Industry Regulatory Authority. The commission may adopt by rule exceptions to this definition for investment advisers.

(6)(7) "Commission" means the Financial Services Commission.

(7)(5) "Control," including the terms "controlling," "controlled by," and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(8)(6)(a) "Dealer" includes, unless otherwise specified, a person, other than an associated person of a dealer, that engages, for all or part of the person's time, directly or indirectly, as agent or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person ~~any of the following:~~

~~1. Any person, other than an associated person registered under this chapter, who engages, either for all or part of her or his time, directly or indirectly, as broker or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.~~

~~2. Any issuer who through persons directly compensated or controlled by the issuer engages, either for all or part of her or his time, directly or indirectly, in the business of offering or selling securities which are issued or are proposed to be issued by the issuer.~~

~~(b)~~ The term ~~"dealer"~~ does not include the following:

(a) A licensed practicing attorney who renders or performs

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any such services in connection with the regular practice of the attorney's profession.

(b) A bank authorized to do business in this state, except nonbank subsidiaries of a bank.

(c) A trust company having trust powers that it is authorized to exercise in this state, which renders or performs services in a fiduciary capacity incidental to the exercise of its trust powers.

(d) A wholesaler selling exclusively to dealers.

(e) A person buying and selling for the person's own account exclusively through a registered dealer or stock exchange.

(f) An issuer.

(g) A natural person representing an issuer in the purchase, sale, or distribution of the issuer's own securities if such person:

1. Is an officer, a director, a limited liability company manager or managing member, or a bona fide employee of the issuer;

2. Has not participated in the distribution or sale of securities for any issuer for which such person was, within the preceding 12 months, an officer, a director, a limited liability company manager or managing member, or a bona fide employee;

3. Primarily performs, or is intended to perform at the end of the distribution, substantial duties for, or on behalf of, the issuer other than in connection with transactions in securities; and

4. Does not receive a commission, compensation, or other consideration for the completed sale of the issuer's securities

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apart from the compensation received for regular duties to the issuer.

~~1. Any licensed practicing attorney who renders or performs any of such services in connection with the regular practice of her or his profession;~~

~~2. Any bank authorized to do business in this state, except nonbank subsidiaries of a bank;~~

~~3. Any trust company having trust powers which it is authorized to exercise in this state, which renders or performs services in a fiduciary capacity incidental to the exercise of its trust powers;~~

~~4. Any wholesaler selling exclusively to dealers;~~

~~5. Any person buying and selling for her or his own account exclusively through a registered dealer or stock exchange; or~~

~~6. Pursuant to s. 517.061(11), any person associated with an issuer of securities if such person is a bona fide employee of the issuer who has not participated in the distribution or sale of any securities within the preceding 12 months and who primarily performs, or is intended to perform at the end of the distribution, substantial duties for, or on behalf of, the issuer other than in connection with transactions in securities.~~

(9) "Federal covered adviser" means a person that ~~who~~ is registered or required to be registered under s. 203 of the Investment Advisers Act of 1940, as amended. The term ~~"federal covered adviser"~~ does not include any person that ~~who~~ is excluded from the definition of investment adviser under subparagraphs (14)(b)1.-8.

(10) "Federal covered security" means a ~~any~~ security that is a covered security under s. 18(b) of the Securities Act of

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1933, as amended, or rules and regulations adopted thereunder.

(11) "Guarantor" means a person ~~that who~~ agrees in writing, or ~~that who~~ holds itself out to the public as agreeing, to pay the indebtedness of another when due, including, without limitation, payments of principal and interest on a bond, debenture, note, or other evidence of indebtedness, without resort by the holder to any other obligor, whether or not such writing expressly states that the person signing is signing as a guarantor. The obligation of a guarantor hereunder shall be a continuing, absolute, and unconditional guaranty of payment, without regard to the validity, regularity, or enforceability of the underlying indebtedness.

(12) "Guaranty" means an agreement in a writing in which one party either agrees, or holds itself out to the public as agreeing, to pay the indebtedness of another when due, including, without limitation, payments of principal and interest on a bond, debenture, note, or other evidence of indebtedness, without resort by the holder to any other obligor, whether or not such writing expressly states that the person signing is signing as a guarantor. An agreement that is not specifically denominated as a guaranty shall nevertheless constitute a guaranty if the holder of the underlying indebtedness or the holder's ~~her or his~~ representative or trustee has the right to sue to enforce the guarantor's obligations under the guaranty. Words of guaranty or equivalent words ~~that which~~ otherwise do not specify guaranty of payment create a presumption that payment, rather than collection, is guaranteed by the guarantor. Any guaranty in writing is enforceable notwithstanding any statute of frauds.

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(13) "Intermediary" means a natural person residing in this ~~the~~ state or a corporation, trust, partnership, limited liability company, association, or other legal entity registered with the Secretary of State to do business in ~~this the~~ state, which facilitates through its website the offer or sale of securities of an issuer with a principal place of business in this state under s. 517.0611.

(14)(a) "Investment adviser" means a ~~includes any~~ person, other than an associated person of an investment adviser or a federal covered adviser, that who receives compensation, directly or indirectly, and engages for all or part of the person's ~~her or his~~ time, directly or indirectly, or through publications or writings, in the business of advising others as to the value of securities or as to the advisability of investments in, purchasing of, or selling of securities, ~~except a dealer whose performance of these services is solely incidental to the conduct of her or his business as a dealer and who receives no special compensation for such services.~~

(b) The term ~~"investment adviser"~~ does not include the following:

1. A dealer or an associated person of a dealer whose performance of services in paragraph (a) is solely incidental to the conduct of the dealer's or associated person's business as a dealer and who does not receive special compensation for those services.

2. A ~~Any~~ licensed practicing attorney or certified public accountant whose performance of such services is solely incidental to the practice of the attorney's or accountant's ~~her or his~~ profession.

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291 2. ~~Any licensed certified public accountant whose~~
 292 ~~performance of such services is solely incidental to the~~
 293 ~~practice of her or his profession;~~
 294 3. A Any bank authorized to do business in this state.⁺
 295 4. A Any bank holding company as defined in the Bank
 296 Holding Company Act of 1956, as amended, authorized to do
 297 business in this state.⁺
 298 5. A Any trust company having trust powers, as defined in
 299 s. 658.12, which it is authorized to exercise in this the state,
 300 which trust company renders or performs investment advisory
 301 services in a fiduciary capacity incidental to the exercise of
 302 its trust powers.⁺
 303 6. A Any person that who renders investment advice
 304 exclusively to insurance or investment companies.⁺
 305 7. A Any person that who does not hold itself herself or
 306 himself out to the general public as an investment adviser and
 307 has no more than 15 clients within 12 consecutive months in this
 308 state.⁺
 309 8. A Any person whose transactions in this state are
 310 limited to those transactions described in s. 222(d) of the
 311 Investment Advisers Act of 1940, as amended. Those clients
 312 listed in subparagraph 6. may not be included when determining
 313 the number of clients of an investment adviser for purposes of
 314 s. 222(d) of the Investment Advisers Act of 1940, as amended.⁺
 315 ~~or~~
 316 9. A federal covered adviser.
 317 (15) "Issuer" means a any person that who proposes to
 318 issue, has issued, or shall hereafter issue any security. A Any
 319 person that who acts as a promoter for and on behalf of a

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320 corporation, trust, ~~or unincorporated association or~~
 321 partnership, limited liability company, association, or other
 322 legal entity of any kind to be formed shall be deemed an issuer.
 323 (16) "Offer to sell," "offer for sale," or "offer" means an
 324 ~~any~~ attempt or offer to dispose of, or solicitation of an offer
 325 to buy, a security or interest in a security, or an investment
 326 or interest in an investment, for value.
 327 ~~(17)-(18)~~ "Office" means the Office of Financial Regulation
 328 of the commission.
 329 ~~(18)-(17)~~ "Predecessor" means a person whose the major
 330 portion of ~~whose~~ assets has have been acquired directly or
 331 indirectly by an issuer.
 332 ~~(19)-(18)~~ "Principal" means an executive officer of a
 333 corporation, partner of a partnership, sole proprietor of a sole
 334 proprietorship, trustee of a trust, or any other person with
 335 similar supervisory functions with respect to any organization,
 336 whether incorporated or unincorporated.
 337 ~~(20)-(19)~~ "Promoter" includes the following:
 338 (a) A Any person that who, acting alone or in conjunction
 339 with one or more other persons, directly or indirectly takes the
 340 initiative in founding and organizing the business or enterprise
 341 of an issuer.
 342 (b) A Any person that who, in connection with the founding
 343 or organizing of the business or enterprise of an issuer,
 344 directly or indirectly receives in consideration of services or
 345 property, or both services and property, 10 percent or more of
 346 any class of securities of the issuer or 10 percent or more of
 347 the proceeds from the sale of any class of securities. However,
 348 a person that who receives such securities or proceeds either

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solely as underwriting commissions or solely in connection with property shall not be deemed a promoter if such person does not otherwise take part in founding and organizing the enterprise.

(21)~~(20)~~ "Qualified institutional buyer" means a ~~any~~ qualified institutional buyer, as defined in ~~United States~~ Securities and Exchange Commission Rule 144A, 17 C.F.R. s. 230.144A(a), under the Securities Act of 1933, as amended, or any foreign buyer that satisfies the minimum financial requirements set forth in such rule.

(22)~~(21)~~ "Sale" or "sell" means a ~~any~~ contract of sale or disposition of an ~~any~~ investment, security, or interest in a security, for value. With respect to a security or interest in a security, the term ~~defined in this subsection~~ does not include preliminary negotiations or agreements between an issuer or any person on whose behalf an offering is to be made and any underwriter or among underwriters who are or are to be in privity of contract with an issuer. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing shall be conclusively presumed to constitute a part of the subject of such purchase and to have been offered and sold for value. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security or another issuer, is considered to include an offer of the other security.

(23)~~(22)~~ "Security" includes any of the following:

- (a) A note.
- (b) A stock.

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(c) A treasury stock.

(d) A bond.

(e) A debenture.

(f) An evidence of indebtedness.

(g) A certificate of deposit.

(h) A certificate of deposit for a security.

(i) A certificate of interest or participation.

(j) A whiskey warehouse receipt or other commodity warehouse receipt.

(k) A certificate of interest in a profit-sharing agreement or the right to participate therein.

(l) A certificate of interest in an oil, gas, petroleum, mineral, or mining title or lease or the right to participate therein.

(m) A collateral trust certificate.

(n) A reorganization certificate.

(o) A preorganization subscription.

(p) A ~~Any~~ transferable share.

(q) An investment contract.

(r) A beneficial interest in title to property, profits, or earnings.

(s) An interest in or under a profit-sharing or participation agreement or scheme.

(t) An ~~Any~~ option contract that ~~which~~ entitles the holder to purchase or sell a given amount of the underlying security at a fixed price within a specified period of time.

(u) Any other instrument commonly known as a security, including an interim or temporary bond, debenture, note, or certificate.

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(v) A ~~Any~~ receipt for a security, or for subscription to a security, or a ~~any~~ right to subscribe to or purchase any security.

(w) A viatical settlement investment.

~~(24)-(23)~~ "Underwriter" means a person that ~~who~~ has purchased from an issuer or an affiliate of an issuer with a view to, or offers or sells for an issuer or an affiliate of an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; except that a person is ~~shall be~~ presumed not to be an underwriter with respect to any security which it ~~she or he~~ has owned beneficially for at least 1 year; and, further, a dealer is ~~shall not be~~ considered an underwriter with respect to any securities which do not represent part of an unsold allotment to or subscription by the dealer as a participant in the distribution of such securities by the issuer or an affiliate of the issuer; and, further, in the case of securities acquired on the conversion of another security without payment of additional consideration, the length of time such securities have been beneficially owned by a person includes the period during which the convertible security was beneficially owned and the period during which the security acquired on conversion has been beneficially owned.

~~(25)-(24)~~ "Viatical settlement investment" means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of all or any portion of a legal or equitable interest in a viaticated policy as defined in chapter 626.

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Section 2. Paragraph (d) of subsection (3) of section 517.072, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

517.072 Viatical settlement investments.—

(3) The registration provisions of ss. 517.07 and 517.12 do not apply to any of the following transactions in viatical settlement investments; however, such transactions in viatical settlement investments are subject to the provisions of ss. 517.301, 517.311, and 517.312:

(d) The transfer or assignment of a viaticated policy to a bank, trust company, savings institution, insurance company, dealer, investment company as defined in the Investment Company Act of 1940, as amended, pension or profit-sharing trust, ~~or~~ qualified institutional buyer as defined in United States Securities and Exchange Commission Rule 144A, 17 C.F.R. or 230.144A(a), or ~~to~~ an accredited investor as defined by Rule 501 of Regulation D of the Securities Act Rules, provided such transfer or assignment is not for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter.

(4) The commission may establish by rule requirements and standards for disclosures to purchasers of viatical settlement investments and recordkeeping requirements for sellers of viatical settlement investments.

Section 3. Paragraphs (a), (g), and (n) of subsection (3) and subsections (6) and (8) of section 517.081, Florida Statutes, are amended to read:

517.081 Registration procedure.—

(3) The office may require the applicant to submit to the

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office the following information concerning the issuer and such other relevant information as the office may in its judgment deem necessary to enable it to ascertain whether such securities shall be registered pursuant to the provisions of this section:

(a) The names and addresses of:

1. All the directors, trustees, and officers, if the issuer is ~~be~~ a corporation, association, or trust.

2. All the managers or managing members, if the issuer is a limited liability company.

3. ~~For~~ All the partners, if the issuer is ~~be~~ a partnership.

4. ~~For~~ The issuer, if the issuer is ~~is~~ a sole proprietorship or natural person ~~be an individual~~.

(g)1. A specimen copy of the securities certificate, if applicable, security and a copy of any circular, prospectus, advertisement, or other description of such securities.

2. The commission shall adopt a form for a simplified offering circular ~~to be used solely by corporations~~ to register, under this section, securities ~~of the corporation~~ that are sold in offerings in which the aggregate offering price in any consecutive 12-month period does not exceed the amount provided in s. 3(b) of the Securities Act of 1933, as amended. The following issuers shall not be eligible to submit a simplified offering circular adopted pursuant to this subparagraph:

a. An issuer seeking to register securities for resale by persons other than the issuer.

b. An issuer that ~~who~~ is subject to any of the disqualifications described in 17 C.F.R. s. 230.262, adopted pursuant to the Securities Act of 1933, as amended, or that ~~who~~

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has been or is engaged or is about to engage in an activity that would be grounds for denial, revocation, or suspension under s. 517.111. For purposes of this subparagraph, an issuer includes an issuer's director, officer, general partner, manager or managing member, trustee, or equity owner ~~shareholder~~ who owns at least 10 percent of the ownership interests ~~shares~~ of the issuer, promoter, or selling agent of the securities to be offered or any officer, director, ~~or~~ partner, or manager or managing member of such selling agent.

c. An issuer that ~~who~~ is a development-stage company that either has no specific business plan or purpose or has indicated that its business plan is to merge with an unidentified company or companies.

d. An issuer of offerings in which the specific business or properties cannot be described.

e. Any issuer the office determines is ineligible because ~~if~~ the form does ~~would~~ not provide full and fair disclosure of material information for the type of offering to be registered by the issuer.

f. Any issuer that ~~corporation which~~ has failed to provide the office the reports required for a previous offering registered pursuant to this subparagraph.

As a condition precedent to qualifying for use of the simplified offering circular, an issuer ~~a corporation~~ shall agree to provide the office with an annual financial report containing a balance sheet as of the end of the issuer's fiscal year and a statement of income for such year, prepared in accordance with United States generally accepted accounting principles and

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accompanied by an independent accountant's report. If the issuer has more than 100 security holders at the end of a fiscal year, the financial statements must be audited. Annual financial reports must be filed with the office within 90 days after the close of the issuer's fiscal year for each of the first 5 years following the effective date of the registration.

(n) If the issuer is a corporation, there shall be filed with the application a copy of its articles of incorporation with all amendments and of its existing bylaws, if not already on file in the office. If the issuer is a limited liability company, there shall be filed with the application a copy of the articles of organization with all the amendments and a copy of the company's operating agreement as may be amended, if not already on file with the office. If the issuer is a trustee, there shall be filed with the application a copy of all instruments by which the trust is created or declared and in which it is accepted and acknowledged. If the issuer is a partnership, unincorporated association, joint-stock company, or any other form of organization whatsoever, there shall be filed with the application a copy of its articles of partnership or association and all other papers pertaining to its organization, if not already on file in the office.

(6) An issuer filing an application under this section shall, at the time of filing, pay the office a nonreturnable fee of \$1,000 per application for each offering that exceeds the amount provided in s. 3(b) of the Securities Act of 1933, as amended, or \$200 per application for each offering that does not exceed the amount provided in s. 3(b) of the Securities Act of 1933, as amended.

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(8) The office shall deem an application to register securities filed with the office abandoned if the issuer or any person acting on behalf of the issuer has failed to timely complete an application specified by commission rule. ~~The commission may by rule establish requirements and standards for:~~

~~(a) Disclosures to purchasers of viatical settlement investments.~~

~~(b) Recordkeeping requirements for sellers of viatical settlement investments.~~

Section 4. Section 517.082, Florida Statutes, is amended to read:

517.082 ~~Notification~~ Registration by notification; federal registration statements.—

(1) ~~Except as provided in subsection (3),~~ Securities offered or sold pursuant to a registration statement filed under the Securities Act of 1933, as amended, are ~~shall be~~ entitled to registration by notification in the manner provided in subsection (2), provided that before ~~prior to~~ the offer or sale the registration statement has become effective.

(2) An application for registration by notification shall be filed with the office, shall contain the following information, and shall be accompanied by all of the following:

(a) An application to sell executed by the issuer, any person on whose behalf the offering is made, a dealer registered under this chapter, or any duly authorized agent of any such person, setting forth the name and address of the applicant, the name and address of the issuer, and the title of the securities to be offered and sold.†

(b) Copies of such documents filed with the Securities and

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Exchange Commission as the Financial Services Commission may by rule require, ~~+~~

(c) An irrevocable written consent to service as required by s. 517.101, ~~+~~ and

(d) A nonreturnable fee of \$1,000 per application.

A registration under this section becomes effective when the federal registration statement becomes effective or as of the date the application is filed with the office, whichever is later, provided that, in addition to the items listed in paragraphs (a)-(d), the office has received written notification of effective registration under the Securities Act of 1933, as amended, or the Investment Company Act of 1940, as amended, within 10 business days after ~~from~~ the date federal registration is granted. Failure to provide all the information required by this subsection to the office within 60 days after ~~of~~ the date the registration statement becomes effective with the Securities and Exchange Commission shall be a violation of this chapter.

(3) Except for units of limited partnership interests or such other securities as the commission describes by rule as exempt from this subsection due to high investment quality, the provisions of this section may not be used to register securities if the offering price at the time of effectiveness with the Securities and Exchange Commission is \$5 or less per share, unless such securities are listed or designated, or approved for listing or designation upon notice of issuance, on a stock exchange registered pursuant to the Securities Exchange Act of 1934, as amended, or on the National Association of Securities Dealers Automated Quotation (NASDAQ) System, or

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unless such securities are of the same issuer and of senior or substantially equal rank to securities so listed or designated.

(4) In lieu of filing with the office the application, fees, and documents for registration required by subsection (2), the commission may establish, by rule, procedures for depositing fees and filing documents by electronic means, provided such procedures provide the office with the information and data required by this section.

(5) If the Securities and Exchange Commission has not declared effective the applicant's federal registration statement within 180 days after the applicant's filing with the office of an application for registration by notification, the office must deem the application abandoned.

Section 5. Section 517.111, Florida Statutes, is amended to read:

517.111 Revocation or denial of registration of securities.—

(1) The office may revoke or suspend the registration of any security, or may deny any application to register securities, if, upon examination or investigation into the affairs of the issuer of such security, the office determines it ~~shall appear~~ that:

(a) The issuer cannot pay its debts as they become due in the usual course of business ~~is insolvent~~;

(b) The issuer or any officer, director, manager or managing member, or control person of the issuer has violated any provision of this chapter or any rule made hereunder or any order of the office of which such issuer has notice;

(c) The issuer or any officer, director, manager or

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639 managing member, or control person of the issuer has been or is
 640 engaged or is about to engage in fraudulent transactions;
 641 (d) The issuer or any officer, director, manager or
 642 managing member, or control person of the issuer has been found
 643 guilty of a fraudulent act in connection with any sale of
 644 securities, has engaged, is engaged, or is about to engage, in
 645 making a fictitious sale or purchase of any security, or in any
 646 practice or sale of any security which is fraudulent or a
 647 violation of any law;
 648 (e) The issuer or any officer, director, manager or
 649 managing member, or control person of the issuer has had a final
 650 judgment entered against such issuer or person in a civil action
 651 on the grounds of fraud, embezzlement, misrepresentation, or
 652 deceit;
 653 (f) The issuer or any officer, director, manager or
 654 managing member, or control person of the issuer has engaged in
 655 any action that would be grounds for revocation, denial, or
 656 suspension under s. 517.161(1) ~~demonstrated any evidence of~~
 657 ~~unworthiness~~;
 658 (g) The issuer or any officer, director, manager or
 659 managing member, or control person of the issuer ~~is in any other~~
 660 ~~way dishonest or~~ has made any fraudulent representations or
 661 failed to disclose any material information in any prospectus or
 662 in any circular or other literature that has been distributed
 663 concerning the issuer or its securities;
 664 (h) The security registered or sought to be registered is
 665 the subject of an injunction entered by a court of competent
 666 jurisdiction or is the subject of an administrative stop-order
 667 or similar order prohibiting the offer or sale of the security;

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668 or
 669 (i) For any security for which registration has been
 670 applied pursuant to s. 517.081, the terms of the offer or sale
 671 of such securities would not be fair, just, or equitable; ~~or~~
 672 ~~(j) The issuer or any person acting on behalf of the issuer~~
 673 ~~has failed to timely complete any application for registration~~
 674 ~~filed with the office pursuant to the provisions of s. 517.081~~
 675 ~~or s. 517.082 or any rule adopted under such sections.~~
 676 (2) In making such examination or investigation, the office
 677 shall have access to and may compel the production of all the
 678 books and papers of such issuer and may administer oaths to and
 679 examine the officers of such issuer or any other person
 680 connected therewith as to its business and affairs and may also
 681 require a balance sheet exhibiting the assets and liabilities of
 682 any such issuer or its income statement, or both, to be
 683 certified to by a public accountant either of this state or of
 684 any other state where the issuer's business is located. Whenever
 685 the office deems it necessary, it may also require such balance
 686 sheet or income statement, or both, to be made more specific in
 687 such particulars as the office may require.
 688 (3) ~~(2)~~ If any issuer refuses ~~shall refuse~~ to permit an
 689 examination or investigation to be made by the office, it shall
 690 be proper ground for revocation of registration.
 691 (4) ~~(3)~~ If the office deems it necessary, it may enter an
 692 order suspending the right to sell securities pending any
 693 examination or investigation, provided that the order shall
 694 state the office's grounds for taking such action.
 695 (5) ~~(4)~~ Notice of the entry of such order shall be given
 696 personally or by mail, ~~personally, by telephone confirmed in~~

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697 ~~writing, or by telegraph~~ to the issuer. Before such order is
 698 made final, the issuer ~~applying for registration~~ shall, on
 699 application, be entitled to a hearing.

700 ~~(6)(5)~~ The office may deny any request to terminate any
 701 registration or to withdraw any application for registration if
 702 the office believes that an act which would be grounds for
 703 denial, suspension, or revocation under this chapter has been
 704 committed.

705 Section 6. Subsections (3) through (22) of section 517.12,
 706 Florida Statutes, are renumbered as subsections (2) through
 707 (21), respectively, and subsection (1), present subsections (2)
 708 and (3), paragraph (b) of present subsection (6), present
 709 subsections (7) and (11), paragraph (b) of present subsection
 710 (15), and present subsections (20) and (21) of that section are
 711 amended, to read:

712 517.12 Registration of dealers, associated persons,
 713 intermediaries, and investment advisers.—

714 (1) No dealer ~~or~~, associated person, ~~or issuer of~~
 715 ~~securities~~ shall sell or offer for sale any securities in or
 716 from offices in this state, or sell securities to persons in
 717 this state from offices outside this state, by mail or
 718 otherwise, unless the person ~~is has been~~ registered with the
 719 office as a dealer or as an associated person of a dealer
 720 pursuant to ~~the provisions of~~ this section. The office shall not
 721 register any person as an associated person of a dealer unless
 722 the dealer with which the applicant seeks registration is
 723 lawfully registered with the office pursuant to this chapter.

724 ~~(2) The registration requirements of this section do not~~
 725 ~~apply to the issuers of securities exempted by s. 517.051(1)-(8)~~

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726 ~~and (10).~~

727 ~~(2)(3) Except as otherwise provided in s. 517.061(11)(a)4.,~~
 728 ~~(13), (16), (17), or (19),~~ The registration requirements of this
 729 section do not apply in a transaction exempted by s. 517.061(1)-
 730 (10) and (12), s. 517.061(1)-(12), (14), and (15).

731 ~~(5)(6)~~ A dealer, associated person, or investment adviser,
 732 in order to obtain registration, must file with the office a
 733 written application, on a form which the commission may by rule
 734 prescribe. The commission may establish, by rule, procedures for
 735 depositing fees and filing documents by electronic means
 736 provided such procedures provide the office with the information
 737 and data required by this section. Each dealer or investment
 738 adviser must also file an irrevocable written consent to service
 739 of civil process similar to that provided for in s. 517.101. The
 740 application shall contain such information as the commission or
 741 office may require concerning such matters as:

742 (b) The applicant's form and place of organization; and, if
 743 the applicant is:

744 1. A corporation, a copy of its articles of incorporation
 745 and amendments to the articles of incorporation;

746 2. A limited liability company, a copy of its articles of
 747 organization with amendments to its articles; or

748 3. ~~if~~ A partnership, a copy of the partnership agreement.

749 ~~(6)(7)~~ The application must also contain such information
 750 as the commission or office may require about the applicant; any
 751 member, principal, or director of the applicant or any person
 752 having a similar status or performing similar functions; any
 753 person directly or indirectly controlling the applicant; or any
 754 employee of a dealer or of an investment adviser rendering

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investment advisory services. Each applicant and any direct owners, principals, or indirect owners that are required to be reported on Form BD or Form ADV pursuant to subsection (14) ~~(15)~~ shall submit fingerprints for live-scan processing in accordance with rules adopted by the commission. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting. The costs of fingerprint processing shall be borne by the person subject to the background check. The Department of Law Enforcement shall conduct a state criminal history background check, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation. The office shall review the results of the state and federal criminal history background checks and determine whether the applicant meets licensure requirements. The commission may waive, by rule, the requirement that applicants, including any direct owners, principals, or indirect owners that are required to be reported on Form BD or Form ADV pursuant to subsection (14) ~~(15)~~, submit fingerprints or the requirement that such fingerprints be processed by the Department of Law Enforcement or the Federal Bureau of Investigation. The commission or office may require information about any such applicant or person concerning such matters as:

(a) The applicant's or person's ~~His or her~~ full name, and any other names by which the applicant or person ~~he or she~~ may have been known, and the applicant's or person's ~~his or her~~ age, social security number, photograph, qualifications, and educational and business history.

(b) Any injunction or administrative order by a state or

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federal agency, national securities exchange, or national securities association involving a security or any aspect of a dealer's or investment adviser's regulated the securities business and any injunction or administrative order by a state or federal agency regulating banking, insurance, finance, or small loan companies, real estate, mortgage brokers, or other related or similar industries, which injunctions or administrative orders relate to such person.

(c) The applicant's or person's ~~His or her~~ conviction of, or plea of nolo contendere to, a criminal offense or the applicant's or person's ~~his or her~~ commission of any acts which would be grounds for refusal of an application under s. 517.161.

(d) The names and addresses of other persons of whom the office may inquire as to the applicant's or person's ~~his or her~~ character, reputation, and financial responsibility.

(10) (a) (11) (a) ~~If the office finds that the applicant is of good repute and character and~~ has complied with the applicable registration provisions of this chapter and the rules made pursuant hereto, it shall register the applicant unless the applicant is otherwise disqualified for registration pursuant to law. The registration of each dealer, investment adviser, and associated person expires on December 31 of the year the registration became effective unless the registrant has renewed its ~~his or her~~ registration on or before that date. Registration may be renewed by furnishing such information as the commission may require, together with payment of the fee required in paragraph (9) (a) ~~(10) (a)~~ for dealers, investment advisers, or associated persons and the payment of any amount lawfully due and owing to the office pursuant to any order of the office or

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pursuant to any agreement with the office. Any dealer, investment adviser, or associated person who has not renewed a registration by the time the current registration expires may request reinstatement of such registration by filing with the office, on or before January 31 of the year following the year of expiration, such information as may be required by the commission, together with payment of the fee required in paragraph (9) (a) ~~(10) (a)~~ for dealers, investment advisers, or associated persons and a late fee equal to the amount of such fee. Any reinstatement of registration granted by the office during the month of January shall be deemed effective retroactive to January 1 of that year.

(b) The office shall waive the \$50 assessment fee for an associated person required by paragraph (9) (a) ~~(10) (a)~~ for a registrant renewing his or her registration who:

1. Is an active duty member of the United States Armed Forces or the spouse of such member;

2. Is or was a member of the United States Armed Forces and served on active duty within the 2 years preceding the expiration date of the registration pursuant to paragraph (a).

To qualify for the fee waiver, a registrant who is a former member of the United States Armed Forces who served on active duty within the 2 years preceding the expiration date of the registration must have received an honorable discharge upon separation or discharge from the United States Armed Forces; or

3. Is the surviving spouse of a member of the United States Armed Forces if the member was serving on active duty at the time of death and died within the 2 years preceding the surviving spouse's registration expiration date pursuant to

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paragraph (a).

A registrant seeking such fee waiver must submit proof, in a form prescribed by commission rule, that the registrant meets one of the qualifications in this paragraph.

~~(14) (15)~~

(b) In lieu of filing with the office the applications specified in subsection (5) ~~(6)~~, the fees required by subsection (9) ~~(10)~~, the renewals required by subsection (10) ~~(11)~~, and the termination notices required by subsection (11) ~~(12)~~, the commission may by rule establish procedures for the deposit of such fees and documents with the Central Registration Depository or the Investment Adviser Registration Depository of the Financial Industry Regulatory Authority, as developed under contract with the North American Securities Administrators Association, Inc.

~~(19) (20)~~ An intermediary may not engage in business in this state unless the intermediary is registered as a dealer or as an intermediary with the office pursuant to this section to facilitate the offer or sale of securities in accordance with s. 517.0611. An intermediary, in order to obtain registration, must file with the office a written application on a form prescribed by commission rule and pay a registration fee of \$200. The fees under this subsection shall be deposited into the Regulatory Trust Fund of the office. The commission may establish by rule procedures for depositing fees and filing documents by electronic means if such procedures provide the office with the information and data required by this section. Each intermediary must also file an irrevocable written consent to service of

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civil process, as provided in s. 517.101.

(a) The application must contain such information as the commission or office may require concerning:

1. The name of the applicant and address of its principal office and each office in this state.

2. The applicant's form and place of organization; and, if the applicant is:

a. A corporation, a copy of its articles of incorporation and amendments to the articles of incorporation;

b. A limited liability company, a copy of its articles of organization and amendments to the articles and a copy of the company's operating agreement as may be amended; or

c. if A partnership, a copy of the partnership agreement.

3. The website address where securities of the issuer will be offered.

4. Contact information.

(b) The application must also contain such information as the commission may require by rule about the applicant; any member, principal, or director of the applicant or any person having a similar status or performing similar functions; or any persons directly or indirectly controlling the applicant. Each applicant and any direct owners, principals, or indirect owners that are required to be reported on a form adopted by commission rule shall submit fingerprints for live-scan processing in accordance with rules adopted by the commission. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting. The costs of fingerprint processing shall be borne by the person subject to the background check. The

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Department of Law Enforcement shall conduct a state criminal history background check, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation. The office shall review the results of the state and federal criminal history background checks and determine whether the applicant meets registration requirements. The commission may waive, by rule, the requirement that applicants, including any direct owners, principals, or indirect owners, which are required to be reported on a form adopted by commission rule, submit fingerprints or the requirement that such fingerprints be processed by the Department of Law Enforcement or the Federal Bureau of Investigation. The commission, by rule, or the office may require information about any applicant or person, including:

1. The applicant's or person's ~~His or her~~ full name and any other names by which the applicant or person ~~he or she~~ may have been known and the applicant's or person's ~~his or her~~ age, social security number, photograph, qualifications, and educational and business history.

2. Any injunction or administrative order by a state or federal agency, national securities exchange, or national securities association involving a security or any aspect of an intermediary's regulated ~~the securities~~ business and any injunction or administrative order by a state or federal agency regulating banking, insurance, finance, ~~or small loan companies,~~ real estate, mortgage brokers, or other related or similar industries, which relate to such person.

3. The applicant's or person's ~~His or her~~ conviction of, or plea of nolo contendere to, a criminal offense or the

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applicant's or person's ~~his or her~~ commission of any acts that would be grounds for refusal of an application under s. 517.161.

(c) The application must be amended within 30 days if any information contained in the form becomes inaccurate for any reason.

(d) An intermediary or persons affiliated with the intermediary are not subject to any disqualification described in s. 517.1611 or ~~United States~~ Securities and Exchange Commission Rule 506(d), 17 C.F.R. 230.506(d), adopted pursuant to the Securities Act of 1933, as amended. Each director, officer, manager or managing member, control person of the issuer, any person occupying a similar status or performing a similar function, and each person holding more than 20 percent of the ownership interests ~~shares~~ of the intermediary is subject to this requirement.

(e) If the office finds that the applicant ~~is of good repute and character and~~ has complied with the applicable registration provisions of this chapter and the rules adopted thereunder, it shall register the applicant. The registration of each intermediary expires on December 31 of the year the registration became effective unless the registrant renews his or her registration on or before that date. Registration may be renewed by furnishing such information as the commission may require by rule, together with payment of a \$200 fee and the payment of any amount due to the office pursuant to any order of the office or pursuant to any agreement with the office. An intermediary who has not renewed a registration by the time that the current registration expires may request reinstatement of such registration by filing with the office, on or before

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January 31 of the year following the year of expiration, such information as required by the commission, together with payment of the \$200 fee and a late fee of \$200. Any reinstatement of registration granted by the office during the month of January is deemed effective retroactive to January 1 of that year.

~~(20)(21)~~ The registration requirements of this section do not apply to any general lines insurance agent or life insurance agent licensed under chapter 626, for the sale of a security as defined in s. 517.021(23)(g) ~~s. 517.021(22)(g)~~, if the individual is directly authorized by the issuer to offer or sell the security on behalf of the issuer and the issuer is a federally chartered savings bank subject to regulation by the Federal Deposit Insurance Corporation. Actions under this subsection shall constitute activity under the insurance agent's license for purposes of ss. 626.611 and 626.621.

Section 7. Section 517.1214, Florida Statutes, is created to read:

517.1214 Continuing education requirements for associated persons of investment advisers and federal covered advisers.—

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

(a) "Approved continuing education content" means the materials, written, oral, or otherwise, which have been approved by NASAA or its designee and which make up the educational program provided to an associated person under this section.

(b) "Credit" means a unit designated by NASAA or its designee as at least 50 minutes of educational instruction.

(c) "Home state" means the state in which an associated person of an investment adviser or a federal covered adviser has his or her principal office and place of business.

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(d) "NASAA" means the North American Securities Administrators Association, Inc.

(e) "Reporting period" means one 12-month period beginning January 1 and ending December 31. An associated person's initial reporting period with this state commences the first day of the first full reporting period after the individual is registered or required to be registered with this state.

(2) By December 31, 2024, and each December 31 thereafter, each associated person of an investment adviser or a federal covered adviser shall complete the following continuing education content requirements offered by a person that NASAA or its designee has authorized to provide the continuing education content required by this section:

(a) Six credits of approved continuing education content that addresses an associated person's ethical and regulatory obligations, with at least 3 hours covering the topic of ethics; and

(b) Six credits of approved continuing education content that addresses an associated person's skills and knowledge regarding financial products, investment features, and practices in the investment advisory industry.

(3) An associated person of an investment adviser or federal covered adviser who is also registered as an associated person of a Financial Industry Regulatory Authority (FINRA) member dealer and who complies with FINRA's continuing education requirements is considered to be in compliance with this section's products and practice requirement for each applicable reporting period, provided that the FINRA continuing education content is approved continuing education content.

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(4) Credits of continuing education completed by an associated person who was awarded and currently holds a credential that qualifies for examination waiver by passing any tests as prescribed in s. 15(b)(7) of the Securities Exchange Act of 1934, as amended, comply with paragraphs (2)(a) and (b), provided all of the following conditions are met:

(a) The associated person completes the credits of continuing education as a condition of maintaining the credential for the relevant reporting period.

(b) The credits of continuing education completed during the relevant reporting period by the associated person are mandatory to maintain the credential.

(c) The continuing education content provided by the credentialing organization during the relevant reporting period is approved continuing education content.

(5) Each associated person is responsible for ensuring that the authorized provider reports the associated person's completion of the applicable continuing education requirements.

(6) An associated person who completes credits of continuing education in excess of the credits required for the reporting period may not carry forward excess credits to a subsequent reporting period.

(7) An associated person who fails to comply with this section by the end of a reporting period shall renew as "CE inactive" at the close of the calendar year in this state until the associated person completes and reports all required continuing education credits for all reporting periods as required by this section. An associated person who is "CE inactive" at the close of the next calendar year is not eligible

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for associated person registration or renewal of associated person registration.

(8) An associated person registered or required to be registered in this state who is registered as an associated person of an investment adviser or federal covered adviser in the individual's home state is considered to be in compliance with this section if:

(a) The associated person's home state has a continuing education requirement of at least 12 hours annually; and

(b) The associated person is in compliance with the home state's associated person of an investment adviser or federal covered adviser continuing education requirements.

(9) An associated person who was previously registered under s. 517.12 and became unregistered must complete continuing education for all reporting periods that occurred between the time that the associated person became unregistered and when the person became registered again under s. 517.12, unless the associated person takes and passes the required examinations or the examination requirements are waived in connection with the subsequent application for registration.

Section 8. Section 517.1217, Florida Statutes, is amended to read:

517.1217 Rules of conduct and prohibited business practices for dealers and their associated persons and for intermediaries.—The commission by rule may establish rules of conduct and prohibited business practices for dealers and their associated persons and for intermediaries. In adopting the rules, the commission shall consider general industry standards as expressed in the rules and regulations of the various federal

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and self-regulatory agencies and regulatory associations, including, but not limited to, the ~~United States~~ Securities and Exchange Commission, the Financial Industry Regulatory Authority, and the North American Securities Administrators Association, Inc.

Section 9. Subsections (1), (4), and (5) of section 517.161, Florida Statutes, are amended to read:

517.161 Revocation, denial, or suspension of registration of dealer, investment adviser, intermediary, or associated person.—

(1) Registration under s. 517.12 may be denied or any registration granted may be revoked, restricted, or suspended by the office if the office determines that such applicant or registrant; any member, principal, or director of the applicant or registrant or any person having a similar status or performing similar functions; or any person directly or indirectly controlling the applicant or registrant:

(a) Has violated any provision of this chapter or any rule or order made under this chapter;

(b) Has made a material false statement in the application for registration;

(c) Has been guilty of a fraudulent act in connection with rendering investment advice or in connection with any sale of securities, has been or is engaged or is about to engage in making fictitious or pretended sales or purchases of any such securities or in any practice involving the rendering of investment advice or the sale of securities which is fraudulent or in violation of the law;

(d) Has made a misrepresentation or false statement to, or

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1103 concealed any essential or material fact from, any person in the
1104 rendering of investment advice or the sale of a security to such
1105 person;

1106 (e) Has failed to account to persons interested for all
1107 money and property received;

1108 (f) Has not delivered, after a reasonable time, to persons
1109 entitled thereto securities held or agreed to be delivered by
1110 the dealer, ~~broker~~, or investment adviser, as and when paid for,
1111 and due to be delivered;

1112 (g) Is rendering investment advice or selling or offering
1113 for sale securities through any associated person not registered
1114 in compliance with ~~the provisions of~~ this chapter;

1115 (h) ~~Has demonstrated unworthiness to transact the business~~
1116 ~~of dealer, investment adviser, intermediary, or associated~~
1117 ~~person;~~

1118 ~~(i)~~ Has exercised management or policy control over or
1119 owned 10 percent or more of the securities of any dealer,
1120 intermediary, or investment adviser that has been declared
1121 bankrupt, or had a trustee appointed under the Securities
1122 Investor Protection Act; or is, in the case of a dealer,
1123 intermediary, or investment adviser, unable to pay its debts as
1124 they become due in the usual course of business ~~insolvent~~;

1125 ~~(i)~~ ~~(j)~~ Has been convicted of, or has entered a plea of
1126 guilty or nolo contendere to, regardless of whether adjudication
1127 was withheld, a crime against the laws of this state or any
1128 other state or of the United States or of any other country or
1129 government which relates to registration as a dealer, investment
1130 adviser, issuer of securities, intermediary, or associated
1131 person; which relates to the application for such registration;

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1132 or which involves moral turpitude or fraudulent or dishonest
1133 dealing;

1134 ~~(j)~~ ~~(k)~~ Has had a final judgment entered against her or him
1135 in a civil action upon grounds of fraud, embezzlement,
1136 misrepresentation, or deceit;

1137 ~~(l) Is of bad business repute;~~

1138 ~~(k)~~ ~~(m)~~ Has been the subject of any decision, finding,
1139 injunction, suspension, prohibition, revocation, denial,
1140 judgment, or administrative order by any court of competent
1141 jurisdiction, administrative law judge, or by any state or
1142 federal agency, national securities, commodities, or option
1143 exchange, or national securities, commodities, or option
1144 association, involving a violation of any federal or state
1145 securities or commodities law or any rule or regulation
1146 promulgated thereunder, or any rule or regulation of any
1147 national securities, commodities, or options exchange or
1148 national securities, commodities, or options association, or has
1149 been the subject of any injunction or adverse administrative
1150 order by a state or federal agency regulating banking,
1151 insurance, finance ~~or small loan companies~~, real estate,
1152 mortgage brokers or lenders, money transmitters, or other
1153 related or similar industries. For purposes of this subsection,
1154 the office may not deny registration to any applicant who has
1155 been continuously registered with the office for 5 years after
1156 the date of entry of such decision, finding, injunction,
1157 suspension, prohibition, revocation, denial, judgment, or
1158 administrative order provided such decision, finding,
1159 injunction, suspension, prohibition, revocation, denial,
1160 judgment, or administrative order has been timely reported to

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the office pursuant to the commission's rules; ~~or~~

~~(1)(A)~~ Made payment to the office for a registration with a check or electronic transmission of funds that is dishonored by the applicant's or registrant's financial institution;

(m) Failed to pay and fully satisfy any final judgment or arbitration award resulting from an investment-related, client- or customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to in writing between the client or customer and the investment adviser, dealer, or associated person and the investment adviser, dealer, or associated person complies with the terms of the alternative payment arrangement;

(n) Attempted to avoid payment of any final judgment or arbitration award resulting from an investment-related, client- or customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to in writing between the client or customer and the investment adviser, dealer, or associated person and the investment adviser, dealer, or associated person complies with the terms of the alternative payment arrangements; or

(o) Failed to pay and fully satisfy any fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed upon the investment adviser, dealer, or associated person by the Securities and Exchange Commission, the securities regulator or other financial services regulator of any state or province, or any securities industry self-regulatory organization.

(4) It shall be sufficient cause for denial of an application or revocation of registration, in the case of a

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partnership, corporation, limited liability company, or unincorporated association, if any member of the partnership, any manager or managing member of the limited liability company, or any officer, director, or ultimate equitable owner of the corporation or association has committed any act or omission which would be cause for denying, revoking, restricting, or suspending the registration of an individual dealer, investment adviser, intermediary, or associated person. As used in this subsection, the term "ultimate equitable owner" means a natural person who directly or indirectly owns or controls an ownership interest in the corporation, partnership, association, or other legal entity however organized, regardless of whether such natural person owns or controls such ownership interest through one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint stock companies, or other entities or devices, or any combination thereof.

(5) The office may deny any request to terminate or withdraw any application or registration if the office believes that an act that ~~which~~ would be a ground for denial, suspension, restriction, or revocation under this chapter has been committed.

Section 10. Section 517.181, Florida Statutes, is repealed.

Section 11. Paragraph (a) of subsection (4) of section 517.201, Florida Statutes, is amended to read:

517.201 Investigations; examinations; subpoenas; hearings; witnesses.—

(4) (a) In the event of substantial noncompliance with a subpoena or subpoena duces tecum issued or caused to be issued by the office pursuant to this section, the office may petition

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1219 the circuit court of the county in which the person subpoenaed
 1220 resides or has its principal place of business for an order
 1221 requiring the subpoenaed person to appear and testify and to
 1222 produce such books, records, and documents as are specified in
 1223 such subpoena duces tecum. The court may grant injunctive relief
 1224 restraining the issuance, sale or offer for sale, purchase or
 1225 offer to purchase, promotion, negotiation, advertisement, or
 1226 distribution ~~in or from offices in this state~~ of securities or
 1227 investments in or from this state by the noncompliant a person
 1228 or its agent, employee, broker, partner, officer, director,
 1229 manager, managing member, equity holder, or any person directly
 1230 or indirectly controlling the noncompliant person ~~stockholder~~
 1231 ~~thereof~~, and may grant such other relief, including, but not
 1232 limited to, the restraint, by injunction or appointment of a
 1233 receiver, of any transfer, pledge, assignment, or other
 1234 disposition of such person's assets or any concealment,
 1235 alteration, destruction, or other disposition of subpoenaed
 1236 books, records, or documents, as the court deems appropriate,
 1237 until such person has fully complied with such subpoena or
 1238 subpoena duces tecum and the office has completed its
 1239 investigation or examination. The office is entitled to the
 1240 summary procedure provided in s. 51.011, and the court shall
 1241 advance the cause on its calendar. Costs incurred by the office
 1242 to obtain an order granting, in whole or in part, such petition
 1243 for enforcement of a subpoena or subpoena duces tecum shall be
 1244 taxed against the subpoenaed person, and failure to comply with
 1245 such order shall be a contempt of court.

1246 Section 12. Paragraph (d) of subsection (3) of section
 1247 921.0022, Florida Statutes, is amended to read:

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1248 921.0022 Criminal Punishment Code; offense severity ranking
 1249 chart.—
 1250 (3) OFFENSE SEVERITY RANKING CHART
 1251 (d) LEVEL 4
 1252
 1253

Florida Statute	Felony Degree	Description
1254 316.1935(3) (a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
1255 499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.
1256 499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
1257 517.07(1)	3rd	Failure to register securities.
1258 517.12(1)	3rd	Failure of dealer <u>or</u> associated person <u>of a dealer</u>

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~~or issuer~~ of securities to
register.

1259

784.07(2)(b) 3rd Battery of law enforcement
officer, firefighter, etc.

1260

784.074(1)(c) 3rd Battery of sexually violent
predators facility staff.

1261

784.075 3rd Battery on detention or
commitment facility staff.

1262

784.078 3rd Battery of facility employee by
throwing, tossing, or expelling
certain fluids or materials.

1263

784.08(2)(c) 3rd Battery on a person 65 years of
age or older.

1264

784.081(3) 3rd Battery on specified official
or employee.

1265

784.082(3) 3rd Battery by detained person on
visitor or other detainee.

1266

784.083(3) 3rd Battery on code inspector.

1267

784.085 3rd Battery of child by throwing,
tossing, projecting, or

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expelling certain fluids or
materials.

1268

787.03(1) 3rd Interference with custody;
wrongly takes minor from
appointed guardian.

1269

787.04(2) 3rd Take, entice, or remove child
beyond state limits with
criminal intent pending custody
proceedings.

1270

787.04(3) 3rd Carrying child beyond state
lines with criminal intent to
avoid producing child at
custody hearing or delivering
to designated person.

1271

787.07 3rd Human smuggling.

1272

790.115(1) 3rd Exhibiting firearm or weapon
within 1,000 feet of a school.

1273

790.115(2)(b) 3rd Possessing electric weapon or
device, destructive device, or
other weapon on school
property.

1274

790.115(2)(c) 3rd Possessing firearm on school

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			property.
1275	794.051(1)	3rd	Indecent, lewd, or lascivious touching of certain minors.
1276	800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
1277	806.135	2nd	Destroying or demolishing a memorial or historic property.
1278	810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
1279	810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
1280	810.06	3rd	Burglary; possession of tools.
1281	810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
1282	812.014(2)(c)3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.

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1283	812.014	3rd	Grand theft, 3rd degree; specified items.
	(2)(c)4.-10.		
1284	812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
1285	817.505(4)(a)	3rd	Patient brokering.
1286	817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
1287	817.568(2)(a)	3rd	Fraudulent use of personal identification information.
1288	817.625(2)(a)	3rd	Fraudulent use of scanning device, skimming device, or reencoder.
1289	817.625(2)(c)	3rd	Possess, sell, or deliver skimming device.
1290	828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.

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836.14(2) 3rd Person who commits theft of a sexually explicit image with intent to promote it.

1292

836.14(3) 3rd Person who willfully possesses a sexually explicit image with certain knowledge, intent, and purpose.

1293

837.02(1) 3rd Perjury in official proceedings.

1294

837.021(1) 3rd Make contradictory statements in official proceedings.

1295

838.022 3rd Official misconduct.

1296

839.13(2)(a) 3rd Falsifying records of an individual in the care and custody of a state agency.

1297

839.13(2)(c) 3rd Falsifying records of the Department of Children and Families.

1298

843.021 3rd Possession of a concealed handcuff key by a person in custody.

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1299

843.025 3rd Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.

1300

843.15(1)(a) 3rd Failure to appear while on bail for felony (bond estreatment or bond jumping).

1301

847.0135(5)(c) 3rd Lewd or lascivious exhibition using computer; offender less than 18 years.

1302

870.01(3) 2nd Aggravated rioting.

1303

870.01(5) 2nd Aggravated inciting a riot.

1304

874.05(1)(a) 3rd Encouraging or recruiting another to join a criminal gang.

1305

893.13(2)(a)1. 2nd Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)5. drugs).

1306

914.14(2) 3rd Witnesses accepting bribes.

1307

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914.22(1) 3rd Force, threaten, etc., witness,
victim, or informant.

1309

914.23(2) 3rd Retaliation against a witness,
victim, or informant, no bodily
injury.

1310

916.1085 3rd Introduction of specified
(2)(c)1. contraband into certain DCF
facilities.

1311

918.12 3rd Tampering with jurors.

1312

934.215 3rd Use of two-way communications
device to facilitate commission
of a crime.

1313

944.47(1)(a)6. 3rd Introduction of contraband
(cellular telephone or other
portable communication device)
into correctional institution.

1314

951.22(1)(h), 3rd Intoxicating drug,
(j) & (k) instrumentality or other device
to aid escape, or cellular
telephone or other portable
communication device introduced
into county detention facility.

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Section 13. Section 517.1215, Florida Statutes, is amended
to read:

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517.1215 Requirements, rules of conduct, and prohibited
business practices for investment advisers ~~advisors~~ and their
associated persons.—

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(1) The commission shall specify by rule requirements for
investment advisers ~~advisors~~ deemed to have custody of client
funds which concern the following:

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(a) Notification of custody of, maintenance of, and
safeguards for client funds.

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(b) Communications with clients and independent
representatives.

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(c) Requirements for investment advisers who have custody
of pooled investments.

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(d) Exceptions to the custody requirements.

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In adopting the rules, the commission shall consider the rules
and regulations of the federal regulatory authority and the
North American Securities Administrators Association, Inc.

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(2) The commission shall by rule establish rules of conduct
and prohibited business practices for investment advisers and
their associated persons. In adopting the rules, the commission
shall consider general industry standards as expressed in the
rules and regulations of the various federal and self-regulatory
agencies and regulatory associations, including, but not limited
to, the ~~United States~~ Securities and Exchange Commission, the
Financial Industry Regulatory Authority, and the North American
Securities Administrators Association, Inc.

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Section 14. Subsections (18) and (22) of section 517.061, Florida Statutes, are amended to read:

517.061 Exempt transactions.—Except as otherwise provided in s. 517.0611 for a transaction listed in subsection (21), the exemption for each transaction listed below is self-executing and does not require any filing with the office before claiming the exemption. Any person who claims entitlement to any of the exemptions bears the burden of proving such entitlement in any proceeding brought under this chapter. The registration provisions of s. 517.07 do not apply to any of the following transactions; however, such transactions are subject to the provisions of ss. 517.301, 517.311, and 517.312:

(18) The offer or sale of any security effected by or through a person in compliance with s. 517.12(16) ~~s. 517.12(17)~~.

(22) The offer or sale of securities, solely in connection with the transfer of ownership of an eligible privately held company, through a merger and acquisition broker in accordance with s. 517.12(21) ~~s. 517.12(22)~~.

Section 15. Paragraph (b) of subsection (4) and subsection (14) of section 517.0611, Florida Statutes, are amended to read:

517.0611 Intrastate crowdfunding.—

(4) An issuer must:

(b) Conduct transactions for the offering through a dealer registered with the office or an intermediary registered under s. 517.12(19) ~~s. 517.12(20)~~.

(14) An intermediary not registered as a dealer under s. 517.12(5) ~~s. 517.12(6)~~ may not:

(a) Offer investment advice or recommendations. A refusal by an intermediary to post an offering that it deems not

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credible or that represents a potential for fraud may not be construed as an offer of investment advice or recommendation.

(b) Solicit purchases, sales, or offers to buy securities offered or displayed on its website.

(c) Compensate employees, agents, or other persons for the solicitation of, or based on the sale of, securities offered or displayed on its website.

(d) Hold, manage, possess, or otherwise handle investor funds or securities.

(e) Compensate promoters, finders, or lead generators for providing the intermediary with the personal identifying information of any potential investor.

(f) Engage in any other activities set forth by commission rule.

Section 16. Subsection (1) of section 517.075, Florida Statutes, is amended to read:

517.075 Cuba, prospectus disclosure of doing business with, required.—

(1) Any issuer of securities that will be sold in this state pursuant to a prospectus must disclose in the prospectus if the issuer or any affiliate thereof, ~~as defined in s. 517.021(1)~~, does business with the government of Cuba or with any person or affiliate located in Cuba. The prospectus disclosure required by this subsection does not apply with respect to prospectuses prepared before April 10, 1992.

Section 17. Paragraph (a) of subsection (1) of section 517.131, Florida Statutes, is amended to read:

517.131 Securities Guaranty Fund.—

(1)(a) The Chief Financial Officer shall establish a

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Securities Guaranty Fund. An amount not exceeding 20 percent of all revenues received as assessment fees pursuant to s. 517.12(9) and (10) ~~s. 517.12(10) and (11)~~ for dealers and investment advisers or s. 517.1201 for federal covered advisers and an amount not exceeding 10 percent of all revenues received as assessment fees pursuant to s. 517.12(9) and (10) ~~s. 517.12(10) and (11)~~ for associated persons shall be part of the regular license fee and shall be transferred to or deposited in the Securities Guaranty Fund.

Section 18. Subsection (1) of section 517.211, Florida Statutes, is amended to read:

517.211 Remedies available in cases of unlawful sale.—

(1) Every sale made in violation of either s. 517.07 or s. 517.12(1), (3), (4), (8), (10), (12), (15), or (17) ~~(4), (5), (9), (11), (13), (16), or (18)~~ may be rescinded at the election of the purchaser, except a sale made in violation of the provisions of s. 517.1202(3) relating to a renewal of a branch office notification shall not be subject to this section, and a sale made in violation of the provisions of s. 517.12(12) ~~s. 517.12(13)~~ relating to filing a change of address amendment shall not be subject to this section. Each person making the sale and every director, officer, partner, or agent of or for the seller, if the director, officer, partner, or agent has personally participated or aided in making the sale, is jointly and severally liable to the purchaser in an action for rescission, if the purchaser still owns the security, or for damages, if the purchaser has sold the security. No purchaser otherwise entitled will have the benefit of this subsection who has refused or failed, within 30 days of receipt, to accept an

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offer made in writing by the seller, if the purchaser has not sold the security, to take back the security in question and to refund the full amount paid by the purchaser or, if the purchaser has sold the security, to pay the purchaser an amount equal to the difference between the amount paid for the security and the amount received by the purchaser on the sale of the security, together, in either case, with interest on the full amount paid for the security by the purchaser at the legal rate, pursuant to s. 55.03, for the period from the date of payment by the purchaser to the date of repayment, less the amount of any income received by the purchaser on the security.

Section 19. Section 517.315, Florida Statutes, is amended to read:

517.315 Fees.—All fees of any nature collected by the office pursuant to this chapter shall be disbursed as follows:

(1) The office shall transfer the amount of fees required to be deposited into the Securities Guaranty Fund pursuant to s. 517.131.~~+~~

(2) After the transfer required in subsection (1), the office shall transfer the \$50 assessment fee collected from each associated person under s. 517.12(9) and (10) ~~s. 517.12(10) and (11)~~ and 30.44 percent of the \$100 assessment fee paid by dealers and investment advisers ~~advisors~~ for each office in the state under s. 517.12(9) and (10) ~~s. 517.12(10) and (11)~~ to the Regulatory Trust Fund.~~+~~ ~~and~~

(3) All remaining fees shall be deposited into the General Revenue Fund.

Section 20. Subsection (5) of section 626.9911, Florida Statutes, is amended to read:

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1460 626.9911 Definitions.—As used in this act, the term:

1461 (5) "Life expectancy provider" means a person who

1462 determines, or holds himself or herself out as determining, life

1463 expectancies or mortality ratings used to determine life

1464 expectancies:

1465 (a) On behalf of a viatical settlement provider, viatical

1466 settlement broker, life agent, or person engaged in the business

1467 of viatical settlements;

1468 (b) In connection with a viatical settlement investment as

1469 defined in s. 517.021, ~~pursuant to s. 517.021(24)~~; or

1470 (c) On residents of this state in connection with a

1471 viatical settlement contract or viatical settlement investment.

1472 Section 21. Subsection (6) of section 744.351, Florida

1473 Statutes, is amended to read:

1474 744.351 Bond of guardian.—

1475 (6) When it is expedient in the judgment of any court

1476 having jurisdiction of any guardianship property, because the

1477 size of the bond required of the guardian is burdensome, or for

1478 other cause, the court may order, in lieu of a bond or in

1479 addition to a lesser bond, that the guardian place all or part

1480 of the property of the ward in a designated financial

1481 institution under the same conditions and limitations as are

1482 contained in s. 69.031. A designated financial institution shall

1483 also include a dealer, as defined in s. 517.021 ~~s. 517.021(6)~~,

1484 if the dealer is a member of the Security Investment Protection

1485 Corporation and is doing business in the state.

1486 Section 22. Section 517.1205, Florida Statutes, is amended

1487 to read:

1488 517.1205 Registration of associated persons specific as to

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1489 securities dealer, investment adviser, or federal covered

1490 adviser identified at time of registration approval.—Inasmuch as

1491 this chapter is intended to protect investors in securities

1492 offerings and other investment transactions regulated by that

1493 chapter, its provisions are to be construed to require full and

1494 fair disclosure of all, but only, those matters material to the

1495 investor's evaluation of the offering or other transaction. It

1496 should, furthermore, be construed to impose the standards

1497 provided by law on all those seeking to participate in the

1498 state's securities industry through registration as a securities

1499 dealer, investment adviser, or associated person. To this end,

1500 it is declared to be the intent of the Legislature that the

1501 registration of associated persons required by law is specific

1502 to the securities dealer, investment adviser, or federal covered

1503 adviser identified at the time such registration is approved.

1504 Notwithstanding any interpretation of law to the contrary, the

1505 historical practice of the Department of Banking and Finance,

1506 reflected in its rules, that requires a new application for

1507 registration from a previously registered associated person when

1508 that person seeks to be associated with a new securities dealer

1509 or investment adviser is hereby ratified and approved as

1510 consistent with legislative intent. It is, finally, declared to

1511 be the intent of the Legislature that while approval of an

1512 application for registration of a securities dealer, investment

1513 adviser, or associated person requires a finding of compliance

1514 with the applicable registration provisions of this chapter and

1515 applicable rules ~~the applicant's good repute and character~~, such

1516 finding is precluded by a determination that the applicant may

1517 be denied registration on grounds provided by law.

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1518

Section 23. This act shall take effect October 1, 2023.



The Florida Senate

Committee Agenda Request

To: Senator Jason Brodeur, Chair
Appropriations Committee on Agriculture, Environment, and General
Government

Subject: Committee Agenda Request

Date: April 6, 2023

I respectfully request that **Senate Bill # 180**, relating to Regulation of Securities, be placed on the:

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

A handwritten signature in black ink that reads "Joe Gruters".

Senator Joe Gruters
Florida Senate, District 22

The Florida Senate

APPEARANCE RECORD

4/18/2023

Meeting Date

180

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name **Ash Mason**

Phone

Address

Email

Street

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without compensation or sponsorship.

☒

I am a registered lobbyist, representing:

Office of Financial Regulation

☐

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf flsenate.gov](#)

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

S-001 (08/10/2021)



2023 AGENCY LEGISLATIVE BILL ANALYSIS

Florida Office of Financial Regulation

BILL INFORMATION

BILL NUMBER:	SB180
BILL TITLE:	An Act Relating to Securities Transactions
BILL SPONSOR:	Senator Gruters
EFFECTIVE DATE:	October 1, 2023

COMMITTEES OF REFERENCE

1) Banking and Insurance
2) Appropriations Committee on Agriculture, Environment, and General Government
3) Fiscal Policy
4)
5)

CURRENT COMMITTEE

Banking and Insurance

SIMILAR BILLS

BILL NUMBER:	HB253
SPONSOR:	Webster Barnaby

IDENTICAL BILLS

BILL NUMBER:	
SPONSOR:	

PREVIOUS LEGISLATION

BILL NUMBER:	HB779
SPONSOR:	Rep. Joe Harding
YEAR:	2022
LAST ACTION:	3/14/22 – Died in Insurance & Banking Subcommittee

Is this bill part of an agency package?

No

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	January 25, 2023
LEAD AGENCY ANALYST:	Ryann White, Assistant General Counsel (850) 410-9803
ADDITIONAL ANALYST(S):	Alisa Goldberg, Director, Division of Securities (850) 410-9785
LEGAL ANALYST:	Anthony Cammarata, General Counsel (850) 410-9601
FISCAL ANALYST:	B. Buckley Vernon, Director of Budget, Research, and Analytics (850) 410-9673

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

This bill amends ch. 517, F.S. to facilitate capital funding for Florida businesses by Florida investors, increasing the expansion of Florida businesses and the hiring of Florida residents. Specifically, the amendments: 1) simplify and improve certain aspects of the exempt offering framework in four principal ways: (1) enabling Florida businesses to solicit Florida accredited investors; (2) facilitating a network of “capital connectors” or “finders” who connect accredited investors to businesses seeking capital by creating a license proportional to their limited permissible activities; (3) allowing Florida businesses a safe harbor to “test the waters” by contacting potential investors before making a live investment offer, which can save a business substantial funds and avoid costly mistakes, and (4), establishing a registration safe harbor for academic programs and business incubators to conduct “pitch nights” and “demo days” for startup businesses. In addition, ch. 517, F.S., is being modernized by bringing certain aspects of federal securities law enhancements, such as matching the \$5 million cap allowable for federal crowdfunding offerings, as well as including up-to-date legal citations and language. Enforcement tools, such as providing with the Office of Financial Regulation with the ability to pursue aiders and abettors, are also upgraded.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

The Division of Securities (Division) within the Office of Financial Regulation (OFR or Office) protects the investing public from unlawful securities activities through regulating the sale of securities and investment advice in, to, or from Florida by firms (securities dealers, issuer dealers, and investment advisers), branch offices, and individuals affiliated with these firms.

As of December 31, 2022, the Division had total registrants in the following areas:

- Dealers: 2,421
- Investment Advisers: 8,096
- Branches: 11,435
- Associated Persons: 361,200

Chapter 517, F.S., the Florida Securities and Investor Protection Act, has remained substantially unchanged for many years despite major developments in federal securities laws and the modernization of securities laws in other states. Specifically, little has been done to promote the sourcing of capital for small and mid-size companies or to generate investor interest in entrepreneurial endeavors in the state.

In order to sell or offer to sell a security in Florida, the security must be registered under ch. 517, F.S., be exempt from registration, or be sold in an exempt transaction. As of January 2023, the Office has three registered offerings. Issuers who find the securities registration process to be overly burdensome, time consuming, or too costly must seek to conduct an offering which is exempt from registration.

One such exemption from the securities registration requirements is Florida’s private placement exemption found in s. 517.061(11), F.S. The private placement exemption allows an issuer to sell its securities to no more than 35 purchasers, excluding accredited investors and certain others, in any 12-month period, without the need to register the securities with the Office. Section 517.061(11) prohibits general solicitation and general advertising, as well as, the payment of sales commissions to anyone defined as a “dealer.” The exemption also provides a three-day voidability period when sales are made to five or more purchasers in Florida. This exemption has remained substantially unchanged for decades.

In 2015, Florida, like many other states, adopted a “crowdfunding” registration exemption which was intended to allow small business to raise capital using the internet without the costs and regulatory hurdles associated with the securities registration process. Florida’s crowdfunding exemption is one of the most restrictive exemptions when compared to other states, and largely mirrors the original federal crowdfunding exemption which has been criticized as being overly burdensome, costly, and unworkable for many. Florida’s crowdfunding exemption allows for a maximum offering amount of \$1 million and it limits the amount of securities that can be purchased by a nonaccredited investor. It also incorporates some of the federal exemptions most onerous requirements, including requiring use of a licensed dealer or intermediary, and requiring the escrowing of investor proceeds until a minimum target amount has been raised. As a result, as of January 25, 2023, no crowdfunding offerings have been made in Florida.

Federal Securities Law Developments

In an effort to simplify, harmonize, and improve certain aspects of the exempt offering framework to promote capital formation while preserving or enhancing important investor protections, the SEC adopted Rules 148, 241, and 147A.

Rule 148 (17 CFR 230.148) – Effective March 2021, Rule 148 provides that certain “demo day” communications are not deemed general solicitation or general advertising if made in connection with a seminar or meeting sponsored by a college, university, or other institution of higher education, state or local government or instrumentality thereof, a nonprofit organization, or an angel investor group, incubator, or accelerator. Under the rule, sponsors are prohibited from: making investment recommendations or providing investment advice to attendees of the event; engaging in any investment negotiations between the issuer and investors attending the event; charging attendees of the event any fees other than reasonable administrative fees; receiving any compensation for making introductions between attendees and issuers, or investment negotiations between parties; and receiving any compensation with respect to the event that would require sponsors to register as a broker or dealer under the federal Securities and Exchange Act of 1934, as amended, or as an investment adviser under the federal Investment Advisers Act of 1940, as amended. Additionally, Rule 148 specifies that advertising for the event may not reference any specific offering of securities by the issuer and limits the information that may be conveyed at the event regarding the offering of securities by or on behalf of the issuer. Further, Rule 148 limits online participation in the event.

Rule 241 (17 CFR 230.241) – Effective March 2021, Rule 241 allows an issuer, or any person authorized to act on behalf of an issuer, to “test the waters” by communicating, orally or in writing with prospective investors, to determine whether there is any interest in a contemplated offering of securities. Communications made in reliance on this rule must state: 1) the issuer is considering an offering of securities exempt from registration under the Securities Act, but has not determined a specific exemption from registration the issuer intends to rely on for the subsequent offer and sale of the securities; 2) no money or other consideration is being solicited, and if sent in response, will not be accepted; 3) no offer to buy the securities can be accepted and no part of the purchase price can be received until the issuer determines the exemption under which the offering is intended to be conducted and, where applicable, the filing, disclosure, or qualification requirements of such exemption are met; and 4) a person's indication of interest involves no obligation or commitment of any kind.

Rules 147 and 147A (17 CFR 230.147 and 17 CFR 230.147A) – Securities Act Section 3(a)(11) provides an exemption from registration under the Securities Act for “[a]ny security which is part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and doing business within, or, if a corporation, incorporated by and doing business within, such State or Territory.” In 1974, the Commission adopted Rule 147 under the Securities Act to provide objective standards for local businesses seeking to rely on section 3(a)(11).

Due to developments in modern business practices and communications technology in the years since Rule 147 was originally adopted, the SEC determined that it was necessary to update the requirements of Rule 147 to ensure its continued utility and to adopt Rule 147A.

Rule 147, as amended, has the following requirements: 1) the company must be organized in the state where it offers and sells securities; 2) the company must have its “principal place of business” in-state and satisfy at least one “doing business” requirement that demonstrates the in-state nature of the company’s business; 3) offers and sales of securities can only be made to in-state residents or persons who the company reasonably believes are in-state residents; and 4) the company obtains a written representation from each purchaser providing the residency of that purchaser.

Rule 147A was adopted in October 2016 by the SEC pursuant to its general exemptive authority under Section 28 of the Securities Act, and therefore, Rule 147A is not subject to the statutory limitations of section 3(a)(11). Rule 147A is substantially identical to Rule 147 except that it: 1) allows offers to be accessible to out-of-state residents, so long as sales are only made to in-state residents; and 2) permits a company to be incorporated or organized out-of-state, so long as the company has its “principal place of business” in-state and satisfies at least one “doing business” requirement that demonstrates the in-state nature of the company’s business. Rule 147A also permits issuers to engage in general solicitation and general advertising of their offerings, using any form of mass media, including unrestricted, publicly-available Internet websites, so long as sales of securities so offered are made only to residents of the state or territory in which the issuer has its principal place of business.

Both Rule 147A and amended Rule 147 require issuers to include a prominent disclosure with all offering materials stating that sales will be made only to residents of the same state or territory as the issuer.

NASAA's Model Accredited Investor Exemption

The North American Securities Administrators Association (NASAA) is an international organization that is devoted to investor protection. Its membership consists of state and provincial securities administrators in the United States, Canada, and Mexico. On April 27, 1997, NASAA members voted to approve "Model Accredited Investor Exemption" (the AI Exemption). The AI exemption exempts the offer or sale of a security by an issuer from the security registration process in a transaction meeting certain requirements. Specifically, the AI exemption limits the sale of securities to accredited investors and the issuer must not be subject to disqualification. The AI exemption also requires that an issuer file a notice of transaction, a consent to service of process, and a copy of the general announcement with the Office within 15 days after the first sale in the state. The majority of states have adopted the AI exemption.

NASAA's Model Rule on Investment Adviser Representative Continuing Education

On November 30, 2020, NASAA adopted a model rule for the implementation of continuing education (CE) programs for investment adviser representatives (IARs). The rule requires IARs of both state-registered and federal covered investment advisers seeking registration or renewal of IAR registration to complete 12 CE credits each year. IARs must complete six credits of regulatory and ethics content and six credits of compliance and practice content. IARs may select courses that appeal to their interests and suit their business models, so long as such courses meet the credit requirements and are approved content for the CE program. The rule allows IARs to satisfy either some or all of the rule's CE requirements through completion of the IAR's home state's CE requirements and completion of CE courses required to be completed by IARs who maintain certain professional designations and those required to be completed for registration as an agent of a dealer, provided certain criteria are met. Course providers and course content are approved by NASAA. If an IAR does not complete the CE requirement by the annual deadline, the IAR will renew as "CE inactive." An IAR who has renewed as "CE inactive" and who does not complete the CE requirements by the end of the year will be unable to renew his or her registration.

IARs are responsible for ensuring that completed CE credits are reported to FINRA, NASAA's vendor for program tracking. NASAA has implemented a course reporting fee of \$3 per credit hour. Individual course costs will vary depending on the course and provider selected.

Currently, 11 NASAA member jurisdictions have adopted CE requirements similar to those proposed in the rule.

2. EFFECT OF THE BILL:

The bill makes many changes throughout ch. 517, F.S. The effect of these changes will be analyzed below for each section:

Section 517.021, F.S. – Definitions

This section is amended to add definitions for the following terms: accredited investor, angel investor group, business accelerator, business incubator, control person, natural person, and target offering amount.

- The term "accredited investor" is currently defined each time it is used throughout ch. 517, F.S. The purpose of the change is to eliminate redundancy and maintain consistency. The Office is directed to adopt such definition by rule to account for changes in the various federal and self-regulatory securities agencies and securities regulatory associations.
- The term "control person" is currently defined in s. 517.12, F.S. This section is amended to move the definition to this section as it is applicable throughout ch. 517, F.S., and to align the definition with the definition of "control person" in ch. 560, F.S.
- The term "natural person" is currently used throughout ch. 517, F.S., so the term is defined for clarity.
- The terms "angel investor group," "business accelerator," and "business incubator" currently do not exist in ch. 517, F.S. and their addition is necessitated by the inclusion of the "demo day" provisions. A "demo day," as proposed, is substantially similar to a "demo day" under SEC Rule 148 and allows an issuer to participate in a seminar or meeting with prospective investors and other issuers subject to strict limits on issuer communications. Such meetings or seminars may only be sponsored by certain persons and they cannot involve any investment recommendations, negotiations, or commitments to invest.
- The term "target offering amount" is currently used in s. 517.0611, F.S., but not defined. The section is amended to define the term for clarity.

This section is amended to redefine the term "associated person." Currently, the definition of the term is awkward and confusing because it does not clearly differentiate between associated persons of dealers and associated persons of investment advisers. The definition is amended to clearly define what "associated person" means as the term relates to Tier I and Tier II dealers, investment advisers, and federal covered advisers.

The term “control” is amended for clarity.

The term “dealer” is amended to separate dealers into “Tier I dealers” and “Tier II dealers.” Tier I dealers are persons who engage for all or part of the person’s time, directly or indirectly, as agent or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person. Tier II dealers, or capital connectors, are natural persons or entities that, for direct or indirect compensation, introduce or refer accredited investors to an issuer with a principal place of business in this state, or introduce or refer an issuer with a principal place of business in this state, to one or more accredited investors, solely for the purpose of a potential offer or sale of securities of the issuer in an issuer transaction in this state. Tier II dealers are required to enter into a written agreement with each issuer and prospective investor. The agreement must contain certain information and contain certain disclosures. A Tier II dealer’s activities are very limited, as is the information they can provide to prospective investors. Such activity currently requires registration as a dealer with the OFR. However, very few capital connectors register as dealers either because they do not realize that their limited activities require registration or because the regulatory burdens and costs associated with registration are too great. The amendments allow capital connectors to elect Tier II dealer registration for their limited activity, a less costly and burdensome dealer registration than traditional Tier I dealer registration. Tier II dealer registration nevertheless requires that an applicant be fingerprinted and make disclosures to ensure investor protection. Further, the exclusion from the term “Tier I dealer” found in subsection (30)(f) is amended to apply to all issuers. The definition is also amended to accommodate the elimination of the issuer registration requirement.

The term “guaranty” is amended to clarify that “a writing” is “an agreement in writing.”

The term “intermediary” is amended for clarity.

The term “investment adviser” is amended to have a parallel structure to the definition of “dealer” in this section. The exclusion found in subsection (16)(b)8. is amended to mirror the national *de minimis* standard (15 USC 80b-18a(d)). The national *de minimis* standard preempts the states from requiring an investment adviser to register in a state if the investment adviser (1) does not have a place of business located within the State; and (2) during the preceding 12-month period, has had fewer than 6 clients who are residents of that State.

The section is amended to move the terms “commission” and “office” into alphabetical order. The terms as defined were not substantively changed.

This section is amended to make technical changes, ensure any amendments to the federal securities laws are included in the reference, replace gender-specific terms with gender-neutral terms, to replace “who” or “which” with “that” where appropriate, and to specifically include limited liability companies.

Section 517.051 - Exempt securities

This section is amended to ensure any amendments to the federal securities laws are included in the reference.

Section 517.061 - Exempt transactions

Subsection (3) is amended for clarity and to correct a reference to the Securities Act of 1933 and include the SEC rules promulgated thereunder.

Subsection (16) and (20) are amended to clarify that all of the specified conditions must be met to qualify for the exemption.

Subsection (9) is amended for clarity and to conform to the Uniform Securities Act.

Subsection (11) is amended to shorten the specified time period from six months to sixty days and to allow the Office to specify factors to be considered for purposes of determining whether offers and sales of securities constitute part of the same offering under Florida’s private placement exemption.

Subsection (23) is added to incorporate NASAA’s model accredited investor exemption to promote capital formation and opportunities for Florida investors.

This section is further amended to: specifically include limited liability companies, to replace gender specific terms with gender neutral terms, for clarity, to differentiate between Tier I and Tier II dealers, to remove outdated references, and to ensure any amendments to the federal securities laws are included by reference.

Section 517.0611 – Intrastate crowdfunding

This section is amended to bring Florida's crowdfunding statute in line with similar, more utilized crowdfunding provisions from other states to promote capital formation. As of January 25, 2023, no Florida crowdfunding offerings have been made since the statute was adopted in 2015.

The section is amended to allow offerings to be conducted in compliance with SEC Rule 147A and to eliminate the requirement that an issuer under this section be formed in Florida and derive its revenues primarily from operations in Florida, thereby expanding the companies eligible to use the exemption.

The section is amended to require that investor funds, through an escrow agreement or trust account arrangement entered into with an independent third party, be deposited in a federally insured account for the benefit of the investors. All funds are to remain in such account until such time as either the target offering amount has been reached, the offering has been terminated, or the offering has expired. All funds are required to be used in accordance with the uses of proceeds represented to prospective investors. In practice, the existing escrow requirement is a major impediment for smaller companies because banks and other institutions are unwilling to serve as escrow agents due to administrative cost and potential liability.

This section is amended to increase the total amount that an issuer can raise within a 12-month period from \$1 million to \$5 million, consistent with the federal crowdfunding statute.

This section is further amended to: specifically include limited liability companies, to replace gender-specific terms with gender-neutral terms, for clarity, to replace the term "potential investor" with "prospective investor," to replace the term "principal shareholders" with "control persons," to differentiate between Tier I and Tier II dealers, and to ensure any amendments to the federal securities laws are included by reference.

Section 517.065, F.S. - Preoffering communications"

This section is created to allow issuers to participate in "demo day" presentations similar to SEC Rule 148. Pre-offering communications made in connection with a "demo day" are not deemed to be in violation of s. 517.07 and are not deemed to constitute general solicitation or general advertising under s. 517.061(11), F.S. The ability to engage in this limited form of public disclosure is important for smaller companies and start-ups trying to attract potential investors. Likewise, the safe harbor protects the promoters of small company showcasing events – the business incubators and accelerators -- from being required to register as dealers, provided the safe harbor restrictions are followed.

This section is also created to allow issuers to "test the waters," similar to SEC Rule 241, by engaging in pre-offering oral or written communications with prospective investors to determine whether there is any interest in a contemplated securities offering. The antifraud provisions apply to these communications. The ability to determine in advance the investor interest in a contemplated offering can save a company from the considerable time and expense of an unsuccessful offering.

Section 517.072, F.S. – Viatical settlement investments

This section is amended to add provisions previously in s. 517.081, F.S. pertaining to viatical settlements for organizational purposes. These provisions are not substantively changed.

This section is amended to ensure any amendments to the federal securities laws are included by reference, for clarity and consistency.

Section 517.081, F.S. – Registration procedure

This section is amended to allow all issuers meeting certain criteria, not only corporations, to use a simplified offering circular to register securities.

This section is amended to eliminate the Commission's ability to fix by rule the maximum discounts, commissions, expenses, remuneration, and other compensation as these terms are best negotiated by the parties participating in an offering.

This section is amended to decrease the filing fee to \$200 for offerings which does not exceed the maximum amount provided in s. 3(b) of the Securities Act of 1933. The maximum amount currently provided in s. 3(b) of the Securities Act of 1933 is \$5 million.

This section is amended to allow the Commission to specify by rule the time period for completing an application to register securities. If the application is not timely completed, the application shall be deemed abandoned.

This section is amended to move provisions pertaining to viatical settlements to s. 517.072, F.S.

This section is amended to specifically include limited liability companies, technical changes for clarity, and to ensure any amendments to the federal securities laws are included by reference.

Section 517.082, F.S. – Registration by notification; federal registration statements

This section is amended for clarity and to ensure any amendments to the federal securities laws are included by reference

This section is amended to allow securities offered or sold pursuant to a registration statement filed under the Securities Act of 1933, as amended, to register by notification when the offering price at the time of effectiveness with the SEC is \$5 or less per share.

This section is amended to allow the Office to deem an application abandoned if an applicant's federal registration statement is not declared effective by the SEC within 180 days of the filing of such application for registration by notification with the Office.

Section 517.111, F.S. – Revocation or denial of registration of securities

This section is amended to remove "failure to timely complete an application" as grounds for denial as this provision is incorporated in the registration sections (ss. 517.081 and 517.082, F.S.).

This section is amended to define the term "insolvency" for clarity.

This section is amended to include "investigation" in addition to "examination" in various provisions as these provisions are applicable to both examinations and investigations conducted by the Office.

This section is amended to specifically include limited liability companies.

This section is amended to remove the phrase "is in any other way dishonest or" because the standard is too vague.

This section is amended to eliminate the phrase "demonstrated any evidence of unworthiness," a vague standard, and replace it with "has engaged in any action that would be grounds for revocation, denial, or suspension under s. 517.161(1)," a clearer standard.

This section is amended to eliminate the ability of the Office to notice the entry of an order pursuant to this section by "telephone confirmed in writing, or by telegraph to the issuer" as these methods are outdated and not used elsewhere in ch. 517, F.S.

Section 517.12, F.S. – Registration of dealers, associated persons, intermediaries, and investment advisers

This section is amended to remove the requirement that issuers register with Office. This registration requirement is not necessary because issuers are required to disclose all material facts about themselves when registering an offering of securities. Further, the majority of states do not have this requirement.

This section is amended to separate dealers into Tier I dealers and Tier II dealers and to describe the registration requirements for each category.

This section is amended to clarify which exempt transactions the registration requirements apply to and to clarify the meaning of "securities business."

This section is amended to remove the term "small loan companies" as the term is not defined.

This section is amended to eliminate the requirement that the Office find an applicant is of “good repute and character.” This standard is not defined, and its meaning is unclear.

This section is amended to replace the phrase “any person directly or indirectly controlling the applicant” with “control person.”

This section is amended to specifically include limited liability companies, and replace gender-specific terms with gender-neutral terms.

Section 517.1214, F.S. - Continuing education requirements for associated persons of investment advisers and federal covered advisers

This section is created to require associated persons of investment advisers and federal covered advisers seeking registration or renewal of registration with the Florida Office of Financial Regulation (“Office”) to complete 12 continuing education (CE) credits each year. An associated person must complete six credits of continuing education content that address ethical and regulatory obligations and six credits of continuing education content that address product knowledge and industry practices. Associated persons of investment advisers and federal covered advisers who are also registered as associated persons of FINRA member dealers and who comply with FINRA’s continuing education requirements are considered to be in compliance with the products and practices requirement. Further, credits of continuing education completed by an associated person who completes such credits as a condition of maintaining certain professional designations or associated persons in compliance with their home state’s continuing education requirements may satisfy the continuing education requirements of this section.

Continuing education credits in excess of the required 12 cannot be carried forward. An associated person who fails to comply with this section by the end of each year will renew as “CE inactive.” An associated person who is CE inactive at the close of the next calendar year is not eligible for associated person registration or renewal of associated person registration.

Section 517.1215, F.S. - Requirements, rules of conduct, and prohibited business practices for investment advisers and their associated persons

This section is amended to replace the term “advisors” with “advisers” and to replace “North American Securities Administrators Association” with “North American Securities Administrators Association, Inc.”

Section 517.1217, F.S. – Rules of conduct and prohibited business practices for dealers and their associated persons and for intermediaries

This section is amended to include intermediaries.

This section is amended to specifically identify the activities that a Tier II dealer can and cannot engage in. This section is also amended to allow the Commission by rule to establish rules of conduct and prohibited business practices for Tier II dealers and their associated persons.

Section 517.161, F.S. – Revocation, denial, or suspension of registration of dealer, investment adviser, intermediary, or associated person

This section is amended to replace the phrase “person directly or indirectly controlling” with “control person” and remove the term “broker” for consistency.

This section is amended to remove the “unworthiness to transact business” and the “of bad business repute” standards because they are vague.

This section is amended to clarify the meaning of “insolvent” as “unable to pay its debts as they become due in the usual course of business” and to remove the term “small loan companies” as it is undefined and its meaning is unclear.

This section is amended to add failure to pay, or attempting to avoid paying, certain final judgments, arbitration awards, fines, civil penalties, orders of restitution and disgorgement, or similar monetary payment obligations as grounds for denying, suspending, or revoking a registration.

This section is amended to include limited liability companies throughout.

Section 517.1611, F.S. – Guidelines

This section is amended to replace the phrase “any person directly or indirectly controlling the applicant” with “control person.”

Section 517.181, F.S. – Escrow agreement

This section requires the impound of securities to be held for issuance contingent on a milestone being reached, such as receipt of a patent. This section is repealed as it is not utilized, and no federal counterpart exists.

Section 517.191, F.S. - Injunction to restrain violations; civil penalties; enforcement by Attorney General

This section is amended to allow the Office to recover any costs and attorney’s fees related to the Office’s investigation in an action for injunctive relief or the Office’s enforcement of any restraining order or injunction.

This section is amended to allow the Office to hold any control person of a controlled person found to have violated any provision of ch. 517, F.S., or of any rule adopted thereunder, jointly and severally liable with, and to the same extent as, such controlled person in any action brought under this section unless the control person acted in good faith and did not directly or indirectly induce the acts that caused the violation.

This section is amended to allow the Office to hold a person who knowingly or recklessly provides substantial assistance to another person in violation of a provision of ch. 517, F.S., or of any rule adopted thereunder, liable to the same extent as the person to whom such assistance is provided, for purposes of this section.

Section 517.201, F.S. - Investigations; examinations; subpoenas; hearings; witnesses

This section is amended for clarity and to specifically include limited liability companies.

Section 517.315, F.S. - Fees

This section is amended to replace the word “advisors” with “advisers” for consistency throughout ch.517, F.S.

*** Cross-references are updated throughout the bill.

3. DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y ☒ N ☐

If yes, explain:	Section 517.021(1) directs the commission to define the term “accredited investor” in accordance with how the term is defined in the rules and regulations of the various federal and self-regulatory securities agencies and securities regulatory associations. Section 517.061(11)(c)2.a. allows the commission to specify factors to be considered in determining whether offers and sales of securities constitute part of the same offering for purposes of Florida’s private placement exemption. Section 517.061(23)(i) allows the commission to prescribe a notice of transaction form and procedures for filing it for purposes of the AI exemption. Section 517.081(7) allows the commission to specify the time period for completing an application. Section 517.1217(4) allows the commission to establish rules of conduct and prohibited business practices for Tier II dealers and their associated persons.
Is the change consistent with the agency’s core mission?	Y ☒ N ☐
Rule(s) impacted (provide references to F.A.C., etc.):	Rules 69W-100.007; 69W-100.008; 69W-200.001; 69W-500.001, 69W-500.006, 69W-500.007, 69W-500.011, 69W-500.016, 69W-600.001, 69W-600.0011, 69W-600.0012, 69W-600.0013, 69W-600.0016, 69W-600.0018, 69W-600.002, 69W-600.0022, 69W-600.0023, 69W-600.0024, 69W-600.0033,

	69W-600.012, 69W-600.013, 69W-600.014, 69W-600.0145, 69W-600.0151, 69W-700.001, 69W-700.021, 69W-700.026, and 69W-1000.001, F.A.C.

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?Y ☐ N ☒

If yes, provide a description:	
Date Due:	
Bill Section Number(s):	

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL?Y ☐ N ☒

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS**1. FISCAL IMPACT TO LOCAL GOVERNMENT**Y ☐ N ☒

Revenues:	
Expenditures:	
Does the legislation increase local taxes or fees? If yes, explain.	
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

2. FISCAL IMPACT TO STATE GOVERNMENTY ☒ N ☐

Revenues:	N/A
Expenditures:	The bill requires issuers conducting an offering under the AI exemption to file a notice of transaction, a consent to service of process, and a copy of the general announcement with the Office. The Office will need to review this material. The bill does not provide additional funds for personnel to conduct such review.
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	

3. FISCAL IMPACT TO THE PRIVATE SECTORY ☒ N ☐

Revenues:	
Expenditures:	The bill requires associated persons of investment advisers and federal covered advisers to complete continuing education requirements on an annual basis. Costs incurred by associated persons who are required to comply with the requirement will vary. NASAA has implemented a course reporting fee of \$3 per credit hour. Therefore, an associated person will be required to pay a minimum of \$36 per year in addition to any training costs to meet the CE requirement of the Rule. Training costs are indeterminable and will vary depending on the selected continuing education course and provider, whether the associated person is in compliance with FINRA CE requirements, and whether the associated person holds and maintains certain professional designations.
Other:	

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?Y ☒ N ☐

If yes, explain impact.	An issuer filing an application to register securities is currently required to pay a filing fee of \$1,000 per application. The bill maintains the \$1,000 filing fee for offerings that exceed the amount provided in s. 3(b) of the Securities Act of 1933, as amended, but reduces the fee to \$200 per application for each offering that does not exceed the amount provided in s. 3(b) of the Securities Act of 1933, as amended.
Bill Section Number:	§517.081(5)

TECHNOLOGY IMPACT**1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?**Y ☒ N ☐

If yes, describe the anticipated impact to the agency including any fiscal impact.	There is a potential fiscal impact due to the revisions required to the REAL system to accommodate the changes. It is uncertain at this time if those changes would require the creation of a new license type, or if simply adding a “business type” modifier to the current application would be sufficient. The range of costs for changes, based on the IT impact is between \$30,000 and \$150,000 depending on which path is chosen. No additional appropriation will be required. Any changes up to the upper limit of the estimate can be absorbed within the Agency’s existing budget.

FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y ☐ N ☒

If yes, describe the anticipated impact including any fiscal impact.	

ADDITIONAL COMMENTS

LEGAL - GENERAL COUNSEL’S OFFICE REVIEW

Issues/concerns/comments:	OGC has reviewed the agency’s bill analysis concerning SB 180, and the analysis sufficiently details the effect of the bill and the areas of impact. OGC has no additional issues, concerns or further comments regarding the bill.

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 Appropriations Committee on Agriculture, Environment, and General Government

BILL: CS/SB 406

INTRODUCER: Regulated Industries Committee and Senator Hooper

SUBJECT: Yacht and Ship Brokers

DATE: April 17, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
2.	<u>Davis</u>	<u>Betta</u>	<u>AEG</u>	Favorable
3.	<u> </u>	<u> </u>	<u>FP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 406 revises the regulation of yacht and ship brokers and salespersons by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (DBPR).

The bill defines the term “visiting broker” to mean a person who conducts business as a broker or salesperson in another state as his or her primary profession and engages in the purchase or sale of a yacht under ch. 326, F.S., if the transaction is executed in its entirety with a broker or salesperson licensed in Florida. Under the bill, a visiting broker is exempt from the license requirements for a yacht and ship broker or salesperson license if the visiting broker engages in the purchase or sale of a yacht and the transaction is executed in its entirety with a broker or salesperson licensed in Florida.

The definition for the term “yacht” is revised by the bill to require that the vessel be manufactured or operated for pleasure or leased, rented, or chartered to a person other than the owner for such person’s pleasure. The bill retains current law that a yacht is a vessel which is propelled by sail or machinery in the water which exceeds 32 feet in length, but deletes the requirement for the vessel to weigh less than 300 gross tons.

The bill revises the requirements for licensure as a broker. Under the bill, an applicant for a broker license must demonstrate that he or she has been directly involved in at least four transactions during the two years preceding the date of the license application that resulted in the

sale of a yacht. Alternatively, a person may qualify for a broker license by certifying that he or she has obtained 20 hours of education, in-person or online, from a provider approved by the division regarding the state laws, rules, and ethics relating to the professional standards of practice, duties, and responsibilities of a licensee. The bill deletes the requirement that an applicant for a broker license have been licensed as a salesperson for two consecutive years.

The bill also deletes the division's authority to issue a temporary 90-day license while the Florida Department of Law Enforcement (FDLE) conducts a national criminal history analysis of an applicant for a broker or salesperson license by means of fingerprint identification. The bill maintains the requirement that an applicant for a broker or salesperson license furnish the division with a full set of fingerprints taken within the six months immediately preceding the submission of the license application.

The bill has an indeterminate fiscal impact on state expenditures. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2023.

II. Present Situation:

Division of Florida Condominiums, Timeshares and Mobile Homes

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the DBPR administers the provisions of chs. 718 and 719, F.S., for condominium and cooperative associations, respectively. The division also has jurisdiction over yacht and ship brokers and sales persons under ch. 326, F.S., timeshares under ch. 721, F.S., and mobile homes under ch. 723, F.S., and limited jurisdiction over homeowners' associations under ch. 720, F.S.

Yacht and Ship Broker Branch Office Licenses

Chapter 326, F.S., which may be cited as the "Yacht and Ship Brokers' Act,"¹ governs the licensing and regulation of yacht and shipbrokers, salespersons, and related business organizations in the state. The Yacht and Ship Broker Section, a unit of the division, processes license applications and responds to consumer complaints and inquiries by monitoring activities and compliance within the yacht brokerage industry.²

Definitions

A broker or yacht and ship broker is a "person who, for or in expectation of compensation: sells, offers, or negotiates to sell; buys, offers, or negotiates to buy; solicits or obtains listings of; or negotiates the purchase, sale, or exchange of, yachts for other persons."³

¹ Section 326.001, F.S.

² See ch. 326, F.S., and Department of Business and Professional Regulation, *Yacht and Ship*, available at: <http://www.myfloridalicense.com/DBPR/yacht-and-ships/> (last visited Mar. 24, 2023).

³ Section 326.002(1), F.S.

A salesperson is “a person who, for or in expectation of compensation, is employed by a broker to perform any acts of a broker.”⁴

The term “yacht” means “any vessel which is propelled by sail or machinery in the water which exceeds 32 feet in length, and which weighs less than 300 gross tons.”

Licensing

A person may not act as a yacht or ship broker or salesperson unless licensed under ch. 326, F.S.

To qualify for a broker’s license, a person must have been licensed as a salesperson for at least two consecutive years.⁵ Current law gives the division the discretion to deny an application for a broker or salesperson license if the applicant does not:

- Furnish proof satisfactory to the division that he or she is of good moral character.⁶
- Certify that he or she has never been convicted of a felony.
- Post the bond required by the Yacht and Ship Brokers' Act.
- Demonstrate that he or she is a resident of this state or that he or she conducts business in this state.
- Furnish a full set of fingerprints taken within the 6 months immediately preceding the submission of the application.
- Have a current license and has operated as a broker or salesperson without a license.⁷

The applicant must also deliver to the division a good and sufficient surety bond or irrevocable letter of credit, executed by the broker as principal, in the sum of \$25,000 before any license may be issued to a broker.⁸ A salesperson must have a bond or equivalent securities in the sum of \$10,000.⁹

The fee for an initial license application for a salesperson or broker license, and for the biennial renewal of a license, is \$500. Additionally, there is a \$51 fee for national fingerprint processing during the initial application process.¹⁰

A broker is not required to complete any continuing education hours as a condition for licensure or renewal of a license.

A license is not required for:

- A person who sells his or her own yacht.
- An attorney at law for services rendered in his or her professional capacity.
- A receiver, trustee, or other person acting under a court order.
- A transaction involving the sale of a new yacht.

⁴ Section 326.002(3), F.S.

⁵ Section 326.004(8), F.S.

⁶ See Fla. Admin. Code R. 61B-60.003(3)(a), providing the factors that bear upon good moral character.

⁷ Section 326.004(6), F.S.

⁸ Section 326.004(7), F.S.

⁹ Section 326.004(9), F.S.

¹⁰ Fla. Admin. Code R. 61B-60.003(4).

- A transaction involving the foreclosure of a security interest in a yacht.¹¹

A broker must maintain a principal place of business in Florida and may establish branch offices in Florida.¹² The biennial fee for a branch office is \$100 for each branch office.¹³

The division is required to provide by rule for the issuance of a temporary 90-day license to an applicant while the FDLE conducts a national criminal history analysis of the applicant by means of fingerprint identification.¹⁴

III. Effect of Proposed Changes:

The bill creates s. 326.002(4), F.S., to define a “visiting broker” to mean a person who conducts business as a broker or salesperson in another state as his or her primary profession and engages in the purchase or sale of a yacht under ch. 326, F.S., if the transaction is executed in its entirety with a broker or salesperson licensed in Florida.

The definition for the term “yacht” is revised by the bill to require that the vessel be manufactured or operated primarily for pleasure or leased, rented, or chartered to a person other than for such person’s pleasure. The bill deletes the requirement for the vessel to weigh less than 300 gross tons.

The DBPR’s analysis for the bill notes that “[t]he term “pleasure”¹⁵ is undefined, and thus rulemaking authority is required to define such a term. Moreover, “primarily” would need to be defined by either statute or rule relative to the scope of use. Otherwise, there is no standard by which to discern whether the yacht in question is a yacht for which the division has regulatory authority.”¹⁶

The bill amends s. 326.004(3), F.S., to exempt a visiting broker from the license requirements for a broker or salesperson if the visiting broker engages in the purchase or sale of a yacht and the transaction is executed in its entirety with a broker or salesperson licensed in Florida.

The bill also amends s. 326.004(6), F.S., to require the division to deny an application for a broker or salesperson license on the basis of the grounds listed in this subsection. Current law gives the division the discretion to deny an application for a broker or salesperson license.

Section 326.004(8), F.S., is amended by the bill to revise the requirements for licensure as a broker. Under the bill, an applicant for a broker license must demonstrate that he or she has been directly involved in at least four transactions during the two years preceding the date of the

¹¹ Section 326.004 (3), F.S.

¹² Section 326.004 (13), F.S.

¹³ Fla. Admin. Code R. 61B-60.003(4).

¹⁴ Section 326.004 (15), F.S. See Fla. Admin. Code R. 61B-60.001(1)(k) and 61B-60.003(2)(a), relating to the requirements for a temporary license.

¹⁵ The term “pleasure” means, in part, “someone or something that provides amusement or enjoyment.” The term “recreation is a synonym for this meaning of the term. See Merriam-Webster.com, “Pleasure,” <https://www.merriam-webster.com/thesaurus/pleasure> (last visited Mar. 29, 2023).

¹⁶ Department of Business and Professional Regulation, 2023 *Agency Legislative Bill Analysis for HB 83 [identical to SB 406]* at 3 (Feb. 17, 2023) (on file with the Senate Regulated Industries Committee).

license application that resulted in the sale of a yacht. Alternatively, a person may qualify for a broker license by certifying that he or she has completed 20 hours of education, in-person or online, from a provider approved by the division under ss. 455.2178 and 455.2179, F.S.,¹⁷ regarding the state laws, rules, and ethics relating to the professional standards of practice, duties, and responsibilities of a licensee.

The bill also amends s. 326.004(8), F.S., to delete the requirement that an applicant for a broker license have been licensed as a salesperson for two consecutive years.

The bill deletes the authority of the division to issue a temporary 90-day license while the FDLE conducts a national criminal history analysis of the applicant by means of fingerprint identification. The bill maintains the requirement that an applicant for a broker or salesperson license furnish the division with a full set of fingerprints taken within the six months immediately preceding the submission of the application.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹⁷ Sections ss. 455.2178 and 455.2179, F.S., relate to the division's authority and the process for approving of continuing education providers.

B. Private Sector Impact:

A visiting broker may engage in a transaction for the sale or purchase of a yacht under the conditions in the bill without applying for a license, including paying the \$500 license application fee.

Applicants for a broker license who opt to qualify for a license by completing 20 hours of education will incur costs related to completing those education hours.

C. Government Sector Impact:

The bill has an indeterminate, but likely minimal, fiscal impact on the division's expenditures, which could be accommodated with existing resources. To date, an analysis from the DBPR regarding the fiscal impact of CS/SB 406 on the division's revenues, expenditures, or operations has not been provided. However, the division may incur costs related to developing the criteria for an education provider which license applicants may use as option for qualifying as a broker.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The definition for the term "yacht" is revised by the bill to require that the vessel be manufactured or operated primarily for pleasure or leased, rented, or chartered to a person other than for such person's pleasure. The DBPR's analysis for the bill notes that "[t]he term "pleasure" is undefined, and thus rulemaking authority is required to define such a term. Moreover, "primarily" would need to be defined by either statute or rule relative to the scope of use. Otherwise, there is no standard by which to discern whether the yacht in question is a yacht for which the division has regulatory authority."¹⁸ However, the term "pleasure" means, in part, "someone or something that provides amusement or enjoyment," and the term "recreation" is a synonym for this meaning of the term.¹⁹ The bill may be interpreted as defining "yacht" as a vessel used primarily for recreation.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 326.002 and 326.004.

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

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

CS by Regulated Industries on March 29, 2023:

¹⁸ *Supra* note 15.

¹⁹ See Merriam-Webster.com, "Pleasure," <https://www.merriam-webster.com/thesaurus/pleasure> (last visited Mar. 29, 2023).

The CS deletes from the bill the amendment to s. 20.165, F.S., renaming the division as the Florida Condominiums, Timeshares, Yacht Brokers, and Mobile Homes, and also deletes all conforming amendments to ss. 192.037; 213.053; 326.006; 455.116; 475.455; 509.512; 559.935; 718.103; 718.105; 718.1255; 718.501; 718.5011; 718.502; 718.503; 718.504; 718.508; 718.509; 718.608; 719.103; 719.1255; 719.501; 719.502; 719.504; 719.508; 719.608; 720.301; 721.05; 721.07; 721.08; 721.26; 721.28; 721.301; 723.003; 723.006; 723.009; and 723.0611, F.S.

The CS also revises the qualifications in the bill for a ship broker license to provide that the four transactions needed to qualify for a license must occur during the two years preceding the license application, and to provide that the education requirement is based on 20 hours of education from a division-approved provider regarding the state laws, rules, and ethics relating to the professional standards of practice, duties, and responsibilities of a licensee.

B. Amendments:

None.

By the Committee on Regulated Industries; and Senator Hooper

580-03282-23

2023406c1

A bill to be entitled

An act relating to yacht and ship brokers; amending s. 326.002, F.S.; defining the term "visiting broker"; revising the definition of the term "yacht"; amending s. 326.004, F.S.; exempting a visiting broker from licensure for specified transactions; requiring, rather than authorizing, the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation to deny licenses for applicants who fail to meet certain requirements; revising requirements for licensure as a broker; removing a provision requiring the division to adopt rules relating to temporary licenses; providing an effective date.

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

Section 1. Present subsections (3), (4), and (5) of section 326.002, Florida Statutes, are redesignated as subsections (4), (6), and (3), respectively, a new subsection (5) is added to that section, and present subsection (4) of that section is amended, to read:

326.002 Definitions.—As used in ss. 326.001-326.006, the term:

(5) "Visiting broker" means a person who conducts business as a broker or salesperson in another state as his or her primary profession and engages in the purchase or sale of a yacht under this act if the transaction is executed in its entirety with a broker or salesperson licensed in this state.

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

580-03282-23

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~~(6)(4)~~ "Yacht" means any vessel which is propelled by sail or machinery in the water which exceeds 32 feet in length, and is:

(a) Manufactured or operated primarily for pleasure; or
(b) Leased, rented, or chartered to a person other than the owner for such person's pleasure which weighs less than 300 gross tons.

Section 2. Subsections (6), (8), and (15) of section 326.004, Florida Statutes, are amended, and paragraph (f) is added to subsection (3) of that section, to read:

326.004 Licensing.—

(3) A license is not required for:

(f) A visiting broker who engages in the purchase or sale of a yacht under this act if the transaction is executed in its entirety with a broker or salesperson licensed in this state.

(6) The division shall ~~may~~ deny a license to any applicant who does not:

(a) Furnish proof satisfactory to the division that he or she is of good moral character.

(b) Certify that he or she has never been convicted of a felony.

(c) Post the bond required by the Yacht and Ship Brokers' Act.

(d) Demonstrate that he or she is a resident of this state or that he or she conducts business in this state.

(e) Furnish a full set of fingerprints taken within the 6 months immediately preceding the submission of the application.

(f) Have a current license and has operated as a broker or salesperson without a license.

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

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(8) A person may not be licensed as a broker unless he or she:

(a) Has been a salesperson for at least 2 consecutive years; ~~7~~ and

(b)1. Can demonstrate that he or she has been directly involved in at least four transactions that resulted in the sale of a yacht during the 2 years preceding the date of the license application; or

2. Can certify that he or she has completed 20 hours of education, in-person or online, from a provider approved by the division, as provided under ss. 455.2178 and 455.2179, regarding the state laws, rules, and ethics relating to the professional standards of practice, duties, and responsibilities of a licensee may not be licensed as a broker unless he or she has been licensed as a salesperson for at least 2 consecutive years.

~~(15) The division shall provide by rule for the issuance of a temporary 90-day license to an applicant while the Florida Department of Law Enforcement conducts a national criminal history analysis of the applicant by means of fingerprint identification.~~

Section 3. This act shall take effect July 1, 2023.



The Florida Senate

Committee Agenda Request

To: Senator Jason Brodeur, Chair
Appropriations Committee on Agriculture, Environment, and General
Government

Subject: Committee Agenda Request

Date: April 4, 2023

I respectfully request that **Senate Bill # 406**, relating to Yacht and Ship Brokers, be placed on the:

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

A handwritten signature in black ink, appearing to read "Ed Hooper", is written over a horizontal line.

Senator Ed Hooper
Florida Senate, District 21

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4/18/23
Meeting Date

406
Bill Number or Topic

Appropriations on
Committee Ag. Env

Amendment Barcode (if applicable)

Name Eilyn Bogdanoff

Phone 954 364-6005

Address 1 E Brd Blvd
Street

Email ebogdanoff@beckerlaugher.com

FTL 33301
City State Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

International Yacht
Brokers Association

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf flsenate.gov](#)

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

S-001 (08/10/2021)

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 Appropriations Committee on Agriculture, Environment, and General Government

BILL: SB 410

INTRODUCER: Senators Garcia and Hutson

SUBJECT: Collateral Protection Insurance

DATE: April 17, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Moody	Knudson	BI	Favorable
2.	Sanders	Betta	AEG	Favorable
3.			FP	

I. Summary:

SB 410 creates a new statutory chapter part (Part XXII), Collateral Protection Insurance (CPI), to:

- Regulate CPI on real property;
- Establish a legal framework for the writing of CPI on real property in Florida;
- maintain separation between lenders or servicers, and insurers or insurance agents; and
- Minimize the possibilities of unfair competition practices in the sale, placement, or solicitation, and negotiation of CPI.

Part XXII applies to insurers and insurance agents engaged in transactions of CPI on real property. All CPI policies for mortgaged real property, including manufactured and mobile homes are subject to Part XXII, with certain exceptions. The bill contains statutory definitions of CPI and several related terms. CPI is defined as commercial property insurance under which a creditor is the primary beneficiary and policyholder, and which protects or covers the creditor's interest arising out of a credit transaction secured by the real property. CPI is triggered by the mortgagor's failure to maintain insurance coverage required by the mortgage or other lending document. The bill provides the Office of Insurance Regulation (OIR or Office) with authority to develop rules related to the regulation of Part XXII.

The bill does not have a fiscal impact on state or local revenues or local government expenditures. Insofar as a data call is created for the annual report required in Section 10 of the bill,¹ the OIR may experience an increase in expenditures related to the technology need. To the extent the requirements of Part XXII result in lower CPI premiums for mortgagors, the bill may have a positive direct economic impact on the private sector.

¹ The Office of Insurance Regulation (OIR), *Agency Analysis SB 410* (Jan. 31, 2023) (hereinafter cited as "OIR Agency Analysis of SB 410) (on file with Senate Committee on Agriculture, Environment, and General Government).

The bill has an effective date of July 1, 2023.

II. Present Situation:

Mortgages on Real Property

A mortgage is an agreement between a borrower and a lender that gives the lender the right to take the property if the borrower fails to pay the loan plus interest.² A mortgage is generally secured by a mortgage note, which is a note evidencing a loan for which real property has been offered as security.³ All mortgages require borrowers to maintain adequate homeowners' insurance on their property.⁴ Borrowers may fail to maintain the required insurance coverage for a variety of reasons, including cancellation or withdrawal of an insurer from the market.⁵ If the policy lapses and the borrower does not secure a replacement policy, most mortgages allow the lender to obtain insurance for the borrower and "force-place" it.⁶

Lender-placed Insurance (LPI)

A LPI policy⁷ is an insurance policy placed by a bank or mortgage servicer on a home when the homeowners' property insurance has lapsed or when the bank or mortgage servicer deems it insufficient.⁸ In recent years, there has been significant media attention on the rates charged for LPI policies and whether insurers and lenders are making excess profits on this line of business.⁹ LPI typically is more expensive than the insurance a borrower purchases on his or her own and provides more limited coverage.¹⁰ Concerns have also been raised about "reverse competition" stemming from the use of lender-place insurance because the lender chooses the coverage provider and amount, but the borrower must pay for the coverage.¹¹

In November 2020 order to address some of these concerns, the National Association of Insurance Commissioners (NAIC) issued a Real Property Lender-Placed Insurance Model Act (Model Act) that can be adopted by member states.¹² Its stated purpose includes creating a legal framework within which LPI on real property may be written in a particular state.¹³ The Model Act also contains provisions regarding terms of insurance policies, calculation of coverage and

² Consumer Financial Protection Bureau, *What is a mortgage?* [Mortgage answers | Consumer Financial Protection Bureau \(consumerfinance.gov\)](https://www.consumerfinance.gov/mortgage-answers/) (last visited March 27, 2023). The borrower and the lender are also referred to as the mortgagor and mortgagee, respectively.

³ Black's Law Dictionary (11th ed. 2019).

⁴ NAIC, *Lender-Placed Insurance*, <https://content.naic.org/cipr-topics/lender-placed-insurance> (last visited March 27, 2023) (hereinafter cited as "NAIC Lender-Placed Insurance")

⁵ *Id.*

⁶ *Id.*

⁷ LPI is also known as creditor-placed or force-placed insurance.

⁸ NAIC, *supra* note 3.

⁹ *Id.*; The Office of Insurance Regulation (OIR), *Agency Analysis SB 410* (Jan. 31, 2023) (hereinafter cited as "OIR Agency Analysis of SB 410") (on file with Senate Committee on Agriculture, Environment, and General Government).

¹⁰ *Id.*

¹¹ *Id.*

¹² NAIC Lender-Placed Insurance; the OIR *Agency Analysis of SB 410*.

¹³ The NAIC, *Real Property Lender-Placed Insurance Model Act*, Spring 2021, available at [Model Regulation Service—January 2006 \(naic.org\)](https://www.naic.org/model-regulation-service-january-2006) (last visited March 27, 2023) (hereinafter cited as "NAIC Model Act").

payment premiums, evidence of coverage, and filing, approval, and withdrawal of forms and rates, and penalties.¹⁴

Florida Laws

The Department of Financial Services and the Office of Insurance Regulation (OIR or Office) have general powers and duties, including, in part:

- Enforce the provisions of the Florida Insurance Code;
- Conduct investigations;
- Collect, propose, publish, and disseminate certain information; and
- Publish all orders.¹⁵

Collateral Protection Insurance

Florida law does not use the term LPI. Instead, it refers to collateral protection insurance (CPI), which is defined as:

[C]ommercial property insurance under which a creditor is the primary beneficiary and policyholder and which protects or covers an interest of the creditor arising out of a credit transaction secured by real or personal property. Initiation of such coverage is triggered by the mortgagor's failure to maintain insurance coverage as required by the mortgage or other lending document. Collateral protection insurance is not residential coverage.¹⁶

This definition applies to a limited number of provisions, including ss. 215.55, F.S. (relating to the Florida Hurricane Catastrophe Fund), 627.311, F.S. (relating to joint underwriting and joint reinsurers), and 627.351, F.S. (relating to insurance risk apportionment plans). Further, s. 627.062, F.S., relating to insurance rates, provides for categories or kinds of insurance and types of commercial lines risks are not subject to certain provisions in the subsection regulating rates.¹⁷ One category is nonresidential property but the provision explicitly excludes CPI.¹⁸

Review of Insurance Policy Forms and Rates

In general, an insurer may not use forms to issue insurance policies in the state unless the forms have been filed with, and approved by, the OIR.¹⁹ Once filed, the OIR has 30 days to review insurance forms.²⁰ At the end of the 30-day period, forms will be deemed approved unless they have been affirmatively approved or disapproved by OIR.²¹

Property and casualty insurers must also file a copy of rates, rating schedules, rating manuals, premium credits or discount schedules, and surcharge schedules, and changes to these

¹⁴ *Id.*

¹⁵ Section 627.307, F.S.

¹⁶ Section 627.6085, F.S.

¹⁷ Section 627.062(3)(d)1., F.S.

¹⁸ Section 627.062(3)(d)1.j., F.S.

¹⁹ Section 627.410(1), F.S.

²⁰ Section 627.410(2), F.S.

²¹ *Id.*

documents, for approval by the OIR.²² The OIR must review insurers' rate filings to determine whether rates are excessive, inadequate, or unfairly discriminatory.²³ In doing so, the OIR must consider factors including, but not limited to, the following:

- Past and prospective loss experience in and out of Florida.
- Past and prospective expenses.
- Degree of competition among insurers for particular risk to be insured.
- Investment income reasonably expected by the insurer.
- Reasonableness of the judgment reflected in the filing.
- Dividends, savings, or unabsorbed premium deposits allowed or returns to policyholders, members or subscribers in Florida.
- Adequacy of loss reserves.
- Cost of reinsurance.
- Trend factors.
- Conflagration and catastrophe hazards, if applicable.
- Projected hurricane losses.
- Projected flood losses.
- Reasonable margin for underwriting profit and contingencies.²⁴

Insurers may make rate filings with the OIR on a file and use, or use and file basis. If a filing is made on a file and use basis, the OIR has 90 days²⁵ to review and approve the filing before an insurer may use the filed rate.²⁶ In contrast, a use and file rate may be used before filing, but must be filed within 30 days of the effective date.²⁷ A use and file rate is still subject to review and disapproval by the OIR.²⁸

The office may also require an insurer to provide all information necessary to evaluate the condition of the company and the reasonableness of the filing according to the criteria for rates under s. 627.062, F.S.²⁹

Consent Orders

The OIR has disapproved rates of two entities that offer CPI, including Praetorian Insurance Company (Florida's second largest LPI provider) and American Securities Insurance

²² Section 627.062(2)(a), F.S.

²³ Section 627.062(1), F.S.

²⁴ Section 627.062(2)(b), F.S.

²⁵ For motor vehicle insurance OIR has 60 days to review the filing. See s. 627.0651, F.S.

²⁶ Section 627.062(2)(a)1., F.S.

²⁷ Section 627.062(2)(a)2., F.S.

²⁸ *Id.*

²⁹ Section 627.062(2)(f), F.S.

Company.³⁰ The OIR issued consent orders³¹ (“Consent Orders”) with respect to these two companies which required the companies to implement the following business practices prohibiting:

- The payment of commissions to a mortgage servicer on LPI policies obtained by that servicer;
- The payment of contingent commissions based on underwriting profitability or loss ratios;
- The issuance of LPI policies on mortgaged property serviced by an affiliate;
- The issuance of reinsurance on LPI policies with a captive insurer of any mortgage servicer;
- The provision of free or below-cost outsourced services to a mortgage servicer; and,
- The payment of any incentive to a mortgage servicer as an inducement to secure LPI business.³²

III. Effect of Proposed Changes:

Section 1 creates a new statutory part of chapter 627, F.S. (Part XXII),³³ entitled Collateral Protection Insurance (CPI), and substantially adopts the Model Act.

Section 2 creates s. 627.9901, F.S., to:

- Regulate CPI on real property;
- Create a legal framework for the writing of CPI on real property in Florida;
- Maintain the separation between lenders and services, and insurers and insurance agents; and
- Minimize the possibilities of unfair competition practices in the sale, placement, or solicitation and negotiation of CPI.

Section 3 creates s. 627.9902, F.S., to provide Part XXII applies to insurers and insurance agents engaged in transactions of CPI on real property. All CPI policies for mortgaged real property, including manufactured and mobile homes is subject to Part XXII except:

- Transactions involving extensions of credit primarily for business, commercial, or agricultural purposes;
- Insurance offered by a lender or servicer and elected by the mortgagor at the mortgagor’s option;

³⁰ Bogner, A., *Office Approves Praetorian Insurance Company’s Second Rate Filing for Lender-Placed Insurance* (Feb. 11, 2013) available at [FLOIR Press Release - Office Approves Praetorian Insurance Company’s Second Rate Filing for Lender-Placed Insurance](#) (last visited March 27, 2023); Bogner, A., *Office Disapproves American Security Insurance Company’s Lender-Placed Insurance Rate Filing and Issues Order to Decrease Rates by Approximately \$51 million*, (Oct. 8, 2013) available at [FLOIR Press Release - Office Disapproves American Security Insurance Company’s Lender-Placed Insurance Rate Filing and Issues Order to Decrease Rates by Approximately \\$51 Million](#) (last visited March 27, 2023).

³¹ *Id.*; See the OIR, *Consent Order* (Oct. 7, 2013), available at [AmericanSecurity141841-13-CO.pdf \(floir.com\)](#) (last visited March 27, 2023) (hereinafter cited as “Consent Order”).

³² *Id.* (noting these prohibitions and requirements shall be effective one (1) year from the date of the Consent Order, if certain conditions are met).

³³ The new statutory chapter part will be part XXII of chapter 627, F.S., and will contain ss. 627.9901-627.9913, F.S. (except for s. 627.9910, F.S.). It is similar to the NAIC Model Act, but is drafted in a way that will fit appropriately within the Florida Insurance Code. Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the Florida Insurance Code. Section 624.01, F.S.

- Insurance purchased by a lender or servicer on real-estate owned property;³⁴ and
- Insurance for which no specific charge is made to the mortgagor or mortgagor's account.

Section 4 creates s. 627.9902, F.S., to define statutory definitions of CPI and several related terms. CPI has the same meaning as the definition in s. 624.6085, F.S., except the term applies only to mortgaged real property and not to personal property. Section 624.6085, F.S., defines CPI as commercial property insurance under which a creditor is the primary beneficiary and policyholder, and which protects or covers the creditor's interest arising out of a credit transaction secured by the real property.³⁵ CPI is triggered by the mortgagor's failure to maintain insurance coverage required by the mortgage or other lending document.

Individual CPI is defined in the bill as coverage for individual real property evidenced by a certificate of coverage under a master CPI policy or a CPI policy for individual real property. A master CPI policy is a group policy issued to a lender or servicer providing coverage for all loans in the lender's or servicer's loan portfolio, as needed.

Section 5 creates s. 627.9904, F.S., and provides CPI becomes effective no earlier than the date of lapse of insurance on mortgaged real property. Individual CPI terminates on the earliest of the following dates:

- The date on which insurance acceptable under the mortgage agreement becomes effective.
- The date on which the applicable real property no longer serves as collateral for a mortgage loan.
- Such other date specified by the individual policy or certificate of insurance.
- Such other date as specified by the lender or servicers.
- The termination date of the policy.

Section 6 creates s. 627.9905, F.S., and provides CPI coverage, and the calculation of the related premium, should be based on the replacement cost value of the real property serving as collateral, as best determined by the last known coverage amount. The last known coverage amount is the dwelling coverage amount specified in the most recent evidence of insurance coverage provided by the mortgagee. The bill requires that an insurer or insurance agent ask the insured, at least once, for the last known coverage amount. If the insurer or insurance agent cannot obtain the last known coverage amount from the insured or by another means, the CPI coverage and the calculation of the related premium may be based on the:

- Replacement cost of the real property serving as collateral as calculated by the insurer; or
- If the replacement cost is prohibited by other state or federal law, the unpaid principal balance of the mortgage loan.

In any event, a mortgagor must not be charged for CPI before the effective date of the CPI or for a term longer than the scheduled term of the CPI.

Section 7 creates s. 627.9906, F.S., and prohibits the following practices by insurers or insurance agents related to CPI:

³⁴ Real-estate owned property is often referred to as bank-owned property, and may be property that failed to sell during a foreclosure.

³⁵ This definition is similar to the definition of collateral protection insurance in s. 624.6085, F.S., discussed above, except that definition also includes coverage secured by personal property.

- Issuing CPI on mortgaged real property if the insurer or insurance agent or an affiliate of the insurer or insurance agent owns the real property or performs the servicing for, or owns the servicing rights to, the real property;
- Compensating a lender, insurer, investor, or servicer, including through the payment of commissions, on CPI policies issued by the insurer;
- Sharing CPI premium or risk with the lender, investor, or servicer that obtained the CPI.
- Offering contingent commissions, profit-sharing, or other payments dependent on profitability or loss ratios to any person affiliated with a servicer or the insurer in connection with CPI;
- Providing free or below-cost outsourced services to a lender, investor, or servicer and outsourcing its own functions to a lender, investor, or servicer at a rate above cost; and
- Making any payments, including, but not limited to, the payment of expenses to a lender, insurer, investor, or servicer to secure CPI business or related outsourced services.

Section 8 creates s. 627.9907, F.S., and provides this part may not be construed to authorize an insurance agent or insurer solely underwriting CPI to circumvent the requirements of Part XXII. Any requirement, limitation, or exclusion provided in Part XXII applies to an insurer or insurance agent involved in CPI.

Section 9 creates s. 627.9908, F.S., and requires proof of CPI is provided in an individual policy or certificate of insurance, which must be delivered to the mortgagor either by mail, in person, or electronically.³⁶ The individual policy or certificate of insurance must include all of the following information:

- Address and identification of the insured real property;
- Coverage amount, or amounts if multiple coverages are provided;
- Effective date of coverage;
- Term of coverage;
- Premium charged for the coverage;
- Contact information for filing a claim; and
- Complete description of the coverage provided.

Section 10 creates s. 627.9909, F.S., and provides, except as otherwise provided in Part XXII, rate and form filing requirements are subject to the Florida Insurance Code. The policy forms and certificates of insurance for CPI, and related premium rates, must be reviewed and approved by the OIR as provided in s. 627.062, F.S. As part of the rate review, the OIR must also evaluate whether expenses included by the insurer in the rates are appropriate. The bill requires insurers subject to Part XXII refile CPI insurance rates at least once every four years. All insurers writing CPI must have separate rates for CPI and voluntary insurance obtained by a mortgage servicer on real-estate owned property.

An insurer must include its experience in existing programs in the associated filings upon the introduction of a new CPI program. Part XXII does not limit an insurer's discretion, as actuarially appropriate, to distinguish different terms, conditions, exclusions, eligibility criteria, or other unique or different characteristics. An insurer may also rely on models, where

³⁶The Uniform Electronic Transaction Act, s. 668.50, F.S., provides the requirements for electronic delivery.

actuarially acceptable, or in the case of flood filings where applicable experience is not credible, on National Flood Insurance Program data.

By April 1 each year, each insurer with at least \$100,000 in direct written premium for CPI in Florida during the prior calendar year must report the following information to the OIR for the prior calendar year:

- Actual loss ratio;³⁷
- Earned premiums;
- Any aggregate schedule rating debit or credit to earned premium;
- Itemized expenses;
- Paid losses; and
- Loss reserves, including case reserves and reserves for incurred but not reported losses.³⁸

The report must be separately produced for each CPI program and presented on both an individual-jurisdiction and countrywide basis. Except for CPI for flood insurance, an insurer experiencing an annual rate loss ratio of less than 35 percent in any collateral protection insurance program for two consecutive years, must submit a rate filing, either adjusting its rates or supporting their continuance, to the office no more than 90 days after the submission of the data required.

Section 11 creates s. 627.9911, F.S., and provides the OIR with the rights and powers to enforce Part XXII, and all proceedings brought pursuant to Part XXII will be conducted under the Florida Administrative Procedures Act.³⁹ Any penalties must be assessed in accordance with s. 624.4211, F.S.

Section 12 creates s. 627.9912, F.S., and provides the OIR with rulemaking authority so it may, after notice and hearing, adopt reasonable rules and regulations to implement and administer Part XXII.

Finally, **Section 13** creates s. 627.9913, F.S., and contains a severability clause so if any portion of Part XXII is held invalid, the remainder of the Part is not affected.

The OIR has reported the “majority of insurers in Florida are already in compliance with the requirements of the proposed law,” but smaller companies that are not yet complying with the model provisions could be impacted by the provisions of the bill.⁴⁰

Section 14 provides the bill is effective July 1, 2023.

³⁷ Loss ratio is an insurer’s actual claims paid plus loss adjustment expenses divided by total earned premiums.

³⁸ Incurred but not reported losses are estimated liabilities from losses that have taken place and not yet been reported to insurers as claims.

³⁹ The Florida Administrative Procedures Act is ch. 120, F.S.

⁴⁰ The Office of Insurance Regulation, *Agency Analysis SB 410* (Jan. 31, 2023) (on file with Senate Committee on Agriculture, Environment and General Government).

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

To the extent the requirements of Part XXII result in lower collateral protection insurance premiums for mortgagors, the bill may have a positive direct economic impact on the private sector.

C. Government Sector Impact:

The bill does not impact state revenues. However, the Office of Insurance Regulation (OIR) indicates a data call would need to be created for the annual report required in Section 10 of the bill,⁴¹ which may increase technology expenditures within the OIR.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁴¹ *Id.*

VIII. Statutes Affected:

This bill creates part XXII of ch. 627, F.S., including ss. 627.9901, 627.9902, 627.9903, 627.9904, 627.9905, 627.9906, 627.9907, 627.9908, 627.9909, 627.9911, 627.9912, and 627.9913 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 Senator Garcia

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1 A bill to be entitled
 2 An act relating to collateral protection insurance;
 3 creating part XXII of ch. 627, F.S., entitled
 4 "Collateral Protection Insurance"; creating s.
 5 627.9901, F.S.; providing legislative purpose;
 6 creating s. 627.9902, F.S.; providing applicability;
 7 creating s. 627.9903, F.S.; defining terms; creating
 8 s. 627.9904, F.S.; specifying requirements for
 9 collateral protection insurance policy terms;
 10 providing a restriction on insurance charges made to
 11 mortgagors; creating s. 627.9905, F.S.; providing for
 12 the calculation of collateral protection insurance
 13 coverages and premiums; requiring certain excess
 14 replacement cost coverage to be paid to the mortgagor;
 15 prohibiting insurers from writing collateral
 16 protection insurance having certain premium rates;
 17 creating s. 627.9906, F.S.; specifying prohibited
 18 practices by insurers and insurance agents relating to
 19 collateral protection insurance; creating s. 627.9907,
 20 F.S.; providing construction relating to
 21 noncircumvention; creating s. 627.9908, F.S.;
 22 providing requirements for the delivery and contents
 23 of policies or certificates of collateral protection
 24 insurance; creating s. 627.9909, F.S.; specifying
 25 requirements for the filing of policy forms and rates;
 26 requiring certain insurers to file specified annual
 27 reports with the Office of Insurance Regulation;
 28 providing construction; creating s. 627.9911, F.S.;
 29 specifying the office's authority to enforce the

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30 provisions of the part; specifying applicable
 31 provisions for proceedings and for assessing
 32 penalties; creating s. 627.9912, F.S.; authorizing the
 33 Financial Services Commission to adopt rules; creating
 34 s. 627.9913, F.S.; providing severability; providing
 35 an effective date.
 36

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

38
 39 Section 1. Part XXII of chapter 627, Florida Statutes,
 40 consisting of ss. 627.9901-627.9913, Florida Statutes, is
 41 created and entitled "Collateral Protection Insurance."

42 Section 2. Section 627.9901, Florida Statutes, is created
 43 to read:

44 627.9901 Purpose.—The purpose of this part is to:

45 (1) Promote the public welfare by regulating collateral
 46 protection insurance on real property.

47 (2) Create a legal framework within which collateral
 48 protection insurance on real property may be written in this
 49 state.

50 (3) Help maintain the separation between the lenders and
 51 servicers and the insurers and insurance agents.

52 (4) Minimize the possibility of unfair competitive
 53 practices in the sale, placement, solicitation, and negotiation
 54 of collateral protection insurance.

55 Section 3. Section 627.9902, Florida Statutes, is created
 56 to read:

57 627.9902 Scope.—

58 (1) This part applies to insurers and insurance agents

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engaged in any mortgage transaction involving collateral protection insurance.

(2) All collateral protection insurance written in connection with mortgaged real property, including manufactured and mobile homes, is subject to the provisions of this part, except:

(a) Insurance associated with mortgage loans or other extensions of credit made primarily for business, commercial, or agricultural purposes.

(b) Insurance offered by the lender or servicer and elected by the mortgagor at the mortgagor's option.

(c) Insurance purchased by a lender or servicer on real estate owned property.

(d) Insurance for which no specific charge is made to the mortgagor or the mortgagor's account.

Section 4. Section 627.9903, Florida Statutes, is created to read:

627.9903 Definitions.—As used in this part, the term:

(1) "Affiliate" has the same meaning as in s. 624.10.

(2) "Collateral protection insurance" has the same meaning as in s. 624.6085, provided that for purposes of this part, the term applies only to mortgaged real property and not to personal property.

(3) "Individual collateral protection insurance" means coverage for individual real property evidenced by a certificate of coverage under a master collateral protection insurance policy or a collateral protection insurance policy for individual real property.

(4) "Insurance agent" has the same meaning as the term

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"agent" in s. 626.015.

(5) "Insurer" has the same meaning as in s. 624.03, provided that for purposes of this part, the term is limited to an insurer, or an affiliate of the insurer, authorized to issue collateral protection insurance on mortgaged real property in this state.

(6) "Investor" means a person or an entity, or an affiliate thereof, holding a beneficial interest in loans secured by real property.

(7) "Lapse" means the date on which a mortgagor has failed to comply with a mortgage agreement's requirements to maintain valid and sufficient insurance upon mortgaged real property.

(8) "Lender" means a person or an entity, or an affiliate thereof, making loans secured by an interest in real property.

(9) "Loss ratio" means the ratio of incurred losses to earned premium.

(10) "Master collateral protection insurance policy" means a group policy issued to a lender or servicer which provides coverage for all loans in the lender's or servicer's loan portfolio as needed.

(11) "Mortgage agreement" means the written document setting forth an obligation or a liability of any kind secured by a lien on real property and due from, owing by, or incurred by a mortgagor to a lender on account of a mortgage loan, which document includes the security agreement, the deed of trust, other documents of similar effect, and any other document incorporated by reference.

(12) "Mortgage loan" has the same meaning as in s. 494.001(25)(a).

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(13) "Mortgagee" means a person who holds mortgaged real property as security for repayment of a mortgage agreement.

(14) "Mortgagor" means a person who is obligated on a mortgage loan pursuant to a mortgage agreement.

(15) "Real estate owned property" means property owned or held by a lender or servicer as a result of a foreclosure under the related mortgage agreement or acceptance of a deed in lieu of foreclosure.

(16) "Replacement cost value" means the estimated cost to replace covered property at the time of loss or damage without deduction for depreciation. Replacement cost value is not market value but is the cost to replace covered property to its pre-loss condition.

(17) "Servicer" means a person or an entity, or an affiliate thereof, contractually obligated to service one or more mortgage loans for a lender or an investor. The term includes an entity involved in subservicing arrangements.

Section 5. Section 627.9904, Florida Statutes, is created to read:

627.9904 Term of insurance policy.—

(1) Collateral protection insurance must become effective no earlier than the date of lapse of insurance upon mortgaged real property subject to the terms of a mortgage agreement or any state or federal law requiring the same.

(2) Individual collateral protection insurance must terminate on the earliest of the following dates:

(a) The date on which insurance acceptable under the mortgage agreement becomes effective, subject to the mortgagor providing sufficient evidence of such acceptable insurance.

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(b) The date on which the applicable real property no longer serves as collateral for a mortgage loan pursuant to a mortgage agreement.

(c) Such other date as specified by the individual policy or certificate of insurance.

(d) Such other date as specified by the lender or servicer.

(e) The termination date of the policy.

(3) An insurance charge may not be made to a mortgagor for collateral protection insurance before the effective date of the collateral protection insurance or for a term longer than the scheduled term of the collateral protection insurance.

Section 6. Section 627.9905, Florida Statutes, is created to read:

627.9905 Calculation of coverage and payment of premiums.—

(1) Any collateral protection insurance coverage, and the subsequent calculation of premium, should be based upon the replacement cost value of the property, which is determined as:

(a) If known to the lender or servicer, the last known coverage amount, which is the dwelling coverage amount set forth in the most recent evidence of insurance coverage provided by the mortgagee. The insurer shall inquire of the insured at least once as to the last known coverage amount. If the insurer is unable to obtain the last known coverage amount from the insured or in another manner, the insurer may proceed according to paragraph (b) or paragraph (c), as applicable.

(b) If the last known coverage amount is unknown, the replacement cost of the property serving as collateral, as calculated by the insurer, unless the use of replacement cost for this purpose is prohibited by other state or federal law.

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(c) If the last known coverage amount is unknown and the replacement cost is not available or its use is prohibited by other state or federal law, the unpaid principal balance of the mortgage loan.

(2) In the event of a covered loss, any replacement cost coverage provided by an insurer in excess of the unpaid principal balance of the mortgage loan must be paid to the mortgagor.

(3) An insurer may not write collateral protection insurance for which the premium rate differs from that determined by the schedules of the insurer on file with the office as of the effective date of any such policy.

Section 7. Section 627.9906, Florida Statutes, is created to read:

627.9906 Prohibited practices.—

(1) An insurer or insurance agent may not issue collateral protection insurance on mortgaged property that the insurer or insurance agent, or an affiliate thereof, owns, performs the servicing for, or owns the servicing right to.

(2) An insurer or insurance agent may not compensate, including through the payment of commissions to, a lender, an insurer, an investor, or a servicer on collateral protection property insurance policies issued by the insurer.

(3) An insurer or insurance agent may not share collateral protection insurance premium or risk with the lender, investor, or servicer that obtained the collateral protection insurance.

(4) An insurer or insurance agent may not offer contingent commissions, profit sharing, or other payments dependent upon profitability or loss ratios to any person affiliated with a

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servicer or the insurer in connection with collateral protection insurance.

(5) An insurer may not provide free or below-cost outsourced services to lenders, investors, or servicers or outsource its own functions to lenders, insurance agents, investors, or servicers on an above-cost basis.

(6) An insurer or insurance agent may not make any payments, including, but not limited to, the payment of expenses to a lender, an insurer, an investor, or a servicer, for the purpose of securing collateral protection insurance business or related outsourced services.

Section 8. Section 627.9907, Florida Statutes, is created to read:

627.9907 Noncircumvention.—This part may not be construed to authorize an insurance agent or insurer solely underwriting collateral protection insurance to circumvent the requirements of this part. Any requirement, limitation, or exclusion provided in this part applies to an insurer or insurance agent involved in collateral protection insurance.

Section 9. Section 627.9908, Florida Statutes, is created to read:

627.9908 Evidence of coverage.—Collateral protection insurance must be set forth in an individual policy or certificate of insurance. A copy of the individual policy, certificate of insurance, or other evidence of insurance coverage must be mailed, first-class mailed, or delivered in person to the last known address of the mortgagor, or delivered in accordance with s. 668.50. Notwithstanding any other information required by general law or by rule, the individual

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policy or certificate of insurance coverage must include all of the following information:

- (1) The address and identification of the insured property.
- (2) The coverage amount, or amounts if multiple coverages are provided.
- (3) The effective date of the coverage.
- (4) The term of coverage.
- (5) The premium charge for the coverage.
- (6) Contact information for filing a claim.
- (7) A complete description of the coverage provided.

Section 10. Section 627.9909, Florida Statutes, is created to read:

627.9909 Filing, approval, and withdrawal of forms and rates.—

(1) Except as otherwise provided in this part, all policy forms and certificates of insurance to be delivered or issued for delivery in this state are subject to the applicable provisions of s. 627.410, and the schedules of premium rates pertaining thereto are subject to the applicable provisions of s. 627.062.

(2) With respect to any analysis of rates in accordance with s. 627.062(1), the analysis must also include a determination as to whether expenses included by the insurer in the rate are appropriate.

(3) Notwithstanding s. 627.0645, insurers subject to this part shall refile collateral protection property insurance rates at least once every 4 years.

(4) All insurers writing collateral protection insurance shall have separate rates for collateral protection insurance

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and voluntary insurance obtained by a mortgage servicer on real estate owned property.

(5) Upon the introduction of a new collateral protection insurance program, the insurer shall reference its experience in existing programs in the associated filings. This part does not limit an insurer's discretion, as actuarially appropriate, to distinguish different terms, conditions, exclusions, eligibility criteria, or other unique or different characteristics. Moreover, an insurer may, where actuarially acceptable, rely upon models or, in the case of flood filings where applicable experience is not credible, on National Flood Insurance Program data.

(6) By April 1 of each year, each insurer with at least \$100,000 in direct written premium for collateral protection insurance in this state during the prior calendar year shall report to the office the following information for the prior calendar year:

(a) Actual loss ratio.

(b) Earned premium.

(c) Any aggregate schedule rating debit or credit to earned premium.

(d) Itemized expenses.

(e) Paid losses.

(f) Loss reserves, including case reserves and reserves for incurred but not reported losses.

The report must be separately produced for each collateral protection insurance program and presented on both an individual-jurisdiction and countrywide basis.

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291 (7) Except in the case of collateral protection insurance
 292 covering the peril of flood, to which this subsection does not
 293 apply, if an insurer experiences an annual loss ratio of less
 294 than 35 percent in any collateral protection insurance program
 295 for 2 consecutive years, it must submit a rate filing, either
 296 adjusting its rates or supporting their continuance, to the
 297 office no more than 90 days after the submission of the data
 298 required in paragraph (6) (f).

299 (8) Except as specifically set forth in this section, rate
 300 and form filing requirements are subject to the Florida
 301 Insurance Code.

302 Section 11. Section 627.9911, Florida Statutes, is created
 303 to read:

304 627.9911 Enforcement; proceedings; penalties.—The office
 305 has all rights and powers to enforce the provisions of this part
 306 as provided by s. 624.307. All proceedings must be conducted in
 307 accordance with chapter 120. Any penalty must be assessed in
 308 accordance with s. 624.4211.

309 Section 12. Section 627.9912, Florida Statutes, is created
 310 to read:

311 627.9912 Rulemaking.—The commission may adopt rules to
 312 administer this part.

313 Section 13. Section 627.9913, Florida Statutes, is created
 314 to read:

315 627.9913 Severability.—If any provision of this part or its
 316 application to any person or circumstance is held invalid, the
 317 invalidity does not affect other provisions or applications of
 318 this part which can be given effect without the invalid
 319 provision or application, and to this end the provisions of this

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320 part are severable.

321 Section 14. This act shall take effect July 1, 2023.



The Florida Senate

Committee Agenda Request

To: Senator Jason Brodeur, Chair
Appropriations Committee on Agriculture, Environment, and General
Government

Subject: Committee Agenda Request

Date: March 22, 2023

I respectfully request that **Senate Bill # 410**, relating to Collateral Protection Insurance, be placed on the:

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

A handwritten signature in dark ink, appearing to read "Ileana Garcia", is written over a horizontal line.

Senator Ileana Garcia
Florida Senate, District 36

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 Appropriations Committee on Agriculture, Environment, and General Government

BILL: CS/SB 580

INTRODUCER: Banking and Insurance Committee and Senator Gruters

SUBJECT: Consumer Finance Loans

DATE: April 17, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Sanders</u>	<u>Betta</u>	<u>AEG</u>	<u>Favorable</u>
3.	<u> </u>	<u> </u>	<u>FP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 580 revises laws governing consumer finance loans, which are loans of \$25,000 or less for which a lender charges an interest rate greater than 18 percent per annum. The Florida Consumer Finance Act (Act) in ch. 516, F.S., provides an exemption from Florida's prohibition against usurious contracts, under which any interest rate greater than 18 percent per annum is prohibited.

Current law limits consumer finance loan interest rates to no more than 30 percent per annum, computed on the first \$3,000 of the principal amount; 24 percent per annum on that part of the principal amount exceeding \$3,000 and up to \$4,000; and 18 percent per annum on that part of the principal amount exceeding \$4,000 and up to \$25,000. The bill increases the maximum interest rate that may be charged to 36 percent per annum.

The bill increases the number of days a payment must be in default before a delinquency charge may be imposed from 10 days in default to 12 days in default.

The bill revises the licensure process to allow a single licensure application for the principle place of business and all branches. The bill defines a "branch" as any location, other than a licensee's principal place of business, at which a licensee operates or conducts consumer finance loan business or controls for the purpose of conducting consumer finance loan business.

The bill requires consumer finance lenders, in any county designated in a Federal Emergency Management Agency (FEMA) major disaster declaration, to suspend for 90 days after the initial date of such declaration, the following:

- The application of delinquency charges for payments in default for at least 10 days;
- Repossessions of collateral pledged to a consumer finance loan; and
- The filing of civil actions for the collection of amounts owed under a consumer finance loan.

The bill also requires consumer finance lenders to:

- Provide notice to the Office of Financial Regulation (OFR) of any assistance program offered by the lender to borrowers impacted by a disaster subject to a FEMA major disaster declaration; and
- Annually report information to the OFR detailing loans issued by the lender during the previous calendar year.

The OFR estimates a recurring reduction of \$5,000 in revenues but the loss is negligible and would not impact operations. Furthermore, the reduction in staff time reviewing full license applications for each additional location when replaced with a branch office license would likely offset any loss in revenue. In addition, the changes proposed within the bill would require the OFR to update its internal licensing system to create a branch license and annual reporting functionality. The cost of such technology changes would be negligible and can be absorbed within existing resources.

The effective date of the bill is July 1, 2023.

II. Present Situation:

The OFR's Division of Consumer Finance (Division) licenses and regulates non-depository financial service entities and individuals, and conducts investigations of licensed entities to determine their compliance with Florida law.¹ One such product regulated by the OFR is consumer finance loans.

A consumer finance loan is a loan of money, credit, goods, or interests valued at \$25,000 or less with permitted interest rates between 18 and 30 percent per year.² A consumer finance loan is not a traditional loan made by a bank, credit union, or similar institution. The consumer finance lenders do not accept deposits, and earn their revenue from the fees charged on the loans they make.³

¹ Fla. Office of Fin. Reg., *Division of Consumer Finance: What We Do*, <https://flofr.gov/sitePages/DivisionOfConsumerFinance.htm> (last visited April 6, 2023).

² Sections 516.01(2) and 516.031(1), F.S. *See also*, Fla. Office of Fin. Reg., *Consumer Finance Companies*, <https://flofr.gov/sitePages/ConsumerFinanceCompanies.htm> (last visited April 6, 2023).

³ Naveen Reddy, *What are the Primary Functions of Finance Companies?* (Nov. 9, 2020), <https://smallbusiness.chron.com/primary-functions-finance-companies-40480.html> (last visited April 6, 2023). Also note, payday lenders are separately regulated pursuant to ch. 560, F.S.

Licensure

Entities that engage in the business of making consumer finance loans must be licensed by the OFR pursuant to the Florida Consumer Finance Act, ch. 516, F.S. (“the Act”). Each location of a consumer finance lender must be separately licensed, even if the separate locations are operated by the same business entity.⁴

A consumer finance lender applicant must submit an application fee of \$625 and an investigation fee of \$200 with its application for licensure.⁵ Consumer finance lender licenses granted under the Act must be renewed every two years, at which time the licensee must pay a \$625 biennial license fee.⁶

The Act does not apply to persons doing business under state or federal laws governing banks, savings banks, trust companies, building and loan associations, credit unions, or industrial loan and investment companies.⁷

Permissible Interest Rates and Fees

Florida’s prohibition on usury⁸ generally prohibits⁹ interest rates in excess of 18 percent per annum simple interest on any loan, advance of money, line of credit, or forbearance.¹⁰ Licensed consumer finance lenders, however, may offer interest rates greater than 18 percent per annum simple interest, up to the following limits, which are based on the amount of the loan’s principal:¹¹

- 30 percent on the first \$3,000;
- 24 percent on principal above \$3,000 and up to \$4,000; and
- 18 percent on principal above \$4,000 and up to \$25,000.

The Act prohibits lenders from directly or indirectly charging borrowers additional fees as a condition to the grant of a loan, except for the following:¹²

- Up to \$25 for investigating the credit and character of the borrower;
- A \$25 annual fee on the anniversary date of each line-of-credit account;
- Brokerage fees for certain loans, title insurance, and appraisals of real property offered as security;

⁴ Sections 516.01(6) and 516.05(3), F.S.

⁵ Section 516.03(1), F.S. *See also*, Fla. Office of Fin. Reg., *Form OFR-516-01 Application for Consumer Finance Company License*, <https://flofr.gov/sitePages/documents/OFR-516-01.pdf> (last visited April 6, 2023).

⁶ Sections 516.03(1) and 516.05(1) & (2), F.S.

⁷ Section 516.02(4), F.S.

⁸ Usury is the act of lending money at an interest rate that is considered unreasonably high or that is higher than the rate permitted by law. Julia Kagan, Investopedia, *What is Usury? Definition, How It Works, Legality, and Example* (February 7, 2022), <https://www.investopedia.com/terms/u/usury.asp> (last visited April 11, 2023). *See ss.* 687.02 and 687.03, F.S.

⁹ Various lenders and credits licensed or chartered under the laws of the United States or specified chapters of the Florida Statutes may charge interest at the maximum rate of interest permitted by law for similar loans or extensions of credit. *See s.* 687.12(1), F.S.

¹⁰ Sections 687.02 and 687.12, F.S.

¹¹ Section 516.031(1), F.S.

¹² Section 516.031(3), F.S.

- Intangible personal property tax on the loan note or obligation, if secured by a lien on real property;
- Documentary excise tax and lawful fees for filing, recording, or releasing an instrument securing the loan;
- The premium for any insurance in lieu of perfecting a security interest otherwise required by the licensee in connection with the loan;
- Actual and reasonable attorney fees and court costs;
- Actual and commercially reasonable expenses for repossession, storing, repairing and placing in condition for sale, and selling of any property pledged as security;
- A delinquency charge for each payment in default for at least 10 days, if agreed upon in writing before the charge is imposed, of up to \$15 for payments due monthly, \$7.50 for payments due semimonthly or every two weeks, and five dollars if three payments are due in the same calendar month; and
- A bad check charge of up to \$20.

A consumer finance lender may offer optional credit property, credit life, and disability insurance at the borrower's expense via a deduction from the principal amount of the loan.¹³

Licensees under ch. 516, F.S., are expressly prohibited from charging prepayment penalties on consumer finance loans.¹⁴

Federal Emergency Management Agency

Robert T. Stafford Disaster Relief and Emergency Assistance Act¹⁵ (Stafford Act)

Under the Stafford Act, Public Law No. 100-107, the President of the United States is authorized to declare emergency and major disaster declarations. An emergency declaration can be declared for any occasion or instance the President determines federal assistance is needed. Emergency declarations supplement state and local or Indian tribal emergency service efforts, which include protection of lives, property, public health and safety or lessens the threat of a catastrophe in any part of the United States.¹⁶ Assistance provided under an emergency declaration may not exceed five million dollars. The President can declare a major disaster for any natural event¹⁷ which the President has determined has caused severe damage beyond the combined capabilities of state and local governments to respond.¹⁸ Such declaration of a major disaster provides federal

¹³ Section 516.35(2), F.S.

¹⁴ Section 516.031(6), F.S.

¹⁵ The Stafford Act constitutes the statutory authority for most Federal disaster response activities, especially as related to the FEMA and FEMA programs. PL 100-707 (November 23, 1988); amended the Disaster Relief Act of 1974, PL 93-288. <https://www.fema.gov/disaster/stafford-act> (last visited April 11, 2023).

¹⁶ FEMA, *How a Disaster Gets Declared, Emergency Declarations*, <https://www.fema.gov/disaster/how-declared> (last visited April 11, 2023).

¹⁷ Natural events include hurricanes, tornadoes, storms, high water, wind-driven water, tidal waves, tsunamis, earthquakes, volcanic eruptions, landslides, snowstorms, mudslides, or drought, or regardless of cause, fire, flood or explosion. FEMA, *How a Disaster Gets Declared, Major Disaster Declarations*, <https://www.fema.gov/disaster/how-declared#:~:text=The%20President%20can%20declare%20a,that%20the%20President%20determines%20has> (last visited April 11, 2023).

¹⁸ *Id.*

assistance programs to individuals and public infrastructure, including emergency and permanent work.¹⁹

Before such declaration can be determined, the governor of a state or Tribal Chief Executive of the affected Tribe must submit a request, within thirty days of the occurrence, to the President through a FEMA Regional Administrator. Federal assistance is determined by the Governor's or Tribal Chief's request and the needs identified during preliminary damage assessments.²⁰

III. Effect of Proposed Changes:

CS/SB 580 revises laws governing consumer finance loans, which are loans of \$25,000 or less for which a lender charges an interest rate greater than 18 percent per annum. The Florida Consumer Finance Act (Act) in ch. 516, F.S., provides an exemption from Florida's prohibition against usurious contracts, under which any interest rate greater than 18 percent per annum is prohibited.

Section 1 amends s. 516.01, F.S., to define the term "branch" to mean any location, other than a licensee's principal place of business, at which a licensee operates or conducts business under this chapter or which the licensee owns or controls for the purpose of conducting consumer finance loan business.

Section 2 amends s. 516.02, F.S., to clarify a person must not engage in the business of making consumer finance loans or operate a branch of such a business unless first authorized to do so.

Section 3 amends s. 516.03, F.S., to revise the licensure process to allow a single licensure application for the principal place of business and all branches. The bill provides applications for a license for the principal place of business to be accompanied by a nonrefundable investigation fee of \$200.

Section 4 amends s. 516.031, F.S., to increase the maximum interest rate that may be charged to 36 percent per annum. Current law limits consumer finance loan interest rates to no more than 30 percent per annum, computed on the first \$3,000 of the principal amount; 24 percent per annum on that part of the principal amount exceeding \$3,000 and up to \$4,000; and 18 percent per annum on that part of the principal amount exceeding \$4,000 and up to \$25,000.

The bill removes language related to calculation of two or more interest rates applied to a principal amount.

Section 4 also increases the number of days a payment must be in default before a delinquency charge may be imposed from 10 days in default to 12 days in default.

Relating to disaster relief and suspension of penalties, **Section 5** amends s. 516.15, F.S., and **Section 7** creates s. 516.39, F.S., to require consumer finance lenders, in any county designated

¹⁹ *Id.*

²⁰ *Id.*

in a FEMA major disaster declaration, to suspend the following for 90 days after the initial date of such declaration:

- The application of delinquency charges for payments in default for at least 10 days;
- Repossessions of collateral pledged to a consumer finance loan; and
- The filing of civil actions for the collection of amounts owed under a consumer finance loan.

The bill also requires consumer finance lenders to provide notice to the OFR of any assistance program offered by the lender to borrowers impacted by a disaster subject to a FEMA major disaster declaration.

Section 6 creates s. 516.38, F.S., to require consumer finance licensees to annually report, by March 15, and beginning March 14, 2024, aggregated and anonymized data that does not reference any borrower's nonpublic personal information to the OFR detailing the loans issued by the lender during the previous calendar year. The report must include:

- The number of locations held by the licensee as of December 31;
- The number of loan originations by the licensee under all licenses;
- The total dollar amount of loans and the number of loans outstanding by the licensee as of December 31;
- The total number of loans in which the licensee holds a security interest in collateral as of December 31;
- The total number of unsecured loans as of December 31;
- The total number of loans, separated by principal amount, in the following ranges as of December 31:
 - Up to and including \$5,000;
 - \$5,001 to \$10,000;
 - \$10,001 to \$15,000;
 - \$15,001 to \$20,000; and
 - \$20,001 to \$25,000;
- The total number and amount of loans charged off as of December 31; and
- The total dollar amount of loans and the number of loans with delinquency status listed as:
 - Current or less than 30 days past due;
 - From 30 to 59 days past due;
 - From 60 to 89 days past due; and
 - At least 90 days past due.

Furthermore, licensees claiming any information submitted in the annual report contains a trade secret must submit to the OFR an affidavit and designate the information claimed to be a trade secret in accordance with s. 655.0591, F.S. The OFR may publish a report using the annual report data, provided all data published in the report is anonymized and aggregated from all licensees.

Section 8 reenacts s. 516.19, F.S., relating to penalties, to incorporate amendments made to ss. 516.02 and 516.031, F.S.

Section 9 provides an effective date of July 1, 2023.

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

None.

B. Public Records/Open Meetings Issues:

The bill allows the OFR to publish a report of information submitted by consumer finance lenders detailing their lending activities during the prior calendar year, “provided that all data published in the report is anonymized and aggregated from all licensees.” However, the lack of a public records exemption related to the reports submitted by insurers may result in the OFR having to provide the reports of individual lenders to a person making such a public records request. The report in each consumer finance lender’s report to the OFR could receive trade secret protection to the extent the lender, pursuant to s. 655.0591, F.S., claims a trade secret and is successful in obtaining a declaratory judgment from a circuit court that the documents in question constitute protected trade secrets.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

The bill revises the licensure process for consumer finance companies to allow a single licensure application for the principle place of business and all branches, thereby potentially reducing application and investigative fees. A fee bill is not anticipated.

B. Private Sector Impact:

The bill may result in more consumer finance loans being issued by Florida-licensed consumer finance lenders to borrowers who cannot currently qualify for loans given the current interest rate limits. However, such borrowers will be subject to greater interest payments than are allowed under current law.

Applicants for the new branch office license will no longer be required to pay the \$200 background investigation fee for each additional location. This may result in applicants saving up to \$5,000 in reduced fees per fiscal year.²¹

C. Government Sector Impact:

The bill proposes to create a branch license in lieu of a full license for each additional location of a licensee, which will not include the \$200 background investigation fee, resulting in a fee reduction. The OFR estimates a recurring reduction of \$5,000 in revenues but the loss is negligible and would not impact operations. Furthermore, the reduction in staff time reviewing full license applications for each additional location when replaced with a branch office license would likely offset any loss in revenue.²²

The changes proposed within the bill would require the OFR to update its internal licensing system to create a branch license and annual reporting functionality. The cost of such technology changes would be negligible and can be absorbed within existing resources.²³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 516.01, 516.02, 516.03, 516.031, and 516.15.

This bill creates the following sections of the Florida Statutes: 516.38 and 516.39.

This bill reenacts the following sections of the Florida Statutes: 516.19.

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 29 2023:

The committee substitute clarifies what constitutes an assistance program offered by a consumer finance lender in response to a disaster subject to a FEMA major disaster declaration, requires additional reporting regarding the length of loan delinquencies, and

²¹ Office of Financial Regulation, *2023 Agency Legislative Bill Analysis of SB 580*, at pg. 5, February 2023 (on file with the Senate Banking and Insurance Committee).

²² *Id* at pg. 5.

²³ *Id* at pg. 6.

clarifies the application of the bill's requirement that consumer finance lenders suspend for 90 days after a FEMA major disaster declaration the application of delinquency charges, collateral repossessions, and civil actions for collections.

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 Gruters

597-03292-23

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1 A bill to be entitled
 2 An act relating to consumer finance loans; reordering
 3 and amending s. 516.01, F.S.; defining the term
 4 "branch"; amending s. 516.02, F.S.; prohibiting a
 5 person from operating a branch of a business making
 6 consumer finance loans before obtaining a license from
 7 the Office of Financial Regulation; amending s.
 8 516.03, F.S.; specifying application fees for branch
 9 licenses; revising the applicability of investigation
 10 fees; making a technical change; amending s. 516.031,
 11 F.S.; revising the maximum interest rate and the
 12 calculation of interest rates on consumer finance
 13 loans; revising the minimum amount of time before
 14 which a delinquency charge for each payment in default
 15 may be imposed; amending s. 516.15, F.S.; requiring
 16 licensees offering an assistance program to borrowers
 17 after a federally declared major disaster to send a
 18 specified notice to the office within a certain
 19 timeframe; providing construction; creating s. 516.38,
 20 F.S.; requiring licensees to file annual reports with
 21 the office; providing for rulemaking by the Financial
 22 Services Commission; specifying requirements for the
 23 reports; providing requirements for a licensee
 24 claiming that submitted information contains a trade
 25 secret; authorizing the office to publish a report in
 26 a certain manner; creating s. 516.39, F.S.; requiring
 27 certain licensees to suspend specified actions for a
 28 certain timeframe after a federally declared disaster;
 29 reenacting s. 516.19, F.S., relating to penalties, to

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

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30 incorporate the amendments made to ss. 516.02 and
 31 516.031, F.S., in references thereto; providing an
 32 effective date.

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

36 Section 1. Section 516.01, Florida Statutes, is reordered
 37 and amended to read:

38 516.01 Definitions.—As used in this chapter, the term:

39 (1) "Branch" means any location, other than a licensee's
 40 principal place of business, at which a licensee operates or
 41 conducts business under this chapter or which the licensee owns
 42 or controls for the purpose of conducting business under this
 43 chapter.

44 (3)(1) "Consumer finance borrower" or "borrower" means a
 45 person who has incurred either direct or contingent liability to
 46 repay a consumer finance loan.

47 (4)(2) "Consumer finance loan" means a loan of money,
 48 credit, goods, or choses in action, including, except as
 49 otherwise specifically indicated, provision of a line of credit,
 50 in an amount or to a value of \$25,000 or less for which the
 51 lender charges, contracts for, collects, or receives interest at
 52 a rate greater than 18 percent per annum.

53 (2)(3) "Commission" means the Financial Services
 54 Commission.

55 (9)(4) "Office" means the Office of Financial Regulation of
 56 the commission.

57 (6)(5) "Interest" means the cost of obtaining a consumer
 58 finance loan and includes any profit or advantage of any kind

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whatsoever that a lender may charge, contract for, collect, receive, or in anywise obtain, including by means of any collateral sale, purchase, or agreement, as a condition for a consumer finance loan. Charges specifically permitted by this chapter, including commissions received for insurance written as permitted by this chapter, shall not be deemed interest.

~~(7)~~~~(6)~~ "License" means a permit issued under this chapter to make and collect loans in accordance with this chapter at a single place of business.

~~(8)~~~~(7)~~ "Licensee" means a person to whom a license is issued.

~~(5)~~~~(4)~~ "Control person" means an individual, partnership, corporation, trust, or other organization that possesses the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. A person is presumed to control a company if, with respect to a particular company, that person:

(a) Is a director, general partner, or officer exercising executive responsibility or having similar status or functions;

(b) Directly or indirectly may vote 10 percent or more of a class of a voting security or sell or direct the sale of 10 percent or more of a class of voting securities; or

(c) In the case of a partnership, may receive upon dissolution or has contributed 10 percent or more of the capital.

Section 2. Subsection (1) of section 516.02, Florida Statutes, is amended to read:

516.02 Loans; lines of credit; rate of interest; license.—

(1) A person must not engage in the business of making

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consumer finance loans or operate a branch of such business unless she or he is authorized to do so under this chapter or other statutes and unless the person first obtains a license from the office.

Section 3. Subsection (1) of section 516.03, Florida Statutes, is amended to read:

516.03 Application for license; fees; etc.—

(1) APPLICATION.—Application for a license to make loans under this chapter shall be in the form prescribed by rule of the commission. The commission may require each applicant to provide any information reasonably necessary to determine the applicant's eligibility for licensure. The applicant shall also provide information that the office requires concerning any officer, director, control person, member, partner, or joint venturer of the applicant or any person having the same or substantially similar status or performing substantially similar functions or concerning any individual who is the ultimate equitable owner of a 10-percent or greater interest in the applicant. The office may require information concerning any such applicant or person, including, but not limited to, his or her full name and any other names by which he or she may have been known, age, social security number, residential history, qualifications, educational and business history, and disciplinary and criminal history. The applicant must provide evidence of liquid assets of at least \$25,000 or documents satisfying the requirements of s. 516.05(10). At the time of making such application, the applicant shall pay to the office a nonrefundable biennial license fee of \$625 for the principal place of business and for each branch application filed.

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Applications for a license for the principal place of business,
~~except for applications to renew or reactivate a license,~~ must
 also be accompanied by a nonrefundable investigation fee of
 \$200. An application is considered received for purposes of s.
 120.60 upon receipt of a completed application form as
 prescribed by commission rule, a nonrefundable application fee
 of \$625, and any other fee prescribed by law. The commission may
 adopt rules requiring electronic submission of any form,
 document, or fee required by this chapter ~~act~~ if such rules
 reasonably accommodate technological or financial hardship. The
 commission may prescribe by rule requirements and procedures for
 obtaining an exemption due to a technological or financial
 hardship.

Section 4. Subsection (1) and paragraph (a) of subsection
 (3) of section 516.031, Florida Statutes, are amended to read:

516.031 Finance charge; maximum rates.—

(1) INTEREST RATES.—A licensee may lend any sum of money up
 to \$25,000. A licensee may not take a security interest secured
 by land on any loan less than \$1,000. The licensee may charge,
 contract for, and receive thereon interest charges as provided
 and authorized by this section. The maximum interest rate shall
 be ~~36 30~~ percent per annum, ~~computed on the first \$3,000 of the~~
~~principal amount, 24 percent per annum on that part of the~~
~~principal amount exceeding \$3,000 and up to \$4,000, and 18~~
~~percent per annum on that part of the principal amount exceeding~~
~~\$4,000 and up to \$25,000.~~ The original principal amount as used
 in this section is the same as the amount financed as defined by
 the federal Truth in Lending Act and Regulation Z of the Board
 of Governors of the Federal Reserve System. In determining

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compliance with the statutory maximum interest and finance
 charges set forth herein, the computations used shall be simple
 interest and not add-on interest or any other computations. ~~If~~
~~two or more interest rates are applied to the principal amount~~
~~of a loan, the licensee may charge, contract for, and receive~~
~~interest at that single annual percentage rate which, if applied~~
~~according to the actuarial method to each of the scheduled~~
~~periodic balances of principal, would produce at maturity the~~
~~same total amount of interest as would result from the~~
~~application of the two or more rates otherwise permitted, based~~
~~upon the assumption that all payments are made as agreed.~~

(3) OTHER CHARGES.—

(a) In addition to the interest, delinquency, and insurance
 charges provided in this section, further or other charges or
 amount for any examination, service, commission, or other thing
 or otherwise may not be directly or indirectly charged,
 contracted for, or received as a condition to the grant of a
 loan, except:

1. An amount of up to \$25 to reimburse a portion of the
 costs for investigating the character and credit of the person
 applying for the loan;
2. An annual fee of \$25 on the anniversary date of each
 line-of-credit account;
3. Charges paid for the brokerage fee on a loan or line of
 credit of more than \$10,000, title insurance, and the appraisal
 of real property offered as security if paid to a third party
 and supported by an actual expenditure;
4. Intangible personal property tax on the loan note or
 obligation if secured by a lien on real property;

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5. The documentary excise tax and lawful fees, if any, actually and necessarily paid out by the licensee to any public officer for filing, recording, or releasing in any public office any instrument securing the loan, which may be collected when the loan is made or at any time thereafter;

6. The premium payable for any insurance in lieu of perfecting any security interest otherwise required by the licensee in connection with the loan if the premium does not exceed the fees which would otherwise be payable, which may be collected when the loan is made or at any time thereafter;

7. Actual and reasonable attorney fees and court costs as determined by the court in which suit is filed;

8. Actual and commercially reasonable expenses for repossession, storing, repairing and placing in condition for sale, and selling of any property pledged as security; or

9. A delinquency charge for each payment in default for at least 12 ~~10~~ days if the charge is agreed upon, in writing, between the parties before imposing the charge. Delinquency charges may be imposed as follows:

a. For payments due monthly, the delinquency charge for a payment in default may not exceed \$15.

b. For payments due semimonthly, the delinquency charge for a payment in default may not exceed \$7.50.

c. For payments due every 2 weeks, the delinquency charge for a payment in default may not exceed \$7.50 if two payments are due within the same calendar month, and may not exceed \$5 if three payments are due within the same calendar month.

Any charges, including interest, in excess of the combined total

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of all charges authorized and permitted by this chapter constitute a violation of chapter 687 governing interest and usury, and the penalties of that chapter apply. In the event of a bona fide error, the licensee shall refund or credit the borrower with the amount of the overcharge immediately but within 20 days after the discovery of such error.

Section 5. Subsection (5) is added to section 516.15, Florida Statutes, to read:

516.15 Duties of licensee.—Every licensee shall:

(5) If the Federal Emergency Management Agency issues a major disaster declaration for this state and if a licensee offers an assistance program to borrowers impacted by the disaster, within 10 days after the licensee's establishment of the program, send written notice to the office in either physical or electronic format and include the following information, subject to change as any additional declarations are issued or declarations are revoked:

(a) The licensed locations affected by the disaster declaration, including physical addresses, if applicable;

(b) The telephone number, e-mail address, or other contact information for the licensee;

(c) A brief description of the assistance program available to borrowers in the affected areas; and

(d) The start date, and end date if known, of the assistance program.

For purposes of this subsection, assistance programs may include, but are not limited to, deferments, forbearance, waiver of late fees, payment modification, or changing payment due

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233 dates.

234 Section 6. Section 516.38, Florida Statutes, is created to
235 read:

236 516.38 Annual reports by licensees.—

237 (1) By March 15, 2024, and each March 15 thereafter, a
238 licensee shall file a report with the office in a form and
239 manner prescribed by commission rule. The report must include
240 each of the items specified in subsection (2) for the preceding
241 calendar year using aggregated and anonymized data and without
242 reference to any borrower's nonpublic personal information.

243 (2) The report must include the following information for
244 the preceding calendar year:

245 (a) The number of locations held by the licensee under this
246 chapter as of December 31 of the preceding calendar year.

247 (b) The number of loan originations by the licensee from
248 all licenses held under this chapter during the preceding
249 calendar year.

250 (c) The total dollar amount of loans and the number of
251 loans outstanding with the licensee from all licenses held under
252 this chapter as of December 31 of the preceding calendar year.

253 (d) The total dollar amount of loans and the number of
254 loans in which the licensee holds a security interest in
255 collateral as of December 31 of the preceding calendar year.

256 (e) The total dollar amount of loans and the number of
257 unsecured loans as of December 31 of the preceding calendar
258 year.

259 (f) The total number of loans, separated by principal
260 amount, in the following ranges as of December 31 of the
261 preceding calendar year:

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262 1. Up to and including \$5,000.

263 2. Five thousand and one dollars to \$10,000.

264 3. Ten thousand and one dollars to \$15,000.

265 4. Fifteen thousand and one dollars to \$20,000.

266 5. Twenty thousand and one dollars to \$25,000.

267 (g) The total dollar amount of loans and the number of
268 loans charged off as of December 31 of the preceding calendar
269 year.

270 (h) The total dollar amount of loans and the number of
271 loans with delinquency status listed as:

272 1. Current or less than 30 days past due.

273 2. From 30 to 59 days past due.

274 3. From 60 to 89 days past due.

275 4. At least 90 days past due.

276 (3) A licensee claiming that any information submitted in
277 the report contains a trade secret must submit to the office an
278 accompanying affidavit in accordance with s. 655.0591 and
279 designate the information claimed to be a trade secret pursuant
280 to s. 655.0591.

281 (4) The office may publish a report of information
282 submitted pursuant to this section, provided that all data
283 published in the report is anonymized and aggregated from all
284 licensees.

285 Section 7. Section 516.39, Florida Statutes, is created to
286 read:

287 516.39 Suspension of penalties and remedial measures after
288 federal disaster declaration.—If the Federal Emergency
289 Management Agency issues a major disaster declaration for a
290 county, a licensee operating in that county designated in the

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291 declaration must suspend for a period of 90 days after the date
292 of the initial declaration the following:

293 (1) The application of delinquency charges under s.
294 516.031(3)(a)9.

295 (2) Repossessions of collateral pledged to loans made under
296 this chapter.

297 (3) The filing of civil actions for the collection of
298 amounts owed for loans made under this chapter.

299 Section 8. For the purpose of incorporating the amendments
300 made by this act to sections 516.02 and 516.031, Florida
301 Statutes, in references thereto, section 516.19, Florida
302 Statutes, is reenacted to read:

303 516.19 Penalties.—Any person who violates any of the
304 provisions of s. 516.02, s. 516.031, s. 516.05(3), s. 516.05(6),
305 or s. 516.07(1)(e) commits a misdemeanor of the first degree,
306 punishable as provided in s. 775.082 or s. 775.083.

307 Section 9. This act shall take effect July 1, 2023.



The Florida Senate

Committee Agenda Request

To: Senator Jason Brodeur, Chair
Appropriations Committee on Agriculture, Environment, and General
Government

Subject: Committee Agenda Request

Date: April 13, 2023

I respectfully request that **Senate Bill # 580**, relating to Consumer Finance Loans, be placed on the:

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

A handwritten signature in black ink that reads "Joe Gruters".

Senator Joe Gruters
Florida Senate, District 22

4/18/23

Meeting Date

ACG

Committee

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

580

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Scott Jenkins

Phone

850-661-0829

Address

201 E. Park Ave. Ste 200B

Email

scott@dactl.com

Street

Tallahassee FL 32301

City

State

Zip

Speaking:

☒

For

☐

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

Florida Financial Services Assoc.

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf](#) [flsenate.gov](#)

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

S-001 (08/10/2021)

4/18/2023

Meeting Date

The Florida Senate
APPEARANCE RECORD

SB580

Bill Number or Topic

Approps - AEGG

Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name

Elizabeth Hammond

Phone

(919) 625-5695

Address

2009 Stonewall Farms Dr

Street

Email

ehammond@marinerfinance.com

Englewood, NC 27526

City

State

Zip

Speaking:



For



Against



Information

OR

Waive Speaking:



In Support



Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:



I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf flsenate.gov](#)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Meeting Date

Bill Number or Topic

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name

Phone

Address

Email

Street

City

State

Zip

Speaking:

☐

For

☒

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

Florida Center for
Fiscal + Economic Policy

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

4/18/23
Meeting Date

580
Bill Number or Topic

AEG
Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name Ezra Garrett

Phone 415-828-3224

Address 555 4th St
Street

Email ezra.garrett@gmail.com

San Francisco, CA 94107
City State Zip

Speaking:



For



Against



Information

OR

Waive Speaking:



In Support



Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:



I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

580

Meeting Date

4/18/23
Appropriations on Agriculture
and General Government

Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Christie Arnold

Phone

407 312 5374

Address

201 W Park Avenue

Email

carnold@fbcc6.org

Street

Tallahassee FL

32301

City

State

Zip

Speaking:

☐ For

☒ Against

☐ Information

OR

Waive Speaking:

☐ In Support

☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing: Florida
Conference of Catholic
Bishops

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules of the Florida Senate](#)

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

S-001 (08/10/2021)



2023 AGENCY LEGISLATIVE BILL ANALYSIS

Florida Office of Financial Regulation

BILL INFORMATION

BILL NUMBER:	SB 580
BILL TITLE:	An Act Relating to Consumer Finance Loans
BILL SPONSOR:	Senator Gruters
EFFECTIVE DATE:	July 1, 2023

COMMITTEES OF REFERENCE

1) Banking and Insurance
2) Appropriations Committee on Agriculture, Environment, and General Government
3) Fiscal Policy
4)
5)

PREVIOUS LEGISLATION

BILL NUMBER:	
SPONSOR:	
YEAR:	
LAST ACTION:	

CURRENT COMMITTEE

Banking and Insurance

SIMILAR BILLS

BILL NUMBER:	none
SPONSOR:	

IDENTICAL BILLS

BILL NUMBER:	none
SPONSOR:	

Is this bill part of an agency package?

No

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	2/X/23
LEAD AGENCY ANALYST:	Gregory Oaks, Director, Division of Consumer Finance
ADDITIONAL ANALYST(S):	Ann Michelle Palecki, Assistant General Counsel
LEGAL ANALYST:	Anthony Cammarata, General Counsel
FISCAL ANALYST:	

POLICY ANALYSIS

A. EXECUTIVE SUMMARY

SB 580 amends the Florida Consumer Finance Act to create a process for licensees to operate branches and simplifies the application process for licensees who wish to operate more than one location. Penalties for violations of the chapter have been accordingly reincorporated. The bill also replaces the current sliding scale of maximum interest rates for consumer finance loans based upon loan amount with a flat maximum interest rate, and raises the maximum interest rate by a minimum of 6 percent. Next, the bill creates several sections of law applicable in the event of a major disaster declaration by FEMA. It creates a notification process whereby a licensee must notify the OFR of any assistance plan offered to those affected by the disaster. It also suspends the application of delinquency charges, repossessions of collateral, and filing of civil actions for collection of amounts owed for 90 days after such a declaration. Finally, it requires a licensee to submit an annual report containing information regarding their loans. Such reports are aggregated and anonymized, and may not contain any non-public personal information of borrowers. The OFR is permitted to publish a report based upon this information, provided the report is aggregated and anonymized among licensees.

The bill provides an effective date of July 1, 2023.

B. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

The Florida Office of Financial Regulation (OFR) is responsible for all activities of the Financial Services Commission relating to the regulation of banks, credit unions, other financial institutions, finance companies, and the securities industry.¹ The OFR has three divisions: the Division of Consumer Finance, the Division of Financial Institutions, and the Division of Securities. The OFR also has a Bureau of Financial Investigations, which functions as a criminal justice agency and has a separate budget.²

OFR's Division of Consumer Finance licenses and regulates various aspects of the non-depository financial services industries, including consumer finance loans, which are governed by chapter 516, Florida Statutes, the "Florida Consumer Finance Act." Loans permitted under the Act are commonly referred to as "consumer finance loans", which are defined as "a loan of money, credit, goods, or choses in action, including, except as otherwise specifically indicated, provision of a line of credit, in an amount or to a value of \$25,000 or less for which the lender charges, contracts for, collects, or receives interest at a rate greater than 18 percent per annum."³ Licensees are issued a license that is a permit to make and collect loans in accordance with the Act at a single place of business.⁴ Consumer finance loans may be secured if over \$1000, or unsecured, but licensees are prohibited from taking a security interest in certain types of collateral, such as an assignment of wages, commissions, or other compensation for services, earned or to be earned.

A licensee may lend any sum of money up to \$25,000.⁵ The maximum interest rates for consumer finance loans are dependent upon the amount of the loan. A maximum interest rate of 30 percent per annum may be charged for the first \$3,000 of the principal amount; 24 percent per annum on that part of the principal amount exceeding \$3,000 and up to \$4,000; and 18 percent per annum on that part of the principal amount exceeding \$4,000 and up to \$25,000.⁶ The original principal amount utilized in the Act is the same as the amount financed as defined by the federal Truth in Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System.⁷

On July 27, 2020, the OFR published a Consumer Finance Company Survey Data Report. As of this data, the OFR had 167 consumer finance license holders. Of the 167 license holders, only 26% returned a completed survey. The Data report shows the average number of loans outstanding in 2018 as 7,949 loans, with an average dollar amount of loans outstanding of \$42,042,015.

Trade Secret Information

¹ Section 20.121(3)(a)2., Florida Statutes.

² *Id.*

³ Section 516.01(2), Fla. Stat.

⁴ Section 516.01(6), Fla. Stat.

⁵ Section 516.031(1), Fla. Stat.

⁶ Section 516.031(1), Fla. Stat.

⁷ *Id.*

OFR's Division of Financial Institutions provides general supervision over all state financial institutions, their subsidiaries, and service corporations,⁸ and is charged with the administration of the financial institutions codes, which apply to all state-authorized or state-chartered financial institutions and to the enforcement of all laws relating to state-authorized or state-chartered financial institutions.⁹ The financial institutions codes include chapters 655, 657, 658, 660, 662, 663, 665, and 667, Florida Statutes.¹⁰

Section 655.0591, Florida Statutes, provides a mechanism by which any person required to submit documents or materials to the OFR to claim that the materials are trade secret. To make such a claim, a person must notify the OFR, mark each section of each document it claims to be a trade secret with the words "trade secret", segregate it from other materials in a sealed envelope marked trade secret, and submit a form affidavit to the OFR. Such notice must contain the name and contact information of the person claiming ownership of the trade secret. If the OFR receives a public record request for a document that has been duly submitted as trade secret, the OFR must promptly notify the person who certified the document as trade secret. To avoid disclosure of the trade secret, the person must file an action in circuit court within 30 days after the date of the notice seeking a declaratory judgment that the document in question contains trade secrets and an order barring public disclosure of the document. Failure to file an action within 30 days constitutes a waiver of any claim of confidentiality, and the OFR shall release the document as requested.

2. EFFECT OF THE BILL:

Section 1 renumbers section 516.01, Florida Statutes, and creates a new subsection (1) to define the term "branch." The term is defined as any location, other than a licensee's principal place of business, at which a licensee operates or conducts business under chapter 516 or which the licensee owns and controls for the purpose of conducting such business.

Section 2 amends subsection 516.02(1), Florida Statutes, to require authorization under chapter 516 and licensure to operate a branch for the business of making consumer finance loans.

Section 3 amends subsection 516.03(1), Florida Statutes, to specify application fees under a branching model. Whereas current law requires a new application for each location, licensees are now authorized to have a principal place of business and one or more branches. The current nonrefundable biennial license fee of \$625 for each application now applies to both the principal place of business and to each branch application filed. Line 117 limits the nonrefundable investigation fee of \$200, which currently applies to each application, to applications for a license for a principal place of business. Line 125 makes a technical change.

Section 4 amends subsection 516.031(1), Florida Statutes, to replace the sliding scale of maximum interest rate charges with a flat maximum rate. Currently, the maximum interest rate for a loan made under chapter 516 is 30 percent per annum computed on the first \$3,000, 24 percent per annum on that part of the principal amount exceeding \$3,000 and up to \$4,000, and 18 percent per annum on that part of the principal amount exceeding \$4,000 up to \$25,000. The bill replaces this sliding scale with a flat maximum interest rate of 36%. Lines 148-156 amend subsection (1) to make conforming changes. This section also amends subparagraph 516.031(3)(a)9., Florida Statutes, to extend the period of time that must pass before a licensee can charge a customer a delinquency charge from 10 to 12 days.

Section 5 creates subsection 516.15(5), Florida Statutes, to require a licensee, under certain circumstances, to notify the OFR of any assistance program it plans to offer upon a major disaster in this state. In the event that the Federal Emergency Management Agency (FEMA) issues a major disaster declaration for Florida, and if a licensee offers an assistance program to borrowers impacted by the disaster, a licensee may establish an assistance program, but must notify the OFR in writing of such program within 10 days of establishment. The following information must be included: licensed locations affected by the disaster declaration, the telephone number, e-mail address, or other contact information for the licensee, a brief description of the assistance program available, the start date, and the end date of the program if known.

Section 6 creates section 516.38, Florida Statutes, to require an annual report by licensees. The report must be filed in a form and manner prescribed by commission rule, which will require rulemaking. The first report is due on March 15, 2024, and each year thereafter. The report must contain each of the following for the proceeding calendar year, using aggregated and anonymized data and without reference to any borrower's nonpublic personal information: the number of licenses held by the licensee, the total number of loan originations from all licenses held by licensee, the total dollar amount of loans and the number of loans outstanding, the total number of loans in which the licensee holds a security interest, the total number of unsecured loans, the total number of loans within certain dollar amount ranges, and the total number and amount of loans charged off. A licensee that claims any information

⁸ Section 655.012(1), Fla. Stat.

⁹ Sections 655.001(1) and 655.012(1), Fla. Stat.

¹⁰ Section 655.005(1)(k), Fla. Stat.

in the report is a trade secret must so designate that information and submit to the OFR an affidavit in accordance with s. 655.0591, Florida Statutes. Subsection (4) permits the OFR to publish a report of such information, provided that all data published is anonymized and aggregated from all licensees.

Section 7 creates section 516.39, Florida Statutes, to suspend the application of delinquency charges, repossessions of collateral, and filing of civil actions for collection of amounts owed under certain circumstances. In the event that FEMA issues a major disaster declaration for this state, a licensee operating in a county designated in the declaration must suspend the application of the above stated remedies for a period of 90 days following such a declaration.

Section 8 reenacts the penalties contained in section 516.19, Florida Statutes, for violation of certain sections of chapter 516 for the purpose of incorporating the amendments made by the bill to the relevant sections.

Section 9 provides an effective date of July 1, 2023.

3. DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y ☒ N ☐

If yes, explain:	Lines 232-234 create a new section of statute that will require a licensee to file an annual report with the office "in a form and manner prescribed by permission rule." This section will require rulemaking. Rule 69V-160.111, F.A.C., which adopts a Disciplinary Guidelines for Consumer Finance Companies, will also require an update.
Is the change consistent with the agency's core mission?	Y ☒ N ☐
Rule(s) impacted (provide references to F.A.C., etc.):	69V-160.111

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown
Opponents and summary of position:	unknown

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?

Y ☐ N ☒

If yes, provide a description:	The bill does not require, but permits, the OFR to publish a report of information contained in the annual reports of licensees, provided that all data published in such report is anonymized and aggregated from all licensees.
Date Due:	unknown
Bill Section Number(s):	6

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL?

Y ☐ N ☒

Board:	
Board Purpose:	
Who Appoints:	
Changes:	

Bill Section Number(s):	

FISCAL ANALYSIS

1. FISCAL IMPACT TO LOCAL GOVERNMENT

Y ☐ N ☒

Revenues:	
Expenditures:	
Does the legislation increase local taxes or fees? If yes, explain.	
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

2. FISCAL IMPACT TO STATE GOVERNMENT

Y ☒ N ☐

Revenues:	The OFR estimates its revenues may decrease by as much as \$5000 per fiscal year if it no longer receives the background investigation fee of \$200 required for each additional location once replaced by a branch office license requirement. This is a negligible and would not impact the OFR's operation. Additionally, the reduction in staff time no longer needed to review a full license application for each additional location when replaced with a branch office license would likely offset any loss in revenues.
Expenditures:	None
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	N/A

3. FISCAL IMPACT TO THE PRIVATE SECTOR

Y ☒ N ☐

Revenues:	Unknown
Expenditures:	The industry will no longer be required to pay a \$200 background investigation fee for each additional location with the implementation of a branch office license. This may save the industry up to \$5,000 per fiscal year in reduced fees.
Other:	N/A

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?

Y ☒ N ☐

If yes, explain impact.	The bill proposes to create a branch license in lieu of a full license for each additional location of a consumer finance company. The branch license will not include the \$200 background investigation fee and result in a fee reduction.
Bill Section Number:	Section 3

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?

Y ☒ N ☐

If yes, describe the anticipated impact to the agency including any fiscal impact.	The proposed bill would require the OFR to make technology changes to its internal licensing system to create a branch office license and annual reporting functionality. The cost of these changes would be negligible and can be covered within the OFR's existing budget.

FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?

Y ☐ N ☒

If yes, describe the anticipated impact including any fiscal impact.	

ADDITIONAL COMMENTS

Lines 212-228: the term “assistance program” is not defined. While the Office of Financial Regulation (OFR) is not tasked with approving the assistance program, it is unclear how the OFR will determine whether a program is actually an assistance program that may be noticed to the OFR pursuant to s. 516.15(5). Further, it is unclear whether the major disaster declaration must be applicable to the whole state of Florida or just part of it.

Line 232: It is unclear whether the deadline will be March 15th of each year.

Line 246: This line references “loans outstanding by the licensee.” Use of the term “with” instead of “by” may provide clarity.

Line 268-271: Subsection (4) permits but does not obligate the OFR to publish a report containing information from annual reports of licensees, provided that all data published in the report is anonymized and aggregated from all licensees. As there is no public records exemption for the annual reports submitted by licensees, the requirement to anonymize and aggregate the data from all licensees will not protect information regarding or identifying the licensee from the disclosure requirements of chapter 119, Florida Statutes. Each annual report submitted will remain public record, and thus, the requirement to anonymize and aggregate data likely will not achieve the apparent goal of protecting licensee information.

Lines 274-277: The bill currently reads that if FEMA “issues a major disaster declaration for this state, a licensee operating in a county designated in the declaration must suspend....” Confusion may be eliminated if it were clear whether the declaration must be for the whole state, or for one or many counties in the state.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	OGC has reviewed the agency's bill analysis concerning SB 580, and the analysis sufficiently details the effect of the bill and the areas of impact. OGC has no additional issues, concerns or further comments regarding the bill.

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 Appropriations Committee on Agriculture, Environment, and General Government

BILL: CS/SB 622

INTRODUCER: Banking and Insurance Committee and Senator Yarborough

SUBJECT: Continuing Care Contracts

DATE: April 17, 2023

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Johnson	Knudson	BI	Fav/CS
2. Sanders	Betta	AEG	Favorable
3. _____	_____	FP	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 622 revises many provisions of ch. 651, Florida Statutes, of the Insurance Code governing continuing care retirement communities¹ (CCRC), which are regulated by the Office of Insurance Regulation (OIR). The CCRCs provide lifelong housing, household assistance, and nursing care in exchange for a significant entrance fee and monthly fees. A CCRC can include an independent living apartment or house, as well as an assisted living facility or a nursing home. The CCRCs may also offer at-home programs that provide residents CCRC services while continuing to live in their own homes until they are ready to move to the CCRC. The CCRCs appeal to older Americans because they offer an independent lifestyle for as long as possible but also provide the reassurance that, as residents age or become unable to care for themselves, they will receive the additional care they need.

The bill provides many changes relating to CCRCs, including regulatory oversight and transparency for residents.

¹ Continuing care retirement communities, also known as life plan communities, are a long-term care option for older people who want to stay in the same place through different phases of the aging process. American Association of Retired Persons (AARP), *Family Caregiving Basics, How Continuing Care Retirement Communities Work* (January 27, 2022), <https://www.aarp.org/caregiving/basics/info-2017/continuing-care-retirement-communities.html> (last visited April 12, 2023).

As it relates to regulatory oversight, the bill:

- Makes it easier for a provider to access escrowed resident fees as part of an expansion, allowing access to the escrowed funds once 75 percent of the proposed units have been reserved rather than once payment in full has been received for 50 percent of the units.
- Reduces the time for the OIR to approve or deny an expansion application from 45 days to 30 days from the date the application is deemed complete;
- Specifies when a provider is using an escrow account held pursuant to a trust indenture or mortgage lien to meet its minimum liquid reserve requirement, the trust indenture, loan agreement, or escrow agreement must require the provider, trustee, lender, escrow agent, or another person designated to act in their place to notify the OIR in writing at least 10 days before the withdrawal of any portion of the debt service reserve funds required to meet the provider's minimum liquid reserve requirement. Further, the notice must include an affidavit sworn to by the provider, the trustee, or a person designated to act in their place which includes the amount of the scheduled debt service payment, the payment due date, the amount of the withdrawal, the accounts from which the withdrawal will be made, and a plan with a schedule for replenishing the withdrawn funds;
- Removes the requirement for a provider to obtain prior approval from the OIR to withdraw funds from a debt service reserve required to be escrowed pursuant to a trust indenture of mortgage lien if the funds will be used to pay principal and interest payments;
- Expands the types of financial institutions that can provide a letter of credit to a provider to satisfy its minimum liquid reserve requirements by adding state-chartered financial institutions as well as federally-chartered financial institutions;
- Allows a provider to assess a cancellation penalty against a person who signs a residency contract and rescinds it within seven days if the person had previously signed a reservation agreement and did not cancel it within 30 days; and
- Requires the OIR to commence examinations of CCRCs within 12 months after the end of the most recent fiscal year covered by the examination. Further, the scope of the examination may include events subsequent to the end of the most recent fiscal year and the events of any prior period, which affects the present financial condition of the provider.

As it relates to transparency for residents, the bill:

- Clarifies a resident is eligible to participate in residents' council matter, including elections, if the person meets the definition of a resident, as provided in s. 651.011, F.S.;
- Requires a provider that owns or operates more than one facility in Florida to have a designated resident representative at each facility;
- Requires that the designated resident representative to be notified by the provider at least 14 days in advance of any meeting of the full governing body at which the annual budget and proposed changes in resident fees or services are on the agenda or will be discussed so that the resident can attend and participate in that portion of the meeting;
- Requires each facility to provide written notice to the president or chair of the residents' council within 10 business days after a change in management; and
- Requires each facility to provide a copy of the OIR final examination report and corrective action plan, if applicable, to the president or chair of the residents' council within 60 days after issuance of the report.

The bill has a significant negative impact on state revenues and expenditures. See Section V. Fiscal Impact Statement.

II. Present Situation:

Continuing Care Retirement Communities (CCRC)

A provider² or a CCRC offers shelter and nursing care or personal services upon the payment of an entrance fee.³ The CCRCs offer a transitional approach to the aging process, accommodating residents' changing level of care. A CCRC can include an independent living apartment or a house, as well as an assisted living facility or a nursing home. The CCRCs may also offer at-home programs that provide residents CCRC services while continuing to live in their own homes until they are ready to move to the CCRC.⁴ A CCRC enters into contracts with seniors (residents) to provide housing and medical care in exchange for an entrance fee and monthly fees. Entrance fees are a significant commitment by the resident as entrance fees range from around \$100,000 to over one million dollars.⁵

Regulation of CCRCs

In Florida, regulatory oversight responsibility of CCRCs is shared between the Agency for Health Care Administration (AHCA) and the Office of Insurance Regulation (OIR).⁶ The OIR regulates CCRC providers⁷ as specialty insurers. The AHCA regulates aspects of CCRCs related to the provision of health care, such as nursing facilities, assisted living facilities, home health agencies, quality of care, and medical facilities.⁸ There are currently 70 licensed continuing care retirement communities in Florida.⁹

Oversight by the Office of Insurance Regulation

The OIR has primary responsibility to license, regulate, and monitor the operation of CCRCs and to determine facilities' financial condition and the management capabilities of their managers and owners.¹⁰ Continuing care services are governed by a contract between the facility and the resident of a CCRC, which is subject to approval by the OIR.¹¹ As part of the regulation of CCRCs, the OIR reviews applications for licensure, reviews expansion applications, conducts solvency monitoring through the review of financial statements and other documents, monitors minimum liquid reserve levels, and conducts examinations of each facility every three to five

² Section 651.011(23), F.S., defines a provider as an owner or operator that provides continuing care.

³ Section 651.011(13), F.S.

⁴ Sections 651.057 and 651.118, F.S.

⁵ Office of Insurance Regulation, *Senate Bill 622 Agency Legislative Analysis* (Feb. 15, 2023) (on file with Senate Committee on Banking and Insurance).

⁶ Chapter 651, F.S., and s. 20.121, F.S.

⁷ Section 651.011(12), F.S., a provider means an owner or operator.

⁸ Agency for Health Care Administration, available at <https://quality.healthfinder.fl.gov/index.html> (last viewed April 12, 2023) and s. 651.118, F.S.

⁹ Office of Insurance Regulation, *Presentation to the Continuing Care Advisory Council* (2022), available at https://floir.com/docs-sf/default-source/continuing-care-retirement-communities/2022ccacpresentation.pdf?sfvrsn=5709d51b_2 last visited (April 12, 2023).

¹⁰ See ss. 651.021, 651.22, and 651.023, F.S.

¹¹ Sections 651.055 and 651.057, F.S.

years. It is a felony of the third degree for any person to maintain, enter into, or perform any continuing care or continuing care at-home contract without actually having a valid provisional Certificate of Authority (COA) or COA. One may not avoid such criminal liability by simply being in pursuance of a COA.¹²

In order to operate a CCRC in Florida, a provider must generally obtain from the OIR a certificate of authority predicated upon first receiving a provisional certificate of authority.¹³ A provisional certificate of authority is issued once a provider meets the requirements prescribed in s. 651.023, F.S. The application process for a provisional certificate of authority and a certificate of authority involves submitting audited financial reports, feasibility studies, copies of contracts, and other information.¹⁴ Further, the applicant must provide evidence the applicant is reputable and of responsible character.¹⁵

The issuance of a provisional COA allows the applicant to collect entrance fees and reservation deposits from prospective residents. All entrance fees and reservation deposits must be placed in an escrow account or on deposit with the Department of Financial Services (DFS).¹⁶ The requirements for a provisional COA application and a COA application¹⁷ require that the feasibility study must show projections for the first five years of operations. For a provisional COA, the preparer of the feasibility study may be the provider or a contracted third party.¹⁸ Like the provisional COA application, an application for a COA requires the submission of various information, such as an audited financial report. For a COA application, a feasibility study must be prepared by an independent consultant. If the feasibility study is prepared by an independent certified public accountant (CPA), it must contain an examination opinion¹⁹ or a compilation report²⁰ containing financial forecasts and projections.

A COA may not be issued until documentation evidencing the project has a minimum of 50 percent of the units reserved for which the provider is charging an entrance fee is provided to

¹² Section 651.125, F.S.

¹³ Section 651.022, F.S.

¹⁴ See ss. 651.021-651.023, F.S.

¹⁵ Section 651.022(2)(c), F.S.

¹⁶ Section 651.023(5), F.S.

¹⁷ Section 651.023, F.S.

¹⁸ Section 651.022 (3)(j), F.S., provides the preparer of the feasibility study for a provisional certificate of authority (COA) may be the provider or a contracted third party.

¹⁹ This is undefined term in ch. 651, F.S.

²⁰ An audit is the highest level of assurance service a certified public accountant (CPA) performs and is intended to provide a user comfort on the accuracy of the financial statements. The CPA performs procedures in order to obtain “reasonable assurance” (defined as a high but not absolute level of assurance) about whether the financial statements are free from material misstatement. In contrast, the CPA does not obtain any assurance for a compilation because the CPA is not required to verify the accuracy or completeness of the information provided or otherwise gather evidence for the purposes of expressing an audit opinion or a review conclusion. The compilation report states the CPA did not audit or review the financial statements and accordingly does not express an opinion, a conclusion or provide any assurance on them. American Institute of Certified Public Accountants, *Guide to Financial Statement Services: Compilation, Review and Audit*, available at

<https://us.aicpa.org/content/dam/aicpa/interestareas/privatecompaniespracticessection/qualityservicesdelivery/keepingup/downloadabledocuments/financial-statement-services-guide.pdf> (last visited April 12, 2023)

the OIR. For a COA application, in order for a unit to be considered reserved, the provider must collect a minimum deposit of the lesser of \$40,000 or 10 percent of the entrance fee.²¹

Applications

Consolidated Application for a Provisional Certificate of Authority and a Certificate of Authority (COA) Applications

Section 651.0215, F.S., provides a consolidated application process, including requirements for handling escrowed funds, in order for an applicant to obtain a COA without first obtaining a provisional COA. The applicant must provide a feasibility study prepared by an independent consultant²² as well as audited financial statements,²³ and other specified information to the OIR. If the feasibility study is conducted by an independent certified public accountant, it must contain an examination report, or a compilation report²⁴ acceptable to the OIR.

Expansion Applications

Section 651.0246, F.S., specifies the application process and information required to obtain approval from the OIR for expansion. This section also provides automatic approval is granted for expansions up to 35 percent of the existing units if the provider exceeds the statewide median for days cash on hand, debt service coverage ratio, and total facility occupancy for the most recent two consecutive reporting periods. In order to obtain this automatic approval, the provider must submit a letter to the OIR indicating the planned number of units, the proposed sources and uses of funds, and an attestation they understand and will comply with all minimum liquid reserve and escrow account requirements.

A feasibility study, prepared by an independent certified public accountant, is required to be submitted as part of an expansion application. The study includes an independent evaluation and examination opinion as to whether the assumptions contained in the study are reasonable and the project is feasible.²⁵ A minimum of 75 percent of the moneys paid for all or any part of an initial entrance fee or reservation deposit collected for units in the expansion and 50 percent of the moneys paid for all or any part of an initial fee collected for continuing care at-home contracts in the expansion must be placed in an escrow account or on deposit with the Department of Financial Services (DFS), as prescribed in s. 651.033, F.S.²⁶

The provider may secure release of the moneys held in escrow within seven days after the receipt by the OIR of an affidavit by the provider the following conditions have been satisfied:

- A certificate of occupancy has been issued;
- The provider has received payment in full for at least 50 percent of the total units of a phase or of the total of the combined phases constructed;
- Documents evidencing commitments have been secured or the provider's long-term financing has been approved by the OIR; and

²¹ Section 651.023(4)(b), F.S.

²² Section 651.0215(2)(b), F.S.

²³ Section 651.0215(2)(f), F.S.

²⁴ See *supra* note 19.

²⁵ Section 651.0246(2)(a), F.S.

²⁶ Section 651.0246(3), F.S.

- Documents evidencing the provider has sufficient funds to meet the minimum liquid reserve requirements of s. 651.035, F.S., which may include funds deposited in the initial entrance fee account.²⁷

Within 30 days after receipt of an application for expansion, the OIR must examine the application and notify the applicant in writing, requesting any additional information.²⁸ Within 15 days after the OIR receives all the requested information, the OIR must notify the applicant in writing that the requested information has been received.²⁹ If the OIR fails to notify the applicant within the 15-day period, the application is deemed complete for purposes of the review.³⁰ Within 45 days of the OIR deeming the application complete, the OIR must complete its review and approve or deny an expansion.³¹

Continuing Care Contracts

All CCRC contracts provide for a refund of a declining portion of the entrance fee if the contract is cancelled for reasons other than the death of the resident during the first four years of occupancy in the CCRC.³² However, some contracts may exceed this requirement and contain minimum refund provisions that guarantee a refund of a specified portion of the entrance fee upon the death of the resident or termination of the contract regardless of the length of occupancy by the resident.³³ The CCRC may assess a forfeiture fee equal to two percent of the entrance fee if the resident cancels his or her reservation after 30 days for reasons that are within the control of the resident.³⁴

Reserving and Escrow Requirements

Section 651.035, F.S., which contains minimum liquid reserve requirements, requires providers that do not have a mortgage loan or other financing on the facility to deposit monthly in escrow one-twelfth of their annual property tax liability and to pay property taxes out of such escrow. Each facility is required to maintain a minimum liquid reserve for operations, debt service, and facility upkeep based on the facility's expenses and debt service obligations. Providers are required to obtain approval from the OIR prior to withdrawing all or a portion of the funds used to satisfy a facility's minimum liquid reserve requirement. Facilities who want to use a letter of credit to fund their minimum liquid reserve are limited to those institutions that participate in the State of Florida Treasury Certificate of Deposit Program.³⁵

A provider may withdraw funds held in escrow without the approval of the OIR if the amount held in escrow exceeds the requirements of s. 651.035, F.S., and if the withdrawal will not affect compliance with this section.³⁶ Any other proposed withdrawals are subject to approval by the

²⁷ Section 651.0246((4)), F.S.

²⁸ Section 651.0246(5)(a), F.S.

²⁹ *Id.*

³⁰ *Id.*

³¹ Section 651.0246(6), F.S.

³² Section 651.055, F.S.

³³ *See supra* note 4.

³⁴ *Id.*

³⁵ Section 651.035(5), F.S.

³⁶ Section 651.035(7)(a), F.S.

OIR. Within 30 days after a filing for such a request for withdrawal is deemed complete, the OIR must notify the provider of its approval or disapproval of the request.³⁷

Any increase in the minimum liquid reserve must be funded no later than 61 days after the minimum liquid reserve calculation is due to be filed.³⁸ If the minimum liquid reserve is less than the required minimum amount at the end of any fiscal quarter due to a change in the market value of the invested funds, the provider must fund the shortfall within 10 business days.³⁹ Further, the section authorizes the OIR authority to require the transfer of reserve funds into the custody of the DFS Bureau of Collateral Management if the OIR finds the provider is impaired or insolvent in order to ensure the safety of those assets.⁴⁰

Section 651.033, F.S., contains requirements for a provider's escrow account and the duties that apply to escrow agents, including the prohibition an escrow agent may not release or otherwise allow the transfer of funds without the written approval of the OIR, unless the withdrawal is from funds in excess of specified statutory requirements.

Financial Reporting

Section 651.026, F.S., requires the provider to annually submit the management's calculation of the provider's debt service coverage ratio, occupancy, and days cash on hand. The OIR is required to publish, on its website by August 1 of each year, an industry report for the preceding calendar year that contains, for all providers, the median days cash on hand, median debt service coverage ratio, and median occupancy rate by setting (independent living, assisted living, skilled nursing, and the entire facility).

Section 651.0261, F.S., requires each provider must submit a quarterly unaudited financial statement of the provider or of the facility, days cash on hand, occupancy, debt service coverage ratio, and a detailed listing of the assets maintained in the liquid reserves within 45 days after the end of each fiscal quarter.⁴¹ This information is intended for the OIR to use for monitoring the financial condition of a provider or facility on an ongoing basis. If a CCRC falls below the thresholds set for two or more of the key indicators (days cash on hand, debt service coverage ratio, or occupancy) at the time of the quarterly report, the CCRC must submit to the OIR an explanation of the circumstances and a description of the actions the CCRC will take to meet the requirements. The last quarterly statement for a fiscal year is not required if a provider does not have a regulatory action level event, an impairment, or a corrective action plan pending.

Section 651.0261, F.S., authorizes the OIR to require monthly reporting of certain information if it finds such information is needed to properly monitor the financial condition of a provider or facility, or is otherwise needed to protect the public interest.⁴² The section also specifies certain circumstances under which monthly filings may be required, such as a provider being subject to delinquency, receivership, or bankruptcy proceedings.⁴³

³⁷ Section 651.035(7)(b), F.S.

³⁸ Section 651.035(10), F.S.

³⁹ Section 651.035(11), F.S.

⁴⁰ Section 651.035(8), F.S.

⁴¹ Section 651.0261(1), F.S.

⁴² Section 651.0261(2), F.S.

⁴³ Section 651.0261(3), F.S.

Financial Indicators and Solvency Framework

Regulatory Action Level Event⁴⁴

Section 651.034, F.S., provides a framework of required actions if a provider falls below specified levels of three key indicators at the time of the annual report: occupancy, days cash on hand⁴⁵, and the debt service coverage ratio⁴⁶. The key indicators were selected based on their tendency to highlight problematic financial developments. If the provider's performance falls below the specified levels on two of the following three key indicators at the time of the annual report, it is considered a "regulatory action level event":

- The provider's debt service coverage ratio is less than the greater of the minimum ratio specified in the provider's bond covenants or lending agreement for long-term financing or 1.20:1 as of the most recent annual report filed with the OIR; or, if the provider does not have a debt service coverage ratio required by its lending institution, the provider's debt service coverage ratio is less than 1.20:1 as of the most recent annual report filed with the OIR;
- The provider's days cash on hand is less than the greater of the minimum number of days cash on hand specified in the provider's bond covenants or lending agreement for long-term financing or 100 days. If the provider does not have a days cash on hand required by its lending institution, the days cash on hand may not be less than 100 as of the most recent annual report filed with the OIR; or,
- The occupancy of the provider's facility is less than 80 percent averaged over the 12-month period immediately preceding the annual report filed with the OIR.

If the provider is a member of an obligated group having cross-collateralized debt, the obligated group's debt service coverage ratio and days cash on hand must be used to determine if a regulatory action level event has occurred. In the event a regulatory action level event occurs, the provider is required to submit a corrective action plan; the OIR is required to perform an examination or analysis of the provider; and the OIR is required to issue a corrective order specifying any corrective actions the OIR determines are required. For new CCRCs, the OIR may exempt a provider from the consequences of a regulatory action level event or impairment until the earlier of the CCRC reaching stabilized occupancy, the time projected to achieve stabilized occupancy, or five years from the date of issuance of the COA.

Impairment

The bill creates a definition for "impaired" or impairment" to allow for earlier intervention by the OIR in an effort to prevent harm to Florida consumers. The impairment framework has been

⁴⁴ Section 651.011(25), F.S., defines "regulatory action level event."

⁴⁵ "Days cash on hand" is an accounting term to account for the number of days an organization can continue to pay operating expenses, given the amount of cash available. AccountingTools, *What Is Days Cash on Hand?* (April 2, 2023), <https://www.accountingtools.com/articles/days-cash-on-hand.html#:~:text=What%20is%20Days%20Cash%20on,generating%20any%20cash%20from%20sales> (last visited April 12, 2023).

⁴⁶ Debt service ratio applies to corporate, government and personal finance. In relation to corporate finance, the debt-service coverage ratio (DSCR) is a measurement of the firm's available cash flow to pay current debt obligations. The DSCR shows investors whether a company has enough income to pay its debts. Investopedia, Jason Fernando, *Debt-Service Coverage Ratio (DSCR): How to Use and Calculate It* (March 23, 2023), <https://www.investopedia.com/terms/d/dscr.asp> (last visited April 12, 2023).

an effective tool in preventing, or minimizing the impact of, insurer insolvencies. The current intervention framework for CCRCs is triggered only after a provider becomes insolvent, meaning it is unable to pay its obligations as they come due in the normal course of business. The establishment of the impairment framework will allow the OIR to begin partnering with a provider much sooner in order to mitigate or resolve any potential issues that would put resident interests in jeopardy. A provider is considered impaired if it fails to hold the minimum liquid reserve.⁴⁷ Additionally, a provider without mortgage or bond financing would be considered impaired if it does not maintain the specified level of days cash on hand, and a provider with mortgage or bond financing would be considered impaired if it does not maintain specified levels of days cash on hand and debt service coverage ratio.⁴⁸ If the provider is a member of an obligated group having cross-collateralized debt, the obligated group's debt service coverage ratio and days cash on hand must be used to determine if the provider is impaired.⁴⁹ The OIR may forego taking action for up to 180 days after an impairment occurs if the OIR finds there is a reasonable expectation the impairment may be eliminated within the 180-day period.

Sections 651.022 and 651.023, F.S., prohibit the OIR from approving an application for a provisional COA or COA if it includes in the financing plan any encumbrance on renewal or replacement reserves required by ch. 651, F.S.

Section 651.114, F.S., requires that a provider, determined by the OIR to not be in compliance with ch. 651, F.S., must submit to the OIR and the Continuing Care Advisory Council a plan for obtaining compliance with ch. 651, F.S., and solvency. The OIR is not prohibited from taking other regulatory action while a plan for obtaining compliance or solvency is under review.

Section 651.114, F.S., provides circumstances under which the OIR's remedial rights are not subordinate to the rights of a trustee or lender. Those circumstances include the following:

- The provider engaged in the misappropriation, conversion, or illegal commitment or withdrawal of minimum liquid reserve or required escrowed funds;
- The provider refused to be examined by the OIR; or
- The provider refused to produce any relevant accounts, records, and files requested as part of an examination.

Even if the OIR's remedial rights are suspended, an impaired provider must make available to the OIR copies of any corrective action plan approved by the trustee or lender to cure the impairment.

Section 651.1065, F.S., requires an impaired or insolvent provider to receive prior approval of the OIR before writing new contracts if its proprietor, general partner, member, officer, director, trustee, or manager knows, or reasonably should know, the CCRC is impaired or insolvent, even if the provider's COA has not been formally suspended. This is intended to help protect potential residents who may be considering investing substantial funds to enter into a CCRC contract. The OIR will have discretion to allow the issuance of new contracts where safeguards are adequate. Violating this section is a felony of the third degree.

⁴⁷ Section 651.011(15)(a), F.S.

⁴⁸ Section 651.011(15)(b), F.S.

⁴⁹ Section 651.011(15), F.S.

Examinations of Providers

Section 651.105, F.S., requires the OIR to examine at least once every three years any applicant for a COA and any provider engaged in the execution of care contracts or engaged in the performance of obligations under such contracts. If a provider is accredited under s. 651.028, F.S., such examinations must occur at least once every five years. Further, any duly authorized officer, employee, or agent of the office may have access to, and examine any records, with or without advance notice, to secure compliance with, or to prevent a violation of, any provision of this chapter.⁵⁰

Rights of Residents; Transparency***Rights of Residents***

The OIR is also authorized to discipline a facility for violations of residents' rights.⁵¹ These rights include: a right to live in a safe and decent living environment, free from abuse and neglect; freedom to participate in and benefit from community services and activities and to achieve the highest possible level of independence, autonomy, and interaction within the community; and present grievances and recommend changes in policies, procedures, and services to the staff of the facility, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal.⁵²

Each CCRC must establish a resident's council to provide a forum for residents' input on issues that affect the general residential quality of life, such as the facility's financial trends, and problems, as well as proposed changes in policies, programs, and services.⁵³ CCRCs are required to maintain and make available certain public information and records, such as records of all cost and inspection reports pertaining to that facility, a concise summary of the last examination report issued by the OIR, and a summary of the most recent annual statement.⁵⁴

Disclosures and Notices

Chapter 651 requires provider to give many types of notices to the residents or residents' council. These assists residents and prospective residents to remain apprised of the status and stability of the provider and to take action to protect their interests.

A provider is required to furnish the following information to the chair of the residents' council: a notice of the issuance of any examination reports; a notice of the initiation of any legal or administrative proceedings by the OIR or the DFS; a notice of any change in ownership filing submitted to the OIR; any master plans approved by the provider's governing board; and any plans for expansion or phased development.⁵⁵ Additionally, a provider must post in a prominent place in the facility a notice that contains the OIR's website and phone number and the website

⁵⁰ Section 651.105(2), F.S.

⁵¹ Section 651.083, F.S.

⁵² *Id.*

⁵³ Section 651.081, F.S.

⁵⁴ Section 651.091, F.S.

⁵⁵ Section 651.091(2), F.S.

and toll-free consumer helpline for the DFS Division of Consumer Services (Division).⁵⁶ The notice must also state that either the OIR or the Division may be contacted for the submission of inquiries and complaints with respect to potential violations of law.

Section 651.091(3), F.S., requires the following disclosures to prospective residents: a notice of the issuance of any examination reports; a notice of the initiation of any legal or administrative proceedings by the OIR or the DFS; notice that, if the resident does not exercise the right to rescind a continuing care contract within seven days after executing the contract, the resident's funds held in escrow will be released to the provider; a statement that distribution of the provider's assets or income may occur or a statement that such distribution will not occur; and a disclosure of any holding company system or obligated group of which the provider is a member. Additionally, the provider must obtain written acknowledgment the prospective resident or his or her legal representative received the disclosures required by s. 651.091(3), F.S.

Section 651.055(3), F.S., requires contracts with a resident disclose CCRC facilities in Florida are regulated by the OIR. Additionally, the contract disclosure must state “[t]he financial structure of a continuing care provider can be complex, and the decision to enter into a contract for continuing care is a long-term commitment between a resident and the continuing care provider. You may wish to consult an attorney or financial advisor before entering into such contract.”

Section 651.111, F.S., provides for the handling of resident complaints against providers, including a requirement the OIR provide a written acknowledgement of any complaint within 15 days of receipt of the complaint and a written statement to the complainant specifying any violations of law and any actions taken. Such additional procedures will keep residents better informed as to the status and outcome of a complaint.

Continuing Care Advisory Council

Section 651.121, F.S., creates the council and provides membership and duties of the ten members comprising the council is an advisory contains requirements for membership of the Continuing Care Advisory Council. The members include three members representing facilities with active COAs, one representative of the business community, one representative of the financial community, a certified public accountant, and four residents who hold continuing care contracts with a facility certified in Florida.

Department of Financial Services’ Oversight of CCRCs

The DFS may become involved with a resident after a CCRC contractual agreement has been signed by both parties or during a mediation or arbitration process.⁵⁷ Typically, residents will contact the DFS Division of Consumer Services, which receives and resolves complaints involving products and persons regulated by the OIR or the DFS.⁵⁸

⁵⁶ Section 651.091, F.S.

⁵⁷ Rules 69O-193.062 and 69O-193.063, F.A.C.

⁵⁸ Section 624.307, F.S.

Chapter 631, F.S., governs the rehabilitation and liquidation process for insurers in Florida. Federal law provides insurance companies are not eligible to be a debtor in federal bankruptcy proceedings and are instead subject to state laws regarding receivership.⁵⁹ In Florida, the Division of Rehabilitation and Liquidation within the DFS is responsible for managing insurance companies placed into receivership. The goal of rehabilitation is to return the insurer to solvency. The goal of liquidation, however, is to liquidate the business of the insurer and use the proceeds to pay claims, including those of policyholders, creditors, and employees.

III. Effect of Proposed Changes:

Section 1 amends s. 651.011, F.S., to create definitions for the following terms:

- “Designated resident representative” means a resident elected by the residents’ council to represent residents on matters related to changes in fees or services as specified in s. 651.085(2) and (3); and
- “Residents’ council” means an organized body representing the resident population of a certified facility. A residents’ council shall serve as a liaison between residents and the appropriate representative of the provider.

Section 2 amends s. 651.0246, F.S., relating to expansions. Subsection (2)(a) is amended to clarify the certified public accountant is responsible for preparing an independent evaluation and examination opinion for the first five years of operation.

Subsection (4) is revised to allow a provider to have access to escrowed resident fees when the provider has collected a reservation deposit for at least 75 percent of the proposed units for which an entrance fee is to be charged. Further, a provider must use the funds for the sole purpose of paying secured indebtedness as specified in the feasibility study. The minimum reservation deposit must be the lesser of \$40,000 or 10 percent of the then-current entrance fee for the unit being reserved. If the expansion is to be completed in multiple phases, the 75 percent reservation requirement applies separately to each phase of the expansion.

Currently, the provider may have access to the escrowed funds if payment in full has been received for 50 percent of the units of a phase or of the total of the combined phases constructed. Subsection (6) is revised to reduce the time for the Office of Insurance Regulation (OIR) to approve or deny an expansion application from 45 days to 30 days from the date the application is deemed complete.

Section 3 amends s. 651.026, F.S., relating to annual reports, to clarify if a provider’s financial statements are consolidated or combined with the financial statements of additional entities owned or controlled by the provider, the financial report must include as supplemental information a separate balance sheet, statement of income and expenses, statement of equity or fund balance, and statement of changes in cash flow for the individual provider and each additional entity comprising the consolidated or combined financial report. A similar

⁵⁹ The Bankruptcy Code expressly provides that “a domestic insurance company” may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. s. 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. See 15 U.S.C. s. 1012 (McCarran-Ferguson Act).

supplemental presentation and reporting requirement is created for a provider that is a member of an obligated group.

Section 4 amends s. 651.033, F.S., relating to escrow accounts, to expand the number of eligible escrow agents by removing the requirement a federal financial institution must have a branch in Florida. The section also provides technical changes. The section also authorizes a provider to hold a resident's check for a seven day rescission period without receiving a request from the resident.

Section 5 amends s. 651.034, F.S., relating to financial and operating requirements. Subsection (6) extends the time the OIR may exempt a provider from certain regulatory actions, such as the submission of a corrective action plan, when the provider's financial results, do not meet certain levels. The change in time frame is extended from five years from the date the provider received its certificate of occupancy to five years after the end of the provider's fiscal year in which the certificate of occupancy was issued.

Section 6 amends s. 651.035, F.S., relating to minimum liquid reserves. The section eliminates the requirement for a provider to obtain prior approval from the OIR to withdraw funds from a debt service reserve that required to be escrowed pursuant to a trust indenture of mortgage lien if the funds will be used to pay principal and interest payments.

Subsection (1) requires when a provider is using an escrow account held pursuant to a trust indenture or mortgage lien to meet its minimum liquid reserve requirement, the trust indenture, loan agreement, or escrow agreement must require that the provider, trustee, lender, escrow agent, or another person designated to act in their place must notify the OIR in writing at least 10 days before the withdrawal of any portion of the debt service reserve funds required to meet the provider's minimum liquid reserve requirement. The notice must include an affidavit sworn to by the provider, the trustee, or a person designated to act in their place which includes the amount of the scheduled debt service payment, the payment due date, the amount of the withdrawal, the accounts from which the withdrawal will be made, and a plan with a schedule for replenishing the withdrawn funds. If the plan is revised by a consultant that is retained as prescribed in the provider's financing documents, the revised plan must be submitted to the OIR within 10 days after approval by the lender or trustee.

Subsection (5) also expands the types of financial institutions that can provide a letter of credit to a provider, and can be used to satisfy its minimum liquid reserve requirement by adding Florida state-chartered financial institutions and specified federal financial institutions

Section 7 amends s. 651.055, F.S., relating to continuing care contracts; right to rescind. The section is amended to authorize a provider to assess a cancellation penalty against a person who signs a residency contract and rescinds it within seven days, if the person had previously signed a reservation agreement and did not cancel it within 30 days. A prospective resident who has signed a reservation agreement and cancels their agreement after 30 days is generally subject to a cancellation penalty. Currently, a person who rescinds a residency contract receives a full refund. As a result, a resident who wants to avoid the reservation agreement cancellation penalty may sign a residency contract and then rescind the contract within seven days, and receive a full

refund. The change in this section would not allow this type of transaction to avoid the cancellation penalty.

Section 8 amends s. 651.081, F.S., relating to residents' council, to clarify a residents' council can establish and maintain its own governance documents, such as bylaws or operating agreements, policies, and operating procedures, which may include establishment of committees. It also gives a resident the right to participate in residents' council matters including elections. The section removes the provision that the residents must allow for open meetings when appropriate.

Section 9 amends s. 651.083, F.S., relating to residents' rights, to clarify that residents have access to ombudsman staff.

Section 10 amends s. 651.085, F.S., relating to quarterly meetings between residents and the governing body of the provider, to require each continuing care retirement community (CCRC) have its own designated resident representative and to clarify the designated resident representative must be a resident and is to be nominated and elected by the residents' council.

This section also clarifies a representative of a provider must notify the designated resident representative at least 14 days in advance of any meeting of the full governing body at which the annual budget and proposed changes in resident fees or services are on the agenda or will be discussed so that the resident can attend and participate in that portion of the meeting. The section also requires any resident who serves as a member of a board or governing body of the facility to perform their duties in a fiduciary manner, including the duty of confidentiality, duty of care, duty of loyalty, and duty of obedience, as required of any individual serving on the board or governing body.

Section 11 amends s. 651.091, F.S., relating to availability of reports and records, to require each facility to provide a copy of the final examination report and corrective action plans, if applicable, to the executive officer of the governing body of the provider and the president or chair of the residents' council within 60 days after issuance of the report. It also requires the CCRC to notify the president or chair of the residents' council in writing of a change in management within 10 business days after the change, and to disclose to prospective residents whether the provider has one or more residents serving on its board or governing body and whether that individual has a vote or is serving in a nonvoting, ex officio capacity.

Section 12 amends s. 651.105, F.S., relating to examinations, to require each examination by the OIR, must cover the preceding three or five years of the provider, whichever is applicable, and must be commenced within 12 months after the end of the most fiscal year covered by the examination. The section provides the scope of the OIR's examination may include events subsequent to the end of the most recent fiscal year and the events of any prior period which relate to possible violations of this chapter or which affect the present financial condition of the provider. Further, the OIR is required to conduct an interview with the current president or chair of the residents' council or their designee, as part of the examination.

Section 13 and **Section 14** amends ss. 651.012 and 651.0261, F.S., respectively, to provide conforming changes.

Section 15 provides this act takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Providers will have access to escrowed resident fees as part of expansion sooner since the provider can access the escrowed funds once 75 percent of the proposed units have been reserved rather than only allowing access if payment in full has been received for 50 percent of the units.

The bill expands the number of eligible escrow agents by removing the requirement the financial institution must have a branch in Florida.

The bill expands the types of financial institutions that can provide a letter of credit to a provider to use to satisfy its minimum liquid reserve requirement by adding Florida state-chartered financial institutions and specified federal, financial institutions.

C. Government Sector Impact:

In order to implement the provisions of the bill, the Office of Insurance Regulation (OIR) has indicated a need for one additional Financial Control Analyst for continuing care

retirement communities (CCRC) examinations and investigations of consumer inquiries and complaints. For this position, the OIR will require an appropriation of \$101,051 in recurring funds and \$4,682 in nonrecurring funds from the Insurance Regulatory Trust Fund. The estimated cost includes \$90,000 in recurring funds for salaries and benefits, 60,000 in rate, as well as \$11,051 in recurring funds and \$4,682 in nonrecurring funds to fill the requested position.⁶⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

The term “office” refers to the Office of Financial Regulation. However, the term “office” is not defined in ch. 651.011, F.S. The term is used throughout ch. 651, F.S.

The term “examination opinion” is not defined in ch. 651, F.S. The term is used in ss. 651.023 and 651.0246, F.S.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 651.011, 651.0246, 651.026, 651.033, 651.034, 651.035, 651.055, 651.081, 651.083, 651.085, 651.091, 651.105, 651.012, and 651.0261.

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 April 5, 2023:

The CS:

- Removes provisions allowing the Office of Insurance Regulation to waive financial reporting requirements under specified circumstances.
- Removes provision revising criteria for conducting feasibility study required as part of an expansion application.
- Revises financial reporting requirements as it related to consolidated or combined financial statements and an obligated group.
- Provides technical, conforming changes.

- B. **Amendments:**

None.

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

⁶⁰ Email from Kevin Jacobs, Office of Insurance Regulation to Lisa Johnson, Senate Committee on Banking and Insurance, (April 4, 2023) (on file with Senate Committee on Banking and Insurance Committee).

By the Committee on Banking and Insurance; and Senator
Yarborough

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1 A bill to be entitled
2 An act relating to continuing care contracts; amending
3 s. 651.011, F.S.; defining the terms "designated
4 resident representative" and "residents' council";
5 amending s. 651.0246, F.S.; revising a requirement for
6 specified information that must be submitted by a
7 provider applying for expansion of a certificated
8 continuing care facility; revising a condition for the
9 release of certain escrowed funds to providers;
10 revising the timeframe in which the Office of
11 Insurance Regulation must complete its review of an
12 application for expansion; amending s. 651.026, F.S.;
13 revising information required to be contained in
14 certain providers' financial reports in their annual
15 reports; amending s. 651.033, F.S.; revising financial
16 institutions in which escrow accounts must be
17 established; revising a condition under which a
18 provider may hold and not deposit a resident's check
19 for a specified period; amending s. 651.034, F.S.;
20 revising the timeframe during which the office may
21 exempt certain providers from certain regulatory
22 actions; amending s. 651.035, F.S.; providing that
23 certain documents relating to a provider's debt
24 service reserve must require certain notice to the
25 office before the withdrawal of debt service reserve
26 funds; specifying requirements for the notice and for
27 certain plans to replenish withdrawn funds; revising
28 the calculation of minimum liquid reserve requirements
29 for certain facilities; revising requirements for

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30 letters of credit which satisfy minimum liquid reserve
31 requirements; revising circumstances under which a
32 provider may withdraw funds held in escrow without the
33 office's approval; making a technical change; amending
34 s. 651.055, F.S.; specifying that a forfeiture penalty
35 may be deducted from certain resident refunds, except
36 under certain circumstances; conforming a provision to
37 changes made by the act; amending s. 651.081, F.S.;
38 specifying the authority of residents' councils and
39 the eligibility of persons to participate in
40 residents' council matters; deleting a requirement for
41 open meetings of residents' councils; amending s.
42 651.083, F.S.; specifying that a resident has the
43 right to access ombudsman staff; amending s. 651.085,
44 F.S.; requiring residents' councils to nominate and
45 elect a designated resident representative to
46 represent them on specified matters; providing
47 requirements for designated resident representatives;
48 revising meetings of the full governing body for which
49 the designated resident representative must be
50 notified; requiring each facility of certain providers
51 to have its own designated resident representative;
52 providing a requirement for certain designated
53 resident representatives; amending s. 651.091, F.S.;
54 adding reporting and notice requirements for
55 continuing care facilities; adding a disclosure
56 requirement for providers to prospective residents or
57 their legal representatives; amending s. 651.105,
58 F.S.; specifying requirements for the office's

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examination of providers and applicants for certificates of authority; deleting a requirement for a provider's representative to give examination reports and corrective action plans to the governing body's executive officer within a certain timeframe; amending ss. 651.012 and 651.0261, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (13) through (26) and (27) of section 651.011, Florida Statutes, are redesignated as subsections (14) through (27) and (29), respectively, and new subsection (13) and subsection (28) are added to that section, to read:

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

(13) "Designated resident representative" means a resident elected by the residents' council to represent residents on matters related to changes in fees or services as specified in s. 651.085(2) and (3).

(28) "Residents' council" means an organized body representing the resident population of a certified facility. A residents' council shall serve as a liaison between residents and the appropriate representative of the provider.

Section 2. Paragraph (a) of subsection (2), paragraph (b) of subsection (4), and subsection (6) of section 651.0246, Florida Statutes, are amended to read:

651.0246 Expansions.—

(2) A provider applying for expansion of a certificated

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facility must submit all of the following:

(a) A feasibility study prepared by an independent certified public accountant. The feasibility study must include at least the following information:

1. A description of the facility and proposed expansion, including the location, the size, the anticipated completion date, and the proposed construction program.

2. An identification and evaluation of the primary and, if applicable, secondary market areas of the facility and the projected unit sales per month.

3. Projected revenues, including anticipated entrance fees; monthly service fees; nursing care revenues, if applicable; and all other sources of revenue.

4. Projected expenses, including for staffing requirements and salaries; the cost of property, plant, and equipment, including depreciation expense; interest expense; marketing expense; and other operating expenses.

5. A projected balance sheet of the applicant.

6. The expectations for the financial condition of the project, including the projected cash flow and an estimate of the funds anticipated to be necessary to cover startup losses.

7. The inflation factor, if any, assumed in the study for the proposed expansion and how and where it is applied.

8. Project costs; the total amount of debt financing required; marketing projections; resident rates, fees, and charges; the competition; resident contract provisions; and other factors that affect the feasibility of the facility.

9. Appropriate population projections, including morbidity and mortality assumptions.

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10. The name of the person who prepared the feasibility study and his or her experience in preparing similar studies or otherwise consulting in the field of continuing care.

11. Financial forecasts or projections prepared in accordance with standards adopted by the American Institute of Certified Public Accountants or in accordance with standards for feasibility studies for continuing care retirement communities adopted by the Actuarial Standards Board.

12. An independent evaluation and examination opinion for the first 5 years of operations, or a comparable opinion acceptable to the office, by the certified public accountant ~~consultant~~ who prepared the study, of the underlying assumptions used as a basis for the forecasts or projections in the study and that the assumptions are reasonable and proper and the project as proposed is feasible.

13. Any other information that the provider deems relevant and appropriate to provide to enable the office to make a more informed determination.

If any material change occurs in the facts set forth in an application filed with the office pursuant to this section, an amendment setting forth such change must be filed with the office within 10 business days after the applicant becomes aware of such change, and a copy of the amendment must be sent by registered mail to the principal office of the facility and to the principal office of the controlling company.

(4) The provider is entitled to secure release of the moneys held in escrow within 7 days after receipt by the office of an affidavit from the provider, along with appropriate copies

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to verify, and notification to the escrow agent by certified mail that the following conditions have been satisfied:

(b) Payment in full has been received for at least 50 percent of the total units of a phase or of the total of the combined phases constructed; or a provider has collected a reservation deposit for at least 75 percent of the proposed units for which an entrance fee is to be charged and the escrowed funds will be used for the sole purpose of paying secured indebtedness as specified in the feasibility study submitted pursuant to paragraph (2)(a). The minimum reservation deposit must be the lesser of \$40,000 or 10 percent of the then-current entrance fee for the unit being reserved. If the expansion is to be completed in multiple phases, the 75 percent reservation requirement applies separately to each phase of the expansion. If a provider offering continuing care at-home is applying for a release of escrowed entrance fees, the same minimum requirement must be met for the continuing care and continuing care at-home contracts independently of each other.

Notwithstanding chapter 120, only the provider, the escrow agent, and the office have a substantial interest in any office decision regarding release of escrow funds in any proceedings under chapter 120 or this chapter.

(6) Within 30 ~~45~~ days after the date on which an application is deemed complete as provided in paragraph (5)(b), the office shall complete its review and, based upon its review, approve an expansion by the applicant and issue a determination that the application meets all requirements of law, that the feasibility study was based on sufficient data and reasonable

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assumptions, and that the applicant will be able to provide continuing care or continuing care at-home as proposed and meet all financial and contractual obligations related to its operations, including the financial requirements of this chapter. If the application is denied, the office must notify the applicant in writing, citing the specific failures to meet the requirements of this chapter. The denial entitles the applicant to a hearing pursuant to chapter 120.

Section 3. Paragraph (b) of subsection (2) of section 651.026, Florida Statutes, is amended to read:

651.026 Annual reports.—

(2) The annual report shall be in such form as the commission prescribes and shall contain at least the following:

(b) A financial report audited by an independent certified public accountant which must contain, for two or more periods if the facility has been in existence that long, all of the following:

1. An accountant's opinion and, in accordance with generally accepted accounting principles:

- a. A balance sheet;
- b. A statement of income and expenses;
- c. A statement of equity or fund balances; and
- d. A statement of changes in cash flows.

2. Notes to the financial report considered customary or necessary for full disclosure or adequate understanding of the financial report, financial condition, and operation.

3. If the provider's financial statements are consolidated or combined in accordance with generally accepted accounting principles with the financial statements of additional entities

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owned or controlled by the provider, the financial report must include as supplemental information a separate balance sheet, statement of income and expenses, statement of equity or fund balances, and statement of changes in cash flows for the individual provider and each additional entity comprising the consolidated or combined financial report.

4. If the provider is a member of an obligated group, the provider may use the obligated group's audited financial statements if they contain as supplemental information a separate balance sheet, statement of income and expenses, statement of equity or fund balances, and statement of changes in cash flows for the individual provider and other members of the obligated group.

Section 4. Paragraph (a) of subsection (1) and paragraph (c) of subsection (3) of section 651.033, Florida Statutes, are amended, and paragraph (a) of subsection (3) of that section is republished, to read:

651.033 Escrow accounts.—

(1) When funds are required to be deposited in an escrow account pursuant to s. 651.0215, s. 651.022, s. 651.023, s. 651.0246, s. 651.035, or s. 651.055:

(a) The escrow account must be established in a Florida ~~state-chartered bank, Florida savings bank and loan association, or Florida trust company, or a federal savings or thrift association, bank, savings bank, or trust company national bank that is chartered and supervised by the Office of the Comptroller of the Currency within the United States Department of the Treasury and that has a branch in this state,~~ which is acceptable to the office, or such funds must be deposited with

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the department and be kept and maintained in an account separate and apart from the provider's business accounts.

(3) When entrance fees are required to be deposited in an escrow account pursuant to s. 651.0215, s. 651.022, s. 651.023, s. 651.0246, or s. 651.055:

(a) The provider shall deliver to the resident a written receipt. The receipt must show the payor's name and address, the date, the price of the care contract, and the amount of money paid. A copy of each receipt, together with the funds, must be deposited with the escrow agent or as provided in paragraph (c). The escrow agent must release such funds to the provider 7 days after the date of receipt of the funds by the escrow agent if the provider, operating under a certificate of authority issued by the office, has met the requirements of s. 651.0215(8), s. 651.023(6), or s. 651.0246. However, if the resident rescinds the contract within the 7-day period, the escrow agent must release the escrowed fees to the resident.

(c) As an alternative to paragraph (a) ~~At the request of an individual resident of a facility,~~ the provider may hold the check for the 7-day period and may not deposit it during this time period. If the resident rescinds the contract within the 7-day period, the check must be immediately returned to the resident. Upon the expiration of the 7 days, the provider shall deposit the check.

Section 5. Subsection (6) of section 651.034, Florida Statutes, is amended to read:

651.034 Financial and operating requirements for providers.-

(6) The office may exempt a provider from subsection (1) or

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subsection (2) until stabilized occupancy is reached or until the time projected to achieve stabilized occupancy as reported in the last feasibility study required by the office as part of an application filing under s. 651.0215, s. 651.023, s. 651.024, or s. 651.0246 has elapsed, but for no longer than 5 years after the end of the provider's fiscal year in which the certificate of occupancy was issued ~~date of issuance of the certificate of occupancy.~~

Section 6. Paragraph (b) of subsection (1), paragraph (a) of subsection (2), subsection (5), and paragraph (a) of subsection (7) of section 651.035, Florida Statutes, are amended to read:

651.035 Minimum liquid reserve requirements.-

(1) A provider shall maintain in escrow a minimum liquid reserve consisting of the following reserves, as applicable:

(b) A provider that has outstanding indebtedness that requires a debt service reserve to be held in escrow pursuant to a trust indenture or mortgage lien on the facility and for which the debt service reserve may only be used to pay principal and interest payments on the debt that the debtor is obligated to pay, and which may include property taxes and insurance, may include such debt service reserve in computing the minimum liquid reserve needed to satisfy this subsection if the provider furnishes to the office a copy of the agreement under which such debt service reserve is held, together with a statement of the amount being held in escrow for the debt service reserve, certified by the lender or trustee and the provider to be correct. The trustee shall provide the office with any information concerning the debt service reserve account upon

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request of the provider or the office. In addition, the trust indenture, loan agreement, or escrow agreement must provide that the provider, trustee, lender, escrow agent, or another person designated to act in their place shall notify the office in writing at least 10 days before the withdrawal of any portion of the debt service reserve funds required to be held in escrow as described in this paragraph. The notice must include an affidavit sworn to by the provider, the trustee, or a person designated to act in their place which includes the amount of the scheduled debt service payment, the payment due date, the amount of the withdrawal, the accounts from which the withdrawal will be made, and a plan with a schedule for replenishing the withdrawn funds. If the plan is revised by a consultant that is retained as prescribed in the provider's financing documents, the revised plan must be submitted to the office within 10 days after approval by the lender or trustee. Any such separate debt service reserves are not subject to the transfer provisions set forth in subsection (8).

(2) (a) In facilities where not all residents are under continuing care or continuing care at-home contracts, the reserve requirements of subsection (1) shall be computed only with respect to the proportional share of operating expenses that are applicable to residents. For purposes of this calculation, the proportional share shall be based upon the ratio of residents under continuing care or continuing care at-home contracts to the total of all residents, including those residents who do not hold such contracts.

(5) A provider may satisfy the minimum liquid reserve requirements of this section by acquiring from a financial

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institution, as specified in paragraph (b), a clean, unconditional irrevocable letter of credit equal to the requirements of this section, less the amount of escrowed operating cash required by paragraph (d).

(a) The letter of credit must be issued by a financial institution participating in the State of Florida Treasury Certificate of Deposit Program; a Florida state-chartered bank, savings bank, or trust company; or a federal savings or thrift association, bank, savings bank, or trust company, and must be approved by the office before issuance and before any renewal or modification thereof. At a minimum, the letter of credit must provide for:

1. Ninety days' prior written notice to both the provider and the office of the financial institution's determination not to renew or extend the term of the letter of credit.

2. Unless otherwise arranged by the provider to the satisfaction of the office, deposit by the financial institution of letter of credit funds in an account designated by the office no later than 30 days before the expiration of the letter of credit.

3. Deposit by the financial institution of letter of credit funds in an account designated by the office within 4 business days following written instructions from the office that, in the sole judgment of the office, funding of the minimum liquid reserve is required.

(b) The terms of the letter of credit must be approved by the office and the long-term debt of the financial institution providing such letter of credit must be rated in one of their top three long-term debt rating categories by either Moody's

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Investors Service, Standard & Poor's Corporation, or a recognized securities rating agency acceptable to the office.

(c) The letter of credit must name the office as beneficiary.

(d) Notwithstanding any other provision of this section, a provider using a letter of credit pursuant to this subsection shall, at all times, have and maintain in escrow an operating cash reserve equal to 2 months' operating expenses as determined pursuant to s. 651.026.

(e) If the issuing financial institution no longer participates in the State of Florida Treasury Certificate of Deposit Program, such financial institution shall deposit as collateral with the department eligible securities, as prescribed by s. 625.52, having a market value equal to or greater than 100 percent of the stated amount of the letter of credit.

(7) (a) A provider may withdraw funds held in escrow without the approval of the office if:

1. The amount held in escrow exceeds the requirements of this section and if the withdrawal will not affect compliance with this section; or

2. The withdrawal is from a debt service reserve required to be held in escrow pursuant to a trust indenture or mortgage lien on the facility as described in paragraph (1)(b) and will be used to pay principal or interest payments, which may include property taxes and insurance, the debtor is obligated to pay when sufficient funds are not available on the next principal or interest payment due date.

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The notice specified in paragraph (1)(b) must be sent to the office at least 10 days before debt service reserve funds may be withdrawn without prior approval.

Section 7. Subsection (2) of section 651.055, Florida Statutes, is amended to read:

651.055 Continuing care contracts; right to rescind.—

(2) A resident has the right to rescind a continuing care contract and receive a full refund of any funds paid, without penalty or forfeiture, within 7 days after executing the contract. However, if an individual signs a reservation agreement pursuant to s. 651.023(4) and fails to cancel such agreement within 30 days after executing the agreement and subsequently signs a residency contract pursuant to this section and rescinds the contract within 7 days, the forfeiture penalty authorized under s. 651.023(4)(b) may be deducted from the refund unless the individual can demonstrate extenuating circumstances, such as, but not limited to, the death or illness of a spouse or partner, a diagnosis of a chronic or terminal illness of the individual, or a change in financial or asset position which warrants cancellation of the contract. A resident may not be required to move into the facility designated in the contract before the expiration of the 7-day period. During the 7-day period, the resident's funds must be held in an escrow account or the provider may hold the check until the 7-day period expires ~~unless otherwise requested by the resident~~ pursuant to s. 651.033(3)(c).

Section 8. Paragraphs (a) and (d) of subsection (2) of section 651.081, Florida Statutes, are amended to read:

651.081 Residents' council.—

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407 (2) (a) Each facility shall establish a residents' council
 408 created for the purpose of representing residents on matters set
 409 forth in s. 651.085. A residents' council has authority to
 410 establish and maintain its own governance documents, such as
 411 bylaws or operating agreements, policies, and operating
 412 procedures, which may include establishment of committees. A
 413 person is eligible to participate in residents' council matters,
 414 including elections, if the person meets the definition of a
 415 resident under s. 651.011. The residents' council shall be
 416 established through an election in which the residents, as
 417 defined in s. 651.011, vote by ballot, physically or by proxy.
 418 If the election is to be held during a meeting, a notice of the
 419 organizational meeting must be provided to all residents of the
 420 community at least 10 business days before the meeting. Notice
 421 may be given through internal mailboxes, communitywide
 422 newsletters, bulletin boards, in-house television stations, and
 423 other similar means of communication. An election creating a
 424 residents' council is valid if at least 40 percent of the total
 425 resident population participates in the election and a majority
 426 of the participants vote affirmatively for the council. The
 427 initial residents' council created under this section is valid
 428 for at least 12 months. A residents' organization formalized by
 429 bylaws and elected officials must be recognized as the
 430 residents' council under this section and s. 651.085. Within 30
 431 days after the election of a newly elected president or chair of
 432 the residents' council, the provider shall give the president or
 433 chair a copy of this chapter and rules adopted thereunder, or
 434 direct him or her to the appropriate public website to obtain
 435 this information. Only one residents' council may represent

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436 residents before the governing body of the provider as described
 437 in s. 651.085(2).
 438 (d) ~~A residents' council shall adopt its own bylaws and~~
 439 ~~governance documents subject to the vote and approval of the~~
 440 ~~residents. The residents' council shall provide for open~~
 441 ~~meetings when appropriate.~~ The residents' council governing
 442 documents shall define the manner in which residents may submit
 443 an issue to the council and define a reasonable timeframe in
 444 which the residents' council shall respond to a resident
 445 submission or inquiry. A residents' council may include term
 446 limits in its governing documents to ensure consistent
 447 integration of new leaders. If a licensed facility files for
 448 bankruptcy under chapter 11 of the United States Bankruptcy
 449 Code, 11 U.S.C. chapter 11, the facility, in its required filing
 450 of the 20 largest unsecured creditors with the United States
 451 Trustee, shall include the name and contact information of a
 452 designated resident selected by the residents' council, and a
 453 statement explaining that the designated resident was chosen by
 454 the residents' council to serve as a representative of the
 455 residents' interest on the creditors' committee, if appropriate.
 456 Section 9. Paragraph (f) of subsection (1) of section
 457 651.083, Florida Statutes, is amended to read:
 458 651.083 Residents' rights.—
 459 (1) No resident of any facility shall be deprived of any
 460 civil or legal rights, benefits, or privileges guaranteed by
 461 law, by the State Constitution, or by the United States
 462 Constitution solely by reason of status as a resident of a
 463 facility. Each resident of a facility has the right to:
 464 (f) Present grievances and recommend changes in policies,

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procedures, and services to the staff of the facility, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal. This right includes access to ombudsman volunteers or staff and advocates and the right to be a member of, and active in, and to associate with, advocacy or special interest groups or associations.

Section 10. Subsections (2), (3), and (5) of section 651.085, Florida Statutes, are amended to read:

651.085 Quarterly meetings between residents and the governing body of the provider; resident representation before the governing body of the provider.—

(2) A residents' council formed pursuant to s. 651.081, members of which are elected by the residents, shall nominate and elect ~~designate~~ a designated resident representative to represent them on matters specified in subsection (3) before the governing body of the provider. The initial designated resident representative elected under this section shall be elected to serve at least 12 months. The designated resident representative need not be a current member of the residents' council; however, such individual must meet the definition of a resident under s. 651.011.

(3) The designated resident representative shall be notified by a representative of the provider at least 14 days in advance of any meeting of the full governing body at which the annual budget and proposed changes or increases in resident fees or services are on the agenda or will be discussed. The designated resident representative shall be invited to attend and participate in that portion of the meeting designated for the discussion of such changes. A designated resident

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representative shall perform his or her duties in good faith. For a provider that owns or operates more than one facility in this state, each facility must have its own designated resident representative.

(5) The board of directors or governing board of a licensed provider may at its sole discretion allow a resident of the facility to be a voting member of the board or governing body of the facility. The board of directors or governing board of a licensed provider may establish specific criteria for the nomination, selection, and term of a resident as a member of the board or governing body. If the board or governing body of a licensed provider operates more than one licensed facility, regardless of whether the facility is in-state or out-of-state, the board or governing body may select at its sole discretion one resident from among its facilities to serve on the board of directors or governing body on a rotating basis. A resident who serves as a member of a board or governing body of the facility shall perform his or her duties in a fiduciary manner, including the duty of confidentiality, duty of care, duty of loyalty, and duty of obedience, as required of any individual serving on the board or governing body.

Section 11. Present paragraphs (e) through (k) and (l) of subsection (2) of section 651.091, Florida Statutes, are redesignated as paragraphs (f) through (l) and (n), respectively, new paragraph (e) and paragraph (m) are added to that subsection, and paragraph (m) is added to subsection (3) of that section, to read:

651.091 Availability, distribution, and posting of reports and records; requirement of full disclosure.—

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(2) Every continuing care facility shall:

(e) Provide a copy of the final examination report and corrective action plan, if one is required by the office, to the executive officer of the governing body of the provider and the president or chair of the residents' council within 60 days after issuance of the report.

(m) Notify the president or chair of the residents' council in writing of a change in management within 10 business days after the change.

(3) Before entering into a contract to furnish continuing care or continuing care at-home, the provider undertaking to furnish the care, or the agent of the provider, shall make full disclosure, obtain written acknowledgment of receipt, and provide copies of the disclosure documents to the prospective resident or his or her legal representative, of the following information:

(m) Disclosure of whether the provider has one or more residents serving on its board or governing body and whether that individual has a vote or is serving in a nonvoting, ex officio capacity.

Section 12. Subsections (1) and (6) of section 651.105, Florida Statutes, are amended to read:

651.105 Examination.—

(1) (a) The office may at any time, and shall at least once every 3 years, examine the business of any applicant for a certificate of authority and any provider engaged in the execution of care contracts or engaged in the performance of obligations under such contracts, in the same manner as is provided for the examination of insurance companies pursuant to

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ss. 624.316 and 624.318. For a provider as deemed accredited under s. 651.028, such examinations must take place at least once every 5 years. An examination covering the preceding 3 or 5 fiscal years of the provider, as applicable, must be commenced within 12 months after the end of the most recent fiscal year covered by the examination. Such examination may include events subsequent to the end of the most recent fiscal year and the events of any prior period which relate to possible violations of this chapter or which affect the present financial condition of the provider. At least once every 3 or 5 fiscal years, as applicable, the office shall conduct an interview in person, telephonically, or through electronic communication with the current president or chair of the residents' council, or another designated officer of the council if the president or chair is not available, as part of the examination process.

(b) Such examinations must be made by a representative or examiner designated by the office whose compensation will be fixed by the office pursuant to s. 624.320. Routine examinations may be made by having the necessary documents submitted to the office; and, for this purpose, financial documents and records conforming to commonly accepted accounting principles and practices, as required under s. 651.026, are deemed adequate. The final written report of each examination must be filed with the office and, when so filed, constitutes a public record. Any provider being examined shall, upon request, give reasonable and timely access to all of its records. The representative or examiner designated by the office may at any time examine the records and affairs and inspect the physical property of any provider, whether in connection with a formal examination or

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not.

~~(6) A representative of the provider must give a copy of the final examination report and corrective action plan, if one is required by the office, to the executive officer of the governing body of the provider within 60 days after issuance of the report.~~

Section 13. Section 651.012, Florida Statutes, is amended to read:

651.012 Exempted facility; written disclosure of exemption.—Any facility exempted under ss. 632.637(1)(e) and 651.011(24) ~~ss. 632.637(1)(e) and 651.011(23)~~ must provide written disclosure of such exemption to each person admitted to the facility. This disclosure must be written using language likely to be understood by the person and must briefly explain the exemption.

Section 14. Subsection (1) of section 651.0261, Florida Statutes, is amended to read:

651.0261 Quarterly and monthly statements.—

(1) Within 45 days after the end of each fiscal quarter, each provider shall file a quarterly unaudited financial statement of the provider or of the facility in the form prescribed by commission rule and days cash on hand, occupancy, debt service coverage ratio, and a detailed listing of the assets maintained in the liquid reserve as required under s. 651.035. The last quarterly statement for a fiscal year is not required if a provider does not have pending a regulatory action level event, impairment, or a corrective action plan. If a provider falls below two or more of the thresholds set forth in s. 651.011(26) ~~s. 651.011(25)~~ at the end of any fiscal quarter,

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the provider shall submit to the office, at the same time as the quarterly statement, an explanation of the circumstances and a description of the actions it will take to meet the requirements.

Section 15. This act shall take effect July 1, 2023.

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The Florida Senate

Committee Agenda Request

To: Senator Jason Brodeur, Chair
Appropriations Committee on Agriculture, Environment, and General
Government

Subject: Committee Agenda Request

Date: April 5, 2023

I respectfully request that **Senate Bill #622**, relating to Continuing Care Contracts, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda, if received.

A handwritten signature in cursive script that reads "Clay Yarborough".

Senator Clay Yarborough
Florida Senate, District 4

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4/18/23

Meeting Date

GG Appropriations

Committee

622

Bill Number or Topic

Amendment Barcode (if applicable)

Name

William Stander

Phone

850 212-3250

Address

P.O. Box 1042

Street

Email

william@williamstander.com

Tallahassee FL

City

State

32302

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

Florida Life Care Residents Association

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. § 11.045 and Joint Rule 1, [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

April 18, 2023

The Florida Senate

APPEARANCE RECORD

SB 622

Meeting Date

Appropriations Committee on Agriculture, Environment & General Government

Deliver both copies of this form to
Senate professional staff conducting the meeting

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name **Steve Bahmer**

Phone **(850) 671-3700**

Address **1812 Riggins Road**

Email **sbahmer@leadingageflorida.org**

Street

Tallahassee

FL

32308

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

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 Appropriations Committee on Agriculture, Environment, and General Government

BILL: CS/CS/SB 714

INTRODUCER: Regulated Industries Committee and Senator DiCeglie

SUBJECT: Vacation Rentals

DATE: April 20, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Betta</u>	<u>AEG</u>	<u>Fav/CS</u>
3.	<u> </u>	<u> </u>	<u>FP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SB 714 revises the regulation of vacation rentals. A vacation rental is a unit in a condominium or cooperative, or a single, two, three, or four family house that is rented to guests more than three times a year for periods of less than 30 days or one calendar month, whichever is shorter, or held out as regularly rented to guests. Vacation rentals are licensed by the Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (DBPR). Current law does not allow local laws, ordinances, or regulations that prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. However, this prohibition does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.

The bill permits “grandfathered” local laws, ordinances, or regulations adopted on or before June 1, 2011, to be amended to be less restrictive or to comply with local registration requirements. The bill does not affect vacation rental ordinances in jurisdictions located in an area of critical state concern. The bill provides that a local law, ordinance, or regulation may restrict the maximum occupancy for rented residential properties if the restriction applies uniformly without regard to whether the residential property is used as a vacation rental.

Under the bill, a local government may require vacation rentals to be registered. The registration fee may not exceed \$150 for an individual registration application or \$200 for a collective registration application for up to a total of 25 individual vacation rentals. A local government may impose a fine for failure to register a vacation rental. The bill allows local governments to

charge a reasonable fee to inspect a vacation rental after registration to verify compliance with the Florida Building Code and the Florida Fire Prevention Code.

The bill permits a local government to impose a fine for failure to register a vacation rental. The bill establishes limits for a local government registration program, including requiring a vacation rental owner to obtain any required tax registrations, pay all recorded municipal or county code liens, and designate a responsible person who is available 24/7 to respond to complaints, and to state the maximum occupancy for the vacation rental based on the number of sleeping accommodations for persons staying overnight in the vacation rental. A local government may adopt parking and garbage requirements so long as those standards are not imposed solely on vacation rentals. Additionally, the bill requires local governments to accept or deny a registration application within 15 days of receipt of an application. The bill authorizes the division to issue temporary licenses to permit the operation of the vacation rental while the license application is pending.

The bill permits a local government to terminate a local registration for violations of local registration requirements. The bill also authorizes the division to revoke or suspend state vacation rental licenses for violations of local registration requirements and violations of community association property restrictions.

The bill preempts the regulation of advertising platforms to the state. An advertising platform is a person who electronically advertises a vacation rental to rent for transient occupancy, maintains a marketplace, and a reservation or payment system.

The bill requires the owner or operator of a vacation rental offered for transient occupancy through an advertising platform to include the property's vacation rental license number issued by the DBPR and the local registration number on the vacation rental's advertisement, and attest that, to the best of their knowledge, those numbers are current, valid, and accurate. The vacation rental property owner or operator must display this tax and licensure information inside the vacation rental property.

The bill requires an advertising platform to display the vacation rental license number and the local registration number of each property that advertises on its platform. The advertising platform must verify the validity of the vacation rental's license number before it publishes the advertisement and must perform ongoing checks every calendar quarter thereafter. To facilitate this verification, the division must maintain vacation rental license information in a readily accessible electronic format by July 1, 2024. The advertising platform must remove from public view any advertisement or listing that fails to display a valid vacation rental license number.

Advertising platforms are required by the bill to collect and remit any taxes imposed under chs. 125, 205, and 212, F.S., that result from payment for the rental of a vacation rental property on its platform. The bill allows platforms to exclude service fees from the taxable amount if the platforms do not own, operate, or manage the vacation rental. It allows the division to take enforcement action for noncompliance.

Additionally, the bill:

- Authorizes the division to fine an advertising platform an amount not to exceed \$1,000 for a violation of the provisions in the bill or rules of the division;
- Requires advertising platforms to adopt anti-discrimination policies and to inform users of the public lodging discrimination prohibition found in section 509.092, F.S.;
- Provides that the advertising platform requirements in the bill do not create a private right of action against advertising platforms;
- Allows the Department of Revenue to adopt emergency rules for six months which may be renewed until permanent rules are adopted; and
- Provides that its terms do not supersede any current or future declaration or covenant for condominium, cooperative, or homeowners' associations.

The Revenue Estimating Conference determined that the provisions in the bill that require advertising platforms to collect and remit state and local sales taxes have no fiscal impact.

For the 2023-2024 fiscal year, the bill provides an appropriation of \$298,507 in recurring funds and \$49,017 in nonrecurring funds from the Hotel and Restaurant Trust Fund and \$175,868 in recurring funds and \$17,025 in nonrecurring funds from the Administrative Trust Fund to the DBPR and six full-time employee positions for the purpose of implementing the bill.

Except as otherwise expressly provided in the bill, the bill takes effect upon becoming a law.

II. Present Situation:

The Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (DBPR) is the state agency charged with enforcing the provisions of ch. 509, F.S., relating to the regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare.

The term “public lodging establishments” includes transient and non-transient public lodging establishments.¹ The principal differences between transient and non-transient public lodging establishments are the number of times that the establishments are rented in a calendar year and the duration of the rentals.

A “transient public lodging establishment” is defined in s. 509.013(4)(a)1., F.S., as:

...any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings *which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month*, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests. (emphasis added)

A “non-transient public lodging establishment” is defined in s. 509.013(4)(a)2., F.S., as:

...any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings *which is rented to guests for periods of at*

¹ Section 509.013(4)(a), F.S.

least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month. (emphasis added)

Section 509.013(4)(b), F.S., exempts the following types of establishments from the definition of “public lodging establishment”:

- Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university for the use of students, faculty, or visitors;
- Any facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place regulated under s. 381.0072, F.S.;
- Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients;
- Any unit or group of units in a condominium, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or one calendar month, whichever is less, and that is not advertised or held out to the public as a place regularly rented for periods of less than one calendar month, provided that no more than four rental units within a single complex of buildings are available for rent;
- Any migrant labor camp or residential migrant housing permitted by the Department of Health under ss. 381.008 - 381.00895, F.S.;
- Any establishment inspected by the Department of Health and regulated by ch. 513 F.S.;
- Any nonprofit organization that operates a facility providing housing only to patients, patients’ families, and patients’ caregivers and not to the general public;
- Any apartment building inspected by the United States Department of Housing and Urban Development or other entity acting on the department’s behalf that is designated primarily as housing for persons at least 62 years of age. The division may require the operator of the apartment building to attest in writing that such building meets the criteria provided in this subparagraph. The division may adopt rules to implement this requirement; and
- Any rooming house, boardinghouse, or other living or sleeping facility that may not be classified as a hotel, motel, timeshare project, vacation rental, non-transient apartment, bed and breakfast inn, or transient apartment under s. 509.242, F.S.

A public lodging establishment is classified as a hotel, motel, vacation rental, non-transient apartment, transient apartment, bed and breakfast inn, or timeshare project if the establishment satisfies specified criteria.²

² Section 509.242(1), F.S.

A “vacation rental” is defined in s. 509.242(1)(c), F.S., as:

...any unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment but is not a timeshare project.

The DBPR licenses vacation rentals as condominiums, dwellings, or timeshare projects.³ The division may issue a vacation rental license for “a single-family house, a townhouse, or a unit or group of units in a duplex, triplex, quad plex, or other dwelling unit that has four or less units collectively.”⁴ The division does not license or regulate the rental of individual rooms within a dwelling unit based on the rooming house and boardinghouse exclusion from the definition of public lodging establishment in s. 509.013(4)(b)9., F.S.⁵

The 63,690 public lodging establishment licenses issued by the division are distributed as follows:⁶

- Hotels – 2,308 licenses;
- Motels – 2,397 licenses;
- Non-transient apartments – 18,315 licenses;
- Transient apartments – 913 licenses;
- Bed and Breakfast Inns – 261 licenses;
- Vacation rental condominiums – 12,716 licenses;
- Vacation rental dwellings – 26,733 licenses; and
- Vacation rental timeshare projects – 47 licenses.

Inspections of Vacation Rentals

The division must inspect each licensed public lodging establishment at least biannually, but must inspect transient and non-transient apartments at least annually. However, the division is not required to inspect vacation rentals, but vacation rentals must be available for inspection upon a request to the division.⁷ The division conducts inspections of vacation rentals in response to a consumer complaint. In Fiscal Year 2021-2022, the division received 325 consumer complaints regarding vacation rentals. In response to the complaints, the division’s inspection confirmed a violation for 34 of the complaints.⁸

³ Fla. Admin. Code R. 61C-1.002(4)(a)1.

⁴ The division further classifies a vacation rental license as a single, group, or collective license. See Fla. Admin. Code R. 61C-1.002(4)(a)1. A single license may include one single-family house or townhouse, or a unit or group of units within a single building that are owned and operated by the same individual person or entity. A group license is a license issued by the division to a licensed agent to cover all units within a building or group of buildings in a single complex. A collective license is a license issued by the division to a licensed agent who represents a collective group of houses or units found on separate locations not to exceed 75 houses or units per license.

⁵ See s. 509.242(1)(c), F.S., defining the term “vacation rental.”

⁶ Department of Business and Professional Regulation, Division of Hotels and Restaurants Annual Report for FY 2020-2021 at page 8, available at http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2021_22.pdf (last visited Apr. 3, 2023). The total number of vacation rental licenses for each classification include single licenses and group and collective licenses that cover multiple condominium units, dwellings, and timeshare projects.

⁷ Section 509.032(2)(a), F.S.

⁸ *Supra* at note 6 at page 21.

The division's inspection of vacation rentals includes matters of safety (for example, fire hazards, smoke detectors, and boiler safety), sanitation (for example, safe water sources, bedding, and vermin control), consumer protection (for example, unethical business practices, compliance with the Florida Clean Air Act, and maintenance of a guest register), and other general safety and regulatory matters.⁹ The division must notify the local fire safety authority or the State Fire Marshal of any readily observable violation of a rule adopted under ch. 633, F.S.,¹⁰ which relates to a public lodging establishment.¹¹ The rules of the State Fire Marshall provide fire safety standards for transient public lodging establishments, including occupancy limits for one and two family dwellings.¹²

Additionally, an applicant for a vacation rental license is required to submit with the license application a signed certificate evidencing the inspection of all balconies, platforms, stairways, railings, and railways, from a person competent to conduct such inspections.¹³

Preemption

Section 509.032(7)(a), F.S., provides that “the regulation of public lodging establishments and public food service establishments, including, but not limited to, sanitation standards, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is preempted to the state.”

Current law does not preempt the authority of a local government or a local enforcement district to conduct inspections of public lodging establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.206, F.S.¹⁴

Section 509.032(7)(b), F.S., does not allow local laws, ordinances, or regulations that prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. However, this prohibition does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.

Section 509.032(7)(c), F.S., provides the prohibition in s. 509.032(7)(b), F.S., does not apply to local laws, ordinances, or regulations exclusively relating to property valuation as a criterion for

⁹ See ss. 509.211 and 509.221, F.S., for the safety and sanitary regulations, respectively. See also Fla. Admin. Code R. 61C-1.002; *Lodging Inspection Report, DBPR Form HR 5022-014*, which details the safety and sanitation matters addressed in the course of an inspection. A copy of the Lodging Inspection Report is available at: <https://www.flrules.org/Gateway/reference.asp?No=Ref-07062> (last visited Feb. 28, 2023).

¹⁰ Chapter 633, F.S., relates to fire prevention and control, including the duties of the State Fire Marshal and the adoption of the Florida Fire Prevention Code.

¹¹ Section 509.032(2)(d), F.S.

¹² See Fla. Admin. Code R. 69A-43.018, relating one and two Family dwellings, recreational vehicles and mobile homes licensed as public lodging establishments.

¹³ See ss. 509.211(3) and 509.2112, F.S., and form *DBPR HR-7020, Division of Hotels and Restaurants Certificate of Balcony Inspection*, available at http://www.myfloridalicense.com/dbpr/hr/forms/documents/application_packet_for_vacation_rental_license.pdf (last visited Feb. 28, 2023).

¹⁴ Section 509.032(7)(a), F.S.

vacation rental if the law, ordinance, or regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern designation.¹⁵

Legislative History

In 2011, the Legislature preempted certain vacation rental regulation to the state. The preemption prevented local governments from enacting any law, ordinance, or regulation that:

- Restricted the use of vacation rentals;
- Prohibited vacation rentals; or
- Regulated vacation rentals based solely on their classification, use, or occupancy.¹⁶

This legislation grandfathered any local law, ordinance, or regulation that was enacted by a local government on or before June 1, 2011.¹⁷

In 2014, the Legislature revised the preemption to its current form with an effective date of July 1, 2014.¹⁸ Chapter 2014-71, Laws of Fla., amended s. 509.032(7)(b), F.S., and repealed the portions of the preemption of local laws, ordinances, and regulations which prohibited “restrict[ing] the use of vacation rentals” and which prohibited regulating vacation rentals “based solely on their classification, use, or occupancy.”¹⁹

Attorney General Opinions

The office of the Attorney General issued an Informal Legal Opinion on October 22, 2013, regarding whether Flagler County could intercede and stop vacation rental operations in private homes that were zoned, prior to June 1, 2011, for single-family residential use.²⁰ According to the opinion, “due to an increase in the number of homes being used as vacation rentals in Flagler County, many permanent residents in neighborhoods with vacation rentals have raised concerns about the negative effects such rentals have on their quality of life and the character of their neighborhood.” Flagler County had no regulation governing vacation rentals before the grandfather date of June 1, 2011, established in s. 509.032(7)(b), F.S. The Attorney General concluded that the county’s local zoning ordinance for single-family homes that predated June 1, 2011, did not restrict the rental of such property as a vacation rental and that the zoning ordinances could not now be interpreted to restrict vacation rentals.

The Attorney General also issued an opinion on November 13, 2014, to the City of Wilton Manors, concluding that s. 509.032(7)(b), F.S., does not permit the city to regulate the location of vacation rentals through zoning, and the city may not prohibit vacation rentals that fail to comply with the registration and licensing requirements in s. 509.241, F.S., which requires public lodging establishments to obtain a license from the division.²¹

¹⁵ See s. 163.3164(43), F.S., which provides that the state land planning agency is the Department of Economic Opportunity.

¹⁶ Chapter 2011-119, Laws of Fla.

¹⁷ *Id.*

¹⁸ Chapter 2014-71, Laws of Fla. (codified in s. 509.032(7)(b), F.S.).

¹⁹ *Id.*

²⁰ Florida Attorney General, *Informal Legal Opinion to Mr. Albert Hadeed, Flagler County Attorney, regarding Vacation Rental Operation-Local Ordinances*, Oct. 22, 2013, (on file with the Senate Committee on Regulated Industries).

²¹ Op. Att’y Gen. Fla. 2014-09, *Vacation Rentals - Municipalities - Land Use* (November 13, 2014), available at <http://www.myfloridalegal.com/ago.nsf/printview/5DFB7F27FB483C4685257D900050D65E> (last visited Feb. 28, 2023).

In addition, the Attorney General issued an advisory opinion on October 5, 2016, addressing whether a municipality could limit the spacing and concentration of vacation rentals through a proposed zoning ordinance.²² The Attorney General concluded that the preemption in s. 509.032, F.S., allows local governments some regulation of vacation rentals, but prevents local governments from prohibiting vacation rentals. Consequently, the Attorney General noted that a municipality may not impose spacing or proportional regulations that would have the effect of preventing eligible housing from being used as a vacation rental.²³

The Attorney General also opined that amending an ordinance that was enacted prior to June 1, 2011 will not invalidate the grandfather protection for the parts of the ordinance that are reenacted.²⁴ The new provisions would be preempted by state law if they revise an ordinance in a manner that would regulate the duration or frequency of rental of vacation rentals, even when the new regulation would be considered “less restrictive” than the prior local law.

Public Lodging Non-Discrimination Law

Section 509.092, F.S., prohibits an operator of a public lodging establishment from denying service or offering lesser quality accommodations to a person based upon his or her race, creed, color, sex, pregnancy, physical disability, or national origin. An aggrieved person may file a complaint pursuant to s. 760.11, F.S., of the Florida Civil Rights Act. Such complaints are mediated, investigated, and determined by the Florida Commission on Human Relations.²⁵

III. Effect of Proposed Changes:

Preemptions

The bill amends s. 509.032(7), F.S., to preempt the regulation of advertising platforms to the state. The bill also amends s. 509.032(7), F.S., to preempt the licensing of vacation rentals to the state.

The bill permits any “grandfathered” local law, ordinance, or regulation adopted on or before June 1, 2011, to be amended to be less restrictive or to comply with local registration requirements. Additionally, a local government that had such a grandfathered regulation on June 1, 2011, may pass a new, less restrictive ordinance.

Definition of “Advertising Platform”

The bill creates s. 509.013(17), F.S., to define the term “advertising platform.” Under the bill, an advertising platform:

²² Op. Att’y Gen. Fla. 2016-12, *Municipalities - Vacation Rentals – Preemption* - <http://www.myfloridalegal.com/ago.nsf/Opinions/1F9A7D9219CF89A3852587AB006DDC58> (last visited Feb. 28, 2023).

²³ *Id.*

²⁴ Op. Att’y Gen. Fla. 2019-07, *Vacation rentals, municipalities, grandfather provisions* (August 16, 2019) available at <http://www.myfloridalegal.com/ago.nsf/Opinions/933B3706FADB00CA85258458006F4CFA> (last visited Feb. 28, 2023).

²⁵ See Florida Commission on Human Relations, *Public Accommodations*, <https://fchr.myflorida.com/public-accommodations> (last visited Feb. 28, 2023).

- Provides an online application, software, website, or system through which a vacation rental located in this state is advertised or held out to the public as available to rent for transient occupancy;
- Provides or maintains a marketplace for the renting by transient occupancy of a vacation rental; and
- Provides a reservation or payment system that facilitates a transaction for the renting by transient occupancy of a vacation rental and for which the person collects or receives, directly or indirectly, a fee in connection with the reservation or payment service provided for such transaction.

Local Registration of Vacation Rentals

Under the bill, a local government may require vacation rentals to be registered. The registration fee may not exceed \$150 for processing an individual registration application, or \$200 for processing a collective registration application for up to a total of 25 individual vacation rentals. A local government may impose a fine for failure to register a vacation rental. The bill allows local governments to charge a reasonable fee to inspect a vacation rental after registration to verify compliance with the Florida Building Code and the Florida Fire Prevention Code.

The bill provides that a local law, ordinance, or regulation may restrict the maximum occupancy for rented residential properties if the restriction applies uniformly without regard to whether the residential property is used as a vacation rental.

The bill establishes limits for a local government registration program. A local registration program may only require an owner or operator of a vacation rental to:

- Register no more than once per year; however, a new owner may be required to submit a new application for registration;
- Submit identifying information;
- Obtain a vacation rental license from the division with 60 days of after local registration;
- Obtain all required tax registrations, receipts, or certificates issued by the Department of Revenue, a county, or a municipal government;
- Update required information on a continuing basis to be current;
- Comply with parking standards and solid waste handling and containment requirements so long as such standards are not imposed solely on vacation rentals;
- Designate and maintain a responsible person who is available at all times to respond to complaints by telephone at a listed phone number;
- State the maximum occupancy for the vacation rental based on the number of sleeping accommodations for persons staying overnight in the vacation rental; and
- Pay all recorded municipal or county code liens.

Additionally, the bill requires local governments to review a registration application for completeness and accept or issue a written notice specifying deficient areas within 15 days of receipt of an application. The vacation rental owner or operator may agree to an extension of this time period. Such notice may be provided by mail or electronically.

If a local government denies an application, the written notice of denial may be sent by United States mail or electronically. The notice must state with particularity the factual reasons for the denial and the applicable portions of an ordinance, rule, statute, or other legal authority for the denial. A local government cannot deny a registration application if the applicant cures the identified deficiency.

If a local government fails to accept or deny the registrations within the provided timeframes, the application is deemed accepted.

Upon the acceptance of a registration application, the local government must assign a unique registration number to the vacation rental or other indicia of registration and provide such registration number or other indicia of registration to the owner or operator of the vacation rental in writing or electronically.

The bill authorizes a local government to terminate a registration or to refuse to renew a registration when:

- The operation of the subject premises violates a registration requirement or a local law, ordinance, or regulation that doesn't apply solely to vacation rentals; or
- The premises and its owner are the subject of a final order or judgment lawfully directing the termination of the premises' use as a vacation rental.

Additionally, a local government may withdraw its acceptance of a registration on the basis of an unsatisfied recorded municipal or county code lien.

Regulation of Vacation Rentals by the Division

Effective January 1, 2024, the bill amends ss. 509.241(2) and (3), F.S., relating to the license application process for vacation rentals, to:

- Require all applications for a vacation rental license to, if applicable, include the local registration number or other proof of registration required by local law, ordinance, or regulation.
- Authorize the Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (DBPR) upon receiving an application for a vacation rental license to grant a temporary license to permit the operation of the vacation rental while the license application is pending and to post the information required under s. 509.243(1)(c), F.S.
 - The temporary license automatically expires upon final agency action regarding the license application.
- Require any license issued by the division to be displayed conspicuously to the public inside the licensed establishment, instead of "in the office or lobby."
- Require the owner or operator of a vacation rental offered for transient occupancy through an advertising platform to display the vacation rental license number and the applicable local registration number.

The bill amends s. 509.261, F.S., to authorize the division to revoke, refuse to issue or renew, or suspend for a period of not more than 30 days a vacation rental license when:

- The operation of the subject premises violates the terms of an applicable lease or property restriction, including any property restriction adopted pursuant to chs. 718, 719, or 720, F.S., as determined;²⁶
- The owner or operator fails to provide proof of registration, if required by local law, ordinance, or regulation;
- The registration of the vacation rental is terminated by a local government as provided in s. 509.032(7)(b)5; or
- The premises and its owner are the subject of a final order or judgment lawfully directing the termination of the premises' use as a vacation rental.

Under the bill, the division may suspend, for a period of not more than 30 days, a vacation rental license when the owner or operator has been found by the code enforcement board to have committed two or more code violations related to the vacation during a period of 90 days. The division shall issue a written warning or notice and provide an opportunity to cure a violation before commencing any legal proceeding.

Requirements for Advertising Platforms

Effective January 1, 2024, the bill creates s. 509.243, F.S., to provide requirements, including tax collection and remittance requirements for an advertising platform.

Advertising and Reporting Requirements

Under the bill, an advertising platform must:

- Require that a person who places an advertisement for the rental of a vacation rental to:
 - Include the vacation rental license number and, if applicable, the local registration number; and
 - Attest to the best of the person's knowledge that the license number and the local registration number, if applicable, for the vacation rental property are current, valid, and accurately stated in the advertisement.
- Display the vacation rental license number and, if applicable, the local registration number.
- Effective July 1, 2024, check that vacation rental license number provided by the owner or operator appears as current in the information posted by the division and applies to the subject vacation before publishing the advertisement on its platform and re-verify the license number on a quarterly basis.
- Remove from public view an advertisement or listing from its online application, software, website, or system within 15 business days after being notified by the division in writing that the subject advertisement or listing for the rental of a vacation rental located in this state fails to display a valid license number issued by the division.
- Adopt an anti-discrimination plan and inform its users of the public lodging discrimination prohibition found in s. 509.092, F.S.

The bill provides advertising platforms that comply with the requirements are deemed to be in compliance. The bill also provides that it does not create and is not intended to create a private

²⁶ Chapters 718, 719, or 720, F.S., relate to the regulation and governance of condominium, cooperative, and homeowners' associations, respectively.

cause of action against advertising platforms. Advertising platform may not be held liable for any action it takes voluntarily in good faith in relation to its users to comply with ch. 509, F.S., or the advertising platform's terms of services.

By July 1, 2024, the division must maintain vacation rental license information in a readily accessible electronic format sufficient to facilitate prompt compliance.

The bill provides processes for the division to issue a cease and desist order for any person who violates ch. 509, F.S. The bill authorizes the division to seek an injunction or a writ of mandamus to enforce a cease and desist order. If the DBPR is required to seek enforcement of the notice for a penalty pursuant to s. 120.69, F.S., it is entitled to collect its attorney fees and costs, together with any cost of collection.

The bill authorizes the division to fine an advertising platform an amount not to exceed \$1,000 per offense for a violation of the provisions in the bill or rules of the division.

The bill provides that the advertising platform requirements in the bill do not create a private right of action against advertising platforms.

Tax Collection and Reporting Requirements

The bill creates s. 509.243(4), F.S., to require advertising platforms to collect and remit taxes due under ss. 125.0104,²⁷ 125.0108,²⁸ 205.044,²⁹ 212.03,³⁰ 212.0305,³¹ and 212.055, F.S.,³² resulting from the reservation of a vacation rental property and payment therefor through an advertising platform.

The bill also amends s. 212.03(3), F.S., to include the tax collection and remittance requirements for advertising platforms within ch. 212, F.S., and to:

- Provide that the taxes an advertising platform must collect and remit are based on the total rental amount charged by the owner or operator for use of the vacation rental.
- Exclude service fees from the calculation of taxes remitted by an advertising platform to the Department of Revenue (DOR), unless the advertising platform owns, is related to, operates, or manages the vacation rental.
- Require the DOR and other jurisdictions to allow advertising platforms to register, collect, and remit such taxes.

The bill authorizes the DOR to adopt emergency rules, which are effective for six months and may be renewed until permanent rules are adopted. This emergency rulemaking authority expires on January 1, 2026.

²⁷ Section 125.0104, F.S., relates to the local option tourist development tax.

²⁸ Section 125.0108, F.S., relates to the tourist impact tax in areas within a county designated as an area of critical state concern.

²⁹ Section 205.044, F.S., relates to the merchant business tax measured by gross receipts.

³⁰ Section 212.03, F.S., relates to the transient rentals tax.

³¹ Section 212.0305, F.S., relates to convention development taxes.

³² Section 212.055, F.S., relates to discretionary sales taxes.

Community Associations

The bill provides that the application of vacation rental provisions created by the bill do not supersede any current or future declaration or declaration of condominium adopted pursuant to ch. 718, F.S., cooperative documents adopted pursuant to ch. 719, F.S., or declaration of covenants or declaration for a homeowners' association adopted pursuant to ch. 720, F.S.

Appropriations

For the 2023-2024 fiscal year, the bill provides an appropriation of \$298,507 in recurring funds and \$49,017 in nonrecurring funds from the Hotel and Restaurant Trust Fund and \$175,868 in recurring funds and \$17,025 in nonrecurring funds from the Administrative Trust Fund to the DBPR and six full-time employee positions for the purpose of implementing the bill.

Effective Date

Except as otherwise expressly provided in the bill, the bill takes effect upon becoming a law. The requirements for vacation rental owners or operators to display license and registration information become effective January 1, 2024. The bill requires the division to maintain vacation rental license information in a readily accessible electronic formation by July 1, 2024. The provisions governing advertising platforms become effective January 1, 2024.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Article VII, Section 19 of the Florida Constitution requires a “state tax or fee imposed, authorized, or raised under this section must be contained in a separate bill that contains no other subject.” A “fee” is defined by the Florida Constitution to mean “any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.”

Article VII, Section 19 of the Florida Constitution also requires that a tax or fee raised by the Legislature must be approved by two-thirds of the membership of each house of the Legislature.

The bill does not impose or authorize a state tax or fee. The bill provides that a local government may not require a registration fee of more than \$200. Under the bill, a local government is not required to charge a registration fee.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference determined that the provisions in the bill that require advertising platforms to collect and remit state and local sales taxes have no fiscal impact.³³

B. Private Sector Impact:

Indeterminate. Vacation rental owners may incur local registration costs of up to \$100 if the local government in which the vacation rental is located adopts an ordinance, law, or regulation consistent with the provisions of this bill.

C. Government Sector Impact:

The Department of Business and Professional Regulation (DBPR) states it will incur additional expenses related to the number of full-time employees (FTE) required to handle the workload needed to implement the bill. The DBPR estimates it will need six additional staff and associated costs of \$540,417 (\$347,527 Hotels and Restaurant Trust Fund and \$192,893 Administrative Trust Fund) for Fiscal Year 2023-2024.³⁴

For the 2023-2024 fiscal year, the bill provides an appropriation of \$298,507 in recurring funds and \$49,017 in nonrecurring funds from the Hotel and Restaurant Trust Fund and \$175,868 in recurring funds and \$17,025 in nonrecurring funds from the Administrative Trust Fund to the DBPR and six full-time employee positions for the purpose of implementing the bill.

The DBPR is also expected to incur some nonrecurring costs to implement an electronic data submission system and database to collect and organize property data received from advertising platforms. According to the DBPR, the system modifications can be made with existing resources.³⁵

The bill may result in an increase in licensing revenue to the DBPR, however, it is unknown how many advertising platforms which are currently exempt from licensing

³³ Revenue Impact Results, Revenue Estimating Conference, Mar. 3, 2023 (on file with the Regulated Industries Committee).

³⁴ See Department of Business and Professional Regulation, *2023 Agency Legislative Bill Analysis for CS/SB 714* at 6 (February 13, 2023) (on file with the Senate Appropriations Committee on Agriculture, Environment, and General Government).

³⁵ *Id.* at 8.

would require licensure. The bill may also result in an indeterminate increase in fines due to noncompliance.³⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 212.03, 509.013, 509.032, 509.241, 509.261, 159.27, 212.08, 316.1955, 404.056, 477.0135, 509.221, 553.5041, 559.955, 705.17, 705.185, 717.1355, and 877.24.

The bill creates section 509.243 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 Appropriations Committee on Agriculture, Environment, and General Government on April 18, 2023

The committee substitute:

- Clarifies that a local law, ordinance, or regulation may restrict the maximum occupancy for rented residential properties if the restriction applies uniformly without regard to whether the residential property is used as a vacation rental; and
- Allows local governments to require applicants for local vacation rental registration to state the maximum occupancy for the vacation rental based on the number of sleeping accommodations for persons staying overnight in the vacation rental.
- Allows local governments to charge a reasonable fee to inspect a vacation rental after registration to verify compliance with the Florida Building Code and the Florida Fire Prevention Code;
- Increases the maximum processing fees that a local government may charge for a vacation rental registration to \$150 for an individual registration application (from \$50 for an individual registration) and \$200 for a collective registration application for up to a total of 25 individual vacation rentals (from \$100 for a collective registration without a limit on the number of vacation rentals under the collective registration);
- Provides an appropriation to the DBPR.

CS by Regulated Industries on March 14, 2023:

The CS amends s. 212.03, (2), F.S., to:

³⁶ *Id.* at 6.

- Add “as amended” after "Internal Revenue Code of 1986";
- Remove references to s. 205.044, F.S., relating to a tax not collected by the DOR; and
- Delete the reference to “department,” i.e., the Florida Department of Revenue, in the flush left provision because this is a provision that is only relevant to counties that self-administer the taxes imposed or authorized in ch. 125, F.S., including the local option tourist development tax.

B. Amendments:

None.

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



399510

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2023	.	
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The Appropriations Committee on Agriculture, Environment, and General Government (DiCeglie) recommended the following:

Senate Amendment (with title amendment)

Delete lines 397 - 425
and insert:
rental registration program. This paragraph does not prohibit a
local law, ordinance, or regulation from restricting the maximum
occupancy for residential properties that are rented if
uniformly applied without regard to whether the residential
property is used as a vacation rental.

2. Local governments may charge a fee of no more than \$150



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for processing an individual registration application or \$200 for processing a collective registration application for up to a total of 25 individual vacation rentals. A local law, ordinance, or regulation may not require renewal of a registration more than once per year. However, if there is a change of ownership, the new owner may be required to submit a new application for registration. Subsequent to the registration of a vacation rental, local governments may charge a reasonable fee to inspect a vacation rental after registration to verify compliance with the Florida Building Code and the Florida Fire Prevention Code.

3. As a condition of registration, the local law, ordinance, or regulation may only require the owner or operator of a vacation rental to:

a. Submit identifying information about the owner or the owner's agents and the subject vacation rental property.

b. Obtain a license as a transient public lodging establishment issued by the division within 60 days after local registration.

c. Obtain all required tax registrations, receipts, or certificates issued by the Department of Revenue, a county, or a municipal government.

d. Update required information on a continuing basis to ensure it is current.

e. Comply with parking standards and solid waste handling and containment requirements, so long as such standards and requirements are not imposed solely on vacation rentals.

f. Designate and maintain at all times a responsible party who is capable of responding to complaints and other immediate problems related to the vacation rental, including being



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available by telephone at a listed phone number.

g. State the maximum occupancy of the vacation rental based
on the number of sleeping accommodations for persons staying
overnight in the vacation rental.

h. Pay in full all recorded municipal or county code liens

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

And the title is amended as follows:

Delete lines 18 - 20

and insert:

for failure to register; providing construction;
authorizing local governments to charge fees up to
specified amounts for processing registration
applications and to charge reasonable inspection fees;
specifying requirements,



630374

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/19/2023	.	
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The Appropriations Committee on Agriculture, Environment, and General Government (Berman) recommended the following:

Senate Amendment (with title amendment)

Delete lines 503 - 510

and insert:

1. Include in the advertisement the physical address of the vacation rental, the vacation rental license number, and, if applicable, the local registration number; and

2. Attest to the best of the person's knowledge that the license number for the vacation rental property and the local registration are current, valid, and accurately stated in the



630374

advertisement.

(b) An advertising platform must display the physical
address of the vacation rental, the vacation rental license
number, and, if applicable, the local registration

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

And the title is amended as follows:

Delete line 44

and insert:

to display and check specified information; requiring
the



494166

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2023	.	
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	.	

The Appropriations Committee on Agriculture, Environment, and General Government (DiCeglie) recommended the following:

Senate Amendment (with title amendment)

Between lines 808 and 809
insert:

Section 21. For the 2023-2024 fiscal year, the sums of \$298,507 in recurring funds and \$49,017 in nonrecurring funds from the Hotel and Restaurant Trust Fund and \$175,868 in recurring funds and \$17,025 in nonrecurring funds from the Administrative Trust Fund are appropriated to the Department of Business and Professional Regulation, and six full-time



494166

equivalent positions with a total associated salary rate of
284,854 are authorized, for the purpose of implementing this
act.

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

And the title is amended as follows:

 Delete line 80

and insert:

 authority; providing appropriations; providing
 effective dates.

By the Committee on Regulated Industries; and Senator DiCeglie

580-02578-23

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1 A bill to be entitled
 2 An act relating to vacation rentals; amending s.
 3 212.03, F.S.; requiring advertising platforms to
 4 collect and remit specified taxes for certain vacation
 5 rental transactions; reordering and amending s.
 6 509.013, F.S.; defining the term "advertising
 7 platform"; amending s. 509.032, F.S.; conforming a
 8 cross-reference; revising the regulated activities of
 9 public lodging establishments and public food service
 10 establishments preempted to the state to include
 11 licensing; revising an exemption to the prohibition
 12 against certain local regulation of vacation rentals;
 13 expanding the authority of local laws, ordinances, or
 14 regulations to include requiring vacation rentals to
 15 register with local vacation rental registration
 16 programs; authorizing local governments to adopt
 17 vacation rental registration programs and impose fines
 18 for failure to register; authorizing local governments
 19 to charge fees up to specified amounts for processing
 20 registration applications; specifying requirements,
 21 procedures, and limitations for local vacation rental
 22 registration programs; authorizing local governments
 23 to terminate or refuse to issue or renew vacation
 24 rental registrations under certain circumstances;
 25 preempting the regulation of advertising platforms to
 26 the state; amending s. 509.241, F.S.; requiring
 27 applications for vacation rental licenses to include
 28 certain information, if applicable; authorizing the
 29 Division of Hotels and Restaurants of the Department

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

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30 of Business and Professional Regulation to issue
 31 temporary licenses upon receipt of vacation rental
 32 license applications; providing for expiration of
 33 temporary vacation rental licenses; requiring licenses
 34 issued by the division to be displayed conspicuously
 35 to the public inside the licensed establishment;
 36 requiring the owner or operator of certain vacation
 37 rentals to also display its vacation rental license
 38 number and applicable local registration number;
 39 creating s. 509.243, F.S.; requiring advertising
 40 platforms to require that persons placing
 41 advertisements for vacation rentals include certain
 42 information in the advertisements and attest to
 43 certain information; requiring advertising platforms
 44 to display and check such information; requiring the
 45 division to maintain certain information in a readily
 46 accessible electronic format by a certain date;
 47 requiring advertising platforms to remove an
 48 advertisement or a listing under certain conditions
 49 and within a specified timeframe; requiring
 50 advertising platforms to collect and remit specified
 51 taxes for certain transactions; authorizing the
 52 division to issue and deliver a notice to cease and
 53 desist for certain violations; providing that such
 54 notice does not constitute agency action for which
 55 certain hearings may be sought; authorizing the
 56 division to file certain proceedings; authorizing the
 57 division to seek certain remedies for the purpose of
 58 enforcing a cease and desist notice; authorizing the

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

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division to collect attorney fees and costs under certain circumstances; authorizing the division to impose a fine on advertising platforms for certain violations; requiring the division to issue written warnings or notices before commencing certain legal proceedings; requiring advertising platforms to adopt an antidiscrimination policy and to inform their users of the policy's provisions; providing construction; amending s. 509.261, F.S.; authorizing the division to revoke, refuse to issue or renew, or suspend vacation rental licenses under certain circumstances; requiring the division to issue a written warning or notice and provide an opportunity to cure certain violations before commencing certain legal proceedings; amending ss. 159.27, 212.08, 316.1955, 404.056, 477.0135, 509.221, 553.5041, 559.955, 705.17, 705.185, 717.1355, and 877.24, F.S.; conforming cross-references; providing applicability; authorizing the Department of Revenue to adopt emergency rules; providing requirements and an expiration for the emergency rules; providing for the expiration of such rulemaking authority; providing effective dates.

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

Section 1. Effective January 1, 2024, subsection (2) of section 212.03, Florida Statutes, is amended to read:

212.03 Transient rentals tax; rate, procedure, enforcement, exemptions.—

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(2) (a) The tax provided for herein shall be in addition to the total amount of the rental, shall be charged by the lessor or person receiving the rent in and by said rental arrangement to the lessee or person paying the rental, and shall be due and payable at the time of the receipt of such rental payment by the lessor or person, as defined in this chapter, who receives said rental or payment. The owner, lessor, or person receiving the rent shall remit the tax to the department at the times and in the manner hereinafter provided for dealers to remit taxes under this chapter. The same duties imposed by this chapter upon dealers in tangible personal property respecting the collection and remission of the tax; the making of returns; the keeping of books, records, and accounts; and the compliance with the rules and regulations of the department in the administration of this chapter shall apply to and be binding upon all persons who manage or operate hotels, apartment houses, roominghouses, tourist and trailer camps, and the rental of condominium units, and to all persons who collect or receive such rents on behalf of such owner or lessor taxable under this chapter.

(b) If a guest uses a payment system on or through an advertising platform, as defined in s. 509.013, to pay for the rental of a vacation rental located in this state, the advertising platform must collect and remit taxes as provided in this paragraph.

1. An advertising platform, as defined in s. 509.013, which owns, operates, or manages a vacation rental or which is related within the meaning of s. 267(b), s. 707(b), or s. 1504 of the Internal Revenue Code of 1986, as amended, to a person who owns, operates, or manages the vacation rental shall collect and remit

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all taxes due under this section and ss. 125.0104, 125.0108, 212.0305, and 212.055 which are related to the rental.

2. An advertising platform to which subparagraph 1. does not apply shall collect and remit all taxes due from the owner, operator, or manager under this section and ss. 125.0104, 125.0108, 212.0305, and 212.055 which are related to the rental. Of the total amount paid by the lessee or rentee, the amount retained by the advertising platform for reservation or payment service is not taxable under this section or ss. 125.0104, 125.0108, 212.0305, and 212.055.

In order to facilitate the remittance of such taxes, the counties that have elected to self-administer the taxes imposed under chapter 125 must allow advertising platforms to register, collect, and remit such taxes.

Section 2. Section 509.013, Florida Statutes, is reordered and amended to read:

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

(1) "Advertising platform" means a person as defined in s. 1.01(3) who:

(a) Provides an online application, software, a website, or a system through which a vacation rental located in this state is advertised or held out to the public as available to rent for transient occupancy;

(b) Provides or maintains a marketplace for the renting of a vacation rental for transient occupancy; and

(c) Provides a reservation or payment system that facilitates a transaction for the renting of a vacation rental for transient occupancy and for which the person collects or

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receives, directly or indirectly, a fee in connection with the reservation or payment service provided for the rental transaction.

~~(3)(1)~~ "Division" means the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

~~(8)(2)~~ "Operator" means the owner, licensee, proprietor, lessee, manager, assistant manager, or appointed agent of a public lodging establishment or public food service establishment.

~~(4)(3)~~ "Guest" means any patron, customer, tenant, lodger, boarder, or occupant of a public lodging establishment or public food service establishment.

~~(10)(a)(4)(a)~~ "Public lodging establishment" includes a transient public lodging establishment as defined in subparagraph 1. and a nontransient public lodging establishment as defined in subparagraph 2.

1. "Transient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

2. "Nontransient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a

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place regularly rented to guests for periods of at least 30 days or 1 calendar month.

License classifications of public lodging establishments, and the definitions therefor, are set out in s. 509.242. For the purpose of licensure, the term does not include condominium common elements as defined in s. 718.103.

(b) The following are excluded from the definitions in paragraph (a):

1. Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university for the use of students, faculty, or visitors.

2. Any facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place regulated under s. 381.0072.

3. Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients.

4. Any unit or group of units in a condominium, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or 1 calendar month, whichever is less, and that is not advertised or held out to the public as a place regularly rented for periods of less than 1 calendar month, provided that no more than four rental units within a single complex of buildings are available for rent.

5. Any migrant labor camp or residential migrant housing

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permitted by the Department of Health under ss. 381.008-381.00895.

6. Any establishment inspected by the Department of Health and regulated by chapter 513.

7. Any nonprofit organization that operates a facility providing housing only to patients, patients' families, and patients' caregivers and not to the general public.

8. Any apartment building inspected by the United States Department of Housing and Urban Development or other entity acting on the department's behalf that is designated primarily as housing for persons at least 62 years of age. The division may require the operator of the apartment building to attest in writing that such building meets the criteria provided in this subparagraph. The division may adopt rules to implement this requirement.

9. Any roominghouse, boardinghouse, or other living or sleeping facility that may not be classified as a hotel, motel, timeshare project, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment under s. 509.242.

(9) (a) (5) (a) "Public food service establishment" means any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared before ~~prior to~~ being delivered to another location for consumption. The term includes a culinary education program, as defined in s. 381.0072(2), which offers, prepares, serves, or sells food to the general public, regardless of whether it is inspected by another state agency for compliance with sanitation

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standards.

(b) The following are excluded from the definition in paragraph (a):

1. Any place maintained and operated by a public or private school, college, or university:

a. For the use of students and faculty; or

b. Temporarily to serve such events as fairs, carnivals, food contests, cook-offs, and athletic contests.

2. Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization:

a. For the use of members and associates; or

b. Temporarily to serve such events as fairs, carnivals, food contests, cook-offs, or athletic contests.

Upon request by the division, a church or a religious, nonprofit fraternal, or nonprofit civic organization claiming an exclusion under this subparagraph must provide the division documentation of its status as a church or a religious, nonprofit fraternal, or nonprofit civic organization.

3. Any eating place maintained and operated by an individual or entity at a food contest, cook-off, or a temporary event lasting from 1 to 3 days which is hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization. Upon request by the division, the event host must provide the division documentation of its status as a church or a religious, nonprofit fraternal, or nonprofit civic organization.

4. Any eating place located on an airplane, train, bus, or watercraft that ~~which~~ is a common carrier.

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5. Any eating place maintained by a facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place that is regulated under s. 381.0072.

6. Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12.

7. Any place of business where the food available for consumption is limited to ice, beverages with or without garnishment, popcorn, or prepackaged items sold without additions or preparation.

8. Any theater, if the primary use is as a theater and if patron service is limited to food items customarily served to the admittees of theaters.

9. Any vending machine that dispenses any food or beverages other than potentially hazardous foods, as defined by division rule.

10. Any vending machine that dispenses potentially hazardous food and which is located in a facility regulated under s. 381.0072.

11. Any research and development test kitchen limited to the use of employees and which is not open to the general public.

(2)(6) "Director" means the Director of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

(11)(7) "Single complex of buildings" means all buildings or structures that are owned, managed, controlled, or operated under one business name and are situated on the same tract or

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plot of land that is not separated by a public street or highway.

(12)~~(8)~~ "Temporary food service event" means any event of 30 days or less in duration where food is prepared, served, or sold to the general public.

(13)~~(9)~~ "Theme park or entertainment complex" means a complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually.

(14)~~(10)~~ "Third-party provider" means, for purposes of s. 509.049, any provider of an approved food safety training program that provides training or such a training program to a public food service establishment that is not under common ownership or control with the provider.

(16)~~(11)~~ "Transient establishment" means any public lodging establishment that is rented or leased to guests by an operator whose intention is that such guests' occupancy will be temporary.

(17)~~(12)~~ "Transient occupancy" means occupancy when it is the intention of the parties that the occupancy will be temporary. There is a rebuttable presumption that, when the dwelling unit occupied is not the sole residence of the guest, the occupancy is transient.

(15)~~(13)~~ "Transient" means a guest in transient occupancy.

(6)~~(14)~~ "Nontransient establishment" means any public lodging establishment that is rented or leased to guests by an operator whose intention is that the dwelling unit occupied will be the sole residence of the guest.

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(7)~~(15)~~ "Nontransient occupancy" means occupancy when it is the intention of the parties that the occupancy will not be temporary. There is a rebuttable presumption that, when the dwelling unit occupied is the sole residence of the guest, the occupancy is nontransient.

(5)~~(16)~~ "Nontransient" means a guest in nontransient occupancy.

Section 3. Paragraph (c) of subsection (3) and paragraphs (a) and (b) of subsection (7) of section 509.032, Florida Statutes, are amended, and paragraph (d) is added to subsection (7) of that section, to read:

509.032 Duties.—

(3) SANITARY STANDARDS; EMERGENCIES; TEMPORARY FOOD SERVICE EVENTS.—The division shall:

(c) Administer a public notification process for temporary food service events and distribute educational materials that address safe food storage, preparation, and service procedures.

1. Sponsors of temporary food service events shall notify the division not less than 3 days before the scheduled event of the type of food service proposed, the time and location of the event, a complete list of food service vendors participating in the event, the number of individual food service facilities each vendor will operate at the event, and the identification number of each food service vendor's current license as a public food service establishment or temporary food service event licensee. Notification may be completed orally, by telephone, in person, or in writing. A public food service establishment or food service vendor may not use this notification process to circumvent the license requirements of this chapter.

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2. The division shall keep a record of all notifications received for proposed temporary food service events and shall provide appropriate educational materials to the event sponsors and notify the event sponsors of the availability of the food-recovery brochure developed under s. 595.420.

3.a. Unless excluded under s. 509.013(9)(b) ~~or~~ ~~509.013(5)(b)~~, a public food service establishment or other food service vendor must obtain one of the following classes of license from the division: an individual license, for a fee of no more than \$105, for each temporary food service event in which it participates; or an annual license, for a fee of no more than \$1,000, that entitles the licensee to participate in an unlimited number of food service events during the license period. The division shall establish license fees, by rule, and may limit the number of food service facilities a licensee may operate at a particular temporary food service event under a single license.

b. Public food service establishments holding current licenses from the division may operate under the regulations of such a license at temporary food service events.

(7) PREEMPTION AUTHORITY.—

(a) The regulation of public lodging establishments and public food service establishments, including, but not limited to, sanitation standards, licensing, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is preempted to the state. This paragraph does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging and public food service

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establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.206.

(b) 1. A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011, including when such law, ordinance, or regulation is amended to be less restrictive or to comply with the local registration requirements provided in this paragraph, or when a law, ordinance, or regulation adopted after June 1, 2011, regulates vacation rentals, if such law, ordinance, or regulation is less restrictive than a law, ordinance, or regulation that was in effect on June 1, 2011. Notwithstanding paragraph (a), a local law, ordinance, or regulation may require the registration of vacation rentals with a local vacation rental registration program. Local governments may adopt a vacation rental registration program pursuant to subparagraph 3. and impose a fine for failure to register under the vacation rental registration program.

2. Local governments may charge a fee of no more than \$50 for processing an individual registration application or \$100 for processing a collective registration application. A local law, ordinance, or regulation may not require renewal of a registration more than once per year. However, if there is a change of ownership, the new owner may be required to submit a new application for registration.

3. As a condition of registration, the local law, ordinance, or regulation may only require the owner or operator

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of a vacation rental to:

a. Submit identifying information about the owner or the owner's agents and the subject vacation rental property.

b. Obtain a license as a transient public lodging establishment issued by the division within 60 days after local registration.

c. Obtain all required tax registrations, receipts, or certificates issued by the Department of Revenue, a county, or a municipal government.

d. Update required information on a continuing basis to ensure it is current.

e. Comply with parking standards and solid waste handling and containment requirements, so long as such standards and requirements are not imposed solely on vacation rentals.

f. Designate and maintain at all times a responsible party who is capable of responding to complaints and other immediate problems related to the vacation rental, including being available by telephone at a listed phone number.

g. Pay in full all recorded municipal or county code liens against the subject property. The local government may withdraw its acceptance of a registration on the basis of an unsatisfied recorded municipal or county code lien.

4.a. Within 15 business days after receiving an application for registration of a vacation rental, the local government must review the application for completeness and accept the registration of the vacation rental or issue a written notice specifying with particularity any areas that are deficient. Such notice may be provided by United States mail or electronically.

b. The vacation rental owner or operator and the local

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government may agree to a reasonable request to extend the timeframes provided in this subparagraph, particularly in the event of a force majeure or other extraordinary circumstance.

c. When a local government denies an application for registration of a vacation rental, the local government must give written notice to the applicant. Such notice may be provided by United States mail or electronically. The notice must specify with particularity the factual reasons for the denial and include a citation to the applicable portions of an ordinance, a rule, a statute, or other legal authority for the denial of the registration. A local government may not deny an applicant from reapplying if the applicant cures the identified deficiencies.

d. If the local government fails to accept or deny the registration within the timeframes provided in this subparagraph, the application is deemed accepted.

e. Upon an accepted registration of a vacation rental, a local government shall assign a unique registration number to the vacation rental or other indicia of registration and provide the registration number or other indicia of registration to the owner or operator of the vacation rental in writing or electronically.

5. The local government may terminate or refuse to issue or renew a vacation rental registration when:

a. The operation of the subject premises violates a registration requirement authorized pursuant to this paragraph or a local law, ordinance, or regulation that does not apply solely to vacation rentals; or

b. The premises and its owner are the subject of a final

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order or judgment lawfully directing the termination of the premises' use as a vacation rental.

(d) The regulation of advertising platforms is preempted to the state as provided in this chapter.

Section 4. Effective January 1, 2024, subsections (2) and (3) of section 509.241, Florida Statutes, are amended to read:

509.241 Licenses required; exceptions.—

(2) APPLICATION FOR LICENSE.—Each person who plans to open a public lodging establishment or a public food service establishment shall apply for and receive a license from the division before ~~prior to~~ the commencement of operation. A condominium association, as defined in s. 718.103, which does not own any units classified as vacation rentals or timeshare projects under s. 509.242(1)(c) or (g) is not required to apply for or receive a public lodging establishment license. All applications for a vacation rental license must, if applicable, include the local registration number or other proof of registration required by local law, ordinance, or regulation. Upon receiving an application for a vacation rental license, the division may grant a temporary license that authorizes the vacation rental to begin operation while the application is pending and to post the information required under s. 509.243(1)(c). The temporary license automatically expires upon final agency action regarding the license application.

(3) DISPLAY OF LICENSE.—Any license issued by the division ~~must shall~~ be conspicuously displayed to the public inside ~~in the office or lobby of the~~ licensed establishment. Public food service establishments that ~~which~~ offer catering services must ~~shall~~ display their license number on all advertising for

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catering services. The owner or operator of a vacation rental offered for transient occupancy through an advertising platform must also display the vacation rental license number and, if applicable, the local registration number.

Section 5. Effective January 1, 2024, section 509.243, Florida Statutes, is created to read:

509.243 Advertising platforms.—

(1) (a) An advertising platform must require that a person who places an advertisement for the rental of a vacation rental:

1. Include in the advertisement the vacation rental license number and, if applicable, the local registration number; and
2. Attest to the best of the person's knowledge that the license number for the vacation rental property and the local registration are current, valid, and accurately stated in the advertisement.

(b) An advertising platform must display the vacation rental license number and, if applicable, the local registration number. Effective July 1, 2024, the advertising platform must check that the vacation rental license number provided by the owner or operator appears as current in the information posted by the division pursuant to paragraph (c) and applies to the subject vacation rental before publishing the advertisement on its platform and again at the end of each calendar quarter that the advertisement remains on its platform.

(c) By July 1, 2024, the division shall maintain vacation rental license information in a readily accessible electronic format that is sufficient to facilitate prompt compliance with the requirements of this subsection by an advertising platform or a person placing an advertisement on an advertising platform

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for transient rental of a vacation rental.

(2) An advertising platform must remove from public view an advertisement or a listing from its online application, software, website, or system within 15 business days after being notified by the division in writing that the subject advertisement or listing for the rental of a vacation rental located in this state fails to display a valid license number issued by the division.

(3) If a guest uses a payment system on or through an advertising platform to pay for the rental of a vacation rental located in this state, the advertising platform must collect and remit all taxes due under ss. 125.0104, 125.0108, 205.044, 212.03, 212.0305, and 212.055 related to the rental as provided in s. 212.03(2)(b).

(4) If the division has probable cause to believe that a person not licensed by the division has violated this chapter or any rule adopted pursuant thereto, the division may issue and deliver to such person a notice to cease and desist from the violation. The issuance of a notice to cease and desist does not constitute agency action for which a hearing under s. 120.569 or s. 120.57 may be sought. For the purpose of enforcing a cease and desist notice, the division may file a proceeding in the name of the state seeking the issuance of an injunction or a writ of mandamus against any person who violates any provision of the notice. If the division is required to seek enforcement of the notice for a penalty pursuant to s. 120.69, it is entitled to collect attorney fees and costs, together with any cost of collection.

(5) The division may fine an advertising platform an amount

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not to exceed \$1,000 per offense for violations of this section or of the rules of the division. For the purposes of this subsection, the division may regard as a separate offense each day or portion of a day in which an advertising platform is operated in violation of this section or rules of the division. The division shall issue a written warning or notice and provide the advertising platform 15 days to cure a violation before commencing any legal proceeding under subsection (4).

(6) Advertising platforms shall adopt an antidiscrimination policy to help prevent discrimination among their users and shall inform all users of their services that it is illegal to refuse accommodation to an individual based on race, creed, color, sex, pregnancy, physical disability, or national origin pursuant to s. 509.092.

(7) Advertising platforms that comply with the requirements of this section are deemed to be in compliance with the requirements of this chapter. This section does not create and is not intended to create a private cause of action against advertising platforms. An advertising platform may not be held liable for any action it takes voluntarily in good faith in relation to its users to comply with this chapter or the advertising platform's terms of service.

Section 6. Subsections (10) and (11) are added to section 509.261, Florida Statutes, to read:

509.261 Revocation or suspension of licenses; fines; procedure.—

(10) The division may revoke, refuse to issue or renew, or suspend for a period of not more than 30 days a vacation rental license when:

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581 (a) The operation of the subject premises violates the
 582 terms of an applicable lease or property restriction, including
 583 any property restriction adopted pursuant to chapter 718,
 584 chapter 719, or chapter 720, as determined by a final order of a
 585 court of competent jurisdiction or a written decision by an
 586 arbitrator authorized to arbitrate a dispute relating to the
 587 subject property and a lease or property restriction;

588 (b) The owner or operator fails to provide proof of
 589 registration, if required by local law, ordinance, or
 590 regulation;

591 (c) The registration of the vacation rental is terminated
 592 by a local government as provided in s. 509.032(7)(b)5.; or

593 (d) The premises and its owner are the subject of a final
 594 order or judgment lawfully directing the termination of the
 595 premises' use as a vacation rental.

596 (11) The division may suspend, for a period of not more
 597 than 30 days, a vacation rental license when the owner or
 598 operator has been found by the code enforcement board, pursuant
 599 to s. 162.06, to have two or more code violations related to the
 600 vacation rental during a period of 90 days. The division shall
 601 issue a written warning or notice and provide an opportunity to
 602 cure a violation before commencing any legal proceeding under
 603 this subsection.

604 Section 7. Subsection (12) of section 159.27, Florida
 605 Statutes, is amended to read:

606 159.27 Definitions.—The following words and terms, unless
 607 the context clearly indicates a different meaning, shall have
 608 the following meanings:

609 (12) "Public lodging or restaurant facility" means property

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610 used for any public lodging establishment as defined in s.
 611 509.242 or public food service establishment as defined in s.
 612 509.013 ~~or 509.013(5)~~ if it is part of the complex of, or
 613 necessary to, another facility qualifying under this part.

614 Section 8. Paragraph (jj) of subsection (7) of section
 615 212.08, Florida Statutes, is amended to read:

616 212.08 Sales, rental, use, consumption, distribution, and
 617 storage tax; specified exemptions.—The sale at retail, the
 618 rental, the use, the consumption, the distribution, and the
 619 storage to be used or consumed in this state of the following
 620 are hereby specifically exempt from the tax imposed by this
 621 chapter.

622 (7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any
 623 entity by this chapter do not inure to any transaction that is
 624 otherwise taxable under this chapter when payment is made by a
 625 representative or employee of the entity by any means,
 626 including, but not limited to, cash, check, or credit card, even
 627 when that representative or employee is subsequently reimbursed
 628 by the entity. In addition, exemptions provided to any entity by
 629 this subsection do not inure to any transaction that is
 630 otherwise taxable under this chapter unless the entity has
 631 obtained a sales tax exemption certificate from the department
 632 or the entity obtains or provides other documentation as
 633 required by the department. Eligible purchases or leases made
 634 with such a certificate must be in strict compliance with this
 635 subsection and departmental rules, and any person who makes an
 636 exempt purchase with a certificate that is not in strict
 637 compliance with this subsection and the rules is liable for and
 638 shall pay the tax. The department may adopt rules to administer

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639 this subsection.

640 (jj) *Complimentary meals*.—Also exempt from the tax imposed
641 by this chapter are food or drinks that are furnished as part of
642 a packaged room rate by any person offering for rent or lease
643 any transient living accommodations as described in s.
644 509.013(10)(a) ~~s. 509.013(4)(a)~~ which are licensed under part I
645 of chapter 509 and which are subject to the tax under s. 212.03,
646 if a separate charge or specific amount for the food or drinks
647 is not shown. Such food or drinks are considered to be sold at
648 retail as part of the total charge for the transient living
649 accommodations. Moreover, the person offering the accommodations
650 is not considered to be the consumer of items purchased in
651 furnishing such food or drinks and may purchase those items
652 under conditions of a sale for resale.

653 Section 9. Paragraph (b) of subsection (4) of section
654 316.1955, Florida Statutes, is amended to read:

655 316.1955 Enforcement of parking requirements for persons
656 who have disabilities.—

657 (4)

658 (b) Notwithstanding paragraph (a), a theme park or an
659 entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~
660 which provides parking in designated areas for persons who have
661 disabilities may allow any vehicle that is transporting a person
662 who has a disability to remain parked in a space reserved for
663 persons who have disabilities throughout the period the theme
664 park is open to the public for that day.

665 Section 10. Subsection (5) of section 404.056, Florida
666 Statutes, is amended to read:

667 404.056 Environmental radiation standards and projects;

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668 certification of persons performing measurement or mitigation
669 services; mandatory testing; notification on real estate
670 documents; rules.—

671 (5) NOTIFICATION ON REAL ESTATE DOCUMENTS.—Notification
672 shall be provided on at least one document, form, or application
673 executed at the time of, or ~~before~~ prior to, contract for sale
674 and purchase of any building or execution of a rental agreement
675 for any building. Such notification must ~~shall~~ contain the
676 following language:

677 "RADON GAS: Radon is a naturally occurring radioactive gas
678 that, when it has accumulated in a building in sufficient
679 quantities, may present health risks to persons who are exposed
680 to it over time. Levels of radon that exceed federal and state
681 guidelines have been found in buildings in Florida. Additional
682 information regarding radon and radon testing may be obtained
683 from your county health department."

684
685
686 The requirements of this subsection do not apply to any
687 residential transient occupancy, as described in s. 509.013 ~~s.~~
688 ~~509.013(12)~~, provided that such occupancy is 45 days or less in
689 duration.

690 Section 11. Subsection (6) of section 477.0135, Florida
691 Statutes, is amended to read:

692 477.0135 Exemptions.—

693 (6) A license is not required of any individual providing
694 makeup or special effects services in a theme park or
695 entertainment complex to an actor, stunt person, musician,
696 extra, or other talent, or providing makeup or special effects

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697 services to the general public. The term "theme park or
 698 entertainment complex" has the same meaning as in s. 509.013 ~~or~~
 699 ~~509.013(9)~~.

700 Section 12. Paragraph (b) of subsection (2) of section
 701 509.221, Florida Statutes, is amended to read:
 702 509.221 Sanitary regulations.—
 703 (2)
 704 (b) Within a theme park or entertainment complex as defined
 705 in s. 509.013 ~~or 509.013(9)~~, the bathrooms are not required to
 706 be in the same building as the public food service
 707 establishment, so long as they are reasonably accessible.

708 Section 13. Paragraph (b) of subsection (5) of section
 709 553.5041, Florida Statutes, is amended to read:
 710 553.5041 Parking spaces for persons who have disabilities.—
 711 (5) Accessible perpendicular and diagonal accessible
 712 parking spaces and loading zones must be designed and located to
 713 conform to ss. 502 and 503 of the standards.

714 (b) If there are multiple entrances or multiple retail
 715 stores, the parking spaces must be dispersed to provide parking
 716 at the nearest accessible entrance. If a theme park or an
 717 entertainment complex as defined in s. 509.013 ~~or 509.013(9)~~
 718 provides parking in several lots or areas from which access to
 719 the theme park or entertainment complex is provided, a single
 720 lot or area may be designated for parking by persons who have
 721 disabilities, if the lot or area is located on the shortest
 722 accessible route to an accessible entrance to the theme park or
 723 entertainment complex or to transportation to such an accessible
 724 entrance.

725 Section 14. Paragraph (b) of subsection (5) of section

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726 559.955, Florida Statutes, is amended to read:
 727 559.955 Home-based businesses; local government
 728 restrictions.—
 729 (5) The application of this section does not supersede:
 730 (b) Local laws, ordinances, or regulations related to
 731 transient public lodging establishments, as defined in s.
 732 509.013(10)(a)1. ~~or 509.013(4)(a)1.~~, that are not otherwise
 733 preempted under chapter 509.

734 Section 15. Subsection (2) of section 705.17, Florida
 735 Statutes, is amended to read:
 736 705.17 Exceptions.—
 737 (2) Sections 705.1015-705.106 do not apply to any personal
 738 property lost or abandoned on premises located within a theme
 739 park or entertainment complex, as defined in s. 509.013 ~~or~~
 740 ~~509.013(9)~~, or operated as a zoo, a museum, or an aquarium, or
 741 on the premises of a public food service establishment or a
 742 public lodging establishment licensed under part I of chapter
 743 509, if the owner or operator of such premises elects to comply
 744 with s. 705.185.

745 Section 16. Section 705.185, Florida Statutes, is amended
 746 to read:
 747 705.185 Disposal of personal property lost or abandoned on
 748 the premises of certain facilities.—When any lost or abandoned
 749 personal property is found on premises located within a theme
 750 park or entertainment complex, as defined in s. 509.013 ~~or~~
 751 ~~509.013(9)~~, or operated as a zoo, a museum, or an aquarium, or
 752 on the premises of a public food service establishment or a
 753 public lodging establishment licensed under part I of chapter
 754 509, if the owner or operator of such premises elects to comply

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with this section, any lost or abandoned property must be delivered to such owner or operator, who must take charge of the property and make a record of the date such property was found. If the property is not claimed by its owner within 30 days after it is found, or a longer period of time as may be deemed appropriate by the owner or operator of the premises, the owner or operator of the premises may not sell and must dispose of the property or donate it to a charitable institution that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code for sale or other disposal as the charitable institution deems appropriate. The rightful owner of the property may reclaim the property from the owner or operator of the premises at any time before the disposal or donation of the property in accordance with this section and the established policies and procedures of the owner or operator of the premises. A charitable institution that accepts an electronic device, as defined in s. 815.03(9), access to which is not secured by a password or other personal identification technology, shall make a reasonable effort to delete all personal data from the electronic device before its sale or disposal.

Section 17. Section 717.1355, Florida Statutes, is amended to read:

717.1355 Theme park and entertainment complex tickets.—This chapter does not apply to any tickets for admission to a theme park or entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~, or to any tickets to a permanent exhibition or recreational activity within such theme park or entertainment complex.

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Section 18. Subsection (8) of section 877.24, Florida Statutes, is amended to read:

877.24 Nonapplication of s. 877.22.—Section 877.22 does not apply to a minor who is:

(8) Attending an organized event held at and sponsored by a theme park or entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~.

Section 19. The application of this act does not supersede any current or future declaration or declaration of condominium adopted pursuant to chapter 718, Florida Statutes, cooperative document adopted pursuant to chapter 719, Florida Statutes, or declaration or declaration of covenant adopted pursuant to chapter 720, Florida Statutes.

Section 20. (1) The Department of Revenue is authorized, and all conditions are deemed to be met, to adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, for the purpose of implementing the amendment made by this act to s. 212.03, Florida Statutes, including establishing procedures to facilitate the remittance of taxes.

(2) Notwithstanding any other law, emergency rules adopted pursuant to subsection (1) are effective for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

(3) This section expires January 1, 2026.

Section 21. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.



The Florida Senate

Committee Agenda Request

To: Senator Jason Brodeur, Chair
Committee on Agriculture, Environment, and General Government

Subject: Committee Agenda Request

Date: March 20, 2023

I respectfully request that **Senate Bill #714**, relating to Vacation Rentals be placed on the:

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

A handwritten signature in blue ink that reads "Nick DiCeglie".

Senator Nick DiCeglie
Florida Senate, District 18

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

Meeting Date

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

Phone

Address

Email

Street

City

State

Zip

Speaking:

☐

For

☒

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

JACKSONVILLE BEACH

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. § 11.045 and Joint Rule 1. [2020-2022 Joint Rules.cdf](#) [flsenate.gov](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

4-18-23

Meeting Date

714

Bill Number or Topic

Deliver both copies of this form to
Senate professional staff conducting the meeting

Approps on Ag, Environment &
Committee Gen. Government

Amendment Barcode (if applicable)

Name Tara Taggart

Phone 850-701-3603

Address PO Box 1757
Street

Email ttaggart@flcities.com

Tallahassee
City

FL
State

32301
Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Florida League of Cities

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. § 11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf](#) ([flsenate.gov](#))

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

4-18-23

Meeting Date

714

Bill Number or Topic

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Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name

Jana Cavalcanti

Phone

561-313-2573

Address

3300 S Dixie Hwy #220

Email

janainacs@hotmail

Street

W. Palm

City

FL

State

33405

Zip

Speaking:

☐

For

☒

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☒

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒

I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf flsenate.gov](#)

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S-001 (08/10/2021)

4/18/2023

Meeting Date

The Florida Senate
APPEARANCE RECORD

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SB 714

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name **Dolly Duran**

Phone **786-873-6589**

Address **1891 NW 36 Street**

Email **dollyduran@live.com**

Street

Oakland Park

FL

33309

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 JointRules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

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Meeting Date

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

Phone

Address

Email

Street

City

State

Zip

Speaking:

☐

For

☒

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☒

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

☒

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf](#) [flsenate.gov](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

4-18-23

Meeting Date

SB 714

Bill Number or Topic

Deliver both copies of this form to
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Appropriation, Agriculture,
Environment Committee General Government

Amendment Barcode (if applicable)

Name Joanne "Cookie" Kennedy, Mayor

Phone 727-560-7565

Address 408 2nd Street

Email ckennedy@irbcity.com

Indian Rocks Beach Fla. 33785

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf](#) ([flsenate.gov](#))

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Meeting Date

4/18/2023

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Bill Number or Topic

SB 714

Committee

Amendment Barcode (if applicable)

Name

Gregg Mims

Phone

727-410-9586

Address

Street

1507 Bay Palm Boulevard

Email

gmims@inbcity.com

City

Indian Rocks Beach

State

FL

Zip

33785

Speaking:

☐ For

☒ Against

☐ Information

OR

Waive Speaking:

☐ In Support

☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:



I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf flsenate.gov](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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4/18
Meeting Date
Appropriations Committee on
Agriculture, Environment & General Gov't
Committee

SB 714

Bill Number or Topic

Amendment Barcode (if applicable)

Name Samantha Padgett

Phone 850-224-2250

Address 230 S Adams St.
Street

Email spadgett@fsla.org

Tallahassee
City

FL
State

32301
Zip

Speaking: ☐ For ☒ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:
Florida Restaurant &
Lodging Association

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf flsenate.gov](#)

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S-001 (08/10/2021)

4-18-23

The Florida Senate

APPEARANCE RECORD

SB 714

Meeting Date

Bill Number or Topic

Appropriations Agricultural Environment

Deliver both copies of this form to
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name

David Will

Phone

323 744 9455

Address

16049 Redington Dr

Email

Mayor@townofredingtonbeach.com

Street

Redington Beach FL 33708

City

State

Zip

Speaking:

☐ For

☒ Against

☐ Information

OR

Waive Speaking:

☐ In Support

☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:



I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

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4/18/23

Meeting Date

App. For AEG

Committee

SB 714

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Mark Ryan

Phone

321 298-4334

Address

4116 Alpine Way

Email

mkr24@icloud.com

Street

Tallahassee

City

FL

State

32303

Zip

Speaking:

☐

For

☒

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒

I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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4.18.23

Meeting Date

714

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

BRIAN ROSS

Phone

561 504 1199

Address

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Email

m1nsports@mdc.com

Street

WEST PALM BEACH FL 33411

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

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S-001 (08/10/2021)

The Florida Senate

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4/18/23

Meeting Date

SB 714

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

KATHRYN LEVASSIUR

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Street

LAKELAND FL

City

State

33803

Zip

Speaking:

☐

For

☒

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒

I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

☐

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S-001 (08/10/2021)

The Florida Senate

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Bill Number or Topic

Meeting Date

Committee

Name

Phone

Address

Street

City

State

Zip

Amendment Barcode (if applicable)

Email

Speaking:

☐

For

☒

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒

I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

☐

I am not a lobbyist, but received
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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

4/18/23
Meeting Date

SB 714
Bill Number or Topic

As Appropriations
Committee

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Amendment Barcode (if applicable)

Name John Regan

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St. Augustine Fl. 32080
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Bill Number or Topic

Meeting Date

Committee

Amendment Barcode (if applicable)

Name

Jerry Richardson

Phone

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Address

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Email

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Street

Wellington

City

FL

State

33414

Zip

Speaking:

☐

For

☒

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒

I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

☐

I am not a lobbyist, but received
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(travel, meals, lodging, etc.),
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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Meeting Date

4-18

Bill Number or Topic

714

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Amendment Barcode (if applicable)

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RANA@RUBOOKPA.COM

Street

Tallahassee FL 32301

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☒

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

CITY OF MIAMI BEACH

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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4/18/2023

Meeting Date

AG, ENV & GEN. GOV. APP.

Committee

714

Bill Number or Topic

(AS AMENDED)

Amendment Barcode (if applicable)

Name

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PARTNERSHIPS.COM

Street

TUL, FL 32301

City

State

Zip

Speaking:

☒

For

☐

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

EXPEDIA

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

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S-001 (08/10/2021)

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 Appropriations Committee on Agriculture, Environment, and General Government

BILL: SB 734

INTRODUCER: Senator Polsky

SUBJECT: Saltwater Intrusion Vulnerability Assessments

DATE: March 14, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Barriero	Rogers	EN	Favorable
2.	Reagan	Betta	AEG	Favorable
3.			AP	

I. Summary:

SB 734 amends the Resilient Florida Grant Program to authorize the Department of Environmental Protection (DEP) to provide grants to coastal counties to conduct vulnerability assessments analyzing the effects of saltwater intrusion on their water supplies and the counties' preparedness to respond to such threats, including water utility infrastructure, wellfield protection, and freshwater supply management. Each vulnerability assessment must include:

- The county's primary water utilities;
- Maps of the county's freshwater wellfields and latest saltwater intrusion impact lines;
- Projections of saltwater intrusion over the next decade; and
- An analysis of the costs necessary to relocate freshwater wellfields anticipated to be impacted.

The bill requires the DEP to use the information from counties' saltwater intrusion vulnerability assessments to update the Comprehensive Statewide Flood Vulnerability and Sea Level Rise Data Set. The DEP must also make any appropriate information from the vulnerability assessments available to the public on its website.

The bill requires the DEP to provide 50 percent cost-share funding, up to \$250,000, for each grant awarded. A county with a population of 50,000 or less is not required to contribute to the cost share.

The DEP will incur indeterminate costs related to updating its comprehensive statewide flood vulnerability and sea level rise data set with the information provided by counties in their saltwater intrusion vulnerability assessments. The DEP will also incur indeterminate costs related to making such information available to the public on its website.

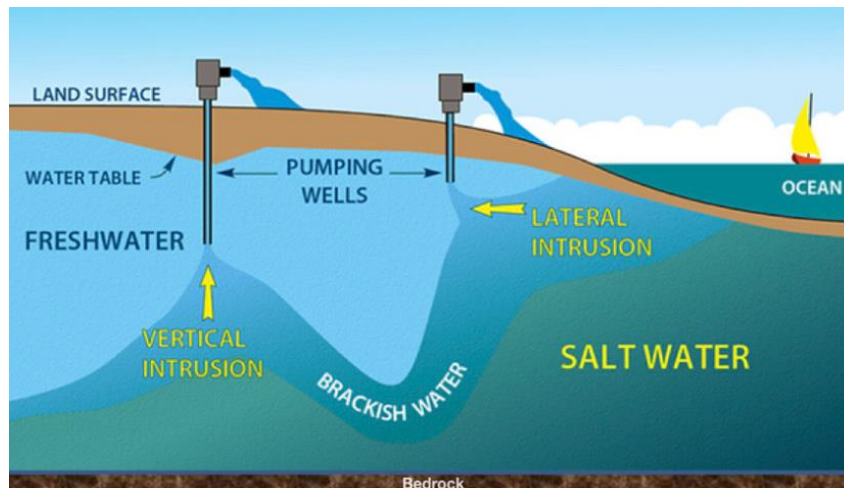
The effective date of the bill is upon becoming a law.

II. Present Situation:

Saltwater Intrusion

Drinking water in Florida comes primarily from water found within underground layers of water-bearing rock or sand called aquifers.¹ Aquifers are composed of different types of sediments and rocks, such as gravel, sandstone, and limestone.² Groundwater enters an aquifer as precipitation seeps through the soil and can move through the aquifer and resurface through springs and wells.³ Fresh and salt water fill the holes in the rock, with freshwater generally filling the uppermost part of aquifers and saltwater found at greater depths.⁴ Where aquifer layers meet the ocean (referred to as the freshwater/saltwater interface),⁵ there is the risk of saltwater moving inland and polluting the freshwater aquifers.⁶

Under natural conditions, the seaward movement of freshwater prevents seawater from encroaching coastal aquifers.⁷ An interface between freshwater and seawater is maintained with denser seawater underlying freshwater. When groundwater is pumped from a coastal aquifer, lowered water levels can cause seawater to be drawn toward the freshwater zones of the aquifer. The intruding seawater decreases the freshwater storage in the aquifers. Without treatment, this groundwater does not conform to drinking water or agricultural water quality standards.⁸



¹ See South Florida Water Management District (SFWMD), *Saltwater Intrusion in Coastal Aquifers*, <https://storymaps.arcgis.com/stories/3731671833e34567b783e9b881a8b36e> (last visited Mar. 6, 2023); see also St. Johns River Water Management District (SJRWMD), *Florida's Aquifers*, <https://www.sjrwmd.com/water-supply/aquifer/> (last visited Mar. 6, 2023).

² National Geographic, *Aquifers*, <https://education.nationalgeographic.org/resource/aquifers/> (last visited Mar. 6, 2023).

³ *Id.*

⁴ SJRWMD, *Florida's Aquifers*, <https://www.sjrwmd.com/water-supply/aquifer/> (last visited Mar. 6, 2023).

⁵ *Id.*

⁶ SFWMD, *Saltwater Intrusion in Coastal Aquifers*, <https://storymaps.arcgis.com/stories/3731671833e34567b783e9b881a8b36e> (last visited Mar. 6, 2023).

⁷ U.S. Geological Survey (USGS), *Sustainable Groundwater: Seawater Intrusion*, <https://ca.water.usgs.gov/sustainable-groundwater-management/seawater-intrusion-california.html> (last visited Mar. 6, 2023).

⁸ USGS, *Sustainable Groundwater: Seawater Intrusion*, <https://ca.water.usgs.gov/sustainable-groundwater-management/seawater-intrusion-california.html> (last visited Mar. 6, 2023). Brett A. Buzzanga, Old Dominion University, *Precipitation and Sea Level Rise Impacts on Groundwater Levels in Virginia Beach, Virginia*, 12 (Fall 2017), available at https://www.researchgate.net/publication/328225012_Precipitation_and_Sea_Level_Rise_Impacts_on_Groundwater_Levels_in_Virginia_Beach_Virginia/download.

Saltwater intrusion can occur in various ways, including lateral encroachment from coastal waters and vertical movement of saltwater near discharging wells.⁹ It can be caused by drilling wells too deep, excessive groundwater pumping, sea level rise, severe drought, and other factors.¹⁰ Sources include infiltration from tidal marshes, estuaries, and bays, encroachment from the ocean, leakage from unprotected canals, upward leakage from deeper aquifers, and movement of residual saltwater.¹¹ Rising sea levels also push saltwater upstream in tidal rivers and streams, raise coastal ground water tables, and push saltwater further inland.¹²

Saltwater intrusion is problematic for several reasons. For example, potable water is necessary for drinking, irrigation, and most industrial uses.¹³ When an aquifer is contaminated by saltwater, it must either be treated to remove the salt—a costly process—or another source of freshwater must be found.¹⁴ Public water supply utilities may shut down a well if it becomes too salty.¹⁵ Utilities with wellfields near the freshwater/saltwater interface that do not have an inland wellfield, have not developed alternative water supply sources, and have limited ability during a drought to meet user needs through interconnects with other utilities are considered more vulnerable.¹⁶

Saltwater intrusion can also cause flooding.¹⁷ Because saltwater is denser than freshwater, an aquifer can become stratified with a layer of freshwater on top of a layer of denser saltwater below. When sea level rise acts upon an aquifer like this, it can cause the freshwater layer to rise in response. This can cause flooding as the top of the water, called the water table, gets closer to ground surface.¹⁸

In addition, saltwater intrusion can cause a decline in forest and agricultural productivity. Saltwater degrades coastal wetlands and barrier islands, which buffer inland areas from storm surge, by killing less salt-tolerant species and leaving behind “ghost forests” or wetland areas

⁹ USGS, *Saltwater Intrusion*, <https://www.usgs.gov/mission-areas/water-resources/science/saltwater-intrusion> (last visited Mar. 6, 2023).

¹⁰ University of Pennsylvania, The Water Center, *Salt Intrusion: A Threat to Source Water Quality*, <https://watercenter.sas.upenn.edu/salt-intrusion-a-threat-to-source-water-quality/> (last visited Mar. 6, 2023); USGS, *Saltwater Intrusion*, <https://www.usgs.gov/mission-areas/water-resources/science/saltwater-intrusion> (last visited Mar. 6, 2023); SJRWMD, *Florida's Aquifers*, <https://www.sjrwmd.com/water-supply/aquifer/> (last visited Mar. 6, 2023).

¹¹ SFWMD, *Saltwater Intrusion in Coastal Aquifers*, <https://storymaps.arcgis.com/stories/3731671833e34567b783e9b881a8b36e> (last visited Mar. 6, 2023).

¹² Dep't of Emergency Management, *Enhanced State Hazard Mitigation Plan*, 107-108 (2018), available at https://www.floridadisaster.org/globalassets/dem/mitigation/mitigate-fl--shmp/shmp-2018-full_final_approved.6.11.2018.pdf.

¹³ *Id.*; see also Scott Jasechko et al., *Groundwater Level Observations in 250,000 Coastal US Wells Reveal Scope of Potential Seawater Intrusion*, 11 NATURE COMMUNICATIONS 3229 (2020), available at <https://www.nature.com/articles/s41467-020-17038-2>.

¹⁴ SFWMD, *Saltwater Intrusion in Coastal Aquifers*, <https://storymaps.arcgis.com/stories/3731671833e34567b783e9b881a8b36e> (last visited Mar. 6, 2023).

¹⁵ *Id.*; USGS, *Saltwater Intrusion*, <https://www.usgs.gov/mission-areas/water-resources/science/saltwater-intrusion> (last visited Mar. 6, 2023).

¹⁶ SFWMD, *Saltwater Intrusion in Coastal Aquifers*, <https://storymaps.arcgis.com/stories/3731671833e34567b783e9b881a8b36e> (last visited Mar. 6, 2023).

¹⁷ *Id.*

¹⁸ *Id.*

with only standing dead trees.¹⁹ Over time, saltwater intrusion, along with rising sea levels, convert these diverse wetland ecosystems into grass marshes and eventually into open water. The loss in forest and agricultural productivity due to increased soil salinity results in decreased ecosystem diversity and habitat for birds, fish, and the animals that prey on them.²⁰

Coastal counties with the following characteristics are particularly susceptible to lateral saltwater intrusion:²¹

- Proximity to the ocean, inlets, and lagoons;
- A large number of coastal wellfields;
- Low land surface elevations (less than 10 feet above mean sea level);
- Drainage canals that lower the water table, reducing the water pressure exerted against the saltwater interface;
- Canals without coastal water control structures to inhibit inland movement of seawater;
- Rising sea levels.²²

Several assessments have been prepared regarding the impact of sea level rise on water resources. For example, the South Florida Water Management District has evaluated saltwater intrusion in the surficial aquifer system of the Big Cypress Basin and southwest Florida²³ and mapped the saltwater interface in coastal aquifers within St. Lucie, Martin, Palm Beach, Broward, Collier, and Lee counties.²⁴ The U.S. Geological Survey conducts saltwater interface mapping for Miami-Dade and Monroe counties.²⁵ At least one evaluation of Florida's saltwater intrusion monitoring network has been performed.²⁶ The Northwest Florida Water Management District has commissioned a report evaluating saltwater intrusion in the Floridan Aquifer in Walton, Okaloosa, and Santa Rosa counties.²⁷

Statewide Resilience Programs

The Legislature has established several statewide resilience programs, including:

- The Resilient Florida Grant Program, which provides grants to counties or municipalities for community resilience planning, including vulnerability assessments, plan development, and

¹⁹ U.S. Dep't of Agriculture, Climate Hubs, *Saltwater Intrusion*, <https://www.climatehubs.usda.gov/taxonomy/term/399> (last visited Mar. 6, 2023).

²⁰ *Id.*

²¹ See SFWMD, *Saltwater Intrusion in Coastal Aquifers*, <https://storymaps.arcgis.com/stories/3731671833e34567b783e9b881a8b36e> (last visited Mar. 6, 2023).

²² *Id.*

²³ USGS, *Saltwater Intrusion in the Surficial Aquifer System of the Big Cypress Basin, Southwest Florida, and a Proposed Plan for Improved Salinity Monitoring: U.S. Geological Survey Open-File Report 2013-1088* (2013), available at <http://pubs.usgs.gov/of/2013/1088/> (last visited Mar. 6, 2023).

²⁴ SFWMD, *Saltwater Interface Monitoring and Mapping Program, Technical Publication WS-58*, 1 (2020), available at https://www.sfwmd.gov/sites/default/files/documents/ws-58_swi_mapping_report_final.pdf (last visited Mar. 6, 2023).

²⁵ *Id.*

²⁶ Scott T. Prinos, *Saltwater Intrusion Monitoring in Florida*, 79 FLORIDA SCIENTIST 4, 269 (Fall 2016), available at <https://www.jstor.org/stable/44113190>.

²⁷ HydroGeoLogic, Inc., *Saltwater Intrusion in the Floridan Aquifer in Walton, Okaloosa and Santa Rosa Counties, Florida, Eastern Model Domain, Final Report* (Sept. 2007), available at https://nwfwater.com/content/download/19030/127812/2007_09_HGL_R2_ED_model_final.pdf (Mar. 6, 2023).

projects to adapt critical assets.²⁸ In the programs first two years, 263 implementation projects have been awarded a total of nearly \$954 million.²⁹

- The Comprehensive Statewide Flood Vulnerability and Sea Level Rise Data Set and Assessment.³⁰ By July 1, 2023, the DEP must develop a data set providing statewide sea level rise projections and information necessary to determine the risks of flooding and sea level rise to inland and coastal communities. By July 1, 2024, the DEP must develop a statewide assessment (using the statewide data set) identifying vulnerable infrastructure, geographic areas, and communities. The statewide assessment must include an inventory of critical assets and be updated every five years.³¹
- The Statewide Flooding and Sea Level Rise Resilience Plan, which consists of ranked projects that address risks of flooding and sea level rise to coastal and inland communities.³² Examples of projects include construction of living shorelines, seawalls, and pump stations, elevation projects, and infrastructure hardening.³³ Counties, municipalities, water management districts, regional water supply authorities, and other entities may submit to the DEP an annual list of proposed projects. Each project must have a minimum 50 percent cost share, unless the project assists or is within a financially disadvantaged community.³⁴ The DEP ranks the projects using a four-tier scoring system.³⁵ The DEP has adopted rules to implement s. 380.093, F.S., relating to the Statewide Flooding and Sea Level Rise Resilience Plan and project submittal requirements. These rules can be found in chapter 62S-8 of the Florida Administrative Code.³⁶ In December 2022, the DEP submitted the FY 23-24 Statewide Flooding and Sea Level Rise Resilience Plan totaling nearly \$408 million over the next three years.³⁷
- The Florida Flood Hub for Applied Research and Innovation,³⁸ which was established within the University of South Florida College of Marine Science to coordinate efforts between the academic and research institutions of the state.³⁹ The Florida Flood Hub is tasked with,

²⁸ Section 380.093(2)(a), F.S. “Critical asset” is defined to include broad lists of assets relating to transportation, critical infrastructure, emergency facilities, natural resources, and historical and cultural resources.

²⁹ This figure includes \$270 million of state funding for the Statewide Flooding and Sea Level Resilience Plan. DEP, *Presentation to the Florida Senate Committee on Environment and Natural Resources* (Feb. 23, 2023), available at https://www.flsenate.gov/Committees/Show/SSHR/MeetingPacket/5700/10150_MeetingPacket_5700_2.23.23.pdf.

³⁰ Section 380.093(4), F.S.

³¹ *Id.* See also DEP, *Resilient Florida Program – Statewide Assessment*, <https://floridadep.gov/rcp/resilient-florida-program/content/resilient-florida-program-statewide-assessment> (last visited Mar. 7, 2023).

³² Section 380.093(5), F.S.

³³ DEP, *2022-2023 Statewide Flooding and Sea Level Rise Resilience Plan*, available at https://floridadep.gov/sites/default/files/FY22.23%20Statewide%20Flooding%20and%20Sea%20Level%20Rise%20Resilience%20Plan_0.pdf.

³⁴ Section 380.093(5)(e), F.S. A financially disadvantaged small community is a municipality with a population of 10,000 or fewer, or a county with a population of 50,000 or fewer, where the per capita annual income is less than the state’s per capita annual income. *Id.*

³⁵ Section 380.093(5)(h), F.S.

³⁶ Fla. Admin. Code Chapter 62S-8, available at https://floridadep.gov/sites/default/files/Final%20Rule%20Language_0.pdf.

³⁷ DEP and Florida Statewide Office of Resilience, *2022 Flood Resilience and Mitigation Efforts Across Florida*, 9, available at https://floridadep.gov/sites/default/files/2022%20Flood%20Resilience%20and%20Mitigation%20Efforts%20Report%20Only_0.pdf

³⁸ See University of South Florida College of Marine Science, *Florida Flood Hub for Applied Research and Innovation: Overview*, <https://www.usf.edu/marine-science/research/florida-flood-hub-for-applied-research-and-innovation/> (last visited Mar. 7, 2023).

³⁹ Section 380.0933(1), F.S.

among other things, organizing existing data needs for comprehensive statewide flood vulnerability and sea level rise analyses and performing gap analyses to determine data needs; developing statewide open source hydrologic models for physically based flood frequency estimation and real-time forecasting of flood; establishing community-based programs to improve flood monitoring and prediction along major waterways; and providing tidal and storm surge flooding data to counties and municipalities for vulnerability assessments.⁴⁰

The DEP may also provide funding for regional resilience entities to assist local governments with planning for the resilience needs of communities and coordinating intergovernmental solutions to mitigate adverse impacts of flooding and sea level rise.⁴¹ To date, \$4 million has been appropriated to regional resilience entities.⁴²

In 2022, the Statewide Office of Resilience was created within the Executive Office of the Governor for the purpose of reviewing all flood resilience and mitigation activities in the state and coordinating flood resilience and mitigation efforts with federal, state, and local governmental entities and other stakeholders. The office's Chief Resilience Officer and the DEP worked together to provide the Governor and the Legislature with a report on flood resilience and mitigation efforts across Florida. The report includes:

- A list of local governments that are required to comply with the requirements of s. 163.3178(2)(f), F.S.,⁴³ but are not in compliance, as reported by the Department of Economic Opportunity;
- A list of local governments that have completed vulnerability assessments in compliance with the requirements of the Resilient Florida grant program in s. 380.093(3), F.S.;⁴⁴
- An overview of the geographic distribution of entities with funded projects in the Statewide Flooding and Sea Level Rise Resilience Plan;⁴⁵ and
- A statewide inventory of basin-level flooding assessments and other related basin-level planning efforts self-reported by water management districts or special districts authorized to submit projects pursuant to s. 380.093(5), F.S.⁴⁶

⁴⁰ Section 380.0933(2) and (3), F.S.

⁴¹ Section 380.093(6), F.S.

⁴² DEP, *Presentation to the Florida Senate Committee on Environment and Natural Resources*, 18 (Feb. 23, 2023), available at https://www.flsenate.gov/Committees/Show/SSHR/MeetingPacket/5700/10150_MeetingPacket_5700_2.23.23.pdf.

⁴³ Section 163.3178(2)(f), F.S., requires local coastal governments to include a redevelopment component within their comprehensive plans' coastal management element, which outlines the principles that must be used to eliminate inappropriate and unsafe development in the coastal areas when opportunities arise. See DEP and Florida Statewide Office of Resilience, *2022 Flood Resilience and Mitigation Efforts Across Florida*, 2, available at https://floridadep.gov/sites/default/files/2022%20Flood%20Resilience%20and%20Mitigation%20Efforts%20Report%20Only_0.pdf; Letter from Department of Economic Opportunity to DEP, 1-2 (Nov. 9, 2022), available at https://floridadep.gov/DEO_PoF_Letter2022.

⁴⁴ DEP and Florida Statewide Office of Resilience, *2022 Flood Resilience and Mitigation Efforts Across Florida*, 3, available at https://floridadep.gov/sites/default/files/2022%20Flood%20Resilience%20and%20Mitigation%20Efforts%20Report%20Only_0.pdf

⁴⁵ *Id.* at 7-9.

⁴⁶ *Id.* at 10-12.

Coastal Counties

Florida has 35 coastal counties.⁴⁷



The following seven coastal counties have populations less than 50,000 as of April 2022:⁴⁸

- Gulf (15,938)
- Franklin (12,729)
- Wakulla (35,169)
- Jefferson (14,923)
- Taylor (21,375)
- Dixie (16,988)
- Levy (44,288)

III. Effect of Proposed Changes:

Section 1 amends the Resilient Florida Grant Program, s. 380.093, F.S., to authorize the DEP, beginning July 1, 2024, to provide grants to coastal counties to conduct vulnerability assessments analyzing the effects of saltwater intrusion on their water supplies and preparedness to respond to such threats, including water utility infrastructure, wellfield protection, and freshwater supply management.

⁴⁷ DEP, *Map of Florida's Coastal Counties*, <https://floridadep.gov/rcp/fcmp/documents/map-floridas-coastal-counties> and <https://floridadep.gov/sites/default/files/CPI-coastal-Florida-map.pdf> (last visited Mar. 6, 2023).

⁴⁸ Office of Economic and Demographic Research, *Florida Population Estimates by County and Municipality as of April 1, 2022*, available at http://edr.state.fl.us/Content/population-demographics/data/2022_Pop_Estimates.pdf (last visited Mar. 6, 2023).

Each vulnerability assessment must include all of the following information:

- The county's primary water utilities;
- Current maps of the county's freshwater wellfields and latest saltwater intrusion impact lines;
- Projections of saltwater intrusion over the next decade, including specific wells that may be impacted during that timeframe; and
- An analysis of the costs necessary to relocate freshwater wellfields that are anticipated to be impacted, including current projects that are underway to relocate the freshwater wellfields.

The bill requires the DEP to use the information from the vulnerability assessments to update its Comprehensive Statewide Flood Vulnerability and Sea Level Rise Data Set. The DEP must also make any appropriate information from the assessment available to the public on its website.

The bill also requires the DEP to provide 50 percent cost-share funding, up to \$250,000, for each grant awarded under this section of the Resilient Florida Grant Program. A county with a population of 50,000 or less is not required to contribute to the cost share.

Section 2 provides that the act will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DEP may incur costs related to updating its comprehensive statewide flood vulnerability and sea level rise data set with the information provided by counties in their saltwater intrusion vulnerability assessments. The DEP may also incur costs related to making such information available to the public on its website.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 380.093 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

By Senator Polsky

30-00018-23

2023734__

A bill to be entitled

An act relating to saltwater intrusion vulnerability assessments; amending s. 380.093, F.S.; authorizing the Department of Environmental Protection to provide grants to coastal counties for saltwater intrusion vulnerability assessments; specifying the purpose of and requirements for the assessments; requiring the department to update the comprehensive statewide flood vulnerability and sea level rise data set and make certain information received from the saltwater intrusion vulnerability assessments available on its website; requiring the department to provide cost-share funding up to a specified amount for awarded grants; specifying that certain counties are not required to contribute to the cost-share funding; providing an effective date.

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

Section 1. Paragraph (b) of subsection (3) of section 380.093, Florida Statutes, is amended, and paragraph (e) is added to that subsection, to read:

380.093 Resilient Florida Grant Program; comprehensive statewide flood vulnerability and sea level rise data set and assessment; Statewide Flooding and Sea Level Rise Resilience Plan; regional resilience entities.—

(3) RESILIENT FLORIDA GRANT PROGRAM.—

(b) Subject to appropriation, the department may provide grants to a county or municipality to fund:

Page 1 of 3

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

30-00018-23

2023734__

1. The costs of community resilience planning and necessary data collection for such planning, including comprehensive plan amendments and necessary corresponding analyses that address the requirements of s. 163.3178(2)(f).

2. Vulnerability assessments that identify or address risks of inland or coastal flooding and sea level rise.

3. The development of projects, plans, and policies that allow communities to prepare for threats from flooding and sea level rise.

4. Preconstruction activities for projects to be submitted for inclusion in the Statewide Flooding and Sea Level Rise Resilience Plan which ~~that~~ are located in a municipality that has a population of 10,000 or less ~~fewer~~ or a county that has a population of 50,000 or less ~~fewer~~, according to the most recent April 1 population estimates posted on the Office of Economic and Demographic Research's website.

5. For coastal counties, saltwater intrusion vulnerability assessments pursuant to paragraph (e).

(e) Under the Resilient Florida Grant Program, beginning July 1, 2024, the department may provide grants to coastal counties to conduct vulnerability assessments analyzing the effects of saltwater intrusion on a county's water supply and the preparedness of the county to respond to such a threat, including water utility infrastructure, wellfield protection, and freshwater supply management.

1. Each saltwater vulnerability assessment must include all of the following information:

a. The county's primary water utilities.

b. Current maps of the county's freshwater wellfields and

Page 2 of 3

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

30-00018-23

2023734__

59 latest saltwater intrusion impact lines.

60 c. Projections of saltwater intrusion over the next decade,
61 including specific wells that may be impacted during that
62 timeframe.

63 d. An analysis of the costs necessary to relocate
64 freshwater wellfields anticipated to be impacted, including
65 current projects that are underway to relocate the freshwater
66 wellfields.

67 2. The department shall use the information contained in
68 the county's vulnerability assessment to update its
69 comprehensive statewide flood vulnerability and sea level rise
70 data set under subsection (4).

71 3. The department shall make available to the public, on
72 the department's website, any appropriate information from the
73 vulnerability assessment it receives from coastal counties
74 pursuant to this paragraph.

75 4. The department shall provide 50 percent cost-share
76 funding, up to \$250,000, for each grant awarded under this
77 paragraph. A county with a population of 50,000 or less is not
78 required to contribute to the cost share.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Appropriations Committee on Agriculture, Environment,
and General Government
Appropriations Committee on Transportation, Tourism,
and Economic Development
Criminal Justice
Environment and Natural Resources
Ethics and Elections

SELECT COMMITTEE:

Select Committee on Resiliency

SENATOR TINA SCOTT POLSKY

30th District

March 14, 2023

Chairman Jason Brodeur

Appropriations Committee on Agriculture, Environment, and General Government

201 The Capitol

404 S. Monroe Street

Tallahassee, FL 32399-1100

Chairman Brodeur,

I respectfully request that you place SB 734, relating to Saltwater Intrusion Vulnerability Assessments, on the agenda of the Appropriations Committee on Agriculture, Environment, and General Government, at your earliest convenience.

Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Kindest Regards,

A handwritten signature in dark ink, appearing to read "Tina S. Polsky", with a stylized flourish at the end.

Senator Tina S. Polsky
Florida Senate, District 30

cc: Gino Betta, Staff Director
Julie Brass, Administrative Assistant

REPLY TO:

- ☐ 5301 North Federal Highway, Suite 135, Boca Raton, Florida 33487 (561) 443-8170
- ☐ 220 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

Senate's Website: www.flsenate.gov

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

4/18/23

Meeting Date

AEGG 110SB

Committee

Name **David Cullen**

Address **2838 Little Deal Rd**

Street

Tallahassee

City

FL

State

32308

Zip

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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734

Bill Number or Topic

Amendment Barcode (if applicable)

Phone **941-323-2404**

Email **cullenasea@gmail.com**

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Sierra Club Florida

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

4/18/23

Meeting Date

The Florida Senate
APPEARANCE RECORD

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SB 734

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

Jane West

Phone

904-671-4008

Address

308 N Monroe

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jwest@1000fof.org

Street

Tallah

FL

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

1000 Friends of Florida

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf flsenate.gov](#)

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S-001 (08/10/2021)

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 Appropriations Committee on Agriculture, Environment, and General Government

BILL: CS/SB 782

INTRODUCER: Regulated Industries Committee and Senator Hooper

SUBJECT: Department of Business and Professional Regulation

DATE: April 17, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Betta</u>	<u>AEG</u>	<u>Favorable</u>
3.	<u> </u>	<u> </u>	<u>FP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 782 revises licensing and regulatory requirements for businesses and professions administered by the Department of Business and Professional Regulation (DBPR), including mold-related professionals, asbestos abatement professionals, electrical and alarm system contractors, certain public lodging establishments, and certain public food service establishments.

Relating to mold-related professional licensing regulations, the bill authorizes a method for persons who have held a license in another state or territory for at least 10 years to obtain a Florida license.

Relating to asbestos professional licensing regulations, the bill:

- Authorizes a method for persons who have held a license in another state for at least 10 years and meet examination and education requirements to obtain a Florida license; and
- Removes limits of bondability and credit as required criteria for determining the financial stability of an applicant for licensure.

Relating to electrical and alarm system contractors licensing, the bill removes an existing deadline for registered electrical and alarm systems contractors to seek authorization to engage in their trades throughout the state at any time.

Relating to the licensing, inspection, and regulation of public lodging establishments and public food service establishments by the Division of Hotels and Restaurants (DHR) in the DBPR which are not otherwise exempt, the bill:

- Requires licensees to establish and accurately maintain an online account with the DHR and provide an email address to the DHR as a primary contact method; the DHR must implement the online account requirements and provide a method to opt-out of online accounts, by rule.
- Requires licensees and licensed agents managing a license classified as a vacation rental or timeshare project to timely submit address changes and changes in the number of houses or units covered by the license within 30 days of the change;
- Allows the DHR to serve inspection reports and other notices to operators of such establishments by email, in-person delivery, or mail; and
- Allows a transient public lodging establishment guest register to be kept in an electronic format and removes the requirement for guests to sign the register.

Relating to boxing matches held solely for training purposes, the bill removes a restriction on the maximum difference in weight of participants, eliminating the 12 pound weight differential for such matches in current law.

The bill has a positive fiscal impact on state government revenues. According to the DBPR, the bill may result in an indeterminate, but likely minimal negative fiscal impact to local government.¹ See Section V, Fiscal Impact Statement.

The bill takes effect July 1, 2023.

II. Present Situation:

For ease of reference, the Present Situation for each section of the bill is addressed below in the Effect of Proposed Changes portion of this bill analysis. Background information about the Department of Business and Professional Regulation (DBPR) is provided below.

Organization of the DBPR

Section 20.165, F.S., establishes the organizational structure of the DBPR, which has the following 11 divisions:

- Administration;
- Alcoholic Beverages and Tobacco;
- Certified Public Accounting;
- Drugs, Devices, and Cosmetics;
- Florida Condominiums, Timeshares, and Mobile Homes;
- Hotels and Restaurants;
- Professions;
- Real Estate;
- Regulation;
- Service Operations; and

¹ See Department of Business and Professional Regulation (DBPR), *2023 Agency Legislative Bill Analysis for SB 782* at 5-6 (Feb. 15, 2023) (on file with the Senate Committee on Regulated Industries).

- Technology.

The Florida Athletic Commission is assigned to the DBPR for administrative and fiscal accountability purposes only.² The DBPR also administers the Child Labor Law and Farm Labor Contractor Registration Law.³

Powers and Duties of the DBPR

Chapter 455, F.S., applies to the regulation of professions constituting “any activity, occupation, profession, or vocation regulated by the [DBPR] in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.”⁴ The chapter also provides the procedural and administrative framework for those divisions and the professional boards within the DBPR.⁵ The DBPR’s regulation of professions is to be undertaken “only for the preservation of the health, safety, and welfare of the public under the police powers of the state.”⁶ Regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.⁷

However, “neither the [DBPR] nor any board may create a regulation that has an unreasonable effect on job creation or job retention,” or a regulation that unreasonably restricts the ability of those desiring to engage in a profession or occupation from finding employment.⁸

Chapter 455, F.S., provides the general powers of the DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under the DBPR as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.⁹ When a person is authorized to engage in a profession or occupation in Florida, the DBPR issues a “permit, registration, certificate, or license” to the licensee.¹⁰

Division of Certified Public Accounting

In Fiscal Year 2021-2022, there were 38,541 active licensees in the DBPR’s Division of Certified Public Accounting.¹¹

² Section 548.003(1), F.S.

³ See Parts I and III of ch. 450, F.S.

⁴ Section 455.01(6), F.S.

⁵ See s. 455.203, F.S. The DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by staff counsel of the DBPR. See s. 455.221(1), F.S.

⁶ Section 455.201(2), F.S.

⁷ *Id.*

⁸ Section 455.201(4)(b), F.S.

⁹ See s. 455.203, F.S. The DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing DBPR staff counsel. See s. 455.221(1), F.S.

¹⁰ Section 455.01(4) and (5), F.S.

¹¹ See Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2021-2022*, at 18, at <http://www.myfloridalicense.com/DBPR/os/documents/Division%20Annual%20Report%20FY%202021-22.pdf> (last visited Mar. 21, 2023).

Division of Hotels and Restaurants

The Division of Hotels and Restaurants (DHR) licenses, inspects, and regulates public lodging and food service establishments in Florida. The DHR also licenses and regulates elevators, escalators, and other vertical conveyance devices.¹²

Division of Professions

In Fiscal Year 2021-2022, in the DBPR's Division of Professions, which regulates all licensees, there were 937,960 active licensees (of which 38,541 were licensed accountants; 66,936 were licensed engineers, and 345,026 were real estate-related licensees), including:¹³

- Accountants (CPAs);
- Architects and interior designers;
- Asbestos consultants and contractors;
- Athlete agents;
- Auctioneers;
- Barbers;
- Building code administrators and inspectors;
- Community association managers;
- Construction industry contractors;
- Cosmetologists;
- Electrical contractors;
- Employee leasing companies;
- Engineers;
- Geologists;
- Home inspectors;
- Harbor pilots (pilot commissioners);
- Landscape architects;
- Mold-related services;
- Real estate appraisers;
- Real estate (brokers/associates)
- Talent agencies; and
- Veterinarians.

Division of Real Estate

In Fiscal Year 2021-2022, there were 345,026 active licensees in the DBPR's Division of Real Estate.¹⁴

¹² See Department of Business and Professional Regulation, *Annual Report, Division of Hotels and Restaurants*, at <http://www.myfloridalicense.com/DBPR/hotels-restaurants/> (last visited Mar. 28, 2023); see page 18 of the Annual Report summarizing the numbers of licenses issued each fiscal year to public lodging and food service establishments.

¹³ *Id.*

¹⁴ *Id.*

III. Effect of Proposed Changes:

Mold-Related Professionals

Present Situation

The Department of Business and Professional Regulation (DBPR) licenses and regulates mold-related professionals.¹⁵ Specifically, mold assessors and mold remediators are regulated by Part XVI of ch. 468, F.S., and licensed by the Mold-Related Services Licensing Program¹⁶ in the DBPR. In Fiscal Year 2021-2022, there were 5,806 active licensees, and 654 inactive licensees.¹⁷ Of 127 complaints against licensees, 26 met the standard of legal sufficiency in s. 455.225(1), F.S., and the DBPR found probable cause that would reasonably indicate that a violation of the practice act or rules occurred in 16 cases.¹⁸

“Mold assessment” means a process performed by a mold assessor that includes the physical sampling and detailed evaluation of data obtained from a building history and inspection to formulate an initial hypothesis about the origin, identity, location, and extent of amplification of mold growth of greater than 10 square feet.¹⁹

“Mold remediation” means the removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, of mold or mold-contaminated matter of greater than 10 square feet that was not purposely grown at that location; however, it may not include work that requires a contractor license under ch. 489, F.S.²⁰

In order to be licensed as a mold assessor or mold remediator, an applicant must:²¹

- Be of good moral character;
- Pass the required DBPR-approved²² examination offered by a nationally recognized organization that certifies persons in the specialty of mold assessment or mold remediation;
- Have the insurance required under s. 468.8421, F.S.; and
- Complete either:
 - At least a two-year associate of arts degree with certain course requirements and a minimum of one year of experience; or
 - A high school diploma or the equivalent with a minimum of four years of experience.

¹⁵ See part XIV of ch. 468, F.S., Mold-Related Services; and *Annual Report, Fiscal Year 2021-2022, for the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation* (2021-2022 Annual Report) at 10, available at <http://www.myfloridalicense.com/DBPR/os/documents/Division%20Annual%20Report%20FY%2021-22.pdf> (last visited Mar. 28, 2023).

¹⁶ Section 468.84, F.S.

¹⁷ See 2021-2022 Annual Report at 18.

¹⁸ *Id.* at 87.

¹⁹ Section 468.8411(3), F.S.

²⁰ Section 468.8411(5), F.S.

²¹ Section 468.8413(2), F.S.

²² Section 455.217, F.S., requires the DBPR’s Division of Professions to “provide, contract, or approve services for the development, preparation, administration, scoring, score reporting, and evaluation of all examinations,” and to seek the advice of the appropriate regulatory board in doing so. The Department of Business and Professional Regulation must act together with the Division of Service Operations, the Division of Professions, and the Division of Real Estate, to “ensure that examinations adequately and reliably measure an applicant’s ability to practice the profession” that is regulated. *Id.*

A person who is licensed in another state is eligible for a license by endorsement in Florida if they:²³

- Are of good moral character;
- Hold the insurance required under s. 468.8421, F.S.;
- Hold a valid license to practice as a mold assessor or mold remediator in another state or territory of the United States if the criteria for such license is substantially equivalent to the licensure criteria in Florida; and
- Are qualified to take the DBPR-approved examination as set forth in s. 468.8413, F.S., and have passed a national, regional, state, or territorial licensing examination that is DBPR-approved as substantially equivalent to the required Florida examination, as set forth in s. 468.8414, F.S.

Applicants for a mold-related license must also pay initial fees of \$230.²⁴

Effect of Proposed Changes

Section 1 amends s. 468.8414, F.S., to allow licensure by endorsement to practice mold assessment or mold remediation for applicants who have held a valid license to practice mold assessment or mold remediation for at least 10 years in another state or territory before the date of application.

Applicants pursuing this avenue for licensure must apply either while they hold an active license in another state or territory, or within two years after such license was last active.

The bill clarifies the provision relating to licensure certification examination requirements.

Asbestos Abatement

Present Situation

The DBPR also licenses and regulates asbestos consultants and asbestos contractors.²⁵ Asbestos abatement means the removal, encapsulation, enclosure, or disposal of asbestos.²⁶

An asbestos consultant may:

- Conduct an asbestos survey;
- Develop an operation and maintenance plan;
- Monitor and evaluate asbestos abatement; and
- Prepare asbestos abatement specifications.²⁷

²³ Section 468.8414(3), (4), F.S.

²⁴ As set forth in Fla. Admin. Code R. 61-31.101, this figure includes an application fee of \$125, a licensure fee of \$100, and an unlicensed activity fee of \$5.00.

²⁵ See ch. 469, F.S., Asbestos Abatement; and *Annual Report, Fiscal Year 2021-2022, for the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation* (2020-2021 Annual Report) at 26, available at http://www.myfloridalicense.com/DBPR/os/documents/DivisionAnnualReport_FY2021.pdf (last visited Mar. 28, 2023).

²⁶ See s. 469.001(1), F.S.

²⁷ See s 469.003, F.S.

An asbestos contractor may work as an asbestos consultant and also conduct asbestos abatement work.²⁸

An asbestos consultant's license may only be issued to an applicant who:

- Holds a current, valid, active license as an architect issued under ch. 481, F.S.;
- Holds a current, valid, active license as a professional engineer issued under ch. 471, F.S.;
- Holds a current, valid, active license as a professional geologist issued under ch. 492, F.S.;
- Is a diplomat of the American Board of Industrial Hygiene; or
- Has been awarded designation as a Certified Safety Professional by the Board of Certified Safety Professionals.²⁹

An applicant for licensure as either an asbestos consultant or contractor must also:³⁰

- If applying for an asbestos consultant license, complete the DBPR-approved courses in the following topics:
 - Building asbestos surveys and mechanical systems;
 - Asbestos management planning;
 - Respiratory protection; and
 - Project designer.
- If applying for an asbestos contractor license, complete courses in the following topics:
 - Asbestos contractor/supervisor; and
 - Respiratory protection.
- Provide evidence of satisfactory work on ten asbestos projects within the last five years;
- Provide evidence of financial stability; and
- Pass a DBPR-approved examination.

In order to determine financial stability and adopt standards in related rules,³¹ the DBPR must use both the applicant's credit history and limits of bondability and credit.³² There is no provision allowing or addressing licenses by endorsement for asbestos licensees of other states.

In Fiscal Year 2021-2022, there were 442 active licensees, and nine inactive licensees.³³ Of nine complaints against licensees, two met the standard of legal sufficiency in s. 455.225(1), F.S., and the DBPR found probable cause that would reasonably indicate that a violation of the practice act or rules occurred in none of the cases.³⁴

If an individual proposes to engage in asbestos consulting or contracting as any legal entity or in a name other than the individual's legal name:

- The legal entity must apply for licensure through a qualifying agent; or
- The applicant must apply for licensure under the fictitious name.³⁵

²⁸ See s. 469.003(3), F.S.

²⁹ See s. 469.004(1), F.S.

³⁰ See s. 469.005, F.S.

³¹ The standards for determining an applicant's financial stability may be found in Fla. Admin. Code R. 61E1-4.002.

³² See s. 469.006(2)(c)2., F.S.

³³ See 2021-2022 Annual Report at 18.

³⁴ *Id.* at 87.

³⁵ See s. 469.006(2)(a), F.S.

A qualifying agent must be licensed under ch. 469, F.S., in order for a business organization to be licensed in the same category for which the qualifying agent is licensed.³⁶

There is no provision which specifically allows or addresses licenses by endorsement for asbestos licensees of other states.

Applicants for an asbestos license pay an initial fee of \$555, and an examination fee of \$316.

Effect of Proposed Changes

Section 2 amends s. 469.004, F.S., related to licensure of asbestos consultants and asbestos contractors, to allow licensure by endorsement to practice as an asbestos consultant or asbestos contractor for an applicant who has:

- Passed a written examination that meets the requirements of the United States Environmental Protection Agency Asbestos Model Accreditation Plan;
- Held a license as an asbestos consultant or asbestos contractor issued by another state or territory of the United States for at least 10 years before the application date and is applying for the same or similar license in Florida;
- Demonstrated financial stability; and
- Successfully completed all required DBPR-approved courses.³⁷

Applicants for licensure by endorsement must apply either while they hold an active license in another state or territory, or within two years after such license was last active.

Grandfathering Provision for Registered Electrical and Alarm System Contractors

Present Situation

Section 489.514, F.S., authorizes the Electrical Contractors' Licensing Board (ECLB) to grandfather certain applicants for registered contractor status, but only if application was made before November 1, 2021; under this provision, which now appears obsolete, the ECLB must certify an electrical, electrical specialty, or alarm system contractor to engage in the specified trade category throughout the state, upon:

- Receipt of a completed application;
- Payment of the appropriate fee;³⁸ and
- Evidence that he or she qualifies for the certification in a trade category based on:
 - Having a valid registered local license;
 - Passing an approved written examination;
 - Having a minimum of five years' contracting experience in the applicable trade category (with an active license and excluding probationary periods);

³⁶ See s. 469.005(3), F.S.

³⁷ All applicants must complete a respiratory protection course, with those seeking licenses as asbestos consultants completing courses in building asbestos surveys and mechanical systems, asbestos management planning, and project design, and those seeking licenses as asbestos contractors completing an asbestos contractor/supervisor course. See ss. 469.005(2) and 469.005(3), F.S.

³⁸ The Electrical Contractors' Licensing Board (ECLB) has established a \$196 fee for applications for registered contractor certification. See s. 489.109, F.S., and Fla. Admin. Code R. ch. 61G6-8.001.

- Never having had a contractor's license revoked, and during the last five years, not having had a suspended license or been assessed a fine in excess of \$500; and
- Meeting all required insurance and financial responsibility requirements.³⁹

The DBPR received 766 applications from local electrical and alarm contractors for a statewide license during the last period of grandfathering, from July 1, 2019, through November 1, 2021.⁴⁰

Effect of Proposed Changes

Section 3 amends s. 489.514(3), F. S., to remove the deadline for applicants with registered contractor status to seek certified licenses by November 1, 2021, allowing the ECLB to consider an application to certify an electrical, electrical specialty, or alarm system contractor to engage in the specified trade category throughout the state at any time.

Public Lodging Establishments/Public Food Service Establishments

Present Situation

The Division of Hotels and Restaurants (DHR) licenses, inspects, and regulates public lodging and food service establishments in Florida.⁴¹ A public lodging establishment includes establishments that are transient or nontransient.⁴² A “transient public lodging establishment” means:

any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.⁴³

A “nontransient public lodging establishment” means:

any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at

³⁹ See s. 489.515(1)(b), F.S., which provides that an applicant must submit satisfactory evidence of workers' compensation insurance or an acceptable exemption issued by the DBPR, public liability and property damage insurance in amounts determined by the ECLB, and evidence of financial responsibility, credit, and business reputation of either the contractor or the business sought to be qualified for certification.

⁴⁰ See DBPR, *2023 Agency Legislative Bill Analysis for SB 782* at 8 (Feb. 15, 2023) (on file with the Senate Regulated Industries Committee).

⁴¹ The Division of Hotels and Restaurants (DHR) also licenses and regulates elevators, escalators, and other vertical conveyance devices. See DBPR, *Division of Hotels and Restaurants*, <http://www.myfloridalicense.com/DBPR/hotels-restaurants/> (last visited Mar. 28, 2023).

⁴² See s. 509.013(4)(a), F.S., which provides “license classifications of public lodging establishments, and the definitions therefor,” are set out in s. 509.242, F.S. For the purpose of licensure, the term does not include condominium common elements, as defined in s. 718.103, F.S.

⁴³ *Id.* Section 509.013(11), F.S., further provides that the term “transient establishment” means any public lodging establishment “that is rented or leased to guests by an operator whose intention is that such guests' occupancy will be temporary.” Section 509.013(14), F.S., further provides the term “nontransient establishment” means any public lodging establishment “that is rented or leased to guests by an operator whose intention is that the dwelling unit occupied will be the sole resident of the guest.”

least 30 days or one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or one calendar month.⁴⁴

A “public food service establishment” means:

any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption. The term includes a culinary education program, as defined in s. 381.0072(2), which offers, prepares, serves, or sells food to the general public, regardless of whether it is inspected by another state agency for compliance with sanitation standards.⁴⁵

Numerous places providing food service are exempted from the definition of public food service establishment, such as certain schools and universities operated for students and faculty, and places maintained by certain religious, fraternal, and civic organizations.⁴⁶

Establishments regulated under ch. 509, F.S., must be licensed and inspected by the DHR, and are subject to sanitary standards, staff training and test requirements, administrative rules, and immediate closure upon a finding that continued operation presents a severe and immediate threat to the public health.⁴⁷

Notices from the DHR pursuant to ch. 509, F.S., must be written and delivered personally by an agent of the DHR or by registered letter to the operator of the establishment, except lodging inspection reports and food service inspection reports, which may be delivered by electronic means.⁴⁸

Operators of a public lodging establishment or public food service establishment may establish rules for guests and employees which must be printed in English and posted prominently within the establishment.⁴⁹ Operators of public food service establishments must also maintain a copy of the latest food service inspection report and make it available to the DHR at the time of any inspection and to the public upon request.⁵⁰

In addition, operators of transient establishments⁵¹ must maintain a register in chronological order, signed by or for guests who occupy rental units in the establishment, indicating the dates

⁴⁴ *Id.*

⁴⁵ *See* s. 509.013(5), F.S.

⁴⁶ *Id.*

⁴⁷ *See* ss. 509.032 and 509.035, F.S.

⁴⁸ *See* s. 509.091, F.S.

⁴⁹ *See* s. 509.101, F.S.

⁵⁰ *Id.*

⁵¹ *See supra* n. 36.

of occupancy and the rates charged.⁵² Registers must be available for inspection by the DHR at any time, but need not be made available if they are more than two years old.⁵³

Effect of Proposed Changes

Sections 4, 5, and 6 address requirements imposed upon public lodging establishments and public food service establishments.

Section 4 amends s. 509.091, F.S., to require licensees and licensed agents to provide an email address to the DHR to serve as the primary method of contact for all communications. The bill authorizes service of the DHR's notices and inspection reports by email or regular mail, in addition to personal delivery, and removes a requirement for the use of registered mail. The bill also authorizes the DHR to post an inspection report in a conspicuous place at the establishment, when the operator refuses to accept or evades service, or the agent is unable to serve the report after due diligence.

Section 5 amends s. 509.101, F.S., to clarify the duty for operators of transient establishments to maintain a guest register in chronological order of guests that occupy rental units in the establishment. Operators must make the register available for inspection by the DHR at any time, and the requirement for guests to sign the register is removed. The bill authorizes operators to keep the register in an electronic format.

Section 6 amends s. 509.241, F.S., related to licenses held by public lodging and public food service establishments. Under the bill, persons who plan to open a public lodging establishment or a public food service establishment, and each licensee or licensed agent, must create and maintain a DHR online account, and provide an e-mail address to function as the primary contact for all communication from the DHR.

The bill provides licensees and licensed agents are responsible for maintaining accurate contact information on file with the DHR. A licensee or licensed agent managing a license classified as a vacation rental or timeshare project (as those terms are defined in s. 509.242(1)(c) and (g), F.S., respectively), must submit any change in the street or unit address or number of houses or units included under the license within 30 days of the change. All changes must be filed with the DHR through the mandatory online account. The DHR must adopt rules to implement the online account requirements, including a provision specifying the circumstances for opting out of the requirement to have an online account.

The bill makes technical and conforming changes.

Florida Athletic Commission (formerly State Boxing Commission)

Present Situation

Chapter 548, F.S., provides for the regulation of professional and amateur boxing, kickboxing,⁵⁴

⁵² See s. 509.101, F.S.

⁵³ *Id.*

⁵⁴ The term "kickboxing" means the unarmed combat sport of fighting by striking with the fists, hands, feet, legs, or any combination, but does not include ground fighting techniques. See s. 548.002(12), F.S.

and mixed martial arts⁵⁵ by the Florida Athletic Commission (commission), which is assigned to the DBPR for administrative and fiscal purposes.⁵⁶

The commission has exclusive jurisdiction over every boxing, kickboxing, and mixed martial arts match held in Florida,⁵⁷ which involves a professional.⁵⁸ Professional matches held in Florida must meet the requirements set forth in ch. 548, F.S., and the rules adopted by the commission.⁵⁹ Chapter 548, F.S., does not apply to certain professional or amateur “martial arts,” such as karate, aikido, judo, and kung fu; the term “martial arts” is distinct from and does not include “mixed martial arts.”⁶⁰

However, as to amateur matches, the commission’s jurisdiction is limited to the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for amateur boxing, kickboxing, and mixed martial arts matches held in Florida.⁶¹ Amateur sanctioning organizations are business entities organized for sanctioning and supervising matches involving amateurs.⁶²

Under current law, certain persons providing certain services for a match involving a professional competing in a boxing, kickboxing, or mixed martial arts match must be licensed by the commission before directly or indirectly performing those services. Section 548.017, F.S., requires licensing for a participant,⁶³ manager, trainer, second, referee, judge, physician, matchmaker, or promoter.⁶⁴

The commission must establish, by rule, the appropriate weight of gloves used in each boxing match. All participants in boxing matches must wear gloves weighing not less than eight ounces each, and participants in mixed martial arts matches must wear gloves weighing between four to eight ounces each. Participants must also wear any protective devices the commission deems necessary.⁶⁵

Effect of Proposed Changes

Section 7 amends s. 548.043, F.S., to remove a restriction requiring that the weight differential between participants in a boxing match held solely for training purposes not exceed 12 pounds.

⁵⁵ The term “mixed martial arts” means the unarmed combat sport involving the use of a combination of techniques, including, but not limited to, grappling, kicking, striking, and using techniques from martial arts disciplines, including, but not limited to, boxing, kickboxing, Muay Thai, jujitsu, and wrestling. *See* s. 548.002(16), F.S.

⁵⁶ Section 548.003(1), F.S.

⁵⁷ Section 548.006(1), F.S.

⁵⁸ The term “professional” means a person who has received or competed for a purse or other article of a value greater than \$50, either for the expenses of training or for participating in a match. *See* s. 548.002(19), F.S.

⁵⁹ Section 548.006(4), F.S.

⁶⁰ Section 548.007(6), F.S., and *supra* n. 41 for the definition of “mixed martial arts.”

⁶¹ Section 548.006(3), F.S.

⁶² Section 548.002(2), F.S.

⁶³ Section 548.002(17), F.S., defines “participant” as a professional competing in a boxing, kickboxing, or mixed martial arts match.

⁶⁴ *See* s. 548.002, F.S., for the definitions of “manager,” “second,” “judge,” “physician,” “matchmaker,” and “promoter.” The terms “trainer” and “referee,” are not defined in ch. 548, F.S.

⁶⁵ Section 548.043(3), F.S.

According to the DBPR, this change will provide greater flexibility to promoters and participants who wish to promote and participate in exhibition matches.⁶⁶

Effective Date

The bill takes effect July 1, 2023.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

There may be a positive impact on the private sector by expanding the geographical scope of practice for those registered electrical contractors that choose to take advantage of the grandfathering provision. The Department of Business and Professional Regulation (DBPR) noted that there will be reduced costs to licensees who will no longer have to maintain registrations in multiple jurisdictions.⁶⁷

⁶⁶ See DBPR, 2023 Agency Legislative Bill Analysis for SB 782 at 4 (Feb. 15, 2023) (on file with the Senate Regulated Industries Committee).

⁶⁷ See DBPR, 2023 Agency Legislative Bill Analysis for SB 782 at 7 (Feb. 14, 2023) (on file with the Senate Regulated Industries Committee).

C. Government Sector Impact:

As to electrical and alarm system license revenue, the Division of Professions of the DBPR indicates revenue from license fees for licensees using the grandfathering provision to seek statewide licensing is indeterminate as it is unknown how many eligible licensees will apply. The total fee (application fee, initial licensing fee, and unlicensed activity fee) during the end of the previous grandfathering period was \$196. The Division of Professions notes there are 2,036 registered licensees with current or inactive licenses who may be able to take advantage of the grandfathering provision. However, the [DBPR] received only 766 applications during the last grandfathering period of July 1, 2019, to November 1, 2021.⁶⁸

Assuming total applications/license fees of \$196, the grandfathering fees received by the [DBPR] over the next three fiscal years could range from \$150,136 (if the [DBPR] receives the same number of applications as the last grandfathering period) to a maximum of \$399,056 if all 2,036 registered licensees apply over the next three fiscal years.⁶⁹

Local governments could experience a decrease in fees from registered electrical and alarm system contractors who seek statewide licensing using the grandfathering provision, but the impact is indeterminate.⁷⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 468.8414, 469.004, 489.514, 509.091, 509.101, 509.241, and 548.043.

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

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

CS by Regulated Industries Committee on March 29, 2023:

The CS:

- Removes provisions allowing public lodging establishments and public food service establishments to obtain renewal licenses for two years rather than one year.

⁶⁸ *Id.* at 8.

⁶⁹ *Id.*

⁷⁰ *Id.* at 5.

- Retains the requirement for public lodging establishments, public food service establishments, licensees, and licensed agents to maintain a division online account for communications with the DBPR; and
- Provides rulemaking authority for the DBPR to specify circumstances allowing an opt-out of the online account requirement.

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 Regulated Industries; and Senator Hooper

580-03286-23

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1 A bill to be entitled
 2 An act relating to the Department of Business and
 3 Professional Regulation; amending s. 468.8414, F.S.;
 4 requiring the department to certify for licensure
 5 qualified individuals who practice mold assessment or
 6 mold remediation and hold certain licenses issued by
 7 other states or territories; amending s. 469.004,
 8 F.S.; revising requirements for the issuance of an
 9 asbestos consultant's license; requiring the
 10 department to certify for licensure by endorsement
 11 asbestos consultants and asbestos contractors who meet
 12 certain exam and other state licensure requirements;
 13 requiring asbestos consultants and asbestos
 14 contractors to complete certain courses; amending s.
 15 489.514, F.S.; removing a time limitation for applying
 16 for certain contracting licenses under certain
 17 provisions; amending s. 509.091, F.S.; requiring
 18 licensees and licensed agents to provide the
 19 department's Division of Hotels and Restaurants with
 20 e-mail addresses at which they can be contacted;
 21 authorizing the division to deliver notices and
 22 inspection reports by e-mail; amending s. 509.101,
 23 F.S.; revising the guest register maintenance
 24 requirements that an operator of a transient
 25 establishment must meet; amending s. 509.241, F.S.;
 26 requiring certain individuals related to public
 27 lodging establishments and public food service
 28 establishments to maintain a division online account
 29 and provide the division with specified information;

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30 requiring the division to adopt rules; providing
 31 requirements for such rules; amending s. 548.043,
 32 F.S.; deleting a requirement limiting the types of
 33 boxing exhibitions which require a specified maximum
 34 difference in participant weights; providing an
 35 effective date.
 36
 37 Be It Enacted by the Legislature of the State of Florida:
 38
 39 Section 1. Subsection (3) of section 468.8414, Florida
 40 Statutes, is amended to read:
 41 468.8414 Licensure.—
 42 (3) The department shall certify as qualified for a license
 43 by endorsement an applicant who is of good moral character, who
 44 has the insurance coverage required under s. 468.8421, and who
 45 meets at least one of the following requirements:
 46 (a) Is qualified to take the examination as set forth in s.
 47 468.8413 and has passed a certification examination offered by a
 48 nationally recognized organization that certifies persons in the
 49 specialty of mold assessment or mold remediation and that has
 50 been approved by the department as substantially equivalent to
 51 the requirements of this part and s. 455.217, ~~or~~
 52 (b) Holds a valid license to practice mold assessment or
 53 mold remediation issued by another state or territory of the
 54 United States if the criteria for issuance of the license were
 55 substantially the same as the licensure criteria ~~that is~~
 56 established by this part as determined by the department.
 57 (c) Has held a valid license to practice mold assessment or
 58 mold remediation issued by another state or territory of the

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United States for at least 10 years before the date of application. The application for licensure must be made either when the license in the other state or territory is active or within 2 years after such license was last active.

Section 2. Present subsection (3) of section 469.004, Florida Statutes, is redesignated as subsection (4), a new subsection (3) is added to that section, and subsection (1) of that section is amended, to read:

469.004 License; asbestos consultant; asbestos contractor.—

(1) All asbestos consultants must be licensed by the department. Except for an asbestos consultant's license issued by endorsement as provided under subsection (3) or otherwise expressly provided by law, an asbestos consultant's license may be issued only to an applicant who holds a current, valid, active license as an architect issued under chapter 481; holds a current, valid, active license as a professional engineer issued under chapter 471; holds a current, valid, active license as a professional geologist issued under chapter 492; is a diplomat of the American Board of Industrial Hygiene; or has been awarded designation as a Certified Safety Professional by the Board of Certified Safety Professionals.

(3) The department shall certify as qualified for licensure by endorsement any individual applying for licensure who has passed a written examination that meets the requirements of the United States Environmental Protection Agency Asbestos Model Accreditation Plan, has held a valid license to practice as an asbestos consultant or asbestos contractor issued by another state or territory of the United States for at least 10 years before the date of application, and is applying for the same or

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similar license in this state, subject to ss. 469.005(5) and 469.006. The application for licensure must be made either when the license in the other state or territory is active or within 2 years after such license was last active. To qualify for licensure by endorsement, an asbestos consultant must complete the courses required by s. 469.005(2) and an asbestos contractor must complete the courses required by s. 469.005(3).

Section 3. Subsection (3) of section 489.514, Florida Statutes, is amended to read:

489.514 Certification for registered contractors; grandfathering provisions.—

~~(3) An applicant must make application by November 1, 2021, to be licensed pursuant to this section.~~

Section 4. Section 509.091, Florida Statutes, is amended to read:

509.091 Notices; form and service.—

(1) All licensees and licensed agents must provide an e-mail address to the division to function as the primary method of contact for all communication with the division.

(2) Each notice or inspection report served by the division pursuant to this chapter must be in writing and must be delivered personally by an agent of the division, sent by e-mail, or mailed by registered letter to the operator of the public lodging establishment or public food service establishment. If the operator refuses to accept service or evades service or the agent is otherwise unable to effect service after due diligence, the division may post such notice or inspection report in a conspicuous place at the establishment.

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~~(2) Notwithstanding subsection (1), the division may deliver lodging inspection reports and food service inspection reports to the operator of the public lodging establishment or public food service establishment by electronic means.~~

Section 5. Subsection (2) of section 509.101, Florida Statutes, is amended to read:

509.101 Establishment rules; posting of notice; food service inspection report; maintenance of guest register; mobile food dispensing vehicle registry.—

(2) It is the duty of each operator of a transient establishment to maintain at all times a register ~~of, signed by or for~~ guests who occupy rental units within the establishment, showing the dates upon which the rental units were occupied by such guests and the rates charged for their occupancy. Each operator shall maintain this register shall be maintained in chronological order, shall make the register and available for inspection by the division at any time, and may keep the register in an electronic format. Operators need not make available registers that ~~which~~ are more than 2 years old.

Section 6. Subsection (4) is added to section 509.241, Florida Statutes, to read:

509.241 Licenses required; exceptions.—

(4) ONLINE ACCOUNT AND TRANSACTIONS.—Except as provided in paragraph (c), each person who plans to open a public lodging establishment or a public food service establishment and each licensee or licensed agent must create and maintain a division online account and provide an e-mail address to the division to function as the primary contact for all communication from the division.

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(a) Licensees and licensed agents are responsible for maintaining accurate contact information on file with the division.

(b) Each licensee issued a license or licensed agent managing a license classified as a vacation rental or timeshare project, as those terms are defined in s. 509.242(1)(c) and (g), respectively, must submit any change in the street or unit address or number of houses or units included under the license within 30 days after the change. All changes must be filed with the division through the division's online system.

(c) The division shall adopt such rules as are necessary to carry out this subsection. The rules must include a provision that specifies circumstances under which a public lodging establishment or a public food service establishment and each licensee or licensed agent may opt out of the requirement to have a division online account.

Section 7. Subsection (2) of section 548.043, Florida Statutes, is amended to read:

548.043 Weights and classes, limitations; gloves.—

(2) The commission shall establish by rule the acceptable difference in weight between participants; however, the maximum difference in weight in boxing matches may ~~shall~~ not exceed 12 pounds, except matches in the cruiserweight and heavyweight classes and exhibitions ~~held solely for training purposes.~~

Section 8. This act shall take effect July 1, 2023.



The Florida Senate

Committee Agenda Request

To: Senator Jason Brodeur, Chair
Appropriations Committee on Agriculture, Environment, and General
Government

Subject: Committee Agenda Request

Date: April 4, 2023

I respectfully request that **Senate Bill # 782**, relating to Department of Business and Professional Regulation, be placed on the:

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

A handwritten signature in black ink, appearing to read "Ed Hooper", is written over a horizontal line.

Senator Ed Hooper
Florida Senate, District 21

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 Appropriations Committee on Agriculture, Environment, and General Government

BILL: CS/CS/SB 902

INTRODUCER: Appropriations Committee on Agriculture, Environment, and General Government;
Agriculture Committee; and Senator Thompson

SUBJECT: Safety Standards for Amusement Rides

DATE: April 20, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Burse</u>	<u>Becker</u>	<u>AG</u>	Fav/CS
2.	<u>Blizzard</u>	<u>Betta</u>	<u>AEG</u>	Fav/CS
3.	<u> </u>	<u> </u>	<u>FP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 902, the “Tyre Sampson Act” requires permanent amusement rides operated for the first time in this state after a specified date, to have a ride commissioning and certification report on file with the Department of Agriculture and Consumer Services (department) within a specified timeframe. The bill provides requirements for permanent and temporary amusement ride permits and creates new reporting requirements for an affidavit of nondestructive testing.

Additionally, the bill revises the circumstances under which the owner or manager of an amusement ride is required to report an accident and under which the department may impound an amusement ride involved in an accident.

The bill has a significant fiscal impact to the Department of Agriculture and Consumer Services. See Section V. Fiscal Impact Statement.

This bill takes effect July 1, 2023.

II. Present Situation:

Tyre Sampson

In March 2022, 14 year old Tyre Sampson fell to his death from the 400-foot (122-meter) drop tower ride operated by Orlando Slingshot.¹ Outside engineers reported that sensors on the ride had been adjusted manually to double the size of the opening for restraints on two seats, resulting in the teen not being properly secured.² The ride has since been shut down and the company has been fined by the Department of Agriculture and Consumer Services (department).

Amusement Ride Inspections

The department is required to inspect all amusement rides in Florida, except those at large parks with more than 1,000 employees and an inspector on staff. The Bureau of Fair Rides Inspection within the department is required to inspect, investigate, and enforce the regulations related to amusement rides.³

Amusement rides regulated in the state of Florida fall into two major groups:

- Temporary amusement rides (those that are regularly relocated with or without assembly); and
- Permanent facility amusement rides (those that are not regularly relocated and operate as a lasting part of the premises).⁴

All temporary amusement rides are inspected each time they are moved or set up at a new location, and permanent rides are inspected semiannually. All amusement rides are required to be permitted annually, are required to undergo nondestructive testing for structural integrity, and must have an annual inspection by a professional engineer or qualified inspector.⁵

The department also inspects go-kart tracks, water-related amusement rides, and zip-line courses operating in the state.⁶

In addition, the department investigates accidents involving amusement rides, and has the authority to impose sanctions on amusement ride owners for violation of the law. The department can close and impound amusement rides that pose an immediate serious danger to public health, safety, and welfare.⁷

¹ <https://www.mysuncoast.com/2022/11/22/florida-amusement-park-where-tyre-sampson-fell-his-death-fined-250000/> (last visited February 24, 2023)

² *Id.*

³ Section 616.242, F.S.

⁴ Florida Department of Agriculture and Consumer Services, Fair Rides Inspection, <https://fdacs.gov/Business-Services/Fairs/Fair-Rides-Inspection> (last visited February 24, 2023).

⁵ Florida Department of Agriculture and Consumer Services, Fair Rides Inspection, <https://fdacs.gov/Business-Services/Fairs/Fair-Rides-Inspection> (last visited February 28, 2023).

⁶ *Id.*

⁷ *Id.*

Adoption of Standards

The department is required to adopt by rule standards for amusement rides which are the same as or similar to the following national standards:

- American Society for Testing and Materials (ASTM) Committee F-24 Standards on Amusement Rides and Devices.
- National Electric Code Handbook, Article 525.
- National Fire Protection Code 101 (chapters 8-4.6 and 9-4.6).
- ASTM Standards: E543 Practice for Determining the Qualification of Nondestructive Testing Agencies.
- American Society for Nondestructive Testing (ASNT) Document Recommended Practice for Nondestructive Testing Personnel Qualification and Certification (SNT-TC-1A).⁸

The department is authorized to adopt rules necessary to effectuate its statutory duties in the interest of public health, safety, and welfare and to promote patron safety in the design, construction, assembly, disassembly, maintenance, and operation of amusement rides in this state.⁹

There are no mandatory national safety standards for United States amusement rides, but the amusement ride industry has developed safety standards through the ASTM F-24 committee. The ASTM F-24 committee is responsible for standards related to amusement rides and devices. This includes waterslides, inflatables, go-karts, zip-lines and challenge courses, trampoline courts, and a growing list of commercially-operated amusement experiences.¹⁰

Annual Permits

Amusement rides may not operate without an annual permit. To apply, an owner must submit to the department a written application on a form prescribed by department rule, and include:

- The legal name, address, and primary place of business of the owner.
- A description, manufacturer's name, serial number, model number, and, if previously assigned, the United States Amusement Identification Number of the amusement ride.
- A valid certificate of insurance for each amusement ride.
- An affidavit of compliance that the amusement ride was inspected and in general conformance with the law and applicable rules. The affidavit of compliance must be executed by a professional engineer or a qualified inspector no earlier than 60 days before, but not later than, the date of filing of the application with the department.
- A request of inspection and permitting of the amusement ride within 60 days of the date of filing the application with the department.¹¹

Upon request, the owner must, at no cost to the department, provide the department with a copy of the manufacturer's current recommended operating instructions in the possession of the

⁸ Section 616.242(4), F.S.

⁹ *Id.*

¹⁰ ASTM International, *Committee F24 on Amusement Rides and Devices*, <https://www.astm.org/get-involved/technical-committees/committee-f24> (Last visited February 28, 2023).

¹¹ Section 616.242(5), F.S.

owner, the owner's operating fact sheet, and any written bulletins in the possession of the owner concerning the safety, operation, or maintenance of the amusement ride.¹²

An annual permit must be issued to the owner when a completed application has been received, the amusement ride has passed department inspection, and all applicable fees, as set by department rule,¹³ have been paid.¹⁴

The annual permit:

- Is valid for one year from the date of issuance;
- Is not transferable; and
- Must be displayed on the amusement ride in a place that is visible to patrons.¹⁵

Nondestructive Testing

In order to operate an amusement ride the owner must at all times have a current affidavit of nondestructive testing from a professional engineer or qualified inspector. The affidavit provides that the amusement ride has undergone nondestructive testing for metal fatigue at least annually.¹⁶ Nondestructive testing must be performed by a technician who meets the national standards for amusement rides provided in department rule.¹⁷

Nondestructive testing for metal fatigue must include visual and nonvisual testing, and can be conducted more often than annually, if required by any rule adopted under s. 616.242(7), F.S., by the manufacturer of the amusement ride, or the professional engineer or qualified inspector executing the affidavit of nondestructive testing.¹⁸

An affidavit of nondestructive testing must provide:

- That the amusement ride was inspected in person by the affiant.
- That all nondestructive testing requirements are current.
- That the nondestructive testing was performed by a qualified nondestructive testing technician.
- The components of the amusement ride for which the manufacturer has recommended or required nondestructive testing.
- The type of nondestructive testing required or recommended by the manufacturer.
- The frequency of the nondestructive testing required or recommended by the manufacturer.
- The components of the amusement ride for which the affiant has recommended or required nondestructive testing.
- The type of nondestructive testing required or recommended by the affiant.
- The frequency of the nondestructive testing as required or recommended by the affiant.

¹² *Id.*

¹³ R. 5J-18.012, F.A.C.

¹⁴ Section 616.242(5), F.S.

¹⁵ *Id.*

¹⁶ Section 616.242(6), F.S.

¹⁷ *Id.*

¹⁸ *Id.*

- That visual nondestructive testing is adequate for the amusement ride to be in general conformance with the requirements of this section, and all applicable rules, if only visual nondestructive testing is required or recommended by either the manufacturer or the affiant.¹⁹

Nondestructive testing is not required for:

- Fun houses;
- Houses of mirrors;
- Haunted houses;
- Mazes;
- Wave pools;
- Wave-making devices;
- Kiddie pools;
- Slides that are fully supported by an earthen mound;
- Non-motorized playground equipment that requires a manager; or
- Lazy-river type non-motorized floating carriers propelled by water.²⁰

Inspections

In order to obtain an annual permit, amusement rides must be inspected by the department and receive an inspection certificate. In addition, the following requirements must be met:

- Permanent amusement rides must be inspected semiannually and receive an inspection certificate; and
- Temporary amusement rides must be inspected and receive an inspection certificate each time the ride is set up or moved to a new location in this state unless the ride is:
 - Used at a private event;
 - A simulator, the capacity of which does not exceed 16 persons; or
 - A kiddie ride used at a public event, provided that there are no more than three amusement rides at the event, none of the kiddie rides at the event exceeds a capacity of 12 persons, and the ride has an inspection certificate that was issued within the preceding six months.²¹

To obtain a department inspection, the owner must submit a written request to the department on a department prescribed form, and provide the following information:

- The legal name, address, and primary place of business of the owner.
- A description, manufacturer's name, serial number, model number, and the United States Amusement Identification Number, if previously assigned, of the amusement ride.
- For a temporary amusement ride, for each time the amusement ride is set up or moved to a new location, the date of first intended use at the new location and the address or a description of the new location.²²

For permanent amusement rides, a request for inspection must be received by the department at least 15 days before the:

¹⁹ *Id.*

²⁰ *Id.*

²¹ Section 616.242(7), F.S.

²² *Id.*

- Owner's planned opening date; or
- Expiration of the prior inspection certificate.²³

For temporary amusement rides, the request for inspection must be received by the department each time the amusement ride is set up or moved to a new location at least 14 days before the date of first intended use at the new location.²⁴

In both cases, if the request for inspection is received late, the department is authorized to inspect the amusement ride and charge a late fee. In addition, if the owner fails to timely cancel a Request for Inspection, requests holiday or weekend inspections, or is required to have a replacement United States Amusement ID Program (USAID) plate issued by the department, the owner may be charged an appropriate fee.²⁵

Inspections are assigned on a first come, first served basis, and overflow requests will be scheduled on the closest date to the date for which the inspection was requested. Upon failure of an amusement ride to pass an inspection, the owner may request in writing a re-inspection. The department is required to re-inspect the ride as soon as practical following receipt of the written request and applicable re-inspection fees.²⁶

Upon passage of inspection and payment of the applicable fee, the department must issue an inspection certificate containing the following information:

- Date of inspection;
- Site of the inspection; and
- Name of the inspector.²⁷

Inspection certificates are valid only for the site stated on the certificate, for a period of not more than six months from the date of issuance. They are not transferable and must be displayed on the amusement ride at a place readily visible to patrons.²⁸

Fees

The department is required by rule to establish fees to cover the costs and expenditures associated with the fair rides inspection program, including all direct and indirect costs. If there is not sufficient general revenue appropriated by the Legislature, the industry is required to pay for the remaining cost of the program.²⁹

Fees must be deposited in the General Inspection Trust Fund. Any owner of an amusement ride who has not paid all the fees required under this section or who has any unpaid fine outstanding

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Section 616.242(8), F.S.

under this section are prohibited from operating any amusement ride in this state until the fees and fines have been paid to the department.³⁰

The department has adopted the following fees:³¹

Type of Fee	Permanent Ride	Temporary Ride
Annual permit fee for each kiddie amusement ride	\$300	\$150
Annual permit fee for each non-kiddie amusement ride	\$400	\$200
Annual permit fee for each super amusement ride	\$600	\$300
Inspection fee per go kart, in addition to the track inspection fee	\$10	\$10
Reinspection fee (return to site)	\$500	\$500
Reinspection fee (return on-site)	\$100	\$100
Fee to replace a lost U.S. Amusement Identification (USAID) plate	\$100	\$100
Fee per amusement ride for late inspection request	\$100	\$100
Fee per amusement ride for failure to cancel inspection request	\$100	\$100
Additional fee per amusement ride for inspection on weekend or state holiday	\$75	\$75
Inspection fee per harness, in addition to the ropes course/zip-line permit fee	\$5	\$5

In order to obtain a permit to operate an amusement ride in Florida, the ride owner must obtain injury liability insurance in the following amounts:

- One million dollars minimum per occurrence; and
- One million dollars in the aggregate.³²

The policies must be procured from an insurer that is:

- Licensed to transact business in this state; or
- Approved as a surplus lines insurer.³³

The insurance requirements do not apply to a governmental entity that is covered by the provisions of s. 768.28(16), F.S., which authorizes the state and its agencies and subdivisions to:

- Be self-insured;
- Enter into risk management programs;
- Purchase liability insurance for whatever coverage they may choose; or
- Have any combination thereof.³⁴

Exemptions

The regulations related to amusement rides do not apply to the following:

- Permanent facilities that employ at least 1,000 full-time employees and that maintain full-time, in-house safety inspectors;

³⁰ *Id.*

³¹ R. 5J-18.012, F.A.C.

³² Section 616.242(8), F.S.

³³ *Id.*

³⁴ *Id.*

- Any playground operated by a school, local government, or business licensed under ch. 509, F.S., if the playground is an incidental amenity and the operating entity is not primarily engaged in providing amusement, pleasure, thrills, or excitement;
- Museums or other institutions principally devoted to the exhibition of products of agriculture, industry, education, science, religion, or the arts;
- Conventions or trade shows for the sale or exhibit of amusement rides if there are a minimum of 15 amusement rides on display or exhibition, and if any operation of such amusement rides is limited to the registered attendees of the convention or trade show;
- Skating rinks, arcades, laser or paint ball war games, bowling alleys, miniature golf courses, mechanical bulls, inflatable rides, trampolines, ball crawls, exercise equipment, jet skis, paddle boats, airboats, helicopters, airplanes, parasails, hot air or helium balloons whether tethered or untethered, theatres, batting cages, stationary spring-mounted fixtures, rider-propelled merry-go-rounds, games, side shows, live animal rides, or live animal shows;
- Go-karts operated in competitive sporting events if participation is not open to the public;
- Non-motorized playground equipment that is not required to have a manager;
- Coin-actuated amusement rides designed to be operated by depositing coins, tokens, credit cards, debit cards, bills, or other cash money and which are not required to have a manager, and which have a capacity of six persons or less;
- Motorsports facilities described in s. 549.09(1)(a), F.S., when such facilities are operating cars, trucks, or motorcycles only;
- Battery-powered cars or other vehicles that are designed to be operated by children seven years of age or under and that cannot exceed a speed of four miles per hour;
- Mechanically driven vehicles that pull train cars, carts, wagons, or other similar vehicles, that are not confined to a metal track or confined to an area but are steered by an operator and do not exceed a speed of four miles per hour;
- Water-related amusement rides operated by a business licensed under ch. 509, F.S., if the water-related amusement ride is an incidental amenity and the operating business is not primarily engaged in providing amusement, pleasure, thrills, or excitement and does not offer day rates;
- Amusement rides at a private, membership-only facility, if the amusement ride is an incidental amenity, and the facility is not open to the general public; is not primarily engaged in providing amusement, pleasure, thrills, or excitement; and does not offer day rates; and
- Nonprofit permanent facilities registered under ch. 496, F.S., which are not open to the general public.³⁵

The department is authorized to establish by rule exemptions from the regulations on amusement rides for “non-motorized or human-powered amusement rides or coin-actuated amusement rides.”³⁶

Inspection Standards

Amusement rides are required to adhere to the following inspection standards:

³⁵ Section 616.242(10), F.S.

³⁶ *Id.*

- All mechanical, structural, and electrical components that affect patron safety must be in good working order.
- All control devices, speed-limiting devices, brakes, and safety equipment designated by the manufacturer must be in good working order.
- Parts must be properly aligned and not be bent, distorted, cut, or otherwise injured to force a fit. Parts requiring lubrication must be lubricated in the course of assembly. Fastening and locking devices must be installed where required for safe operation.
- Before being used by the public, an amusement ride must be placed or secured with blocking, cribbing, outriggers, guys, or other means so as to be stable under all operating conditions.
- Areas in which patrons may be endangered by the operation of an amusement ride must be fenced, barricaded, or otherwise effectively guarded against inadvertent contact.
- Machinery used in or with an amusement ride must be enclosed, barricaded, or otherwise effectively guarded against inadvertent contact.
- An amusement ride powered so as to be capable of exceeding its maximum safe operating speed must be provided with a maximum-speed-limiting device.
- The interior and exterior parts of all patron-carrying amusement rides with which a patron may come in contact must be smooth and rounded and free from sharp, rough, or splintered edges and corners, with no projecting studs, bolts, screws, or other projections which might cause injury.
- Signs that advise or warn patrons of age restrictions, size restrictions, health restrictions, weight limitations, or any other special consideration or use restrictions required or recommended for the amusement ride by the manufacturer must be prominently displayed at the patron entrance of each amusement ride.
- All amusement rides must comply with the section of law governing amusement rides and related rules.³⁷

Major Modifications

After an amusement ride has undergone a major modification, and prior to the time it is placed in operation, a Florida licensed professional engineer must certify that the amusement ride is in compliance with the entire section of law governing amusement ride safety, and all related rules.³⁸

Entry for Inspections

Authorized department employees may enter unannounced and inspect amusement rides at any time in a reasonable manner. Such employees are authorized to:

- Question any owner or manager;
- Inspect, investigate, photograph, and sample all pertinent places, areas, and devices; and
- Conduct all appropriate tests including nondestructive testing.³⁹

³⁷ Section 616.242(11), F.S.

³⁸ Section 616.242(12), F.S.

³⁹ Section 616.242(13), F.S.

The department is authorized to impose fees for unannounced inspections and recover the cost of related tests.⁴⁰

Reporting and Investigating Accidents and Defects

Accidents that the owner or manager have knowledge or, through the exercise of reasonable diligence should have knowledge, and for which a patron is transported to a hospital as defined in ch. 395, F.S., must be reported by the owner or manager to the department. Such reporting must be conducted by telephone within four hours after the accident and followed up by a written report to the department within 24 hours after the accident.

Any mechanical, structural, or electrical defects affecting patron safety for which an amusement ride is closed to patron use for more than four hours must be reported by the owner or manager to the department by telephone or facsimile within eight hours after the closing of the ride. A written report of the closing must be filed by the owner or manager with the department within 24 hours after the ride closes.

In addition, the department is authorized to impound amusement rides that have:

- Been involved in an accident for which a patron is transported to a hospital as defined in ch. 395, F.S.; or
- A mechanical, structural, or electrical defect affecting patron safety.

In cases of impoundment, the department is authorized to impound any other amusement ride of a similar make and model and perform all necessary tests to determine the cause of the accident, defect, or safety of the ride and any other ride of a similar make and model. The ride owners are responsible for the cost of impoundment and related testing.⁴¹

Owner/Manager Inspections

Prior to opening each day of operation, and before any inspection by the department, the owner or manager of an amusement ride is required to inspect and test the ride to ensure compliance with all requirements of the law governing amusement rides. Each inspection must be recorded on a form prescribed by department rule and signed by the person who conducted the inspection.⁴²

In lieu of using the department form, an owner or manager may request approval of an alternative form, which must include at least the information required on the department form. Inspection records of the last 14 daily inspections must be:

- Kept on site by the owner or manager; and
- Made immediately available to the department upon request.⁴³

⁴⁰ *Id.*

⁴¹ Section 616.242(14), F.S.

⁴² Section 616.242(15), F.S.

⁴³ *Id.*

Employee Training

Owners or managers of amusement rides are required to:

- Maintain a record of employee training for each employee who is authorized to operate, assemble, disassemble, transport, or conduct maintenance on an amusement ride; and
- Certify that each employee is trained on the amusement ride for which the employee is responsible.⁴⁴

The training record must be kept on site by the owner or manager and made immediately available to the department upon request. In lieu of using the department form, the owner or manager may request approval of an alternative form.⁴⁵ Training is prohibited when an amusement ride is open to the public, unless the training is conducted under the supervision of an employee who is trained in the operation of that ride.⁴⁶

Enforcement and Penalties

The department has the authority to deny, suspend for up to one year, or revoke any permit or inspection certificate. In addition, the department may impose an administrative fine pursuant to s. 570.971, F.S., not to exceed \$2,500 per violation, for each day the violation exists, against the owner of the amusement ride if the department finds that an amusement ride has operated or is operating:

- With a mechanical, structural, or electrical defect that affects patron safety, of which the owner or manager has knowledge, or, through the exercise of reasonable diligence, should have knowledge;
- In a manner or circumstance that presents a risk of serious injury to patrons;
- At a speed in excess of its maximum safe operating speed;
- In violation of department rules or state law; or
- In violation of an order of the department or any court.

The department also has the authority to deny, suspend, revoke any permit, and impose fines if an owner, manager, or operator is under the influence of drugs or alcohol in the course of his or her duties.⁴⁷

The department is required, in its order suspending a permit or inspection certificate, to specify the period during which the suspension is effective, which may not exceed one year. The permit or inspection certificate must remain suspended during the period, subject to any rescission or modification of the order by the department or modification or reversal by the court, prior to expiration of the suspension period.⁴⁸

The owner of an amusement ride whose permit or inspection certificate has been revoked by the department may not apply for another permit or inspection certificate for the amusement ride

⁴⁴ Section 616.242(16), F.S.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Section 616.242(19), F.S.

⁴⁸ *Id.*

within two years after the date of the revocation. If judicial review is sought and a stay of the revocation is obtained, the owner may not apply for another permit or inspection certificate within two years after the final order of the court sustaining the revocation.⁴⁹

During the period of suspension or revocation, the owner may not engage in or attempt to engage in any operation of the amusement ride for which a permit or inspection certificate is required.⁵⁰

When a department imposed suspension period has expired, the owner may reapply for a new permit or inspection certificate by submitting a complete application to the department.⁵¹

In addition, and notwithstanding the existence of any adequate remedy at law, the department is authorized to bring an action to enjoin the violation of any provision, or rules adopted, under this section, in the circuit court of the county in which the violation occurs or is about to occur. Upon competent and substantial evidence presented by the department, the court is required to immediately issue the temporary or permanent injunction sought by the department without bond.⁵²

In addition to the penalties, the department is authorized to issue a letter of warning to the owner of the ride specifying the violation and requiring immediate corrective action.⁵³

Any person who knowingly violates any of the provisions of the regulations governing amusement rides commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, F.S.⁵⁴

Consumer Product Safety Commission

The Consumer Product Safety Commission (Commission) is charged with protecting the public from unreasonable risks of injury or death associated with the use of the thousands of types of consumer products under the Commission's jurisdiction. The Consumer Product Safety Act (Act)⁵⁵ authorizes the Commission to investigate serious accidents involving portable carnival rides, inflatables, and go-karts. Amusement rides operated at permanent parks ("permanently fixed to a site") are exempt from compliance with the Act.⁵⁶

Ride manufacturers or owner/operators are required to notify the Commission if they obtain information which reasonably supports the conclusion that a portable amusement ride, inflatable device, go-kart or other non-exempt amusement device:

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ 15 U.S.C. ch. 47 § 2051 et seq.

⁵⁶ Saferparks, *U.S. Federal and State Amusement Ride Regulation*, <https://ridesdatabase.org/saferparks/u-s-regulatory-agencies/> (last visited February 28, 2023)

- Fails to comply with a consumer product safety standard or banning regulation established by the omission or a voluntary consumer product safety standard upon which the Commission has relied under s. 9 of the Act;
- Contains a defect which could create a substantial product hazard described in s.15(a)(2) of the Act; or
- Creates an unreasonable risk of serious injury or death.⁵⁷

The Commission does not provide for an inspection program.

Other States

According to a consumer safety organization, Saferparks.org, the research of amusement ride laws in 50 states found the following:⁵⁸

Degree of Oversight	Number of States
Comprehensive Government Oversight	20 States (Including Florida)
Partial Government Oversight	12 States
Private Sector Oversight	9 States
No State Agency with Jurisdiction	8 States
Electrical Inspections Only	1 State

III. Effect of Proposed Changes:

This act may be cited as the “Tyre Sampson Act.”

The bill significantly amends ch. 616, F.S., relating to the regulation of amusement rides. The bill amends the definition of “major modification” and provides a definition for the term “ride commissioning and certification report.”

The bill provides new requirements for permanent and temporary amusement rides and requires that each permanent or temporary amusement ride operated for the first time after July 1, 2023, have a ride commissioning and certification report on file with the Department of Agriculture and Consumer Services (department) before the ride’s first inspection and a permit is issued.

The bill provides exemptions for temporary amusement rides from required permit to include previously permitted rides at private events and kiddie rides at public events not exceeding three amusement rides.

The bill requires that nonvisual nondestructive testing must be used when it cannot be adequately evaluated by other means. The bill also requires that the type of nondestructive testing required or recommended by the affiant must include the manufacturer’s requirements and recommendations. If there is no additional nondestructive testing, the affiant must affirm the manufacturer’s requirements are sufficient for safe operation.

⁵⁷ *Id.*

⁵⁸ *Id.*

The bill creates new reporting requirements for an affidavit of nondestructive testing. The affidavit of nondestructive testing must include the following:

- That all the ride manufacturer's nondestructive testing requirements and recommendations are current;
- That the components of the amusement ride for which the affiant, in addition to the manufacturer's requirements and recommendations, has recommended or required nondestructive testing;
- That the ride is in conformance with the requirements of statute and applicable department rules;
- Whether the amusement ride went under a major modification, the name of the person who authorized the modification and the date the modification took place; and
- That the amusement ride and its components are in conformance with the services life specified by the manufacturer.

The bill requires that the proper positioning and measurements for patron safety restraint systems must be provided to the department prior to inspection. It also provides that if rider restrictions are not provided from the manufacturer, the owner or manager must provide the department with documentation from the manufacturer stating that such restrictions are not necessary for safe operation.

The bill permits the department to prepare a written report of each investigation it conducts. The bill also changes the accident reporting requirements for owners and managers following an accident, and changes the parameters in which the department is permitted to impound an amusement ride involved in an accident.

The bill requires the department to establish by rule, minimum training and retraining standards, and the frequency of employee training for all amusement rides. The bill also creates the requirement that the owner or manager of an amusement ride shall immediately document all training following each training session.

The bill takes effect on July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may result in additional inspections and/or closures of amusement rides. The fiscal impact on owners and/or operators would be difficult to determine due to complexity of the rides and additional requirements.⁵⁹

C. Government Sector Impact:

The Department of Agriculture and Consumer Services (department) estimates that implementation of the bill would require additional resources. The department estimates 18 additional positions, and \$1,409,949 in recurring funds and \$791,204 in nonrecurring funds from the General Revenue Fund, will be needed in Fiscal Year 2023-2024.⁶⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁵⁹ Department of Agriculture and Consumer Services, *Senate Bill 902 Fiscal Analysis* (Mar. 8, 2023) (on file with the Senate Agriculture Committee)

⁶⁰ *Id.*

VIII. Statutes Affected:

This bill substantially amends section 616.242 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations Committee on Agriculture, Environment, and General Government on April 18, 2023:

The committee substitute:

- Removes the definition of “nationally recognized testing laboratory” and revises the term “major modification.”
- Removes requirement for each permanent or temporary amusement ride operated for the first time after July 1, 2023, to have a ride commissioning and certification report on file with the Department of Agriculture and Consumer Services (department) before the ride’s first inspection and a permit is issued pursuant to s. 616.242(4), F.S.
- Removes requirement for a longitudinal record regarding accidents involving rides an operator previously owned, or operated from the permanent and temporary amusement ride permit applications.
- Removes requirement that the amusement ride is in conformance with all of the manufacturer’s required or recommended bulletins from the affidavit of nondestructive testing.
- Eliminates a duplicative provision regarding the department’s authority to conduct unannounced inspections.
- Removes sensor and other limiting devices related to patron safety restraint system adjustments prohibition.
- Revises the proper positioning and measurements requirement to include the demonstration of proper patron loading procedures related to safety restraint systems and that they all must be provided to the department upon request.

CS by Agriculture on March 13, 2023:

The committee substitute revises specifications related to the patron safety restraint systems. Any ride that rises more than 100 feet, must include redundant restraints, such as seat belts and safety bars.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2023	.	
	.	
	.	
	.	

The Appropriations Committee on Agriculture, Environment, and General Government (Thompson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 60 - 384

and insert:

Section 2. Present paragraphs (r) through (u) of subsection (3) of section 616.242, Florida Statutes, are redesignated as paragraphs (s) through (v), respectively, a new paragraph (r) is added to that subsection and paragraph (g) is added to subsection (6) of that section, and paragraph (h) of subsection (3), paragraph (b) of subsection (5), paragraphs (b) and (f) of subsection (6), subsection (7), paragraph (a) of subsection (8),



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paragraph (b) of subsection (11), subsections (12) and (14), paragraphs (a) and (c) of subsection (15), and subsections (16), (17), and (19) of that section are amended, to read:

616.242 Safety standards for amusement rides.—

(3) DEFINITIONS.—As used in this section, the term:

(h) "Major modification" means any change in the structural characteristics, ~~or~~ operational characteristics, or safety systems of an amusement ride which will alter its performance or settings from those ~~that~~ specified in the manufacturer's design criteria or operator's manual.

(r) "Ride commissioning and certification report" means a commissioning and certification report by the ride manufacturer which certifies that the ride has been designed and manufactured in conformance with the manufacturer's design criteria, standards referenced in this section, and rules adopted by the department.

(5) PERMANENT AMUSEMENT RIDE ANNUAL PERMIT.—

(b) To apply for an annual permit, an owner or manager must submit to the department a written application on a form prescribed by department rule, which must include all of the following:

1. The legal name, address, e-mail address, and primary place of business of the owner or manager, ~~as applicable~~.

2. A description, manufacturer's name, serial number, model number, and, if previously assigned, the United States Amusement Identification Number of the amusement ride.

3. A valid certificate of insurance for each amusement ride.

4. ~~If required under subsection (7),~~ An annual affidavit of



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41 compliance and nondestructive testing certifying that the
42 amusement ride was inspected in person by the affiant and that
43 the amusement ride is in ~~general~~ conformance with the
44 requirements of this section and all applicable department
45 rules. The affidavit must have been executed by a professional
46 engineer or a qualified inspector within the last calendar year.

47 ~~5. The owner or manager shall,~~ At no cost to the
48 department, ~~provide the department~~ an electronic copy of the
49 manufacturer's current recommended operating instructions, the
50 owner's operating fact sheet, and any written bulletins
51 concerning the safety, operation, or maintenance of the
52 amusement ride.

53 6. Beginning July 1, 2023, a ride commissioning and
54 certification report for each permanent amusement ride operated
55 for the first time in this state after July 1, 2023.

56 (6) TEMPORARY AMUSEMENT RIDE PERMIT.—

57 (b) To apply for a permit, an owner or manager must submit
58 to the department a written application on a form prescribed by
59 department rule. The written application, ~~which~~ must include all
60 of the following:

61 1. The legal name, address, e-mail address, and primary
62 place of business of the owner or manager, ~~as applicable.~~

63 2. A description, manufacturer's name, serial number, model
64 number, and, if previously assigned, the United States Amusement
65 Identification Number of the amusement ride.

66 3. A valid certificate of insurance for each amusement
67 ride.

68 ~~4. If required under subsection (7),~~ An affidavit of
69 compliance and nondestructive testing certifying that the



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amusement ride was inspected in person by the affiant and that the amusement ride is in ~~general~~ conformance with the requirements of this section and all applicable department rules. The affidavit must be executed by a professional engineer or a qualified inspector.

5. ~~The owner or manager shall,~~ At no cost to the department, ~~provide the department~~ an electronic copy of the manufacturer's current recommended operating instructions, the operating fact sheet, and any written bulletins concerning the safety, operation, or maintenance of the amusement ride.

(f) A temporary amusement ride is exempt from the required permit if it is:

1. Used at a private event and was issued a permit within the preceding 6 months; or

2. A kiddie ride used at a public event, provided that not more than three amusement rides are at the event, the kiddie rides at the event do not exceed a capacity of 12 persons, and the kiddie ride passed a department inspection and was issued a permit within the preceding 6 months. Unless the capacity of the ride has been determined and specified by the manufacturer, the department shall determine the capacity of the kiddie ride by rule. An owner or a manager of a kiddie ride operating under this exemption is responsible for ensuring that not more than three amusement rides are operated at the event.

(g) The permit must be displayed in an accessible location on the amusement ride.

(7) NONDESTRUCTIVE TESTING; ANNUAL AFFIDAVIT; EXEMPTIONS.—

(a) ~~Except as provided in paragraph (d),~~ An owner or manager may not operate an amusement ride unless the owner or



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manager at all times has a current affidavit of nondestructive testing from a professional engineer or qualified inspector that the amusement ride has undergone nondestructive testing to verify the integrity of all components ~~for metal fatigue~~ at least annually. The nondestructive testing ~~for metal fatigue~~ must be conducted more often than annually if required by any rule adopted under this section, by the manufacturer of the amusement ride, or by the professional engineer or qualified inspector executing the affidavit of nondestructive testing. The nondestructive testing ~~for metal fatigue~~ must consist at least of visual nondestructive testing, as well as nonvisual nondestructive testing ~~for metal fatigue~~, which must be conducted on the components of the amusement ride as required by any rule adopted under this section, by the manufacturer of the amusement ride, or by the professional engineer or qualified inspector executing the affidavit of nondestructive testing.

(b) Nonvisual nondestructive testing must be used to verify the integrity of components that, due to their design, location, installation, or a combination thereof, cannot be adequately evaluated by other means.

(c) Nondestructive testing ~~testings~~ must be performed by a technician who meets the requirements prescribed by department rule.

(d) ~~(e)~~ An affidavit of nondestructive testing, on a form prescribed by department rule, must state, at a minimum, all of the following:

1. That the amusement ride was inspected in person by the affiant.

2. That all of the manufacturer's nondestructive testing



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requirements and recommendations are current.

3. That the nondestructive testing was performed by a qualified nondestructive testing technician.

4. The components of the amusement ride for which the manufacturer has recommended or required nondestructive testing.

5. The type of nondestructive testing required or recommended by the manufacturer.

6. The frequency of the nondestructive testing required or recommended by the manufacturer.

7. The components of the amusement ride for which the affiant, in addition to the manufacturer's requirements and recommendations, has recommended or required nondestructive testing.

8. The type of nondestructive testing required or recommended by the affiant in addition to the manufacturer's requirements and recommendations. If the affiant does not require or recommend additional nondestructive testing, the affiant must affirm that the manufacturer's requirements are sufficient for the safe operation of the amusement ride.

9. The frequency of the nondestructive testing as required or recommended by the affiant.

10. That visual nondestructive testing is adequate for the amusement ride to be in ~~general~~ conformance with the requirements of this section and all applicable rules, ~~only~~ if only visual nondestructive testing is required ~~or recommended~~ by the manufacturer or the affiant.

11. That the amusement ride is in conformance with the requirements of this section and all applicable department rules.



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12. Whether the amusement ride has undergone a major modification and, if so, the name of the manager, owner, or operator who authorized the modification and the date the modification took place.

13. That the amusement ride and its components are in conformance with the service life specified by the manufacturer.

(e) ~~(d)~~ Nonvisual nondestructive testing is not required for fun houses, houses of mirrors, haunted houses, mazes, wave pools, wave-making devices, kiddie pools, slides that are fully supported by an earthen mound, nonmotorized playground equipment that requires a manager, or lazy-river-type nonmotorized floating carriers propelled by water.

(8) DEPARTMENT INSPECTIONS.—

(a) In order to obtain an annual or a temporary amusement ride permit, an amusement ride must be inspected by the department.

~~1. A temporary amusement ride is exempt from the required inspection if it is:~~

~~a. Used at a private event;~~

~~b. A simulator, the capacity of which does not exceed 16 persons; or~~

~~c. A kiddie ride used at a public event, provided that not more than three amusement rides are at the event, the kiddie rides at the event do not exceed a capacity of 12 persons, and the kiddie ride passed a department inspection and was issued a permit within the preceding 6 months. The capacity of a kiddie ride shall be determined by department rule, unless the capacity of the ride has been determined and specified by the manufacturer. Any owner or manager of a kiddie ride operating~~



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~~under this exemption is responsible for ensuring that not more than three amusement rides are operated at the event.~~

~~2.~~ The department shall inspect permanent amusement rides 6 months after the issuance of the annual permit. The required inspection may be waived for a permanent amusement ride if it was inspected and certified by an accredited trade organization as defined by department rule.

(11) EXEMPTIONS.—

(b) All of the following are exempt from subsections (5), (6), (8), and (9), but may be inspected by the department upon request following a complaint or pursuant to an accident that is required to be reported under subsection (15), and such exemption may be removed if the exempted amusement ride is found to have been operating in a manner or circumstance that presents a risk or resulted in a serious injury to patrons:

1. Museums or other institutions principally devoted to the exhibition of products of agriculture, industry, education, science, religion, or the arts.

2. Conventions or trade shows for the sale or exhibit of amusement rides if there are a minimum of 15 amusement rides on display or exhibition and if any operation of such amusement rides is limited to the registered attendees of the convention or trade show.

3. Nonmotorized playground equipment that is not required to have a manager.

4. Coin-actuated amusement rides designed to be operated by depositing coins, tokens, credit cards, debit cards, bills, or other cash money and which are not required to have a manager, and which have a capacity of six persons or less.



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5. Facilities described in s. 549.09(1)(a) when such facilities are operating cars, trucks, or motorcycles only.

6. Battery-powered cars or other vehicles that are designed to be operated by children 7 years of age or under and that cannot exceed a speed of 4 miles per hour.

7. Mechanically driven vehicles that pull train cars, carts, wagons, or other similar vehicles, that are not confined to a metal track or confined to an area but are steered by an operator and do not exceed a speed of 4 miles per hour.

8. A water-related amusement ride operated by a business licensed under chapter 509 if the water-related amusement ride is an incidental amenity and the operating business is not primarily engaged in providing amusement, pleasure, thrills, or excitement and does not offer day rates.

9. An amusement ride at a private, membership-only facility if the amusement ride is an incidental amenity and the facility is not open to the general public; is not primarily engaged in providing amusement, pleasure, thrills, or excitement; and does not offer day rates.

10. A nonprofit permanent facility registered under chapter 496 which is not open to the general public.

(12) INSPECTION STANDARDS.—An amusement ride must conform to all of the following standards:

(a) All mechanical, structural, and electrical components that affect patron safety must be in good working order.

(b) All control devices, speed-limiting devices, brakes, and safety equipment must be in good working order.

(c) Parts must be properly aligned and may not be bent, distorted, cut, or otherwise injured to force a fit. Parts



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requiring lubrication must be lubricated in the course of assembly. Fastening and locking devices must be installed when required for safe operation.

(d) The proper positioning, measurements, and demonstration of proper patron loading procedures related to patron safety restraint systems must be provided to the department upon request.

(e) An amusement ride must be placed or secured with blocking, cribbing, outriggers, guys, or other means ~~so as~~ to be stable under all operating conditions.

(f) ~~(e)~~ Areas in which patrons may be endangered by the operation of an amusement ride must be fenced, barricaded, or otherwise effectively guarded against inadvertent contact.

(g) ~~(f)~~ Machinery used in or with an amusement ride must be enclosed, barricaded, or otherwise effectively guarded against inadvertent contact.

(h) ~~(g)~~ An amusement ride powered ~~so as~~ to be capable of exceeding its maximum safe operating speed must be provided with a maximum-speed-limiting device.

(i) ~~(h)~~ The interior and exterior parts of all patron-carrying amusement rides with which a patron may come in contact must be smooth and rounded and free from sharp, rough, or splintered edges and corners, and from projecting studs, bolts, and screws or other projections that might cause injury.

(j) ~~(i)~~ Signs that advise or warn patrons of age restrictions, size restrictions, health restrictions, weight limitations, or any other special consideration or use restrictions, or lack thereof, ~~required or recommended for the amusement ride by the manufacturer~~ must be prominently displayed



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at the patron entrance of each amusement ride. If such rider restrictions are not provided by the manufacturer, the owner or manager must provide the department with documentation from the manufacturer or a licensed professional engineer stating that such rider restrictions are not necessary for the safe operation of the amusement ride.

(k)~~(j)~~ All amusement rides presented for inspection as ready for operation or in operation must comply with this section and department rule.

(l)~~(k)~~ A sign containing the toll-free number of the

===== T I T L E A M E N D M E N T =====
And the title is amended as follows:

Delete lines 17 - 19
and insert:
nondestructive testing; requiring the department to
remove an

By the Committee on Agriculture; and Senator Thompson

575-02509-23

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1 A bill to be entitled
 2 An act relating to safety standards for amusement
 3 rides; providing a short title; amending s. 616.242,
 4 F.S.; defining and redefining terms; requiring
 5 permanent amusement rides operated for the first time
 6 in this state after a specified date to have a ride
 7 commissioning and certification report on file with
 8 the Department of Agriculture and Consumer Services
 9 within a specified timeframe; revising the application
 10 requirements for permanent and temporary amusement
 11 ride permits; exempting from permit requirements
 12 temporary amusement rides that meet certain
 13 conditions; revising the annual nondestructive testing
 14 requirements for amusement rides; requiring nonvisual
 15 nondestructive testing to be used in certain
 16 circumstances; revising the affidavit requirements for
 17 nondestructive testing; authorizing the department to
 18 conduct unannounced inspections for specified
 19 purposes; requiring the department to remove an
 20 amusement ride from service and take appropriate
 21 administrative actions under certain circumstances;
 22 removing an exemption for temporary amusement ride
 23 inspections; authorizing the department to conduct
 24 certain inspections upon request; revising amusement
 25 ride inspection standards; revising the reasons for
 26 which the department is authorized to enter and
 27 inspect amusement rides; requiring the department to
 28 prepare a written report of each investigation it
 29 conducts; revising the circumstances under which the

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

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30 owner or manager of an amusement ride is required to
 31 report an accident and under which the department may
 32 impound an amusement ride involved in an accident;
 33 requiring daily owner or manager amusement ride
 34 inspections to be recorded at the time of inspection;
 35 requiring the department to establish by rule minimum
 36 amusement ride training and retraining standards;
 37 revising training requirements; revising circumstances
 38 under which an amusement ride may be considered an
 39 immediate serious danger to the public; providing an
 40 effective date.

41
 42 WHEREAS, on March 24, 2022, Tyre Sampson, a 14-year-old boy
 43 visiting this state from Missouri, fell to his death from the
 44 Eagle Drop Tower in Orlando, and

45 WHEREAS, after the accident, Department of Agriculture and
 46 Consumer Services inspectors performed multiple onsite
 47 inspections of the tower and its components and contracted with
 48 a third party to conduct a failure analysis assessment of the
 49 tower, and

50 WHEREAS, the investigators concluded that changes made to
 51 the ride by the ride operators after initial installation
 52 contributed to Tyre Sampson's death, and

53 WHEREAS, the proposed changes made by this act are
 54 necessary to address the safety problems discovered during the
 55 department's investigation, NOW, THEREFORE,

56
 57 Be It Enacted by the Legislature of the State of Florida:
 58

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Section 1. This act may be cited as the "Tyre Sampson Act."

Section 2. Present paragraphs (j) through (q) and (r) through (u) of subsection (3) of section 616.242, Florida Statutes, are redesignated as paragraphs (k) through (r) and (t) through (w), respectively, new paragraphs (j) and (s) are added to that subsection and a new paragraph (g) is added to subsection (6) of that section, and paragraph (h) of subsection (3), paragraph (a) of subsection (4), paragraph (b) of subsection (5), paragraphs (b) and (f) of subsection (6), subsection (7), paragraph (a) of subsection (8), paragraph (b) of subsection (11), subsections (12) and (14), paragraphs (a) and (c) of subsection (15), and subsections (16), (17), and (19) of that section are amended, to read:

616.242 Safety standards for amusement rides.—

(3) DEFINITIONS.—As used in this section, the term:

(h) "Major modification" means any change in the structural characteristics, ~~or~~ operational characteristics, or safety systems of an amusement ride which will alter its performance or settings from those that specified in the manufacturer's design criteria or operator's manual or as certified in the ride commissioning and certification report.

(j) "Nationally recognized testing laboratory" means an independent laboratory recognized by the United States Occupational Safety and Health Administration which tests products to applicable product safety standards in order to provide independent testing and certification of devices that may pose a risk to the user.

(s) "Ride commissioning and certification report" means a commissioning and certification report by the ride manufacturer

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or a nationally recognized testing laboratory which certifies that the ride has been designed, manufactured, installed, and tested in conformance with the manufacturer's design criteria, standards referenced in this section, and rules adopted by the department.

(4) ADOPTION OF STANDARDS; RULES.—

(a) The department shall adopt by rule standards for amusement rides. The rules must:

1. Be which are the same as or similar to the following national standards:

a.1- ASTM International Committee F24 Standards on Amusement Rides and Devices.

b.2- The National Electric Code Handbook.

c.3- National Fire Protection Association standards.

2. Require that each permanent amusement ride operated for the first time in this state after July 1, 2023, have a ride commissioning and certification report on file with the department before the department conducts the permanent amusement ride's first inspection and issues a permit for the permanent amusement ride.

(5) PERMANENT AMUSEMENT RIDE ANNUAL PERMIT.—

(b) To apply for an annual permit, an owner or manager must submit to the department a written application on a form prescribed by department rule, which must include all of the following:

1. The legal name, address, e-mail address, and primary place of business of the owner or manager, ~~as applicable.~~

2. A description, manufacturer's name, serial number, model number, and, if previously assigned, the United States Amusement

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Identification Number of the amusement ride.

3. A valid certificate of insurance for each amusement ride.

4. ~~If required under subsection (7),~~ An annual affidavit of compliance and nondestructive testing certifying that the amusement ride was inspected in person by the affiant and that the amusement ride is in ~~general~~ conformance with the requirements of this section and all applicable department rules. The affidavit must have been executed by a professional engineer or a qualified inspector within the last calendar year.

5. ~~The owner or manager shall,~~ At no cost to the department, ~~provide the department~~ an electronic copy of the manufacturer's current recommended operating instructions, the owner's operating fact sheet, a longitudinal record regarding accidents involving rides he or she previously owned or operated, and any written bulletins concerning the safety, operation, or maintenance of the amusement ride.

6. Beginning July 1, 2023, a ride commissioning and certification report for each permanent amusement ride operated for the first time in this state after July 1, 2023.

(6) TEMPORARY AMUSEMENT RIDE PERMIT.—

(b) To apply for a permit, an owner or manager must submit to the department a written application on a form prescribed by department rule. The written application, ~~which~~ must include all of the following:

1. The legal name, address, e-mail address, and primary place of business of the owner or manager, ~~as applicable.~~

2. A description, manufacturer's name, serial number, model number, and, if previously assigned, the United States Amusement

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Identification Number of the amusement ride.

3. A valid certificate of insurance for each amusement ride.

4. ~~If required under subsection (7),~~ An affidavit of compliance and nondestructive testing certifying that the amusement ride was inspected in person by the affiant and that the amusement ride is in ~~general~~ conformance with the requirements of this section and all applicable department rules. The affidavit must be executed by a professional engineer or a qualified inspector.

5. ~~The owner or manager shall,~~ At no cost to the department, ~~provide the department~~ an electronic copy of the manufacturer's current recommended operating instructions, the operating fact sheet, a longitudinal record regarding accidents involving rides he or she previously owned or operated, and any written bulletins concerning the safety, operation, or maintenance of the amusement ride.

(f) A temporary amusement ride is exempt from the required permit if it is:

1. Used at a private event and was issued a permit within the preceding 6 months; or

2. A kiddie ride used at a public event, provided that not more than three amusement rides are at the event, the kiddie rides at the event do not exceed a capacity of 12 persons, and the kiddie ride passed a department inspection and was issued a permit within the preceding 6 months. Unless the capacity of the ride has been determined and specified by the manufacturer, the department shall determine the capacity of the kiddie ride by rule. An owner or a manager of a kiddie ride operating under

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175 this exemption is responsible for ensuring that not more than
 176 three amusement rides are operated at the event.

177 (g) The permit must be displayed in an accessible location
 178 on the amusement ride.

179 (7) NONDESTRUCTIVE TESTING; ANNUAL AFFIDAVIT; EXEMPTIONS.—

180 (a) ~~Except as provided in paragraph (d),~~ An owner or
 181 manager may not operate an amusement ride unless the owner or
 182 manager at all times has a current affidavit of nondestructive
 183 testing from a professional engineer or qualified inspector that
 184 the amusement ride has undergone nondestructive testing to
 185 verify the integrity of all components for metal fatigue at
 186 least annually. The nondestructive testing ~~for metal fatigue~~
 187 must be conducted more often than annually if required by any
 188 rule adopted under this section, by the manufacturer of the
 189 amusement ride, or by the professional engineer or qualified
 190 inspector executing the affidavit of nondestructive testing. The
 191 nondestructive testing ~~for metal fatigue~~ must consist at least
 192 of visual nondestructive testing, as well as nonvisual
 193 nondestructive testing ~~for metal fatigue~~, which must be
 194 conducted on the components of the amusement ride as required by
 195 any rule adopted under this section, by the manufacturer of the
 196 amusement ride, or by the professional engineer or qualified
 197 inspector executing the affidavit of nondestructive testing.

198 (b) Nonvisual nondestructive testing must be used to verify
 199 the integrity of components that, due to their design, location,
 200 installation, or a combination thereof, cannot be adequately
 201 evaluated by other means.

202 (c) Nondestructive testing ~~testings~~ must be performed by a
 203 technician who meets the requirements prescribed by department

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204 rule.

205 (d)(e) An affidavit of nondestructive testing, on a form
 206 prescribed by department rule, must state, at a minimum, all of
 207 the following:

208 1. That the amusement ride was inspected in person by the
 209 affiant.

210 2. That all of the manufacturer's nondestructive testing
 211 requirements and recommendations are current.

212 3. That the nondestructive testing was performed by a
 213 qualified nondestructive testing technician.

214 4. The components of the amusement ride for which the
 215 manufacturer has recommended or required nondestructive testing.

216 5. The type of nondestructive testing required or
 217 recommended by the manufacturer.

218 6. The frequency of the nondestructive testing required or
 219 recommended by the manufacturer.

220 7. The components of the amusement ride for which the
 221 affiant, in addition to the manufacturer's requirements and
 222 recommendations, has recommended or required nondestructive
 223 testing.

224 8. The type of nondestructive testing required or
 225 recommended by the affiant in addition to the manufacturer's
 226 requirements and recommendations. If the affiant does not
 227 require or recommend additional nondestructive testing, the
 228 affiant must affirm that the manufacturer's requirements are
 229 sufficient for the safe operation of the amusement ride.

230 9. The frequency of the nondestructive testing as required
 231 or recommended by the affiant.

232 10. That visual nondestructive testing is adequate for the

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amusement ride to be in ~~general~~ conformance with the requirements of this section and all applicable rules, ~~only~~ if only visual nondestructive testing is required ~~or recommended~~ by the manufacturer or the affiant.

11. That the amusement ride is in conformance with the requirements of this section and all applicable department rules.

12. Whether the amusement ride has undergone a major modification and, if so, the name of the manager, owner, or operator who authorized the modification and the date the modification took place.

13. That the amusement ride and its components are in conformance with the service life specified by the manufacturer.

14. That the amusement ride is in conformance with all of the manufacturer's required or recommended bulletins.

(e) ~~(d)~~ Nonvisual nondestructive testing is not required for fun houses, houses of mirrors, haunted houses, mazes, wave pools, wave-making devices, kiddie pools, slides that are fully supported by an earthen mound, nonmotorized playground equipment that requires a manager, or lazy-river-type nonmotorized floating carriers propelled by water.

(8) DEPARTMENT INSPECTIONS.—

(a) In order to obtain an annual or a temporary amusement ride permit, an amusement ride must be inspected by the department.

1. The department may conduct unannounced inspections to observe operations and ensure the amusement ride is being conducted pursuant to proper procedures, to verify that on-duty employees have received proper training, and to observe the

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amusement ride in operation in order to detect unsafe ride conditions that may have occurred following the last inspection. If unsafe conditions are found, the inspector must immediately remove the amusement ride from service to ensure patron safety and follow up with the appropriate administrative actions. ~~A temporary amusement ride is exempt from the required inspection if it is:~~

~~a. Used at a private event;~~

~~b. A simulator, the capacity of which does not exceed 16 persons; or~~

~~c. A kiddie ride used at a public event, provided that not more than three amusement rides are at the event, the kiddie rides at the event do not exceed a capacity of 12 persons, and the kiddie ride passed a department inspection and was issued a permit within the preceding 6 months. The capacity of a kiddie ride shall be determined by department rule, unless the capacity of the ride has been determined and specified by the manufacturer. Any owner or manager of a kiddie ride operating under this exemption is responsible for ensuring that not more than three amusement rides are operated at the event.~~

2. The department shall inspect permanent amusement rides 6 months after the issuance of the annual permit. The required inspection may be waived for a permanent amusement ride if it was inspected and certified by an accredited trade organization as defined by department rule.

(11) EXEMPTIONS.—

(b) All of the following are exempt from subsections (5), (6), (8), and (9), but may be inspected by the department upon request, following a complaint or pursuant to an accident that

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is required to be reported under subsection (15), and such exemption may be removed if the exempted amusement ride is found to have been operating in a manner or circumstance that presents a risk or resulted in a serious injury to patrons:

1. Museums or other institutions principally devoted to the exhibition of products of agriculture, industry, education, science, religion, or the arts.

2. Conventions or trade shows for the sale or exhibit of amusement rides if there are a minimum of 15 amusement rides on display or exhibition and if any operation of such amusement rides is limited to the registered attendees of the convention or trade show.

3. Nonmotorized playground equipment that is not required to have a manager.

4. Coin-actuated amusement rides designed to be operated by depositing coins, tokens, credit cards, debit cards, bills, or other cash money and which are not required to have a manager, and which have a capacity of six persons or less.

5. Facilities described in s. 549.09(1)(a) when such facilities are operating cars, trucks, or motorcycles only.

6. Battery-powered cars or other vehicles that are designed to be operated by children 7 years of age or under and that cannot exceed a speed of 4 miles per hour.

7. Mechanically driven vehicles that pull train cars, carts, wagons, or other similar vehicles, that are not confined to a metal track or confined to an area but are steered by an operator and do not exceed a speed of 4 miles per hour.

8. A water-related amusement ride operated by a business licensed under chapter 509 if the water-related amusement ride

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is an incidental amenity and the operating business is not primarily engaged in providing amusement, pleasure, thrills, or excitement and does not offer day rates.

9. An amusement ride at a private, membership-only facility if the amusement ride is an incidental amenity and the facility is not open to the general public; is not primarily engaged in providing amusement, pleasure, thrills, or excitement; and does not offer day rates.

10. A nonprofit permanent facility registered under chapter 496 which is not open to the general public.

(12) INSPECTION STANDARDS.—An amusement ride must conform to all of the following standards:

(a) All mechanical, structural, and electrical components that affect patron safety must be in good working order.

(b) All control devices, speed-limiting devices, brakes, and safety equipment must be in good working order.

(c) Parts must be properly aligned and may not be bent, distorted, cut, or otherwise injured to force a fit. Parts requiring lubrication must be lubricated in the course of assembly. Fastening and locking devices must be installed when required for safe operation.

(d) Sensors and other limiting devices related to patron safety restraint systems may not be adjusted beyond the prescribed tolerances determined by the manufacturer or by a licensed professional engineer if the manufacturer is no longer in business.

(e) The proper positioning and measurements related to patron safety restraint systems must be provided to the department before the time of inspection. The specifications

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349 must include redundant restraints, such as seat belts and safety
 350 bars for any ride that rises more than 100 feet, and must be
 351 approved by the ride manufacturer or by a licensed professional
 352 engineer if the manufacturer is no longer in business.

353 (f) An amusement ride must be placed or secured with
 354 blocking, cribbing, outriggers, guys, or other means ~~so as~~ to be
 355 stable under all operating conditions.

356 (g) ~~(e)~~ Areas in which patrons may be endangered by the
 357 operation of an amusement ride must be fenced, barricaded, or
 358 otherwise effectively guarded against inadvertent contact.

359 (h) ~~(f)~~ Machinery used in or with an amusement ride must be
 360 enclosed, barricaded, or otherwise effectively guarded against
 361 inadvertent contact.

362 (i) ~~(g)~~ An amusement ride powered ~~so as~~ to be capable of
 363 exceeding its maximum safe operating speed must be provided with
 364 a maximum-speed-limiting device.

365 (j) ~~(h)~~ The interior and exterior parts of all patron-
 366 carrying amusement rides with which a patron may come in contact
 367 must be smooth and rounded and free from sharp, rough, or
 368 splintered edges and corners, and from projecting studs, bolts,
 369 and screws or other projections that might cause injury.

370 (k) ~~(i)~~ Signs that advise or warn patrons of age
 371 restrictions, size restrictions, health restrictions, weight
 372 limitations, or any other special consideration or use
 373 restrictions, or lack thereof, ~~required or recommended for the~~
 374 ~~amusement ride by the manufacturer~~ must be prominently displayed
 375 at the patron entrance of each amusement ride. If such rider
 376 restrictions are not provided by the manufacturer, the owner or
 377 manager must provide the department with documentation from the

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378 manufacturer or a licensed professional engineer stating that
 379 such rider restrictions are not necessary for the safe operation
 380 of the amusement ride.

381 (l) ~~(j)~~ All amusement rides presented for inspection as
 382 ready for operation or in operation must comply with this
 383 section and department rule.

384 (m) ~~(k)~~ A sign containing the toll-free number of the
 385 department and informing patrons that they may contact the
 386 department with complaints or concerns regarding the safe
 387 operation of amusement rides must be posted in a manner
 388 conspicuous to the public at each entrance of an a temporary
 389 amusement ride ~~facility~~. The department shall prescribe by rule
 390 specifications for such signs.

391 (14) ENTRY FOR INSPECTION OR INVESTIGATION.—

392 (a) Upon presentation of identification, an authorized
 393 employee of the department may enter unannounced and inspect
 394 amusement rides at any time and in a reasonable manner and has
 395 the right to question any owner, operator, or manager; to
 396 inspect, investigate, photograph, and sample all pertinent
 397 places, areas, and devices and review required documentation;
 398 and to conduct or have conducted all appropriate tests,
 399 including nondestructive testing. The department may impose fees
 400 for unannounced inspections and recover the cost of tests
 401 authorized by this subsection.

402 (b) The department shall prepare a written report of each
 403 investigation it conducts.

404 (15) REPORTING AND INVESTIGATION OF ACCIDENTS AND DEFECTS;
 405 IMPOUNDMENTS.—

406 (a) Any accident of which the owner or manager has

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knowledge or, through the exercise of reasonable diligence should have knowledge, and for which a patron seeks treatment at ~~is transported to~~ a hospital or an urgent care center, as those terms are defined in chapter 395, must be reported by the owner or manager to the department by telephone within 4 hours after the occurrence of the accident or after notification by the patron and must be followed up by a written report to the department within 24 hours after the occurrence of the accident or after notification by the patron.

(c) The department may impound an amusement ride involved in an accident for which a patron seeks treatment at ~~is transported to~~ a hospital or an urgent care center as those terms are defined in chapter 395 or which has a mechanical, structural, or electrical defect affecting patron safety; may impound any other amusement ride of a similar make and model or with similar operating characteristics; and may perform all necessary tests to determine the cause of the accident or the mechanical, structural, or electrical defect or to determine the safety of the amusement ride and any other amusement ride of a similar make and model or with similar operating characteristics. The cost of impounding the amusement ride and performing the necessary tests must be borne by the owner of the amusement ride.

(16) INSPECTION BY OWNER OR MANAGER.—Before opening on each day of operation and before any inspection by the department, the owner or manager of an amusement ride must inspect and test each amusement ride to ensure compliance with this section. Each inspection must be recorded at the time of inspection on a form prescribed by department rule and signed by the person who

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conducted the inspection. In lieu of the form prescribed by department rule, the owner or manager may request approval of an alternative form that includes, at a minimum, the information required on the form prescribed by department rule. Inspection records of the last 14 daily inspections must be kept on site by the owner or manager and made immediately available to the department upon request.

(17) TRAINING OF EMPLOYEES.—

(a) The department shall establish by rule minimum training and retraining standards and the frequency of employee training for all amusement rides.

(b) The owner or manager of an amusement ride shall maintain a record of employee training for each employee authorized to operate, assemble, disassemble, transport, or conduct maintenance on an amusement ride on a form prescribed by department rule. In lieu of the form prescribed by department rule, the owner or manager may request approval of an alternative form that includes, at a minimum, the information required on the form prescribed by department rule. The training record must be kept on site by the owner or manager and made immediately available to the department upon request. Training may not be conducted when an amusement ride is open to the public unless the training is conducted under the supervision of an employee who is trained in the operation of that ride. The owner or manager shall immediately document all training following each training session and certify that each employee is trained, as required by this section and any rules adopted thereunder, on the amusement ride for which the employee is responsible.

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(19) IMMEDIATE FINAL ORDERS.—

(a) An amusement ride that fails to meet the requirements of this section or pass the inspections required by this section; that is involved in an accident for which a patron seeks treatment at ~~is transported to~~ a hospital or an urgent care center as those terms are defined in chapter 395; or that has a mechanical, structural, or electrical defect that affects patron safety may be considered an immediate serious danger to the public health, safety, and welfare and, upon issuance of an immediate final order prohibiting patron use of the ride, may not be operated for patron use until it has passed a subsequent inspection by or at the direction of the department.

(b) An amusement ride of a similar make and model or with similar operating characteristics to an amusement ride described in paragraph (a) may be considered an immediate serious danger to the public health, safety, and welfare and, upon issuance of an immediate final order prohibiting patron use of the ride, may not be operated for patron use until it has passed a subsequent inspection by or at the direction of the department.

Section 3. This act shall take effect July 1, 2023.



The Florida Senate

Committee Agenda Request

To: Senator Jason Brodeur, Chair
Appropriations Committee on Agriculture, Environment, and General Government

Subject: Committee Agenda Request

Date: March 14, 2023

I respectfully request that **Senate Bill #902**, relating to Safety Standards for Amusement Rides, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Geraldine F. Thompson

Senator Geraldine F. "Geri" Thompson
Florida Senate, District 15

Cc: The Honorable Lori Berman, Vice Chair
Giovanni Betta, Staff Director
Julie Brass, Administrative Assistant

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
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Bill Number or Topic

44181L

Amendment Barcode (if applicable)

Meeting Date

4/18/23

Committee

Ass Approps

Name

TODD Michael

Phone

305-775-0339

Address

330 Alhambra Circle

Email

tjm@chassandlawfirm.
com

Street

coral Gables FL

33134

City

State

Zip

Speaking:



For



Against



Information

OR

Waive Speaking:



In Support



Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:



I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf](#) ([flsenate.gov](#))

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5-001 (08/10/2021)

4/18/23

Meeting Date

Ass Apprs
Committee

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
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902

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Todd Michaels

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City

State

Zip

Speaking:



For



Against



Information

OR

Waive Speaking:



In Support



Against

PLEASE CHECK ONE OF THE FOLLOWING:



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

S-001 (08/10/2021)

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 Appropriations Committee on Agriculture, Environment, and General Government

BILL: CS/SB 904

INTRODUCER: Appropriation Committee on Agriculture, Environment, and General Government and Senator Thompson

SUBJECT: Public Records/Active Amusement Ride Investigation

DATE: April 20, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Burse</u>	<u>Becker</u>	<u>AG</u>	Favorable
2.	<u>Blizzard</u>	<u>Betta</u>	<u>AEG</u>	Fav/CS
3.	<u> </u>	<u> </u>	<u>FP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 904 provides an exemption from public records requirements for investigatory records made or received by the department. The bill provides a statement of public necessity.

The public records exemption would stand repealed on October 2, 2028, unless it is reenacted by the Legislature under the Open Government Sunset Review Act.

The bill does not have a fiscal impact on state revenues or expenditures.

This act has a contingent effective date.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2022-2024) and Rule 14.1, *Rules of the Florida House of Representatives*, (2022-2024).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ 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 of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

An exemption serves an identifiable purpose if it meets one of the following purposes, *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

In examining an exemption, the act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption. The act requires the Legislature to consider the following specific questions in such a review:²⁴

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and 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.²⁶

III. Effect of Proposed Changes:

Section 1 creates s. 616.242(14)(b), F.S., creating a public record exemption for investigatory records made or received by the department. The public records exemption would stand repealed on October 2, 2028, unless it is reenacted by the Legislature under the Open Government Sunset Review Act.

Section 2 provides a statement of public necessity which is to allow the department to effectively and efficiently administer s. 616.242, F.S. The bill also provides that releasing such records

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S.

²⁵ See *generally* s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

could jeopardize ongoing investigations. The Legislature finds that the harm that may result from the release of these records outweigh public benefit from the disclosure of the information.

Section 3 provides that this act shall take effect on the same date that SB 902 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill creates an exemption, thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill creates an exemption, thus, the bill require a two-thirds vote to be enacted.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The exemption in the bill does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 616.242 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 Appropriations Committee on Agriculture, Environment, and General Government on April 18, 2023:

The committee substitute links the bill to SB 902 related to safety standards for amusement rides, to make them both effective on the same date.

B. Amendments:

None.



200150

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2023	.	
	.	
	.	
	.	

The Appropriations Committee on Agriculture, Environment, and General Government (Thompson) recommended the following:

Senate Amendment (with directory amendment)

Delete line 56
and insert:
SB 902 or similar legislation takes effect, if such legislation

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

And the directory clause is amended as follows:

Delete line 15

and insert:



200150

11 616.242, Florida Statutes, as amended by SB 902 or similar
12 legislation, 2023 Regular

By Senator Thompson

15-01977A-23

2023904__

A bill to be entitled

An act relating to public records; amending s.

616.242, F.S.; providing an exemption from public

records requirements for all investigatory records

made or received by the Department of Agriculture and

Consumer Services pursuant to an active amusement ride

investigation for a specified timeframe; providing for

future legislative review and repeal of the exemption;

providing a statement of public necessity; providing a

contingent effective date.

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

Section 1. Paragraph (b) of subsection (14) of section 616.242, Florida Statutes, as amended by SB ___, 2023 Regular Session, is amended to read:

616.242 Safety standards for amusement rides.—

(14) ENTRY FOR INSPECTION OR INVESTIGATION.—

(b) The department shall prepare a written report of each investigation it conducts. All investigatory records made or received by the department pursuant to an investigation are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the investigation is completed or ceases to be active. For purposes of this paragraph, an investigation is considered active so long as the department is proceeding with reasonable dispatch and has a reasonable good faith belief that additional information is necessary and likely to be discovered which will allow the department, following an accident, to make a final determination

Page 1 of 2

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

15-01977A-23

2023904__

of the cause and circumstances of the accident. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that all investigatory records made or received by the Department of Agriculture and Consumer Services pursuant to an amusement ride investigation by the department pursuant to s. 616.242, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution until the investigation is completed or ceases to be active. The premature release of such records could frustrate or thwart the investigation and impair the ability of the department to effectively and efficiently administer s. 616.242, Florida Statutes. In addition, the release of such records before completion of an active investigation could jeopardize the ongoing investigation, thereby affecting the ability of the department to effectively and efficiently administer the investigation. Therefore, the Legislature finds that the harm that may result from the release of investigatory records made or received by the department pursuant to an investigation by the department of a violation of s. 616.242, Florida Statutes, outweighs the public benefit that may be derived from the disclosure of the information.

Section 3. This act shall take effect on the same date that SB ___ or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Jason Brodeur, Chair
Appropriations Committee on Agriculture, Environment, and General
Government

Subject: Committee Agenda Request

Date: March 14, 2023

I respectfully request that **Senate Bill #904**, relating to Public Records/Active Amusement Ride Investigation, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Geraldine F. Thompson

Senator Geraldine F. "Geri" Thompson
Florida Senate, District 15

Cc: The Honorable Lori Berman, Vice Chair
Giovanni Betta, Staff Director
Julie Brass, Administrative Assistant

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 Appropriations Committee on Agriculture, Environment, and General Government

BILL: SB 1020

INTRODUCER: Senator Wright

SUBJECT: Monuments

DATE: April 17, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Proctor	MS	Favorable
2.	Davis	Betta	AEG	Favorable
3.			FP	

I. Summary:

SB 1020 establishes a Florida Space Exploration Monument to recognize the importance of the state of Florida, and its past, current, and future contributions, in space exploration; to honor the state's residents for their role in humanity's most daring journey of space exploration; and to honor the contribution of all individuals and their families who have gone unrecognized for their contributions to the United States' achievements in space. The Department of Management Services (DMS) is to administer the monument.

The DMS, in consultation with Space Florida, must establish a contest for the monument's design and appoint a selection committee to choose the design. Any competition between sculptors or artists for the design must be limited to sculptors and artists domiciled in Florida. By July 1, 2024, the DMS must submit its plan for the design, placement, and cost of the memorial.

The bill may have an indeterminate, likely insignificant, negative fiscal impact to the DMS. See Section V. Fiscal Impact Statement.

The bill provides an effective date of July 1, 2023.

II. Present Situation:

Florida's Role in Space Exploration

Florida has a long history connected to space exploration. President Dwight D. Eisenhower established the National Aeronautics and Space Administration (NASA) on October 1, 1958. Project Mercury was the first human spaceflight program of the United States. The goals of the program were to place a manned spacecraft in orbit around Earth, investigate man's performance capabilities and ability to function in space, and recover both man and spacecraft safely. Alan B. Shepard, Jr., was America's first man in space, launched in 1961, from Cape Canaveral, Florida.

After consideration, Cape Canaveral was chosen by NASA in 1961, as the space launch center for the Apollo program which was tasked with putting a human on the moon. On July 20, 1969, Apollo 11, commanded by Neil Armstrong, along with Lunar Module Pilot Edwin “Buzz” Aldrin, Jr., landed on the moon, while Command Module Pilot Michael Collins orbited above in the command ship, *Columbia*.¹ Commemorative medallions were left behind by the Apollo 11 crew in remembrance of the three astronauts who had lost their lives in the Apollo 1 fire and for two cosmonauts who had also died in space-related accidents.²

Between the first launch on April 12, 1981, and the final landing on July 21, 2011, NASA's space shuttle fleet, Columbia, Challenger, Discovery, Atlantis and Endeavour, flew 135 missions and helped construct the International Space Station. The final space shuttle mission, STS-135, ended July 21, 2011, when Atlantis rolled to a stop at its home port, NASA's Kennedy Space Center.³ NASA retired its space shuttle fleet in four locations:

- Shuttle Atlantis – Kennedy Space Center Visitor Complex (Florida);
- Shuttle Discovery – Steven F. Udvar-Hazy Center (Virginia);
- Shuttle Endeavor – California Science Center; and
- Shuttle Enterprise – Intrepid Sea, Air & Space Museum (New York).⁴

NASA is working towards returning astronauts to the Moon, including the first woman to the moon, continuing the exploration of Mars, and developing new technology to make supersonic aircraft fly more quietly.⁵ In the meantime, private sector entrepreneurs are also working with NASA to accomplish these goals and more through public sector challenges and awards such as the X Prize,⁶ competing for more opportunities in space, both through commercial ventures and public sector clients.⁷

Space Florida

Space Florida was created under the Space Florida Act⁸ as an independent special district, a body politic and corporate, and subdivision of state government in 2006, by the Governor and Legislature.⁹ Space Florida promotes aerospace business development by facilitating business financing, spaceport operations, research and development, workforce development, and innovative education programs.¹⁰ The size and composition of the Board of Directors is

¹ *NASA and the Space Program Change Florida*, Florida Memory, State library and Archives of Florida, available at <https://www.floridamemory.com/onlineclassroom/nasa/photos/#> (Last visited March 3, 2023).

² *Apollo 11 Mission Overview*, National Aeronautics and Space Administration, available at https://www.nasa.gov/mission_pages/apollo/missions/apollo11.html (Last visited March 3, 2023).

³ NASA Overview, *Space Shuttle Era*, available at https://www.nasa.gov/mission_pages/shuttle/flyout/index.html, (Last visited March 3, 2023).

⁴ *Space Shuttle, Retired Space Shuttle Locations*, National Aeronautics and Space Administration, available at https://www.nasa.gov/topics/shuttle_station/features/shuttle_map.html, (Last visited March 3, 2023).

⁵ *What's Next for NASA*, available at https://www.nasa.gov/about/whats_next.html, (Last visited March 3, 2023).

⁶ The X Prize was offered by the X Prize Foundation and in 2004, Microsoft co-founder and aerospace engineer Burt Rata won the \$10 million prize for building a spacecraft that could carry three people 100 kilometers above the Earth's surface. See *infra* note 7.

⁷ See *10 Major Players in the Private Sector Space Race*, by Nicholas Gerbis, available at <https://science.howstuffworks.com/10-major-players-in-private-sector-space-race.htm>, (Last visited March 3, 2023).

⁸ Ch. 2006-60, L.O.F.; see ch. 331, F.S.

⁹ Section 331.302, F.S.

¹⁰ Section 331.302, F.S.

established by statute under s. 331.3081, F.S. A 13 member independent board of directors is created consisting of the members appointed to the board of directors of Enterprise Florida, Inc., consisting of:

- The Governor, who shall serve ex officio, or appoint a designee to serve, as the chair and voting member;
- Six members appointed by the Governor;
- Three members appointed by the President of the Senate; and
- Three members appointed by the Speaker of the House of Representatives.

Members appointed by the Governor are subject to Senate confirmation.¹¹

A part of the mission statement of Space Florida is to drive Florida's economic development across the global aerospace enterprise creating high value added businesses and jobs in Florida. Additionally, Space Florida seeks to accomplish its other statutory duties to:

- Create marketing campaigns focused on aerospace businesses which would lead to higher retention rates among both the employees and businesses;
- Coordinate with public and other private entities to develop space tourism marketing plans;
- Develop financial and technical assistance plans and assemble experts in aerospace engineering; and
- Carry out its responsibilities towards the successful development and operation of the Space Florida's goals.^{12,13}

Managing the Capitol Center

Chapter 272, F.S., provides that the Capitol Center¹⁴ is under the general control and supervision of the Department of Management Services (DMS),¹⁵ which includes the management and maintenance of both the grounds and buildings.¹⁶ The DMS is authorized to allocate space in the specified buildings to house various departments, agencies, boards, and commissions except the Supreme Court Building.¹⁷ Additionally, the DMS has the authority to provide for the establishment of parks, walkways, and parkways on the grounds of the Capitol Center.¹⁸ This responsibility has historically included assistance in establishing and maintaining public memorials throughout the Capitol Center, including project management oversight of the design and construction of memorials.¹⁹

The term "Capitol Complex" is defined to include:

¹¹ Sections 331.3081 and 288.901(5)(a)8., F.S.

¹² *About Space Florida*, <https://www.spaceflorida.gov/about/> (last visited March. 3, 2023).

¹³ Section 331.3051, F.S.

¹⁴ Section 272.12, F.S., describes the Tallahassee area bound by South Martin Luther King, Jr. Boulevard, East and West College Avenue, Franklin Boulevard, East Jefferson Street, and the Seaboard Coastline Railway right-of-way as the Capitol Center.

¹⁵ Section 272.03, F.S.

¹⁶ Section 272.09, F.S.

¹⁷ Section 272.04, F.S.

¹⁸ Section 272.07, F.S.

¹⁹ See DMS, *2014 Agency Legislative Bill Analysis for SB 608* at 2 (Feb. 19, 2014) (on file with the Senate Appropriations Committee).

that portion of Tallahassee, Leon County, Florida, commonly referred to as the Capitol, the Historic Capitol, the Senate Office Building, the House Office Building, the Knott Building, the Pepper Building, the Holland Building, and the curtilage of each, including the state-owned lands and public streets adjacent thereto within an area bounded by and including Monroe Street, Jefferson Street, Duval Street, and Gaines Street. The term shall also include the State Capital Circle Office Complex located in Leon County, Florida.²⁰

The management, maintenance, and upkeep of the Capital Complex is the obligation of the DMS, which has authority to employ a superintendent of the grounds and other employees, and is authorized to designate or appoint a nonsalaried advisory committee to advise them.²¹

Capitol Complex Monuments

A monument is defined as “a marker, statue, sculpture, plaque, or other artifice, including living plant material, placed in remembrance or recognition of a significant person or event in Florida history.”²² The DMS is required to set aside an area of the Capitol Complex to dedicate a memorial garden on which authorized monuments must be placed.²³ The construction and placement of a monument on the premises of the Capitol Complex is prohibited unless authorized by general law. Additionally, the construction and placement of a monument on the premises of the Capitol Complex must be approved, after considering the recommendations of DMS and the Florida Historical Commission²⁴, by the following persons:

- The Governor, or his or her designee.
- The Attorney General, or his or her designee.
- The Chief Financial Officer, or his or her designee.
- The Commissioner of Agriculture, or his or her designee.
- The President of the Senate, or his or her designee.
- The Speaker of the House of Representatives, or his or her designee.²⁵

Also, the DMS must coordinate with the Division of Historical Resources of the Department of State regarding a monument’s design and placement.²⁶

To date, there have been 13 memorials authorized by general law. Of the 13, eight have been completed, three have been funded, and two have not been funded. The following chart shows each statutorily authorized memorial.²⁷

²⁰ Section 281.01, F.S. The Caldwell Building lies within the bounded area described in current law, but is not specifically named in statutes and therefore not considered as part of the Capitol Complex.

²¹ Section 272.09, F.S.

²² Section 265.111(1), F.S.

²³ Section 265.111(3), F.S.

²⁴ The Florida Historical Commission is required to provide recommendations on the design and placement of monuments authorized by general law pursuant to s. 267.0612(9), F.S.

²⁵ Section 265.111(2), F.S.

²⁶ *Id.*

²⁷ Email from the Deputy Secretary of Business Operations, Office of the Secretary, Department of Management Services, RE: Monuments (Mar. 6, 2023).

Memorial	Statutory Authority	Funded Y/N	Year Authorized	Status
Florida Women's Hall of Fame	265.001	Y	1992	Completed
Florida Medal of Honor Wall	265.002	Y	1996	Completed
Florida Veterans' Hall of Fame	265.003	Y	2011	Completed
POW-MIA Chair of Honor Memorial	265.00301	Y	2014	Completed-2022
Florida Veterans' Walk of Honor and Florida Veterans' Memorial Garden	265.0031	N	2014	TBD
Florida Tourism Hall of Fame	265.004	Y	2014	Completed
Florida Law Enforcement Officers' Hall of Fame	265.0041	Y	2014	Completed
Florida Holocaust Memorial	265.005	Y	2016	In Design
Florida Slavery Memorial	265.006	Y	2018	In Design
Arthur G. Dozier School for Boys Memorial (Dozier School, Marianna)	265.007	Y	2017	Completed-2023
Arthur G. Dozier School for Boys Memorial (Florida Capitol)	265.007	Y	2017	Designed
POW-MIA Vietnam Veterans Bracelet Memorial	265.008	Y	2021	Completed-2021
Beirut monument	265.111	N	2014	TBD

Division of Historical Resources

The Division of Historical Resources, within the Department of State, is charged with encouraging identification, evaluation, protection, preservation, collection, conservation, and interpretation of information about Florida's historic sites and properties or objects related to Florida's history and culture.²⁸ Their efforts include cooperating with, advising and assisting federal and state agencies in pursuit of historic preservation.²⁹

Florida Historical Commission

The commission was established in 2001, to enhance public participation and involvement in the preservation and protection of the state's historic and archaeological sites and properties.³⁰ The commission is part of the Department of State and is tasked with advising and assisting the Division of Historical Resources in carrying out its programs, duties, and responsibilities.³¹ The commission is composed of 11 members of varying backgrounds and interests. Among the membership, seven are appointed by the Governor in consultation with the Secretary of State, two by the President of the Senate, and two by the Speaker of the House of Representatives.³²

²⁸ Section 20.10(2)(b), F.S.

²⁹ Section 267.031, F.S.

³⁰ Chapter 2001-199, L.O.F.

³¹ Section 267.0612, F.S.

³² Section 267.0612(1)(a)1., F.S.

The commission is required to provide assistance, advice, and recommendations to the Division of Historical Resources in a variety of areas. One of those areas involves providing recommendations to the DMS on the design and placement of monuments authorized by general law to be placed on the premises of the Capitol Complex pursuant to s. 265.111, F.S.³³

III. Effect of Proposed Changes:

Section 1 creates a Florida Space Exploration Monument to recognize:

- The importance of the state's role, and its past, current, and future contributions in space exploration;
- To honor state residents for their role in such a daring journey as space exploration; and
- To honor the contribution of all individuals and families who have gone unrecognized for their impact on the nation's achievement in space.

The bill establishes the Florida Space Exploration Monument and specifies that it is to be administered by the DMS. The DMS, in consultation with Space Florida, must establish a contest for individuals to design the monument. The DMS and Space Florida will appoint a selection committee to choose the design.

The DMS must develop a plan, taking into consideration the recommendations of the commission³⁴ and coordinating with the Division of Historical Resources of the Department of State, and a timeline for the design, placement, and cost of the monument within the Capitol Complex. The plan must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by July 1, 2024.

Section 2 creates subsection (4) of s. 265.111, F.S., which provides that any competition between sculptors or artists for the right to design a monument to be placed at the Capitol Complex or any other state building must be limited to individuals who are domiciled in Florida.

Section 3 provides that the bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by section 18 of Article VII of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

³³ Section 267.0612(9), F.S.

³⁴ As required pursuant to ss. 265.111 and 267.0612(9), F.S.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector may be a source of some or all of the funding for the building of the monument once a design and placement in the memorial garden is approved.

C. Government Sector Impact:

The bill may have an indeterminate, likely insignificant, negative fiscal impact to the DMS for the cost to develop the plan for the Florida Space Exploration monument. The cost of the new monument is indeterminate at this time and ongoing maintenance and upkeep of the monument will fall to the DMS once the monument has been erected. The bill does not currently contain an appropriation for the monument or any maintenance costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The cost to construct the memorial is indeterminate, as the design for the memorial has not been completed. As a comparison, the Legislature appropriated \$250,000 for the Fallen Firefighter Memorial,³⁵ \$400,000 for the Florida Holocaust Memorial³⁶, and \$400,000 for the Florida Slavery Memorial.³⁷ In addition, several other statutorily authorized Capitol Complex memorials are administered by direct-support organizations without funding from the state.³⁸

³⁵ Specific Appropriation Item 2739A, Ch. 2014-51, L.O.F.

³⁶ Specific Appropriation Item 2792, Ch. 2020-111, L.O.F.

³⁷ Specific Appropriation Item 2793, Ch. 2020-111, L.O.F.

³⁸ Among the statutorily authorized Capitol Complex memorials that are administered without state funds are the Florida Veterans' Walk of Honor (s. 265.0031, F.S.); the Florida Veterans' Memorial Garden (s. 265.0031, F.S.); and the POW-MIA Chair of Honor Memorial (s. 265.00301, F.S.).

VIII. Statutes Affected:

This bill substantially amends section 265.111 of the Florida Statutes.

This bill creates section 265.009 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 Senator Wright

8-00597-23

20231020__

A bill to be entitled

An act relating to monuments; creating s. 265.009, F.S.; providing legislative intent; establishing the Florida Space Exploration Monument; providing for administration of the monument by the Department of Management Services; providing for the creation of a design contest and selection committee; requiring the department to develop a plan for the design, placement, and cost of the monument; requiring the plan to be submitted to the Governor and the Legislature by a specified date; amending s. 265.111, F.S.; requiring the department to limit participation in design competitions for monuments on the Capitol Complex or at other state-owned buildings to sculptors and artists who are domiciled in this state; providing an effective date.

WHEREAS, Florida's history with space exploration can be traced back to 1865, when Jules Verne envisioned the state as the launch site of the "Columbiad" cannon in his popular novel *From the Earth to the Moon*, and

WHEREAS, in 1950, a rocket known as "Bumper 8" became the first rocket launched from Cape Canaveral, and

WHEREAS, in 1969, the National Aeronautics and Space Administration (NASA) and the crew of Apollo 11 undertook the first mission that would land humans on the surface of the moon after launching from the John F. Kennedy Space Center located on Merritt Island on Florida's east coast, and

WHEREAS, Florida continues to be home to the Cape Canaveral

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8-00597-23

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Spaceport, consisting of NASA's John F. Kennedy Space Center and the Cape Canaveral Space Force Station, and

WHEREAS, the state maintains a robust commercial aerospace industry and highly trained workforce that have contributed technical and scientific knowledge that has allowed Florida to continue to serve as the launch pad of the United States' achievements in space, and

WHEREAS, the establishment of the Florida Space Exploration Monument would not only commemorate the past achievements and contributions of individuals who have made this state a leader in space exploration, but would also serve in the future to inspire individuals to help maintain this state's role as such, NOW, THEREFORE,

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

Section 1. Section 265.009, Florida Statutes, is created to read:

265.009 Florida Space Exploration Monument.—

(1) It is the intent of the Legislature to recognize the importance of the role of this state, and its past, current, and future contributions, in space exploration; to honor this state's residents for their role in humanity's most daring journey of space exploration; and to honor the contribution of all individuals and their families who have gone unrecognized for their impact on the United States' achievements in space.

(2) There is established the Florida Space Exploration Monument.

(a) The monument is administered by the Department of

Page 2 of 4

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

8-00597-23

20231020__

59 Management Services.

60 (b) The department, in consultation with Space Florida,
 61 shall establish a contest for individuals who wish to submit a
 62 design for the monument. The department and Space Florida shall
 63 appoint a selection committee to choose the design of the
 64 monument.

65 (c) The department shall develop a plan for the design,
 66 placement, and cost of the monument. The plan must include the
 67 designation of an appropriate public area for the monument on
 68 the premises of the Capitol Complex as defined in s. 281.01, not
 69 including the State Capital Circle Office Complex. The
 70 department shall consider the recommendations of the Florida
 71 Historical Commission as required pursuant to ss. 265.111 and
 72 267.0612(9) and shall coordinate with the Division of Historical
 73 Resources of the Department of State in developing the plan. The
 74 plan must also include the dates for the design contest and the
 75 timeframe for the selection committee to review and select a
 76 design. The department shall submit the plan to the Governor,
 77 the President of the Senate, and the Speaker of the House of
 78 Representatives by July 1, 2024.

79 Section 2. Subsection (4) is added to section 265.111,
 80 Florida Statutes, to read:

81 265.111 Capitol Complex; monuments.—

82 (4) The Department of Management Services shall limit
 83 participation in any competitions between sculptors or artists
 84 for the design of a monument on the Capitol Complex, or at any
 85 other state buildings where a similar competition is being
 86 conducted, to sculptors and artists who are domiciled in this
 87 state.

8-00597-23

20231020__

88 Section 3. This act shall take effect July 1, 2023.



The Florida Senate

Committee Agenda Request

To: Senator Jason Brodeur, Chair
Appropriations Committee on Agriculture, Environment, and General
Government

Subject: Committee Agenda Request

Date: March 21, 2023

I respectfully request that **Senate Bill 1020**, relating to Monuments, be placed on the:

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

Thank you for your consideration.

A handwritten signature in black ink that reads "Tom A. Wright". The signature is written in a cursive style with a large, looping "T" and "W".

Senator Tom A. Wright
Florida Senate, District 8

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 Appropriations Committee on Agriculture, Environment, and General Government

BILL: CS/SB 1030

INTRODUCER: Environment and Natural Resources Committee and Senator Trumbull

SUBJECT: Recycling of Covered Electronic Devices

DATE: April 17, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Barriero</u>	<u>Rogers</u>	<u>EN</u>	<u>Fav/CS</u>
2.	<u>Reagan</u>	<u>Betta</u>	<u>AEG</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 1030 creates the Statewide Covered Electronic Device Recovery Program within the Department of Environmental Protection (DEP). The purpose of the program is to create a statewide plan for the recycling of covered electronic devices, including:

- Computers, computer monitors, and portable computers;
- Printers, scanners, and fax machines;
- Stereos and radios;
- DVD players;
- Telephones, including mobile phones;
- Televisions;
- Small household appliances; and
- Computer peripherals.

The bill requires the DEP to consider the following when creating the statewide plan:

- Existing collection and consolidation infrastructure for collecting covered electronic devices;
- Convenience standards for each county or solid waste authority;
- County population statistics and data of residents; and
- Administrative costs and other authorized expenses necessary to prevent the disposal of covered electronic devices in landfills.

The bill provides that, by January 1, 2025, each county must submit to the DEP a plan for ensuring the county will appropriately dispose of covered electronic devices at a permitted reclamation facility. Effective January 1, 2026, any person who owns or operates an industrial, institutional, or commercial facility must dispose of that facility's covered electronic devices in a permitted reclamation facility. Effective January 1, 2028, it will be unlawful for any person to dispose of covered electronic devices in this state except at a permitted reclamation facility. Any person in violation of these requirements will be liable for damages and subject to civil penalties pursuant to s. 403.141, F.S., which imposes a penalty of not more than \$15,000 per offense.

In addition, the bill directs the DEP to adopt rules to implement the Statewide Covered Electronic Device Recovery Program. The rules must include:

- Criteria and procedures for obtaining a reclamation facility permit;
- Standards for reclamation facilities and associated collection centers and standards for the storage of covered electronic devices; and
- Requirements for the collection of data on the amounts of precious metals recovered through the program.

The DEP will incur indeterminate costs to develop the Statewide Covered Electronic Device Recovery Program and rules to implement the program.

The effective date of the bill is July 1, 2023.

II. Present Situation:

Recycling Electronic Devices

Electronic products are made from valuable resources and materials, including metals, plastics, and glass, all of which require energy to mine and manufacture.¹ Recycling consumer electronics reduces the amount of raw materials mined and energy used to produce new products, as well as the packaging used to transport them.²

According to a 2006 estimate by the United States Geological Survey (USGS), recycling one million laptops saves the energy equivalent to the electricity used by more than 3,500 homes in a year.³ In addition, for every million cell phones recycled, 35,000 pounds of copper, 772 pounds of silver, 75 pounds of gold, and 33 pounds of palladium can be recovered.⁴ These recovered materials can be used in new products.⁵

¹ Environmental Protection Agency (EPA), *Electronics Donation and Recycling*, <https://www.epa.gov/recycle/electronics-donation-and-recycling> (last visited Mar. 7, 2023).

² EPA, *Secret Life of a Smart Phone*, https://www.epa.gov/sites/default/files/2015-06/smartphone_infographic_700.jpg (last visited Mar. 7, 2023).

³ *Id.*

⁴ *Id.*; USGS, *Recycled Cell Phones – A Treasure Trove of Valuable Metals*, available at <https://pubs.usgs.gov/fs/2006/3097/fs2006-3097.pdf>.

⁵ EPA, *Secret Life of a Smart Phone*.

Some electronic devices contain cathode ray tubes (CRTs). CRT displays were widely used in televisions and computer monitors before being replaced by flat panel displays.⁶ While some CRT displays are still in use today, very few new CRTs are being produced as electronics manufacturers follow demand for flat panel displays. As consumers and businesses replace their CRT monitors and televisions, electronics recyclers receive the discarded CRT products. Unfortunately, the market for recycled CRT glass has become limited and costly, making CRT glass recycling a challenge to electronic scrap recyclers. As a result, some electronics recyclers and many second-hand stores such as Goodwill and the Salvation Army no longer accept CRT products.⁷

Certified Electronics Recyclers

The Environmental Protection Agency (EPA) recommends using certified electronics recyclers to manage unwanted used electronics.⁸ Electronics recyclers can become certified by demonstrating to an accredited, independent third-party auditor that they meet specific standards to safely recycle and manage electronics. There are two accredited certification standards: the Responsible Recycling Standard for Electronics Recyclers and the e-Stewards Standard for Responsible Recycling and Reuse of Electronic Equipment. Both programs advance best management practices and provide a way to assess the environmental, worker health and safety, and security practices of entities managing used electronics. Once certified, continual oversight by the independent accredited certifying body holds the recycler to the particular standard.⁹

Rare-Earth Metals

Rare-earth metals are a set of 17 elements, including scandium, yttrium, and praseodymium. While rare-earth metals are abundant in the earth's crust, they appear in low concentrations in minerals and are difficult to separate from other elements, which is what makes them rare.¹⁰ These metals are valued for their conductive and magnetic properties¹¹ and have a wide variety of applications, ranging from magnets, lasers, GPS satellites, computer components, lighting,

⁶ DEP, *Electronics Waste*, <https://floridadep.gov/waste/permitting-compliance-assistance/content/electronics-waste> (last visited Mar. 7, 2023).

⁷ *Id.*

⁸ EPA, *Certified Electronics Recyclers*, <https://www.epa.gov/smm-electronics/certified-electronics-recyclers> (last visited Mar. 7, 2023).

⁹ EPA, *Certified Electronics Recyclers*, <https://www.epa.gov/smm-electronics/certified-electronics-recyclers> (last visited Mar. 7, 2023).

¹⁰ Harvard International Review, *Not So "Green" Technology: The Complicated Legacy of Rare Earth Mining* (2021), <https://hir.harvard.edu/not-so-green-technology-the-complicated-legacy-of-rare-earth-mining/> (last visited Mar. 8, 2023).

¹¹ Felix K. Chang, Foreign Policy Research Institute, *China's Rare Earth Metals Consolidation and Market Power*, (2022), <https://www.fpri.org/article/2022/03/chinas-rare-earth-metals-consolidation-and-market-power/>.

X-ray and MRI scanning systems, and other electronics.¹² In addition to the electronics sector, the U.S. defense industry relies heavily on rare earth elements to produce weapon guidance systems, jet engines, sonar devices, and laser weapons.¹³

There are two primary methods for rare-earth mining, both of which release toxic chemicals into the environment.¹⁴ Recycling rare-earth metals is one alternative to mining. Adding recycled rare-earth metals as a new source to the supply chain is expected to reduce environmental contamination and energy costs associated with their primary mining and separations.¹⁵ Additionally, a new domestic source of these metals would be a positive contribution to U.S. technology at competitive prices.¹⁶ Though the cost of re-separation and purification may be a limitation on recycling rare-earth metals,¹⁷ some companies are already using this technology.¹⁸ For example, Apple's iPhone 12 is made from 98 percent reused rare-earth metals.¹⁹

Demand for rare-earth metals is projected to spike in coming years as governments, organizations, and individuals increasingly invest in clean energy.²⁰ An electric car requires six times the mineral inputs of a conventional car, and a wind plant requires nine times more minerals than a gas-fired plant. With current estimates, demand for rare-earth metals could increase six-fold by 2040.²¹

China is the largest producer of rare-earth metals,²² accounting for 85 percent of the global supply in 2016.²³ China's dominance in this market has raised concerns about the risk of supply chain disruption if rare-earth metal exports from China slow or cease.²⁴ In 2022, the U.S. imported an estimated \$200 million of rare-earth compounds and metals, a 25 percent increase from 2021.²⁵ The vast majority—74 percent—of these imports came from China.²⁶

¹² Earth.org, *How Rare-Earth Mining Has Devastated China's Environment*, (2020), <https://earth.org/rare-earth-mining-has-devastated-chinas-environment/#:~:text=In%202018%2C%20China%20produced%20120%20000%20metric%20tons,as%20Inner%20Mongolia%20and%20as%20west%20as%20Sichuan>; U.S. Senate Republican Policy Committee, *Policy Papers: Protecting America's Supply of Rare Earth Elements*, (2020), <https://www.rpc.senate.gov/policy-papers/protecting-americas-supply-of-rare-earth-elements> (last visited Mar. 8, 2023).

¹³ *Id.*

¹⁴ Harvard International Review, *Not So "Green" Technology: The Complicated Legacy of Rare Earth Mining*.

¹⁵ U.S. Dep't of Energy, *Rare Earth Recycling* (2017), <https://www.energy.gov/science/bes/articles/rare-earth-recycling>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Harvard International Review, *Not So "Green" Technology: The Complicated Legacy of Rare Earth Mining* (2021), <https://hir.harvard.edu/not-so-green-technology-the-complicated-legacy-of-rare-earth-mining/> (last visited Mar. 8, 2023).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² U.S. Senate Republican Policy Committee, *Policy Papers: Protecting America's Supply of Rare Earth Elements*.

²³ Harvard International Review, *Not So "Green" Technology: The Complicated Legacy of Rare Earth Mining*.

²⁴ U.S. Senate Republican Policy Committee, *Policy Papers: Protecting America's Supply of Rare Earth Elements*. For example, China abruptly stopped exports of rare earth elements to Japan during a diplomatic clash in 2010 over the fate of a Chinese fishing boat captain. *Id.*

²⁵ United States Geological Survey (USGS), *Mineral Commodity Summaries: Rare Earths*, 1 (2023), available at <https://pubs.usgs.gov/periodicals/mcs2023/mcs2023-rare-earths.pdf>.

²⁶ *Id.*

Electronic Waste Regulations and the CRT Rule

While Florida has no laws or regulations that apply specifically to discarded electronic products, ch. 403, F.S., regulates the management of devices and lamps containing mercury.²⁷

Section 403.7186(2), F.S., prohibits the incineration or disposal of mercury-containing devices in a landfill. Grants are available for local governments and other public and private entities to develop and operate mercury recycling programs.²⁸

In addition, the DEP has provided guidelines for the disposal of electronics.²⁹ These guidelines are based on the CRT rule³⁰ issued by the EPA in 2006 and adopted by the DEP in 2008.³¹ The CRT rule divides electronic products into two groups: products that contain a CRT, such as televisions and computer monitors, and products that do not contain a CRT, such as desktop and portable computers, flat panel televisions and computer monitors, and cellular phones.³² Used CRTs discarded by households are considered “household hazardous waste” and are exempt from hazardous waste regulations.³³ The CRT Rule is intended to encourage recycling and reuse of CRTs and CRT glass. The rule streamlines management requirements for recycling of used CRTs and glass removed from CRTs by excluding these materials from hazardous waste regulation if certain conditions are met.³⁴

III. Effect of Proposed Changes:

The bill contains whereas clauses stating the following:

- China presents the broadest, most active and persistent cyber espionage threat to the United States Government and private sector networks;
- The technology products and services most vulnerable to malicious foreign exploitation are sold by companies that the Chinese Government influences through whole or partial ownership, direct funding, or members placed in high-ranking company positions; and
- It is the intent of the Legislature to incentivize and provide the necessary infrastructure to recycle electronic and technology products in the state in order to reduce our economic reliance on such products made in China.

Section 1 establishes the Statewide Covered Electronic Device Recovery Program within the DEP. The purpose of the program is to create a statewide plan for the recycling of covered electronic devices. Covered electronic devices include:

- Computers;
- Computer monitors;

²⁷ Section 403.7186, F.S.

²⁸ Section 403.7186(5)(a), F.S.

²⁹ DEP, *Regulatory Guidelines for the Management of Unwanted Electronic Products*, 1 (2008), available at [https://depdms.dep.state.fl.us/Oculus/servlet/shell?command=getEntity&\[guid=2.403165.1\]&\[profile=DWM%20Historical%20Repository\]](https://depdms.dep.state.fl.us/Oculus/servlet/shell?command=getEntity&[guid=2.403165.1]&[profile=DWM%20Historical%20Repository]).

³⁰ 40 CFR ss. 260, 261, and 271.

³¹ DEP, *Regulatory Guidelines for the Management of Unwanted Electronic Products*, 1.

³² *Id.*

³³ 40 CFR 261.4(b)(1). See also EPA, *Frequent Questions About the Regulation of Used Cathode Ray Tubes (CRTs) and CRT Glass*, no. 18, <https://www.epa.gov/hw/frequent-questions-about-regulation-used-cathode-ray-tubes-crts-and-crt-glass#2> (last visited Mar. 7, 2023).

³⁴ *Id.*

- Portable computers;
- Printers;
- Fax machines;
- Scanners;
- Stereos and radios;
- DVD players;
- Telephones, including mobile phones;
- Televisions;
- Small household appliances, including, but not limited to, coffee pots, toasters, toaster ovens, blenders, and microwaves; and
- Computer peripherals, including, but not limited to, mice, keyboards, and speakers.

Covered electronic devices do not include a device that is:

- A part of a motor vehicle or any component part of a motor vehicle assembled by or for a vehicle manufacturer or franchised dealer, including, but not limited to, replacement parts for use in a motor vehicle;
- A part of a larger piece of equipment designed and intended for use in an industrial, commercial, or medical setting, including, but not limited to, diagnostic, monitoring, or control equipment; or
- Contained within a clothes washer or dryer, refrigerator or freezer, microwave oven, conventional oven, dishwasher, room air conditioner, dehumidifier, or air purifier.

The bill requires the DEP to consider the following when creating the statewide plan:

- Existing collection and consolidation infrastructure for collecting covered electronic devices;
- Convenience standards for each county or solid waste authority;
- County population statistics and data of residents; and
- Administrative costs and other authorized expenses necessary to prevent the disposal of covered electronic devices in landfills.

The bill provides that, by January 1, 2025, each county must submit to the DEP a plan for ensuring the county will appropriately dispose of covered electronic devices at a permitted reclamation facility.

The bill also provides that, effective January 1, 2026, any person who owns or operates an industrial, institutional, or commercial facility must dispose of that facility's covered electronic devices in a permitted reclamation facility. Effective January 1, 2028, it will be unlawful for any person to dispose of covered electronic devices in this state except at a permitted reclamation facility. Any person in violation of these requirements will be liable for damages and subject to civil penalties pursuant to s. 403.141, F.S., which imposes a penalty of not more than \$15,000 per offense.

The bill directs the DEP to adopt rules by July 1, 2024, to implement the Statewide Covered Electronic Device Recovery Program. The rules must include:

- Criteria and procedures for obtaining a reclamation facility permit;
- Standards for reclamation facilities and associated collection centers and standards for the storage of covered electronic devices; and

- Requirements for the collection of data on the amounts of precious metals recovered through the program.

Section 2 provides an effective date of July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county/municipality mandates provision of Art. VII, s. 18(a) of the Florida Constitution may apply to this bill because local governments may be required to expend funds to develop plans to ensure the county will appropriately dispose of covered electronic devices at a permitted reclamation facility. However, the law would have an insignificant fiscal impact. Therefore, an exception from Art. VII, s. 18(a) of the Florida Constitution likely applies.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill specifies that a person who does not appropriately dispose of a covered electronic device is liable for damages and subject to a civil penalty for each offense in an amount of up to \$15,000 per offense. The penalty may be waived if the person has previously taken appropriate corrective action to remedy the actual damages, if any, caused by the unlawful act or rule violation.

C. Government Sector Impact:

The DEP may incur costs to develop the Statewide Covered Electronic Device Recovery Program and rules to implement the program. In addition, counties may incur costs to develop plans to ensure the county will appropriately dispose of covered electronic devices at a permitted reclamation facility. Local governments may also be required to expend funds related to enforcing the civil penalties under with this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the section 403.71853 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 Environment and Natural Resources on March 14, 2023:**

Expanded the bill's definition of "covered electronic device" to include telephones, (including mobile phones) and the following additional devices:

- Printers;
- Fax machines;
- Scanners;
- Stereos;
- DVD Players;
- Radios;
- Small household appliances, including, but not limited to, coffee pots, toasters, toaster ovens, blenders, and microwaves; and
- Computer peripherals, including, but not limited to, mice, keyboards, and speakers.

It also removed the requirement that a device's screen size be greater than four inches to be considered a covered electronic device.

B. Amendments:

None.

By the Committee on Environment and Natural Resources; and
Senator Trumbull

592-02543-23

20231030c1

A bill to be entitled

An act relating to the recycling of covered electronic devices; creating s. 403.71853, F.S.; defining terms; establishing the statewide Covered Electronic Device Recovery Program within the Department of Environmental Protection; authorizing the department to use specified funds to administer the program; specifying requirements for a statewide plan for the recycling of covered electronic devices; requiring counties to submit a specified plan for the disposal of covered electronic devices by a specified date; requiring the owners or operators of certain facilities to dispose of such facilities' covered electronic devices in a permitted reclamation facility beginning on a specified date; prohibiting any person from disposing of covered electronic devices except at a permitted reclamation facility beginning on a specified date; providing civil penalties; authorizing such penalties to be waived under certain conditions; providing applicability; requiring the department to deposit any funds received pursuant to the program into the Solid Waste Management Trust Fund to be used for specified purposes; requiring the department to adopt rules by a specified date which meet certain requirements; providing an effective date.

WHEREAS, it is recognized that China presents the broadest, most active and persistent cyber espionage threat to the United States Government and private sector networks, and

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592-02543-23

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WHEREAS, the technology products and services most vulnerable to malicious foreign exploitation are sold by companies that the Chinese Government influences through whole or partial ownership, direct funding, or members placed in high-ranking company positions, and

WHEREAS, it is the intent of the Legislature to incentivize and provide the necessary infrastructure to recycle electronic and technology products in the state in order to reduce our economic reliance on such products made in China, NOW, THEREFORE,

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

Section 1. Section 403.71853, Florida Statutes, is created to read:

403.71853 Recycling of covered electronic devices.—

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

(a) "Covered electronic device":

1. Includes all of the following electronic devices, whether the device has a cathode-ray tube or flat panel based on any technology:

a. Computers.

b. Portable computers.

c. Computer monitors.

d. Printers.

e. Fax machines.

f. Scanners.

g. Stereos.

h. DVD players.

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59 i. Radios.
 60 j. Telephones, including mobile phones.
 61 k. Televisions.
 62 l. Small household appliances, including, but not limited
 63 to, coffee pots, toasters, toaster ovens, blenders, and
 64 microwaves.
 65 m. Computer peripherals, including, but not limited to,
 66 mice, keyboards, and speakers.
 67 2. Does not include electronic devices that are:
 68 a. Part of a motor vehicle or any component part of a motor
 69 vehicle assembled by or for a vehicle manufacturer or franchised
 70 dealer, including, but not limited to, replacement parts for use
 71 in a motor vehicle;
 72 b. Functionally or physically a part of a larger piece of
 73 equipment designed and intended for use in an industrial,
 74 commercial, or medical setting, including, but not limited to,
 75 diagnostic, monitoring, or control equipment; or
 76 c. Contained within a clothes washer, clothes dryer,
 77 refrigerator, freezer, refrigerator and freezer, microwave oven,
 78 conventional oven or range, dishwasher, room air conditioner,
 79 dehumidifier, or air purifier.
 80 (b) "Reclamation facility" means a site permitted by the
 81 department where equipment is used to handle, process,
 82 disassemble, dismantle, shred, recapture, or store recoverable
 83 materials. The term includes, but is not limited to, composting
 84 or remediation facilities.
 85 (2) STATEWIDE COVERED ELECTRONIC DEVICE RECOVERY PROGRAM.—
 86 The statewide Covered Electronic Device Recovery Program is
 87 established within the Department of Environmental Protection.

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88 The department may use funds from the Solid Waste Management
 89 Trust Fund to administer the program. The purpose of the program
 90 is to create a statewide plan for the recycling of covered
 91 electronic devices. In creating the statewide plan, the
 92 department must consider all of the following:
 93 (a) Existing collection and consolidation infrastructure
 94 for collecting covered electronic devices.
 95 (b) Convenience standards for each county or solid waste
 96 authority serving one or more counties.
 97 (c) County population statistics and data of residents.
 98 (d) Administrative costs and other authorized expenses
 99 necessary to prevent the disposal of covered electric devices in
 100 landfills.
 101 (3) COMPLIANCE TIMELINE.—
 102 (a) By January 1, 2025, each county must submit a plan to
 103 the department for ensuring the county will appropriately
 104 dispose of covered electronic devices at a permitted reclamation
 105 facility.
 106 (b) Effective January 1, 2026, any person who owns or
 107 operates an industrial, institutional, or commercial facility in
 108 this state shall dispose of that facility's covered electronic
 109 devices in a permitted reclamation facility.
 110 (c) Effective January 1, 2028, it is unlawful for any
 111 person to dispose of covered electronic devices in this state
 112 except at a permitted reclamation facility.
 113 (4) CIVIL PENALTY.—A person who engages in an unlawful act
 114 as provided in this section or who violates the rules of the
 115 department adopted pursuant to this section is liable for
 116 damages and subject to civil penalties under s. 403.141. The

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117 penalty may be waived if the person has previously taken
118 appropriate corrective action to remedy the actual damages, if
119 any, caused by the unlawful act or rule violation. Section
120 403.161 does not apply to this section.

121 (5) PROGRAM FUNDS.—The department shall deposit any funds
122 received pursuant to this section into the Solid Waste
123 Management Trust Fund and shall account for such funds
124 separately within the fund. The funds may be used upon
125 appropriation to provide grants to local governments and other
126 public and private entities to develop and operate regional
127 covered electronic device recycling programs and for
128 administrative costs and other authorized expenses necessary to
129 carry out the responsibilities of this section.

130 (6) RULES.—By July 1, 2024, the department shall adopt
131 rules to carry out this section. Such rules must include all of
132 the following:

133 (a) Criteria and procedures for obtaining a reclamation
134 facility permit.

135 (b) Standards for reclamation facilities and associated
136 collection centers and standards for the storage of covered
137 electronic devices.

138 (c) Requirements for the collection of data on the amounts
139 of precious metals recovered through the program.

140 Section 2. This act shall take effect July 1, 2023.

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 Appropriations Committee on Agriculture, Environment, and General Government

BILL: CS/SB 1056

INTRODUCER: Appropriations Committee on Agriculture, Environment, and General Government; and Senator Gruters

SUBJECT: Dosage Form Animal Health Products

DATE: April 17, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Burse</u>	<u>Becker</u>	<u>AG</u>	Favorable
2.	<u>Blizzard</u>	<u>Betta</u>	<u>AEG</u>	Fav/CS
3.	<u> </u>	<u> </u>	<u>FP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1056 defines a “dosage form animal product” as a regulated feedstuff under the Florida Commercial Feed Law, requiring such products to be subject to related fees, quality, safety, and labeling requirements, pursuant to ch. 580, Florida Statutes. The Department of Agriculture and Consumer Services (department) administers and enforces the Florida Commercial Feed Law.

The bill includes specific labeling requirements and clarifies that a dosage form animal product does not apply to drugs that are administered or used to treat animals as defined under federal law.

The bill is expected to have an indeterminate impact on state revenues and a negative operational fiscal impact on state expenditures. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2023.

II. Present Situation:

The Florida Commercial Feed Law

The Florida Commercial Feed Law (Commercial Feed Law)¹ authorizes the Department of Agriculture and Consumer Services (department) to regulate commercial feed and feedstuff for quality, safety, labeling requirements, and standards.² A distributor of commercial feed is required to obtain a master registration³ and place on file with the department, a copy of the label for each brand of feed to be distributed in Florida.⁴

Distributors are required to pay a licensing fee that is based on the weight of feed distributed in the state.⁵ The Commercial Feed Law preempts to the department all authority in the state to regulate, inspect, sample, and analyze any commercial feed or feedstuff, including assessment of penalties for violations.⁶

Samples of feed distributed in Florida must be periodically tested by a certified laboratory to determine compliance with state standards.⁷ The minimum standards for feed and feedstuff are those set forth in the “Official Publication 2001” published by the Association of American Feed Control Officials.⁸

Any commercial feed distributed in this state, except a customer-formula feed and feed distributed through an integrated poultry operation or by a cooperative to its members, must be accompanied by a legible label bearing all information required by the federal Food and Drug Administration (FDA) and the following information:⁹

- An accurate statement of the net weight.
- The name and principal address of the registrant.
- The brand name and product name, if any, under which the commercial feed is distributed. The word “medicated” must be incorporated as part of the brand or product name if the commercial feed contains a drug.

The department is authorized to require feeding directions and precautionary statements to be placed on the label for the safe and effective use of medicated and other feed as deemed necessary.¹⁰

Labels on medicated feed must include all of the following:

¹ See ch. 580, F.S.

² Section 580.036, F.S.

³ Section 580.041, F.S.

⁴ Section 580.051, F.S.

⁵ Section 580.041, F.S.

⁶ Section 580.0365, F.S.

⁷ Section 580.091, F.S.

⁸ R. 5E-3.013, F.A.C. The Association of American Feed Control Officials (AAFCO) is an independent organization that has been guiding state, federal and international feed regulators with ingredient definitions, label standards and laboratory standards for more than 110 years, while supporting the health and safety of people and animals. AAFCO members are charged by their local, state or federal laws to regulate the sale and distribution of animal feeds and animal drug remedies.

⁹ Section 580.051(1), F.S.

¹⁰ *Id.*

- Any feeding directions prescribed by the department to ensure safe usage.
- The stated purpose of the medication contained in the feed as stated in the claim statement.
- The established name of each active drug ingredient.
- The level of each drug used in the final mixture expressed in metric units as well as the required weight measurement.

Commercial feed labels must also include a guaranteed analysis stated in terms that advise the consumer of the composition of the feed or feedstuff or support claims made in the labeling. In all cases, the elements or compounds listed in the analysis must be determinable by laboratory methods approved by the department.¹¹

The department is authorized to adopt rules to enforce the Commercial Feed Law, which must be consistent with the rules and standards of the United States Food and Drug Administration (FDA) and the United States Department of Agriculture (USDA). The rules must include:

- Establishing definitions and reasonable standards for commercial feed or feedstuff, and permissible tolerances for pesticide chemicals, chemical additives, nonnutritive ingredients, or drugs in or on commercial feed or feedstuff in such amounts as will ensure the safety of livestock and poultry, and the products thereof used for human consumption.
- Adopting standards for the manufacture and distribution of medicated feed.
- Establishing definitions and reasonable standards for the certification of laboratories testing and analyses as required.
- Establishing product labeling requirements for distributors.
- Limiting the use of drugs in commercial feed and prescribing feeding directions to be used to ensure safe usage of medicated feed.
- Establishing standards for evaluating quality-assurance/quality-control plans, including testing protocols, for exemptions to certified laboratory testing requirements.
- Establishing standards for the sale, use, and distribution of commercial feed or feedstuff to ensure usage that is consistent with animal safety and well-being and, to the extent that meat, poultry, and other animal products for human consumption may be affected by commercial feed or feedstuff, to ensure that these products are safe for human consumption.
 - Such standards must be developed in consultation with the Agricultural Feed, Seed, and Fertilizer Advisory Council created under s. 570.451, F.S.

The department is required to establish the standards that a laboratory must meet to become certified in any of the following areas of testing:¹²

- Nutrient.
- Mycotoxins.
- Microbiological organisms.
- Pesticide residues.
- Drugs.

¹¹ *Id.*

¹² Section 580.065, F.S.

The department is guided by the methods published by the Association of Official Analytical Chemists, the United States Environmental Protection Agency (EPA), the FDA, or other generally recognized authorities in developing the standards for the laboratory certifications.¹³

The Commercial Feed Law prohibits distribution of an adulterated commercial feed or feedstuff. Commercial feed or feedstuff is deemed adulterated if it includes any of the following:¹⁴

- Any poisonous, deleterious, or nonnutritive substance that may render it injurious to animal or human health.
 - However, if the substance is not an additive, the feed shall not be considered adulterated if the quantity of the substance does not ordinarily render it injurious to animal or human health.
- Any food additive or added poisonous, deleterious, or nonnutritive substance that is unsafe within the meaning of s. 406 of the Federal Food, Drug, and Cosmetic Act, other than a pesticide chemical in or on a raw agricultural commodity.
- Any food additive or color additive that is unsafe within the meaning of s. 409 or s. 512 of the Federal Food, Drug, and Cosmetic Act.
- A raw agricultural commodity that bears or contains a pesticide chemical that is unsafe within the meaning of s. 408(a) of the Federal Food, Drug, and Cosmetic Act.
 - However, where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under s. 408 of the Federal Food, Drug, and Cosmetic Act, and that raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the processed feed will result, or is likely to result, in pesticide residue in the edible product of the animal which is unsafe within the meaning of s. 408(a) of the Federal Food, Drug, and Cosmetic Act.
- Any new animal drug that is unsafe within the meaning of s. 512 of the Federal Food, Drug, and Cosmetic Act.
- Any filthy, putrid, or decomposed substance or is otherwise unfit for feed.
- If it is prepared, packaged, or held under unsanitary conditions in which it may have become contaminated with filth or rendered injurious to health.
- If it is the product of a diseased animal or of an animal that has died by a means other than slaughter which is unsafe within the meaning of s. 402(a)(1) or (2) of the Federal Food, Drug, and Cosmetic Act.

The Commercial Feed Law prohibits misbranded commercial feed or feedstuff. A commercial feed or feedstuff is deemed misbranded, as follows:¹⁵

- If its labeling is false or misleading in any particular.
- If it is distributed under the name of another commercial feed or feedstuff.
- If it is not labeled as required by this chapter or the rules promulgated hereunder.
- If it does not conform to the definition of identity and standard of quality as prescribed by rule.
- If any word, statement, or other information required by ch. 580, F.S., to appear on the label or labeling is not prominently and conspicuously placed thereon in such terms as to render it

¹³ *Id.*

¹⁴ Section 580.071, F.S.

¹⁵ Section 580.081, F.S.

likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

- If it is not appropriate for its intended or purported use.
- If a nutrient test, conducted by a laboratory certified in nutrient testing, shows the presence of any ingredient not listed on the label or the absence of any ingredient shown on the label.

The following acts are prohibited by the Commercial Feed Law:¹⁶

- Distribution of any commercial feed or feedstuff that is adulterated or misbranded.
- Adulteration or misbranding of any commercial feed or feedstuff.
- Distribution of commercial feed or feedstuff that has not been sampled or analyzed by a department-certified laboratory.
- Distribution of agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks, and hulls which are adulterated.
- Dissemination of any false advertisement with reference to the distribution of any commercial feed or feedstuff.
- Refusal to permit entry, inspection, or collection of samples of commercial feed or feedstuff by authorized department personnel.
- Removal or disposal of a lot of commercial feed or feedstuff that has had a stop-sale, stop-use, removal, or hold order issued, prior to release by the department or the court.
- Use of any label that does not comply with the provisions of ch. 580, F.S.
- Forging, counterfeiting, simulating, or false representing of any label.
- Placing or permitting to be placed any false advertisement or misleading statement on a label.
- Redistribution of a customer-formula commercial feed.
- Using or placing of fasteners that may be injurious to animals on any commercial feed or feedstuff or bags of any commercial feed or feedstuff, except those distributed exclusively for poultry.
- Failure or refusal to register, pay inspection fees, or file reports, or perform any other affirmative act required by this chapter, or rule promulgated hereunder.
- Distribution of a feed or feedstuff which is prohibited by federal law or regulation.

The department is authorized to impose one or more of the following penalties against any person who violates the Commercial Feed Law:¹⁷

- Issuance of a warning letter.
- A Class I fine for each occurrence.¹⁸
- Revocation or suspension of the master registration, laboratory certification, or quality assurance/quality-control plan approval.
- Probation for up to six months.

The severity of the penalty imposed must be commensurate with the degree of risk to human or animal safety or the level of financial harm to the consumer that is created by the violation.¹⁹

¹⁶ Section 580.112, F.S.

¹⁷ Section 580.121, F.S.

¹⁸ Section 570.971, F.S., provides that for each violation in the Class I category, a fine not to exceed \$1,000 may be imposed.

¹⁹ Section 580.121, F.S.

Violations of the Commercial Feed Law are a second-degree misdemeanor, punishable by a 60 day term in prison and a \$500 fine.²⁰

The Commercial Feed Law defines “commercial feed” as all materials or combinations of materials that are distributed or intended to be distributed for use as feed or for mixing in a feed for animals other than humans, except:²¹

- Unmixed whole seeds, including physically altered entire unmixed seeds, when such seeds are not chemically changed or are not adulterated;
- Unground hay, straw, stover, silage, cobs, husks, and hulls, and individual chemical compounds or substances, when such commodities, compounds, or substances are unmixed with other substances and are not adulterated; and
- Feed mixed by the consumer for the consumer’s own use made entirely or in part from products raised on the consumer’s farm.

“Feedstuff” is defined as edible materials, other than commercial feed, that are distributed for animal consumption and that contribute energy or nutrients, or both, to an animal diet.²²

Dosage-Form Animal Products

The National Animal Supplement Council (council) defines dosage form animal health products as articles (other than food) intended to affect the structure or any function of the body other than providing nutrition.²³ The council lists the following as examples of dosage form animal health products:

- Hip & Joint Support;
- Calming Aids;
- Antioxidants;
- Organ-Specific Support such as heart, bladder or brain;
- Immune Support; and
- Most Herbal Products.²⁴

Vermont

In May 2021, Vermont Governor Phil Scott signed Act No. 41 (S.102) into law.²⁵ The law provides rules and fees for registration, labeling requirements, and conditions under which dosage form animal health products are considered misbranded or adulterated.²⁶ The law also provides additional rules and administrative penalties for person distributing dosage form animal health product within the state.²⁷

²⁰ Sections 775.082, and 775.083, F.S.

²¹ Section 580.031(2), F.S.

²² Section 580.031(10), F.S.

²³ See <https://www.nasc.cc/news/how-to-read-a-label/> (last visited March 8, 2023).

²⁴ *Id.*

²⁵ See <https://legislature.vermont.gov/bill/status/2022/S.102> (last visited March 8, 2023).

²⁶ See <https://legislature.vermont.gov/Documents/2022/Docs/ACTS/ACT041/ACT041%20As%20Enacted.pdf> (last visited March 8, 2023).

²⁷ *Id.*

III. Effect of Proposed Changes:

The bill includes “dosage form animal products” as a feedstuff under the Commercial Feed Law, requiring such products to be subject to fees, quality, safety, and labeling requirements that are regulated by the department.

The bill defines a “dosage form animal product” as a feedstuff that includes any product intended to affect the structure or function of an animal’s body, other than providing nutrition to the animal. The term includes oils, tinctures, capsules, tablets, liquids, and chewables.

The term does not include:

- A mineral or vitamin;
- A product represented as a primary meal for the intended animal species;
- Any product intended as a treat; or
- A dental product providing mechanical or abrasive action, or both;

Additionally, the term does not include drugs, biologics, parasiticides, medical devices, or diagnostics used to treat animals under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.), as amended by the United States Department of Agriculture under the federal Virus-Serum-Toxin Act (21 U.S.C. Sec. 151 et seq.), as amended, or by the United States Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.), as amended.

The bill exempts dosage form animal products that are sold solely as a dosage form animal product and guaranteed as specified in the Commercial Feed Law from showing a guaranteed analysis. Additionally, the bill requires labeling on a dosage form animal product to contain the following:

- An accurate statement of the net weight;
- The name and principal address of the registrant;
- The brand name and product name, if any, under which the dosage form animal product sold at retail as the department may require by rule;
- The date of manufacture or expiration date of the dosage form animal product sold at retail;
- The amount of each active ingredient per serving;
- The common, or usual name of each inactive ingredient contained in the dosage form animal product;
- A statement that identifies how the product supports the structure or function of the animal;
- Precautionary statements and warnings required to ensure the safe and effective use of the dosage form animal product;
- Recommended dosage by animal weight; and
- The statement “Not for human consumption.”

The bill takes effect October 1, 2023.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

This bill may affect dosage form animal health products that are currently on sale. These products may need to be recalled to be accurately labelled and will cost distributors and business owners negatively.

C. Government Sector Impact:

Revenues associated with violations of the bill are indeterminate. The bill will require additional resources for registration, inspection, and enforcement activities. The department estimates the need for three positions and \$276,193 from the General Revenue Fund to implement the provisions in the bill.²⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²⁸ Florida Department of Agriculture and Consumer Services, Agency Analysis of Senate Bill 1056 (March 9, 2023).

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 580.031 and 580.05.

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 Appropriation Committee on Agriculture, Environment, and General Government on April 18, 2023:

The committee substitute:

- Defines “dosage form animal product” as a regulated feedstuff under the Florida Commercial Feed Law, requiring such products to be subject to regulation by the department;
- Provides that products sold solely as dosage form animal products are exempt from guaranteed analysis requirements;
- Provides specific labeling requirements; and
- Makes the effective date of the bill October 1, 2023.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2023	.	
	.	
	.	
	.	

The Appropriations Committee on Agriculture, Environment, and General Government (Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Present subsections (9) through (24) of section 580.031, Florida Statutes, are redesignated as subsections (10) through (25), respectively, and a new subsection (9) is added to that section, to read:

580.031 Definitions of words and terms.—As used in this chapter, the term:



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(9) "Dosage form animal product" means a feedstuff that includes any product intended to affect the structure or function of the animal's body other than by providing nutrition to the animal.

(a) The term includes oils, tinctures, capsules, tablets, liquids, and chewables.

(b) The term does not include:

1. Minerals or vitamins;

2. Products represented as a primary meal for the intended animal species;

3. Products intended as a treat;

4. Dental products providing mechanical or abrasive action or both; or

5. Drugs, biologics, parasiticides, medical devices, or diagnostics used to treat, or administered to, animals pursuant to:

a. The United States Food and Drug Administration Federal Food, Drug, and Cosmetic Act, 21 U.S.C. ss. 301 et seq., as amended;

b. The United States Department of Agriculture Federal Virus-Serum-Toxin Act, 21 U.S.C. ss. 151 et seq., as amended; or

c. The United States Environmental Protection Agency Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. ss. 136 et seq., as amended.

Except as provided by law or rule, all terms used in connection with commercial feed or feedstuff have the meanings ascribed to them by the Association of American Feed Control Officials.

Section 2. Subsection (1) of section 580.051, Florida



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Statutes, is amended to read:

580.051 Labels; requirements; penalty.—

(1) Any commercial feed or feedstuff distributed in this state, except a customer-formula feed and feed distributed through an integrated poultry operation or by a cooperative to its members, shall be accompanied by a legible label bearing all information required by the federal Food and Drug Administration and the following information:

(a) An accurate statement of the net weight.

(b) The name and principal address of the registrant.

(c) The brand name and product name, if any, under which the commercial feed is distributed. The word “medicated” shall be incorporated as part of the brand or product name if the commercial feed contains a drug.

1. The department may require feeding directions and precautionary statements to be placed on the label for the safe and effective use of medicated and other feed as deemed necessary.

2. Labels on medicated feed shall include all of the following:

a. Any feeding directions prescribed by the department to ensure safe usage.

b. The stated purpose of the medication contained in the feed as stated in the claim statement.

c. The established name of each active drug ingredient.

d. The level of each drug used in the final mixture expressed in metric units as well as the required avoirdupois.

(d) The date of manufacture or expiration date of commercial feed sold at retail as the department may by rule



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require.

(e) The guaranteed analysis stated in terms that advise the consumer of the composition of the feed or feedstuff or support claims made in the labeling. In all cases, the elements or compounds listed in the analysis must be determinable by laboratory methods approved by the department. However, products sold solely as dosage form animal products and guaranteed as specified in this section need not show a guaranteed analysis.

1. The guaranteed analysis, listing the minimum percentage of crude protein, minimum percentage of crude fat, and maximum percentage of crude fiber and, when more than 10 percent mineral ingredients are present, the minimum or maximum percentages of mineral elements or compounds as provided by rule.

2. Vitamin ingredients, when guaranteed, shall be shown in amounts and terms provided by rule. For mineral feed, the list shall include the following: maximum or minimum percentages of calcium (Ca), phosphorus (P), salt (NaCl), iron (Fe), copper (Cu), cobalt (Co), magnesium (Mg), manganese (Mn), potassium (K), selenium (Se), zinc (Zn), and fluorine (F) if ingredients used as sources of any of these constituents are declared. All mixtures that contain mineral or vitamin ingredients generally regarded as dietary factors essential for the normal nutrition of animals and that are sold or represented for the primary purpose of supplying these minerals or vitamins as additions to rations in which these same mineral or vitamin factors may be deficient shall be classified as mineral or vitamin supplements. Products sold solely as mineral or vitamin supplements and guaranteed as specified in this section need not show guarantees for protein, fat, and fiber.



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3. Other nutritional substances or elements determinable by laboratory methods may be guaranteed by permission of, or shall be guaranteed at the request of, the department as may be provided by rule.

(f) The common or usual name of each ingredient used in the manufacture of the commercial feed; however, for all commercial feed except horse feed, the department by rule may permit the use of collective terms for a group of ingredients which perform a similar nutritional function.

(g) A label on a dosage form animal product must contain all of the following:

1. An accurate statement of the net weight.
2. The name and principal address of the registrant.
3. The brand name and product name, if any, under which the dosage form animal product is distributed.
4. The date of manufacture or expiration date of the dosage form animal product sold at retail as the department may by rule require.
5. The amount of each active ingredient per serving.
6. The common or usual name of each inactive ingredient contained in the dosage form animal product.
7. A statement that identifies how the dosage form animal product supports the structure or function of the animal.
8. Precautionary statements and warnings required to ensure the safe and effective use of the dosage form animal product.
9. Recommended dosage by animal weight.
10. The statement "Not for human consumption."

Section 3. This act shall take effect October 1, 2023.



724178

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to dosage form animal health products;
amending s. 580.031, F.S.; defining the term "dosage
formula animal product"; providing a definition;
amending s. 580.051, F.S.; providing an exception from
guaranteed analysis requirements for products sold
solely as dosage form animal products; providing
labeling requirements for dosage form animal products;
providing an effective date.

By Senator Gruters

22-00860-23

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A bill to be entitled

An act relating to dosage form animal health products; creating s. 585.012, F.S.; defining terms; requiring a manufacturer or distributor of dosage form animal health products to register with the Department of Agriculture and Consumer Services; authorizing the department to waive the registration requirement under certain conditions and to require specified information for registration applications; providing requirements for product labels; providing conditions under which dosage form animal health products are considered misbranded or adulterated; providing construction; providing an effective date.

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

Section 1. Section 585.012, Florida Statutes, is created to read:

585.012 Dosage form animal health products.-

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

(a) "Brand name" means any distinguishing word, name, symbol, or device, or combination thereof, identifying the dosage form animal health product of a manufacturer or distributor.

(b) "Distribute" means to offer for sale, sell, barter, or exchange a dosage form animal health product or to supply, furnish, or otherwise provide such a product for use by any consumer or customer in the state.

(c) "Distributor" means a person or entity that distributes

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

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dosage form animal health products.

(d) "Dosage form animal health product" means any product, including oils, tinctures, capsules, tablets, liquids, soft chews, and chewable limited dose products, intended to affect the structure or function of an animal's body other than by providing nutrition to the animal. The term does not include animal feed supplements, products represented as a primary meal for the intended animal species, products intended as a snack treat or behavioral reward treat, or dental products providing mechanical or abrasive action.

(e) "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a dosage form animal health product is distributed, or on the invoice or delivery slip with which the product is distributed.

(f) "Labeling" means all labels and other written, printed, or graphic matter upon a dosage form animal health product or any of its containers; all wrappers accompanying the product; and all advertisements, brochures, posters, or television or radio announcements used in promoting the sale of the product.

(g) "Manufacture" means the grinding, mixing, blending, or further processing of a dosage form animal health product for distribution.

(h) "Manufacturer" means a person or entity that manufactures dosage form animal health products.

(i) "Product name" means the name of a dosage form animal health product which identifies the kind, class, or specific use of the product.

(2) (a) A manufacturer or distributor that manufactures or distributes the finished form of a dosage form animal health

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

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product in the state must submit a registration application to the department every 2 years as prescribed by department rule. The department may waive the registration requirement if a manufacturer or distributor is registered under another federal or state law in compliance with department rule.

(b) The department may require a registration application to include a copy of the label and labeling for each dosage form animal health product.

(3) A dosage form animal health product label must contain, at a minimum, all of the following information:

(a) The net weight or count of the product.

(b) The product name and brand name, if any, under which the product is manufactured or distributed.

(c) The established name of each active ingredient in the product and the amount of each active ingredient per serving in descending order by predominance of the ingredient in the product.

(d) The established name of each inactive ingredient in the product and the amount of each inactive ingredient per serving in alphabetical order.

(e) Adequate directions and precautionary statements and warnings necessary to ensure safe and effective use of the product.

(f) The name and principal mailing address of the manufacturer or distributor. Only the name, city, state, and zip code are required for a manufacturer or distributor listed in a local telephone directory.

(g) A structure-function claim stating the intended non-nutritional benefit of the product.

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(h) The expiration date.

(4) A dosage form animal health product is considered misbranded if the product label or labeling:

(a) Does not provide the information required in subsection (3) in a prominent and conspicuous manner which can be easily identified and understood under customary conditions of purchase and use.

(b) Includes the term "guaranteed analysis."

(c) Is false or misleading.

(5) A dosage form animal health product is considered adulterated if:

(a) The product contains any poisonous or deleterious substance that may be injurious to animal health.

(b) Any valuable ingredient of the product has been in whole or in part omitted or removed.

(c) Any valuable ingredient of the product has been in whole or in part substituted by any less valuable ingredient.

(d) The composition or quality of the product falls below or differs from what the label or labeling purports or represents.

(e) The methods or controls used to manufacture or package the product do not conform to current good manufacturing practice.

(6) Dosage form animal health products may not be considered commercial feed, a drug, or feedstuff as those terms are defined in s. 580.031.

Section 2. This act shall take effect July 1, 2023.

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

SB 1056

Bill Number or Topic

Amendment Barcode (if applicable)

4/18/23
Meeting Date

Agriculture, Environment & Gen. Gov.
Committee

Name

Jonathan Rees

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Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
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While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules, df.flsenate.gov](#)

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

S-001 (08/10/2021)

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 Appropriations Committee on Agriculture, Environment, and General
Government

BILL: SB 1106

INTRODUCER: Senator Hooper

SUBJECT: Household Moving Services

DATE: April 17, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McMillan	McKay	CM	Favorable
2.	Blizzard	Betta	AEG	Favorable
3.			FP	

I. Summary:

SB 1106 broadens protections for consumers who use intrastate moving services by:

- Providing additional registration and proof of registration requirements for movers and moving brokers;
- Providing for a required performance bond or certificate of deposit in certain circumstances for shippers' moved goods;
- Requiring a binding estimate of the cost of services, including any applicable fees of a moving broker, to be provided by the mover to a prospective shipper;
- Requiring a moving broker to arrange with a registered mover for the loading, transportation, shipment, or unloading of household goods as part of a household move;
- Requiring a moving broker to include certain information on any document provided by the moving broker to a shipper; and
- Requiring the Department of Agriculture and Consumer Services to suspend a mover's or moving broker's registration under certain circumstances.

The bill has an indeterminate, but likely insignificant fiscal impact on state revenues or expenditures.

The bill provides an effective date of July 1, 2023.

II. Present Situation:

Moving Scams

The Better Business Bureau (BBB) has seen a marked increase in complaints and negative reviews about movers in recent years.¹ In 2021, nearly 1,100 complaints were filed with the BBB against moving companies.² Additionally, consumers reported more than \$730,000 lost to moving scams to BBB Scam Tracker, a 216 percent increase in monetary losses as compared to 2020.³

One frequent moving scam involves an initial low-ball estimate (usually provided without an in-person visit to review the belongings that need to be moved), that turns into a demand for a much higher price once all of the household belongings are on the moving truck and awaiting delivery. The truck driver can simply drive away if the consumer refuses to pay the higher price.^{4,5}

Another scam requires the shipper to sign a blank or incomplete estimate or contract, which results in a higher than expected price demanded at the time of delivery.⁶

On December 8, 2022, the Office of the Attorney General filed legal action against three individuals, two holding companies, and multiple fraudulent moving brokerage businesses.⁷ According to the consumer protection investigation, the businesses acted as a common enterprise to deceive more than 400 Floridians into believing the company professionally handled moving services, and promised to provide refunds if anything went wrong. Instead, the companies hired third parties to complete the moving services at subpar quality and refused to provide refunds.⁸

Florida (Intrastate) Mover Regulations

Chapter 507, F.S., governs the loading, transportation, shipment, unloading, and affiliated storage of household goods as part of intrastate household moves. The chapter applies to any mover or moving broker engaged in intrastate transportation or shipment of household goods that

¹ Better Business Bureau, *Know Your Mover: BBB Study Reveals Scammers Price Gouge, Take Belongings Hostage, and Destroy Goods* (Jun. 30, 2020), available at <https://www.bbb.org/article/news-releases/22659-know-your-mover-bbb-study-reveals-scammers-price-gouge-take-belongings-hostage-and-destroy-goods> (last visited Mar. 24, 2023).

² Better Business Bureau, *BBB Scam Alert: Avoid Moving Scams this National Moving Month* (May 2, 2022) available at <https://www.bbb.org/article/scams/24198-bbb-scam-alert-avoid-moving-scams-this-national-moving-month> (last visited Mar. 24, 2023).

³ *Id.*

⁴ Better Business Bureau, *Know Your Mover: BBB Study Reveals Scammers Price Gouge, Take Belongings Hostage, and Destroy Goods* (Jun. 30, 2020), available at <https://www.bbb.org/article/news-releases/22659-know-your-mover-bbb-study-reveals-scammers-price-gouge-take-belongings-hostage-and-destroy-goods> (last visited Mar. 24, 2023).

⁵ See, e.g., Jackie Callaway, *Record Number of People File Complaints About Florida Movers in 2021; BBB rates 1,300 Companies 'F'*, (Dec. 2, 2021), available at <https://www.abcactionnews.com/money/consumer/taking-action-for-you/record-number-of-people-file-complaints-about-florida-movers-in-2021-bbb-rates-1-300-companies-f> (last visited Mar. 24, 2023).

⁶ Florida Attorney General's Office, *Scams at a Glance: On the Move*, available at [http://myfloridalegal.com/webfiles.nsf/WF/TDGT-BYLQQL/\\$file/Movers_Scams+at+a+Glance_English.pdf](http://myfloridalegal.com/webfiles.nsf/WF/TDGT-BYLQQL/$file/Movers_Scams+at+a+Glance_English.pdf) (last visited Mar. 24, 2023).

⁷ See Office of Attorney General Ashley Moody, *Attorney General Moody Takes Action to Shut Down Massive Moving Scam* (Dec. 8, 2022), available at [News Release - Attorney General Moody Takes Action to Shut Down Massive Moving Scam \(myfloridalegal.com\)](https://www.myfloridalegal.com/news-release-attorney-general-moody-takes-action-to-shut-down-massive-moving-scam) (last visited Mar. 24, 2023).

⁸ *Id.*

originates and terminates in Florida.⁹ These regulations co-exist with federal law, which governs interstate moving of household goods.¹⁰

A “mover” is a person who, for compensation, contracts for or engages in the loading, transportation, shipment, or unloading of household goods as part of a household move.¹¹ A “moving broker” arranges for another person to load, transport, ship, or unload household goods as part of a household move, or who refers a shipper to a mover by telephone, postal, or electronic mail, website, or other means.¹²

Movers and moving brokers who do business in Florida must register annually with the Department of Agriculture and Consumer Services (department).¹³ As of March 21, 2023, there were 1,792 movers and 48 moving brokers with active Florida registrations.¹⁴ In order to obtain a registration certificate, the mover or moving broker must file an application, pay a \$300 annual registration fee, and meet certain statutory qualifications, including proof of insurance coverage.¹⁵

Insurance Coverage and Liability Limitations

Movers and moving brokers must maintain liability and motor vehicle insurance. A mover who operates more than two vehicles is required to maintain liability insurance of at least \$10,000 per shipment, and not less than 60 cents per pound, per article.¹⁶ Movers who operate fewer than two vehicles are required only to carry either a \$25,000 performance bond, or a \$25,000 certificate of deposit in lieu of liability insurance.¹⁷

Any contractual limitation to a mover’s liability for loss incurred to a shipper’s goods must be disclosed in writing to the shipper, along with the valuation rate, but a mover’s attempt to limit its liability beyond the minimum 60 cents per pound, per article rate, is void under s. 507.04(4), F.S. If the mover offers valuation insurance, it must inform the shipper of the opportunity to purchase valuation coverage to compensate the shipper for household goods that are lost or damaged during a household move, prior to execution of the contract for moving services.¹⁸

⁹ Section 507.02, F.S.

¹⁰ Interstate movers in the U.S. must be licensed by the Department of Transportation’s Federal Motor Carrier Safety Administration (FMCSA).

¹¹ Section 507.01(9), F.S.

¹² Section 507.01(10), F.S.

¹³ Florida Department of Agriculture and Consumer Services (FDACS), *Moving Companies: Who has to Register?*, available at <https://www.fdacs.gov/Business-Services/Moving-Companies> (last visited Mar. 24, 2023).

¹⁴ FDACS, *License/Complaint Lookup*, available at <https://csapp.fdacs.gov/cspublicapp/businesssearch/businesssearch.aspx> (last visited Mar. 24, 2023). Search by “program.”

¹⁵ Section 507.03, F.S.

¹⁶ Sections 507.04(1)(a)1. and 507.04(4), F.S.

¹⁷ Section 507.04(1)(b), F.S.

¹⁸ Section 507.04(5), F.S.

Violations and Penalties

Section 507.05, F.S., requires an intrastate mover to provide an estimate and contract to the shipper before commencing the move. Should a dispute arise over payment or costs, s. 507.06, F.S., provides that the mover may place the shipper's goods in a storage unit until payment is tendered. Because of ambiguity regarding what payment may legally be demanded, some shippers have been taken advantage of by deceptive or fraudulent moving practices. Often, moving fraud manifests as an increased fee assessed by the mover, who then refuses to relinquish the shipper's goods until the inflated price has been paid in full.

While administrative, civil, and criminal penalties exist in ch. 507, F.S., for such fraudulent moving practices and other violations, the aggrieved shipper is not guaranteed the return of his or her goods until after such remedies have been finalized.

In March of 2021, the Florida Consumer Protection Division within the Office of the Attorney General secured four judgments against moving companies that used deceptive advertising, failed to provide proper estimates, failed to relinquish household goods, and failed to provide timely pick-up or delivery of goods in accordance with service contracts.¹⁹

Local Ordinances and Regulations

Chapter 507, F.S., preempts local ordinances or regulations that relate to household moving, unless the local regulation was adopted prior to January 1, 2011.²⁰ Broward,²¹ Miami-Dade,²² Palm Beach,²³ and Pinellas²⁴ counties currently have such ordinances. Movers or moving brokers whose principal place of business is located in a county or municipality with such an ordinance are required to register under local and state laws. State law also allows for local taxes, fees, and bonding related to movers and moving brokers, as long as any local registration fees are reasonable and do not exceed the cost of administering the ordinance or regulation.²⁵

III. Effect of Proposed Changes:

Definitions and Legislative Intent

Section 1 amends the following definitions in s. 507.01, F.S.:

¹⁹ Office of the Attorney General, *Attorney General Moody Shuts Down Moving Scams and Recovers Millions for Consumers Duped by Malicious Movers* (Mar. 2, 2021), available at <http://www.myfloridalegal.com/newsrel.nsf/newsreleases/0BFF0224649D124D8525868C005A765F?Open&> (last visited Mar. 24, 2023).

²⁰ Section 507.13, F.S.

²¹ Broward County Government, *Movers*, available at <https://www.broward.org/Consumer/ConsumerProtection/Movers/Pages/default.aspx> (last visited Mar. 24, 2023).

²² Miami-Dade County, *Moving Companies—Laws & Tips*, available at <https://www.miamidade.gov/global/economy/consumer-protection/moving-companies.page#:~:text=Movers%20must%20insure%20your%20property,the%20value%20of%20your%20property.&text=The%20amount%20of%20added%20value%20you%20purchase%20is%20up%20to%20you>. (last visited Mar. 24, 2023).

²³ Palm Beach County, *Moving*, available at <https://discover.pbcgov.org/publicsafety/consumeraffairs/pages/moving.aspx> (last visited Mar. 24, 2023).

²⁴ Pinellas County, *Moving*, available at <https://www.pinellascounty.org/consumer/moving.htm> (last visited Mar. 24, 2023).

²⁵ Section 507.13, F.S.

- “Contract for service” or “bill of lading” means a written document prepared by a registered mover which is approved and electronically acknowledged or signed by the shipper in writing before the performance of any service by the mover, and which authorizes the named mover to perform the services and lists all costs associated with the household move and accessorial services to be performed;
- “Estimate” means a written document prepared by a registered mover that sets forth the total costs and describes the basis of those costs, related to a shipper’s household move, including, but not limited to, the loading, transportation or shipment, and unloading of household goods and accessorial services; and
- “Moving broker” or “broker” means a person who, for compensation, arranges with a registered mover for loading, transporting or shipping, or unloading of household goods as part of a household move or who, for compensation, refers a shipper to a registered mover.

Section 2 amends s. 507.02, F.S., to provide that the bill is intended to establish the law of Florida governing the brokering of movers of household goods by moving brokers.

Mover Registration

Section 3 amends s. 507.03, F.S., to clarify that “broker” means “moving broker.”

The bill clarifies that each estimate or contract of a “mover” must include a phrase that contains the following:

- The name of the firm;
- A Statement that includes the firm is registered with the State of Florida as a mover; and
- A Florida mover registration number.

The bill also clarifies that any document from a “moving broker” must include:

- The name of the firm;
A statement that includes the firm is registered with the State of Florida as a moving broker; and
- A Florida moving broker registration number.

Additionally, the bill states that each advertisement of a “moving broker” must include the following:

- A Florida moving broker registration number;
- The name of the firm; and
- A phrase that states the firm is paid by a shipper to arrange, or offer to arrange, the transportation of property by a registered mover.

The bill requires each moving broker to provide the Department of Agriculture and Consumer Services (department) with a complete list of registered movers that the moving broker has contracted or is affiliated with, advertises on behalf of, arranges moves for, or refers shippers to, including each mover’s complete name, address, telephone number, email address, and registration number, and the name of each mover’s owners, corporate officers, and directors. Additionally, a moving broker must notify the department of any changes to the provided

information, and the department must publish and maintain a list of all moving brokers and the registered movers each moving broker is contracted with on its website.

The bill provides that a person may not operate as, or hold themselves out to be a mover or moving broker without first registering with the department.

The bill requires the department to immediately issue a cease and desist order to a person upon finding that such person is operating as a mover or moving broker without registering. Additionally, the department may seek an immediate injunction from the appropriate circuit court that prohibits the person from operating in Florida, until the person complies with the registration requirement, a civil penalty not to exceed \$5,000, and court costs.

Insurance Requirement

Section 4 amends the insurance requirements in s. 507.04, F.S. The bill authorizes a mover that operates two or fewer vehicles, in lieu of maintaining liability insurance coverage, to maintain one of the following alternative coverages:

- A performance bond in the amount of \$50,000, up from the current \$25,000, for which the surety of the bond must be a surety company authorized to conduct business in Florida; or
- A certificate of deposit in a Florida banking institution in the amount of \$50,000, up from the current \$25,000.

The bill also requires a moving broker to maintain one of the above listed coverages.

The bill requires the department to immediately suspend a mover's or moving broker's registration if the mover or moving broker fails to maintain the required performance bond, certificate of deposit, or the appropriate insurance. In such cases, the mover or moving broker must immediately cease operating as a mover or moving broker in Florida. Additionally, the department may seek an immediate injunction from the appropriate circuit court that prohibits the person from operating in Florida, until the person complies with the aforementioned requirements, a civil penalty not to exceed \$5,000, and court costs.

Estimates and Contracts for Service

Section 5 amends s. 507.05, F.S., to require that an estimate and a contract must be prepared by a registered mover and provided to a prospective shipper in writing, and the shipper, mover, and moving broker must sign or electronically acknowledge and date the estimate and contract.

The bill requires the estimate and contract for service to include the following:

- The name, telephone number, and physical address where the mover's and moving broker's employees are available during normal business hours;
- The date the estimate and contract were prepared by the mover, and the proposed date or dates of the shipper's household move, including, but not limited to, loading, transportation, shipment, and unloading of household goods and accessorial services;
- The name and address of the shipper, the addresses where the articles are to be picked up and delivered, and a telephone number where the shipper may be reached;

- The name, telephone number, and physical address of the location where the household goods will be held pending further transportation, including situations in which the mover retains possession of household goods pending resolution of a fee dispute with the shipper;
- An itemized breakdown and description of the total of all costs and services for loading, transportation or shipment, unloading, and accessorial services to be provided during a household move or storage of household goods, including the fees of a moving broker, if used; and
- Acceptable forms of payment, which must be clearly and conspicuously disclosed to the shipper on the binding estimate, and the contract for services.

Moving Brokers

Section 6 creates s. 507, 056, F.S., to provide requirements specific to moving brokers.

The bill establishes that a moving broker may only arrange with a registered mover for the loading, transportation, shipment, or unloading of household goods as part of a household move or refer a shipper to a registered mover. Moving brokers may not give a verbal estimate or prepare a written estimate or contract for services that sets forth the total costs and describes the basis of those costs relating to a shipper's household move, including, but not limited to, the loading, transportation, shipment, or unloading of household goods and accessorial services.

The bill provides that before providing any service to a prospective shipper, a moving broker must disclose to the shipper that the broker may only arrange, or offer to arrange, the transportation of property by a registered mover. Additionally, a moving broker's fees may not include the cost of the shipper's household move, including, but not limited to, the loading, transportation, shipment, or unloading of household goods and accessorial services.

The bill requires any document provided to a shipper by a moving broker to include the following:

- The name of the moving broker and the moving broker's registration number;
- The following statement displayed at the top of the document:
 - The name of the moving broker firm and that the firm is not a mover; and
 - The name of the moving broker firm and a phrase stating the moving broker is paid by the shipper to arrange, or offer to arrange, the transportation of property by a registered mover. The moving broker's fees do not include the cost of the shipper's household move, including, but not limited to, the loading, transportation, shipment, or unloading of household goods and accessorial services;
- The name, telephone number, and physical address where the moving broker's employees are available during normal business hours;
- An itemized breakdown and description and total of all costs for the moving broker's fees to arrange with a registered mover for the loading, transportation, shipment, or unloading of household goods as part of a household move or to refer the shipper to a registered mover;
- A list of all of the registered movers the moving broker has contracted with or is affiliated with, advertises on behalf of, arranges moves for, or refers shippers to, including each mover's complete name, address, telephone number, email address, Florida Intrastate Registration Number, and the name of each mover's owners, corporate officers, and directors; and

- A list of acceptable forms of payment, which must include all of the forms of payment listed in at least two of the following subparagraphs:
 - Cash, cashier's check, money order, or traveler's check;
 - Valid personal check, showing upon its face the name and address of the shipper or authorized representative; and
 - Valid credit card, which shall include, but not be limited to, Visa or MasterCard.

Violations and Penalties

Section 7 prohibits a moving broker from providing an estimate or entering into a contract or agreement for moving, loading, shipping, transporting, or unloading services with a shipper which was not prepared and electronically acknowledged, or signed by a mover who is registered with the department.

Section 8 provides that upon notification and subsequent written verification by a law enforcement agency, a court, a state attorney, or the Department of Law Enforcement, the department must immediately suspend a registration or the processing of an application for a registration, if the registrant, applicant, officer, or director of the registrant or applicant is formally charged with a crime involving:

- Fraud;
- Theft;
- Larceny;
- Embezzlement;
- Fraudulent conversion;
- Misappropriation of property; or
- A crime arising from conduct during a movement of household goods until final disposition of the case or removal or resignation of that officer or director.

Sections 9 and 10 make conforming changes to ss. 507.10 and 507.11, F.S., accordingly, to incorporate amendments made elsewhere in the bill.

Effective Date

Section 11 creates an effective date of July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The public may see a faster resolution to moving disputes that arise due to the provisions in the bill.

C. Government Sector Impact:

Implementation of this bill will have an indeterminate fiscal impact to the department. Any additional operating costs will be absorbed within existing resources. There may be additional revenues collected, but will likely be insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 507.01, 507.02, 507.03, 507.04, 507.05, 507.07, 507.09, 507.10, and 507.11.

This bill creates section 507.056 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 Senator Hooper

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1 A bill to be entitled
 2 An act relating to household moving services; amending
 3 s. 507.01, F.S.; revising definitions; amending s.
 4 507.02, F.S.; providing construction; amending s.
 5 507.03, F.S.; revising requirements for estimates,
 6 contracts, and advertisements; conforming a cross-
 7 reference; revising requirements relating to lists
 8 provided to the Department of Agriculture and Consumer
 9 Services by moving brokers; requiring the department
 10 to publish and maintain a specified list on its
 11 website; prohibiting certain persons from operating as
 12 or holding themselves out to be a mover or moving
 13 broker without registering with the department;
 14 requiring the department to issue cease and desist
 15 orders to certain persons under certain circumstances;
 16 authorizing the department to seek an immediate
 17 injunction under certain circumstances; amending s.
 18 507.04, F.S.; revising alternative coverage
 19 requirements; requiring the department to immediately
 20 suspend a mover's or moving broker's registration
 21 under certain circumstances; authorizing the
 22 department to seek an immediate injunction under
 23 certain circumstances; amending s. 507.05, F.S.;
 24 revising requirements for contracts and estimates for
 25 prospective shippers; creating s. 507.056, F.S.;
 26 providing limitations and prohibitions for moving
 27 brokers; requiring moving brokers to make a specified
 28 disclosure to shippers before providing any services;
 29 prohibiting moving brokers' fees from including

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

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30 certain costs; requiring that documents provided to
 31 shippers by moving brokers contain specified
 32 information; amending s. 507.07, F.S.; providing that
 33 it is a violation of ch. 507, F.S., for moving brokers
 34 to provide estimates or enter into contracts or
 35 agreements that were not prepared and signed or
 36 electronically acknowledged by a mover; amending s.
 37 507.09, F.S.; conforming a cross-reference; requiring
 38 the department, upon verification by certain entities,
 39 to immediately suspend a registration or the
 40 processing of an application for a registration in
 41 certain circumstances; amending s. 507.10, F.S.;
 42 conforming a cross-reference; amending s. 507.11,
 43 F.S.; conforming provisions to changes made by the
 44 act; providing an effective date.

46 Be It Enacted by the Legislature of the State of Florida:
 47

48 Section 1. Subsections (4), (6), and (10) of section
 49 507.01, Florida Statutes, are amended to read:

50 507.01 Definitions.—As used in this chapter, the term:

51 (4) "Contract for service" or "bill of lading" means a
 52 written document prepared by a registered mover which is
 53 approved and electronically acknowledged or signed by the
 54 shipper in writing before the performance of any service by the
 55 mover and which authorizes services from the named mover to
 56 perform and lists the services and lists all costs associated
 57 with the household move and accessorial services to be
 58 performed.

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(6) "Estimate" means a written document prepared by a registered mover that sets forth the total costs and describes the basis of those costs, relating to a shipper's household move, including, but not limited to, the loading, transportation or shipment, and unloading of household goods and accessorial services.

(10) "Moving broker" or "broker" means a person who, for compensation, arranges with a registered mover for loading, transporting or shipping, or unloading of ~~for another person to load, transport or ship, or unload~~ household goods as part of a household move or who, for compensation, refers a shipper to a registered mover by telephone, postal or electronic mail, Internet website, or other means.

Section 2. Present paragraph (b) of subsection (1) of section 507.02, Florida Statutes, is redesignated as paragraph (c), and a new paragraph (b) is added to that subsection, to read:

507.02 Construction; intent; application.—

(1) This chapter shall be construed liberally to:

(b) Establish the law of this state governing the brokering of moves of household goods by moving brokers.

Section 3. Subsections (1), (2), (5), (6), (7), (9), and (11) of section 507.03, Florida Statutes, are amended, and subsections (12) and (13) are added to that section, to read:

507.03 Registration.—

(1) Each mover and moving broker must register with the department, providing its legal business and trade name, mailing address, and business locations; the full names, addresses, and telephone numbers of its owners, ~~or~~ corporate officers, and

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directors and the Florida agent of the corporation; a statement whether it is a domestic or foreign corporation, its state and date of incorporation, its charter number, and, if a foreign corporation, the date it registered with the Department of State; the date on which the mover or moving broker registered its fictitious name if the mover or moving broker is operating under a fictitious or trade name; the name of all other corporations, business entities, and trade names through which each owner of the mover or moving broker operated, was known, or did business as a mover or moving broker within the preceding 5 years; and proof of the insurance or alternative coverages required under s. 507.04.

(2) A certificate evidencing proof of registration shall be issued by the department and must be prominently displayed in the mover's or moving broker's primary place of business.

(5) (a) Each estimate or contract of a mover ~~or moving broker~~ must include the phrase "... (NAME OF FIRM) ... is registered with the State of Florida as a Mover ~~or Moving Broker~~. Fla. Mover Registration No."

(b) Any document from a moving broker must include the phrase "... (NAME OF FIRM) ... is registered with the State of Florida as a Moving Broker. Fla. Moving Broker Registration No."

(6) (a) Each advertisement of a mover ~~or moving broker~~ must include the phrase "Fla. Mover Reg. No." or "Fla. IM No." Each of the mover's vehicles must clearly and conspicuously display a sign on the driver's side door which includes at least one of these phrases in lettering of at least 1.5 inches in height.

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(b) Each advertisement of a moving broker must include the phrase "Fla. Moving Broker Reg. No. (NAME OF MOVING BROKER)... is a moving broker. ... (NAME OF MOVING BROKER)... is paid by a shipper to arrange, or offer to arrange, the transportation of property by a registered mover."

(7) A registration is not valid for any mover or moving broker transacting business at any place other than that designated in the mover's or moving broker's application, unless the department is first notified in writing before any change of location. A registration issued under this chapter is not assignable, and the mover or moving broker may not conduct business under more than one name except as registered. A mover or moving broker desiring to change its registered name or location or designated agent for service of process at a time other than upon renewal of registration must notify the department of the change.

(9) The department shall deny or refuse to renew the registration of a mover or a moving broker or deny a registration or renewal request by any of the mover's or moving broker's directors, officers, owners, or general partners if the mover or moving broker has not satisfied a civil penalty or administrative fine for a violation of s. 507.07(10) ~~or 507.07(9)~~.

(11) ~~At the request of the department,~~ Each moving broker shall provide the department with a complete list of the registered movers that the moving broker has contracted or is affiliated with, advertises on behalf of, arranges moves for, or refers shippers to, including each mover's complete name, address, telephone number, ~~and~~ e-mail address, and registration

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number and the name of each mover's owners, corporate officers, and directors ~~owner or other principal~~. A moving broker must notify the department of any changes to the provided information. The department shall publish and maintain a list of all moving brokers and the registered movers each moving broker is contracted with on its website.

(12) A person required to register pursuant to this section may not operate as or hold itself out to be a mover or moving broker without first registering with the department pursuant to this section.

(13) The department must immediately issue a cease and desist order to a person upon finding that such person is operating as mover or moving broker without registering pursuant to this section. In addition, and notwithstanding the availability of any administrative relief under chapter 120, the department may seek from the appropriate circuit court an immediate injunction prohibiting the person from operating in this state until the person complies with this section, a civil penalty not to exceed \$5,000, and court costs.

Section 4. Present subsections (3), (4), and (5) of section 507.04, Florida Statutes, are redesignated as subsections (4), (5), and (6), respectively, a new subsection (3) is added to that section, and subsection (1) and present subsections (4) and (5) of that section are amended, to read:

507.04 Required insurance coverages; liability limitations; valuation coverage.—

(1) LIABILITY INSURANCE.—

(a)1. Except as provided in paragraph (b), each mover operating in this state must maintain current and valid

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liability insurance coverage of at least \$10,000 per shipment for the loss or damage of household goods resulting from the negligence of the mover or its employees or agents.

2. The mover must provide the department with evidence of liability insurance coverage before the mover is registered with the department under s. 507.03. All insurance coverage maintained by a mover must remain in effect throughout the mover's registration period. A mover's failure to maintain insurance coverage in accordance with this paragraph constitutes an immediate threat to the public health, safety, and welfare.

(b) A mover that operates two or fewer vehicles, in lieu of maintaining the liability insurance coverage required under paragraph (a), may, ~~and each moving broker must,~~ maintain one of the following alternative coverages:

1. A performance bond in the amount of \$50,000 ~~\$25,000~~, for which the surety of the bond must be a surety company authorized to conduct business in this state; or

2. A certificate of deposit in a Florida banking institution in the amount of \$50,000 ~~\$25,000~~.

(c) A moving broker must maintain one of the following coverages:

1. A performance bond in the amount of \$50,000, for which the surety of the bond must be a surety company authorized to conduct business in this state; or

2. A certificate of deposit in a Florida banking institution in the amount of \$50,000.

The original bond or certificate of deposit must be filed with the department and must designate the department as the sole

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beneficiary. The department must use the bond or certificate of deposit exclusively for the payment of claims to consumers who are injured by the fraud, misrepresentation, breach of contract, misfeasance, malfeasance, or financial failure of the mover or moving broker or by a violation of this chapter by the mover or moving broker. Liability for these injuries may be determined in an administrative proceeding of the department or through a civil action in a court of competent jurisdiction. However, claims against the bond or certificate of deposit must only be paid, in amounts not to exceed the determined liability for these injuries, by order of the department in an administrative proceeding. The bond or certificate of deposit is subject to successive claims, but the aggregate amount of these claims may not exceed the amount of the bond or certificate of deposit.

(3) REGISTRATION SUSPENSION.—The department must immediately suspend a mover's or moving broker's registration if the mover or moving broker fails to maintain the required performance bond or the certificate of deposit under subsection (1) or the insurance required under subsection (2), and the mover or moving broker must immediately cease operating as a mover or moving broker in this state. In addition, and notwithstanding the availability of any administrative relief pursuant to chapter 120, the department may seek from a circuit court an immediate injunction prohibiting the mover or moving broker from operating in this state until the mover or moving broker complies with subsections (1) and (2), a civil penalty not to exceed \$5,000, and court costs.

(5) ~~(4)~~ LIABILITY LIMITATIONS; VALUATION RATES.—A mover may not limit its liability for the loss or damage of household

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goods to a valuation rate that is less than 60 cents per pound per article. A provision of a contract for moving services is void if the provision limits a mover's liability to a valuation rate that is less than the minimum rate under this subsection. If a mover limits its liability for a shipper's goods, the mover must disclose the limitation, including the valuation rate, to the shipper in writing at the time that the estimate and contract for services are executed and before any moving or accessorial services are provided. The disclosure must also inform the shipper of the opportunity to purchase valuation coverage if the mover offers that coverage under subsection (6) (5).

(6) (5) VALUATION COVERAGE.—A mover may offer valuation coverage to compensate a shipper for the loss or damage of the shipper's household goods that are lost or damaged during a household move. If a mover offers valuation coverage, the coverage must indemnify the shipper for at least the minimum valuation rate required under subsection (5) (4). The mover must disclose the terms of the coverage to the shipper in writing at the time that the estimate and contract for services are executed and before any moving or accessorial services are provided. The disclosure must inform the shipper of the cost of the valuation coverage, the valuation rate of the coverage, and the opportunity to reject the coverage. If valuation coverage compensates a shipper for at least the minimum valuation rate required under subsection (5) (4), the coverage satisfies the mover's liability for the minimum valuation rate.

Section 5. Section 507.05, Florida Statutes, is amended to read:

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

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507.05 Estimates and contracts for service.—Before providing any moving or accessorial services, an estimate and a contract and estimate must be prepared by a registered mover and provided to a prospective shipper in writing, and the shipper, mover, and moving broker, if applicable, must sign or electronically acknowledge and date the estimate and contract. At a minimum, the estimate and contract for service must be signed and dated by the shipper and the mover, and must include:

(1) The name, telephone number, and physical address where the mover's and moving broker's employees are available during normal business hours.

(2) The date the estimate and contract were ~~or estimate is~~ prepared by the mover and the ~~any~~ proposed date or dates of the shipper's household move, including, but not limited to, loading, transportation, shipment, and unloading of household goods and accessorial services.

(3) The name and address of the shipper, the addresses where the articles are to be picked up and delivered, and a telephone number where the shipper may be reached.

(4) The name, telephone number, and physical address of the ~~any~~ location where the household goods will be held pending further transportation, including situations in which ~~where~~ the mover retains possession of household goods pending resolution of a fee dispute with the shipper.

(5) An itemized breakdown and description and total of all costs and services for loading, transportation or shipment, unloading, and accessorial services to be provided during a household move or storage of household goods, including the fees of a moving broker, if used.

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

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291 (6) Acceptable forms of payment, which must be clearly and
 292 conspicuously disclosed to the shipper on the binding estimate
 293 and the contract for services. A mover must ~~shall~~ accept at
 294 least a minimum of two of the three following forms of payment:

295 (a) Cash, cashier's check, money order, or traveler's
 296 check;

297 (b) Valid personal check, showing upon its face the name
 298 and address of the shipper or authorized representative; or

299 (c) Valid credit card, which shall include, but not be
 300 limited to, Visa or MasterCard.

301

302 A mover must clearly and conspicuously disclose to the shipper
 303 in the estimate and contract for services the forms of payments
 304 the mover will accept, including the forms of payment described
 305 in paragraphs (a)-(c).

306 Section 6. Section 507.056, Florida Statutes, is created to
 307 read:

308 507.056 Moving brokers; services.—

309 (1) A moving broker may only arrange with a registered
 310 mover for the loading, transportation, shipment, or unloading of
 311 household goods as part of a household move or refer a shipper
 312 to a registered mover. Moving brokers may not give a verbal
 313 estimate or prepare a written estimate or contract for services
 314 that sets forth the total costs and describes the basis of those
 315 costs relating to a shipper's household move, including, but not
 316 limited to, the loading, transportation, shipment, or unloading
 317 of household goods and accessorial services.

318 (2) Before providing any service to a prospective shipper,
 319 a moving broker must disclose to the shipper that the broker may

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320 only arrange, or offer to arrange, the transportation of
 321 property by a registered mover. A moving broker's fees may not
 322 include the cost of the shipper's household move, including, but
 323 not limited to, the loading, transportation, shipment, or
 324 unloading of household goods and accessorial services. Any
 325 document provided to a shipper by a moving broker must include
 326 all of the following:

327 (a) The name of the moving broker and the moving broker's
 328 registration number.

329 (b) The following statement displayed at the top of the
 330 document: "... (Name of Moving Broker) ... is not a mover.
 331 ... (Name of Moving Broker) ... is paid by the shipper to arrange,
 332 or offer to arrange, the transportation of property by a
 333 registered mover. The moving broker's fees do not include the
 334 cost of the shipper's household move, including, but not limited
 335 to, the loading, transportation, shipment, or unloading of
 336 household goods and accessorial services."

337 (c) The name, telephone number, and physical address where
 338 the moving broker's employees are available during normal
 339 business hours.

340 (d) An itemized breakdown and description and total of all
 341 costs for the moving broker's fees to arrange with a registered
 342 mover for the loading, transportation, shipment, or unloading of
 343 household goods as part of a household move or to refer the
 344 shipper to a registered mover.

345 (e) A list of all of the registered movers the moving
 346 broker has contracted with or is affiliated with, advertises on
 347 behalf of, arranges moves for, or refers shippers to, including
 348 each mover's complete name, address, telephone number, e-mail

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address, Florida Intrastate Registration Number, and the name of each mover's owners, corporate officers, and directors.

(f) A list of acceptable forms of payment, which must include all of the forms of payment listed in at least two of the following subparagraphs:

1. Cash, cashier's check, money order, or traveler's check.

2. Valid personal check, showing upon its face the name and address of the shipper or authorized representative.

3. Valid credit card, which shall include, but not be limited to, Visa or MasterCard.

Section 7. Present subsections (8) and (9) of section 507.07, Florida Statutes, are redesignated as subsections (9) and (10), respectively, and a new subsection (8) is added to that section, to read:

507.07 Violations.—It is a violation of this chapter:

(8) For a moving broker to provide an estimate or enter into a contract or agreement for moving, loading, shipping, transporting, or unloading services with a shipper which was not prepared and electronically acknowledged or signed by a mover who is registered with the department pursuant to this chapter.

Section 8. Section 507.09, Florida Statutes, is amended to read:

507.09 Administrative remedies; penalties.—

(1) The department may enter an order doing one or more of the following if the department finds that a mover or moving broker, or a person employed or contracted by a mover or broker, has violated or is operating in violation of this chapter or the rules or orders issued pursuant to this chapter:

(a) Issuing a notice of noncompliance under s. 120.695.

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(b) Imposing an administrative fine in the Class II category pursuant to s. 570.971 for each act or omission. However, the department must impose an administrative fine in the Class IV category for each violation of s. 507.07(10) ~~s. 507.07(9)~~ if the department does not seek a civil penalty for the same offense.

(c) Directing that the person cease and desist specified activities.

(d) Refusing to register or revoking or suspending a registration.

(e) Placing the registrant on probation, subject to the conditions specified by the department.

(2) The department, upon notification and subsequent written verification by a law enforcement agency, a court, a state attorney, or the Department of Law Enforcement, must immediately suspend a registration or the processing of an application for a registration if the registrant, applicant, or officer or director of the registrant or applicant is formally charged with a crime involving fraud, theft, larceny, embezzlement, or fraudulent conversion or misappropriation of property or a crime arising from conduct during a movement of household goods until final disposition of the case or removal or resignation of that officer or director.

(3) The administrative proceedings ~~that which~~ could result in the entry of an order imposing any of the penalties specified in subsection (1) or subsection (2) are governed by chapter 120.

(4) ~~(3)~~ The department may adopt rules under ss. 120.536(1) and 120.54 to administer this chapter.

Section 9. Subsection (2) of section 507.10, Florida

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Statutes, is amended to read:

507.10 Civil penalties; remedies.—

(2) The department may seek a civil penalty in the Class II category pursuant to s. 570.971 for each violation of this chapter. However, the department must seek a civil penalty in the Class IV category for each violation of s. 507.07(10) ~~s. 507.07(9)~~ if the department does not impose an administrative fine for the same offense.

Section 10. Subsection (1) of section 507.11, Florida Statutes, is amended to read:

507.11 Criminal penalties.—

(1) The refusal of a mover or a mover's employee, agent, or contractor to comply with an order from a law enforcement officer to relinquish a shipper's household goods after the officer determines that the shipper has tendered payment of the amount of a written estimate or contract, or after the officer determines that the mover did not produce a signed or electronically acknowledged binding estimate or contract for service upon which demand is being made for payment, is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A mover's compliance with an order from a law enforcement officer to relinquish goods to a shipper is not a waiver or finding of fact regarding any right to seek further payment from the shipper.

Section 11. This act shall take effect July 1, 2023.



The Florida Senate

Committee Agenda Request

To: Senator Jason Brodeur, Chair
Appropriations Committee on Agriculture, Environment, and General Government

Subject: Committee Agenda Request

Date: March 30, 2023

I respectfully request that **Senate Bill # 1106**, relating to Household Moving Services, be placed on the:

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

A handwritten signature in black ink, appearing to read "Ed Hooper", is written over a horizontal line.

Senator Ed Hooper
Florida Senate, District 21

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

APRIL 18, 2023

Meeting Date

APPR. ON AG

Committee

SB 1106

Bill Number or Topic

Amendment Barcode (if applicable)

Name

TIM DUNCAN

Phone

850-545-6067

Address

1645 COPPERFIELD CIRCLE

Street

TALLAHASSEE FL 32312

City

State

Zip

Email

jim.duncan@hub
International.com

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒

I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf flsenate.gov](#)

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

S-001 (08/10/2021)

4/18/23

Meeting Date

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

SB 1106

Bill Number or Topic

Committee

Name

Gloria Pugh

Phone

850-877-7131

Address

319 Ross Rd

Email

Street

TLH FL 32305

City

State

Zip

gloria@amwamovers.com

Speaking:



For



Against



Information

OR

Waive Speaking:



In Support



Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:



I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
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While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf flsenate.gov](#)

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

S-001 (08/10/2021)

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 Appropriations Committee on Agriculture, Environment, and General Government

BILL: CS/SB 1108

INTRODUCER: Commerce and Tourism Committee and Senator Hooper

SUBJECT: Fees/Moving Brokers

DATE: April 17, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McMillan	McKay	CM	Fav/CS
2.	Blizzard	Betta	AEG	Favorable
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1108 requires registration fees to be calculated at the rate of \$600 per year, per moving broker. Currently, s. 507.03, Florida Statutes, provides that each mover and moving broker must register with the Department of Agriculture and Consumer Services (department) and registration fees are calculated at the rate of \$300 per year per mover or moving broker. All amounts collected are deposited by the Chief Financial Officer to the credit of the department's General Inspection Trust Fund.

SB 1106 is a linked bill that amends ch. 507, Florida Statutes, to broaden protections for consumers who use intrastate moving services.

The bill has an indeterminate positive fiscal impact on state revenues.
See Section V. Fiscal Impact Statement.

The bill is effective on the same date that SB 1106 or similar legislation takes effect, if such legislation is adopted in the same legislative session or any extension and becomes a law.

II. Present Situation:

Florida (Intrastate) Mover Regulations

Chapter 507, F.S., governs the loading, transportation, shipment, unloading, and affiliated storage of household goods as part of intrastate household moves. The chapter applies to any mover or moving broker engaged in intrastate transportation or shipment of household goods that originates and terminates in Florida.¹ These regulations co-exist with federal law, which governs interstate moving of household goods.²

A “mover” is a person who, for compensation, contracts for or engages in the loading, transportation, shipment, or unloading of household goods as part of a household move.³ A “moving broker” arranges for another person to load, transport, ship, or unload household goods as part of a household move or who refers a shipper to a mover by telephone, postal, or electronic mail, website, or other means.⁴

Movers and moving brokers who do business in Florida must register annually with the department.⁵ As of March 21, 2023, there were 1,792 movers and 48 moving brokers with active Florida registrations.⁶ In order to obtain a registration certificate, the mover or moving broker must file an application, pay a \$300 annual registration fee, and meet certain statutory qualifications, including proof of insurance coverage.⁷

III. Effect of Proposed Changes:

The bill requires registration fees to be calculated at the rate of \$600 per year per moving broker.

The bill is effective on the same date that SB 1106 or similar legislation takes effect, if such legislation is adopted in the same legislative session or any extension and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹ Section 507.02, F.S.

² Interstate movers in the U.S. must be licensed by the Department of Transportation’s Federal Motor Carrier Safety Administration (FMCSA).

³ Section 507.01(9), F.S.

⁴ Section 507.01(10), F.S.

⁵ Florida Department of Agriculture and Consumer Services (FDACS), *Moving Companies: Who has to Register?*, available at <https://www.fdacs.gov/Business-Services/Moving-Companies> (last visited Mar. 28, 2023).

⁶ FDACS, *License/Complaint Lookup*, available at <https://csapp.fdacs.gov/cspublicapp/businesssearch/businesssearch.aspx> (last visited Mar. 28, 2023). Search by “program.”

⁷ Section 507.03, F.S.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Section 19, Art. VII of the State Constitution limits the authority of the legislature to enact legislation that imposes or raises a state tax or fee by requiring such legislation to be approved by a 2/3 vote of each chamber of the legislature. Such state tax or fee imposed, authorized, or raised must be contained in a separate bill that contains no other subject. For purposes of this limitation, the term “fee” is defined, in pertinent part, to mean any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill requires registration fees to be calculated at the rate of \$600 per year, per moving broker. Currently, the fee for a moving broker is \$300 per year.

B. Private Sector Impact:

Beginning July 1, 2023, moving brokers in Florida will be required to pay registration fees at the rate of \$600 per year, per moving broker.

C. Government Sector Impact:

The fiscal impact on state revenues due to the implementation of this bill will be insignificant, yet positive. The increased fee amount from \$300 per year to \$600 per year will be deposited into the General Inspection Trust Fund within the Department of Agriculture and Consumer Services.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 507.03 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 Commerce and Tourism on March 27, 2023:

The committee substitute provides that the bill will take effect on the same date that SB 1106 or similar legislation takes effect.

- B. **Amendments:**

None.

By the Committee on Commerce and Tourism; and Senator Hooper

577-03145-23

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A bill to be entitled

An act relating to fees; amending s. 507.03, F.S.;
revising registration fees for moving brokers;
providing a contingent effective date.

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

Section 1. Paragraph (a) of subsection (3) of section
507.03, Florida Statutes, is amended to read:

507.03 Registration.—

(3) (a) Registration fees shall be calculated at the rate of
\$300 per year per mover and \$600 per year per ~~or~~ moving broker.
All amounts collected shall be deposited by the Chief Financial
Officer to the credit of the General Inspection Trust Fund of
the department for the sole purpose of administration of this
chapter.

Section 2. This act shall take effect on the same date that
SB 1106 or similar legislation takes effect, if such legislation
is adopted in the same legislative session or an extension
thereof and becomes a law.



The Florida Senate

Committee Agenda Request

To: Senator Jason Brodeur, Chair
Appropriations Committee on Agriculture, Environment, and General
Government

Subject: Committee Agenda Request

Date: March 30, 2023

I respectfully request that **Senate Bill # 1108**, relating to Fees/Moving Brokers, be placed on the:

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

A handwritten signature in black ink, appearing to read "Ed Hooper", is written over a horizontal line.

Senator Ed Hooper
Florida Senate, District 21

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 Appropriations Committee on Agriculture, Environment, and General Government

BILL: CS/CS/SB 1262

INTRODUCER: Appropriations Committee on Agriculture, Environment, and General Government;
Regulated Industries Committee; and Senator Martin

SUBJECT: Issuance of Special Beverage Licenses

DATE: April 20, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Betta</u>	<u>AEG</u>	<u>Fav/CS</u>
3.	<u> </u>	<u> </u>	<u>FP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1262 reduces the number of persons a bona fide special food service establishment licensee must be equipped to serve meals at one time from 150 persons to 120 persons and decreases the minimum square feet of service area required for a special food service establishment license from 2,500 square feet of service area to 2,000 square feet of service area. The bill also requires that the establishments hold themselves out as restaurants and have at least 120 physical seats that are available for patrons to use during operating hours.

A special food service establishment license, known as an SFS license, is an exception to the limit on the number of alcoholic beverage licenses for the sale of distilled spirits permitted per county (quota licenses). Under current law, a special food service establishment must have at least 2,500 square feet of service area, be equipped to serve 150 persons at one time, and derive at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages, during the first 60-day operating period and each 12-month operating period thereafter.

The bill also revises the alcoholic beverage license requirements for a bona fide beach or cabana club to include bathroom facilities among the list of facilities that a beach or cabana club must have to qualify for a special club license. Current law requires such businesses to have beach facilities, and locker rooms for at least 100 persons. The bill repeals the requirements that a beach or cabana club must have a restaurant with seats at tables for at least 100 persons. Instead

it requires that the beach or cabana club include a public food service establishment as defined in s. 509.013(5), F.S. The bill maintains the requirement in current law that a beach or cabana club must have an area of at least 5,000 square feet located on a contiguous tract of land of in excess of one acre.

The bill may an indeterminate fiscal impact on state revenues and expenditures. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2023.

II. Present Situation:

Division of Alcoholic Beverages and Tobacco

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law,¹ which regulates the manufacture, distribution, and sale of wine, beer, and liquor.² The division is also responsible for the administration and enforcement of tobacco products under ch. 569, F.S.

Quota Licenses

Section 561.20(1), F.S., limits, by county, the number of alcoholic beverage licenses that may be issued for the sale of distilled spirits, to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as “quota” licenses. New quota licenses are created and issued when there is an increase in the population of a county. The licenses may also be issued when a county initially changes its status from a county that does not permit the sale of intoxicating liquor to one that permits such sale. The quota license is the only alcoholic beverage license that is limited in number; all other types of alcoholic beverage licenses are available without limitation. There are several exceptions for special licenses.³ There are several exceptions or exemptions to the limitation by local or special law.⁴

Special Beverage Licenses

Special Food Service Licenses

The limitation on the number of quota licenses per county does not apply to a food service establishment that has at least 2,500 square feet of service area, is equipped to serve 150 persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages, during the first 60-day operating period and each 12-month

¹ Section 561.02, F.S.

² Section 561.01(6), F.S., provides that the “Beverage Law” means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

³ See s. 561.20(2), (7), (9), and (11), F.S., and s. 565.02(2) through (11), F.S.

⁴ See s. 561.561.20(4), F.S., and the Section VII, Related Issues, of this analysis.

operating period thereafter.⁵ This type of license is known as a “special food service establishment license” or an “SFS license.”⁶

Failure by a licensee to satisfy the requirements as to the percentages of food and nonalcoholic beverages results in revocation of the SFS license. A licensee whose license is revoked is ineligible to have an interest in a subsequent application for a license for 120 days after the revocation.⁷

The annual fee for an SFS license varies from \$624 to \$1,820, depending upon the population of the county in which the food service establishment is located.⁸

Beach and Cabana Club Special Licenses

The limitation on the number of quota licenses per county does not apply to any corporation, partnership, or individual operating a club which owns or leases and maintains any bona fide beach or cabana club consisting of beach facilities, swimming pool, locker rooms with facilities for at least 100 persons, and a restaurant with seats at tables for at least 100 persons. The beach or cabana club must have an area of at least 5,000 square feet located on a contiguous tract of land of in excess of 1 acre. A beach or cabana club that fails to maintain these facilities may have their alcoholic beverage license revoked.⁹

Off-Premises Sales by SFS Licensees

A food service establishment holding an SFS license issued after January 1, 1958, may not operate a package store under the license and may not sell intoxicating beverages after the hours of serving or consumption of food have elapsed.

However, an SFS licensee may sell manufacturer-sealed containers of beer and wine for off-premises consumption. An SFS licensee may sell and deliver alcoholic beverage drinks in containers sealed by the licensee, but is prohibited from selling bottles of distilled spirits for off-premises consumption.

Alcoholic beverage drinks prepared by the licensee must be sealed by the licensee with an unbroken seal that prevents the beverage from being consumed, and placed in a bag or other container secured in such a manner that it is visibly apparent if the container has been opened or tampered with. A dated receipt for the beverage and meal must be provided and attached to the container. Alcoholic beverages prepared and sealed by the licensee that are delivered or

⁵ Section 561.20(2)(a)4., F.S. The required square footage and number of persons the restaurant must be equipped to serve may be different for county or municipality jurisdictions due to special acts enacted by the Legislature that affect these requirements for the county or municipality. For a list of the special act requirements for counties and municipalities, including the applicable act in the Laws of Florida, see: Division of Alcoholic Beverages and Tobacco, *General Laws of Local Application and Special Acts*, available at www.myfloridalicense.com/dbpr/abt/documents/GENLAWS.pdf (last visited Mar. 31, 2023).

⁶ The SFS license was previously known as an “SRX” or “Special Restaurant License,” and these licenses are still commonly referred to as “SRX” licenses.

⁷ Section 561.20(2)(a)4., F.S.

⁸ Section 565.02(1)(b)-(f), F.S.

⁹ Section 561.20(7)(d), F.S.

transported by motor vehicle must be placed in a locked compartment, locked trunk, or other area behind the last upright seat of the motor vehicle.

Additionally, an SFS licensee who allows a person under 21 years of age to deliver an alcoholic beverage on its behalf violates the prohibition against selling, giving, or serving alcoholic beverages to a person under 21 years of age. An alcoholic beverage vendor or an agent or employee of a vendor must verify that the person making a delivery of an alcoholic beverage is at least 21 years of age.

III. Effect of Proposed Changes:

The bill amends s. 561.20(2)(a)4., F.S., to reduce the number of persons to which an SFS licensee must be equipped to serve meals at one time from 150 persons to 120 persons, and decreases the minimum square feet of service area required for a special food service establishment license from 2,500 square feet of service area to 2,000 square feet of service area. The bill also requires that the establishments hold themselves out as restaurants and have at least 120 physical seats that are available for patrons to use during operating hours.

The bill amends s. 561.20(7)(d), F.S., to revise the alcoholic beverage license requirements for a bona fide beach or cabana club to include bathroom facilities among the list of facilities that a beach or cabana club must have to qualify for a special club license. Current law requires such businesses to have beach facilities, and locker rooms for at least 100 persons. The bill repeals the requirements that a beach or cabana club must have a restaurant with seats at tables for at least 100 persons. Instead it requires that the beach or cabana club include a public food service establishment as defined in s. 509.013(5), F.S. The bill maintains the requirement in current law that a beach or cabana club must have an area of at least 5,000 square feet located on a contiguous tract of land of in excess of one acre.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have an indeterminate fiscal impact on the division's revenues and expenditures. The bill may allow more restaurants to obtain an SFS license, which would increase license fee revenues; however, the increase of licensees may require more regulatory actions, such as inspections and audits, by the division. To date, an analysis from the DBPR regarding the fiscal impact of CS/SB 1262 on the division's revenues, expenditures, or operations has not been provided.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Special food service licensees in several counties, cities, or districts are subject to special acts that require a food service establishment to be equipped to serve meals at one time to more than the 150 persons required under general law as a condition for the sale of alcoholic beverages.¹⁰ For example, a licensee must be equipped to serve at one time 200 persons in Hendry County¹¹ and 250 persons in Lake County.¹² Other counties, cities, or districts permit the sale of alcoholic beverages under an SFS license if fewer than 150 persons may be served at one time by the establishment. Examples include service for 100 persons in Alachua and Hillsborough counties,¹³ and 80 persons in the City of Orlando's "downtown restaurant area" and "main street small restaurant incentive area."¹⁴

¹⁰ DBPR, *General Laws of Local Application and Special Acts Relating to Food Service Establishments*, at: http://www.myfloridalicense.com/dbpr/abt/documents/General_Laws_and_Special_Acts_for_Food_Service_Establishments.pdf (last visited Mar. 22, 2023).

¹¹ Chapter 71-660, Laws of Fla.

¹² Chapter 2021-244, Laws of Fla., relating to Lake County.

¹³ Chapter 70-574, Laws of Fla., relating to Alachua County; and ch. 2016-264, Laws of Fla., relating to Hillsborough County.

¹⁴ Chapter 65-1873, Laws of Fla., for the City of Orlando's "downtown restaurant area," and ch. 2021-265, Laws of Fla., for the City of Orlando's "main street small restaurant incentive area."

Several counties or cities are also subject to special acts that provide for fewer square feet of service area than required under current law. For example, 1,800 square feet of service area in Alachua County¹⁵ and in the cities of Jacksonville and Kissimmee;¹⁶ 2,000 square feet of service area in Highlands County;¹⁷ and 1,500 square feet of service area in the City of St. Cloud.¹⁸ Some jurisdictions are subject to a minimum square feet of service area that is greater than required under general law, e.g., 4,000 square feet of service area in Hendry, Osceola, Sumter, Walton counties and the City of Maitland.¹⁹

The bill does not affect counties, cities, or districts that are subject to special acts that provide seating and square footage restrictions other than those provided under the bill.²⁰

VIII. Statutes Affected:

This bill substantially amends section 561.20 of the Florida Statutes.

This bill reenacts section 565.045 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/CS by Appropriations Committee on Agriculture, Environment, and General Government on April 18, 2023:

The committee substitute requires that a special food service establishment licensee to have at least 120 “physical seats” available for patrons to use during operating hours instead of requiring that the seats be “exclusively dedicated” for patron use during operating hours.

CS by Regulated Industries on April 4, 2023:

The CS changes the bill's title from "an act relating to requirements for special food service licenses" to "an act relating to the issuance of special beverage licenses."

The CS increases the reduces the number of persons a special food service establishment licensee must be equipped to serve meals at one time from 150 persons to 120 persons, decreases the minimum square feet of service area required for a special food service establishment license from 2,500 square feet of service area to 2,000 square feet of service area, and requires that the establishments hold themselves out as restaurants and have at least 120 exclusively dedicated seats that are available for patrons to use during operating hours.

¹⁵ Chapter 70-574, Laws of Fla., relating to Alachua County.

¹⁶ Chapter 2016-248, Laws of Fla., relating to the City of Jacksonville; and 2019-178, Laws of Fla., relating to the City of Kissimmee.

¹⁷ Chapter 69-782, Laws of Fla.

¹⁸ Chapter 2019-182, Laws of Fla.

¹⁹ Chapter 71-660, Laws of Fla., relating to Hendry County; ch. 69-793, Laws of Fla., relating to Osceola County; ch. 2021-44, relating to Sumter County; and ch. 67-2164, Laws of Fla., relating to Walton County.

²⁰ See s. 561.20(4), F.S.

The CS also amends s. 561.20(7)(d), F.S., to revise the alcoholic beverages license requirements for bona fide beach or cabana clubs.

B. Amendments:

None.

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



656138

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2023	.	
	.	
	.	
	.	

The Appropriations Committee on Agriculture, Environment, and General Government (Martin) recommended the following:

Senate Amendment (with title amendment)

Delete line 60
and insert:
physical seats available for patrons to

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

And the title is amended as follows:

Delete line 6
and insert:



656138

11 s. 565.045(1)(c), F.S., relating to regulations for
12 consumption on premises, to incorporate the amendment
13 made to s. 561.20, F.S., in a reference thereto;

By the Committee on Regulated Industries; and Senator Martin

580-03525-23

20231262c1

A bill to be entitled

An act relating to the issuance of special beverage licenses; amending s. 561.20, F.S.; revising requirements relating to the issuance of special food service licenses and certain club licenses; reenacting s. 565.045(1)(c), F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) and paragraph (d) of subsection (7) of section 561.20, Florida Statutes, are amended to read:

561.20 Limitation upon number of licenses issued.—

(2)(a) The limitation of the number of licenses as provided in this section does not prohibit the issuance of a special license to:

1. Any bona fide hotel, motel, or motor court of not fewer than 80 guest rooms in any county having a population of less than 50,000 residents, and of not fewer than 100 guest rooms in any county having a population of 50,000 residents or greater; or any bona fide hotel or motel located in a historic structure, as defined in s. 561.01(20), with fewer than 100 guest rooms which derives at least 51 percent of its gross revenue from the rental of hotel or motel rooms, which is licensed as a public lodging establishment by the Division of Hotels and Restaurants; provided, however, that a bona fide hotel or motel with no fewer than 10 and no more than 25 guest rooms which is a historic structure, as defined in s. 561.01(20), in a municipality that

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on the effective date of this act has a population, according to the University of Florida's Bureau of Economic and Business Research Estimates of Population for 1998, of no fewer than 25,000 and no more than 35,000 residents and that is within a constitutionally chartered county may be issued a special license. This special license shall allow the sale and consumption of alcoholic beverages only on the licensed premises of the hotel or motel. In addition, the hotel or motel must derive at least 60 percent of its gross revenue from the rental of hotel or motel rooms and the sale of food and nonalcoholic beverages; provided that this subparagraph shall supersede local laws requiring a greater number of hotel rooms;

2. Any condominium accommodation of which no fewer than 100 condominium units are wholly rentable to transients and which is licensed under chapter 509, except that the license shall be issued only to the person or corporation that operates the hotel or motel operation and not to the association of condominium owners;

3. Any condominium accommodation of which no fewer than 50 condominium units are wholly rentable to transients, which is licensed under chapter 509, and which is located in any county having home rule under s. 10 or s. 11, Art. VIII of the State Constitution of 1885, as amended, and incorporated by reference in s. 6(e), Art. VIII of the State Constitution, except that the license shall be issued only to the person or corporation that operates the hotel or motel operation and not to the association of condominium owners;

4. A bona fide food service establishment that has a minimum of 2,000 ~~2,500~~ square feet of service area, is equipped

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59 to serve meals to 120 ~~150~~ persons at one time, has at least 120
 60 exclusively dedicated seats that are available for patrons to
 61 use during operating hours, holds itself out as a restaurant,
 62 and derives at least 51 percent of its gross food and beverage
 63 revenue from the sale of food and nonalcoholic beverages during
 64 the first 120-day operating period and the first 12-month
 65 operating period thereafter. Subsequent audit timeframes must be
 66 based upon the audit percentage established by the most recent
 67 audit and conducted on a staggered scale as follows: level 1, 51
 68 percent to 60 percent, every year; level 2, 61 percent to 75
 69 percent, every 2 years; level 3, 76 percent to 90 percent, every
 70 3 years; and level 4, 91 percent to 100 percent, every 4 years.
 71 A licensee under this subparagraph may sell or deliver alcoholic
 72 beverages in a sealed container for off-premises consumption if
 73 the sale or delivery is accompanied by the sale of food within
 74 the same order. Such authorized sale or delivery includes wine-
 75 based and liquor-based beverages prepared by the licensee or its
 76 employee and packaged in a container sealed by the licensee or
 77 its employee. This subparagraph may not be construed to
 78 authorize public food service establishments licensed under this
 79 subparagraph to sell a bottle of distilled spirits sealed by a
 80 manufacturer. Any sale or delivery of malt beverages must comply
 81 with the container size, labeling, and filling requirements
 82 imposed under s. 563.06. Any delivery of an alcoholic beverage
 83 under this subparagraph must comply with s. 561.57. An alcoholic
 84 beverage drink prepared by the vendor and sold or delivered for
 85 consumption off the premises must be placed in a container
 86 securely sealed by the licensee or its employees with an
 87 unbroken seal that prevents the beverage from being immediately

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88 consumed before removal from the premises. Such alcoholic
 89 beverage also must be placed in a bag or other container that is
 90 secured in such a manner that it is visibly apparent if the
 91 container has been subsequently opened or tampered with, and a
 92 dated receipt for the alcoholic beverage and food must be
 93 provided by the licensee and attached to the bag or container.
 94 If transported in a motor vehicle, an alcoholic beverage that is
 95 not in a container sealed by the manufacturer must be placed in
 96 a locked compartment, a locked trunk, or the area behind the
 97 last upright seat of a motor vehicle. It is a violation of the
 98 prohibition in s. 562.11 to allow any person under the age of 21
 99 to deliver alcoholic beverages on behalf of a vendor. The vendor
 100 or the agent or employee of the vendor must verify the age of
 101 the person making the delivery of the alcoholic beverage before
 102 allowing any person to take possession of an alcoholic beverage
 103 for the purpose of making a delivery on behalf of a vendor under
 104 this section. A food service establishment granted a special
 105 license on or after January 1, 1958, pursuant to general or
 106 special law may not operate as a package store and may not sell
 107 intoxicating beverages under such license after the hours of
 108 serving or consumption of food have elapsed. Failure by a
 109 licensee to meet the required percentage of food and
 110 nonalcoholic beverage gross revenues during the covered
 111 operating period shall result in revocation of the license or
 112 denial of the pending license application. A licensee whose
 113 license is revoked or an applicant whose pending application is
 114 denied, or any person required to qualify on the special license
 115 application, is ineligible to have any interest in a subsequent
 116 application for such a license for a period of 120 days after

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the date of the final denial or revocation;

5. Any caterer, deriving at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages at each catered event, licensed by the Division of Hotels and Restaurants under chapter 509. This subparagraph does not apply to a culinary education program, as defined in s. 381.0072(2), which is licensed as a public food service establishment by the Division of Hotels and Restaurants and provides catering services. Notwithstanding any law to the contrary, a licensee under this subparagraph shall sell or serve alcoholic beverages only for consumption on the premises of a catered event at which the licensee is also providing prepared food, and shall prominently display its license at any catered event at which the caterer is selling or serving alcoholic beverages. A licensee under this subparagraph shall purchase all alcoholic beverages it sells or serves at a catered event from a vendor licensed under s. 563.02(1), s. 564.02(1), or licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), as appropriate. A licensee under this subparagraph may not store any alcoholic beverages to be sold or served at a catered event. Any alcoholic beverages purchased by a licensee under this subparagraph for a catered event that are not used at that event must remain with the customer; provided that if the vendor accepts unopened alcoholic beverages, the licensee may return such alcoholic beverages to the vendor for a credit or reimbursement. Regardless of the county or counties in which the licensee operates, a licensee under this subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this subparagraph must maintain

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for a period of 3 years all records and receipts for each catered event, including all contracts, customers' names, event locations, event dates, food purchases and sales, alcoholic beverage purchases and sales, nonalcoholic beverage purchases and sales, and any other records required by the department by rule to demonstrate compliance with the requirements of this subparagraph. Notwithstanding any law to the contrary, any vendor licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), may, without any additional licensure under this subparagraph, serve or sell alcoholic beverages for consumption on the premises of a catered event at which prepared food is provided by a caterer licensed under chapter 509. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph may not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. This section does not permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. The Division of Alcoholic Beverages and Tobacco is hereby authorized to adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement. The first \$300,000 in fees collected by the division each fiscal year pursuant to this subparagraph shall be deposited in the Department of Children and Families' Operations and Maintenance Trust Fund to be used only for alcohol and drug abuse education, treatment, and prevention programs. The remainder of the fees collected shall be deposited into the Hotel and Restaurant Trust

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Fund created pursuant to s. 509.072; or

6. A culinary education program as defined in s. 381.0072(2) which is licensed as a public food service establishment by the Division of Hotels and Restaurants.

a. This special license shall allow the sale and consumption of alcoholic beverages on the licensed premises of the culinary education program. The culinary education program shall specify designated areas in the facility where the alcoholic beverages may be consumed at the time of application. Alcoholic beverages sold for consumption on the premises may be consumed only in areas designated under s. 561.01(11) and may not be removed from the designated area. Such license shall be applicable only in and for designated areas used by the culinary education program.

b. If the culinary education program provides catering services, this special license shall also allow the sale and consumption of alcoholic beverages on the premises of a catered event at which the licensee is also providing prepared food. A culinary education program that provides catering services is not required to derive at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages. Notwithstanding any law to the contrary, a licensee that provides catering services under this sub-subparagraph shall prominently display its beverage license at any catered event at which the caterer is selling or serving alcoholic beverages. Regardless of the county or counties in which the licensee operates, a licensee under this sub-subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this sub-subparagraph must maintain for a period

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of 3 years all records required by the department by rule to demonstrate compliance with the requirements of this sub-subparagraph.

c. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph does not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. This subparagraph does not permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. Any culinary education program that holds a license to sell alcoholic beverages shall comply with the age requirements set forth in ss. 562.11(4), 562.111(2), and 562.13.

d. The Division of Alcoholic Beverages and Tobacco may adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement.

e. A license issued pursuant to this subparagraph does not permit the licensee to sell alcoholic beverages by the package for off-premises consumption.

However, any license heretofore issued to any such hotel, motel, motor court, or restaurant or hereafter issued to any such hotel, motel, or motor court, including a condominium accommodation, under the general law may not be moved to a new location, such license being valid only on the premises of such hotel, motel, motor court, or restaurant. Licenses issued to hotels, motels, motor courts, or restaurants under the general

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233 law and held by such hotels, motels, motor courts, or
 234 restaurants on May 24, 1947, shall be counted in the quota
 235 limitation contained in subsection (1). Any license issued for
 236 any hotel, motel, or motor court under this law shall be issued
 237 only to the owner of the hotel, motel, or motor court or, in the
 238 event the hotel, motel, or motor court is leased, to the lessee
 239 of the hotel, motel, or motor court; and the license shall
 240 remain in the name of the owner or lessee so long as the license
 241 is in existence. Any special license now in existence heretofore
 242 issued under this law cannot be renewed except in the name of
 243 the owner of the hotel, motel, motor court, or restaurant or, in
 244 the event the hotel, motel, motor court, or restaurant is
 245 leased, in the name of the lessee of the hotel, motel, motor
 246 court, or restaurant in which the license is located and must
 247 remain in the name of the owner or lessee so long as the license
 248 is in existence. Any license issued under this section shall be
 249 marked "Special," and nothing herein provided shall limit,
 250 restrict, or prevent the issuance of a special license for any
 251 restaurant or motel which shall hereafter meet the requirements
 252 of the law existing immediately before the effective date of
 253 this act, if construction of such restaurant has commenced
 254 before the effective date of this act and is completed within 30
 255 days thereafter, or if an application is on file for such
 256 special license at the time this act takes effect; and any such
 257 licenses issued under this proviso may be annually renewed as
 258 now provided by law. Nothing herein prevents an application for
 259 transfer of a license to a bona fide purchaser of any hotel,
 260 motel, motor court, or restaurant by the purchaser of such
 261 facility or the transfer of such license pursuant to law.

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262 (7)
 263 (d) Any corporation, partnership, or individual operating a
 264 club which owns or leases and which maintains any bona fide
 265 beach or cabana club consisting of beach facilities, swimming
 266 pool, locker rooms or bathroom ~~with~~ facilities for at least 100
 267 persons, and a public food service establishment as defined in
 268 s. 509.013(5) ~~restaurant with seats at tables for at least 100~~
 269 ~~persons~~, comprising in all an area of at least 5,000 square feet
 270 located on a contiguous tract of land of in excess of 1 acre may
 271 be issued a license under s. 565.02(4). The failure of such club
 272 to maintain the facilities shall be a ground for revocation of
 273 the license.
 274 Section 2. For the purpose of incorporating the amendment
 275 made by this act to section 561.20, Florida Statutes, in a
 276 reference thereto, paragraph (c) of subsection (1) of section
 277 565.045, Florida Statutes, is reenacted to read:
 278 565.045 Regulations for consumption on premises; penalty;
 279 exemptions.—
 280 (1) Vendors licensed under s. 565.02(1)(b)-(f):
 281 (c) May sell or deliver alcoholic beverages prepared by the
 282 licensee for off-premises consumption if the alcoholic beverage
 283 is in a container sealed by the licensee. All sales or
 284 deliveries of alcoholic beverages made pursuant to this
 285 paragraph must satisfy the following requirements:
 286 1. The vendor must be licensed as a public food service
 287 establishment under chapter 509;
 288 2. The sale or delivery must be accompanied by the sale of
 289 food within the same order;
 290 3. The charge for the sale of food and nonalcoholic

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291 beverages must be at least 40 percent of the total charge for
292 the order, excluding the charge for any manufacturer-sealed
293 containers of alcoholic beverages included in the order; and
294 4. Sales and deliveries of the alcoholic beverages may not
295 occur after the vendor ceases preparing food on the licensed
296 premises for the day or after midnight, whichever is earlier.
297
298 The requirement in subparagraph 3. does not apply to vendors
299 licensed under s. 561.20(2)(a)4.
300 Section 3. This act shall take effect July 1, 2023.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Criminal Justice, *Chair*
Appropriations
Appropriations Committee on Criminal and Civil Justice
Appropriations Committee on Health and Human Services
Community Affairs
Environment and Natural Resources
Ethics and Elections

SELECT COMMITTEE:

Select Committee on Resiliency

SENATOR JONATHAN MARTIN

33rd District

April 6, 2023

The Honorable Jason Brodeur

Senate Appropriations Committee on Agriculture, Environment and Natural Resources, Chair

201 The Capitol

404 South Monroe Street

Tallahassee, FL 32399

RE: CS/SB 1262 - An act relating to the Issuance of Special Beverage Licenses

Dear Chair Brodeur:

Please allow this letter to serve as my respectful request to place CS/SB 1262, relating to the Issuance of Special Beverage Licenses, on the next committee agenda.

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, appearing to read "Jon Martin".

Jonathan Martin
Senate District 33

Cc: Giovanni Betta, Staff Director
Julie Brass, Administrative Assistant

REPLY TO:

- ☐ 2000 Main Street, Suite 401, Fort Myers, Florida 33901 (239) 338-2570
- ☐ 311 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

Senate's Website: www.flsenate.gov

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

4/18/2023

Meeting Date

Appropriations Committee on Agriculture, Environment, and General Government

Committee

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

SB 1262

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Gary Rutledge**

Phone **8500-681-6788**

Address **119 S Monroe Street Suite 202**

Email **Gary@rutledge-ecenia.com**

Street

Tallahassee

City

FL

State

32301

Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

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(travel, meals, lodging, etc.),
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While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Senate professional staff conducting the meeting

4/18
Meeting Date
Appropriations Committee on
Agriculture, Environment & General Gov't
Committee

SB 1262

Bill Number or Topic

Amendment Barcode (if applicable)

Name Sanna Padgett Phone 850-224-2250

Address 230 S Adams St. Email spadgett@fla.org
Street

Tallahassee FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information OR Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:
Florida Restaurant &
Lodging Association

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Meeting Date

4/18/23

Bill Number or Topic

1262

Deliver both copies of this form to
Senate professional staff conducting the meeting

Committee

AGRICULTURE, ENVIRONMENT

+ GEN. GOV'T. APPROP.

Amendment Barcode (if applicable)

Name

DAVID ROBERTS

Phone

850-443-4820

Address

210 S. MONROE ST.

Email

david@norrrob.com

Street

TALLAHASSEE

State

FL

Zip

32301

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

FLORIDA INDEPENDENT SPIRITS ASSOCIATION

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

4/18/2023

Meeting Date

Appropriations Committee on Agriculture, Environment, and General Government

Committee

Name **Gary Rutledge**

Address **119 S Monroe Street Suite 202**

Street

Tallahassee

City

FL

State

32301

Zip

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

SB 1262

Bill Number or Topic

Amendment 656138

Amendment Barcode (if applicable)

Phone **8500-681-6788**

Email **Gary@rutledge-ecenia.com**

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Realtymasters Licensing, LLC

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

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 Appropriations Committee on Agriculture, Environment, and General Government

BILL: CS/CS/SB 1364

INTRODUCER: Appropriations Committee on Agriculture, Environment, and General Government;
Regulated Industries Committee; and Senator Collins and others

SUBJECT: Interstate-Mobility and Universal-Recognition Occupational Licensing Act

DATE: April 20, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	Fav/CS
2.	Davis	Betta	AEG	Fav/CS
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1364 addresses occupational license portability in the United States by requiring Florida licensing boards that issue occupational licenses or government certifications to individuals under ch. 455, F.S., relating to the regulations of professions by the Department of Business and Professional Regulation (DBPR), or ch. 456, F.S., relating to the regulation of professions by the Department of Health (DOH), to issue an occupational license or government certification (universal license) to eligible applicants, under certain circumstances (universal licensing requirement). The bill provides that this requirement does not apply to occupations regulated by the Florida Supreme Court or certified public accountants.

Applicants may seek a universal license through one of three pathways authorized in the bill:

- Universal licensing if licensed by another licensing entity that issues licenses for a lawful occupation for a scope of practice similar to one in Florida and requires specified examinations, education, or work experience;
- Universal licensing based on work experience in another state or the military; or
- Universal licensing based on a DBPR- or DOH-recognized private certification with work experience in a non-licensing state or the military.

Under the bill, an applicant with a valid occupational license or certification in good standing, or who otherwise meets the requirements for an occupational license for a lawful occupation, is presumed to be qualified for the license and must be issued an occupational license or

government certification by the appropriate Florida licensing board, subject to review of the applicant's criminal records and disciplinary records in any jurisdiction and, for health professions, all applicable mandatory background requirements.

The bill provides that during a declared state of emergency, the Governor may order the recognition of occupational licenses from other licensing entities, may expand any occupation license scope of practice, and may authorize licensees to provide services in Florida in person, telephonically, or by other means for the duration of the emergency.

This bill will have a significant negative fiscal impact to the DBPR and the DOH. CS/CS/SB 1366 is linked to this bill and authorizes licensing boards to charge a fee to applicants for an occupational license or government certification, in order to recoup a board's costs, not to exceed \$100 for each application. The fees may offset costs incurred by the DBPR and the DOH. See Section V, Fiscal Impact Statement.

The bill takes effect July 1, 2023.

II. Present Situation:

Chapter 455, F.S., provides for the regulation of professions by the Department of Business and Professional Regulation (DBPR), and ch. 456, F.S., provides for the regulation of health professions by the Department of Health (DOH).

Department of Business and Professional Regulation

Organization of the DBPR

Section 20.165, F.S., establishes the organizational structure of the DBPR, which has the following 11 divisions:

- Administration;
- Alcoholic Beverages and Tobacco;
- Certified Public Accounting;
- Drugs, Devices, and Cosmetics;
- Florida Condominiums, Timeshares, and Mobile Homes;
- Hotels and Restaurants;
- Professions;
- Real Estate;
- Regulation;
- Service Operations; and
- Technology.

The Florida Athletic Commission is assigned to the DBPR for administrative and fiscal accountability purposes only.¹ The DBPR also administers the Child Labor Law and Farm Labor Contractor Registration Law.²

¹ Section 548.003(1), F.S.

² See Parts I and III of ch. 450, F.S.

Powers and Duties of the DBPR

Chapter 455, F.S., applies to the regulation of professions constituting “any activity, occupation, profession, or vocation regulated by the [DBPR] in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.”³ The chapter also provides the procedural and administrative framework for those divisions and the professional boards within the DBPR.⁴

The term “profession” means any activity, occupation, profession, or vocation regulated by the department [DBPR] in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.⁵

The DBPR’s regulation of professions is to be undertaken “only for the preservation of the health, safety, and welfare of the public under the police powers of the state.”⁶ Regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.⁷

However, the DBPR and its boards may not create a regulation that has an unreasonable effect on job creation or job retention or a regulation that unreasonably restricts the ability of those desiring to engage in a profession or occupation from finding employment.⁸

Sections 455.203 and 455.213, F.S., establish general licensing authority for the DBPR, including the authority to charge license fees and license renewal fees. Each board within the DBPR must determine by rule the amount of license fees for each profession, based on estimates of the required revenue to implement the regulatory laws affecting the profession.⁹

Chapter 455, F.S., provides the general powers of the DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under the DBPR as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.¹⁰

When a person is authorized to engage in a profession or occupation in Florida, the DBPR issues a “permit, registration, certificate, or license” to the licensee.¹¹

³ Section 455.01(6), F.S.

⁴ See s. 455.203, F.S. The DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by staff counsel of the DBPR. See s. 455.221(1), F.S.

⁵ Section 455.01(6), F.S.

⁶ Section 455.201(2), F.S.

⁷ *Id.*

⁸ Section 455.201(4)(b), F.S.

⁹ Section 455.219(1), F.S.

¹⁰ See s. 455.203, F.S. The DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing DBPR staff counsel. See s. 455.221(1), F.S.

¹¹ Section 455.01(4) and (5), F.S.

Division of Certified Public Accounting

In Fiscal Year 2021-2022, there were 38,541 active licensees in the DBPR's Division of Certified Public Accounting.¹²

Division of Professions

In Fiscal Year 2021-2022, the DBPR's Division of Professions, had 937,960 active licensees (of which 38,541 were licensed accountants; 66,936 were licensed engineers, and 345,026 were real estate-related licensees), including:¹³

- Accountants (CPAs);
- Architects and interior designers;
- Asbestos consultants and contractors;
- Athlete agents;
- Auctioneers;
- Barbers;
- Building code administrators and inspectors;
- Community association managers;
- Construction industry contractors;
- Cosmetologists;
- Electrical contractors;
- Employee leasing companies;
- Engineers;
- Geologists;
- Home inspectors;
- Pilot commissioners;
- Landscape architects;
- Mold-related services;
- Real estate appraisers;
- Real estate (brokers/associates);
- Talent agencies; and
- Veterinarians.

As noted by the DBPR, most professions regulated by the Division of Profession include a governing professional board responsible for ultimate licensing and disciplinary decisions, but the DBPR is responsible for licensing and regulating asbestos consultants and contractors, athlete agents, community association managers, home inspectors, mold-related professionals, and talent agencies.¹⁴

¹² See Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2021-2022*, at 18, at <http://www.myfloridalicense.com/DBPR/os/documents/Division%20Annual%20Report%20FY%2021-22.pdf> (last visited Mar. 30, 2023).

¹³ *Id.*

¹⁴ See the DBPR Annual Report at 26, *supra* note 12, noting that the Regulatory Council of Community Association Managers is responsible for adopting rules relating to the licensure examination, continuing education requirements, continuing education providers, fees, and professional practice standards to assist the DBPR in carrying out its duties.

Unlike most DBPR professions, the administrative, investigative, and prosecutorial services for the Florida Board of Professional Engineering (FBPE) are not provided by the DBPR. The DBPR has contracted with the Florida Engineers Management Corporation (FEMC) to provide such administrative, investigative, and prosecutorial services for the FBPE.¹⁵

Division of Real Estate

In Fiscal Year 2021-2022, there were 345,026 active licensees in the DBPR's Division of Real Estate.¹⁶

Department of Health

Licensure and Regulation of Health Care Practitioners

The Division of Medical Quality Assurance (MQA), within the DOH, has general regulatory authority over health care professionals (practitioners).¹⁷ The MQA works in conjunction with 22 regulatory boards and four councils to license and regulate ten unique types of health care facilities and more than 40 health care professions.¹⁸ Each profession is regulated by an individual practice act and by ch. 456, F.S., which provides general regulatory and licensure authority for the MQA. The MQA is statutorily responsible for the following boards and professions established within the division and the DOH:¹⁹

- The Board of Acupuncture, created under ch. 457, F.S.;
- The Board of Medicine, created under ch. 458, F.S.;
- The Board of Osteopathic Medicine, created under ch. 459, F.S.;
- The Board of Chiropractic Medicine, created under ch. 460, F.S.;
- The Board of Podiatric Medicine, created under ch. 461, F.S.;
- Naturopathy, under the DOH as provided under ch. 462, F.S.;
- The Board of Optometry, created under ch. 463, F.S.;
- The Board of Nursing, created under part I of ch. 464, F.S.;
- Nursing assistants, under the Board of Nursing as provided under part II of ch. 464, F.S.;
- The Board of Pharmacy, created under ch. 465, F.S.;
- The Board of Dentistry, created under ch. 466, F.S.;
- Midwifery, as provided under ch. 467, F.S.;

¹⁵ See s. 471.038, F.S., the Florida Engineers Management Corporation Act, for the duties and authority of the FEMC. See the Annual Report of the FEMC for FY 2021-2022, available at <https://fbpe.org/wp-content/uploads/2022/09/FEMC-Annual-Report-2022.pdf> (last visited Mar. 18, 2023), and the contract between the DBPR and the FEMC for the period between July 1, 2021 and June 30, 2025 at <https://fbpe.org/wp-content/uploads/2021/10/2021-25-DBPR-FEMC-Contract.pdf> (last visited Mar. 18, 2023).

¹⁶ See the DBPR Annual Report at 26, *supra* note 12.

¹⁷ Pursuant to s. 456.001(4), F.S., health care practitioners are defined to include acupuncturists, physicians, physician assistants, chiropractors, podiatrists, naturopaths, dentists, dental hygienists, optometrists, nurses, nursing assistants, pharmacists, midwives, speech language pathologists, nursing home administrators, occupational therapists, respiratory therapists, dietitians, athletic trainers, orthotists, prosthetists, electrologists, massage therapists, clinical laboratory personnel, medical physicists, genetic counselors, dispensers of optical devices or hearing aids, physical therapists, psychologists, social workers, counselors, and psychotherapists, among others.

¹⁸ Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2021-2022*, at 5, <https://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/annual-reports.html> (last visited Mar. 17, 2023).

¹⁹ Section 456.001(4), F.S.

- The Board of Speech-Language Pathology and Audiology, created under part I of ch. 468, F.S.;
- The Board of Nursing Home Administrators, created under part II of ch. 468, F.S.;
- The Board of Occupational Therapy, created under part III of ch. 468, F.S.;
- Respiratory therapy, under the Board of Respiratory Care as provided under part V of ch. 468, F.S.;
- Dietetics and nutrition practice, under the Board of Medicine as provided under part X of ch. 468, F.S.;
- The Board of Athletic Training, created under part XIII of ch. 468, F.S.;
- The Board of Orthotists and Prosthetists, created under part XIV of ch. 468, F.S.;
- Electrolysis, under the Board of Medicine as provided under ch. 478, F.S.;
- The Board of Massage Therapy, created under ch. 480, F.S.;
- The Board of Clinical Laboratory Personnel, created under part I of ch. 483, F.S.;
- Medical physicists, under the DOH as provided under part II of ch. 483, F.S.;
- Genetic Counselors, under the DOH as provided under part III of ch. 483, F.S.;
- The Board of Opticianry, created under part I of ch. 484, F.S.;
- The Board of Hearing Aid Specialists, created under part II of ch. 484, F.S.;
- The Board of Physical Therapy Practice, created under ch. 486, F.S.;
- The Board of Psychology, under the Board of Psychology created under ch. 490, F.S.;
- School psychologists, under the Board of Psychology as provided under ch. 490, F.S.;
- The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, created under ch. 491, F.S.; and
- Emergency medical technicians and paramedics, under the DOH as provided under part III of ch. 401, F.S.

The DOH and the practitioner boards have different roles in the regulatory system. Boards establish practice standards by rule, pursuant to statutory authority and directives.²⁰ The DOH receives and investigates complaints about practitioners and prosecutes cases for disciplinary action against practitioners.

The DOH, on behalf of the professional boards, investigates complaints against practitioners.²¹ Once an investigation is complete, the DOH presents the investigatory findings to the boards. The DOH recommends a course of action to the appropriate board's probable cause panel which may include:²²

- Issuing an emergency order;
- Having the file reviewed by an expert;
- Issuing a closing order; or
- Filing an administrative complaint.

²⁰ The DOH also establishes these for some professions. *See infra* note 24.

²¹ Department of Health, *Investigative Services*, <http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/isu.html> (last visited Mar. 17, 2023).

²² Department of Health, *Prosecution Services*, <http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/psu.html> (last visited Mar. 17, 2023).

The boards determine the course of action and any disciplinary action to take against a practitioner under the respective practice act.²³ For professions for which there is no board, the DOH determines the action and discipline to take against a practitioner and issues the final orders.²⁴ The DOH is responsible for ensuring that licensees comply with the terms and penalties imposed by the boards.²⁵ If a case is appealed, the DOH attorneys defend the final actions of the boards before the appropriate appellate court.²⁶

The DOH and board rules apply to all statutory grounds for discipline against a practitioner. Under current law, the DOH has disciplinary authority for violations of a practice act only for practitioners that are not regulated by a board. The DOH does not have final disciplinary authority over practitioners for which there is a board.

Health Care Specialties and Florida Licensure

The DOH does not license health care practitioners by specialty or subspecialty. A health care practitioner's specialty area of practice is acquired through the practitioner acquiring additional education, training, or experience in a particular area of health care practice. Practitioners who have acquired additional education, training, or experience in a particular area may also elect to become board-certified in that specialty by private, national specialty boards, such as the American Board of Medical Specialties (ABMS), the Accreditation Board for Specialty Nursing Certification, and the American Board of Dental Specialties.²⁷ Board certification is not required to practice a medical or osteopathic specialty.

Health Care Practitioner Licensure - Federal Government and United States Military

The federal government does not license health care practitioners, nor does it regulate practitioner behavior in terms of scope of practice, standards of practice, or practitioner discipline. Instead, the federal government relies on state governments to fulfill those functions.

In addition to state licensure requirements, Medicare, Medicaid, and other government reimbursement programs²⁸ rely on the power of the purse to manage practitioners and facilities providing health care services to persons enrolled in such programs. These programs impose “conditions of participation” and “conditions of payment,” which essentially mandate compliance with specified standards. Certification under a federal health care program is an authorization to participate in government payment systems; it is distinct from state licensure or accreditation by a nationally-recognized board.²⁹

²³ Section 456.072(2), F.S.

²⁴ Professions which do not have a board include naturopathy, nursing assistants, midwifery, respiratory therapy, dietetics and nutrition, electrolysis, medical physicists, genetic counselors, and school psychologists.

²⁵ *Supra* note 22.

²⁶ *Id.*

²⁷ Examples of specialties include dermatology, emergency medicine, ophthalmology, pediatric medicine, certified registered nurse anesthetist, clinical nurse specialist, cardiac nurse, nurse practitioner, endodontics, orthodontics, and pediatric dentistry.

²⁸ Programs such as the federal workers' compensation program for longshoremen and harbor workers found under 20 CFR Subchapter A, available at: <https://www.law.cornell.edu/cfr/text/20/chapter-VI/subchapter-A> (last visited Mar. 17, 2023).

²⁹ The Healthcare Law Review: USA, *Spotlight: The Regulation of Healthcare Providers and Professionals in the USA*, Sept. 7, 2020, available at: <https://www.lexology.com/library/detail.aspx?g=c3c193d0-753e-4244-914a-fd943e70ec8e> (last visited Mar. 17, 2023).

For example, under federal labor law, the definition of “health care provider” includes, in part, a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices, and others capable of providing health care services, including podiatrists, dentists, clinical psychologists, optometrists, chiropractors, nurse practitioners, nurse midwives, clinical social workers, and physician assistants who are authorized to practice in the state and performing within the scope of their practice as defined under state law.³⁰

Another example found in federal law is the workers’ compensation program for longshoremen and harbor workers.³¹ Under this federal program, for the purpose of establishing who may be paid for providing health care services to patients in the program, the term “physician” includes doctors of medicine, surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice, as defined by state law.³²

Some provisions of federal law distinguish between “physicians” and other practitioners who are included in the “physician” payment provisions above. For example, federal Medicaid law requires that state Medicaid programs “must provide for payment of optometric services as physician services, whether furnished by an optometrist or a physician,” thereby differentiating between optometrists and physicians instead of classifying them jointly.³³

These federal laws do not license or regulate such practitioners in the manner state regulatory laws and practice acts do, and do not define practitioner credentials or scopes of practice outside the applicable state law.

United States Armed Forces Career Fields

The U.S. Armed Forces consists of six military branches: Air Force, Army, Coast Guard, Marine Corps, Navy, and Space Force. The secretary of the U.S. Department of Defense controls each branch, except the Coast Guard, which is under the Department of Homeland Security (DHS). With more than two million civilian and military employees, the U.S. Department of Defense is the world’s largest employer.³⁴

Joining the U.S. Armed Forces as an enlisted member or an officer has a significant impact on the type of experience and training a new recruit receives. All jobs for enlisted members require a high school diploma, although, with certain exceptions, a passing General Education Development (GED) test score is acceptable. While jobs for enlisted members include infantry roles, most jobs involve hands-on training for mechanical, transportation, human service, or office fields that transfer to the civilian world.

³⁰ See 29 CFR s. 825.125, defining the term “health care provider” in the context of the Family and Medical Leave Act of 1993, as amended.

³¹ *Supra* note 28.

³² See 20 CFR s. 702.404.

³³ See 42 CFR s. 441.30.

³⁴ Military.com, *What Are the Branches of the US Military?* at <https://www.military.com/join-armed-forces/us-military-branches-overview.html> (last visited Mar. 17, 2023).

Almost all officer positions require a four-year college degree or equivalent. Officers are the managers of the military, acting in leadership roles that require planning, directing operations, and making critical decisions. Officer positions also include careers that require advanced degrees, such as law and medicine.³⁵

The careers available to members of the U.S. Armed Forces are extensive, and depending on the service branch, have been referred to as career management fields (CMF), occupational management fields (OMF), and military occupational specialties (MOS).³⁶

Portability of Professional Licenses Held by Servicemembers; Interstate License Compacts

The federal Veterans Auto and Education Improvement Act of 2022,³⁷ (the federal portability act) which became law on January 5, 2023, addresses the portability of professional licenses held by members of the U.S. Armed Forces (service members) and their spouses, when they move outside the jurisdiction that issued the license due to military orders for military service, under specified circumstances.

Portability is available only for a professional license or certificate in good standing with the issuing licensing authority which has been actively used by the servicemember or spouse during the two years immediately preceding the relocation (covered licenses), and licenses to practice law are expressly not covered.

Under the act, a covered license must be considered valid at a similar scope of practice and in the discipline applied for in the jurisdiction of such new residency for the duration of such military orders if such servicemember or spouse:

- Provides a copy of military orders to the licensing authority in the new jurisdiction;
- Remains in good standing with:
 - The licensing authority that issued the covered license; and
 - Every other licensing authority that has issued to the servicemember or spouse a license with a similar scope of practice and in the discipline applied in the new jurisdiction; and
- Submits to the authority of the licensing authority in the new jurisdiction for the purposes of standards of practice, discipline, and fulfillment of any continuing education requirements.

If the license of a servicemember or spouse is covered by an interstate licensure compact, use of the license is governed by the interstate compact or applicable state law, and the above portability provisions do not apply.

³⁵ Today's Military, *Enlisted and Officer Paths*, at <https://www.todaysmilitary.com/ways-to-serve/enlisted-officer-paths> (last visited Mar. 17, 2023).

³⁶ See e.g., listed careers for the Air Force, Army, Marines, and Navy, respectively, at <https://www.airforce.com/careers>; https://en.wikipedia.org/wiki/List_of_United_States_Army_careers; <https://www.marines.com/about-the-marine-corps/roles/military-occupational-specialty.html>; and <https://www.navy.com/node/3512> (all last visited Mar. 17, 2023).

³⁷ See s. 19, Pub. Law No. 117-333, H.R. 7939, 117th Cong. (Jan. 5, 2023) at <https://www.congress.gov/bill/117th-congress/house-bill/7939/text> (last visited Mar. 17, 2023), which amended the Servicemembers Civil Relief Act (SCRA), 42 U.S.C. 4021 *et seq.* by adding Section 705A. The amendment also expands the right to terminate certain types of service contracts and clarifies options for tax residence for a servicemember and his or her spouse.

Occupational Licensing Trends

According to the National Conference of State Legislatures (NCSL), “occupational licensing remains a growing area of interest for states, stemming largely from tight labor markets and the race to recruit workers for the large number of job openings nationwide. In 2022, the focus has largely been on improving the accessibility of licensing in order to bolster the workforce and integrate new employees.”³⁸ The NCSL identified four trends: worker mobility; universal licensure recognition; reducing barriers for veterans and military spouses; and simplifying or eliminating licensing.³⁹

Emergency Powers

During a declared state of emergency, in addition to any other powers conferred upon the Governor by law, the Governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of any state agency, if strict compliance with the provisions of any such statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency.⁴⁰

III. Effect of Proposed Changes:

CS/CS/SB 1364 requires Florida licensing boards that regulate a lawful occupation and issue occupational licenses or government certifications to individuals under ch. 455, F.S., relating to the regulation of professions by the Department of Business and Professional Regulation (DBPR) and ch. 456, F.S., relating to the regulation of professions by the Department of Health (DOH), to issue an occupational license or government certification (universal license) to an eligible person, under certain circumstances (universal licensing requirement).

The professions and occupations affected by the universal licensing requirement in the bill are subject to the general regulatory authority of the DBPR and the DOH.

The bill creates s. 455.2135, F.S., and provides that the section may be cited as the “Interstate-Mobility and Universal-Recognition Occupational Licensing Act” (act). The following terms are defined in the act:

- “Board” means an agency, board, department, or another governmental entity that regulates a lawful occupation under ch. 455, F.S., or ch. 456, F.S., and issues an occupational license or government certification (universal license) to an applicant, under certain circumstances (universal licensing requirement), except those boards that regulate an occupation that is excepted from the act.
- “Government certification” means a voluntary, government-granted, and nontransferable recognition granted to an individual who meets personal qualifications related to a lawful occupation, including a military certification.

³⁸ See NCSL 2022 Occupational Licensing Trends Summary, <https://www.ncsl.org/labor-and-employment/2022-occupational-licensing-trends> (last visited Mar. 17, 2023).

³⁹ *Id.*

⁴⁰ Section 252.36(6), F.S.

- “Lawful occupation” means a course of conduct, pursuit, or profession⁴¹ that includes the lawful sale of goods or services regardless of whether the individual selling them is subject to an occupational license.
- “Military” means the Armed Forces of the United States, including the Air Force, Army, Coast Guard, Marine Corps, Navy, Space Force, National Guard, and all reserve components and auxiliaries, including the military reserves and militia of any United States territory or state.
- “Occupational license”⁴² means a nontransferable authorization in law for an individual to perform a lawful occupation based on meeting personal qualifications, including a military occupational specialty.
- “Other licensing entity” or “another licensing entity” means any United States territory, state other than this state, recognized private certification organization, or recognized international organization that issues occupational licenses or government certifications for a lawful occupation with a similar scope of practice to a lawful occupation in this state, including the military.
- “Recognized private certification” means a voluntary program in which a recognized private organization or recognized international organization grants nontransferable recognition to an individual who meets personal qualifications and standards relevant to performing an occupation, as determined by the DBPR or the DOH, as applicable.
- “Scope of practice” means the procedures, actions, processes, and work that an individual may perform under an occupational license or government certification issued in Florida.

Universal Licensing if Licensed by Another Licensing Entity; License Requirements

Under the bill, notwithstanding any other law, a board must issue a universal license to an applicant licensed by another licensing entity, if all of the following apply (the universal license requirements):

- The applicant holds a current and valid occupational license or government certification issued by another licensing entity in a lawful occupation with a similar scope of practice, as determined by a Florida board.
- The applicant has held the occupational license or government certification issued by another licensing entity for at least one year.
- A board for the other licensing entity required the applicant to meet at least two of the following three requirements:
 - Pass an examination.
 - Meet specified education or training standards.
 - Meet specified experience standards.
- A board for the other licensing entity holds the applicant in good standing.
- The applicant does not have a criminal record or professional disciplinary action in any jurisdiction that would disqualify the applicant from licensure in Florida, as determined by

⁴¹ Section 455.01(6), F.S., defines the term “profession” to include any activity, occupation, profession, or vocation regulated by the DBPR in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation, and s. 456.001(6), F.S., defines the term “profession” to include any occupation regulated by the DOH in the MQA.

⁴² The term “license” is defined in ch. 120, F.S., Florida’s Administrative Procedure Act as “a franchise, permit, certification, registration, charter, or similar form of authorization required by law, but it does not include a license required primarily for revenue purposes when issuance of the license is merely a ministerial act.” See s. 120.52, F.S.

the appropriate board; and for health professions, the applicant has met the general background screening requirements under s. 456.0135, F.S., if applicable.

- A board in Florida or a board for another licensing entity has not revoked the applicant's occupational license or government certification.
- The applicant did not surrender an occupational license or government certification, or have such license or certification revoked, because of negligence or intentional misconduct related to the applicant's work in the occupation in another state or in the military.
- The applicant does not have a complaint, allegation, or investigation formally pending before a board for another licensing entity which relates to unprofessional conduct or an alleged crime; while such a matter is pending, a board may not issue or deny a universal license to the applicant until the complaint, allegation, or investigation is resolved or the applicant otherwise meets the criteria for a universal license in Florida to the satisfaction of a Florida board.
- The applicant pays all applicable fees in Florida.

If another licensing entity issued the applicant a government certification, but Florida requires an occupational license to work, a board must issue an occupational license to the applicant if the applicant otherwise satisfies the universal license requirements described above.

Universal Licensing Based on Work Experience in Another State or the Military

Under the bill, notwithstanding any other law, a board must issue a universal license to an applicant based on work experience outside of Florida or in the military, if all of the following apply:

- The applicant worked in a state that does not issue an occupational license or government certification to regulate a lawful occupation or was a member of the military, but an occupational license or government certification is required in Florida for an occupation with a similar scope of practice, as determined by the board.
- The applicant worked for at least three years in the lawful occupation.
- The applicant does not have a criminal record or professional disciplinary action in any jurisdiction that would disqualify the applicant from licensure in Florida, as determined by the appropriate board; and for health professions, the applicant has met the general background screening requirements under s. 456.0135, F.S., if applicable.
- A board in Florida or a board for another licensing entity has not revoked the applicant's occupational license or government certification.
- The applicant did not surrender an occupational license or government certification, or have such license or certification revoked, because of negligence or intentional misconduct related to the applicant's work in the occupation outside of Florida or in the military.
- The applicant does not have a complaint, allegation, or investigation pending before a board for another licensing entity which relates to unprofessional conduct or an alleged crime; while such a matter is pending, a board may not issue or deny a universal license to the applicant until the complaint, allegation, or investigation is resolved or the applicant otherwise meets the criteria for a universal license in Florida to the satisfaction of a Florida board.
- The applicant pays all applicable fees in Florida.

Universal Licensing Based on Recognized Private Certification with Work Experience in a Non-licensing State or the Military

Under the bill, notwithstanding any other law, and subject to the additional requirements listed in subsection (6) of the bill and described below, a board must issue a universal license to an applicant based on the applicant holding a recognized private certification and having work experience outside of Florida or in the military, if all of the following apply:

- The applicant holds a recognized private certification and worked in a state that does not issue an occupational license or government certification to regulate a lawful occupation or was a member of the military, but Florida issues an occupational license or government certification to regulate a lawful occupation with a similar scope of practice, as determined by the board.
- The applicant worked for at least two years in the lawful occupation.
- The applicant holds a current and valid private certification in the lawful occupation.
- The recognized private certification organization holds the applicant in good standing.
- The applicant does not have a criminal record or professional disciplinary action in any jurisdiction that would disqualify the applicant from licensure in Florida, as determined by the appropriate board; and for health professions, the applicant has met the general background screening requirements under s. 456.0135, F.S., if applicable.
- A board in Florida or a board for another licensing entity has not revoked the applicant's occupational license or government certification.
- The applicant did not surrender an occupational license or government certification, or have such license or certification revoked, because of negligence or intentional misconduct related to the applicant's work in the occupation outside of Florida or in the military.
- The applicant does not have a complaint, allegation, or investigation pending before a board for another licensing entity which relates to unprofessional conduct or an alleged crime; while such a matter is pending, a board may not issue or deny a universal license to the applicant until the complaint, allegation, or investigation is resolved or the applicant otherwise meets the criteria for a universal license in Florida to the satisfaction of a Florida board.
- The applicant pays all applicable fees in Florida.

Additional Requirements for Issuance of Universal Licenses in Florida; Exceptions***Examinations on Florida Law***

Under the bill, a board may require an applicant to pass an examination specific to relevant Florida laws that regulate the occupation, if an occupational license or government certification under ch. 455, F.S., relating to the regulation of professions by the DBPR or ch. 456, F.S., relating to the regulation of professions by the DOH, requires such examination.

The bill provides that a board, in addition to the above examination, must require an applicant seeking to be licensed as a general contractor, building contractor, residential contractor, roofing contractor, specialty structure contractor, or glass and glazing contractor to:

- Successfully complete the examination for licensure described in s. 489.113(1), F.S.; and
- Before being issued a certificate or registration, successfully complete the following continuing education courses, either in person or online:

- The number of required hours, as determined by the Construction Industry Licensing Board, relating to laws and rules related to the construction industry in ch. 455, F.S., and part 1 of ch. 489, F.S., and the rules of the Construction Industry Licensing Board, and relating to wind mitigation methodology and techniques incorporated in the Florida Building Code; and
- For applicants seeking to be licensed as a general contractor, building contractor, residential contractor, or roofing contractor, a two-hour course on the Florida Building Code which includes information on wind mitigation techniques.

Under the bill, and notwithstanding any of these additional licensing requirements, a board for an occupation regulated under ch. 458 F.S., (Medical Practice), ch. 459, F.S., (Osteopathic Medicine), or ch. 461, F.S., (Podiatric Medicine) must require an applicant to meet certain licensure requirements in current law⁴³ before issuing an occupational license or a government certification to practice medicine, osteopathic medicine, or podiatric medicine.

Presumption of Qualification; Time Frame for Board Action; Appeal

Under the bill, unless a board can demonstrate a substantial difference between licensure or certification requirements of another licensing entity and those in Florida, there is a presumption that an applicant who holds a valid occupational license, government certification, or private certification, or otherwise meets the requirements to be issued an occupational license for a lawful occupation, and is in good standing in another state is qualified for an occupational license or government certification in Florida and must be approved by the board.

The bill requires a board to provide an applicant with a written decision on the application within 90 days after receipt of a complete application. The applicant may appeal to the Division of Administrative Hearings any of the board's determinations relating to the issuance of a license pursuant to s. 455.2135, F.S., as created by the bill, including:

- Denial of an occupational license or government certification;
- Determination of the validity of an occupational license or government certification;
- Determination of the similarity of the scope of practice of the occupational license or government certification held by the applicant; or
- Determination of a disqualifying criminal record.

Jurisdiction; Exceptions; Construction

An applicant who obtains an occupational license or a government certification pursuant to s. 455.2135, F.S., is subject to Florida laws regulating the occupation and the jurisdiction of the applicable Florida board.

Section 455.2135, F.S., does not apply to an occupation regulated by the Florida Supreme Court or any occupation regulated under ch. 473, F.S. (certified public accountants).

Under the bill, an occupational license or a government certification issued pursuant to s. 455.2135, F.S., is valid only in Florida, and such license or certification does not make the

⁴³ See the requirements in ss. 458.313, 459.0055, and 461.006, F.S., applicable to the practice of medicine, osteopathic medicine, and podiatric medicine, respectively.

individual eligible to work outside this state under an interstate compact or a reciprocity agreement unless otherwise provided in law.

The act may not be construed to:

- Prohibit an individual from applying for an occupational license or a government certification under another law or rule.
- Prevent the State of Florida from entering into a licensing compact or reciprocity agreement with another state, United States territory, foreign province, foreign country, international organization, or other entity.
- Prevent boards in the State of Florida from recognizing occupational licenses or governmental certifications issued by a private certification organization, foreign province, foreign country, international organization, or other entity.
- Require a private certification organization to grant or deny private certification to any individual.

Governor's Licensing Authority During State of Emergency

The bill provides that, during a state of emergency declared by the Governor,⁴⁴ the Governor may:

- Order the recognition of occupational licenses from other licensing entities;
- Expand any occupational license's scope of practice; and
- Authorize licensees to provide services in Florida in person, telephonically, or by other means for the duration of the emergency.

Annual Report

The bill requires each board to submit an annual report to the President of the Senate and the Speaker of the House of Representatives by December 31 of each year, detailing the number of licenses or certifications issued pursuant to s. 455.2135, F.S., the number of submitted applications that were denied, and the reason for each denial.

Rulemaking

The bill requires the DBPR and the DOH, for the boards under their respective jurisdiction, to adopt rules to administer the act. Each board must adopt rules for determining whether a scope of practice is similar to the scope of practice of a lawful occupation regulated by a board in Florida.

Veterans Online Portal

Contingent upon the appropriation of funds by the Legislature, the Department of Veterans' Affairs must establish a one-stop online portal system that allows former and present members of the military and their dependents to enter and verify their military credentials, government certifications, occupational licenses, or recognized private certifications. The DBPR and the

⁴⁴ See ss. 252.31-252.60, F.S., known as the "State Emergency Management Act, and s. 252.36, F.S., relating to emergency management powers of the Governor.

DOH must, for the boards under their respective jurisdiction, use this system to verify credentials for applicants.

Health Professions; Notice to Applicants and Boards

The bill creates s. 456.0365, F.S., noting the applicability of the act to professions regulated by the DOH.

Effective Date

The bill is effective July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Individuals seeking to work in the state may be eligible under the additional pathways created by the bill to obtain a license to work in specified occupations and professions in Florida.

C. Government Sector Impact:

CS/CS/SB 1364 appears to impact state government due to the additional pathways created by the bill for eligible individuals to obtain a license to work in specified occupations and professions in Florida.

Specifically, this bill will have a significant negative fiscal impact to the Department of Business and Professional Regulation (DBPR) and the Department of Health (DOH). CS/CS/SB 1366 is linked to this bill and authorizes licensing boards to charge a fee to applicants for an occupational license or government certification, in order to recoup a board's costs, not to exceed \$100 for each application. There will be up-front costs associated with implementing the bill; however, in future years, fees may offset costs incurred by the DBPR and the DOH.

The DBPR indicates in its analysis⁴⁵ that the fiscal impact on revenues and expenditures is indeterminate, as the number of individuals who will apply for licensure under the provisions of the bill is unknown. However, the DBPR estimates it will incur additional expenses related to the number of full-time employees (FTE) required to handle the workload needed to implement the bill. The DBPR estimates it will need 43 additional staff and associated costs of \$4,656,085 for Fiscal Year 2023-2024.⁴⁶

The DOH estimates it will need \$2.5 million in additional resources including 13 FTE positions for increased workload to process applicants, handle complaints, investigations, and prosecutions, gather information and produce annual reports, increased board meeting costs, contracted service costs for processing of initial applications and related fees, costs for queries to the National Practitioner Data Bank, and to contract for development and administration of required exams.⁴⁷ The estimated cost includes:

- Salary and Benefits - \$1,132,663/Recurring;
- Salary Rate – 795,118;
- Expense - \$431,552/Recurring and \$62,907/Non-Recurring;
- OPS - \$18,400;
- Contracted Services - \$640,756/Recurring and \$222,480/Non-Recurring; and
- Human Resources - \$4,442/Recurring.

In reviewing the authority related to occupational licensing granted to the Governor during a state of emergency, the Division of Emergency Management has indicated that there is no fiscal impact.⁴⁸

⁴⁵ See Department of Business and Professional Regulation, *2023 Agency Legislative Bill Analysis for CS/SB 1364* at 6 (Mar. 21, 2023, received by the Regulated Industries Committee on Apr. 3, 2023) (on file with the Senate Appropriations Committee on Agriculture, Environment and General Government).

⁴⁶ *Id.* at 13.

⁴⁷ See Department of Health, *2023 Agency Legislative Bill Analysis for SB 1364* at 21 (Mar. 8, 2023, received by the Regulated Industries Committee on Mar. 21, 2023) (on file with the Senate Committee on Regulated Industries).

⁴⁸ See Division of Emergency Management, *2023 Agency Legislative Bill Analysis for SB 1364* at 3 (Mar. 13, 2023) (on file with the Senate Committee on Regulated Industries).

According to the Division of Administrative Hearings, the potential additional workload can be handled within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Division of Professions in the DBPR notes the following concerns about the bill's impact on operational issues:

[The bill states] that a board may not issue or deny an occupational license/government certification to any person with a pending complaint, allegation, or investigation until such matter is resolved. This conflicts with Section 455.213(4), F.S., which authorizes denial of an initial license to any applicant who is under investigation or prosecution in any jurisdiction for an action that would constitute a violation of this chapter or the respective professional practice acts, until such time as the investigation is complete. Additionally, it is unclear if the provisions of Section 120.60(1), [F.S.] that deem an application approved for failure to issue a decision within 90 days of a complete application would still apply when an agency is prohibited from denying or issuing a license while the applicant has pending complaints, allegations, or investigations.

It is unclear if the presumption of approval [in] the bill places the burden on the department or applicable board to affirmatively obtain evidence that the applicant is not qualified for licensure. If an applicant refuses or otherwise fails to submit proof of meeting the requirements set out in the bill, is the department or applicable board required to obtain such evidence such as another licensing entity's laws or rules to illustrate a substantial difference in requirements before denying licensure?

It is unclear whether [the bill provides] applicants a separate point of entry from what is already provided in Chapter 120, Florida Statutes, including a possible direct appeal to DOAH regardless of whether there is a dispute of material fact. All applications for licensure under the department are already subject to the provisions of Chapter 120, Florida Statutes, relating to time requirements for processing and granting/denying applications for licensure (90 days), and points of entry to appeal such decisions, including requesting for formal hearings before DOAH.

[The annual reports] to be provided by each board require that the number of applications that were denied, including the reasons for denial, be included in the annual report. It is unclear if this requires a line item of each application and the reason for denial, which could become expansive depending on the number of applications that are received and denied. It is

not possible to estimate how many applications will be received under the provisions of this bill.

The professional practice acts for most of the occupations/professions that would be impacted by this bill already contain one or more endorsement methods specific to that occupation/profession. The endorsement provisions in this bill would apply to all professions regardless of how its requirements compare to the endorsement requirements of each of the professional practice acts. The impact to the health, safety, and welfare of Florida citizens cannot be determined as the licensure or certification requirements of other states or private organizations may be substantially different from Florida's requirements.

Certain professions have additional requirements other than completing Florida-specific exams, such as completing Florida-specific courses and demonstrating financial responsibility, or providing proof of compliance with insurance or bonding requirements. These requirements also apply to individuals applying via endorsement, but individuals applying under the provisions of this bill would not be required to fulfill such requirements.

The bill's effective date of July 1, 2023, will not allow sufficient time for rulemaking to implement the provisions of the bill, including developing new fees and applications.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 455.2135 and 456.0365.

IX. Additional Information:

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

CS/CS by Appropriations Committee on Agriculture, Environment, and General Government on April 18, 2023:

The committee substitute:

- Removes licensing entities in foreign provinces and foreign countries from the operation of the act;
- Adds the qualifier “recognized” to the terms “private certification organization” and “international organization” in the bill, with such recognition determined by the Department of Business and Professional Regulation (DBPR) and the Department of Health (DOH);
- Provides that boards licensing applicants in a similar occupation outside Florida require applicants meet two of these three requirements: (1) passing an examination; (2) meeting specified education or training standards; (3) meeting specified experience standards;
- Revises the requirement that an applicant not have a criminal record that would be disqualifying in Florida, as determined by the applicable board;

- Requires applicants in certain health professions to meet background screening requirements in current law.
- Adds to the minimum requirements for issuance of a license, that a Florida board must not have revoked the applicant's license for any reason;
- Provides that notwithstanding any other provision in the act, before issuing a license to practice medicine, osteopathic medicine, or podiatric medicine, the applicable licensing board must require applicants to meet certain licensure requirements in current law;
- Adds a requirement that each board adopt rules to determine whether a scope of practice for an occupation is similar to a scope of practice regulated by that board in Florida;
- Creates a Veterans Online Portal contingent upon the appropriation of funds by the Legislature, and requires (1) the Department of Veterans' Affairs to establish a one-stop online portal system allowing former and present members of the military and their dependents to verify military credentials, government certifications, occupational licenses, or recognized private certifications; and (2) all DBPR and DOH licensing boards to use the Portal to verify credentials for such applicants; and
- Includes technical drafting changes and conforming changes.

CS by Regulated Industries Committee on March 21, 2023:

The CS:

- Clarifies definitions and revises other language in the bill for consistency;
- Identifies more specifically those individuals who are not covered by the universal licensing requirement created by the bill;
- Revises the definition of "other licensing entity" to specify all the jurisdictions and entities outside the state that may have issued an occupational license or government certification;
- Requires certain contractor applicants for a universal license to successfully complete continuing education courses on the rules and laws related to the construction industry, and on wind mitigation methodology.
- Requires the DBPR and the DOH to adopt rules to implement the act;
- Provides notice of the applicability of the act to the health professions regulated in ch. 456, F.S.; and
- Includes technical drafting changes and conforming changes.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2023	.	
	.	
	.	
	.	

The Appropriations Committee on Agriculture, Environment, and General Government (Collins) recommended the following:

Senate Amendment (with title amendment)

Delete lines 67 - 255
and insert:
recognized private certification organization, or recognized
international organization that issues occupational licenses or
government certifications for a lawful occupation with a similar
scope of practice to a lawful occupation in this state. The term
includes the military.

(g) "Recognized private certification" means a voluntary



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program in which a recognized private organization or recognized international organization grants nontransferable recognition to an individual who meets personal qualifications and standards relevant to performing an occupation, as determined by the Department of Business and Professional Regulation or the Department of Health, as applicable.

(h) "Scope of practice" means the procedures, actions, processes, and work that an individual may perform under an occupational license or a government certification issued in this state.

(3) OCCUPATIONAL LICENSE OR GOVERNMENT CERTIFICATION.—

(a) Notwithstanding any other law, a board must issue an occupational license or a government certification to an applicant for such license or certification if all of the following apply:

1. The applicant holds a current and valid occupational license or government certification issued by another licensing entity in a lawful occupation with a similar scope of practice, as determined by a board in this state.

2. The applicant has held the occupational license or government certification issued by another licensing entity for at least 1 year.

3. A board for the other licensing entity required the applicant to meet at least two of the following three requirements:

a. Pass an examination.

b. Meet specified education or training standards.

c. Meet specified experience standards.

4. A board for the other licensing entity holds the



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applicant in good standing.

5. The applicant does not have a criminal record or professional disciplinary action in any jurisdiction that would disqualify the applicant from licensure in this state, as determined by the appropriate board; and the applicant has met the general background screening requirements under s. 456.0135, if applicable.

6. A board in this state or a board for another licensing entity has not revoked the applicant's occupational license or government certification.

7. The applicant did not surrender an occupational license or a government certification, or have such license or certification revoked, because of negligence or intentional misconduct related to the applicant's work in the occupation outside of this state or in the military.

8. The applicant does not have a complaint, an allegation, or an investigation formally pending before a board for another licensing entity which relates to unprofessional conduct or an alleged crime. If the applicant has such a complaint, allegation, or investigation pending, a board may not issue or deny an occupational license or a government certification to the applicant until the complaint, allegation, or investigation is resolved or the applicant otherwise meets the criteria for an occupational license or a government certification in this state to the satisfaction of a board in this state.

9. The applicant pays all applicable fees in this state.

(b) If another licensing entity issued the applicant a government certification but an occupational license is required in this state to perform a lawful occupation, the applicable



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board must issue an occupational license to the applicant if the applicant otherwise satisfies paragraph (a).

(4) WORK EXPERIENCE.—Notwithstanding any other law, a board must issue an occupational license or a government certification to an applicant for such license or certification based on work experience outside of this state or in the military if all of the following apply:

(a) The applicant worked in a state that does not issue an occupational license or a government certification to regulate a lawful occupation or was a member of the military, but this state issues an occupational license or a government certification to regulate a lawful occupation with a similar scope of practice, as determined by the board.

(b) The applicant worked for at least 3 years in the lawful occupation.

(c) The applicant satisfies subparagraphs (3) (a) 5.-9.

(5) RECOGNIZED PRIVATE CERTIFICATION.—Notwithstanding any other law, except as provided in subsection (6), a board must issue an occupational license or a government certification to an applicant for such license or certification based on the applicant holding a recognized private certification and the applicant's work experience outside of this state or in the military if all of the following apply:

(a) The applicant holds a recognized private certification and worked in a state that does not issue an occupational license or a government certification to regulate a lawful occupation or was a member of the military, but an occupational license is required in this state for such lawful occupation, as determined by the board.



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(b) The applicant worked for at least 2 years in the lawful occupation.

(c) The applicant holds a current and valid private certification in the lawful occupation.

(d) The recognized private certification organization holds the applicant in good standing.

(e) The applicant satisfies subparagraphs (3) (a) 5.-9.

(6) ADDITIONAL REQUIREMENTS.—

(a) A board may require an applicant to pass an examination specific to relevant state laws that regulate the occupation if an occupational license or a government certification under this chapter or chapter 456 requires such examination.

(b) In addition to the examination described in paragraph (a), a board must require an applicant seeking to be licensed as a general contractor, building contractor, residential contractor, roofing contractor, specialty structure contractor, or glass and glazing contractor to:

1. Successfully complete the examination for licensure described in s. 489.113(1); and

2. Before being issued a certificate or registration, successfully complete the following continuing education courses, either in person or online:

a. The number of required hours, as determined by the Construction Industry Licensing Board, relating to laws and rules related to the construction industry in chapter 455 and part 1 of chapter 489 and the rules of the Construction Industry Licensing Board, and relating to wind mitigation methodology and techniques incorporated in the Florida Building Code; and

b. For applicants seeking to be licensed as a general



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contractor, building contractor, residential contractor, or
roofing contractor, a 2-hour course on the Florida Building Code
which includes information on wind mitigation techniques.

(c) Notwithstanding any other provision in this section, a
board for an occupation regulated under chapter 458, chapter
459, or chapter 461 shall require an applicant to meet the
requirements of s. 458.313, s. 459.0055, or s. 461.006, as
applicable, before issuing an occupational license or a
government certification to practice medicine, osteopathic
medicine, or podiatric medicine.

(7) PRESUMPTION OF APPROVAL; DECISION.—Unless a board can
demonstrate a substantial difference between the licensure or
certification requirements of another licensing entity and this
state, there is a presumption that an applicant who holds a
valid occupational license, government certification, or private
certification, or otherwise meets the requirements to be issued
an occupational license for a lawful occupation, and is in good
standing with another licensing entity is qualified for an
occupational license or a government certification in this state
and must be approved by the board. A board shall provide an
applicant with a written decision regarding his or her
application within 90 days after receipt of a completed
application.

(8) APPEAL.—

(a) The applicant may appeal the board's decision to the
Division of Administrative Hearings.

(b) The applicant may appeal the board's:

1. Denial of an occupational license or a government
certification;



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2. Determination of the validity of an occupational license or a government certification;

3. Determination of the similarity of the scope of practice of the occupational license or government certification held by the applicant; or

4. Determination of a disqualifying criminal record.

(9) STATE LAWS AND JURISDICTION.—An applicant who obtains an occupational license or a government certification pursuant to this section is subject to:

(a) The laws regulating the occupation in this state; and

(b) The jurisdiction of the applicable board in this state.

(10) EXCEPTION.—This section does not apply to an occupation regulated by the Florida Supreme Court or any occupation regulated under chapter 473, relating to public accountancy.

(11) CONSTRUCTION.—

(a) This section may not be construed to prohibit an individual from applying for an occupational license or a government certification under another law or rule.

(b) An occupational license or a government certification issued pursuant to this section is valid only in this state. Such license or certification does not make the individual eligible to work outside this state under an interstate compact or a reciprocity agreement unless otherwise provided in law.

(c) This section may not be construed to prevent this state from entering into a licensing compact or reciprocity agreement with another state, United States territory, foreign province, foreign country, international organization, or other entity.

(d) This section may not be construed to prevent boards in



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this state from recognizing occupational licenses or government
certifications issued by a private certification organization,
foreign province, foreign country, international organization,
or other entity.

(e) This section may not be construed to require a private
certification organization to grant or deny private
certification to any individual.

(12) EMERGENCY POWERS.—

(a) During a state of emergency declared by the Governor,
the Governor may order the recognition of occupational licenses
from other licensing entities.

(b) The Governor may expand any occupational license's
scope of practice and may authorize licensees to provide
services in this state in person, telephonically, or by other
means for the duration of the emergency.

(13) ANNUAL REPORT.—Each board shall submit an annual
report to the President of the Senate and the Speaker of the
House of Representatives by December 31 of each year, detailing
the number of licenses or certifications issued pursuant to this
section, the number of completed applications submitted pursuant
to this section which were denied, and the reason for each
denial.

(14) RULEMAKING.—

(a) The Department of Business and Professional Regulation
and the Department of Health shall, for the boards under their
respective jurisdiction, adopt rules to administer this section.

(b) Each board shall adopt rules for determining whether a
scope of practice is similar to the scope of practice of a
lawful occupation regulated by the board in this state.



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(15) VETERANS ONLINE PORTAL.—Contingent upon the appropriation of funds for that purpose by the Legislature, the Department of Veterans' Affairs shall establish a one-stop online portal system that allows former and present members of the military and their dependents to enter and verify their military credentials, government certifications, occupational licenses, or recognized private certifications. The Department of Business and Professional Regulation and the Department of Health shall, for the boards under their respective jurisdiction, use this system to verify credentials for applicants under this section.

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

And the title is amended as follows:

Delete lines 12 - 28

and insert:

to meet specified additional requirements; providing a presumption that the applications of certain individuals will be approved; requiring licensing entities to provide a written decision to an applicant within a specified timeframe; authorizing an applicant to appeal a decision made under the act; specifying that an applicant licensed or certified under the act is still subject to specified laws and entities; providing exceptions; providing construction; authorizing the Governor to take certain actions relating to occupational licenses during declared states of emergency; requiring licensing entities to submit an annual report to the Legislature by a



749536

243 specified date; requiring boards, the Department of
244 Business and Professional Regulation, and the
245 Department of Health to adopt rules; requiring the
246 Department of Veterans' Affairs, contingent upon an
247 appropriation, to establish a specified online portal
248 relating to veterans' occupational licenses and
249 government certifications; requiring the Department of
250 Business and Professional Regulation and the
251 Department of Health to use such portal to verify
252 credentials; creating s. 456.0365, F.S.; providing

By the Committee on Regulated Industries; and Senators Collins, Burgess, and Calatayud

580-02865-23

20231364c1

1 A bill to be entitled
 2 An act relating to the Interstate-Mobility and
 3 Universal-Recognition Occupational Licensing Act;
 4 creating s. 455.2135, F.S.; providing a short title;
 5 defining terms; requiring certain agencies, boards,
 6 departments, and other governmental entities to issue
 7 an occupational license or a government certification
 8 to applicants under certain circumstances; authorizing
 9 such entities to require an applicant to pass a
 10 specified examination under certain circumstances;
 11 requiring such entities to require certain applicants
 12 to complete a specified examination and certain
 13 education requirements; providing a presumption that
 14 the applications of certain individuals will be
 15 approved; requiring licensing entities to provide a
 16 written decision to an applicant within a specified
 17 timeframe; authorizing an applicant to appeal a
 18 decision made under the act; specifying that an
 19 applicant licensed or certified under the act is still
 20 subject to specified laws and entities; providing
 21 exceptions; providing construction; authorizing the
 22 Governor to take certain actions relating to
 23 occupational licenses during declared states of
 24 emergency; requiring licensing entities to submit an
 25 annual report to the Legislature by a specified date;
 26 requiring the Department of Business and Professional
 27 Regulation and the Department of Health to adopt
 28 rules; creating s. 456.0365, F.S.; providing
 29 applicability; providing an effective date.

Page 1 of 10

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20231364c1

30
 31 Be It Enacted by the Legislature of the State of Florida:
 32
 33 Section 1. Section 455.2135, Florida Statutes, is created
 34 to read:
 35 455.2135 Interstate-Mobility and Universal-Recognition
 36 Occupational Licensing Act.—
 37 (1) SHORT TITLE.—This section may be cited as the
 38 "Interstate-Mobility and Universal-Recognition Occupational
 39 Licensing Act."
 40 (2) DEFINITIONS.—As used in this section, the term:
 41 (a) "Board" means an agency, a board, a department, or
 42 another governmental entity that regulates a lawful occupation
 43 under this chapter or chapter 456 and issues an occupational
 44 license or a government certification to an individual. The term
 45 does not include any board that regulates an occupation listed
 46 under subsection (10).
 47 (b) "Government certification" means a voluntary,
 48 government-granted, and nontransferable recognition granted to
 49 an individual who meets personal qualifications related to a
 50 lawful occupation. The term includes a military certification
 51 for a lawful occupation.
 52 (c) "Lawful occupation" means a course of conduct, pursuit,
 53 or profession that includes the lawful sale of goods or
 54 services, regardless of whether the individual selling them is
 55 subject to an occupational license.
 56 (d) "Military" means the Armed Forces of the United States,
 57 including the Air Force, Army, Coast Guard, Marine Corps, Navy,
 58 Space Force, National Guard, and all reserve components and

Page 2 of 10

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59 auxiliaries. The term also includes the military reserves and
 60 militia of any United States territory or state.

61 (e) "Occupational license" means a nontransferable
 62 authorization in law for an individual to perform a lawful
 63 occupation based on meeting personal qualifications. The term
 64 includes a military occupational specialty.

65 (f) "Other licensing entity" or "another licensing entity"
 66 means any United States territory, state other than this state,
 67 private certification organization, foreign province, foreign
 68 country, international organization, or other entity that issues
 69 occupational licenses or government certifications. The term
 70 includes the military.

71 (g) "Private certification" means a voluntary program in
 72 which a private organization grants nontransferable recognition
 73 to an individual who meets personal qualifications and standards
 74 relevant to performing the occupation, as determined by the
 75 private organization.

76 (h) "Scope of practice" means the procedures, actions,
 77 processes, and work that an individual may perform under an
 78 occupational license or a government certification issued in
 79 this state.

80 (3) OCCUPATIONAL LICENSE OR GOVERNMENT CERTIFICATION.—

81 (a) Notwithstanding any other law, a board must issue an
 82 occupational license or a government certification to an
 83 applicant for such license or certification if all of the
 84 following apply:

85 1. The applicant holds a current and valid occupational
 86 license or government certification issued by another licensing
 87 entity in a lawful occupation with a similar scope of practice,

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88 as determined by a board in this state.

89 2. The applicant has held the occupational license or
 90 government certification issued by another licensing entity for
 91 at least 1 year.

92 3. A board for the other licensing entity required the
 93 applicant to pass an examination or meet education, training, or
 94 experience standards.

95 4. A board for the other licensing entity holds the
 96 applicant in good standing.

97 5. The applicant does not have a disqualifying criminal
 98 record as determined by a board in this state.

99 6. A board for another licensing entity has not revoked the
 100 applicant's occupational license or government certification
 101 because of negligence or intentional misconduct related to the
 102 applicant's work in the occupation.

103 7. The applicant did not surrender an occupational license
 104 or a government certification, or have such license or
 105 certification revoked, because of negligence or intentional
 106 misconduct related to the applicant's work in the occupation
 107 outside of this state or in the military.

108 8. The applicant does not have a complaint, an allegation,
 109 or an investigation formally pending before a board for another
 110 licensing entity which relates to unprofessional conduct or an
 111 alleged crime. If the applicant has such a complaint,
 112 allegation, or investigation pending, a board may not issue or
 113 deny an occupational license or a government certification to
 114 the applicant until the complaint, allegation, or investigation
 115 is resolved or the applicant otherwise meets the criteria for an
 116 occupational license or a government certification in this state

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117 to the satisfaction of a board in this state.

118 9. The applicant pays all applicable fees in this state.

119 (b) If another licensing entity issued the applicant a
 120 government certification but an occupational license is required
 121 in this state to perform a lawful occupation, the applicable
 122 board must issue an occupational license to the applicant if the
 123 applicant otherwise satisfies paragraph (a).

124 (4) WORK EXPERIENCE.—Notwithstanding any other law, a board
 125 must issue an occupational license or a government certification
 126 to an applicant for such license or certification based on work
 127 experience outside of this state or in the military if all of
 128 the following apply:

129 (a) The applicant worked in a state that does not issue an
 130 occupational license or a government certification to regulate a
 131 lawful occupation or was a member of the military, but this
 132 state issues an occupational license or a government
 133 certification to regulate a lawful occupation with a similar
 134 scope of practice, as determined by the board.

135 (b) The applicant worked for at least 3 years in the lawful
 136 occupation.

137 (c) The applicant satisfies subparagraphs (3)(a)5.-9.

138 (5) PRIVATE CERTIFICATION.—Notwithstanding any other law, a
 139 board must issue an occupational license or a government
 140 certification to an applicant for such license or certification
 141 based on the applicant holding a private certification and the
 142 applicant's work experience outside of this state or in the
 143 military if all of the following apply:

144 (a) The applicant holds a private certification and worked
 145 in a state that does not issue an occupational license or a

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146 government certification to regulate a lawful occupation or was
 147 a member of the military, but an occupational license is
 148 required in this state for such lawful occupation, as determined
 149 by the board.

150 (b) The applicant worked for at least 2 years in the lawful
 151 occupation.

152 (c) The applicant holds a current and valid private
 153 certification in the lawful occupation.

154 (d) The private certification organization holds the
 155 applicant in good standing.

156 (e) The applicant satisfies subparagraphs (3)(a)5.-9.

157 (6) REQUIRED EXAMINATIONS AND EDUCATION.—

158 (a) A board may require an applicant to pass an examination
 159 specific to relevant state laws that regulate the occupation if
 160 an occupational license or a government certification under this
 161 chapter or chapter 456 requires such examination.

162 (b) In addition to the examination described in paragraph
 163 (a), a board must require an applicant seeking to be licensed as
 164 a general contractor, building contractor, residential
 165 contractor, roofing contractor, specialty structure contractor,
 166 or glass and glazing contractor to:

167 1. Successfully complete the examination for licensure
 168 described in s. 489.113(1); and

169 2. Before being issued a certificate or registration,
 170 successfully complete the following continuing education
 171 courses, either in person or online:

172 a. The number of required hours, as determined by the
 173 Construction Industry Licensing Board, relating to laws and
 174 rules related to the construction industry in chapter 455 and

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part 1 of chapter 489 and the rules of the Construction Industry Licensing Board, and relating to wind mitigation methodology and techniques incorporated in the Florida Building Code; and

b. For applicants seeking to be licensed as a general contractor, building contractor, residential contractor, or roofing contractor, a 2-hour course on the Florida Building Code which includes information on wind mitigation techniques.

(7) PRESUMPTION OF APPROVAL; DECISION.—Unless a board can demonstrate a substantial difference between the licensure or certification requirements of another licensing entity and this state, there is a presumption that an applicant who holds a valid occupational license, government certification, or private certification, or otherwise meets the requirements to be issued an occupational license for a lawful occupation, and is in good standing with another licensing entity is qualified for an occupational license or a government certification in this state and must be approved by the board. A board shall provide an applicant with a written decision regarding his or her application within 90 days after receipt of a completed application.

(8) APPEAL.—

(a) The applicant may appeal the board's decision to the Division of Administrative Hearings.

(b) The applicant may appeal the board's:

1. Denial of an occupational license or a government certification;

2. Determination of the validity of an occupational license or a government certification;

3. Determination of the similarity of the scope of practice

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20231364c1

of the occupational license or government certification held by the applicant; or

4. Determination of a disqualifying criminal record.

(9) STATE LAWS AND JURISDICTION.—An applicant who obtains an occupational license or a government certification pursuant to this section is subject to:

(a) The laws regulating the occupation in this state; and

(b) The jurisdiction of the applicable board in this state.

(10) EXCEPTION.—This section does not apply to an occupation regulated by the Florida Supreme Court or any occupation regulated under chapter 473, relating to public accountancy.

(11) CONSTRUCTION.—

(a) This section may not be construed to prohibit an individual from applying for an occupational license or a government certification under another law or rule.

(b) An occupational license or a government certification issued pursuant to this section is valid only in this state. Such license or certification does not make the individual eligible to work outside this state under an interstate compact or a reciprocity agreement unless otherwise provided in law.

(c) This section may not be construed to prevent this state from entering into a licensing compact or reciprocity agreement with another state, United States territory, foreign province, foreign country, international organization, or other entity.

(d) This section may not be construed to prevent boards in this state from recognizing occupational licenses or government certifications issued by a private certification organization, foreign province, foreign country, international organization,

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233 or other entity.

234 (e) This section may not be construed to require a private
 235 certification organization to grant or deny private
 236 certification to any individual.

237 (12) EMERGENCY POWERS.—

238 (a) During a state of emergency declared by the Governor,
 239 the Governor may order the recognition of occupational licenses
 240 from other licensing entities.

241 (b) The Governor may expand any occupational license's
 242 scope of practice and may authorize licensees to provide
 243 services in this state in person, telephonically, or by other
 244 means for the duration of the emergency.

245 (13) ANNUAL REPORT.—Each board shall submit an annual
 246 report to the President of the Senate and the Speaker of the
 247 House of Representatives by December 31 of each year, detailing
 248 the number of licenses or certifications issued pursuant to this
 249 section, the number of completed applications submitted pursuant
 250 to this section which were denied, and the reason for each
 251 denial.

252 (14) RULEMAKING.—The Department of Business and
 253 Professional Regulation and the Department of Health, for the
 254 boards under their jurisdiction, shall adopt rules to administer
 255 this section.

256 Section 2. Section 456.0365, Florida Statutes, is created
 257 to read:

258 456.0365 Applicability of the Interstate-Mobility and
 259 Universal-Recognition Occupational Licensing Act.—Except as
 260 provided in s. 455.2135(10), s. 455.2135 applies to professions
 261 regulated by the department under this chapter.

Page 9 of 10

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

580-02865-23

20231364c1

262 Section 3. This act shall take effect July 1, 2023.

Page 10 of 10

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Agriculture, *Chair*
Appropriations Committee on Education
Appropriations Committee on Transportation, Tourism,
and Economic Development
Education Postsecondary
Education Pre-K -12
Fiscal Policy
Military and Veterans Affairs, Space, and
Domestic Security

SELECT COMMITTEE:

Select Committee on Resiliency

JOINT COMMITTEE:

Joint Select Committee on Collective Bargaining

SENATOR JAY COLLINS

14th District

March 22, 2023

Senator Jason Brodeur
405 Senate Building
404 South Monroe Street
Tallahassee, FL 32399

Chair Brodeur,

I respectfully request that SB 1364 and SB 1366 - Interstate Mobility and Universal-Recognition Licensing Act be placed on the next available agenda for the Appropriations Committee on Agriculture, Environment, and General Government. This bill is crucial for allowing people with occupational licenses to be able to continue their work in Florida as they relocate.

Should you have any questions or concerns, please feel free to contact my office. Thank you in advance for your consideration.

Thank you,

A handwritten signature in black ink, appearing to read "Jay Collins", with a horizontal line underneath.

Senator Jay Collins
District 14

CC: Giovanni Betta, Staff Director
Julie Brass, Committee Administrative Assistant

REPLY TO:

- ☐ 405 North Reo Street, Suite 170, Tampa, Florida 33609 (813) 281-2538
- ☐ 305 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 387-4014

Senate's Website: www.flsenate.gov

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4/18/23

Meeting Date

Approps Ag, Enviro & GG

Committee

1364

Bill Number or Topic

749536

Amendment Barcode (if applicable)

Name

Chris Hansen

Phone

850/251-2672

Address

201 E. Park Ave 5th Floor

Street

Tallahassee

FL

32301

City

State

Zip

Email

Chansen@ballardpartners.com

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

749536

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

FL Podiatric Medical Association (FPMA)

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf flsenate.gov](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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4/18/23

Meeting Date

AEG Appropriations

Committee

SB 1364

Bill Number or Topic

Amendment Barcode (if applicable)

Name Linda McMahon, America First Works

Phone _____

Address 1900 Campus Commons Dr. Suite 100

Street

Email _____

Reston

City

VA

State

20191

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:



I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf flsenate.gov](#)

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S-001 (08/10/2021)

4/18/23
Meeting Date

The Florida Senate
APPEARANCE RECORD

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SB 1364
Bill Number or Topic

Committee

Name

Kevin Comerar [co - mer]
Phone

Amendment Barcode (if applicable)

Address

Street

Email

kevin@rubinfunbull.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

Assoc. of Dental Support Organizations

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf flsenate.gov](#)

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S-001 (08/10/2021)

The Florida Senate

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4/18/23

Meeting Date

1364

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

Steve Winn

Phone

818-7364

Address

2544 Blairstone Pines Dr.

Email

winnsr@earthlink.net

Street

Tall

City

FL

State

32301

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

Florida Osteopathic Medical Association

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf](#) ([flsenate.gov](#))

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S-001 (08/10/2021)

The Florida Senate

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4/18/23

Meeting Date

Appropriations, E, & GG

Committee

1364

Bill Number or Topic

749536

Amendment Barcode (if applicable)

Name

Steve Winn

Phone

878-7364

Address

2544 Blairstone Pines Dr.

Email

winnsv@earthlink.net

Street

Tell

City

FL

State

32301

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

Florida Osteopathic Medical Association

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf flsenate.gov](#)

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S-001 (08/10/2021)

April 18, 2023

The Florida Senate
APPEARANCE RECORD

SB 1364

Meeting Date

Deliver both copies of this form to

Bill Number or Title

Legislative Committee or Agency, Environment and Natural Resources

Senate professional staff conducting the meeting

Committee

Amendment (delete if applicable)

Name **Scot Ackerman**

Phone **904-571-9000**

Address **4072 Alhambra Drive West**

Email **ackerman@ackermancancer.com**

Street

Jacksonville

FL

32207

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering as a lobbyist please see Fla. Stat. § 11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf flsenate.gov

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5-001 (08/10/2021)

4/18/23

Meeting Date

The Florida Senate
APPEARANCE RECORD

SB 1364

Bill Number or Topic

Ag, Environment, Govt, App.

Committee

Deliver both copies of this form to
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Amendment Barcode (if applicable)

Name

Sal Nuzzo

Phone

850-322-9941

Address

100 N. Duval ST

Email

SNUZZO@JamesMadison.org

Street

Tallahassee, FL

32301

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

James Madison Institute

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf flsenate.gov](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

4/18/2023

Meeting Date

SB 1364

Bill Number or Topic

APP. CITE - AG, ENVR, GUNT

Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name

CHRISTIAN CAWART

Phone

(305) 608-4300

Address

PO Box 122

Email

Street

TALLAHASSEE FL 32302

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

am a registered lobbyist,
representing:

INSTITUTE FOR JUSTICE

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

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18 April 2023

Meeting Date

AEgg Approps

Committee

1364

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Chris Stranburg

Phone

813-767-9667

Address

107 E College Ave

Street

Email

cstranburg@aephy.org

Tallahassee

City

FL

State

32301

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

Americans for
Prosperity

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

APPEARANCE RECORD

4-18-23

1364

Meeting Date

Bill Number or Topic

Approps committee on

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Senate professional staff conducting the meeting

Ag, Ensh, 2 gen law

Amendment Barcode (if applicable)

Name

Darrad Fowler

Phone

850-224-6496

Address

1430 Piedmont Dr. E

Email

dfowler@fimedical.org

Street

Tallahassee FL

32308

City

State

Zip

Speaking:

☐ For☐ Against☐ Information**OR**

Waive Speaking:

☒

In Support

☐ Against**PLEASE CHECK ONE OF THE FOLLOWING:**I am appearing without
compensation or sponsorship.I am a registered lobbyist,
representing:

Florida Medical Association

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf flsenate.gov](#)

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4/18/23

Meeting Date

The Florida Senate
APPEARANCE RECORD

1364

Bill Number or Topic

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Abt, Enviro, Gen Gov. Approps

Committee

Amendment Barcode (if applicable)

Name

Chad Kunde

Phone

(810) 766-7796

Address

136 S Bronough St

Email

CKunde@flchamber.com

Street

Tallahassee FL

State

32301

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

Florida Chamber
of Commerce

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf flsenate.gov](#)

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

S-001 (08/10/2021)

04/18/2023

Meeting Date

Appropriations Committee on Agriculture, Environment, and General Government

Committee

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

SB 1364 - Interstate-Mobility

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Joseph Salzverg ("Saul's-Verg")**

Phone **(850) 577-9090**

Address **301 S Bronough Street, Suite 600**

Email **joseph.salzverg@gray-robinson.com**

Street

Tallahassee

FL

32301

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

**Florida Society of Health-System
Pharmacists**

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

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 Appropriations Committee on Agriculture, Environment, and General Government

BILL: CS/CS/SB 1366

INTRODUCER: Appropriations Committee on Agriculture, Environment, and General Government;
Regulated Industries Committee; and Senator Collins

SUBJECT: Fees/Interstate-Mobility and Universal-Recognition Occupational Licensing Act

DATE: April 20, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	Fav/CS
2.	Davis	Betta	AEG	Fav/CS
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SB 1366 authorizes licensing boards that issue licenses pursuant to the Interstate-Mobility and Universal-Recognition Occupational Licensing Act (act), created by CS/CS/SB 1364, to charge a fee to applicants for an occupational license or government certification, in order to recoup a board's costs, not to exceed \$100 for each application.

The affected boards issue licenses pursuant to ch. 455, F.S., relating to the regulations of professions by the Department of Business and Professional Regulation (DBPR), or ch. 456, F.S., relating to the regulation of professions by the Department of Health (DOH).

CS/CS/SB 1364 is a linked bill that creates s. 455.2135, F.S. to address occupational license portability in the United States by requiring Florida licensing boards to issue occupational licenses or government certifications to eligible individuals, under certain circumstances. The bill may have an indeterminate negative fiscal impact to the DBPR and the DOH, which may be offset by the collection of a fee not to exceed \$100 for an occupational license or government certification application.

This bill has an indeterminate fiscal impact on state revenues and expenditures. See Section V, Fiscal Impact Statement.

Because this bill authorizes a new state fee, it will require a two-thirds vote of each house in order to pass.

The bill is effective on the same date that CS/CS/SB 1364 or similar legislation takes effect, if such legislation is adopted in the same legislative session or any extension and becomes a law.

II. Present Situation:

For each license issued, the DBPR charges an initial license fee and license renewal fee set by the applicable board or by the DBPR if there is no board for the profession.¹ The DBPR also imposes a \$5 unlicensed activity fee on each occupational license, in order to fund efforts to combat unlicensed activity.² Renewal fees may be imposed for a two-year (biennial) or four-year license, if authorized by the DBPR.³ Collected fees are paid into the Professional Regulation Trust Fund.⁴

For each license issued, the DOH charges an initial license fee and license renewal fee set by the applicable board or by the DOH if there is no board for the profession.⁵ The DOH also imposes a \$5 unlicensed activity fee on each occupational license, in order to fund efforts to combat unlicensed activity.⁶ Renewal fees may be imposed for a two-year (biennial) or four-year license, if authorized by the DOH.⁷ Collected fees are paid into a trust fund used by the DOH to implement ch. 456, F.S., relating to health professions and occupations.⁸

The linked bill, CS/SB 1364, addresses occupational license portability in the United States by requiring Florida licensing boards that issue occupational licenses or government certifications to individuals under ch. 455, F.S., relating to the regulations of professions by the DBPR, or ch. 456, F.S., relating to the regulation of professions by the DOH, to issue an occupational license or government certification (universal license) to eligible applicants, under certain circumstances (universal licensing requirement), as follows:

- The universal licensing requirement does not apply to occupations regulated by the Florida Supreme Court, certified public accountants, and other credentials, such as those used for medical board certification;
- Applicants may seek a universal license through one of three pathways described in the bill:
 - Universal licensing if licensed by another licensing entity;
 - Universal licensing based on work experience in another state or the military; or
 - Universal licensing based on private certification with work experience in a non-licensing state or the military.
- An applicant with a valid occupational license or certification in good standing, or who otherwise meets the requirements for an occupational license for a lawful occupation, is

¹ See s. 455.213, F.S.

² See s. 455.2281, F.S.

³ See s. 455.203(1), F.S.

⁴ See s. 455.219(3), F.S.

⁵ See s. 456.013, F.S.

⁶ See s. 456.065, F.S.

⁷ See s. 456.004(1), F.S.

⁸ See s. 456.025(8), F.S.

presumed to be qualified for, and must be issued, an occupational license or government certification by the appropriate Florida licensing board.

- During a declared state of emergency, the Governor may order the recognition of occupational licenses from outside Florida or from a foreign country as if the licenses were issued in Florida, may expand any occupation license scope of practice, and authorize licensees to provide services in Florida in person, telephonically, or by other means for the duration of the emergency.

III. Effect of Proposed Changes:

The bill authorizes licensing boards that issue licenses pursuant to the Interstate-Mobility and Universal-Recognition Occupational Licensing Act, created by CS/CS/SB 1364, to charge a fee to applicants for an occupational license or government certification, in order to recoup a board's costs, not to exceed \$100 for each application.

The affected boards issue licenses pursuant to ch. 455, F.S., or ch. 456, F.S., pursuant to s. 455.2135, F.S., as created by CS/CS/SB 1364.

CS/CS/SB 1364 is a linked bill that addresses occupational license portability in the United States by requiring Florida licensing boards that issue occupational licenses or government certifications to individuals, under certain circumstances.

Successful applicants who are issued licenses in Florida by the DBPR will be subject to the fees authorized under s. 455.219, F.S., and those licensed by the DOH will be subject to the fees authorized under s. 456.025, F.S.

The bill is effective on the same date that CS/CS/SB 1364 or similar legislation takes effect, if such legislation is adopted in the same legislative session or any extension and becomes a law. CS/CS/SB 1364 is effective July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Section 19, Art. VII of the State Constitution limits the authority of the legislature to enact legislation that imposes or raises a state tax or fee by requiring such legislation to

be approved by a 2/3 vote of each chamber of the legislature. Such state tax or fee imposed, authorized, or raised must be contained in a separate bill that contains no other subject.

For purposes of this limitation, the term “fee” is defined, in pertinent part, to mean any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill requires certain licensing boards to establish a fee for licensure of eligible applicants licensed or certified to work in occupations or professions outside Florida, to perform such work in this state, as authorized in s. 455.2135, F.S., created by linked bill CS/CS/SB 1364, establishing the Interstate-Mobility and Universal-Recognition Occupational Licensing Act.

B. Private Sector Impact:

Beginning July 1, 2024, persons who are licensed or certified to work in occupations or professions outside Florida, if eligible to do so pursuant to s. 455.2135, F.S., created by the act, will be required to pay an application fee up to \$100 to be able to be licensed to perform such work in Florida.

C. Government Sector Impact:

This bill is linked to CS/CS/SB 1364 (2023 Regular Session) which requires Florida licensing boards of the Department of Business and Professional Regulation and the Department of Health to issue occupational licenses or government certifications to eligible applicants, under certain circumstances. According to the DBPR and the DOH, the creation of an additional application procedure for eligible individuals licensed outside Florida will result in a fiscal impact on their respective operations, revenues, and expenditures. The DBPR estimates it will need an additional 43 full-time positions (FTE) and associated costs of \$4.7 million to implement the provisions of CS/CS/SB 1364. The DOH estimates it will need 13 FTEs and associated costs totaling \$2.5 million.

CS/CS/SB 1366 authorizes licensing boards to charge a fee to applicants for an occupational license or government certification, in order to recoup a board's costs, not to exceed \$100 for each application. The number of individuals who will apply for licensure under the provisions of CS/CS/SB 1364 is unknown and also it is indeterminate as to whether sufficient fees could be generated to cover the total program costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 455.2135 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/CS by Appropriations Committee on Agriculture, Environment, and General Government on April 18, 2023:

The committee substitute revises the subsection number to conform to the linked bill (CS/CS/SB 1364).

CS by Regulated Industries Committee on March 21, 2023:

The CS inserts the bill number for the linked bill (SB 1364, Interstate-Mobility and Universal-Recognition Occupational Licensing Act), into the bill, and revises the subsection number to conform to the linked bill.

B. Amendments:

None.



642672

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2023	.	
	.	
	.	
	.	

The Appropriations Committee on Agriculture, Environment, and General Government (Collins) recommended the following:

Senate Amendment (with directory amendment)

Delete line 15
and insert:
(16) FEE.—A board may charge a fee to an applicant to

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

And the directory clause is amended as follows:

Delete line 10

and insert:



642672

11

Section 1. Subsection (16) is added to section 455.2135,

By the Committee on Regulated Industries; and Senator Collins

580-02866-23

20231366c1

A bill to be entitled

An act relating to fees; amending s. 455.2135, F.S.;
authorizing applicable boards to charge a fee for
applications under the Interstate-Mobility and
Universal-Recognition Occupational Licensing Act;
providing a contingent effective date.

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

Section 1. Subsection (15) is added to section 455.2135,
Florida Statutes, as created by SB 1364 or similar legislation,
to read:

455.2135 Interstate-Mobility and Universal-Recognition
Occupational Licensing Act.—

(15) FEE.—A board may charge a fee to an applicant to
recoup the board's costs, not to exceed \$100 for each
application.

Section 2. This act shall take effect on the same date that
SB 1364 or similar legislation takes effect, if such legislation
is adopted in the same legislative session or an extension
thereof and becomes a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Agriculture, *Chair*
Appropriations Committee on Education
Appropriations Committee on Transportation, Tourism,
and Economic Development
Education Postsecondary
Education Pre-K -12
Fiscal Policy
Military and Veterans Affairs, Space, and
Domestic Security

SELECT COMMITTEE:

Select Committee on Resiliency

JOINT COMMITTEE:

Joint Select Committee on Collective Bargaining

SENATOR JAY COLLINS

14th District

March 22, 2023

Senator Jason Brodeur
405 Senate Building
404 South Monroe Street
Tallahassee, FL 32399

Chair Brodeur,

I respectfully request that SB 1364 and SB 1366 - Interstate Mobility and Universal-Recognition Licensing Act be placed on the next available agenda for the Appropriations Committee on Agriculture, Environment, and General Government. This bill is crucial for allowing people with occupational licenses to be able to continue their work in Florida as they relocate.

Should you have any questions or concerns, please feel free to contact my office. Thank you in advance for your consideration.

Thank you,

A handwritten signature in black ink, appearing to read "Jay Collins", written over a horizontal line.

Senator Jay Collins
District 14

CC: Giovanni Betta, Staff Director
Julie Brass, Committee Administrative Assistant

REPLY TO:

- ☐ 405 North Reo Street, Suite 170, Tampa, Florida 33609 (813) 281-2538
- ☐ 305 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 387-4014

Senate's Website: www.flsenate.gov

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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4/18/23

Meeting Date

SB 1366

Bill Number or Topic

AFG Appropriations

Committee

Amendment Barcode (if applicable)

Name Linda McMahon, America first Wares Phone

Address 1900 campus commons Dr. S. 100 Email

Street

Bristan

City

VA

State

29191

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:



I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
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S-001 (08/10/2021)

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 Appropriations Committee on Agriculture, Environment, and General Government

BILL: CS/CS/SB 1398

INTRODUCER: Appropriations Committee on Agriculture, Environment, and General Government;
Banking and Insurance Committee; and Senator DiCeglie

SUBJECT: Consumer Protection

DATE: April 20, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Moody</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Sanders</u>	<u>Betta</u>	<u>AEG</u>	<u>Fav/CS</u>
3.	<u> </u>	<u> </u>	<u>FP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1398 revises consumer protection laws, including, but not limited to, those related to public adjusters, annuity investments, and mortgage loan regulations.

As it relates to adjusters, the bill:

- Provides adjusting firms must comply with the same requirements an insurance agency must comply with regarding firm names, and repeals the grace period for using the terms “Medicare” or “Medicaid” that expires on July 1, 2023;
- Removes a provision providing public adjuster responsibility and a provision setting the commission rate that may be charged on the difference between the settlement offer and the actual settlement amount;
- Modifies a public adjuster’s compensation to no more than one percent, rather than up to \$1,000, of payments or commitments to pay a claim made within a specified time that is equal to or greater than the policy limit;
- Prohibits a public adjuster from charging any percentage of the amount of insurance claim payments or settlements paid to the insured where the payment or written agreement to pay occurs before the public adjuster contract is executed;
- When entering into public adjuster services after July 1, 2023, prohibits a public adjuster from collecting a fee for services or contracting with third parties on behalf of the named insured unless certain conditions are met, and requires a public adjuster to pay third party fees in specified circumstances;

- Allows the insured or claimant to cancel a contract with a public adjuster that was entered into based on events that are the subject to a state of emergency for up to 30 days after the loss or 10 days after the date on which the contract is executed, whichever is longer;
- Specifies an insured may cancel a public adjuster's contract without penalty or obligation if a written estimate is not received within 60 days unless the failure to provide the estimate is caused by factors beyond the control of the public adjuster and provides that the cancellation period ceases on the date the estimate is provided, and requires the contract to provide notice of such right;
- Provides that a public adjuster who contracts with anyone other than the named insured must pay the fees of the third party and such charges may not be charged back to the named insured;
- Requires public adjusters to pay third party fees if the public adjuster does not first obtain the insured's written consent;
- Clarifies the exemption which allows attorneys to participate in the adjustment of any claim without an adjuster's license does not apply to certain staff of an attorney or a law firm;
- Requires an independent or public adjuster to post their license in the principal place of business or have it in the public adjuster's actual possession in certain circumstances;
- Specifies independent adjusters and public adjusters must retain certain records for five years and requires such records must be available for inspection by the Department of Financial Services ("Department") within specified times;
- Amends public adjuster contract requirements to include certain contact details and compensation; amends the font type with respect to certain provisions in the contract and proof-of-loss statement; and requires initials of the insured to be on each page that does not contain the insured's signature;
- Provides that a public adjuster must provide the insured with an unaltered copy of the contract at the time of execution and a copy provided to the insurer or insurer's representative within seven days, after execution;
- Provides a public adjuster may not receive compensation for services before the date the insured receives an unaltered copy of the executed contract or the date the contract is submitted to the insurer, and requires the public adjuster retain proof of receipt by the insured and proof of submission to the insurer for not less than five years;
- Requires the public adjuster to provide to and obtain a signed separate disclosure statement from the insured with specified information;
- Provides that a public adjuster contract which does not comply with s. 626.8796, F.S., regarding public adjuster contracts, is invalid and unenforceable;
- Authorizes the Department to have rulemaking authority to implement s. 626.8796, F.S.; and
- Amends the definition of "public adjuster."

As it relates to annuity investments, the bill:

- Amends s. 627.4554, F.S., to adopt, with minimal exceptions, the National Association of Insurance Commissioners (NAIC) Suitability in Annuity Transactions Model Regulation (2020);
- Broadens the scope of the section to apply to any sale or recommendation of an annuity;
- Amends the duties of insurers and agents to require the agent to act in the consumer's best interest which includes satisfying obligations regarding care, disclosure, conflict of interest, and recordkeeping;

- Specifies transactions for which an agent does not have an obligation to a consumer;
- Revises an insurer's obligation to establish a supervision system to provide additional consumer protections;
- Prohibits insurers from dissuading, or attempting to dissuade, a consumer from providing truthful information, filing complaints, or cooperating with a complaint investigation;
- Provides any sale in compliance with comparable standards satisfies the requirements of the section, and provides this provision does not limit an insurer's care obligation; and
- Provides for training requirements for agents who engage in the sale of annuities;

As it relates to other insurance provisions, the bill:

- Provides it is an unfair method of trade for an agent to fail to disclose a third party that receives certain remuneration for specified marketing practices for policy of health insurance;
- Shortens the timeframe in which the hurricane deductible on an insurance policy can be applied to a claim; amends the definition of "hurricane;" and defines the term "hurricane deductible;"
- Reduces the underwriting timeframe on property insurance from nine days to 60 days;
- Provides Citizens Property Insurance Corporation ("Citizens") may cancel certain policies within 90 days or less for misrepresentation or failure to comply with underwriting requirements established before the effectuation of coverage; and
- Provides notice of claims made under s. 627.714, F.S., must be given to the insurer in accordance with the terms of the policy within three years of the date of loss.

As it relates to mortgage loan regulations, the bill:

- Expands the options of where a mortgage lender may transact business;
- Specifies a remote location must be operated under the full charge, control, and supervision of the licensee;
- Provides when a licensee may allow loan originators to work from a remote location; and
- Amends the definition of "branch office" and defines the term "remote location."

As it relates to money services businesses, the bill:

- Specifies a licensee may not cash corporate checks where the aggregate face amount of all corporate checks cashed for each payee exceeds 200 percent of the payee's workers' compensation policy coverage amount during the same policy coverage period; and
- Provides a person who violates this provision commits a felony of the third degree.

As it relates to crowd-funding campaigns, the bill:

- Requires organizers of crowd-funding campaigns related to disasters to take certain steps relating to collecting and retaining certain information, disclosing specified information, cooperating with law enforcement, and displaying and directing donors to certain fundraisers;
- Requires an organizer to attest to the accuracy and completeness of specified information;
- Defines several terms, including "crowd-funding campaign," "crowd-funding platform," "disaster," and "organizer."

As it relates to distributed energy generation platform, the bill:

- Adds three disclosures related to the sale or lease of a distributed energy generation system which must be separate from the agreement between the seller or lessor and buyer and lessee; and
- Requires a sale or lease agreement to include the customer contact center phone number for the Department of Business and Professional Regulation.

The bill provides motor vehicle service agreements that maintain a contractual liability insurance policy in lieu of maintaining unearned premium reserve may have a policy with certain terms.

The bill revises the definition of the term “manufacturer” for purposes of part III of ch. 634, F.S., to exclude a business that maintains outstanding debt obligations, if any, rated in the top four rating categories by a recognized rating service, and makes conforming changes to s. 634.406, F.S.

The bill creates a new third degree felony, which is punishable by a term of imprisonment not to exceed five years,¹ a fine not to exceed \$5,000,² or in the case of a habitual offender, a term of imprisonment not to exceed ten to fifteen years.³ The new third degree felony may increase state court revenues and expenditures. In addition, the bill may have an indeterminate negative state prison bed impact. The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill.

The bill, except as otherwise provided, is effective July 1, 2023.

II. Present Situation:

Insurance

In January 2003, the Financial Services Commission (“Commission”) was created within the Department of Financial Services (Department).⁴ The Commission is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture.⁵ The Commission consists of the Office of Insurance Regulation (OIR) and the Office of Financial Regulation (OFR).⁶

The OIR is responsible for the regulation of activities related to insurers and other risk bearing entities, including, amongst other things, licensing, rates, policy forms market conduct, claims, issuance of certificates of authority.⁷ A person may not act, advertise, or hold himself or herself

¹ Section 775.082, F.S.

² Section 775.083, F.S.

³ Section 775.084, F.S.

⁴ Section 20.121(3), F.S.

⁵ *Id.*

⁶ Section 20.121(3)(a), F.S.

⁷ Section 20.121(3)(a), F.S.

out as an insurance agent,⁸ insurance adjuster,⁹ or customer representative unless he or she is licensed by the Department and appointed by an appropriate appointing entity or person.¹⁰ To obtain a license, such individuals must comply with certain requirements, including submit an application which contains specified information such as the applicant's name, address, and other contact information.¹¹ A licensee has an obligation to notify the Department, in writing, within 30 days after a change of name, residence address, principal business street, address, mailing address, contract telephone numbers, including a business telephone number, or e-mail address.¹² A licensee who failure to notify the Department of such change within the 30 days is subject to a fine not to exceed \$250 for a first offence and a fine of at least \$500 or suspension or revocation of certain licenses for a subsequent offense.¹³

Public Adjusters

A public adjuster is any person, except a duly licensed attorney-at-law as exempted under s. 626.860, F.S., who, for money, commission, or any other things of value, directly or indirectly prepares, completes, or files an insurance claim for an insured¹⁴ or third-party claimant, or who, for money, commission, or any other thing of value, acts on behalf of, or aids an insured or third-party claimant in negotiating for or effecting the settlement of a claim or claims for loss or damage covered by an insurance contract, or who, advertises for employment as an adjuster of such claims.¹⁵ The term also includes any person who, for money, commission, or any other thing of value, directly or indirectly solicits, investigates, or adjusts such claims on behalf of the public adjuster, as insured, or a third-party claimant.¹⁶ The term excludes several categories of persons who do not fall within the definition, such as licensed health care providers or employees thereof who prepares or files health insurance claim forms on behalf of a patient.¹⁷

⁸ Section 626.015(3), F.S., defines "agent" as a general lines agent, life agent, health agent, or title agent, or all such agents, as indicated by context. The term "agent" includes an insurance producer or producer, but does not include a customer representative, limited customer representative, or service representative. Section 626.015(6), F.S., defines "customer representative" as an individual appointed by a general lines agent or agency to assist that agent or agency in transacting the business of insurance from the office of the agent or agency. Section 626.015(13), F.S., defines "limited customer representative" as a customer representative appointed by a general lines agent or agency to assist that agent or agency in transacting only the business of private passenger motor vehicle insurance from the office of that agent or agency. Section 626.015(19), F.S., defines "service representative" as an individual employed by an insurer or managing general agent for the purpose of assisting a general lines agent in negotiating and effecting insurance contracts when accompanied by a licensed general lines agent.

⁹ Section 626.015(2), F.S., defines "adjuster" as a public adjuster as defined in s. 626.854, F.S., or an all-lines adjuster as defined in s. 626.8548, F.S. which defines the term as a person who, for money, commission, or any other thing of value, directly or indirectly undertakes on behalf of a public adjuster or an insurer to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertakes to effect settlement of such claim, loss, or damage. The term also includes any person who, for money, commission, and any other thing of value, directly or indirectly solicits claims on behalf of a public adjuster, but does not include a paid spokesperson used as part of a written or an electronic advertisement or a person who photographs or inventories damaged property or business personal property if such person does not otherwise adjust, investigate, or negotiate for or attempt to effect the settlement of a claim.

¹⁰ Section 626.112(1)(a), F.S.

¹¹ Section 626.171, F.S.

¹² Section 626.551, F.S.

¹³ *Id.*

¹⁴ Section 626.854(4), F.S., defines "insured," for purposes of this section, as only the policyholder and any beneficiaries named or similarly identified in the policy.

¹⁵ Section 626.854(1), F.S.

¹⁶ *Id.*

¹⁷ Section 626.854(2)(a), F.S.

Prohibited acts

Section 626.854, F.S., prohibits public adjusters from engaging in certain conduct, including giving legal advice or acting on behalf of any person negotiating or settling certain claims.¹⁸ An attorney who is licensed to practice law in Florida and in good standing with The Florida Bar is not required to hold a separate license under ch. 626, F.S., to adjust or participate in the adjustment of any claim, loss, or damage arising under policies or insurance contracts.¹⁹

Public adjusters are also prohibited from directly or indirectly soliciting an insured or claimant except for during specified times.²⁰ A public adjuster or any other person who circulates or disseminates any advertisement, announcement, or statement containing any assertion, representation, or statement about the business of insurance that is untrue, deceptive, or misleading commits an unfair and deceptive insurance trade practice, and Florida law sets out specific statements which are considered deceptive or misleading.²¹

Contracts and Disclosures

All contracts for public adjuster services and proof-of-loss statements must be in writing and include a disclosure relating to injuring, defrauding, or deceiving an insurer or insured and committing a crime if proof of loss or estimate of claims is based on false, incomplete, or misleading information.²² A public adjuster contract for a property and casualty claim must contain certain information, such as the full name and certain contact details of the public adjuster and insured.²³ Such contract must state the percentage of compensation for the public adjuster's services, type of claim, and signatures of the public adjuster and named insureds.²⁴ An unaltered copy of the executed contract must be provided to the insurer within 30 days after the execution. Public adjusting firms that adjust claims primarily for commercial entities that meet certain requirements is deemed to comply with these provisions if the public adjusting firm remits to the insurer a signed affidavit that contains specified information relating to:

- The name and contact details of the public adjuster, public adjuster apprentice, and insured;
- The name of the public adjusting firm;
- An attestation the compensation will not exceed the limits provided by law; and
- The type of claim.²⁵

An insured or claimant may cancel a contract with a public adjuster without penalty within 10 days after the date on which the contract is executed.²⁶ The reason for providing the 10 day period is to allow the consumer to have time to make an informed decision in the wake of a

¹⁸ Section 626.854(3), F.S.

¹⁹ Section 626.860, F.S.

²⁰ Section 626.854(5), F.S.

²¹ Section 626.854(7), F.S. Section 626.9541, F.S., provides for unfair methods of competition and unfair or deceptive acts or practices.

²² Section 626.8796(1), F.S.; Section 626.8797, F.S.

²³ Section 626.8796(2), F.S.

²⁴ *Id.*

²⁵ Section 626.8796(2), F.S.

²⁶ Section 626.854(10), F.S.

storm.²⁷ A public adjuster's contract must contain the following statement in minimum 18-point bold type which states:

"You, the insured, may cancel this contract for any reason without penalty or obligation to you within 10 days after the date of this contract by providing notice to (name of public adjuster), submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that provides proof thereof, at the address specified in the contract."²⁸

A public adjuster is required to provide to the insured or claimant a written estimate of the loss to assist in any claim for insurance proceeds within 60 days after the date of the contract.²⁹

Charges, Fees, and Gifts

Florida law prohibits a public adjuster from charging a fee unless a written contract is entered into prior to the payment of the claim, and restricts certain fees and charges of a public adjuster who enter into contracts with an insured or claimant.³⁰ For instance, a public adjuster's compensation may not exceed twenty percent of the amount of insurance claim payments or settlements for claims that are not based on an emergency, and ten percent based on events that are based on an emergency.³¹ A public adjuster may not give or offer to give a client or prospective client a loan or advance, or give or offer to give any merchandise worth more than \$25 to any individual for the purpose of advertising or inducing such individual to enter into a contract.³²

Office and Records

Independent or public adjusters must maintain a place of business in Florida which is accessible to the public but may be a home office.³³ Such adjusters must keep the "usual and customary records" relating to the transactions covered under the license. Records related to a specific claim must be retained in the adjuster's place of business for not less than five years after completion of the adjustment.³⁴ An adjuster is not prohibited from returning or delivering certain documents to the insurer or insured.³⁵

²⁷ The Department of Financial Services, *2023 Legislative Bill Analysis for SB 1398*, p. 3 (Mar. 16, 2023) (on file with Senate Committee on Banking and Insurance).

²⁸ Section 626.854(6), F.S.

²⁹ Section 626.854(14), F.S.

³⁰ Section 626.854(10), F.S.

³¹ Section 626.854(10)(b), F.S.

³² Section 626.854(8) and (9), F.S.

³³ Section 626.875(1), F.S.

³⁴ Section 626.875(2), F.S.

³⁵ *Id.*

Annuity Investments

The purpose of s. 627.4554, F.S., annuity³⁶ investments, is to set out requirements for which insurers³⁷ must comply when making recommendations³⁸ to consumers regarding annuity products, and to establish a system for supervising such recommendations to ensure consumers' insurance needs and financial objectives are met at the time of the transaction.³⁹ The section applies to any recommendation made by an insurer or agent⁴⁰ to a consumer to purchase, exchange, or replace an annuity which results in the consumer purchasing, exchanging, or replacing the recommended product.⁴¹ The section, however, does not apply to the following:

- Direct-response solicitation where there is no recommendation based on information collected from the consumer;
- Contracts used to fund:
 - An employee pension or welfare benefit plan that is covered by the federal Employee Retirement and Income Security Act;
 - Certain plans of the Internal Revenue Code, if established or maintained by an employer;⁴²
 - A government or church plan,⁴³ a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization;⁴⁴
 - A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
 - Settlements or assumptions of liabilities associated with personal injury litigation or a dispute or claim-resolution process; or
 - Formal prepaid funeral contracts.⁴⁵

When making a recommendation to purchase or exchange an annuity product which results in an insurance transaction or series of insurance transactions, the insurer or agent must have a reasonable basis to believe, based on the consumer's suitability information,⁴⁶ the

³⁶ Section 627.4554, F.S., defines "annuity" as an insurance product under state law which is individually solicited, whether classified as an individual or group annuity.

³⁷ The term "insurer" has the same meaning as provided in s. 624.03, F.S. Section 627.4554(3)(d), F.S.

³⁸ Section 627.4554(3)(e), F.S., defines "recommendation" as advice provided by an insurer or its agent to a consumer which would result in the purchase, exchange, or replacement of an annuity in accordance with that advice.

Section 627.4554(3)(f), F.S., defines "replacement" as a transaction in which a new policy or contract is to be purchased and it is known or should be known to the proposing insurer or its agent that by reason of such transaction an existing policy or contract will be: 1. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated; 2. Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value due to the use of nonforfeiture benefits or other policy values; 3. Amended so as to effect a reduction in benefits or the term for which coverage would otherwise remain in force or for which benefits would be paid; 4. Reissued with a reduction in cash value; or 5. Used in a financed purchase.

³⁹ Section 627.4554(1), F.S.

⁴⁰ The term "agent" has the same meaning as provided in s. 626.015, F.S. Section 627.4554(3)(a), F.S.

⁴¹ Section 627.4554(2), F.S.

⁴² Section 627.4554(4)(b)2., F.S., specifies the plans that are exempt from this section includes s. 401(a), s. 401(k), s. 403(b), s. 408(k), or s. 408(p) of the Internal Revenue Code.

⁴³ Section 414, I.R.C.

⁴⁴ Section 457, I.R.C.

⁴⁵ Section 627.4554(4), F.S.

⁴⁶ Section 627.4554(3)(g), F.S., defines "suitability information" as information related to the consumer which is reasonably appropriate to determine the suitability of a recommendation made to the consumer, including the following: 1. Age; 2. Annual income; 3. Financial situation and needs, including the financial resources used for funding the annuity;

recommendation is suitable for the consumer and a reasonable basis to believe all of the following:

- The consumer has been reasonably informed of various features of the annuity;⁴⁷
- The consumer would benefit from certain features of the annuity;⁴⁸
- The particular annuity as a whole, underlying subaccounts to which funds are allocated, riders or similar enhancements are suitable; and, in respect of exchange or replacement, the transaction as a whole is suitable for the consumer based on his or her suitability information;
- An exchange or replacement is suitable after considering whether the consumer:
 - Will incur a surrender charge, be subject to a new surrender period, lose existing benefits, be subject to increased fees;
 - Would benefit from product enhancements and improvements; and
 - Has had another annuity exchange or replacement within the preceding 36 months.⁴⁹

Before executing a transaction for an annuity resulting from a recommendation, an insurer or its agent must make reasonable efforts to obtain the consumer's suitability information.⁵⁰ The information must be collected on a specified form that must be signed by the applicant and agent.⁵¹ Such form must be in at least 12-point type and be readily understandable by the agent and consumer.⁵² A true and correct copy of the executed form must be provided to the insurer by the responsible party within 10 days after execution of the form, and must be provided to the consumer no later than the date of delivery of the contract.⁵³

An insurer may not issue a recommended annuity to a consumer unless the insurer has reasonable basis to believe the annuity is suitable based on the consumer's suitability information.⁵⁴ An insurer's issuance of an annuity must be reasonable based on all of the circumstances known at the time of the issuance, but an insurer does not have an obligation to a consumer under certain provisions of the section if:

- A recommendation has not been made;
- A recommendation was made and is later found to be based on materially inaccurate information provided by the consumer;
- A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or
- A consumer decides to enter into an annuity transaction that is not based on a recommendation of an insurer or its agent.⁵⁵

4. Financial experience; 5. Financial objective; 6. Intended use of the annuity; 7. Financial time horizon; 8. Existing assets, including investment and life insurance holdings; 9. Liquidity needs; 10. Liquid net worth; 11. Risk tolerance; and 12. Tax status.

⁴⁷ Section 627.4554(5)(a)1., F.S. provides examples such as the potential surrender period and charge, potential tax liability, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components, and market risk.

⁴⁸ Section 627.4554(5)(a)2., F.S., provides examples such as tax-deferred growth, annuitization, or the death or living benefit.

⁴⁹ Section 627.4554(5)(a), F.S.

⁵⁰ Section 627.4554(5)(b), F.S.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Section 627.4554(5)(c), F.S.

⁵⁵ Section 627.4554(5)(d), F.S.

At the time of the sale, the agent and the agent's representative must:

- Make a record of any recommendation to the consumer;
- Obtain the consumer's signed statement documenting his or her refusal to provide suitability information, if applicable; and
- Obtain the consumer's signed statement acknowledging an annuity transaction is not recommended, if applicable.

Before executing an exchange or a replacement of an annuity contract resulting from a recommendation, the agent must provide the consumer with a specified form which compares the difference between the existing annuity contract and the annuity contract being recommended to determine the suitability and benefits to the consumer.⁵⁶ Such form needs to be signed by the agent and the insured, and must be to the insurer within 10 days after execution of the form and to the consumer no later than the date of delivery of the contract.⁵⁷

An insurer must establish a supervision system that is reasonably designed to ensure the insurer and agent's compliance with s. 627.4554, F.S., and must include, but is not limited to:

- Maintaining reasonable procedures to inform its agents of the requirements under Florida law and incorporating them into training manuals;
- Establishing standards for agent product training;
- Providing product-specific training and training materials that explain all material features of its annuity products to its agents;
- Maintaining procedures for the review of each recommendation before issuance of an annuity to ensure there is reasonable basis for determining that the recommendation is suitable, such as review procedures;
- Maintaining reasonable procedures to detect recommendations that are not suitable, such as confirmation of consumer suitability information, systematic customer surveys, and customer interviews; and
- Annually providing a report to senior managers which details a review, along with appropriate testing to determine the effectiveness of the supervision system, the exceptions found, and any corrective action taken or recommended.⁵⁸

An insurer is not required to include in its supervision system agent recommendations to consumers of products other than annuities offered by the insurer.⁵⁹ An insurer may contract with a third-party to perform any function required with respect to the supervisory system,⁶⁰ but the insurer must include the supervision of such function as part of the procedures required to be conducted as part of the system which include, but are not limited to:

- Monitoring and, as appropriate, conducting audits to ensure the contracted function is properly performed; and

⁵⁶ Section 627.4554(5)(f), F.S.

⁵⁷ *Id.*

⁵⁸ Section 627.4554(5)(g)1., F.S.

⁵⁹ Section 627.4554(5)(g)2., F.S.

⁶⁰ Section 627.4554(5)(g)3., F.S.

- Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis for representing the function is being properly performed.⁶¹

An insurer is responsible for taking appropriate corrective action and may be subject to penalties notwithstanding any contract for the performance of a function by a third-party and regardless of the insurer's compliance with these provisions in this paragraph regarding contracting with third-parties to perform functions.⁶²

An insurer may not dissuade, or attempt to dissuade, a consumer from:

- Truthfully responding to an insurer's request for confirmation of suitability information;
- Filing a complaint; or
- Cooperating with the investigation of a complaint.⁶³

Sales made in compliance with Financial Industry Regulatory Authority (FINRA) or a succeeding agency requirements relating to the suitability and supervision of annuity transactions satisfy the requirements of s. 627.4554, F.S. This applies to FINRA broker-dealer sales of variable annuities and fixed annuities if the suitability and supervision is similar to those applied to variable annuity sales.⁶⁴ These provisions do not limit the Department's or the OIR's ability to investigate or take any enforcement actions against insurers or agents.⁶⁵ For this paragraph to apply, the insurer must:

- Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and
- Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer in maintaining its supervision system.⁶⁶

Insurers and agents are required to maintain or be able to make available to the Department or the OIR records of the information collected from the consumer with respect to an annuity insurance transaction, and other information relied upon in making the recommendation, for five years after the insurance transaction is completed.⁶⁷ An insurer may retain records on behalf of its agent.⁶⁸ Records may be maintained in various specified forms or by any process that accurately produces the actual document.⁶⁹

An insurer is responsible for compliance with s. 627.4554, F.S., and, if violated because of action or inaction by the insurer or its agent that causes harm to the consumer, the OIR may order the

⁶¹ Section 627.4554(5)(g)3., F.S.

⁶² Section 627.4554(5)(g)3.b., F.S.

⁶³ Section 627.4554(h), F.S.

⁶⁴ Section 627.4554(i), F.S.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Section 627.4554(6), F.S.

⁶⁸ *Id.*

⁶⁹ *Id.*

insurer to take reasonably appropriate corrective action and may impose appropriate sanctions and penalties.⁷⁰ The Department may order:

- An agent to take reasonably appropriate corrective action for a consumer harmed by a violation, including monetary restitution of penalties or fees incurred by the consumer and impose appropriate penalties and sanctions;
- A managing general agency or insurance agency that employs or contracts with an agent to sell or solicit the sale of annuities to consumers to take reasonably appropriate corrective action for a consumer harmed by a violation.⁷¹

The Department must order an agent to pay restitution to a consumer who has been deprived of money by the agent's misappropriation, conversion, or unlawful withholding of money belonging to the consumer, and the amount may not exceed the amount misappropriated, converted, or unlawfully withheld.⁷² This provision does not limit the consumer's right to seek other remedies. To the extent that corrective action for the consumer is taken promptly after a violation is discovered, any applicable penalty under the Florida Insurance Code for a violation must be reduced or eliminated, as appropriate, according to a schedule adopted by the Department or the OIR.⁷³

In 2003, the National Association of Insurance Commissioners (NAIC) created the Suitability in Annuity Transactions Model Regulations in 2003 which were revised with updated standards in 2020 ("NAIC Model Regulation").⁷⁴ According to the NAIC, as of 2022, 27 states have adopted either the 2003 or 2020 version of the NAIC Model Regulation.⁷⁵ The NAIC Model Regulation requires agents to act in the best interest of consumers when making recommendations regarding annuities, and requires insurers to establish and maintain a system to supervise procedures to ensure compliance with the regulation.⁷⁶ It also contains, among other things, duties for which insurers and agents must comply, training requirements, recordkeeping, and compliance mitigation provisions.⁷⁷

⁷⁰ Section 627.4554(7)(a), F.S.

⁷¹ Section 627.4554(7)(a)1. and 2., F.S.

⁷² Section 627.4554(7)(c), F.S.

⁷³ Section 627.4554(7)(d), F.S.

⁷⁴ Zimmermann, S., *NAI Annuity Suitability Training Requirements*, Annuity.Org, Feb. 20, 2023, available at <https://www.annuity.org/annuities/regulations/naic/training/> (last visited April 13, 2023).

⁷⁵ Silvestrini, E., *Annuity Regulations*, Annuity.Org, Feb. 20, 2023, <https://www.annuity.org/annuities/regulations/> (last visited April 13, 2023).

⁷⁶ The NAIC Model Laws, Regulations, Guidelines and Other Resources – Spring 2020, *Suitability in Annuity Transactions Model Regulation*, Spring 2020, available at <https://content.naic.org/sites/default/files/inline-files/MDL-275.pdf> (last visited April 13, 2023).

⁷⁷ *Id.*

Insurance Agency Firm Name

An insurance agency's⁷⁸ firm name must comply with certain provisions under Florida law.⁷⁹ The Department may disapprove the use of any true or fictitious name, except the bona fide natural name of an individual, by an insurance agency for any of the following reasons:

- The name interferes with or is too similar to a name already in use by another agency or insurer;
- The use of the name may mislead the public;
- The name states or implies the agency is an insurer, motor club, hospital service plan, state or federal agency, charitable organization, or entity that primarily provides advice and counsel rather than sells or solicits insurance, or is entitled to engage in insurance activities not permitted under the license held or applied for by the licensee. This provision does not prohibit the use of the terms “state” or “states,” and use of such terms does not imply the agency is a state agency.
- The name contains the term “Medicare” or “Medicaid.” An insurance agency whose name contains such terms and is licensed as of July 1, 2021 may continue to use that name until June 30, 2023 as long as the license remains valid. Insurance agencies whose names contain such terms will automatically expire on July 1, 2023, unless the terms are removed from the name before that date.⁸⁰

Notice of Property Insurance Claim

Section 627.70132, F.S., currently requires insureds to notify an insurer of a claim or reopened claim,⁸¹ within one year after the date of loss.⁸² Notice of a supplemental claim⁸³ must be given to the insurer within 18 months after the date of loss or such claim is barred.

Residential Condominium Loss Assessments

Loss assessment coverage is insurance coverage for condominium unit owners that provides protection for situations where the owner of a condominium unit, as the owner of shared property, is held financially responsible for:

- Deductibles owed when a claim is made under a condominium association's property insurance policy;

⁷⁸ Section 626.015(10), F.S., defines “insurance agency” as a business location at which an individual, firm, partnership, corporation, association, or other entity, other than an employee of the individual, firm, partnership, corporation, association, or other entity other than an insurer as defined by s. 624.03, F.S., or an adjuster, engages in any activity or employs individuals to engage in any activity which by law may be performed only by a licensed insurance agent.

⁷⁹ Section 626.602, F.S.

⁸⁰ *Id.*

⁸¹ Section 627.70132(1)(a), F.S., defines “reopened claim” as a claim that an insurer has previously closed, but that has been reopened upon an insured's request for additional costs for loss or damage previously disclosed to the insurer.

⁸² Section 627.702(3), F.S., provides that the date of loss for claims resulting from specified and other weather-related events, such as hurricanes and tornadoes, is the date that the hurricane made landfall or the other weather-related event is verified by the National Oceanic and Atmospheric Administration.

⁸³ Section 627.70132(1)(b), F.S., defines “supplemental claim” as a claim for additional loss or damage from the same peril which the insured has previously adjusted or for which costs have been incurred while completing repairs or replacement pursuant to an open claim for which timely notice was previously provided to the insurer.

- Damage that occurs to the condominium building or the common areas of a condominium property; or
- Injuries that occur in the common areas of a condominium property.⁸⁴

Florida law requires that property insurance policies held by condominium unit owners include a minimum property loss assessment coverage of \$2,000 for all assessments made as a result of the same direct loss to the condominium property.⁸⁵ The law further establishes the maximum amount of any unit owner's coverage that can be assessed for any loss is an amount equal to the unit owner's loss assessment coverage limit in effect one day before the date of an occurrence, but it does not specify exactly what occurrence is referenced.⁸⁶ A condominium unit owner's insurance policy must state that the coverage afforded by the policy is excess coverage over the amount recoverable under any policy covering the same property.⁸⁷

Notice of Cancellation for Certain Policies

Insurers must inform the first-named policyholder for coverage of property, casualty (except for mortgage guaranty), surety, or marine insurance (except for certain motor vehicle insurance) with 45 days' advance written notice of cancellation or termination with when otherwise specified in certain provisions.⁸⁸ When cancellation is due to failure to pay a premium, at least 10 days' written notice of cancellation and the reason for the cancellation must be provided to the insured.⁸⁹ When cancellation or termination occurs during the first 90 days and is not a result of nonpayment of premium, at least 20 days' written notice and the reason for cancellation or termination must be given to the insured except where there has been a material misstatement, misrepresentation, or failure to comply with the underwriting requirements.⁹⁰ After 90 days, no such policy may be cancelled by the insurer unless there has been a material misstatement, a failure to pay the premium, a failure to comply with underwriting requirement within a specified time, or a substantial change in the risk covered by the policy or when cancellation is given for a class of insureds.⁹¹

With respect to personal lines or commercial residential property insurance policies, such as any homeowner, mobile home owner, farm owner, condominium association, condominium unit owner, apartment building, the insurer must give the first-named insured written notice at least 120 days before the effective date of the nonrenewal, cancellation, or termination.⁹² Such insurers must receive 10 days' advance notice of cancellation for a failure to pay a premium, or 20 days' notice for a reason other than nonpayment if cancellation occurs within the first 90 days of coverage.⁹³ An insurer may not cancel the policy after it has been in effect for 90 days unless there has been a material misstatement, nonpayment, a failure to comply within underwriting

⁸⁴ Araujo, Mila, *The Balance, Loss Assessment Explained for Condo Insurance*, <https://www.thebalancemoney.com/loss-assessment-explained-for-condo-insurance-4060435> (last visited March 9, 2023).

⁸⁵ Section 627.714(1), F.S.

⁸⁶ Section 627.714(2), F.S.

⁸⁷ Section 627.714(4), F.S.

⁸⁸ Section 627.4133(1)(a), F.S.

⁸⁹ Section 627.4133(1)(b)1., F.S.

⁹⁰ Section 627.4133(1)(b)2., F.S.

⁹¹ *Id.*

⁹² Section 627.4133(2)(b), F.S.

⁹³ Section 627.4133(2)(b)1. and 2., F.S.

within a specified time, a substantial change in the risk covered by the policy or unless the cancellation is for a given class of insureds.⁹⁴

Unfair Methods of Competition and Unfair or Deceptive Acts

The Unfair Insurance Trade Practices Act⁹⁵ provides no person may engage in any unfair method of competition or an unfair or deceptive act or practice in relation to the business of insurance.⁹⁶ Section 626.9541, F.S., sets out several acts or practices that constitute unfair methods of competition and unfair or deceptive acts, such as:

- Misrepresentations and false advertising of insurance policies;
- False information and advertising;
- Defamation;
- Boycott, Coercion, and intimidation;
- False statements and entries;
- Unfair discrimination;
- Unlawful rebates; and
- Unfair claim settlement practices.

Misrepresentations and false advertising of insurance policies means knowingly making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, comparison, or property and casualty certificate of insurance altered after being issued, which, for instance, misrepresents the benefits, advantages, conditions, or terms of any insurance policy or is misleading, or is a misrepresentation, as to the financial condition of any person or as to the legal reserve system upon which any life insurer operates.⁹⁷

Except for specified penalties to the contrary and subject to any other applicable penalties, a person who violates any provision of the Unfair Insurance Trade Practices Act may be fined an amount not greater than \$5,000 for each non-willful violation and not greater than \$40,000 for each willful violation.⁹⁸ An insurer may not be fined more than an aggregate amount of \$20,000 for all non-willful violations, or \$200,000 for all willful violations, arising out of the same action.⁹⁹

Hurricane Deductibles

Residential coverage includes both personal lines residential coverage¹⁰⁰ and commercial lines residential coverage,¹⁰¹ and includes policies that provide coverage for particular perils such as

⁹⁴ Section 627.4133(2)(b)3., F.S.

⁹⁵ Section 626.951(2), F.S.

⁹⁶ Section 626.9521(1), F.S.

⁹⁷ Section 626.9541(1)(a), F.S.

⁹⁸ Section 626.9521(2), F.S.

⁹⁹ *Id.*

¹⁰⁰ Types of personal lines residential coverage include homeowner, mobile home owner, dwelling, tenant, condominium unit owner, or cooperative unit owner. Section 627.4025(1), F.S.

¹⁰¹ Types of commercial lines residential coverage includes condominium association, cooperative association, apartment building, and similar policies, including policies covering the common elements of a homeowners association. Section 627.4025(1), F.S.

windstorm¹⁰² and hurricane.¹⁰³ “Hurricane coverage” is the loss or damage caused by the peril of windstorm during a hurricane, which includes damage to the interior of a building or to property inside a building caused by rain, snow, sleet, hail, sand, or dust if the direct force of a windstorm first damages the building, causing an opening through which rain, snow, sleet, hail, sand, or dust enters and causes damage.¹⁰⁴ The term “hurricane,” as used in this paragraph, is a storm system that has been declared to be a hurricane by the National Hurricane Center of the National Weather Service. The duration of the hurricane includes the time period, in Florida:

- Beginning at the time a hurricane watch or hurricane warning is issued for any part of Florida by the National Hurricane Center of the National Weather Service;
- Continuing for the time period during which the hurricane conditions exist anywhere in Florida; and
- Ending 72 hours following the termination of the last hurricane watch or hurricane warning issued for any part of Florida by the National Hurricane Center of the National Weather Service.¹⁰⁵

According to the Insurance Services Office, there has been \$159.1 billion in insured losses caused by hurricanes between 1993 and 2013.¹⁰⁶ In 1992, after Hurricane Andrew hit South Florida, hurricane deductibles were introduced to deal with the major losses caused by the major storms.¹⁰⁷ Florida law does not define “hurricane deductible,” but according to the NAIC, a deductible is the amount of loss for which the policyholder is responsible to pay before any loss is covered by the insurer.¹⁰⁸ Hurricane deductibles may be a fixed amount but usually are a percentage of the insured’s home value.¹⁰⁹ Hurricane deductibles are usually higher than other peril deductibles because of the catastrophic damage caused by hurricanes,¹¹⁰ and typically range from between one percent to 10 percent of the home value.¹¹¹ Laws in nineteen states, including Florida, and the District of Columbia contain to some form of hurricane or storm deductible.¹¹²

¹⁰² Section 627.4025(2)(b), F.S., defines “windstorm,” for purposes of defining the term “hurricane coverage,” means wind, wind gusts, hail, rain, tornadoes, or cyclones caused by or resulting from a hurricane which results in direct physical loss or damage to property.

¹⁰³ Section 627.4025(1), F.S.

¹⁰⁴ Section 627.4025(2)(a), F.S.

¹⁰⁵ Section 627.4025(2)(c), F.S.

¹⁰⁶ The National Association of Insurance Commissioners (NAIC), *Hurricane Deductibles*, May 11, 2022, available at <https://content.naic.org/cipr-topics/hurricane-deductibles> (hereinafter cited as “NAIC Hurricane Deductible”) (last visited April 14, 2023).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ The NAIC Hurricane Deductible.

¹¹⁰ The Department of Financial Services, *2023 Legislative Bill Analysis for SB 1398*, p. 3 (Mar. 16, 2023) (on file with Senate Committee on Banking and Insurance); The NAIC Hurricane Deductible.

¹¹¹ The NAIC Hurricane Deductible.

¹¹² *Id.*; Howard, P., and Gimbel, J., *Hurricane Deductibles in 2023: Your State-by-State Guide*, Policygenius, Dec. 30, 2022, available at <https://www.policygenius.com/homeowners-insurance/hurricane-deductible-guide/> (last visited April 14, 2023) (summarizing the laws on hurricane deductibles in 19 states).

Motor Vehicle Service Agreements

A person may not transact, administer, market, or attempt any of these activities with respect to a service agreement¹¹³ business in Florida without a license.¹¹⁴ To qualify for and maintain a license, a service agreement company (“company”) must comply with applicable Florida laws (including the Florida Insurance Code), rules and charter powers, and comply with specified requirements, including, in part:

- Being a solvent corporation;
- Furnishing the OIR with evidence the management of the company is competent and trustworthy, and can successfully and lawfully manage its affairs;
- Making a deposit required under s. 634.052, F.S.;
- Maintaining the required reserves and the required ratio of liquid assets to the required reserves;
- Having and maintaining net assets of \$500,000; and
- Establishing and maintaining an unearned premium reserve that meets certain requirements, including:
 - The unearned premium reserve consists of unencumbered assets equal to a minimum of 50 percent of the unearned gross written premium of each service agreement and must amortize this reserve pro rata over the duration of the service agreement;
 - A company utilizing the 50-percent reserve must not allow its ratio of gross written premium to net assets to exceed 10 to one; and
 - The company must deposit with the DFS securities of the type eligible for deposit by insurers under s. 625.52, F.S., equal to 15 percent of the unearned premium reserve; or
- Does not establish and maintain an unearned premium reserve if the company secures and maintains contractual liability insurance in accordance with the following:
 - Coverage of 100 percent of the claim exposure is obtained from an insurer approved by the OIR which meets certain criteria;
 - The contractual liability insurance policy binds its issuer to pay or cause to be paid to the service agreement holder all legitimate claims and cancellation refunds if the company does not meet its contractual obligations;
 - If the issuer of the contractual liability policy is fulfilling the service agreements covered by contractual liability policy and the holder cancels the service agreement, the issuer must make a full refund of the unearned premium to the consumer in certain circumstances;
 - The policy’s cancellation, termination, or nonrenewal is subject to 90 days written notice by the insurer to the OIR; and

¹¹³ Section 634.011(8), F.S., defines “motor vehicle service agreement” or “service agreement” as a contract or agreement indemnifying the service agreement holder for the motor vehicle listed on the service agreement and arising out of the ownership, operation, and use of the motor vehicle against loss caused by failure of any mechanical or other component part, or any mechanical or other component part that does not function as it was originally intended; however, nothing in this part shall prohibit or affect the giving, free of charge, of the usual performance guarantees by manufacturers or dealers in connection with the sale of motor vehicles. Transactions exempt under s. 624.125, F.S., are expressly excluded from this definition and are exempt from the provisions of this part. The term “motor vehicle service agreement” includes any contract or agreement that provides: (a) for the coverage or protection and which is issued or provided in conjunction with an additive produce applied to the motor vehicle that is the subject of such contract or agreement; (b) For payment of vehicle protection expenses as defined in s. 634.011(8)(b)1.a., F.S.

¹¹⁴ Section 634.031(1), F.S.

- The company must provide the OIR with the claims statistics.¹¹⁵

Mortgage Loan Regulations

The OFR is responsible for the regulation of banks, credit unions, other financial institutions, finance companies, and securities.¹¹⁶ The OFR has a Division of Consumer Finance which is responsible for the administration and enforcement of ch. 494, F.S.¹¹⁷ that licenses and regulates the individuals and businesses in the mortgage business, including loan originators,¹¹⁸ mortgage brokers,¹¹⁹ and mortgage lenders.¹²⁰ A person who acts in any of these capacities must be licensed.¹²¹

A mortgage broker and mortgage lender who makes loans in Florida must transact business from a principal place of business.¹²² Mortgage brokers and mortgage lenders may separately license branch offices.¹²³ A “branch office” is a location, other than a mortgage broker’s or mortgage lender’s principal place of business:

- The address of which appears on business cards, stationary, or advertising used by the licensee in connection with business conducted under ch. 494, F.S.;
- At which the licensee’s name, advertising or promotional materials, or signage suggests that mortgage loans are originated, negotiated, funded, or services; or
- At which mortgage loans are originated, negotiated, funded, or services by a licensee.¹²⁴

The OFR must issue a branch office license after determining that the mortgage broker or mortgage lender has submitted a completed branch office application form, which must contain specified information, and an initial nonrefundable fee of \$225.¹²⁵ Branch office licenses must be renewed at the same time as mortgage broker or mortgage lender licenses.¹²⁶ Each branch office must be operated by the “full charge, control, and supervision” of a principal loan originator and

¹¹⁵ Section 634.041, F.S.

¹¹⁶ Section 20.121(3)(a)2., F.S.

¹¹⁷ Section 494.0011(1), F.S.

¹¹⁸ Section 494.001(18), F.S., defines “loan originator” as an individual who, directly or indirectly, solicits or offers to solicit a mortgage loan, accepts, or offers to accept an application for a mortgage loan, negotiates or offers to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender, or negotiates or offers to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain.

¹¹⁹ Section 494.001(23), F.S. defines “mortgage broker” as a person conducting loan originator activities through one or more licensed loan originators employed by the mortgage broker or as independent contractors to the mortgage broker.

¹²⁰ Section 494.001(24), F.S., defines “mortgage lender” as a person making a mortgage loan or servicing mortgage loan for others, or, for compensation or gain, directly or indirectly, selling or offering to sell a mortgage loan to a noninstitutional investor. A mortgage lender may act as a mortgage broker. Section 494.0073, F.S.

¹²¹ Sections 494.00312, 494.00321, and 494.00611, F.S.

¹²² Sections 494.0039 and 494.0067(1), F.S. Section 494.001(31), F.S., defines “principal place of business” as a mortgage’s broker’s or mortgage lender’s primary business office, the street address, or physical location that is designated on the application for licensure or any amendment to such application.

¹²³ Sections 494.0036(1) and 494.0066(1), F.S.

¹²⁴ Section 494.001(3), F.S.

¹²⁵ Sections 494.0036(2) and 494.0066(2), F.S.

¹²⁶ Section 494.0036(3) and 494.0066(3), F.S.

branch manager.¹²⁷ Operating a branch office without the required license, designated principal loan originator, or branch manager is grounds for disciplinary action.¹²⁸

Licensees are required to maintain books, accounts, records and documents necessary to determine compliance with ch. 494, F.S., at their principal place of business,¹²⁹ but the OFR may authorize a licensee to maintain such records at an alternative location.¹³⁰

Conduct of Money Services Businesses

Ch. 560, F.S., sets out provisions on the conduct of money services businesses (MSB), specifying, in part:

- A licensee may transact MSB only under the legal name under which the person is licensed;
- The payment instrument must be endorsed using the legal name under which the licensee is licensed in certain circumstances;
- A licensee may not accept or cash a payment instrument from a person who is not the original payee with limited exception; and
- A licensee must report all suspicious activity to the OIR.¹³¹

Pursuant to s. 560.310, F.S., the OIR must require a licensee to submit certain information to the check cashing database or electronic log, before entering into each check cashing transaction for each payment instrument being cashed.¹³² A person who knowingly violates this section commits a felony of the third degree.¹³³

Crowd-funding Campaigns

Crowd-funding is a recent method used to raise funds online from a large number of people who are interested in a campaign.¹³⁴ Campaigns may support a wide range of ideas and ventures, and usually share information about the project, cause, or idea to decide whether to invest in the campaign based on the “collective wisdom of the crowd.”¹³⁵ Some of the top crowd-funding sites include GoFundMe, StartEngine, Indiegogo, and SeedInvest Technology.¹³⁶

Florida statutes have limited provisions related to crowd-funding campaigns that relate to intrastate crowd-funding for securities transactions.¹³⁷ There are no other provisions that address

¹²⁷ Sections 494.0035 and 494.00665, F.S.

¹²⁸ Section 494.00255(1)(q) and (r), F.S.

¹²⁹ Section 494.0016(1), F.S.

¹³⁰ Section 494.0016(2), F.S.

¹³¹ Section 560.309, F.S.

¹³² Section 560.310(2)(d), F.S.

¹³³ Section 560.111(6), F.S. A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

¹³⁴ The Securities and Exchange Commission, *24D Securities Pub. & Priv. Offerings Appendix C13 (2d ed.)* (Nov. 2022) available at [Appendix C13. SEC Crowdfunding Rule | Secondary Sources | National | Westlaw Edge](#) (last visited March 18, 2023).

¹³⁵ *Id.*

¹³⁶ Kearn, M., *Crowdfunding Platforms*, Investopedia, Dec. 28, 2022, <https://www.investopedia.com/best-crowdfunding-platforms-5079933> (last visited April 14, 2023).

¹³⁷ Section 517.0611, F.S.

crowd-funding explicitly, but crowd-funding campaigns must comply with all other relevant laws, such as the Florida Deceptive and Unfair Trade Practices Act (FDUTPA).¹³⁸ For instance, it is unlawful to engage in any unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.¹³⁹ Three are also provisions on unlawful acts and practices by social media platforms which, if applicable, a crowd-funding campaign organizer would need to comply.¹⁴⁰

The state attorney in the judicial circuit which a violation occurs or affects, or the Department of Legal Affairs if a violation occurs or affects more than one judicial circuit,¹⁴¹ has authority to conduct investigations if certain conditions are met.¹⁴² Such authority may seek specified remedies, such as a declaratory judgment or an action to enjoin,¹⁴³ and a violator may be liable for a civil penalty of not more than \$10,000.¹⁴⁴ Further, an aggrieved party may bring an individual cause of action in certain circumstances and seek actual damages, plus attorney fees and court costs.¹⁴⁵

Distributed Energy Generation Systems

A distributed energy generation system (DEGS), such as a solar panel or a wind-turbine,¹⁴⁶ is a device or system that is used to generate or store electricity, that has an electric delivery capacity, individually or in connection with other similar devices or systems, of greater than one kilowatt or one kilowatt-hour; and that is used primarily for on-site consumption.¹⁴⁷ According to the United States Environmental Protection Agency (EPA), the use of DEGS has increased for several reasons, for instance because they have become cost-effective.¹⁴⁸ There are benefits to using DEGS, such as reducing the amount of electricity generated which can reduce the environmental impact, but it can also have negative impacts, such as a system that involves combustion.¹⁴⁹ Most solar installations on residences are installed on a roof, and DEGS may be best suited for new roofs as they can last up to 25 years or longer.¹⁵⁰

¹³⁸ Sections 501.201, F.S. to 501.213, F.S.

¹³⁹ Section 501.204(1), F.S. “Trade or commerce” is defined as the advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated. The terms includes the conduct of any trade or commerce, however denominated, including any nonprofit or not-for-profit person or activity. Section 501.203(8), F.S. “Thing of value” may include, without limitation, any moneys, donation, membership, credential, certificate, prize, award, benefit, license, interest, professional opportunity, or chance of winning. Section 501.203(9), F.S.

¹⁴⁰ Section 501.2041, F.S.

¹⁴¹ Section 501.203(2), F.S.

¹⁴² Section 501.206, F.S.

¹⁴³ Section 501.207(1), F.S.

¹⁴⁴ Section 501.2075, F.S.

¹⁴⁵ Section 501.211(1), F.S.

¹⁴⁶ United States Environmental Protection Agency, *Distributed Generation of Electricity and its Environmental Impacts*, <https://www.epa.gov/energy/distributed-generation-electricity-and-its-environmental-impacts> (last visited April 14, 2023) (hereinafter cited as “EPA Website”).

¹⁴⁷ Section 520.20(3), F.S.

¹⁴⁸ EPA Website.

¹⁴⁹ *Id.*

¹⁵⁰ The Department of Financial Services, *2023 Legislative Bill Analysis for SB 1398*, p. 3 (Mar. 16, 2023) (on file with Senate Committee on Banking and Insurance).

In 2017, the Florida Legislature adopted laws related to the retail installment sales of DEGS in Part II of ch. 520, F.S. (Part II)¹⁵¹ Part II applies to agreements¹⁵² to sell or lease a DEGS and is supplemental to the provisions on retail installment contracts contained in Part III, F.S.,¹⁵³ and any sale of a DEGS must comply with applicable safety standards under chs. 489 and 553, F.S.¹⁵⁴ A written statement, separate from the agreement, must be acknowledged by the buyer or lessee, and must meet certain minimum requirements and must contain specified information, including, in part:

- The name and certain contact details of the buyer, the person responsible for installing the DEGS, and the DEGS's maintenance providers;
- A statement indicating whether the DEGS is being purchased or leased;
- The total cost to be paid by the buyer or lease;
- A payment schedule;
- Each state or federal tax incentive or rebate relied upon by the seller;
- A description of any roof warranties;
- A disclosure notifying the lessee whether the seller will insure a leased DEGS against damage or loss; and
- A prescribed statement about the buyer's or lessee's responsibility to obtain insurance.¹⁵⁵

This requirement to produce a written statement may be satisfied by the electronic delivery of a document that contains the requirement information provided the intended recipient acknowledges its receipt.¹⁵⁶ A seller who willfully violates the Part II commits a noncriminal violation punishable by a fine.¹⁵⁷ The owner may recover against certain person specified charges under the agreement, attorney fees and costs.¹⁵⁸

Warranty Associations

Chapter 634, F.S., provides for the regulation of warranty associations. There are three parts to the chapter; Part I for motor vehicle service agreement companies; Part II for home warranty associations; and Part III for service warranty associations.

¹⁵¹ Ch. 2017-118, Laws of Fla.

¹⁵² Section 520.20(1), F.S. defines "agreement" as a contract executed between a buyer or lessee and a seller that leases or sells a DEGS. For purposes of this part, the term includes retail installment contracts. Section 520.20(2), F.S., defines "buyer" as a person that enters into an agreement to buy a DEGS from a seller. Section 520.20(6), F.S., defines "seller" as a person who regularly engaged in, and whose business substantially consists of, selling or leasing goods, including DEGS, to buyers or lessees. A seller that is also an installer must be licensed under ch. 489, F.S. Section 520.20(5), F.S., defines "retail installment contract" as an agreement executed in this state between a buyer and a seller in which the title to, or a lien upon, a DEGS is retained or taken by the seller from the buyer as security, in whole or in part, for the buyer's obligations to make specified payments over time.

¹⁵³ Section 520.21, F.S.

¹⁵⁴ Section 520.22, F.S.

¹⁵⁵ Section 520.23, F.S.

¹⁵⁶ *Id.*

¹⁵⁷ Section 520.25(1), F.S.

¹⁵⁸ Section 520.25(2), F.S.

Service Warranty Associations

A service warranty association is any business other than an authorized insurer that issues service warranties.¹⁵⁹ A service warranty includes, in return for the payment of a segregated charge by the consumer, any warranty, guaranty, or maintenance service contract equal to or greater than one year in length; an agreement for a specific duration to perform the repair, replacement, or maintenance of a consumer product; for indemnification for repair, replacement, or maintenance, for failure due to a defect in materials or workmanship, normal wear and tear, power surge, or accidental damage from handling.¹⁶⁰ The regulation of the association and the warranties is administered by the OIR; the regulation of the sales representatives is by the DFS.¹⁶¹

III. Effect of Proposed Changes:

Public Adjusters

Section 9 amends s. 626.854, F.S., by revising the definition of public adjuster to apply to any person who acts as a public adjuster regardless of how that person described or presents his or her services. When entering into a contract after July 1, 2023, a public adjuster is prohibited from:

- Collecting a fee for services on payments made to the insured unless the public adjuster and the named insured or the named insured's legal representative have entered into a written contract; and
- Contracting with a third party on behalf of the named insured unless the named insured gives written consent to procure these services and he or she gives such consent after entering into a contract for public adjusting services. If a public adjuster contracts with a third party to assist in settling the claim before obtaining written consent from the insured, the public adjuster is responsible for the third-party's fees.

If a public adjuster represents anyone other than the named insured in a claim, the public adjuster fees must be paid by the third party and may not be charged back to the named insured.

Public Adjuster Compensation

- A public adjuster may not charge more than: One percent of the amount of insurance claim payments or settlements paid to the insured by the insurer for any coverage part of the policy where the claim payment or written agreement by the insurer to pay is equal to or greater than the policy limit for that part of the policy, if the payment or written commitment to pay is provided within 14 days from the date of the reported loss or 10 days after the date on which the public adjusting contract is executed, whichever is later; and
- Zero percent of the amount of insurance claim payments or settlements, paid to the insured by the insurer for any coverage part of the policy where the claim payment or written agreement by the insurer to pay occurs before the date on which the public adjusting contract is executed.

¹⁵⁹ Section 634.401(14), F.S.

¹⁶⁰ Section 634.401(13), F.S.

¹⁶¹ Section 634.402, F.S.

Right of Rescission

When an insured or claimant enters into a contract with a public adjuster as a result of an emergency, an insured or claimant may cancel the contract without penalty or obligation within 30 days after the date of the loss, or 10 days after the date on which the contract is executed, whichever is longer. The public adjuster's contract to adjust must contain the following language in a minimum 18-point bold type immediately before the space reserved in the contract for the signature of the insured or claimant:

“You, the insured, may cancel this contract for any reason without penalty or obligation to you within 10 days after the date of this contract. If this contract was entered into based on events that are the subject of a declaration of a state of emergency by the Governor, you may cancel this contract for any reason without penalty or obligation to you within 30 days after the date of the event or 10 days after the date on which the contract is executed, whichever is longer. You may also cancel the contract without penalty or obligation to you if I, as your public adjuster, fail to provide you and your insurer a copy of the written estimate within 60 days of the execution of the contract, unless the failure to provide the estimate within 60 days is caused by factors beyond my control, in accordance with s. 626.854(14)(b), Florida Statutes. The 60-day cancellation period for failure to provide a written estimate shall cease on the date I have provided you with the written estimate.”

The insured may cancel a public adjuster services contract with no additional penalties or fees charged by the public adjuster if the public adjuster has not provided the insurer with a written estimate within 60 days after executing the contract, unless the failure to provide the estimate within 60 days is caused by factors beyond the control of the public adjuster. The cancellation period must cease on the date the public adjuster provides the written estimate to the insured.

Sections 11 and 12 amend ss. 626.8796 and 626.8797, F.S., respectively, and provides the fraud statement that must be contained in the contract and proof-of-loss statement must be in a minimum 18-point bold type before the space in the contract reserved for the insured's signature.

Public Adjuster Contracts

Section 11 amends s. 626.8796, F.S., and provides all contracts for public adjuster services must be in at least 12-point font, and be titled “Public Adjuster Contract.” The provision on public adjuster contracts relating to property and casualty claims must include the public adjuster's and insured's phone number and e-mail addresses, and requires these details for the affidavit remitted by public adjusting firms in eligible circumstances. The bill specifies contract language must state the percentage of compensation in a minimum of 18-point bold type before the space reserved for the insured's signature. The bill provides the insured is required to initial each page that does not have his or her signature. Further, the bill specifies the unaltered copy of the contract must be remitted to the insured at the time of execution and to the insurer within seven, rather than 30, days after execution, and clarifies that the unaltered copy may be provided to the insurer's representative.

The bill provides the public adjuster may not receive compensation for services provided prior to the date the insured receives unaltered copies of the executed contract or the date the executed contract is submitted to the insurer. Proof of receipt by the insured and proof of submission must be retained by the public adjuster for not less than five years.

Furthermore, an insured may rescind the contract for public adjuster services if the public adjuster has not submitted a written estimate to the insurer within 60 day after executing the contract, unless the failure is caused by factors beyond the public adjuster's control. The cancellation period for failure to provide a written estimate terminates on the date the estimate is provided.

Prior to executing the contract, the public adjuster must provide the insured with a separate disclosure document on a form adopted by the Department regarding the claim process and must:

- Define the type of adjusters who may be involved in the claim process as either a company adjuster, independent adjuster, and public adjuster;
- Explain the public adjuster is not a representative or employee of the insurer;
- Explain the insured is not required to hire a public adjuster, but has a right to do so;
- Explain an insured has a right to initiate direct communications with the insured's attorney, the insurer, the company adjuster, the insurer's attorney, or any person regarding the settlement of the insured's claim;
- Explain the public adjuster's salary, fee, commission, or other consideration to be paid is the insured's responsibility;
- Explain the public adjuster is required to provide the insured an unaltered copy of the executed contract at the time of execution;
- Explain if the contract was entered into based on events subject to a declaration of a state of emergency, the insured has a right to rescind the contract within 30 days after the date of the loss, or 10 days after the date on which the contract is executed, whichever is longer; and
- The public adjuster must provide an unaltered copy of the executed disclosure document at the time of execution.

A contract that does not comply with these disclosure requirements is invalid and unenforceable.

Rulemaking

Section 11 also provides the Department with authority to adopt rules to implement s. 626.8796, F.S., including rules to adopt forms required under the section.

Exemption from Public Adjuster Licensure

Section 9 amends s. 626.860, F.S., to clarify that the exemption for attorneys from needing a license under ch. 626, F.S., to adjust claims does not apply to the employees, interns, volunteers, or contractors of any attorney or law firm.

Display of Adjuster License

Section 10 amends s. 626.875, F.S., and requires an independent or public adjuster to display their license in a conspicuous place in the license holder's principal place of business, but carry

the license in his or her actual possession if the licensee is conducting business away from their place of business and cannot post the license.

Adjuster Records Retention

The bill requires records of specific claims or losses, that are required to be retained by the adjuster, must be retained in the adjuster's place of business for a period of not less than five years and must be made available for inspection by the Department between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding state holidays. The bill further specifies documents which must be maintained for a period not less than five years, including:

- Name, address, telephone number, and e-mail address of the insured, and the name of the attorney representing the insured, if applicable;
- The date, location, and amount of the loss;
- An unaltered copy of the executed disclosure document required and public adjuster contract;
- A copy of the estimate of damages provided to the insurer;
- The name of the insurer, the name of the insurer's claims representative, and the amount, expiration date, and number of each policy under which the loss is covered;
- An itemized statement of recoveries by the insured from the sources known to the adjuster;
- An itemized statement of the compensation received by the public adjuster from any source; and
- A register of all money received, deposited, disbursed, and withdrawn in connection with a transaction with the insured, including fees, transfers, and disbursements in connection with the loss.

Annuities

Section 16 amends s. 627.4554, F.S., and largely adopts the National Association of Insurance Commissioners (NAIC) Model Regulation with some modifications to synthesize the provisions with current law. The Department and Financial Services Commission (Commission) is authorized to adopt by rule the forms prescribed in the NAIC Suitability in Annuity Transaction Model Regulation Appendix A – Insurance Agent (Producer), Appendix B – Consumer Refusal to Provide Information, and Appendix C – Consumer Decision to Purchase an Annuity Not Based on a Recommendation.

The bill renames the title of s. 627.4554, F.S., to “Suitability in Annuity Transactions,” and makes the section effective January 1, 2024. The bill amends the purpose of s. 627.4554(1), F.S., which, unlike current law, requires agents to act in the best interest of the consumer when making a recommendation about an annuity. The purpose also requires insurers to establish and maintain a supervisory system to ensure that the insurance needs and financial objectives of the consumer are effectively, rather than appropriately, addressed at the time of the transaction. The scope of the section is also amended to apply to any sale or recommendation of an annuity but is no longer limited to apply to transactions which result in the purchase, exchange or replacement recommended. The bill modifies the exemptions provision under current law to state the exemptions do not apply to s. 627.4554, F.S., “unless otherwise specifically included.”

The bill defines, deletes or revises the following terms:

- “Agent” is revised, from the same meaning as provided in s. 626.015, F.S., to mean a person or entity required to be licensed under the laws of Florida to sell, solicit, or negotiate insurance, including annuities. For purposes of this section, the terms include an insurer where no agent is involved;
- “Cash compensation” means as any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by an agent from an insurer, intermediary, or directly from the consumer in connection with the recommendation or sale of an annuity;
- “Consumer profile information” means information that is reasonably appropriate to determine whether a recommendation addresses the consumer’s financial situation, insurance needs, and financial objectives, including, at a minimum, the following:
 - Age;
 - Annual income;
 - Financial situation and needs, including debts and other obligations;
 - Financial experience;
 - Insurance needs;
 - Financial objectives;
 - Intended use of the annuity;
 - Financial time horizon;
 - Existing assets or financial products, including investment, annuity, and insurance holdings;
 - Liquidity needs;
 - Liquid net worth;
 - Risk tolerance, including, but not limited to, willingness to accept nonguaranteed elements in the annuity;
 - Financial resources used to fund the annuity; and
 - Tax status.
- “Intermediary” means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer’s annuities by agents;
- “Material conflict of interest” means a financial interest of the agent in the sale of an annuity which a reasonable person would expect to influence the impartiality of a recommendation. The term expressly does not include cash compensation or noncash compensation;
- “Noncash compensation” means any form of compensation that is not cash compensation, including, but not limited to, health insurance, office rent, office support, and retirement benefits;
- “Nonguaranteed elements” means the premiums; credited interest rates, including any bonus; benefits; values; dividends; noninterest-based credits; charges; or elements of formulas used to determine any of these, which are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation;
- “Recommendation” is revised to mean advice provided by an agent to an individual consumer which was intended to result or does result in a purchase, an exchange, or a replacement of an annuity in accordance with that advice. New language was added to specify the term does not include general communication to the public, generalized customer services, assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material;

- “Replacement” is revised to mean a transaction in which a new annuity is to be purchased and it is known or should be known to the proposing agent, or to the proposing insurer whether or not an agent is involved, that by reason of such transaction an existing annuity or other insurance policy has been or is to be any of the criteria contained in the subsection (l)1- 5 of the bill;
- “SEC” means the United States Securities and Exchange Commission;
- “Suitability information” is deleted and replaced with the definition of “consumer profile information”;
- “Comparable standard” means, for purposes of paragraph 4.a., with respect to:
 - Broker-dealers and registered representatives of broker-dealers, applicable Securities and Exchange Commission and FINRA rules pertaining to best interest obligations and supervision of rules pertaining to best interest obligations and supervision of annuity recommendations and sales including, but not limited to, Regulation Best Interest, 17 C.F.R. s. 240.15101, and any amendments or successor regulations thereto;
 - Investment advisers registered under federal or state securities laws or investment adviser representatives by contract or under the Investment Advisers Act 1940 or applicable state securities laws, including, but not limited to, Form ADV and interpretations; and
 - Plan fiduciaries or fiduciaries, the duties, obligations, prohibitions and all other requirements attendant to such status under the Employee Retirement Income Security Act of 1974 of the Internal Revenue Code and any amendments or successor statutes thereto; and
- “Financial professional” means, for purposes of paragraph 4.a., an agent that is regulated and acting as: (a) A broker-dealer registered under federal or state securities laws or a registered representative of a broker-dealer; (b) An investment adviser registered under federal or state securities laws or an investment adviser representative associated with the federal or state registered investment adviser; or (c) A plan fiduciary under s. 3(21) of the Employee Retirement Income Security Act of 1974 or fiduciary under s. 4975(e)(3) of the Internal Revenue Code or any amendments or successor statutes thereto.

The bill replaces, or amends as specified below, the duties of insurers and agents under current law to incorporate the best interest standards contained in the NAIC Model Regulation:

- When making a recommendation of an annuity, an agent must act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the insurer or agent’s financial interest ahead of the consumers’ interests.
- Provides an agent has acted in the best interest of the consumer if the agent has satisfied the following obligations regarding care, disclosure, conflicts of interest, and documentation.
- In making a recommendation, the agent must exercise reasonable diligence, care, and skill (“care obligation”) to:
 - Know the customer’s financial situation, insurance needs, and financial objectives;
 - Understand the available options after making a reasonable inquiry into options available to the agent;
 - Have a reasonable basis to believe the recommended option effectively addresses the consumer’s financial situation, insurance needs, and financial objectives over the life of the product, in light of the consumer’s profile information; and
 - Communicate the reason or reasons for the recommendation.
- The requirements of the care obligation include:

- Making reasonable efforts to obtain consumer profile information from the consumer before the recommendation of an annuity;
- Requiring an agent to consider the types of products the agent is authorized and licensed to recommend or sell which address the consumer's financial situation, insurance needs, and financial objectives. An insurer or agent are not required to analyze or consider products outside the authority and license of the agent or other possible alternative products or strategies available in the market at the time of the recommendation. Agents must be held to standards applicable to agents with similar authority and license; and
- Having a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization,¹⁶² death or living benefit, or other insurance-related features.
- The care obligation does not create a fiduciary duty or relationship and only establishes a regulatory duty.
- Consumer profile information, characteristics of the insurer and product costs, rates, benefits, and features are those factors generally relevant in making a determination whether an annuity effectively addresses the consumer's financial situation, insurance needs, and financial objectives but the level of importance of each factor under the care obligation may vary depending on the factors and circumstances of a particular case. However, each factor may not be considered in isolation.
- The requirements of the care obligation apply to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar product enhancements, if any.
- The care obligation does not require that the annuity with the lowest one-time occurrence compensation structure or multiple occurrence compensation structure must necessarily be recommended.
- The agent does not have ongoing monitoring obligations under the care obligation, although such obligation may be separately owed under the terms of a fiduciary, consulting, investment, advising, or financial planning agreement between the consumer and agent.
- In a case of an exchange or replacement of an annuity, the agent must consider the whole transaction, which includes considering whether:
 - The consumer will incur a surrender charge, be subject to a new surrender period, lose existing benefits, be subject to increased fees;
 - Would benefit from product enhancements and improvements; and
 - Has had another annuity exchange or replacement within the preceding 60 months.
- An agent is not required to obtain any license other than an agent license with the appropriate line of authority to sell, solicit, or negotiate insurance in this state, including, but not limited to, any securities license, in order to fulfill the duties and obligations contained in this section; provided, the agent does not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses.
- Before the recommendation or sale of an annuity, the agent must prominently disclose to the consumer on a form substantially similar to that posted on the OIR's website as Appendix A, relating to an insurance agent disclosure for annuities, including:
 - A description of the scope and terms of the relationship with the consumer and the role of the agent in the transaction;

¹⁶² Annuitization is the process of converting investment into a series of periodic income payments. Investopedia.com, *Annuitization Definition*, <https://www.investopedia.com/terms/a/annuitization.asp> (last visited April 14, 2023).

- An affirmative statement on whether the agent is licensed and authorized to sell the certain products, including certain types of annuities, life insurance, mutual funds, stocks and bonds, or certificates of deposits;
- An affirmative statement describing the insurers for which the agent is authorized, contracted, or appointed, or otherwise able to sell insurance products, using the following descriptions specified descriptions regarding the number of insurers and, if two or more, whether the agent is primarily contracted with one insurer;
- A description of the sources and types of cash compensation and noncash compensation to be received by the agent, including certain information about the type of compensation received for the sale of a recommended annuity; and
- A notice of the consumer's right to request additional information regarding cash compensation.
- Upon request of the consumer or the consumer's designated representative, the agent must disclose:
 - A reasonable estimate of the amount, stated as a range of amounts or percentages, of cash compensation to be received by the agent.
 - Whether the cash compensation is a one-time or multiple occurrence amount; if a multiple occurrence amount then the disclosure must contain certain information.
- Before or at the time of the recommendation or sale of an annuity, the agent must have a reasonable basis to believe the consumer has been informed, rather than the consumer being reasonably informed under current law, of various features of the annuity, and additional features have been added to the specified list, including any annual fees, other options of the annuity, and potential changes in nonguaranteed elements of the annuity.
- The agent must identify and avoid, or reasonably manage and disclose, material conflicts of interest, including material conflicts of interest related to an ownership interest.
- An agent must at the time of the recommendation or sale:
 - Make a written record of any recommendation and the basis for the recommendation;
 - Obtain a consumer signed statement on a form substantially similar to that posted on the OIR's website as Appendix B, related to a consumer's refusal to provide information:
 - A customer's refusal to provide the consumer profile information, if any; or
 - A customer's understanding of the ramifications of not providing his or her consumer profile information or providing insufficient consumer profile information.
 - Obtain a customer signed on a form substantially similar to that posted on the OIR's website as Appendix C, related to a consumer's decision to purchase an annuity not based on a recommendation, acknowledging the annuity transaction is not recommended, if applicable.
- Any requirement applicable to an agent under this subsection must apply to every agent who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the agent has had direct contact with the consumer. Certain activities, such as providing or delivering marketing or educational materials, are specified as not constituting material control or influence.
- The first sentence of s. 627.4554(5)(d), F.S., relating to the requirement that an insurer's issuance of an annuity being reasonable in all of the circumstances, is relocated to a separate subparagraph, and clarifies that an insurer to does have a care obligation with respect to specified transactions.

- An insurer is prohibited from recommending an annuity to a consumer unless there is reasonable basis to believe that it would effectively address the particular consumer's financial situation, insurance needs, and financial objectives based on the consumer's profile information.
- An insurer must establish and maintain, not only establish as provided under current law, a supervision system that is reasonably designed to ensure the insurer and agent's compliance with s. 627.4554, F.S., and must include, but is not limited to, the insurer must:
 - Establish and maintain, not only maintain as provided under current law, reasonable procedures to inform its agents of the requirements of the section and incorporating them into training manuals;
 - Establish and maintain, not only establish as provided under current law, standards for agent product training, and establish and maintain reasonable procedures to require its agent to comply with the training requirements;
 - Provide product-specific training and training materials that explain all material features of its annuity products to its agents;
 - Establish and maintain, not only maintain as provided under current law, procedures for the review of each recommendation before issuance of an annuity to ensure there is reasonable basis to determine the recommended annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives, rather than for determining that the recommendation is suitable;
 - Establish and maintain, not only maintain as provided under current law, reasonable procedures to detect recommendations that are not in compliance with paragraphs (a), (b), (d), and (e), rather than detecting recommendations that are not suitable. Two examples of procedures are added to the list in current law which are: agent interviews and agent statements or attestations;
 - Annually providing a report to senior managers which details a review, along with appropriate testing to determine the effectiveness of the supervision system, the exceptions found, and any corrective action taken or recommended;
 - Establish and maintain reasonable procedures to assess, prior to the issuance or delivery of the annuity, whether an agent has provided the consumer with required information, which is not a requirement under current law;
 - Establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information, which is not a requirement under current law; and
 - Establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, and other noncash compensation that are based on the sales of specific annuities within a limited period of time. The requirements under this provision do not prohibit the receipt of health insurance, office rents, office support and other employee benefits by employees as long as they are not based on the volume of sales of a specific annuity within a limited period of time.
- Amends the list of requirements that do not need to be included in an insurer's supervision system to add consideration of or comparison to options available to the agents or compensation relating to those options other than annuities or other products offered by the insurer.
- Provides an insurer may contract for the maintenance of procedures relating to the supervisory system.
- An insurer's supervision system must include supervision of any contractual performances;

- The annual certificate from a senior manager must state that the manager has a reasonable basis to represent and does represent, rather than just representing as provided under current law, that the function is being properly performed.
- Provides neither an agent nor an insurer shall dissuade or attempt to dissuade a consumer from certain acts including recommendation and sales of annuities made by financial professionals in compliance with FINRA standards, even if such standard would not otherwise apply to the product or recommendation at issue.
- Does not limit the insurer's obligation to have a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives.
 - The insurer:
 - May base its analysis on information received from either the financial professional or the entity supervising the financial professional and is amended to conform to this change;
 - Must monitor relevant conduct of the financial professional or an entity responsible for supervising the financial professional; and
 - The entity responsible for supervising the financial professional, information and reports that are reasonably appropriate to assist such entity in maintaining its supervision system.

The bill creates s. 627.4554(6), F.S., relating to agent training. This section provides:

- An agent must not solicit the sale of an annuity product unless the agent has adequate knowledge of the product to recommend the annuity and the agent is in compliance with the insurer's standards for product training. An agent may rely on insurer-provided product-specific training standards and materials to comply the training requirements.
- An agent who engages in the sale of annuity products must complete a one-time four hour training course, which is not part of the agent's continuing education requirement in s. 626.2815, F.S., however, if the course provider submits and receives approval from the Department, the course is eligible for continuing education credit pursuant to s. 626.2815, F.S.
- Agents who hold a life insurance line of authority on January 1, 2024, and who desire to sell annuities must complete the training requirements by July 1, 2024. Individuals who obtain a life insurance line of authority after the effective date of this act may not engage in the sale of annuities until the annuity training course has been completed.
- The minimum length of training required is four hours.
- The required training must include information on the following topics:
 - The types of annuities and various classifications of annuities;
 - Identification of the parties to the annuity;
 - How product-specific annuity contract features affect consumers;
 - The application of income taxation of qualified and nonqualified annuities;
 - The primary uses of annuities; and
 - The appropriate standard of conduct, sales practices, replacement, and disclosure requirements.
- Providers of courses intended to comply with this subsection must cover all of these topics and must not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.

- An agent who has completed an annuity training course before January 1, 2024, must, by July 1, 2024 complete either:
 - A new four hour training course; or
 - An additional one hour training course on appropriate sales practices, replacement, and disclosure requirements under this subsection.
- Annuity training courses may be conducted and completed by classroom or self-study methods.
- Providers of annuity training must issue certificates of completion.
- The satisfaction of the training requirements of another state that are substantially similar to the provisions of this subsection must be deemed to satisfy the training requirements of this subsection in Florida.
- The satisfaction of the training requirements of any course or courses with components substantially similar to the provisions of this subsection must be deemed to satisfy the training requirements of the subsection in Florida.
- An insurer must verify that an agent has completed the annuity training course before allowing the agent to sell an annuity product for that insurer.

Insurance Agency Firm Name

Section 7 amends s. 626.602, F.S., to expand the Department’s authority to disapprove, under certain circumstances, the use of any true or fictitious name, other than a bona fide natural name of an individual, by an adjusting firm. Finally, this section repeals the provision on the grace period allowed for insurance agencies who were already using the terms “Medicare” or “Medicaid” in their firm names as of July 1, 2021, that expires on June 30, 2023.

Notice of Property Insurance Claim

Section 17 amends s. 627.70132, F.S., to provide that for loss assessment claims made by residential condominium unit owners, the notice of claim must be given to the insurer within three years from the date of loss.

Notice of Cancellation of Certain Policies

Section 15 amends s. 627.4133, F.S., relating to notice of cancellation, nonrenewal or renewal premium, to revise the cancellation or termination timeframe from 90 to 60 days. After such policies have been in effect for 60 days, no policy may be cancelled by the insurer except when there has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements by the insurer within 60 days of the effective date of coverage, a substantial change of risk covered by the policy, or when cancellation is for a class of insured.

The same provisions relating to personal lines or commercial residential property insurance policies are also amended to: (1) require 20 days’ written notice for cancellation within 60 days from the date the policy is in force, and (2) prohibit the policy from being cancelled after 60 days for such reasons. The bill amends current law to provide that an insurer may not cancel or terminate a contract after a policy or contract has been in effect for more than 60 days, rather than 90 days, based on credit information available in public records.

With respect to policies that were most recently insured by an insurer that has been placed in receivership under ch. 631, F.S., Citizens, in underwriting risks, is authorized to immediately cancel a policy that is in effect for 90 days or less for any material misrepresentation or failure to comply with underwriting requirements established before the effectuation of coverage.

Unfair Methods of Competition and Unfair or Deceptive Acts

Section 13 amends s. 626.9541, F.S., to provide another ground for misrepresentations and false advertising of insurance policies to include failure to disclose a third party that receives royalties, referral fees, or other remuneration for sponsorship, marketing, or use of third-party branding for a policy of health insurance.¹⁶³

Hurricane Deductibles

Section 14 amends s. 627.4025, F.S., to revise the definition of “hurricane” to shorten the duration in which a hurricane deductible may be applied to a claim by modifying the start time of a hurricane to begin at the time of a hurricane warning and not when a hurricane watch or warning is issued. The bill removes from the definition “continuing for the time period during which the hurricane conditions exist anywhere in Florida,” and changes the end of a hurricane to mean 24 hours, rather than 72 hours, after the last hurricane watch or warning is issued for any part of Florida.

The bill defines “hurricane deductible” as the deductible applicable to loss caused by a hurricane.

Motor Vehicle Service Agreements

Section 18 amends s. 634.041, F.S., to provide a service agreement company that maintains a contractual liability insurance policy in lieu of maintaining unearned premium reserve may have a policy that either pays 100 percent of claims as they are incurred or 100 percent of claims in the event of the failure of the service agreement company to pay claims when due.

Mortgage Loan Regulations

Section 1 amends s. 494.001, F.S., relating to definitions. The section amends the definition of “branch office” to include “a remote location” and defines the term “remote location” to mean a location other than a principal place of business or a branch office, at which a loan originator or a licensee may conduct business.

The bill provides a licensee may allow loan originators to work from remote locations if:

- The licensee has written policies and procedures for supervision of loan originators working from remote locations;
- Access to company platforms and customer information is in accordance with the licensee’s comprehensive written information security plan;

¹⁶³ Section 624.603, F.S., defines “health insurance,” also known as “disability insurance,” is insurance of human beings against bodily injury, disablement, or death by accident or accidental means, or the expense thereof, or against disablement or expense resulting from sickness, and every insurance appertaining thereto. Health insurance does not include workers’ compensation coverage, except as provided in s. 624.406(4), F.S.

- An in-person customer interaction does not occur at a loan originator's residence unless such residence is a licensed location;
- Physical records are not maintained at a remote location;
- Customer interactions and conversations about consumers will be in compliance with federal and state information security requirements, including applicable provisions under the Gramm-Leach-Bliley Act and the Safeguards Rule established by the Federal Trade Commission, set forth at 16 C.F.R. part 314, F.S., as such requirements may be amended from time to time;
- A loan originator working at a remote location accesses the company's secure systems or documents, including a cloud-based system, directly from any out-of-office device such as a laptop, phone, desktop computer, or tablet, through a virtual private network or comparable system that ensures secure connectivity and that requires passwords or other forms of authentication to access;
- The licensee ensures that appropriate security updates, patches, or other alterations to the security of all devices used at remote locations are installed and maintained;
- The licensee is able to remotely look or erase company-related contents of any device or otherwise remotely limit all access to a company's secure systems; and
- The registry's record of a loan originators who works from a remote location designates the principal place of business as a loan originator's registered location, or the loan originator has elected a licensed branch office as a registered location.

Section 2 amends s. 494.0067, F.S., to expand Florida law to authorize mortgage lenders to transact business from a branch location and remote location, in addition to the principal place of business provided for under current law. In addition to a principal place of business and branch office, a remote location must also operate under the full charge, control, and supervision of the licensee.

Conduct of Money Services Businesses

Section 6 amends s. 560.309, F.S., to provide a licensee may not cash corporate checks where the aggregate face amount of all corporate checks cashed for each payee exceeds 200 percent of the payee's workers' compensation policy coverage amount during the same dates as the workers' compensation policy coverage period. A person who knowingly and willfully violates this provision commits a felony of the third degree under s. 560.111(6), F.S.

Section 5 amends s. 560.111, F.S., relating to prohibited acts, to provide anyone who knowingly or willfully commits a violation of s. 560.309(11), F.S., commits a third degree felony.

Crowd-funding

Section 3 creates s. 501.2042, F.S., to provide for unlawful acts and practices by online crowd-funding campaigns. The section provides the following definitions:

- "Crowd-funding campaign" means an online fundraising initiative that is intended to receive monetary donations from donors and is created by an organizer in the interest of a beneficiary.
- "Crowd-funding platform" means an entity doing business in this state which provides an online medium for the creation and facilitation of a crowd-funding campaign.

- “Disaster” has the same meaning as s. 252.34(2), F.S. Under this provision, disaster means any natural, technological, or civil emergency that causes damage of sufficient severity and magnitude to result in a declaration of a state of emergency by a county, the Governor, or the President of the United States. Under s. 252.34(2), F.S., disaster is further categorized as either catastrophic, major or minor.
- “Organizer” means a person who resides or is domiciled in this state and has an account on a crowd-funding platform and has created a crowd-funding campaign either as a beneficiary or on behalf of a beneficiary, regardless of whether the beneficiary or the crowd-funding campaign has received donations.

When an organizer arranges a crowd-funding campaign related to or arising out of a declared disaster, a crowd-funding platform must:

- Collect and retain, for one year after the date of the declared disaster, the name, email address, phone number, and state of residence of the organizer;
- Require the organizer to indicate, on the crowd-funding campaign, the state in which they are located;
- Cooperate with any investigation by or in partnership with law enforcement; and
- Clearly display and direct donors to fundraisers that comply with the crowd-funding platform’s terms of service.

When an organizer arranges a crowd-funding campaign related to and arising out of a declared disaster, the organizer must attest that:

- All information provided in connection with a crowd-funding campaign is accurate, complete, and not likely to deceive users; and
- All donations contributed to the crowd-funding campaign will be used solely as described in the materials the organizer posts or provides on the crowd-funding platform.

Distributed Energy Generation System

Section 4 amends s. 520.23, F.S., relating to disclosures, to add an additional disclosure requirement and statements that must be included in an agreement to sell or lease a DEGS, including:

- The customer contact center phone number for the Department of Business and Professional Regulation;
- A statement in substantially the following form:
 “You should consider the age and remaining life of your roof prior to installing a distributed energy generation system. Replacement of your roof may require re-installment of the distributed energy generation system;” and
- A statement in substantially the following form:
 “Placing a distributed energy generation system on your roof may impact your future insurance premiums. You are responsible for contacting your insurance carrier, prior to entering into a purchase or lease agreement, to confirm whether your current policy or coverage will need to be modified upon installing the distributed energy generation system onto your dwelling.”

The bill specifies such statements may be satisfied by electronic delivery of a document within 24 hours after execution of the written statement.

Warranty Associations

Section 19 amends s. 634.401, F.S., to revise the definition of the term “manufacturer” for purposes of part III of ch. 634, F.S., to exclude a business that maintains outstanding debt obligations, if any, rated in the top four rating categories by a recognized rating service.

Section 20 amends s. 634.406, F.S., to conform to the change made by **section 19** of the bill.

Section 21 provides, except as otherwise provided, the bill is effective July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Public adjusters’ compensation may be reduced due to the provisions in the bill.¹⁶⁴ The ability to utilize to contractual liability insurance policy that will service policies when a service agreement company fails to do so should reduce the costs of the policy.¹⁶⁵

¹⁶⁴ The Department of Financial Services, *2023 Legislative Bill Analysis for SB 1398*, p. 12 (Mar. 16, 2023) (on file with Senate Committee on Banking and Insurance).

¹⁶⁵ *Id.*

C. Government Sector Impact:

The bill creates a new third degree felony, which is punishable by a term of imprisonment not to exceed five years,¹⁶⁶ a fine not to exceed \$5,000,¹⁶⁷ or in the case of a habitual offender, a term of imprisonment not to exceed ten to fifteen years.¹⁶⁸ The new third degree felony may increase state court revenues and expenditures. In addition, the bill may have an indeterminate negative state prison bed impact. The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 494.001, 494.0067, 520.23, 560.111, 560.309, 626.551, 626.602, 626.854, 626.860, 626.875, 626.8796, 626.8797, 626.9541, 627.4025, 627.4133, 627.4554, 627.70132, 634.041, 634.401, and 634.406.

This bill creates section 501.2042 of the Florida Statutes.

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

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

CS/CS by Appropriations Committee on Agriculture, Environment, and General Government on April 18, 2023:

The committee substitute:

- Clarifies a licensee may allow a loan originator to work from a remote location if such originator has access to documents, as well as the company’s system, directly from any out-of-office device through a vital private network or system;
- Revises the definition of “disaster” to have the same meaning as in s. 252.34(2), F.S.;
- Revises an organizer’s responsibilities relating to a crowd-funding platform for campaigns related to and arising out of a declared disaster;
- When entering into public adjuster services after July 1, 2023, a public adjuster is prohibited from collecting a fee for services or contracting with third parties on behalf of the named insured unless certain conditions are met, and requires a public adjuster to pay third party fees in specified circumstances;

¹⁶⁶ Section 775.082, F.S.

¹⁶⁷ Section 775.083, F.S.

¹⁶⁸ Section 775.084, F.S.

- Removes a provision providing public adjuster responsibility and a provision setting the commission rate that may be charged on the difference between the settlement offer and the actual settlement amount;
- Modifies a public adjuster's compensation to no more than one percent, rather than up to \$1,000, of payments or commitments to pay a claim made within a specified time that is equal to or greater than the policy limit;
- Prohibits a public adjuster from charging any percentage of the amount of insurance claim payments or settlements paid to the insured where the payment or written agree to pay occurs before to the public adjuster contract is executed;
- Provides the Department of Financial Services (Department) may inspect a public adjuster's records relating to a particular claim or loss Monday through Friday, 8:00 a.m. – 5:00 p.m., excluding state holidays;
- Amends the provision which requires an unaltered copy of the public adjuster contract to be provided to the insurer within 10 days, to within seven days, after execution, and clarifies that the unaltered copy may be provided to the insurer's representative;
- Provides a public adjuster may not receive compensation for services prior to the date the insured receives an unaltered copy of the executed contract or the date the contract is submitted to the insurer. Requires the public adjuster to maintain proof of receipt by the insured and proof of submission to the insurer for not less than five years;
- Allows an insured to rescind a public adjuster contract if a written estimate has not been provided to the insurer within 60 days after execution of the contract for services, unless such failure was caused by factors beyond the public adjuster's control, and provides the cancellation period for failure to provide a written estimate terminates on the date such estimate is provided; requires the notice that must be included in the public adjuster services contracts to be updated to include these provisions;
- Provides Citizens Property Insurance Corporation, may cancel certain policies within 90 days or less for misrepresentation or failure to comply with underwriting requirements established before the effectuation of coverage;
- Removes the amendment to the time period for which insurance agents must inform the Department of change of name or specified contact information, and retains current law that requires the notification be submitted within 30 days after such a change;
- Repeals the provision on the grace period for using the terms "Medicare" or "Medicaid" in insurance agency firm names;
- Provides notice of claims made under s. 627.714, F.S., must be given to the insurer in accordance with the terms of the policy within three years of the date of loss; and
- Makes technical and conforming changes.

CS by Banking and Insurance Committee on March 22, 2023:

- Clarifies the definition of "branch location" to mean a location other than specified locations, including a remote location;
- Provides that a person who violates s. 560.309, F.S., relating to cashing corporate checks that exceed certain amounts of workers' compensation policy coverage

- amounts, commits a third degree felony punishable by up to 5 years imprisonment, \$5,000 fine, or enhanced penalties under habitual offender provisions;
- Prohibits a licensee from cashing corporate checks where the aggregate face amount for each payee exceeds 200 percent of the payee's workers' compensation policy coverage amount during the policy coverage period;
 - Amends the revocation period for which an insured or claimant may cancel a public adjuster's contract without penalty during a state of emergency in certain circumstances from "within 30 days after the date on which the contract is executed," to "within 30 days after the date of the event, or 10 days after the date on which the contract is executed, whichever is longer," and makes conforming changes to the notice that must be given to insureds;
 - Authorizes an insured to cancel a contract with a public adjuster with no additional penalties if an estimate is not provided within 60 days, rather than 45 days provided in the bill, after executing the contract; and makes conforming changes to: (a) the notice that must be given to insureds on this issue and (b) provisions required in public adjuster's contracts;
 - Clarifies that, in circumstances when a public adjuster must not receive a commission, it is based on the amount "timely paid or committed policy limits," rather than "paid by the insurer to resolve the claim" that is provided in bill;
 - Provides public adjusters are entitled to \$1,000, instead of "reasonable compensation" from the insured when an insurer either pays or commits to pay the policy limit within 14 days from the date of the reported loss;
 - Removes Section 9 relating to public adjuster's errors and omissions insurance;
 - Requires the settlement of claims to be made by "payment," rather than "check," and specifies that the first payment must be made "solely" to the public adjuster;
 - Amends the time within which an unaltered copy of the public adjuster's executed contract must be provided to the insurer from three days in the bill (30 days in current law) to 10 days after execution of the contract;
 - Amends the disclosure a public adjuster must provide to an insured to explain that an insured has 60 days, rather than 30 days provided in the bill, after executing a contract resulting from a state of emergency to rescind it;
 - Amends the new provision under FDUPTA, relating to misrepresentations and false advertising of insurance, for failure to disclose that a third party receives certain remuneration for sponsorship, marketing, or branding for a "policy of health insurance," rather than "health insurance contract";
 - Amends the title of s. 627.4554, F.S., from "Annuity Investments" to "Suitability in Annuity Transactions";
 - Clarifies that the provision requiring an agent to exercise reasonable diligence, care, and skill in making recommendations does "not" require, rather than "does" require, the agent to have ongoing monitoring obligations;
 - With respect to an insurer's supervision system, clarifies that the annual certification obtained from a senior manager "does represent," rather than "does not represent," that the function is being properly performed;
 - Deletes from the agent training provisions the requirements:
 - To register as a continuing education provider and to comply with the rules and guidelines provided in s. 626.2815, F.S.;

- That the OIR approve the specified training courses;
- For classroom or self-study methods, and the issuance of certificates of completion, to be in accordance with s. 626.2815, F.S.;
- For compliance with reporting requirements;
- Deletes the provision that authorizes an insurer to satisfy the requirement to verify training compliance in certain ways, such as by obtaining certificates from certain databases;
- Amends s. 634.401, F.S., to revise the definition of the term “manufacturer” relating to the regulation of service warranty associations to exclude a business that maintains outstanding debt obligations, if any, rated in the top four rating categories by a recognized rating service, and makes conforming changes in s. 634.406, F.S.;
- Amends the effective date to, except as otherwise provided, July 1, 2023;
- Makes conforming changes by changing “suitability information” to “consumer profile information” (which is newly defined to replace “suitability information” in the bill); and
- Makes technical amendments.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2023	.	
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The Appropriations Committee on Agriculture, Environment, and General Government (DiCeglie) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Present subsections (35) through (38) of section 494.001, Florida Statutes, are redesignated as subsections (36) through (39), respectively, a new subsection (35) is added to that section, and subsection (3) of that section is amended, to read:

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



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(3) "Branch office" means a location, other than a mortgage broker's or mortgage lender's principal place of business or remote location:

(a) The address of which appears on business cards, stationery, or advertising used by the licensee in connection with business conducted under this chapter;

(b) At which the licensee's name, advertising or promotional materials, or signage suggests that mortgage loans are originated, negotiated, funded, or serviced; or

(c) At which mortgage loans are originated, negotiated, funded, or serviced by a licensee.

(35) "Remote location" means a location, other than a principal place of business or a branch office, at which a loan originator of a licensee may conduct business. A licensee may allow loan originators to work from remote locations if:

(a) The licensee has written policies and procedures for supervision of loan originators working from remote locations.

(b) Access to company platforms and customer information is in accordance with the licensee's comprehensive written information security plan.

(c) An in-person customer interaction does not occur at a loan originator's residence unless such residence is a licensed location.

(d) Physical records are not maintained at a remote location.

(e) Customer interactions and conversations about consumers will be in compliance with federal and state information security requirements, including applicable provisions under the Gramm-Leach-Bliley Act and the Safeguards Rule established by



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the Federal Trade Commission, set forth at 16 C.F.R. part 314,
as such requirements may be amended from time to time.

(f) A loan originator working at a remote location accesses the company's secure systems or documents, including a cloud-based system, directly from any out-of-office device such as a laptop, phone, desktop computer, or tablet, through a virtual private network or system that ensures secure connectivity and that requires passwords or other forms of authentication to access.

(g) The licensee ensures that appropriate security updates, patches, or other alterations to the security of all devices used at remote locations are installed and maintained.

(h) The licensee is able to remotely lock or erase company-related contents of any device or otherwise remotely limit all access to a company's secure systems.

(i) The registry's record of a loan originator who works from a remote location designates the principal place of business as the loan originator's registered location, or the loan originator has elected a licensed branch office as a registered location.

Section 2. Subsection (1) of section 494.0067, Florida Statutes, is amended to read:

494.0067 Requirements of mortgage lenders.—

(1) A mortgage lender that makes mortgage loans on real estate in this state shall transact business from a principal place of business, branch office, or remote location. Each principal place of business, and each branch office, and remote location shall be operated under the full charge, control, and supervision of the licensee pursuant to this part.



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Section 3. Section 501.2042, Florida Statutes, is created to read:

501.2042 Unlawful acts and practices by online crowd-funding campaigns.—

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

(a) "Crowd-funding campaign" means an online fundraising initiative that is intended to receive monetary donations from donors and is created by an organizer in the interest of a beneficiary.

(b) "Crowd-funding platform" means an entity doing business in this state which provides an online medium for the creation and facilitation of a crowd-funding campaign.

(c) "Disaster" has the same meaning as in s. 252.34(2).

(d) "Organizer" means a person who:

1. Resides or is domiciled in this state; and

2. Has an account on a crowd-funding platform and has created a crowd-funding campaign either as a beneficiary or on behalf of a beneficiary, regardless of whether the beneficiary or the crowd-funding campaign has received donations.

(2) For crowd-funding campaigns related to and arising out of a declared disaster, a crowd-funding platform must:

(a) Collect and retain, for one year after the date of the declared disaster, the name, e-mail address, phone number, and state of residence of the organizer.

(b) Require the organizer to indicate, on the crowd-funding campaign, the state in which they are located.

(c) Cooperate with any investigation by or in partnership with law enforcement.

(d) Clearly display and direct donors to fundraisers that



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comply with the crowd-funding platform's terms of service.

(3) When an organizer arranges a crowd-funding campaign related to and arising out of a declared disaster, the organizer must attest that:

(a) All information provided in connection with a crowd-funding campaign is accurate, complete, and not likely to deceive users.

(b) All donations contributed to the crowd-funding campaign will be used solely as described in the materials the organizer posts or provides on the crowd-funding platform.

Section 4. Section 520.23, Florida Statutes, is amended to read:

520.23 Disclosures required.—Each agreement governing the sale or lease of a distributed energy generation system shall, at a minimum, include a written statement printed in at least 12-point type that is separate from the agreement, is separately acknowledged by the buyer or lessee, and includes the following information and disclosures, if applicable:

(1) The name, address, telephone number, and e-mail address of the buyer or lessee.

(2) The name, address, telephone number, e-mail address, and valid state contractor license number of the person responsible for installing the distributed energy generation system.

(3) The name, address, telephone number, e-mail address, and valid state contractor license number of the distributed energy generation system maintenance provider, if different from the person responsible for installing the distributed energy generation system.



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127 (4) The customer contact center phone number for the
128 Department of Business and Professional Regulation.

129 (5)~~(4)~~ A written statement indicating whether the
130 distributed energy generation system is being purchased or
131 leased.

132 (a) If the distributed energy generation system will be
133 leased, the written statement must include a disclosure in
134 substantially the following form: "You are entering into an
135 agreement to lease a distributed energy generation system. You
136 will lease (not own) the system installed on your property."

137 (b) If the distributed energy generation system will be
138 purchased, the written statement must include a disclosure in
139 substantially the following form: "You are entering into an
140 agreement to purchase a distributed energy generation system.
141 You will own (not lease) the system installed on your property."

142 (6)~~(5)~~ The total cost to be paid by the buyer or lessee,
143 including any interest, installation fees, document preparation
144 fees, service fees, or other fees.

145 (7)~~(6)~~ A payment schedule, including any amounts owed at
146 contract signing, at the commencement of installation, at the
147 completion of installation, and any final payments. If the
148 distributed energy generation system is being leased, the
149 written statement must include the frequency and amount of each
150 payment due under the lease and the total estimated lease
151 payments over the term of the lease.

152 (8)~~(7)~~ Each state or federal tax incentive or rebate, if
153 any, relied upon by the seller in determining the price of the
154 distributed energy generation system.

155 (9)~~(8)~~ A description of the assumptions used to calculate



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any savings estimates provided to the buyer or lessee, and if such estimates are provided, a statement in substantially the following form: "It is important to understand that future electric utility rates are estimates only. Your future electric utility rates may vary."

(10)~~(9)~~ A description of any one-time or recurring fees, including, but not limited to, estimated system removal fees, maintenance fees, Internet connection fees, and automated clearinghouse fees. If late fees may apply, the description must describe the circumstances triggering such late fees.

(11)~~(10)~~ A statement notifying the buyer whether the distributed energy generation system is being financed and, if so, a statement in substantially the following form: "If your system is financed, carefully read any agreements and/or disclosure forms provided by your lender. This statement does not contain the terms of your financing agreement. If you have any questions about your financing agreement, contact your finance provider before signing a contract."

(12)~~(11)~~ A statement notifying the buyer whether the seller is assisting in arranging financing of the distributed energy generation system and, if so, a statement in substantially the following form: "If your system is financed, carefully read any agreements and/or disclosure forms provided by your lender. This statement does not contain the terms of your financing agreement. If you have any questions about your financing agreement, contact your finance provider before signing a contract."

(13)~~(12)~~ A provision notifying the buyer or lessee of the right to rescind the agreement for a period of at least 3



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business days after the agreement is signed. This subsection does not apply to a contract to sell or lease a distributed energy generation system in a solar community in which the entire community has been marketed as a solar community and all of the homes in the community are intended to have a distributed energy generation system, or a solar community in which the developer has incorporated solar technology for purposes of meeting the Florida Building Code in s. 553.73.

(14)~~(13)~~ A description of the distributed energy generation system design assumptions, including the make and model of the major components, system size, estimated first-year energy production, and estimated annual energy production decreases, including the overall percentage degradation over the estimated life of the distributed energy generation system, and the status of utility compensation for excess energy generated by the system at the time of contract signing. A seller who provides a warranty or guarantee of the energy production output of the distributed energy generation system may provide a description of such warranty or guarantee in lieu of a description of the system design and components.

(15)~~(14)~~ A description of any performance or production guarantees.

(16)~~(15)~~ A description of the ownership and transferability of any tax credits, rebates, incentives, or renewable energy certificates associated with the distributed energy generation system, including a disclosure as to whether the seller will assign or sell any associated renewable energy certificates to a third party.

(17)~~(16)~~ A statement in substantially the following form:



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"You are responsible for property taxes on property you own. Consult a tax professional to understand any tax liability or eligibility for any tax credits that may result from the purchase of your distributed energy generation system."

(18)~~(17)~~ The approximate start and completion dates for the installation of the distributed energy generation system.

(19)~~(18)~~ A disclosure as to whether maintenance and repairs of the distributed energy generation system are included in the purchase price.

(20)~~(19)~~ A disclosure as to whether any warranty or maintenance obligations related to the distributed energy generation system may be sold or transferred by the seller to a third party and, if so, a statement in substantially the following form: "Your contract may be assigned, sold, or transferred without your consent to a third party who will be bound to all the terms of the contract. If a transfer occurs, you will be notified if this will change the address or phone number to use for system maintenance or repair requests."

(21)~~(20)~~ If the distributed energy generation system will be purchased, a disclosure notifying the buyer of the requirements for interconnecting the system to the utility system.

(22)~~(21)~~ A disclosure notifying the buyer or lessee of the party responsible for obtaining interconnection approval.

(23)~~(22)~~ A description of any roof warranties.

(24) A statement in substantially the following form: "You should consider the age and remaining life of your roof prior to installing a distributed energy generation system. Replacement of your roof may require reinstallment of the distributed energy



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generation system."

(25)~~(23)~~ A disclosure notifying the lessee whether the seller will insure a leased distributed energy generation system against damage or loss and, if applicable, the circumstances under which the seller will not insure the system against damage or loss.

(26)~~(24)~~ A statement, ~~if applicable,~~ in substantially the following form: "You are responsible for obtaining insurance policies or coverage for any loss of or damage to the system. Consult an insurance professional to understand how to protect against the risk of loss or damage to the system."

(27) A statement in substantially the following form:
"Placing a distributed energy generation system on your roof may impact your future insurance premiums. You are responsible for contacting your insurance carrier, prior to entering into a purchase or lease agreement, to confirm whether your current policy or coverage will need to be modified upon installing the distributed energy generation system onto your dwelling."

(28)~~(25)~~ A disclosure notifying the buyer or lessee whether the seller or lessor will place a lien on the buyer's or lessee's home or other property as a result of entering into a purchase or lease agreement for the distributed energy generation system.

(29)~~(26)~~ A disclosure notifying the buyer or lessee whether the seller or lessor will file a fixture filing or a State of Florida Uniform Commercial Code Financing Statement Form (UCC-1) on the distributed energy generation system.

(30)~~(27)~~ A disclosure identifying whether the agreement contains any restrictions on the buyer's or lessee's ability to



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modify or transfer ownership of a distributed energy generation system, including whether any modification or transfer is subject to review or approval by a third party.

~~(31)(28)~~ A disclosure as to whether the lease agreement may be transferred to a purchaser upon sale of the home or real property to which the system is affixed, and any conditions for such transfer.

~~(32)(29)~~ A blank section that allows the seller to provide additional relevant disclosures or explain disclosures made elsewhere in the disclosure form.

The requirement to provide a written statement under this section may be satisfied by the electronic delivery of a document within 24 hours after execution of the written statement containing the required statement if the intended recipient of the electronic document affirmatively acknowledges its receipt. An electronic document satisfies the font and other formatting standards required for the written statement if the format and the relative size of characters of the electronic document are reasonably similar to those required in the written document or if the information is otherwise displayed in a reasonably conspicuous manner.

Section 5. Subsection (6) of section 560.111, Florida Statutes, is amended to read:

560.111 Prohibited acts.—

(6) A person who knowingly and willfully violates s. 560.309(11) or s. 560.310(2)(d) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.



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Section 6. Subsection (11) is added to section 560.309, Florida Statutes, to read:

560.309 Conduct of business.—

(11) A licensee may not cash corporate checks where the aggregate face amount of all corporate checks cashed for each payee exceeds 200 percent of the payee's workers' compensation policy payroll amount during the same dates as the workers' compensation policy coverage period.

Section 7. Section 626.602, Florida Statutes, is amended to read:

626.602 Insurance agency and adjusting firm names; disapproval.—The department may disapprove the use of any true or fictitious name, other than the bona fide natural name of an individual, by any insurance agency or adjusting firm on any of the following grounds:

(1) The name interferes with or is too similar to a name already filed and in use by another agency, adjusting firm, or insurer.

(2) The use of the name may mislead the public in any respect.

(3) The name states or implies that the agency or adjusting firm is an insurer, motor club, hospital service plan, state or federal agency, charitable organization, or entity that primarily provides advice and counsel rather than sells or solicits insurance, settles claims, or is entitled to engage in insurance activities not permitted under licenses held or applied for. This provision does not prohibit the use of the word "state" or "states" in the name of the agency. The use of the word "state" or "states" in the name of an agency or



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adjusting firm does not in and of itself imply that the agency
or adjusting firm is a state agency.

(4) The name contains the word "Medicare" or "Medicaid." ~~An~~
~~insurance agency whose name contains the word "Medicare" or~~
~~"Medicaid" but which is licensed as of July 1, 2021, may~~
~~continue to use that name until June 30, 2023, provided that the~~
~~agency's license remains valid. If the agency's license expires~~
~~or is suspended or revoked, the agency may not be relicensed~~
~~using that name.~~ Licenses for agencies with names containing
either of these words automatically expire on July 1, 2023,
unless these words are removed from the name.

Section 8. Section 626.854, Florida Statutes, is amended to
read:

626.854 "Public adjuster" defined; prohibitions.—The
Legislature finds that it is necessary for the protection of the
public to regulate public insurance adjusters and to prevent the
unauthorized practice of law.

(1) A "public adjuster" is any person, except a duly
licensed attorney at law as exempted under s. 626.860, who, for
money, commission, or any other thing of value, directly or
indirectly prepares, completes, or files an insurance claim for
an insured or third-party claimant, regardless of how that
person describes or presents his or her services, or who, for
money, commission, or any other thing of value, acts on behalf
of, or aids an insured or third-party claimant in negotiating
for or effecting the settlement of a claim or claims for loss or
damage covered by an insurance contract, regardless of how that
person describes or presents his or her services, or who
advertises for employment as an adjuster of such claims. The



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term also includes any person who, for money, commission, or any other thing of value, directly or indirectly solicits, investigates, or adjusts such claims on behalf of a public adjuster, an insured, or a third-party claimant. The term does not include a person who photographs or inventories damaged personal property or business personal property or a person performing duties under another professional license, if such person does not otherwise solicit, adjust, investigate, or negotiate for or attempt to effect the settlement of a claim.

(2) This definition does not apply to:

(a) A licensed health care provider or employee thereof who prepares or files a health insurance claim form on behalf of a patient.

(b) A licensed health insurance agent who assists an insured with coverage questions, medical procedure coding issues, balance billing issues, understanding the claims filing process, or filing a claim, as such assistance relates to coverage under a health insurance policy.

(c) A person who files a health claim on behalf of another and does so without compensation.

(3) A public adjuster may not give legal advice or act on behalf of or aid any person in negotiating or settling a claim relating to bodily injury, death, or noneconomic damages.

(4) For purposes of this section, the term "insured" includes only the policyholder and any beneficiaries named or similarly identified in the policy.

(5) A public adjuster may not directly or indirectly through any other person or entity solicit an insured or claimant by any means except on Monday through Saturday of each



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week and only between the hours of 8 a.m. and 8 p.m. on those days.

(6) When entering a contract for adjuster services after July 1, 2023, a public adjuster:

(a) May not collect a fee for services on payments made to a named insured unless they have a written contract with the named insured or the named insured's legal representative.

(b) May not contract for services to be provided by a third party on behalf of the named insured or in pursuit of settlement of the named insureds claim, if the cost of those services is to be borne by the named insured, unless the named insured agrees in writing to procure these services and such agreement is entered into subsequent to the date of the contract for public adjusting services.

(c) If a public adjuster contracts with a third-party service provider to assist with the settlement of the named insured's claim, without first obtaining the insured's written consent, payment of the third party's fees must be made by the public adjuster and may not be charged back to the named insured.

(d) If a public adjuster represents anyone other than the named insured in a claim, the public adjuster fees shall be paid by the third party and may not be charged back to the named insured.

~~(7)-(6)~~ An insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation within 10 days after the date on which the contract is executed. If the contract was entered into based on events that are the subject of a declaration of a state of emergency by



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the Governor, an insured or claimant may cancel the public
adjuster's contract to adjust a claim without penalty or
obligation within 30 days after the date of loss or 10 days
after the date on which the contract is executed, whichever is
longer. The public adjuster's contract must contain the
following language in minimum 18-point bold type immediately
before the space reserved in the contract for the signature of
the insured or claimant: "You, the insured, may cancel this
contract for any reason without penalty or obligation to you
within 10 days after the date of this contract. If this contract
was entered into based on events that are the subject of a
declaration of a state of emergency by the Governor, you may
cancel this contract for any reason without penalty or
obligation to you within 30 days after the date of loss or 10
days after the date on which the contract is executed, whichever
is longer. You may also cancel the contract without penalty or
obligation to you if I, as your public adjuster, fail to provide
you and your insurer a copy of a written estimate within 60 days
of the execution of the contract, unless the failure to provide
the estimate within 60 days is caused by factors beyond my
control, in accordance with s. 626.854(14)(b), Florida Statutes.
The 60-day cancellation period for failure to provide a written
estimate shall cease on the date I have provided you with the
written estimate." ~~The by providing~~ notice of cancellation shall
be provided to ...(name of public adjuster)..., submitted in
writing and sent by certified mail, return receipt requested, or
other form of mailing that provides proof thereof, at the
address specified in the contract.

(8)~~(7)~~ It is an unfair and deceptive insurance trade



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practice pursuant to s. 626.9541 for a public adjuster or any other person to circulate or disseminate any advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance which is untrue, deceptive, or misleading.

(a) The following statements, made in any public adjuster's advertisement or solicitation, are considered deceptive or misleading:

1. A statement or representation that invites an insured policyholder to submit a claim when the policyholder does not have covered damage to insured property.

2. A statement or representation that invites an insured policyholder to submit a claim by offering monetary or other valuable inducement.

3. A statement or representation that invites an insured policyholder to submit a claim by stating that there is "no risk" to the policyholder by submitting such claim.

4. A statement or representation, or use of a logo or shield, that implies or could mistakenly be construed to imply that the solicitation was issued or distributed by a governmental agency or is sanctioned or endorsed by a governmental agency.

(b) For purposes of this paragraph, the term "written advertisement" includes only newspapers, magazines, flyers, and bulk mailers. The following disclaimer, which is not required to be printed on standard size business cards, must be added in bold print and capital letters in typeface no smaller than the typeface of the body of the text to all written advertisements by a public adjuster:



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"THIS IS A SOLICITATION FOR BUSINESS. IF YOU HAVE HAD
A CLAIM FOR AN INSURED PROPERTY LOSS OR DAMAGE AND YOU
ARE SATISFIED WITH THE PAYMENT BY YOUR INSURER, YOU
MAY DISREGARD THIS ADVERTISEMENT."

(9)~~(8)~~ A public adjuster, a public adjuster apprentice, or
any person or entity acting on behalf of a public adjuster or
public adjuster apprentice may not give or offer to give a
monetary loan or advance to a client or prospective client.

(10)~~(9)~~ A public adjuster, public adjuster apprentice, or
any individual or entity acting on behalf of a public adjuster
or public adjuster apprentice may not give or offer to give,
directly or indirectly, any article of merchandise having a
value in excess of \$25 to any individual for the purpose of
advertising or as an inducement to entering into a contract with
a public adjuster.

~~(10)~~ (11) (a) If a public adjuster enters into a contract
with an insured or claimant to reopen a claim or file a
supplemental claim that seeks additional payments for a claim
that has been previously paid in part or in full or settled by
the insurer, the public adjuster may not charge, agree to, or
accept from any source compensation, payment, commission, fee,
or any other thing of value based on a previous settlement or
previous claim payments by the insurer for the same cause of
loss. The charge, compensation, payment, commission, fee, or any
other thing of value must be based only on the claim payments or
settlements paid to the insured, exclusive of attorney fees and
costs, obtained through the work of the public adjuster after



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entering into the contract with the insured or claimant.
Compensation for the reopened or supplemental claim may not
exceed 20 percent of the reopened or supplemental claim payment.
In no event shall the contracts described in this paragraph
exceed the limitations in paragraph (b).

(b) A public adjuster may not charge, agree to, or accept
from any source compensation, payment, commission, fee, or any
other thing of value in excess of:

1. Ten percent of the amount of insurance claim payments or
settlements, exclusive of attorney fees and costs, paid to the
insured by the insurer for claims based on events that are the
subject of a declaration of a state of emergency by the
Governor. This provision applies to claims made during the year
after the declaration of emergency. After that year, the
limitations in subparagraph 2. apply.

2. Twenty percent of the amount of insurance claim payments
or settlements, exclusive of attorney fees and costs, paid to
the insured by the insurer for claims that are not based on
events that are the subject of a declaration of a state of
emergency by the Governor.

3. One percent of the amount of insurance claim payments or
settlements, paid to the insured by the insurer for any coverage
part of the policy where the claim payment or written agreement
by the insurer to pay is equal to or greater than the policy
limit for that part of the policy, if the payment or written
commitment to pay is provided within 14 days after the date of
loss or within 10 days after the date on which the public
adjusting contract is executed, whichever is later.

4. Zero percent of the amount of insurance claim payments



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or settlements, paid to the insured by the insurer for any coverage part of the policy where the claim payment or written agreement by the insurer to pay occurs before the date on which the public adjusting contract is executed.

(c) Insurance claim payments made by the insurer do not include policy deductibles, and public adjuster compensation may not be based on the deductible portion of a claim.

(d) Public adjuster compensation may not be based on amounts attributable to additional living expenses, unless such compensation is affirmatively agreed to in a separate agreement that includes a disclosure in substantially the following form: "I agree to retain and compensate the public adjuster for adjusting my additional living expenses and securing payment from my insurer for amounts attributable to additional living expenses payable under the policy issued on my (home/mobile home/condominium unit)."

(e) Public adjuster rate of compensation may not be increased based solely on the fact that the claim is litigated.

(f) Any maneuver, shift, or device through which the limits on compensation set forth in this subsection are exceeded is a violation of this chapter punishable as provided under s. 626.8698.

(12) (a) - (11) Each public adjuster must provide to the claimant or insured a written estimate of the loss to assist in the submission of a proof of loss or any other claim for payment of insurance proceeds within 60 days after the date of the contract. The written estimate must include an itemized, per-unit estimate of the repairs, including itemized information on equipment, materials, labor, and supplies, in accordance with



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accepted industry standards. The public adjuster shall retain such written estimate for at least 5 years and shall make the estimate available to the claimant or insured, the insurer, and the department upon request.

(b) An insured may cancel the contract with no additional penalties or fees charged by the public adjuster if such an estimate is not provided within 60 days after executing the contract, subject to the cancellation notice requirement in this section, unless the failure to provide the estimate within 60 days is caused by factors beyond the control of the public adjuster. The cancellation period shall cease on the date the public adjuster provides the written estimate to the insured.

(13)~~(12)~~ A public adjuster, public adjuster apprentice, or any person acting on behalf of a public adjuster or apprentice may not accept referrals of business from any person with whom the public adjuster conducts business if there is any form or manner of agreement to compensate the person, directly or indirectly, for referring business to the public adjuster. A public adjuster may not compensate any person, except for another public adjuster, directly or indirectly, for the principal purpose of referring business to the public adjuster.

(14)~~(13)~~ A company employee adjuster, independent adjuster, attorney, investigator, or other persons acting on behalf of an insurer that needs access to an insured or claimant or to the insured property that is the subject of a claim must provide at least 48 hours' notice to the insured or claimant, public adjuster, or legal representative before scheduling a meeting with the claimant or an onsite inspection of the insured property. The insured or claimant may deny access to the



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property if the notice has not been provided. The insured or claimant may waive the 48-hour notice.

(15)~~(14)~~ The public adjuster must ensure that prompt notice is given of the claim to the insurer, the public adjuster's contract is provided to the insurer, the property is available for inspection of the loss or damage by the insurer, and the insurer is given an opportunity to interview the insured directly about the loss and claim. The insurer must be allowed to obtain necessary information to investigate and respond to the claim.

(a) The insurer may not exclude the public adjuster from its in-person meetings with the insured. The insurer shall meet or communicate with the public adjuster in an effort to reach agreement as to the scope of the covered loss under the insurance policy. The public adjuster shall meet or communicate with the insurer in an effort to reach agreement as to the scope of the covered loss under the insurance policy. This section does not impair the terms and conditions of the insurance policy in effect at the time the claim is filed.

(b) A public adjuster may not restrict or prevent an insurer, company employee adjuster, independent adjuster, attorney, investigator, or other person acting on behalf of the insurer from having reasonable access at reasonable times to any insured or claimant or to the insured property that is the subject of a claim.

(c) A public adjuster may not act or fail to reasonably act in any manner that obstructs or prevents an insurer or insurer's adjuster from timely conducting an inspection of any part of the insured property for which there is a claim for loss or damage.



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The public adjuster representing the insureds may be present for the insurer's inspection, but if the unavailability of the public adjuster otherwise delays the insurer's timely inspection of the property, the public adjuster or the insureds must allow the insurer to have access to the property without the participation or presence of the public adjuster or insureds in order to facilitate the insurer's prompt inspection of the loss or damage.

~~(16)~~⁽¹⁵⁾ A licensed contractor under part I of chapter 489, or a subcontractor of such licensee, may not advertise, solicit, offer to handle, handle, or perform public adjuster services as provided in subsection (1) unless licensed and compliant as a public adjuster under this chapter. The prohibition against solicitation does not preclude a contractor from suggesting or otherwise recommending to a consumer that the consumer consider contacting his or her insurer to determine if the proposed repair is covered under the consumer's insurance policy, except as it relates to solicitation prohibited in s. 489.147. In addition, the contractor may discuss or explain a bid for construction or repair of covered property with the residential property owner who has suffered loss or damage covered by a property insurance policy, or the insurer of such property, if the contractor is doing so for the usual and customary fees applicable to the work to be performed as stated in the contract between the contractor and the insured.

~~(17)~~⁽¹⁶⁾ A public adjuster shall not acquire any interest in salvaged property, except with the written consent and permission of the insured through a signed affidavit.

~~(18)~~⁽¹⁷⁾ A public adjuster, a public adjuster apprentice,



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or a person acting on behalf of an adjuster or apprentice may not enter into a contract or accept a power of attorney that vests in the public adjuster, the public adjuster apprentice, or the person acting on behalf of the adjuster or apprentice the effective authority to choose the persons or entities that will perform repair work in a property insurance claim or provide goods or services that will require the insured or third-party claimant to expend funds in excess of those payable to the public adjuster under the terms of the contract for adjusting services.

(19)~~(18)~~ Subsections (5)-(18) ~~(5)-(17)~~ apply only to residential property insurance policies and condominium unit owner policies as described in s. 718.111(11).

(20)~~(19)~~ Except as otherwise provided in this chapter, no person, except an attorney at law or a licensed public adjuster, may for money, commission, or any other thing of value, directly or indirectly:

(a) Prepare, complete, or file an insurance claim for an insured or a third-party claimant;

(b) Act on behalf of or aid an insured or a third-party claimant in negotiating for or effecting the settlement of a claim for loss or damage covered by an insurance contract;

(c) Offer to initiate or negotiate a claim on behalf of an insured;

(d) Advertise services that require a license as a public adjuster; or

(e) Solicit, investigate, or adjust a claim on behalf of a public adjuster, an insured, or a third-party claimant.

(21)~~(20)~~ The department may take administrative actions and



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impose fines against any persons performing claims adjusting, soliciting, or any other services described in this section without the licensure required under this section or s. 626.112.

(22)~~(21)~~ A public adjuster, public adjuster apprentice, or public adjusting firm that solicits a claim and does not enter into a contract with an insured or a third-party claimant pursuant to paragraph (11) (a) ~~(10) (a)~~ may not charge an insured or a third-party claimant or receive payment by any other source for any type of service related to the insured or third-party claimant's claim.

(23) (a)~~(22) (a)~~ Any following act by a public adjuster, a public adjuster apprentice, or a person acting on behalf of a public adjuster or public adjuster apprentice is prohibited and shall result in discipline as applicable under this part:

1. Offering to a residential property owner a rebate, gift, gift card, cash, coupon, waiver of any insurance deductible, or any other thing of value in exchange for:

a. Allowing a contractor, a public adjuster, a public adjuster apprentice, or a person acting on behalf of a public adjuster or public adjuster apprentice to conduct an inspection of the residential property owner's roof; or

b. Making an insurance claim for damage to the residential property owner's roof.

2. Offering, delivering, receiving, or accepting any compensation, inducement, or reward for the referral of any services for which property insurance proceeds would be used for roofing repairs or replacement.

(b) Notwithstanding the fine set forth in s. 626.8698, a public adjuster or public adjuster apprentice may be subject to



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a fine not to exceed \$10,000 per act for a violation of this subsection and a fine not to exceed \$20,000 per act for a violation of this subsection that occurs during a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36.

(c) A person who engages in an act prohibited by this subsection and who is not a public adjuster or a public adjuster apprentice, or is not otherwise exempt from licensure, is guilty of the unlicensed practice of public adjusting and may be:

1. Subject to all applicable penalties set forth in this part.

2. Notwithstanding subparagraph 1., subject to a fine not to exceed \$10,000 per act for a violation of this subsection and a fine not to exceed \$20,000 per act for a violation of this subsection that occurs during a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36.

Section 9. Section 626.860, Florida Statutes, is amended to read:

626.860 Attorneys at law; exemption.—Attorneys at law duly licensed to practice law in the courts of this state, and in good standing with The Florida Bar, shall not be required to be licensed under ~~the provisions of~~ this code to authorize them to adjust or participate in the adjustment of any claim, loss, or damage arising under policies or contracts of insurance. This exemption does not extend to the employees, interns, volunteers, or contractors of an attorney or of a law firm.

Section 10. Section 626.875, Florida Statutes, is amended to read:



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626.875 Office and records.—

(1)(a) Each appointed independent adjuster and licensed public adjuster must maintain a place of business in this state which is accessible to the public and keep therein the usual and customary records pertaining to transactions under the license. This provision does not prohibit maintenance of such an office in the home of the licensee.

(b) A license issued under this chapter must at all times be posted in a conspicuous place in the principal place of business of the license holder. If the licensee is conducting business away from the place of business such that the license cannot be posted, the licensee shall have such license in his or her actual possession at the time of carrying on such business.

(2) The records of the adjuster relating to a particular claim or loss shall be so retained in the adjuster's place of business for a period of not less than 5 years after completion of the adjustment and shall be available for inspection by the department between the hours of 8 a.m. and 5 p.m., Monday through Friday, excluding state holidays. This provision shall not be deemed to prohibit return or delivery to the insurer or insured of documents furnished to or prepared by the adjuster and required by the insurer or insured to be returned or delivered thereto. At a minimum, the following records must be maintained for a period of not less than 5 years:

(a) Name, address, telephone number, and e-mail address of the insured, and the name of the attorney representing the insured, if applicable.

(b) The date, location, and amount of the loss.

(c) An unaltered copy of the executed disclosure document



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required by s. 626.8796.

(d) An unaltered copy of the executed public adjuster contract required by s. 626.8796.

(e) A copy of the estimate of damages provided to the insurer.

(f) The name of the insurer; the name of the claims representative of the insurer; and the amount, expiration date, and number of each policy under which the loss is covered.

(g) An itemized statement of the recoveries by the insured from the sources known to the adjuster.

(h) An itemized statement of all compensation received by the public adjuster from any source in connection with the loss.

(i) A register of all money received, deposited, disbursed, and withdrawn in connection with a transaction with the insured, including fees, transfers, and disbursements in connection with the loss.

Section 11. Section 626.8796, Florida Statutes, is amended to read:

626.8796 Public adjuster contracts; disclosure statement; fraud statement.—

(1) All contracts for public adjuster services must be in writing in at least 12-point type, be titled "Public Adjuster Contract," and prominently display the following statement on the contract in minimum 18-point bold type before the space reserved in the contract for the signature of the insured:

"Pursuant to s. 817.234, Florida Statutes, any person who, with the intent to injure, defraud, or deceive an insurer or insured, prepares, presents, or causes to be presented a proof of loss or estimate of cost or repair of damaged property in support of a



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claim under an insurance policy knowing that the proof of loss or estimate of claim or repairs contains false, incomplete, or misleading information concerning any fact or thing material to the claim commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, Florida Statutes."

(2) A public adjuster contract relating to a property and casualty claim must contain the full name, permanent business address, phone number, e-mail address, and license number of the public adjuster; the full name of the public adjusting firm; and the insured's full name, and street address, phone number, and e-mail address, together with a brief description of the loss. The contract must state the percentage of compensation for the public adjuster's services in minimum 18-point bold type before the space reserved in the contract for the signature of the insured; the type of claim, including an emergency claim, nonemergency claim, or supplemental claim; the initials of the named insured on each page that does not contain the insured's signature; the signatures of the public adjuster and all named insureds; and the signature date. If all of the named insureds' signatures are not available, the public adjuster must submit an affidavit signed by the available named insureds attesting that they have authority to enter into the contract and settle all claim issues on behalf of the named insureds. An unaltered copy of the executed contract must be remitted to the insured at the time of execution and to the insurer, or the insurer's representative, within 7 ~~30~~ days after execution. A public adjusting firm that adjusts claims primarily for commercial entities with operations in more than one state and that does



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not directly or indirectly perform adjusting services for insurers or individual homeowners is deemed to comply with the requirements of this subsection if, at the time a proof of loss is submitted, the public adjusting firm remits to the insurer an affidavit signed by the public adjuster or public adjuster apprentice that identifies:

(a) The full name, permanent business address, phone number, e-mail address, and license number of the public adjuster or public adjuster apprentice.

(b) The full name of the public adjusting firm.

(c) The insured's full name, and street address, phone number, and e-mail address, together with a brief description of the loss.

(d) An attestation that the compensation for public adjusting services will not exceed the limitations provided by law.

(e) The type of claim, including an emergency claim, nonemergency claim, or supplemental claim.

(3) The public adjuster shall not receive compensation for services provided prior to the date the insured receives an unaltered copy of the executed contract or the date executed contract is submitted to the insurer. Proof of receipt by the insured and proof of submission to the insurer must be maintained by the public adjuster for not less than five years.

(4) The insured may rescind the contract for public adjuster services if the public adjuster has not submitted a written estimate to the insurer within 60 days after executing the contract, unless the failure to provide the written estimate within 60 days is caused by factors beyond the public adjuster's



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control.

(5) The cancellation period for failure to provide a written estimate terminates on the date the estimate is provided.

(6) Before the signing of the contract, the public adjuster shall provide the insured with a separate disclosure document to be signed by the insured, on a form adopted by the department, regarding the claim process which accomplishes the following:

(a) Defines the following types of adjusters who may be involved in the claim process: company adjuster, independent adjuster, and public adjuster.

(b) Explains that the public adjuster is not a representative or employee of the insurer.

(c) Explains that the insured is not required to hire a public adjuster, but has a right to do so.

(d) Explains that an insured has a right to initiate direct communications with the insured's attorney, the insurer, the company adjuster, the insurer's attorney, or any person regarding the settlement of the insured's claim.

(e) Explains that the public adjuster's salary, fee, commission, or other consideration to be paid to a public adjuster is the insured's responsibility.

(f) Explains that the public adjuster is required to provide the insured an unaltered copy of the executed contract at the time of execution.

(g) Explains that if the contract was entered into based on events that are the subject of a declaration of a state of emergency by the Governor, an insured or a claimant may cancel the public adjuster's contract to adjust a claim without penalty



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or obligation within 30 days after the date of loss or 10 days after the date on which the contract is executed, whichever is longer.

(h) The public adjuster shall provide an unaltered copy of the executed disclosure document to the insured at the time of execution.

(7) A contract that does not comply with this section is invalid and unenforceable.

(8) The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section, including rules to adopt forms required by this section.

Section 12. Section 626.8797, Florida Statutes, is amended to read:

626.8797 Proof of loss; fraud statement.—All proof-of-loss statements must prominently display the following statement in minimum 18-point bold type before the space reserved in the contract for the signature of the insured: "Pursuant to s. 817.234, Florida Statutes, any person who, with the intent to injure, defraud, or deceive any insurer or insured, prepares, presents, or causes to be presented a proof of loss or estimate of cost or repair of damaged property in support of a claim under an insurance policy knowing that the proof of loss or estimate of claim or repairs contains any false, incomplete, or misleading information concerning any fact or thing material to the claim commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, Florida Statutes."

Section 13. Paragraph (a) of subsection (1) of section 626.9541, Florida Statutes, is amended to read:



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626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(a) *Misrepresentations and false advertising of insurance policies.*—Knowingly making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, comparison, or property and casualty certificate of insurance altered after being issued, which:

1. Misrepresents the benefits, advantages, conditions, or terms of any insurance policy.

2. Misrepresents the dividends or share of the surplus to be received on any insurance policy.

3. Makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy.

4. Is misleading, or is a misrepresentation, as to the financial condition of any person or as to the legal reserve system upon which any life insurer operates.

5. Uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof.

6. Is a misrepresentation for the purpose of inducing, or tending to induce, the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy.

7. Is a misrepresentation for the purpose of effecting a pledge or assignment of, or effecting a loan against, any insurance policy.



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8. Misrepresents any insurance policy as being shares of stock or misrepresents ownership interest in the company.

9. Uses any advertisement that would mislead or otherwise cause a reasonable person to believe mistakenly that the state or the Federal Government is responsible for the insurance sales activities of any person or stands behind any person's credit or that any person, the state, or the Federal Government guarantees any returns on insurance products or is a source of payment of any insurance obligation of or sold by any person.

10. Fails to disclose a third party that receives royalties, referral fees, or other remuneration for sponsorship, marketing, or use of third-party branding for a policy of health insurance as defined in s. 624.603.

Section 14. Paragraph (c) of subsection (2) of section 627.4025, Florida Statutes, is amended, and paragraph (d) is added to that subsection, to read:

627.4025 Residential coverage and hurricane coverage defined.—

(2) As used in policies providing residential coverage:

(c) "Hurricane" for purposes of paragraphs (a) and (b) means a storm system that has been declared to be a hurricane by the National Hurricane Center of the National Weather Service. The duration of the hurricane includes the time period, in Florida:

1. Beginning at the time a ~~hurricane watch or~~ hurricane warning is issued for any part of Florida by the National Hurricane Center of the National Weather Service; and

~~2. Continuing for the time period during which the hurricane conditions exist anywhere in Florida; and~~



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3. Ending 72 hours following the termination of the last hurricane watch or hurricane warning issued for any part of Florida by the National Hurricane Center of the National Weather Service.

(d) "Hurricane deductible" means the deductible applicable to loss caused by a hurricane.

Section 15. Paragraph (b) of subsection (1) and paragraph (b) of subsection (2) of section 627.4133, Florida Statutes, are amended to read:

627.4133 Notice of cancellation, nonrenewal, or renewal premium.—

(1) Except as provided in subsection (2):

(b) An insurer issuing a policy providing coverage for property, casualty, except mortgage guaranty, surety, or marine insurance, other than motor vehicle insurance subject to s. 627.728 or s. 627.7281, shall give the first-named insured written notice of cancellation or termination other than nonrenewal at least 45 days prior to the effective date of the cancellation or termination, including in the written notice the reason or reasons for the cancellation or termination, except that:

1. When cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason therefor shall be given. As used in this subparagraph and s. 440.42(3), the term "nonpayment of premium" means failure of the named insured to discharge when due any of her or his obligations in connection with the payment of premiums on a policy or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly



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under any premium finance plan or extension of credit, or failure to maintain membership in an organization if such membership is a condition precedent to insurance coverage. "Nonpayment of premium" also means the failure of a financial institution to honor an insurance applicant's check after delivery to a licensed agent for payment of a premium, even if the agent has previously delivered or transferred the premium to the insurer. If a dishonored check represents the initial premium payment, the contract and all contractual obligations shall be void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by certified mail or registered mail, and if the contract is void, any premium received by the insurer from a third party shall be refunded to that party in full; and

2. When such cancellation or termination occurs during the first 60 ~~90~~ days during which the insurance is in force and the insurance is canceled or terminated for reasons other than nonpayment of premium, at least 20 days' written notice of cancellation or termination accompanied by the reason therefor shall be given except where there has been a material misstatement or misrepresentation or failure to comply with the underwriting requirements established by the insurer.

After the policy has been in effect for 60 ~~90~~ days, no such policy shall be canceled by the insurer except when there has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements established by the insurer within 60 ~~90~~ days of the date of effectuation of



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coverage, or a substantial change in the risk covered by the policy or when the cancellation is for all insureds under such policies for a given class of insureds. This subsection does not apply to individually rated risks having a policy term of less than 90 days.

(d) Notwithstanding paragraph (b), Citizens Property Insurance Corporation, in underwriting risks that, prior to the date of the application, were most recently insured by an insurer that has been placed in receivership under chapter 631, may immediately cancel a policy insuring such risk that is in effect for 90 days or less for material misrepresentation or failure to comply with underwriting requirements established before the effectuation of coverage.

(2) With respect to any personal lines or commercial residential property insurance policy, including, but not limited to, any homeowner, mobile home owner, farmowner, condominium association, condominium unit owner, apartment building, or other policy covering a residential structure or its contents:

(b) The insurer shall give the first-named insured written notice of nonrenewal, cancellation, or termination at least 120 days before the effective date of the nonrenewal, cancellation, or termination. The notice must include the reason for the nonrenewal, cancellation, or termination, except that:

1. If cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason therefor must be given. As used in this subparagraph, the term "nonpayment of premium" means failure of the named insured to discharge when due her or his obligations for paying the



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premium on a policy or an installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under a premium finance plan or extension of credit, or failure to maintain membership in an organization if such membership is a condition precedent to insurance coverage. The term also means the failure of a financial institution to honor an insurance applicant's check after delivery to a licensed agent for payment of a premium even if the agent has previously delivered or transferred the premium to the insurer. If a dishonored check represents the initial premium payment, the contract and all contractual obligations are void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by certified mail or registered mail. If the contract is void, any premium received by the insurer from a third party must be refunded to that party in full.

2. If cancellation or termination occurs during the first 60 ~~90~~ days the insurance is in force and the insurance is canceled or terminated for reasons other than nonpayment of premium, at least 20 days' written notice of cancellation or termination accompanied by the reason therefor must be given unless there has been a material misstatement or misrepresentation or a failure to comply with the underwriting requirements established by the insurer.

3. After the policy has been in effect for 60 ~~90~~ days, the policy may not be canceled by the insurer unless there has been a material misstatement; a nonpayment of premium; a failure to comply, within 60 ~~90~~ days after the date of effectuation of



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coverage, with underwriting requirements established by the insurer before the date of effectuation of coverage; or a substantial change in the risk covered by the policy or unless the cancellation is for all insureds under such policies for a given class of insureds. This subparagraph does not apply to individually rated risks that have a policy term of less than 90 days.

4. After a policy or contract has been in effect for more than 60 ~~90~~ days, the insurer may not cancel or terminate the policy or contract based on credit information available in public records.

5. A policy that is nonrenewed by Citizens Property Insurance Corporation, pursuant to s. 627.351(6), for a policy that has been assumed by an authorized insurer offering replacement coverage to the policyholder is exempt from the notice requirements of paragraph (a) and this paragraph. In such cases, the corporation must give the named insured written notice of nonrenewal at least 45 days before the effective date of the nonrenewal.

6. Notwithstanding any other provision of law, an insurer may cancel or nonrenew a property insurance policy after at least 45 days' notice if the office finds that the early cancellation of some or all of the insurer's policies is necessary to protect the best interests of the public or policyholders and the office approves the insurer's plan for early cancellation or nonrenewal of some or all of its policies. The office may base such finding upon the financial condition of the insurer, lack of adequate reinsurance coverage for hurricane risk, or other relevant factors. The office may condition its



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finding on the consent of the insurer to be placed under administrative supervision pursuant to s. 624.81 or to the appointment of a receiver under chapter 631.

7. A policy covering both a home and a motor vehicle may be nonrenewed for any reason applicable to the property or motor vehicle insurance after providing 90 days' notice.

Section 16. Effective January 1, 2024, section 627.4554, Florida Statutes, is amended to read:

627.4554 Suitability in annuity transactions investments.—

(1) PURPOSE.—The purpose of this section is to require agents to act in the best interest of the consumer when making a recommendation of an annuity and to require insurers to establish and maintain a system to supervise so ~~set forth~~ ~~standards and procedures for making recommendations to consumers which result in transactions involving annuity products, and to establish a system for supervising such recommendations in order to ensure~~ that the insurance needs and financial objectives of consumers are effectively ~~appropriately~~ addressed at the time of the transaction.

(2) SCOPE.—This section applies to any sale or recommendation of ~~made to a consumer to purchase, exchange, or replace an annuity by an insurer or its agent, and which results in the purchase, exchange, or replacement recommended.~~

(3) DEFINITIONS.—As used in this section, the term:

(a) "Agent" means a person or entity required to be licensed under the laws of this state to sell, solicit, or negotiate insurance, including annuities. For purposes of this section, the term includes an insurer when no agent is involved ~~has the same meaning as provided in s. 626.015.~~



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(b) "Annuity" means an insurance product under state law which is individually solicited, whether classified as an individual or group annuity.

(c) "Cash compensation" means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by an agent from an insurer or intermediary or directly from the consumer in connection with the recommendation or sale of an annuity.

(d) "Consumer profile information" means information that is reasonably appropriate to determine whether a recommendation addresses the consumer's financial situation, insurance needs, and financial objectives, including, at a minimum, the following:

1. Age.
2. Annual income.
3. Financial situation and needs, including debts and other obligations.
4. Financial experience.
5. Insurance needs.
6. Financial objectives.
7. Intended use of the annuity.
8. Financial time horizon.
9. Existing assets or financial products, including investment, annuity, and insurance holdings.
10. Liquidity needs.
11. Liquid net worth.
12. Risk tolerance, including, but not limited to, willingness to accept nonguaranteed elements in the annuity.
13. Financial resources used to fund the annuity.



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14. Tax status.

(e)~~(e)~~ "FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.

(f)~~(d)~~ "Insurer" has the same meaning as provided in s. 624.03.

(g) "Intermediary" means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer's annuities by agents.

(h) "Material conflict of interest" means a financial interest of the agent in the sale of an annuity which a reasonable person would expect to influence the impartiality of a recommendation. The term does not include cash compensation or noncash compensation.

(i) "Noncash compensation" means any form of compensation that is not cash compensation, including, but not limited to, health insurance, office rent, office support, and retirement benefits.

(j) "Nonguaranteed elements" means the premiums; credited interest rates, including any bonus; benefits; values; dividends; noninterest-based credits; charges; or elements of formulas used to determine any of these, which are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(k)~~(e)~~ "Recommendation" means advice provided by an ~~insurer~~ ~~or its~~ agent to an individual a consumer which was intended to result or does result ~~which would result~~ in a ~~the~~ purchase, an exchange, or a replacement of an annuity in accordance with that advice. The term does not include general communication to the



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public, generalized customer services, assistance or
administrative support, general educational information and
tools, prospectuses, or other product and sales material.

(1)(f) "Replacement" means a transaction in which a new
annuity ~~policy or contract~~ is to be purchased and it is known or
should be known to the proposing ~~insurer or its~~ agent, or to the
proposing insurer whether or not an agent is involved, that by
reason of such transaction an existing annuity or other
insurance policy has been or is to be any of the following ~~or~~
~~contract will be:~~

1. Lapsed, forfeited, surrendered or partially surrendered,
assigned to the replacing insurer, or otherwise terminated;

2. Converted to reduced paid-up insurance, continued as
extended term insurance, or otherwise reduced in value due to
the use of nonforfeiture benefits or other policy values;

3. Amended so as to effect a reduction in benefits or the
term for which coverage would otherwise remain in force or for
which benefits would be paid;

4. Reissued with a reduction in cash value; or

5. Used in a financed purchase.

(m) "SEC" means the United States Securities and Exchange
Commission.

~~(g) "Suitability information" means information related to
the consumer which is reasonably appropriate to determine the
suitability of a recommendation made to the consumer, including
the following:~~

~~1. Age;~~

~~2. Annual income;~~

~~3. Financial situation and needs, including the financial~~



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~~resources used for funding the annuity;~~

~~4. Financial experience;~~

~~5. Financial objectives;~~

~~6. Intended use of the annuity;~~

~~7. Financial time horizon;~~

~~8. Existing assets, including investment and life insurance
holdings;~~

~~9. Liquidity needs;~~

~~10. Liquid net worth;~~

~~11. Risk tolerance; and~~

~~12. Tax status.~~

(4) EXEMPTIONS.—Unless otherwise specifically included,
this section does not apply to transactions involving:

(a) Direct-response solicitations where there is no
recommendation based on information collected from the consumer
pursuant to this section;

(b) Contracts used to fund:

1. An employee pension or welfare benefit plan that is
covered by the federal Employee Retirement and Income Security
Act;

2. A plan described by s. 401(a), s. 401(k), s. 403(b), s.
408(k), or s. 408(p) of the Internal Revenue Code, if
established or maintained by an employer;

3. A government or church plan defined in s. 414 of the
Internal Revenue Code, a government or church welfare benefit
plan, or a deferred compensation plan of a state or local
government or tax-exempt organization under s. 457 of the
Internal Revenue Code; or

4. A nonqualified deferred compensation arrangement



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established or maintained by an employer or plan sponsor;

(c)5- Settlements or assumptions of liabilities associated with personal injury litigation or a dispute or claim-resolution process; or

(d)6- Formal prepaid funeral contracts.

(5) DUTIES OF INSURERS AND AGENTS.—

(a) An agent, when making a recommendation of an annuity, shall act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the financial interest of the agent or insurer ahead of the consumer's interest. An agent has acted in the best interest of the consumer if the agent has satisfied the following obligations regarding care, disclosure, conflict of interest, and documentation:

1.a. The agent, in making a recommendation, shall exercise reasonable diligence, care, and skill to:

(I) Know the financial situation, insurance needs, and financial objectives of the customer.

(II) Understand the available options after making a reasonable inquiry into options available to the agent.

(III) Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs, and financial objectives over the life of the product, as evaluated in light of the consumer profile information.

(IV) Communicate the reason or reasons for the recommendation.

b. The requirements of sub-subparagraph a. include:

(I) Making reasonable efforts to obtain consumer profile



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information from the consumer before the recommendation of an annuity.

(II) Requiring an agent to consider the types of products the agent is authorized and licensed to recommend or sell which address the consumer's financial situation, insurance needs, and financial objectives. This does not require analysis or consideration of any products outside the authority and license of the agent or other possible alternative products or strategies available in the market at the time of the recommendation. Agents shall be held to standards applicable to agents with similar authority and licensure.

(III) Having a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, death or living benefit, or other insurance-related features.

c. The requirements of this subsection do not create a fiduciary obligation or relationship and only create a regulatory obligation as provided in this section.

d. The consumer profile information, characteristics of the insurer, and product costs, rates, benefits, and features are those factors generally relevant in making a determination whether an annuity effectively addresses the consumer's financial situation, insurance needs, and financial objectives, but the level of importance of each factor under the care obligation of this paragraph may vary depending on the facts and circumstances of a particular case. However, each factor may not be considered in isolation.

e. The requirements under sub-subparagraph a. apply to the particular annuity as a whole and the underlying subaccounts to



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which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar product enhancements, if any.

f. Sub-subparagraph a. does not require that the annuity with the lowest one-time occurrence compensation structure or multiple occurrence compensation structure shall necessarily be recommended.

g. Sub-subparagraph a. does not require the agent to have ongoing monitoring obligations under the care obligation, although such an obligation may be separately owed under the terms of a fiduciary, consulting, investment, advising, or financial planning agreement between the consumer and the agent.

h. In the case of an exchange or replacement of an annuity, the agent shall consider the whole transaction, which includes taking into consideration whether:

(I) The consumer will incur a surrender charge; be subject to the commencement of a new surrender period; lose existing benefits, such as death, living, or other contractual benefits; or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements.

(II) The replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product.

(III) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months.

i. This section does not require an agent to obtain any license other than an agent license with the appropriate line of authority to sell, solicit, or negotiate insurance in this state, including, but not limited to, any securities license, in



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order to fulfill the duties and obligations contained in this section; provided, the agent does not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses.

2.a. Before the recommendation or sale of an annuity, the agent shall prominently disclose to the consumer, on a form substantially similar to that posted on the office website as Appendix A, related to an insurance agent disclosure for annuities:

(I) A description of the scope and terms of the relationship with the consumer and the role of the agent in the transaction.

(II) An affirmative statement on whether the agent is licensed and authorized to sell the following products:

(A) Fixed annuities.

(B) Fixed indexed annuities.

(C) Variable annuities.

(D) Life insurance.

(E) Mutual funds.

(F) Stocks and bonds.

(G) Certificates of deposit.

(III) An affirmative statement describing the insurers for which the agent is authorized, contracted, or appointed, or otherwise able to sell insurance products, using the following descriptions:

(A) From one insurer;

(B) From two or more insurers; or

(C) From two or more insurers, although primarily contracted with one insurer.



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(IV) A description of the sources and types of cash compensation and noncash compensation to be received by the agent, including whether the agent is to be compensated for the sale of a recommended annuity by commission as part of premium or other remuneration received from the insurer, intermediary, or other agent, or by fee as a result of a contract for advice or consulting services.

(V) A notice of the consumer's right to request additional information regarding cash compensation described in subparagraph b.

b. Upon request of the consumer or the consumer's designated representative, the agent shall disclose:

(I) A reasonable estimate of the amount of cash compensation to be received by the agent, which may be stated as a range of amounts or percentages.

(II) Whether the cash compensation is a one-time or multiple occurrence amount; and if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages. ~~When recommending the purchase or exchange of an annuity to a consumer which results in an insurance transaction or series of insurance transactions, the agent, or the insurer where no agent is involved, must have reasonable grounds for believing that the recommendation is suitable for the consumer, based on the consumer's suitability information, and that there is a reasonable basis to believe all of the following:~~

c.1. Before or at the time of the recommendation or sale of an annuity, the agent shall have a reasonable basis to believe the consumer has been reasonably informed of various features of



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the annuity, such as the potential surrender period and surrender charge; potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity; mortality and expense fees; any annual fees; investment advisory fees; potential charges for and features of riders or other options of the annuity; limitations on interest returns; potential changes in nonguaranteed elements of the annuity; insurance and investment components; and market risk.

~~2. The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization, or the death or living benefit.~~

3. An agent shall identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.

4. An agent shall at the time of the recommendation or sale:

a. Make a written record of any recommendation and the basis for the recommendation, subject to this section.

b. Obtain a consumer-signed statement on a form substantially similar to that posted on the office website as Appendix B, related to a consumer's refusal to provide information, documenting:

(I) A customer's refusal to provide the consumer profile information, if any.

(II) A customer's understanding of the ramifications of not providing his or her consumer profile information or providing insufficient consumer profile information.

c. Obtain a consumer-signed statement on a form substantially similar to that posted on the office website as



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Appendix C, related to a consumer's decision to purchase an annuity not based on a recommendation, acknowledging the annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the agent's recommendation.

5. Any requirement applicable to an agent under this subsection applies to every agent who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the agent has had any direct contact with the consumer. Activities such as providing or delivering marketing or education materials, product wholesaling or other back office product support, and general supervision of an agent do not, in and of themselves, constitute material control or influence.

~~3. The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable; and, in the case of an exchange or replacement, the transaction as a whole is suitable for the particular consumer based on his or her suitability information.~~

~~4. In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable after considering whether the consumer:~~

~~a. Will incur a surrender charge; be subject to the commencement of a new surrender period; lose existing benefits, such as death, living, or other contractual benefits; or be subject to increased fees, investment advisory fees, or charges~~



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~~for riders and similar product enhancements;~~

~~b. Would benefit from product enhancements and improvements; and~~

~~c. Has had another annuity exchange or replacement, including an exchange or replacement within the preceding 36 months.~~

~~(b) Before executing a purchase, exchange, or replacement of an annuity resulting from a recommendation, an insurer or its agent must make reasonable efforts to obtain the consumer's suitability information. The information shall be collected on form DFS-H1-1980, which is hereby incorporated by reference, and completed and signed by the applicant and agent. Questions requesting this information must be presented in at least 12-point type and be sufficiently clear so as to be readily understandable by both the agent and the consumer. A true and correct executed copy of the form must be provided by the agent to the insurer, or to the person or entity that has contracted with the insurer to perform this function as authorized by this section, within 10 days after execution of the form, and shall be provided to the consumer no later than the date of delivery of the contract or contracts.~~

~~(c) Except as provided under paragraph (d), an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.~~

~~(b)1.(d) Except as provided under subparagraph 2., An insurer's issuance of an annuity must be reasonable based on all the circumstances actually known to the insurer at the time the annuity is issued. However, an insurer or its agent does not~~



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~~have~~ ~~does not have~~ an obligation to a consumer related to an annuity transaction under subparagraph (a)1. ~~paragraph (a) or paragraph (c)~~ if:

~~a.1.~~ A recommendation has not been made;

~~b.2.~~ A recommendation was made and is later found to have been based on materially inaccurate information provided by the consumer;

~~c.3.~~ A consumer refuses to provide relevant consumer profile suitability information and the annuity transaction is not recommended; or

~~d.4.~~ A consumer decides to enter into an annuity transaction that is not based on a recommendation of the ~~an insurer or its~~ agent.

2. An insurer's issuance of an annuity subject to subparagraph 1. must be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

(c)1. Except as permitted under paragraph (b), an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives based on the consumer's consumer profile information.

~~(c) At the time of sale, the agent or the agent's representative must:~~

~~1. Make a record of any recommendation made to the consumer pursuant to paragraph (a);~~

~~2. Obtain the consumer's signed statement documenting his or her refusal to provide suitability information, if applicable; and~~



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~~3. Obtain the consumer's signed statement acknowledging that an annuity transaction is not recommended if he or she decides to enter into an annuity transaction that is not based on the insurer's or its agent's recommendation, if applicable.~~

~~(f) Before executing a replacement or exchange of an annuity contract resulting from a recommendation, the agent must provide on form DFS-H1-1981, which is hereby incorporated by reference, information that compares the differences between the existing annuity contract and the annuity contract being recommended in order to determine the suitability of the recommendation and its benefit to the consumer. A true and correct executed copy of this form must be provided by the agent to the insurer, or to the person or entity that has contracted with the insurer to perform this function as authorized by this section, within 10 days after execution of the form, and must be provided to the consumer no later than the date of delivery of the contract or contracts.~~

~~2.(g) An insurer shall establish and maintain a supervision system that is reasonably designed to achieve the insurer's and its agent's compliance with this section, including, but not limited to, the following:-~~

~~1. Such system must include, but is not limited to:~~

~~a. The insurer shall establish and maintain Maintaining reasonable procedures to inform its agents of the requirements of this section and incorporating those requirements into relevant agent training manuals.~~

~~b. The insurer shall establish and maintain Establishing standards for agent product training and shall establish and maintain reasonable procedures to require its agents to comply~~



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with the requirements of subsection (6).~~†~~

c. The insurer shall provide ~~Providing~~ product-specific training and training materials that explain all material features of its annuity products to its agents.~~†~~

d. The insurer shall establish and maintain ~~Maintaining~~ procedures for the review of each recommendation before issuance of an annuity which are designed to ensure that there is a reasonable basis to determine the recommended annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives ~~for determining that a recommendation is suitable~~. Such review procedures may use a screening system for identifying selected transactions for additional review and may be accomplished electronically or through other means, including, but not limited to, physical review. Such electronic or other system may be designed to require additional review only of those transactions identified for additional review using established selection criteria.~~†~~

e. The insurer shall establish and maintain ~~Maintaining~~ reasonable procedures to detect recommendations that are not in compliance with paragraphs (a), (b), (d), and (e). This may include, but is not limited to, ~~suitable, such as~~ confirmation of consumer profile suitability ~~suitability~~ information, systematic customer surveys, agent and consumer interviews, confirmation letters, agent statements or attestations, and internal monitoring programs. This sub-subparagraph does not prevent an insurer from using sampling procedures or from confirming the consumer profile suitability ~~suitability~~ information after the issuance or delivery of the annuity.~~† and~~



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f. The insurer shall establish and maintain reasonable procedures to assess, prior to or upon issuance or delivery of an annuity, whether an agent has provided to the consumer the information required to be provided under this subsection.

g. The insurer shall establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information.

h. The insurer shall establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and noncash compensation that are based on the sales of specific annuities within a limited period of time. The requirements of this sub-subparagraph are not intended to prohibit the receipt of health insurance, office rents, office support, retirement benefits, or other employee benefits by employees, as long as those benefits are not based upon the volume of sales of a specific annuity within a limited period of time.

~~i.f.~~ The insurer shall annually provide ~~providing~~ a written report to senior managers, including the senior manager who is responsible for audit functions, which details a review, along with appropriate testing, which is reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

~~3.2.~~ An insurer is not required to include in its supervision system:

a. Agent recommendations to consumers of products other than the annuities offered by the insurer; or

b. Consideration of or comparison to options available to



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the agent or compensation relating to those options other than annuities or other products offered by the insurer.

~~4.3-~~ An insurer may contract for performance of a function, including maintenance of procedures, required under subparagraph 1.

a. An insurer's supervision system under this subsection shall include supervision of contractual performance under this subsection, which includes, but is ~~If an insurer contracts for the performance of a function, the insurer must include the supervision of contractual performance as part of those procedures listed in subparagraph 1. These include, but are not~~ limited to:

(I) Monitoring and, as appropriate, conducting audits to ensure that the contracted function is properly performed; and

(II) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, ~~for representing~~ that the function is being properly performed.

b. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to subsection (8) ~~(7)~~ regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with sub-subparagraph a.

~~(d)-(h)~~ Neither an agent nor an insurer shall ~~may not~~ dissuade, or attempt to dissuade, a consumer from:

1. Truthfully responding to an insurer's request for confirmation of consumer profile ~~suitability~~ information;

2. Filing a complaint; or



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3. Cooperating with the investigation of a complaint.

(e) ~~1.(i)~~ Recommendations and sales made in compliance with comparable standards shall ~~FINRA requirements pertaining to the suitability and supervision of annuity transactions~~ satisfy the requirements of this section. This applies to all recommendations and ~~FINRA broker-dealer~~ sales of ~~variable~~ annuities made by financial professionals in compliance with business rules, controls, and procedures that satisfy a comparable standard even if such standard would not otherwise apply to the product or recommendation at issue ~~and fixed annuities if the suitability and supervision is similar to those applied to variable annuity sales.~~ However, this paragraph does not limit the ability of the office or the department to investigate and enforce, ~~including investigate, the provisions of~~ this section.

2. Subparagraph 1. does not limit the insurer's obligation to comply with subparagraph (c)1., although the insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.

3. For subparagraph 1. ~~this paragraph~~ to apply, an insurer must:

a.1. Monitor relevant conduct of the financial professional seeking to rely on subparagraph 1. or the entity responsible for supervising the financial professional, such as the financial professional's broker-dealer or an investment adviser registered under federal or state securities law, ~~the FINRA member broker-dealer~~ using information collected in the normal course of an insurer's business; and



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b.2. Provide to the entity responsible for supervising the financial professional seeking to rely on subparagraph 1., such as the financial professional's broker-dealer or investment adviser registered under federal or state securities laws, ~~FINRA member broker-dealer~~ information and reports that are reasonably appropriate to assist such entity the ~~FINRA member broker-dealer~~ in maintaining its supervision system.

4. For purposes of this paragraph, the term:

a. "Comparable standards" means:

(I) With respect to broker-dealers and registered representatives of broker-dealers, applicable SEC and FINRA rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including, but not limited to, Regulation Best Interest, 17 C.F.R. s. 240.151-1, and any amendments or successor regulations thereto;

(II) With respect to investment advisers registered under federal or state securities laws or investment adviser representatives, the fiduciary duties and all other requirements imposed on such investment advisers or investment adviser representatives by contract or under the Investment Advisers Act of 1940 or applicable state securities laws, including, but not limited to, Form ADV and interpretations; and

(III) With respect to plan fiduciaries or fiduciaries, the duties, obligations, prohibitions, and all other requirements attendant to such status under the Employee Retirement Income Security Act of 1974 or the Internal Revenue Code and any amendments or successor statutes thereto.

b. "Financial professional" means an agent that is regulated and acting as:



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(I) A broker-dealer registered under federal or state securities laws or a registered representative of a broker-dealer;

(II) An investment adviser registered under federal or state securities laws or an investment adviser representative associated with the federal or state registered investment adviser; or

(III) A plan fiduciary under s. 3(21) of the Employee Retirement Income Security Act of 1974 or fiduciary under s. 4975(e)(3) of the Internal Revenue Code or any amendments or successor statutes thereto.

(6) AGENT TRAINING.—

(a) An agent shall not solicit the sale of an annuity product unless the agent has adequate knowledge of the product to recommend the annuity and the agent is in compliance with the insurer's standards for product training. An agent may rely on insurer-provided, product-specific training standards and materials to comply with this subsection.

(b)1.a. An agent who engages in the sale of annuity products shall complete a one-time 4-hour training course. This requirement is not part of an agent's continuing education requirement in s. 626.2815; however, if a course provider submits and receives approval from the department, the course is eligible for continuing education credit pursuant to s. 626.2815.

b. Agents who hold a life insurance line of authority on January 1, 2024, and who desire to sell annuities shall complete the requirements of this subsection by July 1, 2024. Individuals who obtain a life insurance line of authority after January 1,



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2024, may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.

2. The minimum length of the training required under this subsection is 4 hours.

3. The training required under this subsection shall include information on the following topics:

a. The types of annuities and various classifications of annuities.

b. Identification of the parties to an annuity.

c. How product-specific annuity contract features affect consumers.

d. The application of income taxation of qualified and nonqualified annuities.

e. The primary uses of annuities.

f. The appropriate standard of conduct, sales practices, replacement, and disclosure requirements.

4. Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.

5. An agent who has completed an annuity training course before January 1, 2024, shall, by July 1, 2024, complete either:

a. A new 4-hour training course; or

b. An additional 1-hour training course on appropriate sales practices, replacement, and disclosure requirements under



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this section.

6. Annuity training courses may be conducted and completed by classroom or self-study methods.

7. Providers of annuity training shall issue certificates of completion.

8. The satisfaction of the training requirements of another state that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this state.

9. The satisfaction of the training requirements of any course or courses with components substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this state.

10. An insurer shall verify that an agent has completed the annuity training course required under this subsection before allowing the agent to sell an annuity product for that insurer.

~~(7)(6)~~ RECORDKEEPING.—

(a) Insurers and agents must maintain or be able to make available to the office or department records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for 5 years after the insurance transaction is completed by the insurer. An insurer may maintain the documentation on behalf of its agent.

(b) Records required to be maintained under this subsection may be maintained in paper, photographic, microprocess, magnetic, mechanical, or electronic media, or by any process that accurately reproduces the actual document.

~~(8)(7)~~ COMPLIANCE MITIGATION; PENALTIES.—



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(a) An insurer is responsible for compliance with this section. If a violation occurs because of the action or inaction of the insurer or its agent which results in harm to a consumer, the office may order the insurer to take reasonably appropriate corrective action for the consumer and may impose appropriate penalties and sanctions.

(b) The department may order:

1. An ~~insurance~~ agent to take reasonably appropriate corrective action for a consumer harmed by a violation of this section by the ~~insurance~~ agent, including monetary restitution of penalties or fees incurred by the consumer, and impose appropriate penalties and sanctions.

2. A managing general agency or insurance agency that employs or contracts with an ~~insurance~~ agent to sell or solicit the sale of annuities to consumers to take reasonably appropriate corrective action for a consumer harmed by a violation of this section by the ~~insurance~~ agent.

(c) In addition to any other penalty authorized under chapter 626, the department shall order an insurance agent to pay restitution to a consumer who has been deprived of money by the agent's misappropriation, conversion, or unlawful withholding of moneys belonging to the consumer in the course of a transaction involving annuities. The amount of restitution required to be paid may not exceed the amount misappropriated, converted, or unlawfully withheld. This paragraph does not limit or restrict a person's right to seek other remedies as provided by law.

(d) Any applicable penalty under the Florida Insurance Code for a violation of this section shall be reduced or eliminated



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according to a schedule adopted by the office or the department, as appropriate, if corrective action for the consumer was taken promptly after a violation was discovered.

(e) A violation of this section does not create or imply a private cause of action.

(9)~~(8)~~ PROHIBITED CHARGES.—An annuity contract issued to a senior consumer age 65 or older may not contain a surrender or deferred sales charge for a withdrawal of money from an annuity exceeding 10 percent of the amount withdrawn. The charge shall be reduced so that no surrender or deferred sales charge exists after the end of the 10th policy year or 10 years after the date of each premium payment if multiple premiums are paid, whichever is later. This subsection does not apply to annuities purchased by an accredited investor, as defined in Regulation D as adopted by the United States Securities and Exchange Commission, or to those annuities specified in paragraph (4)(b).

(10)~~(9)~~ RULES.—The department and the commission may adopt rules to administer this section. The department may adopt by rule the forms prescribed in the National Association of Insurance Commissioners Suitability in Annuity Transactions Model Regulation Appendix A - Insurance Agent (Producer) Disclosure for Annuities, Appendix B - Consumer Refusal to Provide Information, and Appendix C - Consumer Decision to Purchase an Annuity Not Based on a Recommendation.

Section 17. Subsection (5) is added to section 627.70132, Florida Statutes, to read:

627.70132 Notice of property insurance claim.—

(5) For loss assessment claims made under s. 627.714, the notice of claim must be given to the insurer in accordance with



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the terms of the policy within 3 years of the date of loss.

Section 18. Paragraph (b) of subsection (8) of section 634.041, Florida Statutes, is amended to read:

634.041 Qualifications for license.—To qualify for and hold a license to issue service agreements in this state, a service agreement company must be in compliance with this part, with applicable rules of the commission, with related sections of the Florida Insurance Code, and with its charter powers and must comply with the following:

(8)

(b) A service agreement company does not have to establish and maintain an unearned premium reserve if it secures and maintains contractual liability insurance in accordance with the following:

1. Coverage of 100 percent of the claim exposure is obtained from an insurer approved by the office, which holds a certificate of authority under s. 624.401 to do business within this state, or secured through a risk retention group, which is authorized to do business within this state under s. 627.943 or s. 627.944. Such insurer or risk retention group must maintain a surplus as regards policyholders of at least \$15 million.

2. If the service agreement company does not meet its contractual obligations, the contractual liability insurance policy binds its issuer to pay or cause to be paid to the service agreement holder all legitimate claims and cancellation refunds for all service agreements issued by the service agreement company while the policy was in effect. This requirement also applies to those service agreements for which no premium has been remitted to the insurer.



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3. If the issuer of the contractual liability policy is fulfilling the service agreements covered by the contractual liability policy and the service agreement holder cancels the service agreement, the issuer must make a full refund of unearned premium to the consumer, subject to the cancellation fee provisions of s. 634.121(3). The sales representative and agent must refund to the contractual liability policy issuer their unearned pro rata commission.

4. The policy may not be canceled, terminated, or nonrenewed by the insurer or the service agreement company unless a 90-day written notice thereof has been given to the office by the insurer before the date of the cancellation, termination, or nonrenewal.

5. The service agreement company must provide the office with the claims statistics.

6. A policy issued in compliance with this paragraph may either pay 100 percent of claims as they are incurred, or 100 percent of claims due in the event of the failure of the service agreement company to pay such claims when due.

All funds or premiums remitted to an insurer by a motor vehicle service agreement company under this part shall remain in the care, custody, and control of the insurer and shall be counted as an asset of the insurer; provided, however, this requirement does not apply when the insurer and the motor vehicle service agreement company are affiliated companies and members of an insurance holding company system. If the motor vehicle service agreement company chooses to comply with this paragraph but also maintains a reserve to pay claims, such reserve shall only be



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considered an asset of the covered motor vehicle service agreement company and may not be simultaneously counted as an asset of any other entity.

Section 19. Paragraphs (d), (e), and (f) of subsection (17) of section 634.401, Florida Statutes, are amended to read:

634.401 Definitions.—As used in this part, the term:

(17) "Manufacturer" means any entity or its affiliate which:

~~(d) Maintains outstanding debt obligations, if any, rated in the top four rating categories by a recognized rating service;~~

~~(d)(e)~~ Has and maintains at all times, a minimum net worth of at least \$100 ~~\$10~~ million as evidenced by certified financial statements prepared by an independent certified public accountant in accordance with generally accepted accounting principles; and

~~(e)(f)~~ Is authorized to do business in this state.

Section 20. Paragraph (a) of subsection (7) of section 634.406, Florida Statutes, is amended to read:

634.406 Financial requirements.—

(7) An association licensed under this part and holding no other license under part I or part II of this chapter is not required to establish an unearned premium reserve or maintain contractual liability insurance and may allow its premiums to exceed the ratio to net assets limitation of this section if the association complies with the following:

(a) The association or, if the association is a direct or indirect wholly owned subsidiary of a parent corporation, its parent corporation has, and maintains at all times, a minimum



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net worth of at least \$100 million and provides the office with the following:

1. A copy of the association's annual audited financial statements or the audited consolidated financial statements of the association's parent corporation, prepared by an independent certified public accountant in accordance with generally accepted accounting principles, which clearly demonstrate the net worth of the association or its parent corporation to be \$100 million and a quarterly written certification to the office that such entity continues to maintain the net worth required under this paragraph.

2. The association's, or its parent corporation's, Form 10-K, Form 10-Q, or Form 20-F as filed with the United States Securities and Exchange Commission or such other documents required to be filed with a recognized stock exchange, which shall be provided on a quarterly and annual basis within 10 days after the last date each such report must be filed with the Securities and Exchange Commission, the National Association of Security Dealers Automated Quotation system, or other recognized stock exchange.

Failure to timely file the documents required under this paragraph may, at the discretion of the office, subject the association to suspension or revocation of its license under this part. ~~An association or parent corporation demonstrating compliance with subparagraphs 1. and 2. must maintain outstanding debt obligations, if any, rated in the top four rating categories by a recognized rating service.~~

Section 21. Except as otherwise expressly provided in this



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act, this act shall take effect July 1, 2023.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to consumer protection; amending s.
494.001, F.S.; revising the definition of the term
"branch office"; defining the term "remote location";
authorizing a licensee under ch. 494, F.S., to allow
loan originators to work from remote locations if
specified conditions are met; amending s. 494.0067,
F.S.; specifying that mortgage lenders may transact
business from branch offices and remote locations;
providing a requirement for operating remote
locations; creating s. 501.2042, F.S.; providing
requirements for crowd-funding platforms and
organizers of crowd-funding campaigns related to and
arising out of declared disasters; amending s. 520.23,
F.S.; revising disclosure requirements for agreements
governing the sale or lease of a distributed energy
generation system; amending s. 560.111, F.S.;
providing a criminal penalty; amending s. 560.309,
F.S.; prohibiting a licensee under ch. 560, F.S., from
cashing corporate checks for certain payees where the
aggregate face amount exceeds a specified amount;
amending s. 626.551, F.S.; revising the timeframe in
which an insurance representative must notify the



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1983 Department of Financial Services of certain changes in
1984 information; amending s. 626.602, F.S.; providing
1985 applicability of provisions relating to the
1986 disapproval of insurance agency names to adjusting
1987 firm names; revising grounds on which such names may
1988 be disapproved by the department; deleting an obsolete
1989 provision; amending s. 626.854, F.S.; revising the
1990 definition of the term "public adjuster"; prohibiting
1991 public adjusters from contracting with anyone other
1992 than the named insured without the insured's written
1993 consent; specifying a penalty for noncompliance;
1994 specifying timeframes in which an insured or a
1995 claimant may cancel a public adjuster's contract
1996 without penalty or contract under certain
1997 circumstances; revising requirements for public
1998 adjusters' contracts; specifying requirements for
1999 public adjusters if the insurer, within a certain
2000 timeframe, pays or commits in writing to pay to the
2001 insured the policy limit of the policy; specifying
2002 limitations on commissions received by public
2003 adjusters; amending s. 626.860, F.S.; providing that
2004 an attorney's exemption from public adjuster licensure
2005 requirements does not apply to certain persons;
2006 amending s. 626.875, F.S.; revising recordkeeping
2007 requirements for appointed independent adjusters and
2008 licensed public adjusters; amending s. 626.8796, F.S.;
2009 revising requirements for public adjuster contracts;
2010 specifying requirements for and prohibitions on public
2011 adjusters relating to such contracts; providing



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2012 construction; authorizing the department to adopt
2013 rules; amending s. 626.8797, F.S.; revising a fraud
2014 statement requirement in proof-of-loss statements;
2015 amending s. 626.9541, F.S.; adding an unfair or
2016 deceptive insurance act relating to health insurance
2017 policies; amending s. 627.4025, F.S.; revising the
2018 definition of the term "hurricane," and defining the
2019 term "hurricane deductible," as used in policies
2020 providing residential coverage; amending s. 627.4133,
2021 F.S.; revising conditions that apply to a specified
2022 notice requirement for, and a limitation on, the
2023 cancellation or termination of certain insurance
2024 policies; amending s. 627.4554, F.S.; revising
2025 legislative purpose; revising applicability; revising
2026 and defining terms; revising and specifying duties of
2027 insurers and agents relating to the recommendation and
2028 sale of annuity investments; specifying comparable
2029 standards that comply with such requirements;
2030 specifying agent training requirements; providing and
2031 revising construction; authorizing the department to
2032 adopt certain forms by rule; amending s. 627.70132,
2033 F.S.; specifying the period in which notices of loss
2034 assessment claims under residential condominium unit
2035 owner coverage must be given to the insurer; amending
2036 s. 634.041, F.S.; specifying authorized methods of
2037 paying claims for motor vehicle service agreements;
2038 amending s. 634.401, F.S.; revising the definition of
2039 the term "manufacturer" for purposes of part III of
2040 ch. 634, F.S.; amending s. 634.406, F.S.; deleting a



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2041 debt obligation rating requirement for certain service
2042 warranty associations or parent corporations;
2043 providing effective dates.

By the Committee on Banking and Insurance; and Senator DiCeglie

597-02915-23

20231398c1

1 A bill to be entitled
 2 An act relating to consumer protection; amending s.
 3 494.001, F.S.; revising the definition of the term
 4 "branch office"; defining the term "remote location";
 5 authorizing a licensee under ch. 494, F.S., to allow
 6 loan originators to work from remote locations if
 7 specified conditions are met; amending s. 494.0067,
 8 F.S.; specifying that mortgage lenders may transact
 9 business from branch offices and remote locations;
 10 providing a requirement for operating remote
 11 locations; creating s. 501.2042, F.S.; defining terms;
 12 providing requirements for organizers of crowd-funding
 13 campaigns related to disasters and for crowd-funding
 14 platforms; amending s. 520.23, F.S.; revising
 15 disclosure requirements for agreements governing the
 16 sale or lease of a distributed energy generation
 17 system; amending s. 560.111, F.S.; providing a
 18 criminal penalty; amending s. 560.309, F.S.;
 19 prohibiting a licensee under ch. 560, F.S., from
 20 cashing corporate checks for certain payees where the
 21 aggregate face amount exceeds a specified amount;
 22 amending s. 626.551, F.S.; revising the timeframe in
 23 which an insurance representative must notify the
 24 Department of Financial Services of certain changes in
 25 information; amending s. 626.602, F.S.; providing
 26 applicability of provisions relating to the
 27 disapproval of insurance agency names to adjusting
 28 firm names; revising grounds on which such names may
 29 be disapproved by the department; deleting an obsolete

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30 provision; amending s. 626.854, F.S.; revising the
 31 definition of the term "public adjuster"; prohibiting
 32 public adjusters from contracting with anyone other
 33 than the named insured without the insured's written
 34 consent; specifying a penalty for noncompliance;
 35 specifying timeframes in which an insured or a
 36 claimant may cancel a public adjuster's contract
 37 without penalty or contract under certain
 38 circumstances; revising requirements for public
 39 adjusters' contracts; specifying requirements for
 40 public adjusters if the insurer, within a certain
 41 timeframe, pays or commits in writing to pay to the
 42 insured the policy limit of the policy; specifying
 43 limitations on commissions received by public
 44 adjusters; amending s. 626.860, F.S.; providing that
 45 an attorney's exemption from public adjuster licensure
 46 requirements does not apply to certain persons;
 47 amending s. 626.875, F.S.; revising recordkeeping
 48 requirements for appointed independent adjusters and
 49 licensed public adjusters; amending s. 626.8796, F.S.;
 50 revising requirements for public adjuster contracts;
 51 specifying requirements for and prohibitions on public
 52 adjusters relating to such contracts; providing
 53 construction; authorizing the department to adopt
 54 rules; amending s. 626.8797, F.S.; revising a fraud
 55 statement requirement in proof-of-loss statements;
 56 amending s. 626.9541, F.S.; adding an unfair or
 57 deceptive insurance act relating to health insurance
 58 policies; amending s. 627.4025, F.S.; revising the

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definition of the term "hurricane," and defining the term "hurricane deductible," as used in policies providing residential coverage; amending s. 627.4133, F.S.; revising conditions that apply to a specified notice requirement for, and a limitation on, the cancellation or termination of certain insurance policies; amending s. 627.4554, F.S.; revising legislative purpose; revising applicability; revising and defining terms; revising and specifying duties of insurers and agents relating to the recommendation and sale of annuity investments; specifying comparable standards that comply with such requirements; specifying agent training requirements; providing and revising construction; authorizing the department to adopt certain forms by rule; amending s. 634.041, F.S.; specifying authorized methods of paying claims for motor vehicle service agreements; amending s. 634.401, F.S.; revising the definition of the term "manufacturer" for purposes of part III of ch. 634, F.S.; amending s. 634.406, F.S.; deleting a debt obligation rating requirement for certain service warranty associations or parent corporations; providing effective dates.

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

Section 1. Present subsections (35) through (38) of section 494.001, Florida Statutes, are redesignated as subsections (36) through (39), respectively, a new subsection (35) is added to

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that section, and subsection (3) of that section is amended, to read:

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

(3) "Branch office" means a location, other than a mortgage broker's or mortgage lender's principal place of business or remote location:

(a) The address of which appears on business cards, stationery, or advertising used by the licensee in connection with business conducted under this chapter;

(b) At which the licensee's name, advertising or promotional materials, or signage suggests that mortgage loans are originated, negotiated, funded, or serviced; or

(c) At which mortgage loans are originated, negotiated, funded, or serviced by a licensee.

(35) "Remote location" means a location, other than a principal place of business or a branch office, at which a loan originator of a licensee may conduct business. A licensee may allow loan originators to work from remote locations if:

(a) The licensee has written policies and procedures for supervision of loan originators working from remote locations.

(b) Access to company platforms and customer information is in accordance with the licensee's comprehensive written information security plan.

(c) An in-person customer interaction does not occur at a loan originator's residence unless such residence is a licensed location.

(d) Physical records are not maintained at a remote location.

(e) Customer interactions and conversations about consumers

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will be in compliance with federal and state information security requirements, including applicable provisions under the Gramm-Leach-Bliley Act and the Safeguards Rule established by the Federal Trade Commission, set forth at 16 C.F.R. part 314, as such requirements may be amended from time to time.

(f) A loan originator working at a remote location accesses the company's secure systems, including a cloud-based system, directly from any out-of-office device such as a laptop, phone, desktop computer, or tablet, through a virtual private network or comparable system that ensures secure connectivity and that requires passwords or other forms of authentication to access.

(g) The licensee ensures that appropriate security updates, patches, or other alterations to the security of all devices used at remote locations are installed and maintained.

(h) The licensee is able to remotely lock or erase company-related contents of any device or otherwise remotely limit all access to a company's secure systems.

(i) The registry's record of a loan originator who works from a remote location designates the principal place of business as the loan originator's registered location, or the loan originator has elected a licensed branch office as a registered location.

Section 2. Subsection (1) of section 494.0067, Florida Statutes, is amended to read:

494.0067 Requirements of mortgage lenders.—

(1) A mortgage lender that makes mortgage loans on real estate in this state shall transact business from a principal place of business, branch office, or remote location. Each principal place of business, ~~and each~~ branch office, and remote

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location shall be operated under the full charge, control, and supervision of the licensee pursuant to this part.

Section 3. Section 501.2042, Florida Statutes, is created to read:

501.2042 Unlawful acts and practices by online crowd-funding campaigns.—

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

(a) "Crowd-funding campaign" means an online fundraising initiative that is intended to receive monetary donations from donors and is created by an organizer in the interest of a beneficiary.

(b) "Crowd-funding platform" means an entity doing business in this state which provides an online medium for the creation and facilitation of a crowd-funding campaign.

(c) "Disaster" means any natural, technological, or civil emergency that occurs in this state and that causes damage of sufficient severity and magnitude to result in a declaration of a state of emergency by a county, the Governor, or the President of the United States.

(d) "Organizer" means a person who:

1. Resides or is domiciled in this state; and

2. Has an account on a crowd-funding platform and has created a crowd-funding campaign either as a beneficiary or on behalf of a beneficiary, regardless of whether the beneficiary or the crowd-funding campaign has received donations.

(2) When an organizer arranges a crowd-funding campaign related to a disaster, the organizer must produce to the crowd-funding platform a complete and accurate accounting of all donations received and expended by the crowd-funding campaign.

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The crowd-funding platform must publish all received accountings on its website.

Section 4. Section 520.23, Florida Statutes, is amended to read:

520.23 Disclosures required.—Each agreement governing the sale or lease of a distributed energy generation system shall, at a minimum, include a written statement printed in at least 12-point type that is separate from the agreement, is separately acknowledged by the buyer or lessee, and includes the following information and disclosures, if applicable:

(1) The name, address, telephone number, and e-mail address of the buyer or lessee.

(2) The name, address, telephone number, e-mail address, and valid state contractor license number of the person responsible for installing the distributed energy generation system.

(3) The name, address, telephone number, e-mail address, and valid state contractor license number of the distributed energy generation system maintenance provider, if different from the person responsible for installing the distributed energy generation system.

(4) The customer contact center phone number for the Department of Business and Professional Regulation.

(5)~~(4)~~ A written statement indicating whether the distributed energy generation system is being purchased or leased.

(a) If the distributed energy generation system will be leased, the written statement must include a disclosure in substantially the following form: "You are entering into an

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agreement to lease a distributed energy generation system. You will lease (not own) the system installed on your property."

(b) If the distributed energy generation system will be purchased, the written statement must include a disclosure in substantially the following form: "You are entering into an agreement to purchase a distributed energy generation system. You will own (not lease) the system installed on your property."

(6)~~(5)~~ The total cost to be paid by the buyer or lessee, including any interest, installation fees, document preparation fees, service fees, or other fees.

(7)~~(6)~~ A payment schedule, including any amounts owed at contract signing, at the commencement of installation, at the completion of installation, and any final payments. If the distributed energy generation system is being leased, the written statement must include the frequency and amount of each payment due under the lease and the total estimated lease payments over the term of the lease.

(8)~~(7)~~ Each state or federal tax incentive or rebate, if any, relied upon by the seller in determining the price of the distributed energy generation system.

(9)~~(8)~~ A description of the assumptions used to calculate any savings estimates provided to the buyer or lessee, and if such estimates are provided, a statement in substantially the following form: "It is important to understand that future electric utility rates are estimates only. Your future electric utility rates may vary."

(10)~~(9)~~ A description of any one-time or recurring fees, including, but not limited to, estimated system removal fees, maintenance fees, Internet connection fees, and automated

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clearinghouse fees. If late fees may apply, the description must describe the circumstances triggering such late fees.

(11)~~(10)~~ A statement notifying the buyer whether the distributed energy generation system is being financed and, if so, a statement in substantially the following form: "If your system is financed, carefully read any agreements and/or disclosure forms provided by your lender. This statement does not contain the terms of your financing agreement. If you have any questions about your financing agreement, contact your finance provider before signing a contract."

(12)~~(11)~~ A statement notifying the buyer whether the seller is assisting in arranging financing of the distributed energy generation system and, if so, a statement in substantially the following form: "If your system is financed, carefully read any agreements and/or disclosure forms provided by your lender. This statement does not contain the terms of your financing agreement. If you have any questions about your financing agreement, contact your finance provider before signing a contract."

(13)~~(12)~~ A provision notifying the buyer or lessee of the right to rescind the agreement for a period of at least 3 business days after the agreement is signed. This subsection does not apply to a contract to sell or lease a distributed energy generation system in a solar community in which the entire community has been marketed as a solar community and all of the homes in the community are intended to have a distributed energy generation system, or a solar community in which the developer has incorporated solar technology for purposes of meeting the Florida Building Code in s. 553.73.

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(14)~~(13)~~ A description of the distributed energy generation system design assumptions, including the make and model of the major components, system size, estimated first-year energy production, and estimated annual energy production decreases, including the overall percentage degradation over the estimated life of the distributed energy generation system, and the status of utility compensation for excess energy generated by the system at the time of contract signing. A seller who provides a warranty or guarantee of the energy production output of the distributed energy generation system may provide a description of such warranty or guarantee in lieu of a description of the system design and components.

(15)~~(14)~~ A description of any performance or production guarantees.

(16)~~(15)~~ A description of the ownership and transferability of any tax credits, rebates, incentives, or renewable energy certificates associated with the distributed energy generation system, including a disclosure as to whether the seller will assign or sell any associated renewable energy certificates to a third party.

(17)~~(16)~~ A statement in substantially the following form: "You are responsible for property taxes on property you own. Consult a tax professional to understand any tax liability or eligibility for any tax credits that may result from the purchase of your distributed energy generation system."

(18)~~(17)~~ The approximate start and completion dates for the installation of the distributed energy generation system.

(19)~~(18)~~ A disclosure as to whether maintenance and repairs of the distributed energy generation system are included in the

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291 purchase price.

292 ~~(20)-(19)~~ A disclosure as to whether any warranty or
 293 maintenance obligations related to the distributed energy
 294 generation system may be sold or transferred by the seller to a
 295 third party and, if so, a statement in substantially the
 296 following form: "Your contract may be assigned, sold, or
 297 transferred without your consent to a third party who will be
 298 bound to all the terms of the contract. If a transfer occurs,
 299 you will be notified if this will change the address or phone
 300 number to use for system maintenance or repair requests."

301 ~~(21)-(20)~~ If the distributed energy generation system will
 302 be purchased, a disclosure notifying the buyer of the
 303 requirements for interconnecting the system to the utility
 304 system.

305 ~~(22)-(21)~~ A disclosure notifying the buyer or lessee of the
 306 party responsible for obtaining interconnection approval.

307 ~~(23)-(22)~~ A description of any roof warranties.

308 ~~(24)~~ A statement in substantially the following form: "You
 309 should consider the age and remaining life of your roof prior to
 310 installing a distributed energy generation system. Replacement
 311 of your roof may require reinstallment of the distributed energy
 312 generation system."

313 ~~(25)-(23)~~ A disclosure notifying the lessee whether the
 314 seller will insure a leased distributed energy generation system
 315 against damage or loss and, if applicable, the circumstances
 316 under which the seller will not insure the system against damage
 317 or loss.

318 ~~(26)-(24)~~ A statement, ~~if applicable,~~ in substantially the
 319 following form: "You are responsible for obtaining insurance

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320 policies or coverage for any loss of or damage to the system.
 321 Consult an insurance professional to understand how to protect
 322 against the risk of loss or damage to the system."

323 ~~(27)~~ A statement in substantially the following form:
 324 "Placing a distributed energy generation system on your roof may
 325 impact your future insurance premiums. You are responsible for
 326 contacting your insurance carrier, prior to entering into a
 327 purchase or lease agreement, to confirm whether your current
 328 policy or coverage will need to be modified upon installing the
 329 distributed energy generation system onto your dwelling."

330 ~~(28)-(25)~~ A disclosure notifying the buyer or lessee whether
 331 the seller or lessor will place a lien on the buyer's or
 332 lessee's home or other property as a result of entering into a
 333 purchase or lease agreement for the distributed energy
 334 generation system.

335 ~~(29)-(26)~~ A disclosure notifying the buyer or lessee whether
 336 the seller or lessor will file a fixture filing or a State of
 337 Florida Uniform Commercial Code Financing Statement Form (UCC-1)
 338 on the distributed energy generation system.

339 ~~(30)-(27)~~ A disclosure identifying whether the agreement
 340 contains any restrictions on the buyer's or lessee's ability to
 341 modify or transfer ownership of a distributed energy generation
 342 system, including whether any modification or transfer is
 343 subject to review or approval by a third party.

344 ~~(31)-(28)~~ A disclosure as to whether the lease agreement may
 345 be transferred to a purchaser upon sale of the home or real
 346 property to which the system is affixed, and any conditions for
 347 such transfer.

348 ~~(32)-(29)~~ A blank section that allows the seller to provide

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additional relevant disclosures or explain disclosures made elsewhere in the disclosure form.

The requirement to provide a written statement under this section may be satisfied by the electronic delivery of a document within 24 hours after execution of the written statement containing the required statement if the intended recipient of the electronic document affirmatively acknowledges its receipt. An electronic document satisfies the font and other formatting standards required for the written statement if the format and the relative size of characters of the electronic document are reasonably similar to those required in the written document or if the information is otherwise displayed in a reasonably conspicuous manner.

Section 5. Subsection (6) of section 560.111, Florida Statutes, is amended to read:

560.111 Prohibited acts.—

(6) A person who knowingly and willfully violates s. 560.309(11) or s. 560.310(2)(d) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 6. Subsection (11) is added to section 560.309, Florida Statutes, to read:

560.309 Conduct of business.—

(11) A licensee may not cash corporate checks where the aggregate face amount of all corporate checks cashed for each payee exceeds 200 percent of the payee's workers' compensation policy coverage amount during the same dates as the workers' compensation policy coverage period.

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Section 7. Section 626.551, Florida Statutes, is amended to read:

626.551 Notice of change of address, name.—A licensee must notify the department, in writing, within 5 ~~30~~ days after a change of name, residence address, principal business street address, mailing address, contact telephone numbers, including a business telephone number, or e-mail address. A licensee who has moved his or her principal place of residence and principal place of business from this state shall have his or her license and all appointments immediately terminated by the department. Failure to notify the department within the required time shall result in a fine not to exceed \$250 for the first offense and a fine of at least \$500 or suspension or revocation of the license pursuant to s. 626.611, s. 626.6115, s. 626.621, or s. 626.6215 for a subsequent offense. The department may adopt rules to administer and enforce this section.

Section 8. Section 626.602, Florida Statutes, is amended to read:

626.602 Insurance agency and adjusting firm names; disapproval.—The department may disapprove the use of any true or fictitious name, other than the bona fide natural name of an individual, by any insurance agency or adjusting firm on any of the following grounds:

(1) The name interferes with or is too similar to a name already filed and in use by another agency, adjusting firm, or insurer.

(2) The use of the name may mislead the public in any respect.

(3) The name states or implies that the agency or adjusting

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407 firm is an insurer, motor club, hospital service plan, state or
 408 federal agency, charitable organization, or entity that
 409 primarily provides advice and counsel rather than sells or
 410 solicits insurance, settles claims, or is entitled to engage in
 411 insurance activities not permitted under licenses held or
 412 applied for. This provision does not prohibit the use of the
 413 word "state" or "states" in the name of the agency. The use of
 414 the word "state" or "states" in the name of an agency or
 415 adjusting firm does not in and of itself imply that the agency
 416 or adjusting firm is a state agency.

417 (4) The name contains the word "Medicare" or "Medicaid." ~~An~~
 418 ~~insurance agency whose name contains the word "Medicare" or~~
 419 ~~"Medicaid" but which is licensed as of July 1, 2021, may~~
 420 ~~continue to use that name until June 30, 2023, provided that the~~
 421 ~~agency's license remains valid. If the agency's license expires~~
 422 ~~or is suspended or revoked, the agency may not be relicensed~~
 423 ~~using that name. Licenses for agencies with names containing~~
 424 ~~either of these words automatically expire on July 1, 2023,~~
 425 ~~unless these words are removed from the name.~~

426 Section 9. Section 626.854, Florida Statutes, is amended to
 427 read:

428 626.854 "Public adjuster" defined; prohibitions.—The
 429 Legislature finds that it is necessary for the protection of the
 430 public to regulate public insurance adjusters and to prevent the
 431 unauthorized practice of law.

432 (1) A "public adjuster" is any person, except a duly
 433 licensed attorney at law as exempted under s. 626.860, who, for
 434 money, commission, or any other thing of value, directly or
 435 indirectly prepares, completes, or files an insurance claim for

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436 an insured or third-party claimant, regardless of how that
 437 person describes or presents his or her services, or who, for
 438 money, commission, or any other thing of value, acts on behalf
 439 of, or aids an insured or third-party claimant in negotiating
 440 for or effecting the settlement of a claim or claims for loss or
 441 damage covered by an insurance contract, regardless of how that
 442 person describes or presents his or her services, or who
 443 advertises for employment as an adjuster of such claims. The
 444 term also includes any person who, for money, commission, or any
 445 other thing of value, directly or indirectly solicits,
 446 investigates, or adjusts such claims on behalf of a public
 447 adjuster, an insured, or a third-party claimant. The term does
 448 not include a person who photographs or inventories damaged
 449 personal property or business personal property or a person
 450 performing duties under another professional license, if such
 451 person does not otherwise solicit, adjust, investigate, or
 452 negotiate for or attempt to effect the settlement of a claim.

453 (2) This definition does not apply to:

454 (a) A licensed health care provider or employee thereof who
 455 prepares or files a health insurance claim form on behalf of a
 456 patient.

457 (b) A licensed health insurance agent who assists an
 458 insured with coverage questions, medical procedure coding
 459 issues, balance billing issues, understanding the claims filing
 460 process, or filing a claim, as such assistance relates to
 461 coverage under a health insurance policy.

462 (c) A person who files a health claim on behalf of another
 463 and does so without compensation.

464 (3) A public adjuster may not give legal advice or act on

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465 behalf of or aid any person in negotiating or settling a claim
466 relating to bodily injury, death, or noneconomic damages.

467 (4) For purposes of this section, the term "insured"
468 includes only the policyholder and any beneficiaries named or
469 similarly identified in the policy.

470 (5) A public adjuster may not directly or indirectly
471 through any other person or entity solicit an insured or
472 claimant by any means except on Monday through Saturday of each
473 week and only between the hours of 8 a.m. and 8 p.m. on those
474 days.

475 (6) (a) When entering a contract for adjuster services after
476 July 1, 2023, a public adjuster may not contract with anyone
477 other than the named insured unless the named insured provides
478 written consent, subsequent to entering a contract for public
479 adjusting services.

480 (b) If a public adjuster contracts with a third party in
481 settling the named insured's claim without first obtaining the
482 insured's written consent, payment of the third party's fees
483 must be made from the public adjuster's fee.

484 (7) (6) An insured or claimant may cancel a public
485 adjuster's contract to adjust a claim without penalty or
486 obligation within 10 days after the date on which the contract
487 is executed. If the contract was entered into based on events
488 that are the subject of a declaration of a state of emergency by
489 the Governor, an insured or claimant may cancel the public
490 adjuster's contract to adjust a claim without penalty or
491 obligation within 30 days after the date of the event or 10 days
492 after the date on which the contract is executed, whichever is
493 longer. The public adjuster's contract must contain the

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494 following language in minimum 18-point bold type immediately
495 before the space reserved in the contract for the signature of
496 the insured or claimant: "You, the insured, may cancel this
497 contract for any reason without penalty or obligation to you
498 within 10 days after the date of this contract. If this contract
499 was entered into based on events that are the subject of a
500 declaration of a state of emergency by the Governor, you may
501 cancel this contract for any reason without penalty or
502 obligation to you within 30 days after the date of the event or
503 10 days after the date on which the contract is executed,
504 whichever is longer. You may also cancel the contract without
505 penalty or obligation to you if I, as your public adjuster, fail
506 to provide you and your insurer a copy of a written estimate
507 within 60 days of the execution of the contract in accordance
508 with s. 626.854(14) (b), Florida Statutes." ~~The by providing~~
509 notice of cancellation shall be provided to ... (name of public
510 adjuster) ..., submitted in writing and sent by certified mail,
511 return receipt requested, or other form of mailing that provides
512 proof thereof, at the address specified in the contract.

513 (8) (7) It is an unfair and deceptive insurance trade
514 practice pursuant to s. 626.9541 for a public adjuster or any
515 other person to circulate or disseminate any advertisement,
516 announcement, or statement containing any assertion,
517 representation, or statement with respect to the business of
518 insurance which is untrue, deceptive, or misleading.

519 (a) The following statements, made in any public adjuster's
520 advertisement or solicitation, are considered deceptive or
521 misleading:

522 1. A statement or representation that invites an insured

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policyholder to submit a claim when the policyholder does not have covered damage to insured property.

2. A statement or representation that invites an insured policyholder to submit a claim by offering monetary or other valuable inducement.

3. A statement or representation that invites an insured policyholder to submit a claim by stating that there is "no risk" to the policyholder by submitting such claim.

4. A statement or representation, or use of a logo or shield, that implies or could mistakenly be construed to imply that the solicitation was issued or distributed by a governmental agency or is sanctioned or endorsed by a governmental agency.

(b) For purposes of this paragraph, the term "written advertisement" includes only newspapers, magazines, flyers, and bulk mailers. The following disclaimer, which is not required to be printed on standard size business cards, must be added in bold print and capital letters in typeface no smaller than the typeface of the body of the text to all written advertisements by a public adjuster:

"THIS IS A SOLICITATION FOR BUSINESS. IF YOU HAVE HAD A CLAIM FOR AN INSURED PROPERTY LOSS OR DAMAGE AND YOU ARE SATISFIED WITH THE PAYMENT BY YOUR INSURER, YOU MAY DISREGARD THIS ADVERTISEMENT."

(9)~~(8)~~ A public adjuster, a public adjuster apprentice, or any person or entity acting on behalf of a public adjuster or public adjuster apprentice may not give or offer to give a

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monetary loan or advance to a client or prospective client.

(10)~~(9)~~ A public adjuster, public adjuster apprentice, or any individual or entity acting on behalf of a public adjuster or public adjuster apprentice may not give or offer to give, directly or indirectly, any article of merchandise having a value in excess of \$25 to any individual for the purpose of advertising or as an inducement to entering into a contract with a public adjuster.

(11) If the insurer, not later than 14 days after the date on which the loss is reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of the insurance policy, the public adjuster shall:

(a) Inform the insured that, due to the insurer's payment or commitment to pay the policy limit, the loss recovery amount might not be increased by the insurer.

(b) Not receive a commission consisting of a percentage of the total amount of the timely paid or committed policy limits.

(c) Be entitled only up to \$1,000 from the insured for any time spent or expenses incurred on the claim by the public adjuster, until the claim is paid or the insured receives a written commitment to pay from the insurer.

(12) Except as provided in paragraphs (11)(b) and (c), if the public adjuster enters into a contract with an insured or claimant after the insured or claimant unsuccessfully negotiates an insurance claim payment and the public adjuster is successful in obtaining a higher insurance claim payment, the public adjuster shall receive a commission consisting of 10 percent of the difference between the initial insurance claim payment offer made to the insured and the final insurance claim payment

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obtained through the work of the public adjuster after entering into the contract with the insured or claimant.

~~(13) (a) (10) (a)~~ If a public adjuster enters into a contract with an insured or claimant to reopen a claim or file a supplemental claim that seeks additional payments for a claim that has been previously paid in part or in full or settled by the insurer, the public adjuster may not charge, agree to, or accept from any source compensation, payment, commission, fee, or any other thing of value based on a previous settlement or previous claim payments by the insurer for the same cause of loss. The charge, compensation, payment, commission, fee, or any other thing of value must be based only on the claim payments or settlements paid to the insured, exclusive of attorney fees and costs, obtained through the work of the public adjuster after entering into the contract with the insured or claimant. Compensation for the reopened or supplemental claim may not exceed 20 percent of the reopened or supplemental claim payment. In no event shall the contracts described in this paragraph exceed the limitations in paragraph (b).

(b) A public adjuster may not charge, agree to, or accept from any source compensation, payment, commission, fee, or any other thing of value in excess of:

1. Ten percent of the amount of insurance claim payments or settlements, exclusive of attorney fees and costs, paid to the insured by the insurer for claims based on events that are the subject of a declaration of a state of emergency by the Governor. This provision applies to claims made during the year after the declaration of emergency. After that year, the limitations in subparagraph 2. apply.

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2. Twenty percent of the amount of insurance claim payments or settlements, exclusive of attorney fees and costs, paid to the insured by the insurer for claims that are not based on events that are the subject of a declaration of a state of emergency by the Governor.

(c) Insurance claim payments made by the insurer do not include policy deductibles, and public adjuster compensation may not be based on the deductible portion of a claim.

(d) Public adjuster compensation may not be based on amounts attributable to additional living expenses, unless such compensation is affirmatively agreed to in a separate agreement that includes a disclosure in substantially the following form: "I agree to retain and compensate the public adjuster for adjusting my additional living expenses and securing payment from my insurer for amounts attributable to additional living expenses payable under the policy issued on my (home/mobile home/condominium unit)."

(e) Public adjuster rate of compensation may not be increased based solely on the fact that the claim is litigated.

(f) Any maneuver, shift, or device through which the limits on compensation set forth in this subsection are exceeded is a violation of this chapter punishable as provided under s. 626.8698.

~~(14) (a) (11)~~ Each public adjuster must provide to the claimant or insured a written estimate of the loss to assist in the submission of a proof of loss or any other claim for payment of insurance proceeds within 60 days after the date of the contract. The written estimate must include an itemized, per-unit estimate of the repairs, including itemized information on

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equipment, materials, labor, and supplies, in accordance with accepted industry standards. The public adjuster shall retain such written estimate for at least 5 years and shall make the estimate available to the claimant or insured, the insurer, and the department upon request.

(b) An insured may cancel the contract with no additional penalties or fees charged by the public adjuster if such an estimate is not provided within 60 days after executing the contract, subject to the cancellation notice requirement in this section.

(15)~~(12)~~ A public adjuster, public adjuster apprentice, or any person acting on behalf of a public adjuster or apprentice may not accept referrals of business from any person with whom the public adjuster conducts business if there is any form or manner of agreement to compensate the person, directly or indirectly, for referring business to the public adjuster. A public adjuster may not compensate any person, except for another public adjuster, directly or indirectly, for the principal purpose of referring business to the public adjuster.

(16)~~(13)~~ A company employee adjuster, independent adjuster, attorney, investigator, or other persons acting on behalf of an insurer that needs access to an insured or claimant or to the insured property that is the subject of a claim must provide at least 48 hours' notice to the insured or claimant, public adjuster, or legal representative before scheduling a meeting with the claimant or an onsite inspection of the insured property. The insured or claimant may deny access to the property if the notice has not been provided. The insured or claimant may waive the 48-hour notice.

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(17)~~(14)~~ The public adjuster must ensure that prompt notice is given of the claim to the insurer, the public adjuster's contract is provided to the insurer, the property is available for inspection of the loss or damage by the insurer, and the insurer is given an opportunity to interview the insured directly about the loss and claim. The insurer must be allowed to obtain necessary information to investigate and respond to the claim.

(a) The insurer may not exclude the public adjuster from its in-person meetings with the insured. The insurer shall meet or communicate with the public adjuster in an effort to reach agreement as to the scope of the covered loss under the insurance policy. The public adjuster shall meet or communicate with the insurer in an effort to reach agreement as to the scope of the covered loss under the insurance policy. This section does not impair the terms and conditions of the insurance policy in effect at the time the claim is filed.

(b) A public adjuster may not restrict or prevent an insurer, company employee adjuster, independent adjuster, attorney, investigator, or other person acting on behalf of the insurer from having reasonable access at reasonable times to any insured or claimant or to the insured property that is the subject of a claim.

(c) A public adjuster may not act or fail to reasonably act in any manner that obstructs or prevents an insurer or insurer's adjuster from timely conducting an inspection of any part of the insured property for which there is a claim for loss or damage. The public adjuster representing the insureds may be present for the insurer's inspection, but if the unavailability of the

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public adjuster otherwise delays the insurer's timely inspection of the property, the public adjuster or the insureds must allow the insurer to have access to the property without the participation or presence of the public adjuster or insureds in order to facilitate the insurer's prompt inspection of the loss or damage.

~~(18)-(15)~~ A licensed contractor under part I of chapter 489, or a subcontractor of such licensee, may not advertise, solicit, offer to handle, handle, or perform public adjuster services as provided in subsection (1) unless licensed and compliant as a public adjuster under this chapter. The prohibition against solicitation does not preclude a contractor from suggesting or otherwise recommending to a consumer that the consumer consider contacting his or her insurer to determine if the proposed repair is covered under the consumer's insurance policy, except as it relates to solicitation prohibited in s. 489.147. In addition, the contractor may discuss or explain a bid for construction or repair of covered property with the residential property owner who has suffered loss or damage covered by a property insurance policy, or the insurer of such property, if the contractor is doing so for the usual and customary fees applicable to the work to be performed as stated in the contract between the contractor and the insured.

~~(19)-(16)~~ A public adjuster shall not acquire any interest in salvaged property, except with the written consent and permission of the insured through a signed affidavit.

~~(20)-(17)~~ A public adjuster, a public adjuster apprentice, or a person acting on behalf of an adjuster or apprentice may not enter into a contract or accept a power of attorney that

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vests in the public adjuster, the public adjuster apprentice, or the person acting on behalf of the adjuster or apprentice the effective authority to choose the persons or entities that will perform repair work in a property insurance claim or provide goods or services that will require the insured or third-party claimant to expend funds in excess of those payable to the public adjuster under the terms of the contract for adjusting services.

~~(21)-(18)~~ Subsections ~~(5)-(20)~~ ~~(5)-(17)~~ apply only to residential property insurance policies and condominium unit owner policies as described in s. 718.111(11).

~~(22)-(19)~~ Except as otherwise provided in this chapter, no person, except an attorney at law or a licensed public adjuster, may for money, commission, or any other thing of value, directly or indirectly:

(a) Prepare, complete, or file an insurance claim for an insured or a third-party claimant;

(b) Act on behalf of or aid an insured or a third-party claimant in negotiating for or effecting the settlement of a claim for loss or damage covered by an insurance contract;

(c) Offer to initiate or negotiate a claim on behalf of an insured;

(d) Advertise services that require a license as a public adjuster; or

(e) Solicit, investigate, or adjust a claim on behalf of a public adjuster, an insured, or a third-party claimant.

~~(23)-(20)~~ The department may take administrative actions and impose fines against any persons performing claims adjusting, soliciting, or any other services described in this section

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without the licensure required under this section or s. 626.112.

~~(24)(21)~~ A public adjuster, public adjuster apprentice, or public adjusting firm that solicits a claim and does not enter into a contract with an insured or a third-party claimant pursuant to paragraph (13)(a) ~~(10)(a)~~ may not charge an insured or a third-party claimant or receive payment by any other source for any type of service related to the insured or third-party claimant's claim.

(25)(a) ~~(22)(a)~~ Any following act by a public adjuster, a public adjuster apprentice, or a person acting on behalf of a public adjuster or public adjuster apprentice is prohibited and shall result in discipline as applicable under this part:

1. Offering to a residential property owner a rebate, gift, gift card, cash, coupon, waiver of any insurance deductible, or any other thing of value in exchange for:

a. Allowing a contractor, a public adjuster, a public adjuster apprentice, or a person acting on behalf of a public adjuster or public adjuster apprentice to conduct an inspection of the residential property owner's roof; or

b. Making an insurance claim for damage to the residential property owner's roof.

2. Offering, delivering, receiving, or accepting any compensation, inducement, or reward for the referral of any services for which property insurance proceeds would be used for roofing repairs or replacement.

(b) Notwithstanding the fine set forth in s. 626.8698, a public adjuster or public adjuster apprentice may be subject to a fine not to exceed \$10,000 per act for a violation of this subsection and a fine not to exceed \$20,000 per act for a

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violation of this subsection that occurs during a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36.

(c) A person who engages in an act prohibited by this subsection and who is not a public adjuster or a public adjuster apprentice, or is not otherwise exempt from licensure, is guilty of the unlicensed practice of public adjusting and may be:

1. Subject to all applicable penalties set forth in this part.

2. Notwithstanding subparagraph 1., subject to a fine not to exceed \$10,000 per act for a violation of this subsection and a fine not to exceed \$20,000 per act for a violation of this subsection that occurs during a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36.

Section 10. Section 626.860, Florida Statutes, is amended to read:

626.860 Attorneys at law; exemption.—Attorneys at law duly licensed to practice law in the courts of this state, and in good standing with The Florida Bar, shall not be required to be licensed under ~~the provisions of~~ this code to authorize them to adjust or participate in the adjustment of any claim, loss, or damage arising under policies or contracts of insurance. This exemption does not extend to the employees, interns, volunteers, or contractors of an attorney or of a law firm.

Section 11. Section 626.875, Florida Statutes, is amended to read:

626.875 Office and records.—

(1) (a) Each appointed independent adjuster and licensed

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public adjuster must maintain a place of business in this state which is accessible to the public and keep therein the usual and customary records pertaining to transactions under the license. This provision does not prohibit maintenance of such an office in the home of the licensee.

(b) A license issued under this chapter must at all times be posted in a conspicuous place in the principal place of business of the license holder. If the licensee is conducting business away from the place of business such that the license cannot be posted, the licensee shall have such license in his or her actual possession at the time of carrying on such business.

(2) The records of the adjuster relating to a particular claim or loss shall be so retained in the adjuster's place of business for a period of not less than 5 years after completion of the adjustment and shall be available for inspection by the department at all times. This provision shall not be deemed to prohibit return or delivery to the insurer or insured of documents furnished to or prepared by the adjuster and required by the insurer or insured to be returned or delivered thereto. At a minimum, the following records must be maintained for a period of not less than 5 years:

(a) Name, address, telephone number, and e-mail address of the insured, and the name of the attorney representing the insured, if applicable.

(b) The date, location, and amount of the loss.

(c) An unaltered copy of the executed disclosure document required by s. 626.8796.

(d) An unaltered copy of the executed public adjuster contract required by s. 626.8796.

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(e) A copy of the estimate of damages provided to the insurer.

(f) The name of the insurer; the name of the claims representative of the insurer; and the amount, expiration date, and number of each policy under which the loss is covered.

(g) An itemized statement of the recoveries by the insured from the sources known to the adjuster.

(h) An itemized statement of all compensation received by the public adjuster from any source in connection with the loss.

(i) A register of all money received, deposited, disbursed, and withdrawn in connection with a transaction with the insured, including fees, transfers, and disbursements in connection with the loss.

Section 12. Section 626.8796, Florida Statutes, is amended to read:

626.8796 Public adjuster contracts; disclosure statement; fraud statement.—

(1) All contracts for public adjuster services must be in writing in at least 12-point type, be titled "Public Adjuster Contract," and prominently display the following statement on the contract in minimum 18-point bold type before the space reserved in the contract for the signature of the insured:

"Pursuant to s. 817.234, Florida Statutes, any person who, with the intent to injure, defraud, or deceive an insurer or insured, prepares, presents, or causes to be presented a proof of loss or estimate of cost or repair of damaged property in support of a claim under an insurance policy knowing that the proof of loss or estimate of claim or repairs contains false, incomplete, or misleading information concerning any fact or thing material to

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871 the claim commits a felony of the third degree, punishable as
 872 provided in s. 775.082, s. 775.083, or s. 775.084, Florida
 873 Statutes."

874 (2) A public adjuster contract relating to a property and
 875 casualty claim must contain the full name, permanent business
 876 address, phone number, e-mail address, and license number of the
 877 public adjuster; the full name of the public adjusting firm; and
 878 the insured's full name, ~~and~~ street address, phone number, and
 879 e-mail address, together with a brief description of the loss.
 880 The contract must state the percentage of compensation for the
 881 public adjuster's services in minimum 18-point bold type before
 882 the space reserved in the contract for the signature of the
 883 insured; the type of claim, including an emergency claim,
 884 nonemergency claim, or supplemental claim; the initials of the
 885 named insured on each page that does not contain the insured's
 886 signature; the signatures of the public adjuster and all named
 887 insureds; and the signature date. If all of the named insureds'
 888 signatures are not available, the public adjuster must submit an
 889 affidavit signed by the available named insureds attesting that
 890 they have authority to enter into the contract and settle all
 891 claim issues on behalf of the named insureds. An unaltered copy
 892 of the executed contract must be remitted to the insured at the
 893 time of execution and to the insurer within 10 30 days after
 894 execution. A public adjusting firm that adjusts claims primarily
 895 for commercial entities with operations in more than one state
 896 and that does not directly or indirectly perform adjusting
 897 services for insurers or individual homeowners is deemed to
 898 comply with the requirements of this subsection if, at the time
 899 a proof of loss is submitted, the public adjusting firm remits

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900 to the insurer an affidavit signed by the public adjuster or
 901 public adjuster apprentice that identifies:

902 (a) The full name, permanent business address, phone
 903 number, e-mail address, and license number of the public
 904 adjuster or public adjuster apprentice.

905 (b) The full name of the public adjusting firm.

906 (c) The insured's full name, ~~and~~ street address, phone
 907 number, and e-mail address, together with a brief description of
 908 the loss.

909 (d) An attestation that the compensation for public
 910 adjusting services will not exceed the limitations provided by
 911 law.

912 (e) The type of claim, including an emergency claim,
 913 nonemergency claim, or supplemental claim.

914 (3) The public adjuster shall not provide services until
 915 both the insured and insurer have been provided with unaltered
 916 copies of the executed contract.

917 (4) The insured may rescind the contract for public
 918 adjuster services if the public adjuster has not submitted a
 919 written estimate to the insurer within 60 days after executing
 920 the contract.

921 (5) Before the signing of the contract, the public adjuster
 922 shall provide the insured with a separate disclosure document to
 923 be signed by the insured, on a form adopted by the department,
 924 regarding the claim process which accomplishes the following:

925 (a) Defines the following types of adjusters who may be
 926 involved in the claim process: company adjuster, independent
 927 adjuster, and public adjuster.

928 (b) Explains that the public adjuster is not a

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representative or employee of the insurer.

(c) Explains that the insured is not required to hire a public adjuster, but has a right to do so.

(d) Explains that an insured has a right to initiate direct communications with the insured's attorney, the insurer, the company adjuster, the insurer's attorney, or any person regarding the settlement of the insured's claim.

(e) Explains that the public adjuster's salary, fee, commission, or other consideration to be paid to a public adjuster is the insured's responsibility.

(f) Explains that the public adjuster is required to provide the insured an unaltered copy of the executed contract at the time of execution.

(g) Explains that if the contract was entered into based on events that are the subject of a declaration of a state of emergency by the Governor, an insured or a claimant may cancel the public adjuster's contract to adjust a claim without penalty or obligation within 30 days after the date of the event or 10 days after the date on which the contract is executed, whichever is longer.

(h) The public adjuster shall provide an unaltered copy of the executed disclosure document to the insured at the time of execution.

(6) A contract that does not comply with this section is invalid and unenforceable.

(7) The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section, including rules to adopt forms required by this section.

Section 13. Section 626.8797, Florida Statutes, is amended

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to read:

626.8797 Proof of loss; fraud statement.—All proof-of-loss statements must prominently display the following statement in minimum 18-point bold type before the space reserved in the contract for the signature of the insured: "Pursuant to s. 817.234, Florida Statutes, any person who, with the intent to injure, defraud, or deceive any insurer or insured, prepares, presents, or causes to be presented a proof of loss or estimate of cost or repair of damaged property in support of a claim under an insurance policy knowing that the proof of loss or estimate of claim or repairs contains any false, incomplete, or misleading information concerning any fact or thing material to the claim commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, Florida Statutes."

Section 14. Paragraph (a) of subsection (1) of section 626.9541, Florida Statutes, is amended to read:

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(a) *Misrepresentations and false advertising of insurance policies*.—Knowingly making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, comparison, or property and casualty certificate of insurance altered after being issued, which:

1. Misrepresents the benefits, advantages, conditions, or

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terms of any insurance policy.

2. Misrepresents the dividends or share of the surplus to be received on any insurance policy.

3. Makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy.

4. Is misleading, or is a misrepresentation, as to the financial condition of any person or as to the legal reserve system upon which any life insurer operates.

5. Uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof.

6. Is a misrepresentation for the purpose of inducing, or tending to induce, the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy.

7. Is a misrepresentation for the purpose of effecting a pledge or assignment of, or effecting a loan against, any insurance policy.

8. Misrepresents any insurance policy as being shares of stock or misrepresents ownership interest in the company.

9. Uses any advertisement that would mislead or otherwise cause a reasonable person to believe mistakenly that the state or the Federal Government is responsible for the insurance sales activities of any person or stands behind any person's credit or that any person, the state, or the Federal Government guarantees any returns on insurance products or is a source of payment of any insurance obligation of or sold by any person.

10. Fails to disclose a third party that receives royalties, referral fees, or other remuneration for sponsorship, marketing, or use of third-party branding for a policy of health

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insurance as defined in s. 624.603.

Section 15. Paragraph (c) of subsection (2) of section 627.4025, Florida Statutes, is amended, and paragraph (d) is added to that subsection, to read:

627.4025 Residential coverage and hurricane coverage defined.—

(2) As used in policies providing residential coverage:

(c) "Hurricane" for purposes of paragraphs (a) and (b) means a storm system that has been declared to be a hurricane by the National Hurricane Center of the National Weather Service. The duration of the hurricane includes the time period, in Florida:

1. Beginning at the time a ~~hurricane watch or~~ hurricane warning is issued for any part of Florida by the National Hurricane Center of the National Weather Service; and

~~2. Continuing for the time period during which the hurricane conditions exist anywhere in Florida; and~~

~~3. Ending 24 72 hours following the termination of the last hurricane watch or hurricane warning issued for any part of Florida by the National Hurricane Center of the National Weather Service.~~

(d) "Hurricane deductible" means the deductible applicable to loss caused by a hurricane.

Section 16. Paragraph (b) of subsection (1) and paragraph (b) of subsection (2) of section 627.4133, Florida Statutes, are amended to read:

627.4133 Notice of cancellation, nonrenewal, or renewal premium.—

(1) Except as provided in subsection (2):

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1045 (b) An insurer issuing a policy providing coverage for
 1046 property, casualty, except mortgage guaranty, surety, or marine
 1047 insurance, other than motor vehicle insurance subject to s.
 1048 627.728 or s. 627.7281, shall give the first-named insured
 1049 written notice of cancellation or termination other than
 1050 nonrenewal at least 45 days prior to the effective date of the
 1051 cancellation or termination, including in the written notice the
 1052 reason or reasons for the cancellation or termination, except
 1053 that:

1054 1. When cancellation is for nonpayment of premium, at least
 1055 10 days' written notice of cancellation accompanied by the
 1056 reason therefor shall be given. As used in this subparagraph and
 1057 s. 440.42(3), the term "nonpayment of premium" means failure of
 1058 the named insured to discharge when due any of her or his
 1059 obligations in connection with the payment of premiums on a
 1060 policy or any installment of such premium, whether the premium
 1061 is payable directly to the insurer or its agent or indirectly
 1062 under any premium finance plan or extension of credit, or
 1063 failure to maintain membership in an organization if such
 1064 membership is a condition precedent to insurance coverage.
 1065 "Nonpayment of premium" also means the failure of a financial
 1066 institution to honor an insurance applicant's check after
 1067 delivery to a licensed agent for payment of a premium, even if
 1068 the agent has previously delivered or transferred the premium to
 1069 the insurer. If a dishonored check represents the initial
 1070 premium payment, the contract and all contractual obligations
 1071 shall be void ab initio unless the nonpayment is cured within
 1072 the earlier of 5 days after actual notice by certified mail is
 1073 received by the applicant or 15 days after notice is sent to the

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1074 applicant by certified mail or registered mail, and if the
 1075 contract is void, any premium received by the insurer from a
 1076 third party shall be refunded to that party in full; and

1077 2. When such cancellation or termination occurs during the
 1078 first 60 ~~90~~ days during which the insurance is in force and the
 1079 insurance is canceled or terminated for reasons other than
 1080 nonpayment of premium, at least 20 days' written notice of
 1081 cancellation or termination accompanied by the reason therefor
 1082 shall be given except where there has been a material
 1083 misstatement or misrepresentation or failure to comply with the
 1084 underwriting requirements established by the insurer.

1085

1086 After the policy has been in effect for 60 ~~90~~ days, no such
 1087 policy shall be canceled by the insurer except when there has
 1088 been a material misstatement, a nonpayment of premium, a failure
 1089 to comply with underwriting requirements established by the
 1090 insurer within 60 ~~90~~ days of the date of effectuation of
 1091 coverage, or a substantial change in the risk covered by the
 1092 policy or when the cancellation is for all insureds under such
 1093 policies for a given class of insureds. This subsection does not
 1094 apply to individually rated risks having a policy term of less
 1095 than 90 days.

1096 (2) With respect to any personal lines or commercial
 1097 residential property insurance policy, including, but not
 1098 limited to, any homeowner, mobile home owner, farmowner,
 1099 condominium association, condominium unit owner, apartment
 1100 building, or other policy covering a residential structure or
 1101 its contents:

1102 (b) The insurer shall give the first-named insured written

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notice of nonrenewal, cancellation, or termination at least 120 days before the effective date of the nonrenewal, cancellation, or termination. The notice must include the reason for the nonrenewal, cancellation, or termination, except that:

1. If cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason therefor must be given. As used in this subparagraph, the term "nonpayment of premium" means failure of the named insured to discharge when due her or his obligations for paying the premium on a policy or an installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under a premium finance plan or extension of credit, or failure to maintain membership in an organization if such membership is a condition precedent to insurance coverage. The term also means the failure of a financial institution to honor an insurance applicant's check after delivery to a licensed agent for payment of a premium even if the agent has previously delivered or transferred the premium to the insurer. If a dishonored check represents the initial premium payment, the contract and all contractual obligations are void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by certified mail or registered mail. If the contract is void, any premium received by the insurer from a third party must be refunded to that party in full.

2. If cancellation or termination occurs during the first 60 ~~90~~ days the insurance is in force and the insurance is canceled or terminated for reasons other than nonpayment of

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premium, at least 20 days' written notice of cancellation or termination accompanied by the reason therefor must be given unless there has been a material misstatement or misrepresentation or a failure to comply with the underwriting requirements established by the insurer.

3. After the policy has been in effect for 60 ~~90~~ days, the policy may not be canceled by the insurer unless there has been a material misstatement; a nonpayment of premium; a failure to comply, within 60 ~~90~~ days after the date of effectuation of coverage, with underwriting requirements established by the insurer before the date of effectuation of coverage; or a substantial change in the risk covered by the policy or unless the cancellation is for all insureds under such policies for a given class of insureds. This subparagraph does not apply to individually rated risks that have a policy term of less than 90 days.

4. After a policy or contract has been in effect for more than 60 ~~90~~ days, the insurer may not cancel or terminate the policy or contract based on credit information available in public records.

5. A policy that is nonrenewed by Citizens Property Insurance Corporation, pursuant to s. 627.351(6), for a policy that has been assumed by an authorized insurer offering replacement coverage to the policyholder is exempt from the notice requirements of paragraph (a) and this paragraph. In such cases, the corporation must give the named insured written notice of nonrenewal at least 45 days before the effective date of the nonrenewal.

6. Notwithstanding any other provision of law, an insurer

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may cancel or nonrenew a property insurance policy after at least 45 days' notice if the office finds that the early cancellation of some or all of the insurer's policies is necessary to protect the best interests of the public or policyholders and the office approves the insurer's plan for early cancellation or nonrenewal of some or all of its policies. The office may base such finding upon the financial condition of the insurer, lack of adequate reinsurance coverage for hurricane risk, or other relevant factors. The office may condition its finding on the consent of the insurer to be placed under administrative supervision pursuant to s. 624.81 or to the appointment of a receiver under chapter 631.

7. A policy covering both a home and a motor vehicle may be nonrenewed for any reason applicable to the property or motor vehicle insurance after providing 90 days' notice.

Section 17. Effective January 1, 2024, section 627.4554, Florida Statutes, is amended to read:

627.4554 Suitability in annuity transactions investments.—

(1) PURPOSE.—The purpose of this section is to require agents to act in the best interest of the consumer when making a recommendation of an annuity and to require insurers to establish and maintain a system to supervise so set forth standards and procedures for making recommendations to consumers which result in transactions involving annuity products, and to establish a system for supervising such recommendations in order to ensure that the insurance needs and financial objectives of consumers are effectively appropriately addressed at the time of the transaction.

(2) SCOPE.—This section applies to any sale or

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~~recommendation of made to a consumer to purchase, exchange, or replace an annuity by an insurer or its agent, and which results in the purchase, exchange, or replacement recommended.~~

(3) DEFINITIONS.—As used in this section, the term:

(a) "Agent" means a person or entity required to be licensed under the laws of this state to sell, solicit, or negotiate insurance, including annuities. For purposes of this section, the term includes an insurer when no agent is involved ~~has the same meaning as provided in s. 626.015.~~

(b) "Annuity" means an insurance product under state law which is individually solicited, whether classified as an individual or group annuity.

(c) "Cash compensation" means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by an agent from an insurer or intermediary or directly from the consumer in connection with the recommendation or sale of an annuity.

(d) "Consumer profile information" means information that is reasonably appropriate to determine whether a recommendation addresses the consumer's financial situation, insurance needs, and financial objectives, including, at a minimum, the following:

1. Age.

2. Annual income.

3. Financial situation and needs, including debts and other obligations.

4. Financial experience.

5. Insurance needs.

6. Financial objectives.

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1219 7. Intended use of the annuity.
 1220 8. Financial time horizon.
 1221 9. Existing assets or financial products, including
 1222 investment, annuity, and insurance holdings.
 1223 10. Liquidity needs.
 1224 11. Liquid net worth.
 1225 12. Risk tolerance, including, but not limited to,
 1226 willingness to accept nonguaranteed elements in the annuity.
 1227 13. Financial resources used to fund the annuity.
 1228 14. Tax status.
 1229 (e) (e) "FINRA" means the Financial Industry Regulatory
 1230 Authority or a succeeding agency.
 1231 (f) (d) "Insurer" has the same meaning as provided in s.
 1232 624.03.
 1233 (g) "Intermediary" means an entity contracted directly with
 1234 an insurer or with another entity contracted with an insurer to
 1235 facilitate the sale of the insurer's annuities by agents.
 1236 (h) "Material conflict of interest" means a financial
 1237 interest of the agent in the sale of an annuity which a
 1238 reasonable person would expect to influence the impartiality of
 1239 a recommendation. The term does not include cash compensation or
 1240 noncash compensation.
 1241 (i) "Noncash compensation" means any form of compensation
 1242 that is not cash compensation, including, but not limited to,
 1243 health insurance, office rent, office support, and retirement
 1244 benefits.
 1245 (j) "Nonguaranteed elements" means the premiums; credited
 1246 interest rates, including any bonus; benefits; values;
 1247 dividends; noninterest-based credits; charges; or elements of

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1248 formulas used to determine any of these, which are subject to
 1249 company discretion and are not guaranteed at issue. An element
 1250 is considered nonguaranteed if any of the underlying
 1251 nonguaranteed elements are used in its calculation.
 1252 (k) (e) "Recommendation" means advice provided by an ~~insurer~~
 1253 ~~or its agent~~ to an individual a consumer which was intended to
 1254 result or does result ~~which would result~~ in a the purchase, an
 1255 exchange, or a replacement of an annuity in accordance with that
 1256 advice. The term does not include general communication to the
 1257 public, generalized customer services, assistance or
 1258 administrative support, general educational information and
 1259 tools, prospectuses, or other product and sales material.
 1260 (l) (f) "Replacement" means a transaction in which a new
 1261 annuity policy or contract is to be purchased and it is known or
 1262 should be known to the proposing ~~insurer or its agent~~, or to the
 1263 proposing insurer whether or not an agent is involved, that by
 1264 reason of such transaction an existing annuity or other
 1265 insurance policy has been or is to be any of the following or
 1266 ~~contract will be:~~
 1267 1. Lapsed, forfeited, surrendered or partially surrendered,
 1268 assigned to the replacing insurer, or otherwise terminated;
 1269 2. Converted to reduced paid-up insurance, continued as
 1270 extended term insurance, or otherwise reduced in value due to
 1271 the use of nonforfeiture benefits or other policy values;
 1272 3. Amended so as to effect a reduction in benefits or the
 1273 term for which coverage would otherwise remain in force or for
 1274 which benefits would be paid;
 1275 4. Reissued with a reduction in cash value; or
 1276 5. Used in a financed purchase.

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1277 (m) "SEC" means the United States Securities and Exchange
 1278 Commission.
 1279 ~~(g) "Suitability information" means information related to~~
 1280 ~~the consumer which is reasonably appropriate to determine the~~
 1281 ~~suitability of a recommendation made to the consumer, including~~
 1282 ~~the following:~~
 1283 ~~1. Age;~~
 1284 ~~2. Annual income;~~
 1285 ~~3. Financial situation and needs, including the financial~~
 1286 ~~resources used for funding the annuity;~~
 1287 ~~4. Financial experience;~~
 1288 ~~5. Financial objectives;~~
 1289 ~~6. Intended use of the annuity;~~
 1290 ~~7. Financial time horizon;~~
 1291 ~~8. Existing assets, including investment and life insurance~~
 1292 ~~holdings;~~
 1293 ~~9. Liquidity needs;~~
 1294 ~~10. Liquid net worth;~~
 1295 ~~11. Risk tolerance; and~~
 1296 ~~12. Tax status.~~
 1297 (4) EXEMPTIONS.—Unless otherwise specifically included,
 1298 this section does not apply to transactions involving:
 1299 (a) Direct-response solicitations where there is no
 1300 recommendation based on information collected from the consumer
 1301 pursuant to this section;
 1302 (b) Contracts used to fund:
 1303 1. An employee pension or welfare benefit plan that is
 1304 covered by the federal Employee Retirement and Income Security
 1305 Act;

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1306 2. A plan described by s. 401(a), s. 401(k), s. 403(b), s.
 1307 408(k), or s. 408(p) of the Internal Revenue Code, if
 1308 established or maintained by an employer;
 1309 3. A government or church plan defined in s. 414 of the
 1310 Internal Revenue Code, a government or church welfare benefit
 1311 plan, or a deferred compensation plan of a state or local
 1312 government or tax-exempt organization under s. 457 of the
 1313 Internal Revenue Code; or
 1314 4. A nonqualified deferred compensation arrangement
 1315 established or maintained by an employer or plan sponsor;
 1316 (c) 5. Settlements or assumptions of liabilities associated
 1317 with personal injury litigation or a dispute or claim-resolution
 1318 process; or
 1319 (d) 6. Formal prepaid funeral contracts.
 1320 (5) DUTIES OF INSURERS AND AGENTS.—
 1321 (a) An agent, when making a recommendation of an annuity,
 1322 shall act in the best interest of the consumer under the
 1323 circumstances known at the time the recommendation is made,
 1324 without placing the financial interest of the agent or insurer
 1325 ahead of the consumer's interest. An agent has acted in the best
 1326 interest of the consumer if the agent has satisfied the
 1327 following obligations regarding care, disclosure, conflict of
 1328 interest, and documentation:
 1329 1.a. The agent, in making a recommendation, shall exercise
 1330 reasonable diligence, care, and skill to:
 1331 (I) Know the financial situation, insurance needs, and
 1332 financial objectives of the customer.
 1333 (II) Understand the available options after making a
 1334 reasonable inquiry into options available to the agent.

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(III) Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs, and financial objectives over the life of the product, as evaluated in light of the consumer profile information.

(IV) Communicate the reason or reasons for the recommendation.

b. The requirements of sub-subparagraph a. include:

(I) Making reasonable efforts to obtain consumer profile information from the consumer before the recommendation of an annuity.

(II) Requiring an agent to consider the types of products the agent is authorized and licensed to recommend or sell which address the consumer's financial situation, insurance needs, and financial objectives. This does not require analysis or consideration of any products outside the authority and license of the agent or other possible alternative products or strategies available in the market at the time of the recommendation. Agents shall be held to standards applicable to agents with similar authority and licensure.

(III) Having a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, death or living benefit, or other insurance-related features.

c. The requirements of this subsection do not create a fiduciary obligation or relationship and only create a regulatory obligation as provided in this section.

d. The consumer profile information, characteristics of the insurer, and product costs, rates, benefits, and features are

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those factors generally relevant in making a determination whether an annuity effectively addresses the consumer's financial situation, insurance needs, and financial objectives, but the level of importance of each factor under the care obligation of this paragraph may vary depending on the facts and circumstances of a particular case. However, each factor may not be considered in isolation.

e. The requirements under sub-subparagraph a. apply to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar product enhancements, if any.

f. Sub-subparagraph a. does not require that the annuity with the lowest one-time occurrence compensation structure or multiple occurrence compensation structure shall necessarily be recommended.

g. Sub-subparagraph a. does not require the agent to have ongoing monitoring obligations under the care obligation, although such an obligation may be separately owed under the terms of a fiduciary, consulting, investment, advising, or financial planning agreement between the consumer and the agent.

h. In the case of an exchange or replacement of an annuity, the agent shall consider the whole transaction, which includes taking into consideration whether:

(I) The consumer will incur a surrender charge; be subject to the commencement of a new surrender period; lose existing benefits, such as death, living, or other contractual benefits; or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements.

(II) The replacing product would substantially benefit the

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1393 consumer in comparison to the replaced product over the life of
1394 the product.

1395 (III) The consumer has had another annuity exchange or
1396 replacement and, in particular, an exchange or replacement
1397 within the preceding 60 months.

1398 i. This section does not require an agent to obtain any
1399 license other than an agent license with the appropriate line of
1400 authority to sell, solicit, or negotiate insurance in this
1401 state, including, but not limited to, any securities license, in
1402 order to fulfill the duties and obligations contained in this
1403 section; provided, the agent does not give advice or provide
1404 services that are otherwise subject to securities laws or engage
1405 in any other activity requiring other professional licenses.

1406 2.a. Before the recommendation or sale of an annuity, the
1407 agent shall prominently disclose to the consumer, on a form
1408 substantially similar to that posted on the office website as
1409 Appendix A, related to an insurance agent disclosure for
1410 annuities:

1411 (I) A description of the scope and terms of the
1412 relationship with the consumer and the role of the agent in the
1413 transaction.

1414 (II) An affirmative statement on whether the agent is
1415 licensed and authorized to sell the following products:

1416 (A) Fixed annuities.

1417 (B) Fixed indexed annuities.

1418 (C) Variable annuities.

1419 (D) Life insurance.

1420 (E) Mutual funds.

1421 (F) Stocks and bonds.

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1422 (G) Certificates of deposit.

1423 (III) An affirmative statement describing the insurers for
1424 which the agent is authorized, contracted, or appointed, or
1425 otherwise able to sell insurance products, using the following
1426 descriptions:

1427 (A) From one insurer;

1428 (B) From two or more insurers; or

1429 (C) From two or more insurers, although primarily
1430 contracted with one insurer.

1431 (IV) A description of the sources and types of cash
1432 compensation and noncash compensation to be received by the
1433 agent, including whether the agent is to be compensated for the
1434 sale of a recommended annuity by commission as part of premium
1435 or other remuneration received from the insurer, intermediary,
1436 or other agent, or by fee as a result of a contract for advice
1437 or consulting services.

1438 (V) A notice of the consumer's right to request additional
1439 information regarding cash compensation described in sub-
1440 paragraph b.

1441 b. Upon request of the consumer or the consumer's
1442 designated representative, the agent shall disclose:

1443 (I) A reasonable estimate of the amount of cash
1444 compensation to be received by the agent, which may be stated as
1445 a range of amounts or percentages.

1446 (II) Whether the cash compensation is a one-time or
1447 multiple occurrence amount; and if a multiple occurrence amount,
1448 the frequency and amount of the occurrence, which may be stated
1449 as a range of amounts or percentages. ~~When recommending the~~
1450 ~~purchase or exchange of an annuity to a consumer which results~~

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~~in an insurance transaction or series of insurance transactions, the agent, or the insurer where no agent is involved, must have reasonable grounds for believing that the recommendation is suitable for the consumer, based on the consumer's suitability information, and that there is a reasonable basis to believe all of the following:~~

c.1- Before or at the time of the recommendation or sale of an annuity, the agent shall have a reasonable basis to believe the consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge; potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity; mortality and expense fees; any annual fees; investment advisory fees; potential charges for and features of riders or other options of the annuity; limitations on interest returns; potential changes in nonguaranteed elements of the annuity; insurance and investment components; and market risk.

~~2. The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization, or the death or living benefit.~~

3. An agent shall identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.

4. An agent shall at the time of the recommendation or sale:

a. Make a written record of any recommendation and the basis for the recommendation, subject to this section.

b. Obtain a consumer-signed statement on a form substantially similar to that posted on the office website as

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Appendix B, related to a consumer's refusal to provide information, documenting:

(I) A customer's refusal to provide the consumer profile information, if any.

(II) A customer's understanding of the ramifications of not providing his or her consumer profile information or providing insufficient consumer profile information.

c. Obtain a consumer-signed statement on a form substantially similar to that posted on the office website as Appendix C, related to a consumer's decision to purchase an annuity not based on a recommendation, acknowledging the annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the agent's recommendation.

5. Any requirement applicable to an agent under this subsection applies to every agent who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the agent has had any direct contact with the consumer. Activities such as providing or delivering marketing or education materials, product wholesaling or other back office product support, and general supervision of an agent do not, in and of themselves, constitute material control or influence.

~~3. The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable; and, in the case of an exchange or replacement, the transaction as a whole is suitable~~

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for the particular consumer based on his or her suitability information.

4. ~~In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable after considering whether the consumer:~~

a. ~~Will incur a surrender charge; be subject to the commencement of a new surrender period; lose existing benefits, such as death, living, or other contractual benefits; or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;~~

b. ~~Would benefit from product enhancements and improvements; and~~

c. ~~Has had another annuity exchange or replacement, including an exchange or replacement within the preceding 36 months.~~

~~(b) Before executing a purchase, exchange, or replacement of an annuity resulting from a recommendation, an insurer or its agent must make reasonable efforts to obtain the consumer's suitability information. The information shall be collected on form DFS-HI-1980, which is hereby incorporated by reference, and completed and signed by the applicant and agent. Questions requesting this information must be presented in at least 12-point type and be sufficiently clear so as to be readily understandable by both the agent and the consumer. A true and correct executed copy of the form must be provided by the agent to the insurer, or to the person or entity that has contracted with the insurer to perform this function as authorized by this section, within 10 days after execution of the form, and shall be provided to the consumer no later than the date of delivery~~

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~~of the contract or contracts.~~

~~(e) Except as provided under paragraph (d), an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.~~

~~(b)1.(d) Except as provided under subparagraph 2., An insurer's issuance of an annuity must be reasonable based on all the circumstances actually known to the insurer at the time the annuity is issued. However, an insurer or its agent does not have does not have an obligation to a consumer related to an annuity transaction under subparagraph (a)1. paragraph (a) or paragraph (c) if:~~

a.1. A recommendation has not been made;

b.2. A recommendation was made and is later found to have been based on materially inaccurate information provided by the consumer;

c.3. A consumer refuses to provide relevant consumer profile suitability information and the annuity transaction is not recommended; or

d.4. A consumer decides to enter into an annuity transaction that is not based on a recommendation of the an insurer or its agent.

2. An insurer's issuance of an annuity subject to subparagraph 1. must be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

(c)1. Except as permitted under paragraph (b), an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance

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needs, and financial objectives based on the consumer's consumer profile information.

~~(e) At the time of sale, the agent or the agent's representative must:~~

~~1. Make a record of any recommendation made to the consumer pursuant to paragraph (a);~~

~~2. Obtain the consumer's signed statement documenting his or her refusal to provide suitability information, if applicable; and~~

~~3. Obtain the consumer's signed statement acknowledging that an annuity transaction is not recommended if he or she decides to enter into an annuity transaction that is not based on the insurer's or its agent's recommendation, if applicable.~~

~~(f) Before executing a replacement or exchange of an annuity contract resulting from a recommendation, the agent must provide on form DFS-H1-1981, which is hereby incorporated by reference, information that compares the differences between the existing annuity contract and the annuity contract being recommended in order to determine the suitability of the recommendation and its benefit to the consumer. A true and correct executed copy of this form must be provided by the agent to the insurer, or to the person or entity that has contracted with the insurer to perform this function as authorized by this section, within 10 days after execution of the form, and must be provided to the consumer no later than the date of delivery of the contract or contracts.~~

~~2.(g)~~ An insurer shall establish and maintain a supervision system that is reasonably designed to achieve the insurer's and its agent's compliance with this section, including, but not

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limited to, the following:-

~~1. Such system must include, but is not limited to:~~

a. The insurer shall establish and maintain Maintaining reasonable procedures to inform its agents of the requirements of this section and incorporating those requirements into relevant agent training manuals.

b. The insurer shall establish and maintain Establishing standards for agent product training and shall establish and maintain reasonable procedures to require its agents to comply with the requirements of subsection (6).

c. The insurer shall provide Providing product-specific training and training materials that explain all material features of its annuity products to its agents.

d. The insurer shall establish and maintain Maintaining procedures for the review of each recommendation before issuance of an annuity which are designed to ensure that there is a reasonable basis to determine the recommended annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives ~~for determining that a recommendation is suitable~~. Such review procedures may use a screening system for identifying selected transactions for additional review and may be accomplished electronically or through other means, including, but not limited to, physical review. Such electronic or other system may be designed to require additional review only of those transactions identified for additional review using established selection criteria.

e. The insurer shall establish and maintain Maintaining reasonable procedures to detect recommendations that are not in

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1625 ~~compliance with paragraphs (a)-(e). This may include, but is not~~
 1626 ~~limited to, suitable, such as~~ confirmation of consumer profile
 1627 ~~suitability~~ information, systematic customer surveys, agent and
 1628 consumer interviews, confirmation letters, agent statements or
 1629 attestations, and internal monitoring programs. This sub-
 1630 subparagraph does not prevent an insurer from using sampling
 1631 procedures or from confirming the consumer profile suitability
 1632 information after the issuance or delivery of the annuity. ~~and~~
 1633 f. The insurer shall establish and maintain reasonable
 1634 procedures to assess, prior to or upon issuance or delivery of
 1635 an annuity, whether an agent has provided to the consumer the
 1636 information required to be provided under this subsection.
 1637 g. The insurer shall establish and maintain reasonable
 1638 procedures to identify and address suspicious consumer refusals
 1639 to provide consumer profile information.
 1640 h. The insurer shall establish and maintain reasonable
 1641 procedures to identify and eliminate any sales contests, sales
 1642 quotas, bonuses, and noncash compensation that are based on the
 1643 sales of specific annuities within a limited period of time. The
 1644 requirements of this sub-subparagraph are not intended to
 1645 prohibit the receipt of health insurance, office rents, office
 1646 support, retirement benefits, or other employee benefits by
 1647 employees, as long as those benefits are not based upon the
 1648 volume of sales of a specific annuity within a limited period of
 1649 time.
 1650 i.f. The insurer shall annually provide ~~providing~~ a written
 1651 report to senior managers, including the senior manager who is
 1652 responsible for audit functions, which details a review, along
 1653 with appropriate testing, which is reasonably designed to

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1654 determine the effectiveness of the supervision system, the
 1655 exceptions found, and corrective action taken or recommended, if
 1656 any.
 1657 ~~3.2.~~ An insurer is not required to include in its
 1658 supervision system:
 1659 a. Agent recommendations to consumers of products other
 1660 than the annuities offered by the insurer; or
 1661 b. Consideration of or comparison to options available to
 1662 the agent or compensation relating to those options other than
 1663 annuities or other products offered by the insurer.
 1664 ~~4.3.~~ An insurer may contract for performance of a function,
 1665 including maintenance of procedures, required under subparagraph
 1666 1.
 1667 a. An insurer's supervision system under this subsection
 1668 shall include supervision of contractual performance under this
 1669 subsection, which includes, but is ~~if an insurer contracts for~~
 1670 the performance of a function, the insurer must include the
 1671 supervision of contractual performance as part of those
 1672 procedures listed in subparagraph 1. These include, but are not
 1673 limited to:
 1674 (I) Monitoring and, as appropriate, conducting audits to
 1675 ensure that the contracted function is properly performed; and
 1676 (II) Annually obtaining a certification from a senior
 1677 manager who has responsibility for the contracted function that
 1678 the manager has a reasonable basis to represent, and does
 1679 represent, ~~for representing~~ that the function is being properly
 1680 performed.
 1681 b. An insurer is responsible for taking appropriate
 1682 corrective action and may be subject to sanctions and penalties

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pursuant to subsection (8) ~~(7)~~ regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with sub-subparagraph a.

~~(d)(4)~~ Neither an agent nor an insurer shall ~~may not~~ dissuade, or attempt to dissuade, a consumer from:

1. Truthfully responding to an insurer's request for confirmation of consumer profile suitability information;
2. Filing a complaint; or
3. Cooperating with the investigation of a complaint.

~~(e)1.(i)~~ Recommendations and sales made in compliance with comparable standards shall FINRA requirements pertaining to the suitability and supervision of annuity transactions satisfy the requirements of this section. This applies to all recommendations and FINRA broker-dealer sales of variable annuities made by financial professionals in compliance with business rules, controls, and procedures that satisfy a comparable standard even if such standard would not otherwise apply to the product or recommendation at issue and fixed annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, this paragraph does not limit the ability of the office or the department to investigate and enforce, including investigate, the provisions of this section.

2. Subparagraph 1. does not limit the insurer's obligation to comply with subparagraph (c)1., although the insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.

3. For subparagraph 1. this paragraph to apply, an insurer

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must:

a.1- Monitor relevant conduct of the financial professional seeking to rely on subparagraph 1. or the entity responsible for supervising the financial professional, such as the financial professional's broker-dealer or an investment adviser registered under federal or state securities law, the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and

b.2- Provide to the entity responsible for supervising the financial professional seeking to rely on subparagraph 1., such as the financial professional's broker-dealer or investment adviser registered under federal or state securities laws, FINRA member broker-dealer information and reports that are reasonably appropriate to assist such entity the FINRA member broker-dealer in maintaining its supervision system.

4. For purposes of this paragraph, the term:

a. "Comparable standards" means:

(I) With respect to broker-dealers and registered representatives of broker-dealers, applicable SEC and FINRA rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including, but not limited to, Regulation Best Interest, 17 C.F.R. s. 240.15l-1, and any amendments or successor regulations thereto;

(II) With respect to investment advisers registered under federal or state securities laws or investment adviser representatives, the fiduciary duties and all other requirements imposed on such investment advisers or investment adviser representatives by contract or under the Investment Advisers Act of 1940 or applicable state securities laws, including, but not

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limited to, Form ADV and interpretations; and

(III) With respect to plan fiduciaries or fiduciaries, the duties, obligations, prohibitions, and all other requirements attendant to such status under the Employee Retirement Income Security Act of 1974 or the Internal Revenue Code and any amendments or successor statutes thereto.

b. "Financial professional" means an agent that is regulated and acting as:

(I) A broker-dealer registered under federal or state securities laws or a registered representative of a broker-dealer;

(II) An investment adviser registered under federal or state securities laws or an investment adviser representative associated with the federal or state registered investment adviser; or

(III) A plan fiduciary under s. 3(21) of the Employee Retirement Income Security Act of 1974 or fiduciary under s. 4975(e)(3) of the Internal Revenue Code or any amendments or successor statutes thereto.

(6) AGENT TRAINING.—

(a) An agent shall not solicit the sale of an annuity product unless the agent has adequate knowledge of the product to recommend the annuity and the agent is in compliance with the insurer's standards for product training. An agent may rely on insurer-provided, product-specific training standards and materials to comply with this subsection.

(b)1.a. An agent who engages in the sale of annuity products shall complete a one-time 4-hour training course. This requirement is not part of an agent's continuing education

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requirement in s. 626.2815; however, if a course provider submits and receives approval from the department, the course is eligible for continuing education credit pursuant to s. 626.2815.

b. Agents who hold a life insurance line of authority on January 1, 2024, and who desire to sell annuities shall complete the requirements of this subsection by July 1, 2024. Individuals who obtain a life insurance line of authority after January 1, 2024, may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.

2. The minimum length of the training required under this subsection is 4 hours.

3. The training required under this subsection shall include information on the following topics:

a. The types of annuities and various classifications of annuities.

b. Identification of the parties to an annuity.

c. How product-specific annuity contract features affect consumers.

d. The application of income taxation of qualified and nonqualified annuities.

e. The primary uses of annuities.

f. The appropriate standard of conduct, sales practices, replacement, and disclosure requirements.

4. Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific

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1799 information about a particular insurer's products. Additional
 1800 topics may be offered in conjunction with and in addition to the
 1801 required outline.

1802 5. An agent who has completed an annuity training course
 1803 before January 1, 2024, shall, by July 1, 2024, complete either:

1804 a. A new 4-hour training course; or
 1805 b. An additional 1-hour training course on appropriate
 1806 sales practices, replacement, and disclosure requirements under
 1807 this section.

1808 6. Annuity training courses may be conducted and completed
 1809 by classroom or self-study methods.

1810 7. Providers of annuity training shall issue certificates
 1811 of completion.

1812 8. The satisfaction of the training requirements of another
 1813 state that are substantially similar to the provisions of this
 1814 subsection shall be deemed to satisfy the training requirements
 1815 of this subsection in this state.

1816 9. The satisfaction of the training requirements of any
 1817 course or courses with components substantially similar to the
 1818 provisions of this subsection shall be deemed to satisfy the
 1819 training requirements of this subsection in this state.

1820 10. An insurer shall verify that an agent has completed the
 1821 annuity training course required under this subsection before
 1822 allowing the agent to sell an annuity product for that insurer.

1823 (7)(6) RECORDKEEPING.—

1824 (a) Insurers and agents must maintain or be able to make
 1825 available to the office or department records of the information
 1826 collected from the consumer and other information used in making
 1827 the recommendations that were the basis for insurance

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1828 transactions for 5 years after the insurance transaction is
 1829 completed by the insurer. An insurer may maintain the
 1830 documentation on behalf of its agent.

1831 (b) Records required to be maintained under this subsection
 1832 may be maintained in paper, photographic, microprocess,
 1833 magnetic, mechanical, or electronic media, or by any process
 1834 that accurately reproduces the actual document.

1835 (8)(7) COMPLIANCE MITIGATION; PENALTIES.—

1836 (a) An insurer is responsible for compliance with this
 1837 section. If a violation occurs because of the action or inaction
 1838 of the insurer or its agent which results in harm to a consumer,
 1839 the office may order the insurer to take reasonably appropriate
 1840 corrective action for the consumer and may impose appropriate
 1841 penalties and sanctions.

1842 (b) The department may order:

1843 1. An ~~insurance~~ agent to take reasonably appropriate
 1844 corrective action for a consumer harmed by a violation of this
 1845 section by the ~~insurance~~ agent, including monetary restitution
 1846 of penalties or fees incurred by the consumer, and impose
 1847 appropriate penalties and sanctions.

1848 2. A managing general agency or insurance agency that
 1849 employs or contracts with an ~~insurance~~ agent to sell or solicit
 1850 the sale of annuities to consumers to take reasonably
 1851 appropriate corrective action for a consumer harmed by a
 1852 violation of this section by the ~~insurance~~ agent.

1853 (c) In addition to any other penalty authorized under
 1854 chapter 626, the department shall order an insurance agent to
 1855 pay restitution to a consumer who has been deprived of money by
 1856 the agent's misappropriation, conversion, or unlawful

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withholding of moneys belonging to the consumer in the course of a transaction involving annuities. The amount of restitution required to be paid may not exceed the amount misappropriated, converted, or unlawfully withheld. This paragraph does not limit or restrict a person's right to seek other remedies as provided by law.

(d) Any applicable penalty under the Florida Insurance Code for a violation of this section shall be reduced or eliminated according to a schedule adopted by the office or the department, as appropriate, if corrective action for the consumer was taken promptly after a violation was discovered.

(e) A violation of this section does not create or imply a private cause of action.

(9)~~(8)~~ PROHIBITED CHARGES.—An annuity contract issued to a senior consumer age 65 or older may not contain a surrender or deferred sales charge for a withdrawal of money from an annuity exceeding 10 percent of the amount withdrawn. The charge shall be reduced so that no surrender or deferred sales charge exists after the end of the 10th policy year or 10 years after the date of each premium payment if multiple premiums are paid, whichever is later. This subsection does not apply to annuities purchased by an accredited investor, as defined in Regulation D as adopted by the United States Securities and Exchange Commission, or to those annuities specified in paragraph (4) (b).

(10)~~(9)~~ RULES.—The department and the commission may adopt rules to administer this section. The department may adopt by rule the forms prescribed in the National Association of Insurance Commissioners Suitability in Annuity Transactions Model Regulation Appendix A - Insurance Agent (Producer)

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Disclosure for Annuities, Appendix B - Consumer Refusal to Provide Information, and Appendix C - Consumer Decision to Purchase an Annuity Not Based on a Recommendation.

Section 18. Paragraph (b) of subsection (8) of section 634.041, Florida Statutes, is amended to read:

634.041 Qualifications for license.—To qualify for and hold a license to issue service agreements in this state, a service agreement company must be in compliance with this part, with applicable rules of the commission, with related sections of the Florida Insurance Code, and with its charter powers and must comply with the following:

(8)

(b) A service agreement company does not have to establish and maintain an unearned premium reserve if it secures and maintains contractual liability insurance in accordance with the following:

1. Coverage of 100 percent of the claim exposure is obtained from an insurer approved by the office, which holds a certificate of authority under s. 624.401 to do business within this state, or secured through a risk retention group, which is authorized to do business within this state under s. 627.943 or s. 627.944. Such insurer or risk retention group must maintain a surplus as regards policyholders of at least \$15 million.

2. If the service agreement company does not meet its contractual obligations, the contractual liability insurance policy binds its issuer to pay or cause to be paid to the service agreement holder all legitimate claims and cancellation refunds for all service agreements issued by the service agreement company while the policy was in effect. This

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requirement also applies to those service agreements for which no premium has been remitted to the insurer.

3. If the issuer of the contractual liability policy is fulfilling the service agreements covered by the contractual liability policy and the service agreement holder cancels the service agreement, the issuer must make a full refund of unearned premium to the consumer, subject to the cancellation fee provisions of s. 634.121(3). The sales representative and agent must refund to the contractual liability policy issuer their unearned pro rata commission.

4. The policy may not be canceled, terminated, or nonrenewed by the insurer or the service agreement company unless a 90-day written notice thereof has been given to the office by the insurer before the date of the cancellation, termination, or nonrenewal.

5. The service agreement company must provide the office with the claims statistics.

6. A policy issued in compliance with this paragraph may either pay 100 percent of claims as they are incurred, or 100 percent of claims due in the event of the failure of the service agreement company to pay such claims when due.

All funds or premiums remitted to an insurer by a motor vehicle service agreement company under this part shall remain in the care, custody, and control of the insurer and shall be counted as an asset of the insurer; provided, however, this requirement does not apply when the insurer and the motor vehicle service agreement company are affiliated companies and members of an insurance holding company system. If the motor vehicle service

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agreement company chooses to comply with this paragraph but also maintains a reserve to pay claims, such reserve shall only be considered an asset of the covered motor vehicle service agreement company and may not be simultaneously counted as an asset of any other entity.

Section 19. Paragraphs (d), (e), and (f) of subsection (17) of section 634.401, Florida Statutes, are amended to read:

634.401 Definitions.—As used in this part, the term:

(17) "Manufacturer" means any entity or its affiliate which:

~~(d) Maintains outstanding debt obligations, if any, rated in the top four rating categories by a recognized rating service;~~

(d)(e) Has and maintains at all times, a minimum net worth of at least \$100 ~~\$10~~ million as evidenced by certified financial statements prepared by an independent certified public accountant in accordance with generally accepted accounting principles; and

(e)(f) Is authorized to do business in this state.

Section 20. Paragraph (a) of subsection (7) of section 634.406, Florida Statutes, is amended to read:

634.406 Financial requirements.—

(7) An association licensed under this part and holding no other license under part I or part II of this chapter is not required to establish an unearned premium reserve or maintain contractual liability insurance and may allow its premiums to exceed the ratio to net assets limitation of this section if the association complies with the following:

(a) The association or, if the association is a direct or

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1973 indirect wholly owned subsidiary of a parent corporation, its
 1974 parent corporation has, and maintains at all times, a minimum
 1975 net worth of at least \$100 million and provides the office with
 1976 the following:
 1977 1. A copy of the association's annual audited financial
 1978 statements or the audited consolidated financial statements of
 1979 the association's parent corporation, prepared by an independent
 1980 certified public accountant in accordance with generally
 1981 accepted accounting principles, which clearly demonstrate the
 1982 net worth of the association or its parent corporation to be
 1983 \$100 million and a quarterly written certification to the office
 1984 that such entity continues to maintain the net worth required
 1985 under this paragraph.
 1986 2. The association's, or its parent corporation's, Form 10-
 1987 K, Form 10-Q, or Form 20-F as filed with the United States
 1988 Securities and Exchange Commission or such other documents
 1989 required to be filed with a recognized stock exchange, which
 1990 shall be provided on a quarterly and annual basis within 10 days
 1991 after the last date each such report must be filed with the
 1992 Securities and Exchange Commission, the National Association of
 1993 Security Dealers Automated Quotation system, or other recognized
 1994 stock exchange.
 1995
 1996 Failure to timely file the documents required under this
 1997 paragraph may, at the discretion of the office, subject the
 1998 association to suspension or revocation of its license under
 1999 this part. ~~An association or parent corporation demonstrating~~
 2000 ~~compliance with subparagraphs 1. and 2. must maintain~~
 2001 ~~outstanding debt obligations, if any, rated in the top four~~

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

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2002 ~~rating categories by a recognized rating service.~~
 2003 Section 21. Except as otherwise expressly provided in this
 2004 act, this act shall take effect July 1, 2023.

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



The Florida Senate

Committee Agenda Request

To: Senator Jason Brodeur, Chair
Committee on Agriculture, Environment, and General Government

Subject: Committee Agenda Request

Date: March 22, 2023

I respectfully request that **Senate Bill #1398**, relating to Consumer Protection be placed on the:

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

A handwritten signature in blue ink that reads "Nick DiCeglie".

Senator Nick DiCeglie
Florida Senate, District 18

The Florida Senate
APPEARANCE RECORD

Meeting Date

4/18

Committee

AE GG

Deliver both copies of this form to
Senate professional staff conducting the meeting

Bill Number or Topic

1398

Amendment Barcode (if applicable)

Name

Chase Mitchell

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Address

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TLH

City

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State

32399

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

CFO Jimmy Portanis

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf](#) ([flsenate.gov](#))

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

S-001 (08/10/2021)

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 Appropriations Committee on Agriculture, Environment, and General Government

BILL: CS/CS/SB 1418

INTRODUCER: Appropriations Committee on Agriculture, Environment, and General Government;
Regulated Industries Committee; and Senator Bradley

SUBJECT: Emergency Communications

DATE: April 20, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Schrader</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
2.	<u>Davis</u>	<u>Betta</u>	<u>AEG</u>	Fav/CS
3.	<u> </u>	<u> </u>	<u>FP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1418 revises Florida law to support and reflect the transition from enhanced 911 (E911) to Next Generation 911 (NG911) and to revise the composition, name, and duties of the current E911 Board. The bill also revises the distribution of revenue collected from a monthly fee to fund 911 services assessed on voice communications services in the state, removes county exceptions to the state's uniform rate for this fee, and revises the expenditures that are eligible to be paid by revenue collected from this fee. The bill also requires the Division of Telecommunications to develop a plan by December 30, 2023, to upgrade all 911 public safety answering points within the state to allow for inter-jurisdictional transfers of emergency calls by December 30, 2033, and provides requirements for the plan.

The bill may have an indeterminate positive fiscal impact on state revenues. See Section V. Fiscal Impact Statement.

The bill takes effect of July 1, 2023.

II. Present Situation:

Division of Telecommunications

The Division of Telecommunications (division) is created by s. 20.22, F.S., within Florida's Department of Management Services (DMS). The division is responsible for providing contracts for voice and data services to agency customers while also managing the state's public safety communications. As part of its voice and data contract duties, the division oversees master contracts to provide telecommunications and technology service offerings. The division also, as part of these duties, handles invoicing and billing, streamlining processes.¹

In managing the state's public safety communications, the division manages the Statewide Law Enforcement Radio System (SLERS), provides operational assistance to the State E911 Board, and supports Florida's Next Generation 911 efforts in partnership with local government entities.²

Florida E911 System

Since 1973, the state of Florida, in conjunction with Florida's counties, has funded technological advancements in statewide emergency number systems (i.e. 911 systems) for emergency communications between citizens and visitors and emergency services. Basic 911 service was established statewide in 1997. In 2005, wireline enhanced E911 service was implemented in all of Florida's 67 counties to obtain a 911 caller's telephone number and address. In 2007, Florida's wireless 911 board transitioned to the E911 Board with the intent of implementing enhanced 911 services. Phase I of the enhanced services provided call back numbers and the location of cell sites utilized for making the call into 911, Phase II provided location information for the actual cellular caller. These enhancements were completed March 31, 2008. Currently, Florida's counties are working on technical, funding, and deployment issues in an effort to provide statewide text-to-911 services.³ As of February 2023, 60 of Florida's 67 counties offer text-to-911 service.⁴

Division Management of the E911 System

The division oversees the E911 system in Florida, and is required to develop, maintain, and implement appropriate modifications for a statewide emergency communications E911 system plan (plan). The plan must provide for:

- The public agency emergency communications requirements for each entity of local government⁵ in the state.

¹ Department of Management Services, *Telecommunications*, https://www.dms.myflorida.com/business_operations/telecommunications (last visited: Mar 29, 2023).

² *Id.*

³ Department of Management Services, *Florida 911*, https://www.dms.myflorida.com/business_operations/telecommunications/public_safety_communications/florida_911 (last visited: Mar. 29, 2023).

⁴ Florida E911 Board, *2022 Annual Report*, at 10, February 28, 2023 (available at: <https://www.dms.myflorida.com/content/download/155677/1033501/20212022E911BoardAnnualReportVersionFINAL.pdf>) (last visited Apr. 10, 2023).

⁵ The term "local government" means any city, county, or political subdivision of the state and its agencies. Section 365.171(3)(b), F.S.

- A system to meet specific local government requirements. Such system shall include law enforcement, firefighting, and emergency medical services and may include other emergency services such as poison control, suicide prevention, and emergency management services.
 - Identification of the mutual aid agreements necessary to obtain an effective E911 system.
 - A funding provision that identifies the cost necessary to implement the E911 system.⁶
- The division is responsible for the implementation and coordination of the plan, and must adopt any necessary rules and schedules related to public agencies⁷ for implementing and coordinating the plan, under the provisions of ch. 120, F.S.⁸

E911 Board

In 2007, the Florida Legislature established the E911 Board, which is composed of eleven members. The secretary of the DMS designates the chair of the E911 Board. The Governor appoints five members who are county 911 coordinators and five members from the telecommunications industry.⁹ The E911 Board provides coordination, support, and technical assistance to counties to promote the deployment of advanced 911 and E911 systems.¹⁰ The E911 Board also “provides coordination, technical and financial support for educational opportunities related to Florida's E911 issues for the 911 public safety communities.”¹¹

In addition to the above, one of the E911 Board’s primary functions is to administer funds generated from a monthly fee for voice communications services within the state (fee).¹² Under s. 365.172(3)(cc), F.S., “voice communications services” means:

Two-way voice service, through the use of any technology, which actually provides access to E911 services, and includes communications services, as defined in s. 202.11,¹³ which actually provide access to E911 services and which are required to be included in the provision of E911 services pursuant to orders and rules adopted by the Federal Communications Commission. The term includes voice-over-Internet-protocol service [(VoIP)]...

⁶ Section 365.171(4), F.S.

⁷ The term “public agency” means the state and any city, county, city and county, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state which provides, or has authority to provide, firefighting, law enforcement, ambulance, medical, or other emergency services. Section 365.171(3)(c), F.S.

⁸ Section 365.171(4), F.S.

⁹ Section 365.172(5)(b), F.S., and Department of Management Services, *E911 Board*, https://www.dms.myflorida.com/business_operations/telecommunications/public_safety_communications/florida_911/e911_board (last visited Mar. 29, 2023).

¹⁰ Department of Management Services, *E911 Board*, *supra* note 9.

¹¹ *Id.*

¹² Regarding this fee, the E911 Board must also provide an annual report to the Governor and Legislature regarding the amounts collected and expended, the purposes for which expenditures have been made, and the status of Florida E911 service. Section 365.172(5)(a), F.S.

¹³ Section 202.11, F.S., defines communications services, in part, as “the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance.”

Funding

To fund Florida's E911 system, voice communications services providers (providers) collect a fee from their customers on a service identifier basis (e.g., from each active phone line or number with access to the E911 system). The fee is imposed upon local exchange services, prepaid and billed wireless services, and other voice communications services that have access to E911 service, such as Voice over Internet Protocol.¹⁴ Sellers of prepaid wireless service must collect this fee from customers with each retail transaction in the state.¹⁵

Section 365.172(8)(f), F.S., provides that, effective January 1, 2015, the fee is set uniformly across the state at 40 cents per month for each service identifier. However, in counties that, before July 1, 2007, had adopted an ordinance or resolution establishing a fee less than 50 cents per month per access line may maintain such rate. For such counties, any future changes to the rate may only be to the uniform 40-cent rate. Three counties have this higher rate for local exchange carriers (LECs): Duval (44 cents per month), Lee (44 cents per month), and Volusia (41 cents per month).¹⁶ The E911 Board is authorized to adjust the fee as necessary to ensure full recovery of the costs incurred by counties and wireless service providers to provide E911 service and to prevent over-recovery of those costs, subject to a cap of 50 cents per month for each service identifier.^{17,18}

All collected fees are deposited into the Emergency Communications Number E911 System Fund, which is segregated into three categories: wireless, prepaid wireless, and non-wireless.¹⁹ At least three percent of the funds in each category is distributed by the E911 Board to rural counties to provide facilities and network and service enhancements and assistance for their 911 or E911 systems and for grants to rural counties to upgrade and replace E911 systems. Further, the E911 Board may retain no more than one percent of the funds from each category to cover its administrative costs. For Fiscal Year 2021-2022, the E911 Board distributed the remaining 96 percent of funds to counties and wireless providers as follows:²⁰

- Wireless Category
 - 94.75 percent to counties for authorized expenditures and costs to comply with FCC requirements for E911 service (funds allocated by county based on total number of service identifiers in each county).
 - An additional four percent to rural county grants.

¹⁴ Section 365.172(8), F.S.

¹⁵ Section 365.172(9), F.S. For prepaid wireless transactions which involve a "single, nonitemized price with a prepaid wireless service of 10 minutes or less or \$5 or less," the seller may choose not to collect the fee.

¹⁶ See Florida E911 Board, *supra* note 4, at 8, and *infra* Table 1.

¹⁷ Section 365.172(8), F.S.

¹⁸ The statutory fee cap of 50 cents per month has remained unchanged since its adoption in 1985. See Ch. 85-317, L.O.F.

¹⁹ Section 365.172(3)(k), (8)(d), and (9)(i); s. 365.173(1)(c), F.S. Each provider may retain one percent of collected fees as reimbursement for its administrative costs to bill, collect, and remit the fee. Each seller of prepaid wireless service may retain five percent of collected fees as a collection allowance. Fees collected from prepaid wireless service are remitted to the Department of Revenue, which may retain up to 3.2 percent of remitted fees to reimburse its direct costs to administer collection and remittance of the fees.

²⁰ Section 365.173 (2), F.S., specifies the allocation of these funds but authorizes the E911 Board to modify allocations if necessary to ensure full cost recovery or prevent over-recovery of costs incurred in the provision of E911 service. The allocations presented above are based on the E911 Board's 2022 *Annual Report*, *supra* note 4.

- 0.25 percent to wireless service providers for reimbursement of actual costs to provide 911 or E911 service and costs to comply with FCC requirements for E911 service.²¹
- Prepaid Wireless Category
 - 61 percent to counties for authorized expenditures (funds allocated by county based on total amount of fees reported and paid in each county).
 - 35 percent for statewide grants awarded by the E911 Board.²²
- Non-Wireless Category
 - 96 percent to counties for authorized expenditures (funds allocated by county based on total number of service identifiers in each county)

Specifically, Table 1 below shows the most recent published E911 fee revenue allocation percentages breakdown from the E911 Board's 2022 annual report:²³

Table 1. E911 Breakdown of Fee Revenue Allocation Percentages Breakdown.

Non-wireless E911 Fee				
Based on a \$0.40 Fee Rate				
(includes LEC & VoIP. Three counties have a higher fee on LEC, Duval (\$0.44), Lee (\$0.44) & Volusia (\$0.41))				
Fee Collected	County Monthly Share 96%	Rural County Grant Program 3%	Board Administration 1%	
\$0.40	\$0.3840	\$0.0120	\$0.0040	

Wireless E911 Fee				
Based on a \$0.40 Fee Rate				
Fee Collected	County Monthly Share 94.75%	Wireless Service Providers Reimbursements .25%	Rural County Grant Program 4%	Board Administration 1%
\$0.40	\$0.3790	\$0.0010	\$0.0160	\$0.0040

Prepaid E911 Fee				
Based on a \$0.40 Fee Rate				
Fee Collected	County Monthly Share 61%	Statewide Next Generation & Services Grant Program 35%	Rural County Grant Program 3%	Board Administration 1%
\$0.40	\$0.2440	\$0.1400	\$0.0120	\$0.0040

Wireless allocation effective Oct 12, 2021

²¹ The E911 Board may use, as needed, undisbursed funds from the allotment to wireless service providers to provide grants to counties for purposes of upgrading E911 systems. S. 365.172(6)(a)3.b., F.S.

²² Grants awarded with these funds are prioritized as follows: first, for counties to upgrade or replace E911 systems; next, for counties to develop and maintain statewide 911 routing, geographic, and management information systems; last, for counties to develop and maintain next-generation 911 services and equipment. Section 365.173(h), F.S.

²³ Source: Florida E911 Board, 2022 Annual Report, at 8, February 28, 2023 (available at: <https://www.dms.myflorida.com/content/download/155677/1033501/20212022E911BoardAnnualReportVersionFINAL.pdf>).

The E911 Board makes disbursements from the Emergency Communications Number E911 System Fund to county governments and wireless providers in accordance with s. 365.173, F.S.

Current Authorized Expenditures for E911 Funds

Section 365.172, F.S., specifies the expenditures that may be made with E911 funds. Generally, all costs directly attributable to the establishment or provision of E911 service and contracting for E911 services are eligible. Specifically, these costs may include the acquisition, implementation, and maintenance of Public Safety Answering Point (PSAP) equipment and E911 service features, as defined in the providers' published schedules, or the acquisition, installation, and maintenance of other E911 equipment, including:

- Circuits;
- Call answering equipment;
- Call transfer equipment;
- Automatic Number Identification (ANI) or Automatic Location Identification (ALI) controllers;
- ANI or ALI displays;
- Station instruments;
- E911 telecommunications systems;
- Visual call information and storage devices;
- Recording equipment;
- Telephone devices and other equipment for the hearing impaired used in the E911 system;
- PSAP backup power systems;
- Consoles;
- Automatic call distributors, and interfaces, including hardware and software, for computer-aided dispatch (CAD) systems;
- Integrated CAD systems for that portion of the systems used for E911 call taking;
- GIS system and software equipment and information displays; network clocks;
- Salary and associated expenses for E911 call takers for that portion of their time spent taking and transferring E911 calls, salary, and associated expenses for a county to employ a full-time equivalent E911 coordinator position and a full-time equivalent mapping or geographical data position, and technical system maintenance, database, and administration personnel for the portion of their time spent administering the E911 system;
- Emergency medical, fire, and law enforcement prearrival instruction software;
- Charts and training costs;
- Training costs for PSAP call takers, supervisors, and managers in the proper methods and techniques used in taking and transferring E911 calls;
- Costs to train and educate PSAP employees regarding E911 service or E911 equipment, including fees collected by the Department of Health for the certification and recertification of 911 public safety telecommunicators as required under s. 401.465, F.S.;
- Expenses required to develop and maintain all information, including ALI and ANI databases and other information source repositories, necessary to properly inform call takers as to location address, type of emergency, and other information directly relevant to the E911 call-taking and transferring function; and

- Next-generation E911 network services, next-generation E911 database services, next-generation E911 equipment, and wireless E911 routing systems.

For FY 2021-2022, the E911 Board disbursed a total of \$131.8 million. Of that amount, \$114.6 million was disbursed to counties, \$0.6 million was disbursed to service providers, and \$2 million was retained to cover the operation and administration of the E911 Board. The remaining \$15.5 million was disbursed to counties as grants and supplemental disbursements.²⁴

Next Generation 911

Currently, the E911 Board's mission statement is to:

Promote and support the development, coordination, and integration for an evolved, fully-functional, seamless [NG-911] system that is accessible anytime, anywhere, from any device in order to realize the full potential for 911 to provide emergency services, enable interoperability between systems, protect human life, preserve property, and maintain public safety for the residents, visitors, and first responders in the State of Florida.

NG911 is a digital, internet protocol (IP)-based system that is intended to replace the nation's analog 911 infrastructure that has been in place for decades.²⁵ The National Telecommunications and Information Administration (NTIA), part of the United States Department of Commerce, states that fully-deploying NG911, "will enhance emergency number services by creating a faster, more resilient system that allows digital information (e.g., voice, photos, videos, text messages) to flow seamlessly from the public, through the 911 network and eventually, directly to first responders." The technology will also, enable 911 call centers to transfer 911 calls to other call centers, and help them deal with call overload, disasters, and day-to-day transfer of 911 calls to other jurisdictions.²⁶

Most 911 systems were originally built with analog instead of digital technologies. The transition from older, analog 911 technologies, to digital technologies requires new computer hardware and software, and the coordination of a variety of emergency communication, public safety, legislative and governing entities.²⁷

Many states and localities are in the process of making the transition to NG911. The National 911 Program keeps a database of state self-reported NG911 data on NG911 progress. The National 911 Program provides that "the collection and use of data helps 911 systems plan for the future, benchmark against other states, and measure progress on enhancing 911, and share important information with non-911 stakeholders such as legislators and [other] elected officials."²⁸

²⁴ Source: Florida E911 Board, 2022 Annual Report, at 6 and 9, February 28, 2023 (available at: <https://www.dms.myflorida.com/content/download/155677/1033501/20212022E911BoardAnnualReportVersionFINAL.pdf>) (last visited Apr. 10, 2023).

²⁵ 911.gov, *Next Generation 911*, <https://www.911.gov/issues/ng911/> (last visited Mar. 29, 2023).

²⁶ National Telecommunications and Information Administration, *Next Generation 911*, <https://ntia.gov/category/next-generation-911> (last visited Mar. 29, 2023).

²⁷ 911.gov, *Next Generation*, *supra* note 255.

²⁸ 911.gov, 911 Profile Database, <https://www.911.gov/projects/911-profile-database/>. This page provides links to the database, along with a summarized version of the data in the National 911 Annual Report.

Current Next Generation 911 Progress in Florida

Florida's counties continue to maintain their E911 systems; however, some counties have taken steps to transition to NG911 equipment and services. The E911 Board states that, "E911 monthly fee revenue disbursements to the counties support routine service and maintenance costs of E911 equipment and networks, but often fall short of upgrading systems and implementing advanced [NG911] technologies, requiring additional financial assistance."²⁹

Transitioning to NG911 in Florida requires the complete replacement of legacy 911 systems with IP networks and core services that will allow for geospatial 911 call routing. Counties in Florida have taken a regional approach to NG911 transition, which offers longer-term grant program assistance. Counties that have more financial resources have been starting the NG911 transition without grant or other supplemental funding sources and are also joining regional solutions. The E911 Board and the DMS have been encouraging this regional solutions process and have been working closely with counties on how best to achieve NG911 through such regional solutions. The E911 Board has expressed some concern, however, that while regionalization provides some cost savings and flexibility, potential challenges to this regionalization may include procurement and reaching agreement on jurisdictional control across boundaries. The E911 Board also expressed a number of additional challenges in progressing to NG911, including data readiness, cybersecurity, and funding.³⁰

Progress towards NG911 varies widely from county-to-county, with some Florida counties having taken no progressive action at all and others in differing stages of planning and transition. The E911 Board states that, in order to achieve NG911 on a statewide basis, they expect a comprehensive and flexible plan, with a detailed timeline, is need. Such a plan, "would accommodate potential changes in revenue sources, 911 fee adjustments, changes in the language of Florida legislation that reflect new technologies, changes in E911 Board composition and authority, and support of the Florida Legislature as it pertains to budget authority."³¹

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 365.172, F.S., to reflect a move away from using the term "Enhanced 911" (or "E911") in statute. The section is renamed the "Emergency Communications Act" (act) and the bill removes most references to Enhanced 911 and E911. Similar revisions are also made to ss. 365.171 through 365.174, 365.177, and 212.05965, F.S. in the bill.

The definitions provided in s. 365.172(3), F.S., which are also utilized in ss. 365.171, 365.173, 365.174, and 365.177, F.S., are updated by the bill with conforming and technical changes. In addition, the bill makes the following revisions:

²⁹ Florida E911 Board, *supra* note 4, at 10.

³⁰ *Id.* at 11.

³¹ *Id.* at 12.

- Provides a definition for “computer-aided dispatch” or “CAD” to mean a computerized system within a public safety answering point for entering, tracking, dispatching, and resolving requests for public safety services.
- Re-names “fee” to “public safety emergency communications systems fee (PSECS Fee).”
- Re-names “fund” to mean the Emergency Communications Trust Fund.
- Defines “Next Generation 911” or “NG911” to mean an Internet protocol (IP)-based system composed of managed emergency services IP networks (ESInets), functional elements (applications), and databases that replicate traditional E911 features and functions and provide additional capabilities. The definition also provides that the NG911 system is designed to provide access to emergency services from all connected communications sources and provide multimedia data capabilities for public safety access points [(PSAPs)] and other emergency service organizations.

The bill modifies the statement of legislative intent in s. 365.172(2), F.S., to state that the act is intended to:

- Establish and implement a comprehensive statewide emergency communications and response capability using modern technologies and methods.
- Provide funds to counties to pay costs associated with such counties’ public safety emergency response capabilities and costs incurred to purchase, upgrade, and maintain 911 systems, computer-aided dispatch, and systems to create interoperable radio communications systems.
- Levy a reasonable fee on users of voice communications services, unless otherwise provided in this section, to accomplish these purposes.
- Provide for an Emergency Communications Board (EC Board)³² to administer the fee, with oversight by the Division of Telecommunications (division), in a manner that is competitively and technologically neutral as to all communications services providers.
- Ensure that the fee established for emergency communications systems is used exclusively by counties for costs associated with developing and maintaining emergency communications systems and networks in a manner that is competitively and technologically neutral as to all communications services providers.
- It is further the intent of the Legislature that the fee authorized or imposed by this section not necessarily provide the total funding required for establishing or providing emergency communications systems and services.

The bill establishes new duties for the EC Board, with oversight by the division, to:

- Promote interoperability between PSAPs by providing guidance and direction to counties and state agencies that operate 911 centers for the deployment of emergency communications infrastructure and the handling of emergency communications information, such as voice, text, data, and images, from receipt at a PSAP to dispatching to first responders;
- Establish and administer allocations from the fund dedicated to investing in public safety communications and technology for 911; and
- Provide technical assistance and guidance to rural counties as needed.

³² The bill renames the “E911 Board” to be the “Emergency Communications Board.”

The bill specifies the public safety funding administered by the EC Board must focus on, but is not limited to:

- NG911;
- ESInet;
- Computer-aided dispatch;
- PSAP technology to interface with: Land mobile radio; smart city technology data; and in-building coverage;
- Emergency communications broadband networks; and
- Cybersecurity.

The EC Board is also restructured by the bill to have nine members (from previously having 11), all of which must be Florida residents. The secretary of the DMS continues to designate the chair of the EC Board and the Governor appoints the remaining eight members. In making selections for the EC Board, four of those members must be county 911 coordinators, with consideration given to rural, medium, and large counties. The remaining four members must represent fields including, but not limited to, law enforcement, fire response, emergency medical services, public safety dispatch, and telecommunications. The Florida Sheriffs Association, the Florida Police Chiefs Associations, and the Florida Association of Counties, in consultation with the county 911 coordinators, may provide recommendations to the Governor for the appointment of EC Board members. The bill also updates how the Governor may initially appoint EC Board members, by staggering the terms for which the initial EC Board members may be appointed and provides that current 911 coordinators on the EC Board will complete their terms.

Under the bill, the EC Board is given the additional responsibility of advocating and developing policy recommendations to ensure interoperability and connectivity between public safety communication systems within the state, including, but not limited to, recommendations related to:

- Call routing accuracy and timeliness of response;
- Improved interagency communication and situational awareness;
- Improved interagency system connectivity;
- Improved response times;
- Maximized use of emerging technologies;
- Improved lifecycle management of the systems, equipment, and services that enable responders and public safety officials to share information securely;
- Governance, policy, and procedure across public safety agencies; and
- Establishment of resilient and secure emergency communications systems to reduce cybersecurity threats and vulnerabilities.

The bill also authorizes the EC Board to create subcommittees to advise the EC Board as needed.

Under the bill, the EC Board is authorized to establish a schedule for implementing wireless NG911 systems, public safety radio communications systems, and other public safety communications improvements. The bill authorizes the EC Board to prioritize disbursement of revenues pursuant to this schedule to implement 911 services in the most efficient and cost-effective manner.

Current law requires that the EC Board establish a committee to review requests for proposals (RFPs). The bill removes the requirement that the committee include two members of the EC Board, one of which is a county 911 coordinator and one of which represents a voice communications services provider.

Per the bill, the EC Board is also responsible for administering the PSECS Fee—formerly known as the E911 fee. These responsibilities include receiving revenues; distributing portions of the revenues, accounting for the moneys maintained in the fund; and providing annual reports for review and submission to the Governor and the Legislature.

Revenues from the PSECS Fee are deposited into the Emergency Communications Trust Fund (EC Trust Fund). The EC Trust Fund disbursements are significantly modified under the bill. The revised process provided in the bill requires that, for statewide grants made available by the EC Board, the EC Board must provide 90 days' written notice to all counties and publish electronically an approved application process. Priority is based on grant funding availability, current system life expectancy, and system replacement needs. The EC Board must ensure that county recipients of funds only use such funds for under which they have been provided. If the EC Board determines the funds were not used for the purpose for which they were provided, The EC Board may, within its authority, secure county repayment of improperly used funds.

Under the bill, the division will administer the disbursement of funds to counties and provide a monthly report to the Board. Accordingly, the bill eliminates the current requirement that the Board meet monthly and replaces it with a requirement that the Board meet in the most efficient and cost-effective manner.

The bill strikes the following provisions under current law related to the PSECS Fee:

- A county that before July 1, 2007, had adopted an ordinance or resolution establishing a fee of less than 50 cents per month per access line is an exception to the requirement that the fee of 40 cents per month be applied uniformly and throughout the state. (This provision allows Duval (44 cents per month), Lee (44 cents per month), and Volusia (41 cents per month) counties to charge a PSECS Fee rate higher than the state uniform 40 cents per month PSECS Fee); and
- The requirement that when the Board sets percentages or contemplates any adjustments to the fee, that the Board consider revenues currently allocated for wireless service provider costs for implementing E911 service and projected costs for implementing E911 service, including recurring costs for Phase I and Phase II and the effect of new technologies.

In regards to the eligible expenditure of moneys derived from the PSECS Fee, the bill provides that emergency communications and 911 service includes the functions relating to the receipt and transfer of requests for emergency assistance, of database management, call taking, and location verification. The bill also revises s. 365.172(10), F.S., which provides the eligible expenditures for moneys derived from the PSECS Fee, and requires that these costs be attributable to emergency communications equipment and services related to a primary or secondary PSAP. These costs now include:

- NG911 telecommunications systems;
- ESInet;

- Interfaces, including hardware and software, for CAD systems, for public safety land mobile radio systems and radio consoles that provide two-way radio communication with responders, and for in-building coverage;
- Cybersecurity, including hardware, software, and services;
- Salary and associated expenses for emergency dispatchers;
- Training costs for dispatchers in the proper methods and techniques used in taking and transferring 911 calls;
- Costs to educate employees regarding 911 and radio service or NG911 equipment; and
- Expenses required to develop and maintain all information, including call taker access to smart city technology data, emergency communications broadband network information, and other information directly relevant to the processing of a request for emergency assistance.

The bill clarifies that PSECS Fee revenues may not be used to cover any capital or operational costs related to responders dispatched to an emergency or to cover costs for utilities.

The bill makes additional conforming and technical revisions, and deletes obsolete provisions.

Section 2 of the bill makes technical and conforming changes. This section of the bill also modifies the statutory allocation of the fee revenues in the wireless category to provide that:

- Ninety-five percent of the funds be distributed each month to counties (increased from seventy-six in current law), based on the total number of service identifiers in each county;
- An additional one percent of the funds shall be used to make monthly distributions to rural counties for certain purposes for grants to rural counties to upgrade and replace emergency communications systems; and
- The EC Board will no longer transfer twenty percent of the funds to wireless providers for the cost of operating 911 or E911 services.

The bill authorizes the EC Board, in accordance with its rules, to withhold future distribution of grant funds or request a return of all or a portion of funds previously awarded based on findings from financial audits conducted under current law³³ that address, among other things, the use of the EC Trust Fund.

The bill also removes an authorization that such moneys may be used for compliance with certain 911-service related rules and orders from the Federal Communications Commission (FCC).³⁴ The bill maintains the provision in current law that such moneys may exclusively be used for the expenditures authorized in s. 365.172(10), F.S., (as that subsection was amended by Section 1 of the bill).

- **Section 3** of the bill extends the date, from February 1, 2020, to December 30, 2023, by which the division is required to develop a plan to upgrade 911 public safety answering

³³ Section 218.39, F.S., requires annual financial audits of counties and other local government entities.

³⁴ Specifically, pursuant to s. 365.172(3)(t), F.S., the rules and orders are those issued by the FCC in FCC Docket No. 94-102: (1) Order adopted on June 12, 1996, with an effective date of October 1, 1996, the amendments to s. 47 CFR s. 20.03 and the creation of 47 CFR s. 20.18 adopted by the FCC pursuant to such order; (2) Memorandum and Order No. FCC 97-402 adopted on December 23, 1997; (3) Order No. FCC DA 98-2323 adopted on November 13, 1998; (4) Order No. FCC 98-345 adopted December 31, 1998. Also included are the orders and rules subsequently adopted by the FCC relating to the provision of 911 services, including Order Number FCC-05-116, adopted May 19, 2005.

points within the state to allow the transfer of an emergency call from one local, multijurisdictional, or regional E911 system to another local, multijurisdictional, or regional E911 system in the state by December 30, 2033. The bill provides the plan must:

- Prioritize the upgrade of PSAPs based on the population served by each PSAP, the capability of a jurisdiction or region to modernize PSAPs beyond legacy 911 infrastructure, and the ability of a jurisdiction or region to address interoperability between PSAPs; and
- Identify and address the projected costs of providing these transfer capabilities and project the ability of each county to meet operational costs based on disbursement of non-grant funds.

Sections 4, 5, and 6 make technical and conforming changes.

Section 7 provides the bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The Revenue Estimating Conference has not yet conducted an analysis of the bill.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Under the bill, Duval and Lee counties (from 44 cents down to 40 cents per service identifier), and Volusia County (from 41 cents down to 40 cents per service identifier), will see a reduction in monthly public safety emergency communications systems fee (PSECS Fee) revenues from local exchange carriers (LECs). This will bring their PSECS fee rate amounts into alignment with the statewide 40-cent uniform rate. In its analysis of the bill, the Department of Management Services stated that the decrease in revenue for

these counties will be mitigated by the increase of wireless and VoIP subscribers as LEC subscribers upgrade to newer technology.³⁵

B. Private Sector Impact:

CS/CS/SB 1418 eliminates the distribution of twenty percent of the moneys in the wireless category in the Emergency Communications Trust Fund (EC Trust Fund) to wireless providers for the cost of operating 911 or E911 services. Thus, the bill may have a negative financial impact on such wireless providers.

C. Government Sector Impact:

The bill may increase revenues to local governments by increasing the allocation of funds from the wireless category of the EC Trust Fund to counties from 76 percent to 94 percent.

VI. Technical Deficiencies:

The bill uses the term “smart city technology data,” but does not provide a definition for this term. The sponsor may want to include a definition for this term as this may not be a commonly used phrase and may be open to multiple interpretations.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 365.172, 365.173, 365.177, 212.05965, 365.171, and 365.174.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS/CS by Appropriations Committee on Agriculture, Environment, and General Government on April 18, 2023:

The committee substitute:

- Revises legislative intent to remove references to providing funding to state agencies operating 911 centers;
- Revises the definitions of “computer-aided dispatch,” “E911,” “fund,” and “NG911;”
- Renames the “Emergency Communications Fund” to be the “Emergency Communications Trust Fund” (trust fund);

³⁵ Florida Department of Management Services, *Bill Analysis for SB 1418* (Mar. 17, 2023) (on file with the Senate Regulated Industries Committee).

- Revises the duties and makeup of the Emergency Communications Board (EC Board);
- Specifies that current EC Board members must complete their terms—other positions created by the provisions of the bill must be filled immediately;
- Removes a requirement that the EC Board meet quarterly. Instead, the EC Board is to meet most efficient and cost-effective manner, without a particular timeframe requirement;
- Requires the Division of Telecommunications (division) to administer the disbursement of trust fund funds and provide a monthly report to the board of such disbursements;
- Restores a provision in existing law authorizing prepaid wireless sellers adequate time to comply with a subsection relating to the collection public safety emergency fee and allowing such sellers to retain the first two months of such payment to offset the cost of setup;
- Revises the expenditures that that may be made with the funds derived from the Public Safety Communications Fee (fee);
- Revises the distribution of the trust fund to eliminate funding of state agencies that operate 911 centers;
- Authorizes the EC Board to withhold future distribution of emergency communications grant funds or request a return of all or a portion of funds previously awarded based on findings from the financial audit;
- Establishes a deadline for the division to implement a plan to upgrade all 911 public safety answering points within the state to allow the transfer of an emergency call from one local, multijurisdictional, or regional E911 system to another local, multijurisdictional, or regional E911 system in the state (plan);
- Revises the requirements of the plan; and
- Makes technical and conforming revisions.

CS by Regulated Industries on March 4, 2023:

The committee substitute makes a technical revision to SB1418 to remove an erroneous cross-reference change in the bill.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2023	.	
	.	
	.	
	.	

The Appropriations Committee on Agriculture, Environment, and General Government (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 365.172, Florida Statutes, is amended to
read:

365.172 Emergency communications. ~~number "E911."~~

(1) SHORT TITLE.—This section may be cited as the
"Emergency Communications ~~Number E911~~ Act."

(2) LEGISLATIVE INTENT.—It is the intent of the Legislature



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11 to:

12 (a) Establish and implement a comprehensive statewide
13 emergency communications and response capability using modern
14 technologies and methods. ~~telecommunications number system that~~
15 ~~will provide users of voice communications services within the~~
16 ~~state rapid direct access to public safety agencies by accessing~~
17 ~~the telephone number "911."~~

18 (b) Provide funds to counties to pay certain costs
19 associated with their public safety emergency response
20 capabilities and costs incurred to purchase, upgrade, and
21 maintain 911 systems, computer-aided dispatch, and systems to
22 create interoperable radio communications systems ~~E911 or 911~~
23 ~~systems, to contract for E911 services, and to reimburse~~
24 ~~wireless telephone service providers for costs incurred to~~
25 ~~provide 911 or E911 services.~~

26 (c) Levy a reasonable fee on users of voice communications
27 services, unless otherwise provided in this section, to
28 accomplish these purposes.

29 (d) Provide for an Emergency Communications Board ~~E911~~
30 ~~board~~ to administer the fee, with oversight by the office, in a
31 manner that is competitively and technologically neutral as to
32 all ~~voice~~ communications services providers.

33 (e) Ensure that the fee established for emergency
34 communications systems is used exclusively ~~for recovery by~~
35 ~~wireless providers and~~ by counties for costs associated with
36 developing and maintaining emergency communications ~~E911~~ systems
37 and networks in a manner that is competitively and
38 technologically neutral as to all ~~voice~~ communications services
39 providers.



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It is further the intent of the Legislature that the fee authorized or imposed by this section not necessarily provide the total funding required for establishing or providing emergency communications systems and services ~~E911 service~~.

(3) DEFINITIONS.—Only as used in this section and ss. 365.171, 365.173, 365.174, and 365.177, the term:

(a) "Authorized expenditures" means expenditures of the fee, as specified in subsection (10).

(b) "Automatic location identification" means the capability of the E911 service which enables the automatic display of information that defines the approximate geographic location of the wireless telephone, or the location of the address of the wireline telephone, used to place a 911 call.

(c) "Automatic number identification" means the capability of the E911 service which enables the automatic display of the service number used to place a 911 call.

(d) "Board" or "Emergency Communications Board" ~~"E911 Board"~~ means the board ~~of directors of the E911 Board~~ established in subsection (5).

(e) "Building permit review" means a review for compliance with building construction standards adopted by the local government under chapter 553 and does not include a review for compliance with land development regulations.

(f) "Colocation" ~~"Collocation"~~ means the situation when a second or subsequent wireless provider uses an existing structure to locate a second or subsequent antennae. The term includes the ground, platform, or roof installation of equipment enclosures, cabinets, or buildings, and cables, brackets, and



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other equipment associated with the location and operation of the antennae.

(g) "Computer-Aided Dispatch" or "CAD" means a computerized system within a public safety answering point for entering, tracking, dispatching, and resolving requests for public safety services.

(h)~~(g)~~ "Designed service" means the configuration and manner of deployment of service the wireless provider has designed for an area as part of its network.

(i)~~(h)~~ "Enhanced 911" or "E911" means an enhanced 911 system or enhanced 911 service that is an emergency telephone system or service that provides a subscriber with 911 service and, in addition, directs 911 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated, or as otherwise provided in the state plan under s. 365.171, and that provides for automatic number identification and automatic location-identification features. The 911 ~~E911~~ service provided by a wireless provider means E911 as defined in the order.

(j)~~(i)~~ "Existing structure" means a structure that exists at the time an application for permission to place antennae on a structure is filed with a local government. The term includes any structure that can structurally support the attachment of antennae in compliance with applicable codes.

(k)~~(j)~~ "Fee" or "public safety emergency communications systems fee" means the ~~E911~~ fee authorized and imposed under subsections (8) and (9).

(l)~~(k)~~ "Fund" means the Emergency Communications Trust ~~Number E911 System~~ Fund established in s. 365.173 and maintained



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under this section for the purpose of recovering the costs associated with providing emergency communications services ~~911 service or E911 service~~, including the costs of implementing the order. The fund shall be segregated into wireless, prepaid wireless, and nonwireless categories.

(m) ~~(l)~~ "Historic building, structure, site, object, or district" means any building, structure, site, object, or district that has been officially designated as a historic building, historic structure, historic site, historic object, or historic district through a federal, state, or local designation program.

(n) ~~(m)~~ "Land development regulations" means any ordinance enacted by a local government for the regulation of any aspect of development, including an ordinance governing zoning, subdivisions, landscaping, tree protection, or signs, the local government's comprehensive plan, or any other ordinance concerning any aspect of the development of land. The term does not include any building construction standard adopted under and in compliance with chapter 553.

(o) ~~(n)~~ "Local exchange carrier" means a "competitive local exchange telecommunications company" or a "local exchange telecommunications company" as defined in s. 364.02.

(p) ~~(o)~~ "Local government" means any municipality, county, or political subdivision or agency of a municipality, county, or political subdivision.

(q) ~~(p)~~ "Medium county" means any county that has a population of 75,000 or more but less than 750,000.

(r) ~~(q)~~ "Mobile telephone number" or "MTN" means the telephone number assigned to a wireless telephone at the time of



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initial activation.

(s) "Next Generation 911" or "NG911" means an Internet Protocol(IP)-based system composed of managed Emergency Services IP Networks (ESInet), functional elements (applications), and databases that replicate traditional E911 features and functions and provide additional capabilities. The NG911 system is designed to provide access to emergency services from all connected communications sources and provide multimedia data capabilities for PSAPs and other emergency service organizations.

(t)~~(r)~~ "Nonwireless category" means the revenues to the fund received from voice communications services providers other than wireless providers.

(u)~~(s)~~ "Office" means the Division of Telecommunications within the Department of Management Services, as designated by the secretary of the department.

(v)~~(t)~~ "Order" means:

1. The following orders and rules of the Federal Communications Commission issued in FCC Docket No. 94-102:

a. Order adopted on June 12, 1996, with an effective date of October 1, 1996, the amendments to s. 20.03 and the creation of s. 20.18 of Title 47 of the Code of Federal Regulations adopted by the Federal Communications Commission pursuant to such order.

b. Memorandum and Order No. FCC 97-402 adopted on December 23, 1997.

c. Order No. FCC DA 98-2323 adopted on November 13, 1998.

d. Order No. FCC 98-345 adopted December 31, 1998.

2. Orders and rules subsequently adopted by the Federal



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Communications Commission relating to the provision of 911 services, including Order Number FCC-05-116, adopted May 19, 2005.

(w)~~(u)~~ "Prepaid wireless category" means all revenues in the fund received through the Department of Revenue from the fee authorized and imposed under subsection (9).

(x)~~(v)~~ "Prepaid wireless service" means a right to access wireless service that allows a caller to contact and interact with 911 to access the 911 system, which service must be paid for in advance and is sold in predetermined units or dollars, which units or dollars expire on a predetermined schedule or are decremented on a predetermined basis in exchange for the right to access wireless service.

(y)~~(w)~~ "Public agency" means the state and any municipality, county, municipal corporation, or other governmental entity, public district, or public authority located in whole or in part within this state which provides, or has authority to provide, firefighting, law enforcement, ambulance, medical, or other emergency services.

(z)~~(*)~~ "Public safety agency" means a functional division of a public agency which provides firefighting, law enforcement, medical, or other emergency services.

(aa)~~(y)~~ "Public safety answering point," "PSAP," or "answering point" means the public safety agency that receives incoming 911 requests for assistance and dispatches appropriate public safety agencies to respond to the requests in accordance with the state E911 plan.

(bb)~~(z)~~ "Rural county" means any county that has a population of fewer than 75,000.



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185 ~~(cc)(aa)~~ "Service identifier" means the service number,
186 access line, or other unique identifier assigned to a subscriber
187 and established by the Federal Communications Commission for
188 purposes of routing calls whereby the subscriber has access to
189 the E911 system.

190 ~~(dd)(bb)~~ "Tower" means any structure designed primarily to
191 support a wireless provider's antennae.

192 ~~(ee)(cc)~~ "Voice communications services" means two-way
193 voice service, through the use of any technology, which actually
194 provides access to 911 ~~E911~~ services, and includes
195 communications services, as defined in s. 202.11, which actually
196 provide access to 911 ~~E911~~ services and which are required to be
197 included in the provision of 911 ~~E911~~ services pursuant to
198 orders and rules adopted by the Federal Communications
199 Commission. The term includes voice-over-Internet-protocol
200 service. For the purposes of this section, the term "voice-over-
201 Internet-protocol service" or "VoIP service" means
202 interconnected VoIP services having the following
203 characteristics:

204 1. The service enables real-time, two-way voice
205 communications;

206 2. The service requires a broadband connection from the
207 user's locations;

208 3. The service requires IP-compatible customer premises
209 equipment; and

210 4. The service offering allows users generally to receive
211 calls that originate on the public switched telephone network
212 and to terminate calls on the public switched telephone network.

213 ~~(ff)(dd)~~ "Voice communications services provider" or



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"provider" means any person or entity providing voice communications services, except that the term does not include any person or entity that resells voice communications services and was assessed the fee authorized and imposed under subsection (8) by its resale supplier.

(gg)~~(ee)~~ "Wireless 911 system" or "wireless 911 service" means an emergency telephone system or service that provides a subscriber with the ability to reach an answering point by accessing the digits 911.

(hh)~~(ff)~~ "Wireless category" means the revenues to the fund received from a wireless provider from the fee authorized and imposed under subsection (8).

(ii)~~(gg)~~ "Wireless communications facility" means any equipment or facility used to provide service and may include, but is not limited to, antennae, towers, equipment enclosures, cabling, antenna brackets, and other such equipment. Placing a wireless communications facility on an existing structure does not cause the existing structure to become a wireless communications facility.

(jj)~~(hh)~~ "Wireless provider" means a person who provides wireless service and:

1. Is subject to the requirements of the order; or
2. Elects to provide wireless 911 service, ~~or~~ E911 service, or NG911 service in this state.

(kk)~~(ii)~~ "Wireless service" means "commercial mobile radio service" as provided under ss. 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. ss. 151 et seq., and the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, August 10, 1993, 107 Stat. 312. The term includes service



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provided by any wireless real-time two-way wire communication device, including radio-telephone communications used in cellular telephone service; personal communications service; or the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network radio access line. The term does not include wireless providers that offer mainly dispatch service in a more localized, noncellular configuration; providers offering only data, one-way, or stored-voice services on an interconnected basis; providers of air-to-ground services; or public coast stations.

(4) POWERS AND DUTIES OF THE OFFICE.—The office shall oversee the administration of the fee authorized and imposed under subsections (8) and (9).

(5) THE EMERGENCY COMMUNICATIONS ~~E911~~ BOARD.—

(a) The Emergency Communications ~~E911~~ Board is established, with oversight by the office, to:

1. Promote interoperability between public safety answering points by providing guidance and direction to counties and state agencies that operate 911 centers for the deployment of emergency communications infrastructure and the handling of emergency communications information, such as voice, text, data, and images, from receipt at a PSAP to dispatching to responders.

2. Establish and administer allocations from the fund dedicated to investing in public safety communications and technology for 911.

3. Provide technical assistance and guidance to rural counties as needed.

(b) Public safety funding under paragraph (a) must focus



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on, but need not be limited to:

1. Next Generation 911.
2. Emergency Services IP Network (ESInet).
3. Computer-Aided Dispatch.
4. PSAP technology to interface with:
 - a. Land Mobile Radio (LMR).
 - b. Smart city technology data.
 - c. In-building coverage.
5. Emergency communications broadband networks.
6. Cybersecurity

~~to administer, with oversight by the office, the fee imposed under subsections (8) and (9), including receiving revenues derived from the fee; distributing portions of the revenues to wireless providers, counties, and the office; accounting for receipts, distributions, and income derived by the funds maintained in the fund; and providing annual reports to the Governor and the Legislature for submission by the office on amounts collected and expended, the purposes for which expenditures have been made, and the status of E911 service in this state.~~ In order to advise and assist the office in implementing the purposes of this section, the board, which has the power of a body corporate, has the powers enumerated in subsection (6).

~~(c)-(b)~~ The board shall consist of nine ~~11~~ members, one of whom must be the system director designated under s. 365.171(5), or his or her designee, who shall serve as the chair of the board. The remaining eight ~~10~~ members of the board shall be appointed by the Governor. All members must be residents of this state. The board must be composed of four county 911



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coordinators, with consideration given to rural, medium, and
large counties, and four members from fields that include, but
are not limited to, law enforcement, fire response, emergency
medical services, public safety dispatch, and
telecommunications. The Florida Sheriffs Association, the
Florida Police Chiefs Association, and the Florida Association
of Counties, in consultation with the county 911 coordinators,
may provide recommendations to the Governor for the appointment
of the board members and must be composed of 5 county 911
coordinators, consisting of a representative from a rural
county, a representative from a medium county, a representative
from a large county, and 2 at-large representatives recommended
by the Florida Association of Counties in consultation with the
county 911 coordinators; 3 local exchange carrier member
representatives, one of whom must be a representative of the
local exchange carrier having the greatest number of access
lines in the state and one of whom must be a representative of a
certificated competitive local exchange telecommunications
company; and 2 member representatives from the wireless
telecommunications industry, with consideration given to
wireless providers that are not affiliated with local exchange
carriers. Not more than one member may be appointed to represent
any single provider on the board.

(d)(e) The system director, designated under s. 365.171(5),
or his or her designee, must be a permanent member of the board.
Each of the remaining eight ~~10~~ members of the board shall be
appointed to a 4-year term and may not be appointed to more than
two successive terms. However, for the purpose of staggering
terms, three ~~two~~ of the original board members shall be



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appointed to terms of 4 years, three ~~two~~ shall be appointed to terms of 3 years, and two ~~four~~ shall be appointed to terms of 2 years, as designated by the Governor. A vacancy on the board shall be filled in the same manner as the original appointment. Current 911 coordinators serving on the board must complete their terms while other positions must be filled immediately.

(e) The board shall advocate and develop policy recommendations for ensuring interoperability of and connectivity between public safety communications systems within the state, including, but not limited to, recommendations related to the following:

1. Call routing accuracy and timeliness of response.
2. Improved interagency communication and situational awareness.
3. Improved interagency system connectivity.
4. Improved response times.
5. Maximized use of emerging technologies.
6. Improved lifecycle management of the systems, equipment, and services that enable responders and public safety officials to share information securely.
7. Governance, policy, and procedure across public safety agencies.
8. Establishment of resilient and secure emergency communications systems to reduce cybersecurity threats and vulnerabilities.

(f) The board shall administer the fee imposed under subsections (8) and (9), including receiving revenues derived from the fee; distributing portions of the revenues to counties and the office; accounting for receipts, distributions, and



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income derived by the funds maintained in the fund; and
providing annual reports for review and submission to the
Governor and the Legislature on amounts collected and expended,
the purposes for which expenditures have been made, and the
status of emergency communications services in this state.

(g) The board may create subcommittees to advise the board,
as needed.

(6) AUTHORITY OF THE BOARD; ANNUAL REPORT.—

(a) The board shall:

1. Administer the public safety emergency communications
systems ~~E911~~ fee.

2. Implement, maintain, and oversee the fund.

3. Review and oversee the disbursement of the revenues
deposited into the fund as provided in s. 365.173.

a. The board may establish a schedule for implementing
wireless NG911 systems, public safety radio communications
systems, and other public safety communications improvements
~~E911 service by service area,~~ and prioritize disbursements of
revenues from the fund to ~~providers and~~ rural counties as
provided in s. 365.173(2)(f) ~~s. 365.173(2)(e) and (g)~~ pursuant
to the schedule, in order to implement 911 ~~E911~~ services in the
most efficient and cost-effective manner.

b. For grants made available under s. 365.173(2)(g), the
board shall provide 90 days' written notice to all counties and
publish electronically an approved application process.
Applications must be prioritized based on the availability of
grant funds, current system life expectancy, and system
replacement needs. The board shall take all actions within its
authority to ensure that county recipients of such funds use



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these funds only for the purpose for which they have been
provided and may take any actions within its authority to secure
county repayment of revenues upon a determination that the funds
were not used for the purpose for which the funds were
disbursed.

~~b. Revenues in the fund which have not been disbursed
because sworn invoices as required by s. 365.173(2)(c) have not
been submitted to the board may be used by the board as needed
to provide grants to counties for the purpose of upgrading E911
systems. The counties must use the funds only for capital
expenditures or remotely provided hosted 911 answering point
call-taking equipment and network services directly attributable
to establishing and provisioning E911 services, which may
include next-generation deployment. Prior to the distribution of
grants, the board shall provide 90 days' written notice to all
counties and publish electronically an approved application
process. County grant applications shall be prioritized based on
the availability of funds, current system life expectancy,
system replacement needs, and Phase II compliance per the
Federal Communications Commission. No grants will be available
to any county for next-generation deployment until all counties
are Phase II complete. The board shall take all actions within
its authority to ensure that county recipients of such grants
use these funds only for the purpose under which they have been
provided and may take any actions within its authority to secure
county repayment of grant revenues upon determination that the
funds were not used for the purpose under which they were
provided.~~

~~e. When determining the funding provided in a state 911~~



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~~grant application request, the board shall take into account information on the amount of carryforward funds retained by the counties. The information will be based on the amount of county carryforward funds reported in the financial audit required in s. 365.173(2)(d). E911 State Grant Program funding requests will be limited by any county carryforward funds in excess of the allowable 30 percent amount of fee revenue calculated on a 2-year basis.~~

~~d. The board shall reimburse all costs of a wireless provider in accordance with s. 365.173(2)(e) before taking any action to transfer additional funds.~~

~~e. After taking the action required in sub-subparagraphs a.-d., the board may review and, with all members participating in the vote, adjust the percentage allocations or adjust the amount of the fee as provided under paragraph (8)(g), and, if the board determines that the revenues in the wireless category exceed the amount needed to reimburse wireless providers for the cost to implement E911 services, the board may transfer revenue to the counties from the existing funds within the wireless category. The board shall disburse the funds equitably to all counties using a timeframe and distribution methodology established by the board.~~

~~4. Review documentation submitted by wireless providers which reflects current and projected funds derived from the fee, and the expenses incurred and expected to be incurred in order to comply with the E911 service requirements contained in the order for the purposes of:~~

~~a. Ensuring that wireless providers receive fair and equitable distributions of funds from the fund.~~



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~~b. Ensuring that wireless providers are not provided disbursements from the fund which exceed the costs of providing E911 service, including the costs of complying with the order.~~

~~c. Ascertaining the projected costs of compliance with the requirements of the order and projected collections of the fee.~~

~~d. Implementing changes to the allocation percentages or adjusting the fee under paragraph (8) (h).~~

5. Implement changes to the allocation percentages or adjust the fee pursuant to s. 365.173.

~~6.5. Meet monthly in the most efficient and cost-effective manner, including telephonically when practical, for the business to be conducted. The office shall administer the disbursement of funds to counties and provide a monthly report of such disbursements to the board, to review and approve or reject, in whole or in part, applications submitted by wireless providers for recovery of moneys deposited into the wireless category, and to authorize the transfer of, and distribute, the fee allocation to the counties.~~

~~7.6. Hire and retain employees, which may include an independent executive director who shall possess experience in the area of telecommunications and emergency 911 issues, for the purposes of performing the technical and administrative functions for the board.~~

~~8.7. Make and enter into contracts, pursuant to chapter 287, and execute other instruments necessary or convenient for the exercise of the powers and functions of the board.~~

~~9.8. Sue and be sued, and appear and defend in all actions and proceedings, in its corporate name to the same extent as a natural person.~~



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475 ~~10.9.~~ Adopt, use, and alter a common corporate seal.

476 ~~11.10.~~ Elect or appoint the officers and agents that are
477 required by the affairs of the board.

478 ~~12.11.~~ The board may adopt rules under ss. 120.536(1) and
479 120.54 to implement this section and ss. 365.173 and 365.174.

480 ~~13.12.~~ Provide coordination, support, and technical
481 assistance to counties to promote the deployment of advanced
482 public safety emergency communications ~~911 and E911~~ systems in
483 the state.

484 ~~14.13.~~ Provide coordination and support for educational
485 opportunities related to 911 ~~E911~~ issues for the public safety
486 emergency communications ~~E911~~ community in this state.

487 ~~15.14.~~ Act as an advocate for issues related to public
488 safety emergency communications ~~E911~~ system functions, features,
489 and operations to improve the delivery of public safety
490 emergency communications ~~E911~~ services to the residents of and
491 visitors to this state.

492 ~~16.15.~~ Coordinate input from this state at national forums
493 and associations, to ensure that policies related to public
494 safety emergency communications ~~E911~~ systems and services are
495 consistent with the policies of the public safety emergency
496 communications ~~E911~~ community in this state.

497 ~~17.16.~~ Work cooperatively with the system director
498 established in s. 365.171(5) to enhance the state of public
499 safety emergency communications ~~E911~~ services in this state and
500 to provide unified leadership for all public safety emergency
501 communications ~~E911~~ issues through planning and coordination.

502 ~~18.17.~~ Do all acts and things necessary or convenient to
503 carry out the powers granted in this section in a manner that is



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competitively and technologically neutral as to all voice communications services providers, including, but not limited to, consideration of emerging technology and related cost savings, while taking into account embedded costs in current systems.

~~19.18.~~ Have the authority to secure the services of an independent, private attorney via invitation to bid, request for proposals, invitation to negotiate, or professional contracts for legal services already established at the Division of Purchasing of the Department of Management Services.

(b) Board members shall serve without compensation; however, members are entitled to per diem and travel expenses as provided in s. 112.061.

(c) By February 28 of each year, the board shall prepare a report for submission by the office to the Governor, the President of the Senate, and the Speaker of the House of Representatives which addresses for the immediately preceding state fiscal year and county fiscal year:

1. The annual receipts, including the total amount of fee revenues collected by each provider, the total disbursements of money in the fund, ~~including the amount of fund-reimbursed expenses incurred by each wireless provider to comply with the order,~~ and the amount of moneys on deposit in the fund.

2. Whether the amount of the fee and the allocation percentages set forth in s. 365.173 have been or should be adjusted to comply with the ~~requirements of the order or other~~ provisions of this chapter, and the reasons for making or not making a recommended adjustment to the fee.

3. Any other issues related to providing emergency



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communications ~~E911~~ services.

4. The status of emergency communications ~~E911~~ services in this state.

(7) REQUEST FOR PROPOSALS FOR INDEPENDENT ACCOUNTING FIRM.—

(a) The board shall issue a request for proposals as provided in chapter 287 for the purpose of retaining an independent accounting firm. The independent accounting firm shall perform all material administrative and accounting tasks and functions required for administering the fee. The request for proposals must include, but need not be limited to:

1. A description of the scope and general requirements of the services requested.

2. A description of the specific accounting and reporting services required for administering the fund, including processing checks and distributing funds as directed by the board under s. 365.173.

3. A description of information to be provided by the proposer, including the proposer's background and qualifications and the proposed cost of the services to be provided.

(b) The board shall establish a committee to review requests for proposals which must include the statewide emergency communications systems ~~E911 system~~ director designated under s. 365.171(5), or his or her designee, and two members of the board, ~~one of whom is a county 911 coordinator and one of whom represents a voice communications services provider~~. The review committee shall review the proposals received by the board and recommend an independent accounting firm to the board for final selection. By agreeing to serve on the review committee, each member of the review committee shall verify that



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he or she does not have any interest or employment, directly or indirectly, with potential proposers which conflicts in any manner or degree with his or her performance on the committee.

(c) The board may secure the services of an independent accounting firm via invitation to bid, request for proposals, invitation to negotiate, or professional contracts already established at the Division of Purchasing, Department of Management Services, for certified public accounting firms, or the board may hire and retain professional accounting staff to accomplish these functions.

(8) PUBLIC SAFETY EMERGENCY COMMUNICATIONS SYSTEMS FEE.—

(a) Each voice communications services provider shall collect the fee described in this subsection, except that the fee for prepaid wireless service shall be collected in the manner set forth in subsection (9). Each provider, as part of its monthly billing process, shall bill the fee as follows. The fee may ~~shall~~ not be assessed on any pay telephone in the state.

1. Each voice communications service provider other than a wireless provider shall bill the fee to a subscriber based on the number of access lines having access to the 911 ~~E911~~ system, on a service-identifier basis, up to a maximum of 25 access lines per account bill rendered.

2. Each voice communications service provider other than a wireless provider shall bill the fee to a subscriber on a basis of five service-identified access lines for each digital transmission link, including primary rate interface service or equivalent Digital-Signal-1-level service, which can be channelized and split into 23 or 24 voice-grade or data-grade



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channels for communications, up to a maximum of 25 access lines per account bill rendered.

3. Except in the case of prepaid wireless service, each wireless provider shall bill the fee to a subscriber on a per-service-identifier basis for service identifiers whose primary place of use is within this state. The fee may ~~shall~~ not be assessed on or collected from a provider with respect to an end user's service if that end user's service is a prepaid wireless service sold before January 1, 2015.

4. Except in the case of prepaid wireless service, each voice communications services provider not addressed under subparagraphs 1., 2., and 3. shall bill the fee on a per-service-identifier basis for service identifiers whose primary place of use is within the state up to a maximum of 25 service identifiers for each account bill rendered.

The provider may list the fee as a separate entry on each bill, in which case the fee must be identified as a fee for 911 ~~E911~~ services. A provider shall remit the fee to the board only if the fee is paid by the subscriber. If a provider receives a partial payment for a monthly bill from a subscriber, the amount received shall first be applied to the payment due the provider for providing voice communications service.

(b) A provider is not obligated to take any legal action to enforce collection of the fees for which any subscriber is billed. A county subscribing to 911 service remains liable to the provider delivering the 911 service or equipment for any 911 service, equipment, operation, or maintenance charge owed by the county to the provider.



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(c) For purposes of this subsection, the state and local governments are not subscribers.

(d) Each provider may retain 1 percent of the amount of the fees collected as reimbursement for the administrative costs incurred by the provider to bill, collect, and remit the fee. The remainder shall be delivered to the board and deposited by the board into the fund. The board shall distribute the remainder pursuant to s. 365.173.

(e) Voice communications services providers billing the fee to subscribers shall deliver revenues from the fee to the board within 60 days after the end of the month in which the fee was billed, together with a monthly report of the number of service identifiers in each county. Each wireless provider and other applicable provider identified in subparagraph (a)4. shall report the number of service identifiers for subscribers whose place of primary use is in each county. All provider subscriber information provided to the board is subject to s. 365.174. If a provider chooses to remit any fee amounts to the board before they are paid by the subscribers, a provider may apply to the board for a refund of, or may take a credit for, any such fees remitted to the board which are not collected by the provider within 6 months following the month in which the fees are charged off for federal income tax purposes as bad debt.

(f) The rate of the fee may not exceed 50 cents per month for each service identifier. Effective January 1, 2015, the fee shall be 40 cents per month for each service identifier. The fee shall apply uniformly and be imposed throughout the state, ~~except for those counties that, before July 1, 2007, had adopted an ordinance or resolution establishing a fee less than 50 cents~~



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~~per month per access line. In those counties the fee established by ordinance may be changed only to the uniform statewide rate no sooner than 30 days after notification is made by the county's board of county commissioners to the board.~~

(g) The board may adjust the allocation percentages for distribution of the fund as provided in s. 365.173. ~~No sooner than June 1, 2015, the board may adjust the rate of the fee under paragraph (f) based on the criteria in this paragraph and paragraph (h).~~ Any adjustment in the rate must be approved by a two-thirds vote of the total number of ~~E911~~ board members. When setting the percentages or contemplating any adjustments to the fee, the board shall consider the following:

~~1. The revenues currently allocated for wireless service provider costs for implementing E911 service and projected costs for implementing E911 service, including recurring costs for Phase I and Phase II and the effect of new technologies;~~

~~1.2.~~ The appropriate level of funding needed to fund the rural grant program provided for in s. 365.173(2)(f) ~~s. 365.173(2)(g)~~; and

~~2.3.~~ The need to fund statewide, regional, and county grants in accordance with sub-subparagraph (6)(a)3.b. and s. 365.173(2)(g) ~~s. 365.173(2)(h)~~.

(h) The board may adjust the allocation percentages or adjust the amount of the fee as provided in paragraph (g) if necessary to ensure full cost recovery or prevent over recovery ~~overrecovery~~ of costs incurred in the provision of 911 ~~E911~~ service, including costs incurred or projected to be incurred ~~to comply with the order~~. Any new allocation percentages or reduced or increased fee may not be adjusted for 1 year. In no event



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shall the fee exceed 50 cents per month for each service identifier. The fee, and any board adjustment of the fee, shall be uniform throughout the state, ~~except for the counties identified in paragraph (f)~~. No less than 90 days before the effective date of any adjustment to the fee, the board shall provide written notice of the adjusted fee amount and effective date to each voice communications services provider from which the board is then receiving the fee.

(i) It is the intent of the Legislature that all revenue from the fee be used as specified in s. 365.173(2) (a)-(h) ~~s. 365.173(2) (a)-(i)~~.

(j) State and local taxes do not apply to the fee. The amount of the ~~E911~~ fee collected by a provider may not be included in the base for imposition of any tax, fee, surcharge, or other charge imposed by this state, any political subdivision of this state, or any intergovernmental agency.

(k) A local government may not levy the fee or any additional fee on providers or subscribers for the provision of 911 ~~E911~~ service.

(l) For purposes of this section, the definitions contained in s. 202.11 and the provisions of s. 202.155 apply in the same manner and to the same extent as the definitions and provisions apply to the taxes levied under chapter 202 on mobile communications services.

(9) PREPAID WIRELESS PUBLIC SAFETY EMERGENCY COMMUNICATIONS SYSTEMS ~~E911~~ FEE.—

(a) Effective January 1, 2015, a prepaid wireless ~~E911~~ fee is imposed per retail transaction at the rate established in paragraph (8)(f). In order to allow sellers of all sizes and



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707 technological capabilities adequate time to comply with this
708 subsection, a seller of prepaid wireless service operating in
709 this state before the prepaid wireless ~~E911~~ fee is imposed shall
710 retain 100 percent of the fee collected under this paragraph for
711 the first 2 months to offset the cost of setup.

712 (b) Effective March 1, 2015, the prepaid wireless ~~E911~~ fee
713 imposed under paragraph (a) shall be subject to remittance in
714 accordance with paragraph (g). In no event shall the fee exceed
715 50 cents for each retail transaction. At least 90 days before
716 the effective date of any adjustment to the fee under paragraph
717 (8)(g), the Department of Revenue shall provide written notice
718 of the adjusted fee amount and its effective date to each seller
719 from which the department is then receiving the fee. At least
720 120 days before the effective date of any adjustment to the fee
721 imposed under this subsection, the board shall provide notice to
722 the Department of Revenue of the adjusted fee amount and
723 effective date of the adjustment.

724 (c) The prepaid wireless ~~E911~~ fee shall be collected by the
725 seller from the consumer with respect to each retail transaction
726 occurring in this state. The amount of the prepaid wireless ~~E911~~
727 fee shall be separately stated on an invoice, receipt, or other
728 similar document that is provided to the consumer by the seller
729 or otherwise disclosed to the consumer.

730 (d) For purposes of paragraph (c), a retail transaction
731 that takes place in person by a consumer at a business location
732 of the seller shall be treated as occurring in this state if
733 that business location is in this state. Such transaction is
734 deemed to have occurred in the county of the business location.
735 When a retail transaction does not take place at the seller's



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business location, the transaction shall be treated as taking place at the consumer's shipping address or, if no item is shipped, at the consumer's address or the location associated with the consumer's mobile telephone number. Such transaction is deemed to have occurred in the county of the consumer's shipping address when items are shipped to the consumer or, when no items are shipped, the county of the consumer's address or the location associated with the consumer's mobile telephone number. A transaction for which the specific Florida county cannot be determined shall be treated as nonspecific.

(e) If a prepaid wireless device is sold for a single, nonitemized price with a prepaid wireless service of 10 minutes or less or \$5 or less, the seller may elect not to apply the prepaid wireless ~~E911~~ fee to the transaction.

(f) The amount of the prepaid wireless ~~E911~~ fee that is collected by a seller from a consumer and that is separately stated on an invoice, receipt, or similar document provided to the consumer by the seller, may not be included in the base for imposition of any tax, fee, surcharge, or other charge that is imposed by this state, any political subdivision of this state, or any intergovernmental agency.

(g) Beginning April 1, 2015, each seller shall file a return and remit the prepaid wireless ~~E911~~ fees collected in the previous month to the Department of Revenue on or before the 20th day of the month. If the 20th day falls on a Saturday, Sunday, or legal holiday, payments accompanied by returns are due on the next succeeding day that is not a Saturday, Sunday, or legal holiday observed by federal or state agencies as defined in chapter 683 and s. 7503 of the Internal Revenue Code



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of 1986, as amended. A seller may remit the prepaid wireless ~~E911~~ fee by electronic funds transfer and file a fee return with the Department of Revenue that is initiated through an electronic data interchange.

1. When a seller is authorized by the Department of Revenue pursuant to s. 212.11(1)(c) or (d) to file a sales and use tax return on a quarterly, semiannual, or annual reporting basis, the seller may file a return and remit the prepaid wireless ~~E911~~ fees on or before the 20th day of the month following the authorized reporting period for sales and use tax.

2. A seller collecting less than \$50 per month of prepaid wireless ~~E911~~ fees may file a quarterly return for the calendar quarters ending in March, June, September, and December. The seller must file a return and remit the prepaid wireless ~~E911~~ fees collected during each calendar quarter on or before the 20th day of the month following that calendar quarter.

3. A seller must provide the following information on each prepaid wireless ~~E911~~ fee return filed with the Department of Revenue:

a. The seller's name, federal identification number, taxpayer identification number issued by the Department of Revenue, business location address and mailing address, and county of the business location in accordance with paragraph (d);

b. The reporting period;

c. The number of prepaid wireless services sold during the reporting period;

d. The amount of prepaid wireless ~~E911~~ fees collected and the amount of any adjustments to the fees collected;



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e. The amount of any retailer collection allowance deducted from the amount of prepaid wireless ~~E911~~ fees collected; and

f. The amount to be remitted to the Department of Revenue.

4. A seller who operates two or more business locations for which returns are required to be filed with the Department of Revenue may file a consolidated return reporting and remitting the prepaid wireless ~~E911~~ fee for all business locations. Such sellers must report the prepaid wireless ~~E911~~ fees collected in each county, in accordance with paragraph (d), on a reporting schedule filed with the fee return.

5. A return is not required for a reporting period when no prepaid wireless ~~E911~~ fee is to be remitted for that period.

6. Except as provided in this section, the Department of Revenue shall administer, collect, and enforce the fee under this subsection pursuant to the same procedures used in the administration, collection, and enforcement of the general state sales tax imposed under chapter 212. The provisions of chapter 212 regarding authority to audit and make assessments, keeping of books and records, and interest and penalties on delinquent fees shall apply. The provisions of estimated tax liability in s. 212.11(1)(a) do not apply to the prepaid wireless ~~E911~~ fee.

(h) A seller of prepaid wireless services in this state must register with the Department of Revenue for each place of business as required by s. 212.18(3) and the Department of Revenue's administrative rule regarding registration as a sales and use tax dealer. A separate application is required for each place of business. A valid certificate of registration issued by the Department of Revenue to a seller for sales and use tax purposes is sufficient for purposes of the registration



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requirement of this subsection. There is no fee for registration for remittance of the prepaid wireless ~~E911~~ fee.

(i) The Department of Revenue shall deposit the funds remitted under this subsection into the Audit and Warrant Clearing Trust Fund established in s. 215.199 and retain up to 3.2 percent of the funds remitted under this subsection to reimburse its direct costs of administering the collection and remittance of prepaid wireless ~~E911~~ fees. Thereafter, the Department of Revenue shall transfer all remaining funds remitted under this subsection to the Emergency Communications Trust ~~Number E911 System~~ Fund monthly for use as provided in s. 365.173.

(j) Beginning March 1, 2015, a seller may retain 5 percent of the prepaid wireless ~~E911~~ fees that are collected by the seller from consumers as a retailer collection allowance.

(k) A provider or seller of prepaid wireless service is not liable for damages to any person resulting from or incurred in connection with providing or failing to provide emergency communications and 911 ~~or E911~~ service or for identifying or failing to identify the telephone number, address, location, or name associated with any person or device that is accessing or attempting to access emergency communications and 911 ~~or E911~~ service.

(l) A provider or seller of prepaid wireless service is not liable for damages to any person resulting from or incurred in connection with providing any lawful assistance to any investigative or law enforcement officer of the United States, any state, or any political subdivision of any state in connection with any lawful investigation or other law



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enforcement activity by such law enforcement officer.

(m) The limitations of liability under this subsection for providers and sellers are in addition to any other limitation of liability provided for under this section.

(n) A local government may not levy the fee or any additional fee on providers or sellers of prepaid wireless service for the provision of 911 ~~E911~~ service.

(o) For purposes of this section, the state and local governments are not consumers.

(p) For purposes of this subsection, the term:

1. "Consumer" means a person who purchases prepaid wireless service in a retail sale.

2. "Prepaid wireless ~~E911~~ fee" means the fee that is required to be collected by a seller from a consumer as provided in this subsection.

3. "Provider" means a person that provides prepaid wireless service pursuant to a license issued by the Federal Communications Commission.

4. "Retail transaction" means the purchase by a consumer from a seller of prepaid wireless service that may be applied to a single service identifier for use by the consumer. If a consumer makes a purchase of multiple prepaid wireless services in a single transaction, each individual prepaid wireless service shall be considered a separate retail transaction for purposes of calculating the prepaid wireless ~~E911~~ fee.

5. "Seller" means a person who makes retail sales of prepaid wireless services to a consumer.

(10) AUTHORIZED EXPENDITURES OF PUBLIC SAFETY EMERGENCY COMMUNICATIONS SYSTEMS ~~E911~~ FEE.—



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(a) For purposes of this section, emergency communications and 911 ~~E911~~ service includes the functions relating to the receipt and transfer of requests for emergency assistance, of database management, call taking, and location verification, and ~~call transfer~~. Department of Health certification and recertification and training costs for ~~911~~ public safety telecommunications, including dispatching, are functions of public safety emergency communications ~~911~~ services.

(b) All costs directly attributable to the establishment or provision of emergency communications equipment ~~E911 service~~ and ~~contracting for ~~E911~~ services~~ related to a primary or secondary public safety answering point are eligible for expenditure of moneys derived from imposition of the fee authorized by subsections (8) and (9). These costs include the acquisition, implementation, and maintenance of Public Safety Answering Point (PSAP) equipment and 911 ~~E911~~ service features, as defined in the providers' published schedules or the acquisition, installation, and maintenance of other ~~E911~~ equipment, including: circuits; call answering equipment; call transfer equipment; ANI or ALI controllers; ANI or ALI displays; station instruments; NG911 ~~E911~~ telecommunications systems; Emergency Services IP Networks (ESInets); visual call information and storage devices; recording equipment; telephone devices and other equipment for the hearing impaired used in the 911 ~~E911~~ system; PSAP backup power systems; consoles; automatic call distributors; and interfaces, including hardware and software, for computer-aided dispatch (CAD) systems, public safety Land Mobile Radio (LMR) systems and radio consoles that provide two-way radio communication with responders, and in-building



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~~coverage; integrated CAD systems for that portion of the systems~~
~~used for E911 call taking; GIS system and software equipment and~~
~~information displays; network clocks; cybersecurity, including~~
~~hardware, software, and services; salary and associated expenses~~
~~for 911 E911 call takers and emergency dispatchers for that~~
~~portion of their time spent taking and transferring E911 calls,~~
~~salary, and associated expenses for a county to employ a full-~~
~~time equivalent 911 E911 coordinator position and a full-time~~
~~equivalent mapping or geographical data position, and technical~~
~~system maintenance, database, and administration personnel for~~
~~the portion of their time spent administrating the emergency~~
~~communications E911 system; emergency medical, fire, and law~~
~~enforcement prearrival instruction software; charts and training~~
~~costs; training costs for PSAP call takers, dispatchers,~~
~~supervisors, and managers in the proper methods and techniques~~
~~used in taking and transferring 911 E911 calls; costs to train~~
~~and educate PSAP employees and the public regarding 911 and~~
~~radio E911 service or NG911 E911 equipment, including fees~~
~~collected by the Department of Health for the certification and~~
~~recertification of 911 public safety telecommunicators as~~
~~required under s. 401.465; and expenses required to develop and~~
~~maintain all information, including ALI and ANI databases, call-~~
~~takers access to smart city technology data, emergency~~
~~communications broadband network information and other~~
~~information source repositories, necessary to properly inform~~
~~call takers as to location address, type of emergency, and other~~
~~information directly relevant to the processing of a request for~~
~~emergency assistance E911 call taking and transferring function.~~
~~Moneys derived from the fee may also be used for next-generation~~



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~~E911 network services, next-generation E911 database services,
next-generation E911 equipment, and wireless E911 routing
systems.~~

(c) The moneys may not be used to pay for any item not listed in this subsection, including, but not limited to, any capital or operational costs related to responders dispatched to the emergency, and for emergency responses which occur after the ~~call transfer to the responding public safety entity and the~~ costs for utilities, constructing, leasing, maintaining, or renovating buildings, except for those building modifications necessary to maintain the security and environmental integrity of the PSAP and emergency communications ~~E911~~ equipment rooms.

(11) LIABILITY OF COUNTIES.—A county subscribing to 911 service remains liable to the local exchange carrier for any 911 service, equipment, operation, or maintenance charge owed by the county to the local exchange carrier. As used in this subsection, the term “local exchange carrier” means a local exchange telecommunications service provider of 911 service or equipment to any county within its certificated area.

(12) INDEMNIFICATION AND LIMITATION OF LIABILITY.—A local government may indemnify local exchange carriers against liability in accordance with the published schedules of the company. Notwithstanding an indemnification agreement, a local exchange carrier, voice communications services provider, or other service provider that provides 911, ~~or~~ E911, or NG911 service on a retail or wholesale basis is not liable for damages resulting from or in connection with 911, ~~or~~ E911, or NG911 service, or for identification of the telephone number, or address, or name associated with any person accessing 911, ~~or~~



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E911, or NG911 service, unless the carrier or provider acted with malicious purpose or in a manner exhibiting wanton and willful disregard of the rights, safety, or property of a person when providing such services. A carrier or provider is not liable for damages to any person resulting from or in connection with the carrier's or provider's provision of any lawful assistance to any investigative or law enforcement officer of the United States, this state, or a political subdivision thereof, or of any other state or political subdivision thereof, in connection with any lawful investigation or other law enforcement activity by such law enforcement officer. For purposes of this subsection, the term "911, ~~or~~ E911, or NG911 service" means a telecommunications service, voice or nonvoice communications service, or other wireline or wireless service, including, but not limited to, a service using Internet protocol, which provides, in whole or in part, any of the following functions: providing members of the public with the ability to reach an answering point by using the digits 9-1-1; directing 911 calls to answering points by selective routing; providing for automatic number identification and automatic location-identification features; or providing wireless E911 services as defined in the order.

(13) FACILITATING EMERGENCY COMMUNICATIONS ~~E911~~ SERVICE IMPLEMENTATION.—To balance the public need for reliable emergency communications ~~E911~~ services through reliable wireless systems and the public interest served by governmental zoning and land development regulations and notwithstanding any other law or local ordinance to the contrary, the following standards shall apply to a local government's actions, as a regulatory



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body, in the regulation of the placement, construction, or modification of a wireless communications facility. This subsection may ~~shall~~ not, however, be construed to waive or alter the provisions of s. 286.011 or s. 286.0115. For the purposes of this subsection only, "local government" shall mean any municipality or county and any agency of a municipality or county only. The term "local government" does not, however, include any airport, as defined by s. 330.27(2), even if it is owned or controlled by or through a municipality, county, or agency of a municipality or county. Further, notwithstanding anything in this section to the contrary, this subsection does not apply to or control a local government's actions as a property or structure owner in the use of any property or structure owned by such entity for the placement, construction, or modification of wireless communications facilities. In the use of property or structures owned by the local government, however, a local government may not use its regulatory authority so as to avoid compliance with, or in a manner that does not advance, the provisions of this subsection.

(a) Colocation ~~Collocation~~ among wireless providers is encouraged by the state.

1.a. Colocations ~~Collocations~~ on towers, including nonconforming towers, that meet the requirements in sub-sub-paragraphs (I), (II), and (III), are subject to only building permit review, which may include a review for compliance with this subparagraph. Such colocations ~~collocations~~ are not subject to any design or placement requirements of the local government's land development regulations in effect at the time of the colocation ~~collocation~~ that are more restrictive than



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those in effect at the time of the initial antennae placement approval, to any other portion of the land development regulations, or to public hearing review. This sub-subparagraph ~~may shall~~ not preclude a public hearing for any appeal of the decision on the colocation ~~collocation~~ application.

(I) The colocation ~~collocation~~ does not increase the height of the tower to which the antennae are to be attached, measured to the highest point of any part of the tower or any existing antenna attached to the tower;

(II) The colocation ~~collocation~~ does not increase the ground space area, commonly known as the compound, approved in the site plan for equipment enclosures and ancillary facilities; and

(III) The colocation ~~collocation~~ consists of antennae, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with all applicable regulations, restrictions, or conditions, if any, applied to the initial antennae placed on the tower and to its accompanying equipment enclosures and ancillary facilities and, if applicable, applied to the tower supporting the antennae. Such regulations may include the design and aesthetic requirements, but not procedural requirements, other than those authorized by this section, of the local government's land development regulations in effect at the time the initial antennae placement was approved.

b. Except for a historic building, structure, site, object, or district, or a tower included in sub-subparagraph a., colocations ~~collocations~~ on all other existing structures that meet the requirements in sub-sub-subparagraphs (I)-(IV) shall be



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subject to no more than building permit review, and an administrative review for compliance with this subparagraph. Such colocations ~~collocations~~ are not subject to any portion of the local government's land development regulations not addressed herein, or to public hearing review. This subparagraph may ~~shall~~ not preclude a public hearing for any appeal of the decision on the colocation ~~collocation~~ application.

(I) The colocation ~~collocation~~ does not increase the height of the existing structure to which the antennae are to be attached, measured to the highest point of any part of the structure or any existing antenna attached to the structure;

(II) The colocation ~~collocation~~ does not increase the ground space area, otherwise known as the compound, if any, approved in the site plan for equipment enclosures and ancillary facilities;

(III) The colocation ~~collocation~~ consists of antennae, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with any applicable structural or aesthetic design requirements and any requirements for location on the structure, but not prohibitions or restrictions on the placement of additional colocations ~~collocations~~ on the existing structure or procedural requirements, other than those authorized by this section, of the local government's land development regulations in effect at the time of the colocation ~~collocation~~ application; and

(IV) The colocation ~~collocation~~ consists of antennae, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with all applicable



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restrictions or conditions, if any, that do not conflict with sub-sub-subparagraph (III) and were applied to the initial antennae placed on the structure and to its accompanying equipment enclosures and ancillary facilities and, if applicable, applied to the structure supporting the antennae.

c. Regulations, restrictions, conditions, or permits of the local government, acting in its regulatory capacity, that limit the number of colocations ~~collocations~~ or require review processes inconsistent with this subsection does ~~shall~~ not apply to colocations ~~collocations~~ addressed in this subparagraph.

d. If only a portion of the colocation ~~collocation~~ does not meet the requirements of this subparagraph, such as an increase in the height of the proposed antennae over the existing structure height or a proposal to expand the ground space approved in the site plan for the equipment enclosure, where all other portions of the colocation ~~collocation~~ meet the requirements of this subparagraph, that portion of the colocation ~~collocation~~ only may be reviewed under the local government's regulations applicable to an initial placement of that portion of the facility, including, but not limited to, its land development regulations, and within the review timeframes of subparagraph (d)2., and the rest of the colocation ~~collocation~~ shall be reviewed in accordance with this subparagraph. A colocation ~~collocation~~ proposal under this subparagraph that increases the ground space area, otherwise known as the compound, approved in the original site plan for equipment enclosures and ancillary facilities by no more than a cumulative amount of 400 square feet or 50 percent of the original compound size, whichever is greater, shall, however,



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require no more than administrative review for compliance with the local government's regulations, including, but not limited to, land development regulations review, and building permit review, with no public hearing review. This sub-subparagraph does ~~shall~~ not preclude a public hearing for any appeal of the decision on the colocation ~~collocation~~ application.

2. If a colocation ~~collocation~~ does not meet the requirements of subparagraph 1., the local government may review the application under the local government's regulations, including, but not limited to, land development regulations, applicable to the placement of initial antennae and their accompanying equipment enclosure and ancillary facilities.

3. If a colocation ~~collocation~~ meets the requirements of subparagraph 1., the colocation may ~~collocation shall~~ not be considered a modification to an existing structure or an impermissible modification of a nonconforming structure.

4. The owner of the existing tower on which the proposed antennae are to be colocated ~~collocated~~ shall remain responsible for compliance with any applicable condition or requirement of a permit or agreement, or any applicable condition or requirement of the land development regulations to which the existing tower had to comply at the time the tower was permitted, including any aesthetic requirements, provided the condition or requirement is not inconsistent with this paragraph.

5. An existing tower, including a nonconforming tower, may be structurally modified in order to permit colocation ~~collocation~~ or may be replaced through no more than administrative review and building permit review, and is not subject to public hearing review, if the overall height of the



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tower is not increased and, if a replacement, the replacement tower is a monopole tower or, if the existing tower is a camouflaged tower, the replacement tower is a like-camouflaged tower. This subparagraph may ~~shall~~ not preclude a public hearing for any appeal of the decision on the application.

(b)1. A local government's land development and construction regulations for wireless communications facilities and the local government's review of an application for the placement, construction, or modification of a wireless communications facility shall only address land development or zoning issues. In such local government regulations or review, the local government may not require information on or evaluate a wireless provider's business decisions about its service, customer demand for its service, or quality of its service to or from a particular area or site, unless the wireless provider voluntarily offers this information to the local government. In such local government regulations or review, a local government may not require information on or evaluate the wireless provider's designed service unless the information or materials are directly related to an identified land development or zoning issue or unless the wireless provider voluntarily offers the information. Information or materials directly related to an identified land development or zoning issue may include, but are not limited to, evidence that no existing structure can reasonably be used for the antennae placement instead of the construction of a new tower, that residential areas cannot be served from outside the residential area, as addressed in subparagraph 3., or that the proposed height of a new tower or initial antennae placement or a proposed height increase of a



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modified tower, replacement tower, or colocation ~~collocation~~ is necessary to provide the provider's designed service. Nothing in this paragraph shall limit the local government from reviewing any applicable land development or zoning issue addressed in its adopted regulations that does not conflict with this section, including, but not limited to, aesthetics, landscaping, land use-based ~~use-based~~ location priorities, structural design, and setbacks.

2. Any setback or distance separation required of a tower may not exceed the minimum distance necessary, as determined by the local government, to satisfy the structural safety or aesthetic concerns that are to be protected by the setback or distance separation.

3. A local government may exclude the placement of wireless communications facilities in a residential area or residential zoning district but only in a manner that does not constitute an actual or effective prohibition of the provider's service in that residential area or zoning district. If a wireless provider demonstrates to the satisfaction of the local government that the provider cannot reasonably provide its service to the residential area or zone from outside the residential area or zone, the municipality or county and provider shall cooperate to determine an appropriate location for a wireless communications facility of an appropriate design within the residential area or zone. The local government may require that the wireless provider reimburse the reasonable costs incurred by the local government for this cooperative determination. An application for such cooperative determination may ~~shall~~ not be considered an application under paragraph (d).



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4. A local government may impose a reasonable fee on applications to place, construct, or modify a wireless communications facility only if a similar fee is imposed on applicants seeking other similar types of zoning, land use, or building permit review. A local government may impose fees for the review of applications for wireless communications facilities by consultants or experts who conduct code compliance review for the local government but any fee is limited to specifically identified reasonable expenses incurred in the review. A local government may impose reasonable surety requirements to ensure the removal of wireless communications facilities that are no longer being used.

5. A local government may impose design requirements, such as requirements for designing towers to support colocation ~~collocation~~ or aesthetic requirements, except as otherwise limited in this section, but may ~~shall~~ not impose or require information on compliance with building code type standards for the construction or modification of wireless communications facilities beyond those adopted by the local government under chapter 553 and that apply to all similar types of construction.

(c) Local governments may not require wireless providers to provide evidence of a wireless communications facility's compliance with federal regulations, except evidence of compliance with applicable Federal Aviation Administration requirements under 14 C.F.R. part 77, as amended, and evidence of proper Federal Communications Commission licensure, or other evidence of Federal Communications Commission authorized spectrum use, but may request the Federal Communications Commission to provide information as to a wireless provider's



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compliance with federal regulations, as authorized by federal law.

(d)1. A local government shall grant or deny each properly completed application for a colocation ~~collocation~~ under subparagraph (a)1. based on the application's compliance with the local government's applicable regulations, as provided for in subparagraph (a)1. and consistent with this subsection, and within the normal timeframe for a similar building permit review but in no case later than 45 business days after the date the application is determined to be properly completed in accordance with this paragraph.

2. A local government shall grant or deny each properly completed application for any other wireless communications facility based on the application's compliance with the local government's applicable regulations, including but not limited to land development regulations, consistent with this subsection and within the normal timeframe for a similar type review but in no case later than 90 business days after the date the application is determined to be properly completed in accordance with this paragraph.

3.a. An application is deemed submitted or resubmitted on the date the application is received by the local government. If the local government does not notify the applicant in writing that the application is not completed in compliance with the local government's regulations within 20 business days after the date the application is initially submitted or additional information resubmitted, the application is deemed, for administrative purposes only, to be properly completed and properly submitted. However, the determination may ~~shall~~ not be



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deemed as an approval of the application. If the application is not completed in compliance with the local government's regulations, the local government shall so notify the applicant in writing and the notification must indicate with specificity any deficiencies in the required documents or deficiencies in the content of the required documents which, if cured, make the application properly completed. Upon resubmission of information to cure the stated deficiencies, the local government shall notify the applicant, in writing, within the normal timeframes of review, but in no case longer than 20 business days after the additional information is submitted, of any remaining deficiencies that must be cured. Deficiencies in document type or content not specified by the local government do not make the application incomplete. Notwithstanding this sub-subparagraph, if a specified deficiency is not properly cured when the applicant resubmits its application to comply with the notice of deficiencies, the local government may continue to request the information until such time as the specified deficiency is cured. The local government may establish reasonable timeframes within which the required information to cure the application deficiency is to be provided or the application will be considered withdrawn or closed.

b. If the local government fails to grant or deny a properly completed application for a wireless communications facility within the timeframes set forth in this paragraph, the application shall be deemed automatically approved and the applicant may proceed with placement of the facilities without interference or penalty. The timeframes specified in subparagraph 2. may be extended only to the extent that the



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application has not been granted or denied because the local government's procedures generally applicable to all other similar types of applications require action by the governing body and such action has not taken place within the timeframes specified in subparagraph 2. Under such circumstances, the local government must act to either grant or deny the application at its next regularly scheduled meeting or, otherwise, the application is deemed to be automatically approved.

c. To be effective, a waiver of the timeframes set forth in this paragraph must be voluntarily agreed to by the applicant and the local government. A local government may request, but not require, a waiver of the timeframes by the applicant, except that, with respect to a specific application, a one-time waiver may be required in the case of a declared local, state, or federal emergency that directly affects the administration of all permitting activities of the local government.

(e) The replacement of or modification to a wireless communications facility, except a tower, that results in a wireless communications facility not readily discernibly different in size, type, and appearance when viewed from ground level from surrounding properties, and the replacement or modification of equipment that is not visible from surrounding properties, all as reasonably determined by the local government, are subject to no more than applicable building permit review.

(f) Any other law to the contrary notwithstanding, the Department of Management Services shall negotiate, in the name of the state, leases for wireless communications facilities that provide access to state government-owned property not acquired



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for transportation purposes, and the Department of Transportation shall negotiate, in the name of the state, leases for wireless communications facilities that provide access to property acquired for state rights-of-way. On property acquired for transportation purposes, leases shall be granted in accordance with s. 337.251. On other state government-owned property, leases shall be granted on a space available, first-come, first-served basis. Payments required by state government under a lease must be reasonable and must reflect the market rate for the use of the state government-owned property. The Department of Management Services and the Department of Transportation are authorized to adopt rules for the terms and conditions and granting of any such leases.

(g) If any person adversely affected by any action, or failure to act, or regulation, or requirement of a local government in the review or regulation of the wireless communication facilities files an appeal or brings an appropriate action in a court or venue of competent jurisdiction, following the exhaustion of all administrative remedies, the matter shall be considered on an expedited basis.

(14) MISUSE OF 911, ~~OR~~ E911, OR NG911 SYSTEM; PENALTY.—911, ~~and E911~~, and NG911 service must be used solely for emergency communications by the public. Any person who accesses the number 911 for the purpose of making a false alarm or complaint or reporting false information that could result in the emergency response of any public safety agency; any person who knowingly uses or attempts to use such service for a purpose other than obtaining public safety assistance; or any person who knowingly uses or attempts to use such service in an effort to avoid any



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charge for service, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. After being convicted of unauthorized use of such service four times, a person who continues to engage in such unauthorized use commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, if the value of the service or the service charge obtained in a manner prohibited by this subsection exceeds \$100, the person committing the offense commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(15) TEXT-TO-911 SERVICE.—Each county shall develop a countywide implementation plan addressing text-to-911 services and, by January 1, 2022, enact a system to allow text-to-911 services.

(16) STATE LAW NOT PREEMPTED.—This section and ss. 365.173 and 365.174 do not alter any state law that otherwise regulates voice communications services providers.

Section 2. Section 365.173, Florida Statutes, is amended to read:

365.173 Emergency Communications Trust ~~Number E911 System~~ Fund.—

(1) REVENUES.—

(a) Revenues derived from the fee levied on subscribers under s. 365.172(8) must be paid by the board into the State Treasury on or before the 15th day of each month. Such moneys must be accounted for in a special fund to be designated as the Emergency Communications Trust ~~Number E911 System~~ Fund, a fund created in the Division of Telecommunications, or other office as designated by the Secretary of Management Services.



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(b) Revenues derived from the fee levied on prepaid wireless service under s. 365.172(9), less the costs of administering collection of the fee, must be transferred by the Department of Revenue to the Emergency Communications Trust ~~Number E911 System~~ Fund on or before the 25th day of each month following the month of receipt.

(c) For accounting purposes, the Emergency Communications Trust ~~Number E911 System~~ Fund must be segregated into three separate categories:

1. The wireless category;
2. The nonwireless category; and
3. The prepaid wireless category.

(d) All moneys must be invested by the Chief Financial Officer pursuant to s. 17.61. All moneys in such fund are to be expended by the office for the purposes provided in this section and s. 365.172. These funds are not subject to s. 215.20.

(2) DISTRIBUTION AND USE OF FUNDS.—As determined by the board pursuant to s. 365.172(8)(f) ~~s. 365.172(8)(g)~~, and subject to any modifications approved by the board pursuant to s. 365.172(6)(a)3. or (8)(g) ~~s. 365.172(6)(a)3. or (8)(h)~~, the moneys in the fund shall be distributed and used only as follows:

(a) Ninety-five ~~Seventy-six~~ percent of the moneys in the wireless category shall be distributed each month to counties, based on the total number of service identifiers in each county, to and shall be used exclusively for payment of:

- ~~1. authorized expenditures, as specified in s. 365.172(10).~~
- ~~2. Costs to comply with the requirements for E911 service contained in the order and any future rules related to the~~



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~~order.~~

(b) Ninety-six percent of the moneys in the nonwireless category shall be distributed each month to counties based on the total number of service identifiers in each county and shall be used exclusively for payment of authorized expenditures, as specified in s. 365.172(10).

(c) Sixty-one percent of the moneys in the prepaid wireless category shall be distributed each month to counties based on the total amount of fees reported and paid in each county and shall be used exclusively for payment of authorized expenditures, as specified in s. 365.172(10). The moneys from prepaid wireless ~~E911~~ fees identified as nonspecific in accordance with s. 365.172(9) shall be distributed as determined by the Emergency Communications ~~E911~~ Board.

(d) Any county that receives funds under paragraphs (a), (b), and (c) shall establish a fund to be used exclusively for the receipt and expenditure of the revenues collected under paragraphs (a), (b), and (c). All fees placed in the fund and any interest accrued shall be used solely for costs described in paragraph (a) ~~subparagraphs (a)1. and 2.~~ and may not be reduced, withheld, or allocated for other purposes. The money collected and interest earned in this fund shall be appropriated for these purposes by the county commissioners and incorporated into the annual county budget. The fund shall be included within the financial audit performed in accordance with s. 218.39. The financial audit shall assure that all emergency communications ~~E911~~ fee revenues, interest, and emergency communications ~~E911~~ grant funding are used for payment of authorized expenditures, as specified in s. 365.172(10) and as specified in the Emergency



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Communications E911 Board grant and special disbursement programs. The board may, in accordance with board rules, withhold future distribution of grant funds or request a return of all or a portion of funds previously awarded based on findings from the financial audit. The county is responsible for all expenditures of revenues distributed from the county emergency communications E911 fund and shall submit the financial audit reports to the board for review. A county may carry forward up to 30 percent of the total funds disbursed to the county by the board during a county fiscal year for expenditures for capital outlay, capital improvements, equipment replacement, or implementation of a hosted system if such expenditures are made for the purposes specified in paragraph (a) subparagraphs (a)1. and 2.; however, the 30-percent limitation does not apply to funds disbursed to a county under s. 365.172(6)(a)3., and a county may carry forward any percentage of the funds, except that any grant provided shall continue to be subject to any condition imposed by the board. In order to prevent an excess recovery of costs incurred in providing emergency communications E911 service, a county that receives funds greater than the permissible emergency communications E911 costs described in s. 365.172(10), including the 30-percent carryforward allowance, must return the excess funds to the E911 board to be allocated under s. 365.172(6)(a).

~~(c) Twenty percent of the moneys in the wireless category shall be distributed to wireless providers in response to sworn invoices submitted to the board by wireless providers to reimburse such wireless providers for the actual costs incurred to provide 911 or E911 service, including the costs of complying~~



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1461 ~~with the order. Such costs include costs and expenses incurred~~
1462 ~~by wireless providers to design, purchase, lease, program,~~
1463 ~~install, test, upgrade, operate, and maintain all necessary~~
1464 ~~data, hardware, and software required to provide E911 service.~~
1465 ~~Each wireless provider shall submit to the board, by August 1 of~~
1466 ~~each year, a detailed estimate of the capital and operating~~
1467 ~~expenses for which it anticipates that it will seek~~
1468 ~~reimbursement under this paragraph during the ensuing state~~
1469 ~~fiscal year. In order to be eligible for recovery during any~~
1470 ~~ensuing state fiscal year, a wireless provider must submit all~~
1471 ~~sworn invoices for allowable purchases made within the previous~~
1472 ~~calendar year no later than March 31 of the fiscal year. By~~
1473 ~~September 15 of each year, the board shall submit to the~~
1474 ~~Legislature its legislative budget request for funds to be~~
1475 ~~allocated to wireless providers under this paragraph during the~~
1476 ~~ensuing state fiscal year. The budget request shall be based on~~
1477 ~~the information submitted by the wireless providers and~~
1478 ~~estimated surcharge revenues. Distributions of moneys in the~~
1479 ~~fund by the board to wireless providers must be fair and~~
1480 ~~nondiscriminatory. If the total amount of moneys requested by~~
1481 ~~wireless providers pursuant to invoices submitted to the board~~
1482 ~~and approved for payment exceeds the amount in the fund in any~~
1483 ~~month, wireless providers that have invoices approved for~~
1484 ~~payment shall receive a pro rata share of moneys in the fund and~~
1485 ~~the balance of the payments shall be carried over to the~~
1486 ~~following month or months until all of the approved payments are~~
1487 ~~made. The board may adopt rules necessary to address the manner~~
1488 ~~in which pro rata distributions are made when the total amount~~
1489 ~~of funds requested by wireless providers pursuant to invoices~~



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~~submitted to the board exceeds the total amount of moneys on deposit in the fund.~~

(e)~~(f)~~ One percent of the moneys in each category of the fund shall be retained by the board to be applied to costs and expenses incurred for the purposes of managing, administering, and overseeing the receipts and disbursements from the fund and other activities as defined in s. 365.172(6). Any funds retained for such purposes in a calendar year which are not applied to such costs and expenses by March 31 of the following year shall be redistributed as determined by the board.

(f)~~(g)~~ Three percent of the moneys in each category of the fund and an additional 1 percent of the moneys collected in the wireless category shall be used to make monthly distributions to rural counties for the purpose of providing facilities and network and service enhancements and assistance for the emergency communications ~~911 or E911~~ systems operated by rural counties and for the provision of grants by the office to rural counties for upgrading and replacing emergency communications ~~E911~~ systems.

(g)~~(h)~~ Thirty-five percent of the moneys in the prepaid wireless category shall be retained by the board to provide state emergency communications ~~E911~~ grants to be awarded in accordance with the following order of priority:

1. For all large, medium, and rural counties to upgrade or replace emergency communications ~~E911~~ systems.

2. For all large, medium, and rural counties to develop and maintain statewide 911 routing, geographic, and management information systems.

3. For all large, medium, and rural counties to develop and



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maintain next-generation 911 services and equipment.

(h) ~~(i)~~ If the wireless category has funds remaining in it on December 31 after disbursements have been made during the calendar year immediately prior to December 31, the board may disburse the excess funds in the wireless category in accordance with s. 365.172(6)(a)3.b.

(3) The Legislature recognizes that the fee authorized under s. 365.172 may not necessarily provide the total funding required for establishing or providing the emergency communications ~~E911~~ service. It is the intent of the Legislature that all revenue from the fee be used as specified in subsection (2).

Section 3. Subsection (1) of section 365.177, Florida Statutes, is amended to read:

365.177 Transfer of E911 calls between systems.—

(1) The office shall develop a plan by December 30, 2023 ~~February 1, 2020~~, to upgrade all 911 public safety answering points within the state to allow the transfer of an emergency call from one local, multijurisdictional, or regional E911 system to another local, multijurisdictional, or regional E911 system in the state by December 30, 2033. Such transfer should include voice, text message, image, video, caller identification information, location information, and additional standards-based 911 call information. The plan must prioritize the upgrade of PSAPs based on the population served by each PSAP, the capability of a jurisdiction or region to modernize PSAPs beyond legacy 911 infrastructure, and the ability of a jurisdiction or region to address interoperability between PSAPs. The plan must identify and address the projected costs of providing these



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transfer capabilities and project the ability of each county to
meet operational costs based on disbursement of funds under s.
365.173(2)(a), (b), and (c).

Section 4. Subsection (10) of section 212.05965, Florida
Statutes, is amended to read:

212.05965 Taxation of marketplace sales.—

(10) Notwithstanding any other law, the marketplace
provider is also responsible for collecting and remitting any
prepaid wireless public safety emergency communications systems
~~E911~~ fee under s. 365.172, waste tire fee under s. 403.718, and
lead-acid battery fee under s. 403.7185 at the time of sale for
taxable retail sales made through its marketplace.

Section 5. Section 365.171, Florida Statutes, is amended to
read:

365.171 Emergency communications ~~number E911~~ state plan.—

(1) SHORT TITLE.—This section may be cited as the “Florida
Emergency Communications ~~Number E911~~ State Plan Act.”

(2) LEGISLATIVE INTENT.—It is the intent of the Legislature
that the communications number “911” be the designated emergency
communications number. A public safety agency may not advertise
or otherwise promote the use of any communications number for
emergency response services other than “911.” It is further the
intent of the Legislature to implement and continually update a
cohesive statewide emergency communications ~~number “E911”~~ plan
for enhanced 911 services which will provide citizens with rapid
direct access to public safety agencies by accessing “911” with
the objective of reducing the response time to situations
requiring law enforcement, fire, medical, rescue, and other
emergency services.



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(3) DEFINITIONS.—As used in this section, the term:

(a) "Office" means the Division of Telecommunications within the Department of Management Services, as designated by the secretary of the department.

(b) "Local government" means any city, county, or political subdivision of the state and its agencies.

(c) "Public agency" means the state and any city, county, city and county, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state which provides, or has authority to provide, firefighting, law enforcement, ambulance, medical, or other emergency services.

(d) "Public safety agency" means a functional division of a public agency which provides firefighting, law enforcement, medical, or other emergency services.

(4) STATE PLAN.—The office shall develop, maintain, and implement appropriate modifications for a statewide emergency communications ~~E911~~ system plan. The plan shall provide for:

(a) The public agency emergency communications requirements for each entity of local government in the state.

(b) A system to meet specific local government requirements. Such system shall include law enforcement, firefighting, and emergency medical services and may include other emergency services such as poison control, suicide prevention, and emergency management services.

(c) Identification of the mutual aid agreements necessary to obtain an effective emergency communications ~~E911~~ system.

(d) A funding provision that identifies the cost necessary to implement the emergency communications ~~E911~~ system.



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The office shall be responsible for the implementation and coordination of such plan. The office shall adopt any necessary rules and schedules related to public agencies for implementing and coordinating the plan, pursuant to chapter 120.

(5) SYSTEM DIRECTOR.—The secretary of the department or his or her designee is designated as the director of the statewide emergency communications ~~number E911~~ system and, for the purpose of carrying out the provisions of this section, is authorized to coordinate the activities of the system with state, county, local, and private agencies. The director in implementing the system shall consult, cooperate, and coordinate with local law enforcement agencies.

(6) REGIONAL SYSTEMS.—This section does not prohibit or discourage the formation of multijurisdictional or regional systems; and any system established pursuant to this section may include the jurisdiction, or any portion thereof, of more than one public agency. It is the intent of the Legislature that emergency communications services ~~E911 service~~ be available throughout the state. Expenditure by counties of the ~~E911~~ fee authorized and imposed under s. 365.172 should support this intent to the greatest extent feasible within the context of local service needs and fiscal capability. This section does not prohibit two or more counties from establishing a combined emergency ~~E911~~ communications service by an interlocal agreement and using the fees authorized and imposed by s. 365.172 for such combined ~~E911~~ service.

(7) TELECOMMUNICATIONS INDUSTRY COORDINATION.—The office shall coordinate with the Florida Public Service Commission



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which shall encourage the Florida telecommunications industry to activate facility modification plans for timely emergency communications services ~~E911~~ implementation.

(8) COIN TELEPHONES.—The Florida Public Service Commission shall establish rules to be followed by the telecommunications companies in this state designed toward encouraging the provision of coin-free dialing of "911" calls wherever economically practicable and in the public interest.

(9) SYSTEM APPROVAL.—No emergency communications number E911 system shall be established and no present system shall be expanded without prior approval of the office.

(10) COMPLIANCE.—All public agencies shall assist the office in their efforts to carry out the intent of this section, and such agencies shall comply with the developed plan.

(11) FEDERAL ASSISTANCE.—The secretary of the department or his or her designee may apply for and accept federal funding assistance in the development and implementation of a statewide emergency communications ~~number E911~~ system.

(12) CONFIDENTIALITY OF RECORDS.—

(a) Any record, recording, or information, or portions thereof, obtained by a public agency or a public safety agency for the purpose of providing services in an emergency and which reveals the name, address, telephone number, or personal information about, or information which may identify any person requesting emergency service or reporting an emergency by accessing an emergency communications ~~E911~~ system is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that such record or information may be disclosed to a public safety



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agency. The exemption applies only to the name, address, telephone number or personal information about, or information which may identify any person requesting emergency services or reporting an emergency while such information is in the custody of the public agency or public safety agency providing emergency services. A telecommunications company or commercial mobile radio service provider is ~~shall~~ not ~~be~~ liable for damages to any person resulting from or in connection with such telephone company's or commercial mobile radio service provider's provision of any lawful assistance to any investigative or law enforcement officer of the State of Florida or political subdivisions thereof, of the United States, or of any other state or political subdivision thereof, in connection with any lawful investigation or other law enforcement activity by such law enforcement officer unless the telecommunications company or commercial mobile radio service provider acted in a wanton and willful manner.

(b) Notwithstanding paragraph (a), a 911 public safety telecommunicator, as defined in s. 401.465, may contact any private person or entity that owns an automated external defibrillator who has notified the local emergency medical services medical director or public safety answering point of such ownership if a confirmed coronary emergency call is taking place and the location of the coronary emergency is within a reasonable distance from the location of the defibrillator, and may provide the location of the coronary emergency to that person or entity.

Section 6. Paragraph (b) of subsection (2) of section 365.174, Florida Statutes, is amended to read:



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365.174 Proprietary confidential business information.—
(2)

(b) The Department of Revenue may provide information relative to s. 365.172(9) to the Secretary of Management Services, or his or her authorized agent, or to the Emergency Communications E911 Board established in s. 365.172(5) for use in the conduct of the official business of the Department of Management Services or the Emergency Communications E911 Board.

Section 7. This act shall take effect July 1, 2023.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to emergency communications; amending s. 365.172, F.S.; revising the short title; revising legislative intent; revising and providing definitions; renaming the E911 Board as the Emergency Communications Board; providing the purpose of the board; revising the composition of the board; establishing board responsibilities; requiring the board to administer fees; authorizing the board to create subcommittees; authorizing the board to establish schedules for implementing certain wireless NG911 systems and improvements; establishing notice and publication requirements before distribution of grant funds; providing for priority of county applications for funds; requiring board oversight of



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1722 such funds; eliminating certain authority of the
1723 board; providing for the board's authority to
1724 implement changes to the allocation percentages and
1725 adjust fees; revising the frequency of board meetings;
1726 specifying that the Division of Telecommunications
1727 within the Department of Management Services must
1728 disburse funds to counties and provide a monthly
1729 report of such disbursements; revising the composition
1730 of a committee that reviews requests for proposals
1731 from the board regarding independent accounting firm
1732 selections; revising provisions relating to the public
1733 safety emergency communications systems fee; requiring
1734 uniform application and imposition of the fee;
1735 revising the factors that the board considers when
1736 setting percentages or contemplating adjustments to
1737 the fee; updating provisions relating to the prepaid
1738 wireless public safety emergency communications
1739 systems fee; revising emergency communications and 911
1740 service functions; revising the types of emergency
1741 communications equipment and services that are
1742 eligible for expenditure of moneys derived from the
1743 fee; making technical changes; conforming cross-
1744 references; amending s. 365.173, F.S.; renaming the
1745 Communications Number E911 System Fund as the
1746 Emergency Communications Trust Fund; revising the
1747 percent distribution of the fund to be used
1748 exclusively for payment of certain authorized
1749 expenditures; authorizing the board, pursuant to rule,
1750 to withhold certain distributions of grant funds and



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1751 request a return of all or a portion of such funds
1752 based on a financial audit; removing the percent
1753 distribution to wireless providers; adding a specified
1754 percent distribution to rural counties; amending s.
1755 365.177, F.S.; extending the date by which the
1756 Division of Telecommunications within the Department
1757 of Management Services must develop a plan to upgrade
1758 911 public safety answering points; specifying
1759 components of the required plan; amending ss.
1760 212.05965, 365.171, and 365.174, F.S.; conforming
1761 provisions to changes made by the act; providing an
1762 effective date.

By the Committee on Regulated Industries; and Senator Bradley

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1 A bill to be entitled
 2 An act relating to emergency communications; amending
 3 s. 365.172, F.S.; revising a short title; revising
 4 legislative intent; revising and defining terms;
 5 renaming the E911 Board as the Emergency
 6 Communications Board; providing the purpose of the
 7 board; revising the composition of the board;
 8 establishing board responsibilities; requiring the
 9 board to administer fees; authorizing the board to
 10 create subcommittees; authorizing the board to
 11 establish schedules for implementing certain wireless
 12 systems and improvements; establishing notice and
 13 publication requirements before distribution of
 14 revenues; providing for priority of county
 15 applications for funds; requiring board oversight of
 16 such funds; eliminating certain authority of the
 17 board; providing for the board's authority to
 18 implement changes to the allocation percentages or to
 19 adjust the fee; revising the frequency of board
 20 meetings and the business to be conducted at such
 21 meetings; revising the composition of a committee that
 22 reviews requests for proposals from the board
 23 regarding independent accounting firm selection;
 24 revising provisions relating to the public safety
 25 emergency communications systems fee; requiring
 26 uniform application and imposition of the fee;
 27 revising the factors that the board considers when
 28 setting percentages or contemplating adjustments to
 29 the fee; updating provisions relating to the prepaid

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

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30 wireless public safety emergency communications
 31 systems fee; revising emergency communications and 911
 32 service functions; revising the types of emergency
 33 communications equipment and services that are
 34 eligible for expenditure of moneys derived from the
 35 fee; amending s. 365.173, F.S.; renaming the
 36 Communications Number E911 System Fund as the
 37 Emergency Communications Fund; revising the percent
 38 distribution of the fund; deleting the percent
 39 distribution of wireless providers; adding a specified
 40 percent distribution to rural counties; amending s.
 41 365.177, F.S.; extending the date by which the
 42 Division of Telecommunications within the Department
 43 of Management Services is required to develop a plan
 44 to upgrade 911 public safety answering points;
 45 amending ss. 212.05965, 365.171, and 365.174, F.S.;
 46 conforming provisions to changes made by the act;
 47 providing an effective date.

48
 49 Be It Enacted by the Legislature of the State of Florida:

50
 51 Section 1. Section 365.172, Florida Statutes, is amended to
 52 read:

53 365.172 Emergency communications. ~~number "E911."~~

54 (1) SHORT TITLE.—This section may be cited as the

55 "Emergency Communications ~~Number E911~~ Act."

56 (2) LEGISLATIVE INTENT.—It is the intent of the Legislature

57 to:

58 (a) Establish and implement a comprehensive statewide

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emergency communications and response capability using modern technologies and methods. telecommunications number system that will provide users of voice communications services within the state rapid direct access to public safety agencies by accessing the telephone number "911."

(b) Provide funds to counties and state agencies that operate 911 centers to pay certain costs associated with their public safety emergency response capabilities and costs incurred to purchase, upgrade, and maintain 911 systems, computer-aided dispatch, and systems to create interoperable radio communications systems ~~E911 or 911 systems, to contract for E911 services, and to reimburse wireless telephone service providers for costs incurred to provide 911 or E911 services.~~

(c) Levy a reasonable fee on users of voice communications services, unless otherwise provided in this section, to accomplish these purposes.

(d) Provide for an Emergency Communications Board ~~E911 board~~ to administer the fee, with oversight by the office, in a manner that is competitively and technologically neutral as to all ~~voice~~ communications services providers.

(e) Ensure that the fee established for emergency communications systems is used exclusively ~~for recovery by wireless providers and~~ by counties and state agencies that operate 911 centers for costs associated with developing and maintaining emergency communications ~~E911~~ systems and networks in a manner that is competitively and technologically neutral as to all ~~voice~~ communications services providers.

It is further the intent of the Legislature that the fee

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authorized or imposed by this section not necessarily provide the total funding required for establishing or providing emergency communications systems and services ~~E911 service.~~

(3) DEFINITIONS.—Only as used in this section and ss. 365.171, 365.173, 365.174, and 365.177, the term:

(a) "Authorized expenditures" means expenditures of the fee, as specified in subsection (10).

(b) "Automatic location identification" means the capability of the E911 service which enables the automatic display of information that defines the approximate geographic location of the wireless telephone, or the location of the address of the wireline telephone, used to place a 911 call.

(c) "Automatic number identification" means the capability of the E911 service which enables the automatic display of the service number used to place a 911 call.

(d) "Board" or "Emergency Communications Board" ~~"E911 Board"~~ means the board ~~of directors of the E911 Board~~ established in subsection (5).

(e) "Building permit review" means a review for compliance with building construction standards adopted by the local government under chapter 553 and does not include a review for compliance with land development regulations.

(f) "Colocation" ~~"Collocation"~~ means the situation when a second or subsequent wireless provider uses an existing structure to locate a second or subsequent antennae. The term includes the ground, platform, or roof installation of equipment enclosures, cabinets, or buildings, and cables, brackets, and other equipment associated with the location and operation of the antennae.

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(g) "Computer-aided dispatch" or "CAD" means a computerized system for entering, tracking, dispatching, and resolving requests for public safety services.

(h) ~~(g)~~ "Designed service" means the configuration and manner of deployment of service the wireless provider has designed for an area as part of its network.

(i) ~~(h)~~ "Enhanced 911" or "E911" means an enhanced 911 system or enhanced 911 service that is an emergency telephone system or service that provides a subscriber with 911 service and, in addition, directs 911 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated, or as otherwise provided in the state plan under s. 365.171, and that provides for automatic number identification and automatic location-identification features. A 911 E911 service provided by a wireless provider means E911 as defined in the order.

(j) ~~(i)~~ "Existing structure" means a structure that exists at the time an application for permission to place antennae on a structure is filed with a local government. The term includes any structure that can structurally support the attachment of antennae in compliance with applicable codes.

(k) ~~(j)~~ "Fee" or "public safety emergency communications systems fee" means the ~~E911~~ fee authorized and imposed under subsections (8) and (9).

(l) ~~(k)~~ "Fund" means the Emergency Communications ~~Number E911-System~~ Fund established in s. 365.173 and maintained under this section for the purpose of recovering the costs associated with providing emergency communications 911 service or E911 service, including the costs of implementing the order. The fund

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shall be segregated into wireless, prepaid wireless, and nonwireless categories.

(m) ~~(l)~~ "Historic building, structure, site, object, or district" means any building, structure, site, object, or district that has been officially designated as a historic building, historic structure, historic site, historic object, or historic district through a federal, state, or local designation program.

(n) ~~(m)~~ "Land development regulations" means any ordinance enacted by a local government for the regulation of any aspect of development, including an ordinance governing zoning, subdivisions, landscaping, tree protection, or signs, the local government's comprehensive plan, or any other ordinance concerning any aspect of the development of land. The term does not include any building construction standard adopted under and in compliance with chapter 553.

(o) ~~(n)~~ "Local exchange carrier" means a "competitive local exchange telecommunications company" or a "local exchange telecommunications company" as defined in s. 364.02.

(p) ~~(o)~~ "Local government" means any municipality, county, or political subdivision or agency of a municipality, county, or political subdivision.

(q) ~~(p)~~ "Medium county" means any county that has a population of 75,000 or more but less than 750,000.

(r) ~~(q)~~ "Mobile telephone number" or "MTN" means the telephone number assigned to a wireless telephone at the time of initial activation.

(s) "Next Generation 911" or "NG911" means an Internet protocol (IP)-based system comprised of managed emergency

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175 services IP networks (ESInets), functional elements such as
 176 applications, and databases that replicate traditional E911
 177 features and functions and provides additional capabilities. The
 178 NG911 system is designed to provide access to emergency services
 179 from all connected communications sources and provide multimedia
 180 data capabilities for public safety answering points (PSAPs) and
 181 other emergency service organizations.

182 (t)-(*) "Nonwireless category" means the revenues to the
 183 fund received from voice communications services providers other
 184 than wireless providers.

185 (u)-(*) "Office" means the Division of Telecommunications
 186 within the Department of Management Services, as designated by
 187 the secretary of the department.

188 (v)-(t) "Order" means:

189 1. The following orders and rules of the Federal
 190 Communications Commission issued in FCC Docket No. 94-102:

191 a. Order adopted on June 12, 1996, with an effective date
 192 of October 1, 1996, the amendments to s. 20.03 and the creation
 193 of s. 20.18 of Title 47 of the Code of Federal Regulations
 194 adopted by the Federal Communications Commission pursuant to
 195 such order.

196 b. Memorandum and Order No. FCC 97-402 adopted on December
 197 23, 1997.

198 c. Order No. FCC DA 98-2323 adopted on November 13, 1998.

199 d. Order No. FCC 98-345 adopted December 31, 1998.

200 2. Orders and rules subsequently adopted by the Federal
 201 Communications Commission relating to the provision of 911
 202 services, including Order Number FCC-05-116, adopted May 19,
 203 2005.

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204 (w)-(*) "Prepaid wireless category" means all revenues in
 205 the fund received through the Department of Revenue from the fee
 206 authorized and imposed under subsection (9).

207 (x)-(*) "Prepaid wireless service" means a right to access
 208 wireless service that allows a caller to contact and interact
 209 with 911 to access the 911 system, which service must be paid
 210 for in advance and is sold in predetermined units or dollars,
 211 which units or dollars expire on a predetermined schedule or are
 212 decremented on a predetermined basis in exchange for the right
 213 to access wireless service.

214 (y)-(*) "Public agency" means the state and any
 215 municipality, county, municipal corporation, or other
 216 governmental entity, public district, or public authority
 217 located in whole or in part within this state which provides, or
 218 has authority to provide, firefighting, law enforcement,
 219 ambulance, medical, or other emergency services.

220 (z)-(*) "Public safety agency" means a functional division
 221 of a public agency which provides firefighting, law enforcement,
 222 medical, or other emergency services.

223 (aa)-(*) "Public safety answering point," "PSAP," or
 224 "answering point" means the public safety agency that receives
 225 incoming 911 requests for assistance and dispatches appropriate
 226 public safety agencies to respond to the requests in accordance
 227 with the state E911 plan.

228 (bb)-(*) "Rural county" means any county that has a
 229 population of fewer than 75,000.

230 (cc)-(aa) "Service identifier" means the service number,
 231 access line, or other unique identifier assigned to a subscriber
 232 and established by the Federal Communications Commission for

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purposes of routing calls whereby the subscriber has access to the E911 system.

~~(dd)-(bb)~~ "Tower" means any structure designed primarily to support a wireless provider's antennae.

~~(ee)-(cc)~~ "Voice communications services" means two-way voice service, through the use of any technology, which actually provides access to 911 ~~E911~~ services, and includes communications services, as defined in s. 202.11, which actually provide access to 911 ~~E911~~ services and which are required to be included in the provision of 911 ~~E911~~ services pursuant to orders and rules adopted by the Federal Communications Commission. The term includes voice-over-Internet-protocol service. For the purposes of this section, the term "voice-over-Internet-protocol service" or "VoIP service" means interconnected VoIP services having the following characteristics:

1. The service enables real-time, two-way voice communications;

2. The service requires a broadband connection from the user's locations;

3. The service requires IP-compatible customer premises equipment; and

4. The service offering allows users generally to receive calls that originate on the public switched telephone network and to terminate calls on the public switched telephone network.

~~(ff)-(dd)~~ "Voice communications services provider" or "provider" means any person or entity providing voice communications services, except that the term does not include any person or entity that resells voice communications services

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and was assessed the fee authorized and imposed under subsection (8) by its resale supplier.

~~(gg)-(ee)~~ "Wireless 911 system" or "wireless 911 service" means an emergency telephone system or service that provides a subscriber with the ability to reach an answering point by accessing the digits 911.

~~(hh)-(ff)~~ "Wireless category" means the revenues to the fund received from a wireless provider from the fee authorized and imposed under subsection (8).

~~(ii)-(gg)~~ "Wireless communications facility" means any equipment or facility used to provide service and may include, but is not limited to, antennae, towers, equipment enclosures, cabling, antenna brackets, and other such equipment. Placing a wireless communications facility on an existing structure does not cause the existing structure to become a wireless communications facility.

~~(jj)-(hh)~~ "Wireless provider" means a person who provides wireless service and:

1. Is subject to the requirements of the order; or

2. Elects to provide wireless 911 service, ~~or~~ E911 service, or NG911 service in this state.

~~(kk)-(ii)~~ "Wireless service" means "commercial mobile radio service" as provided under ss. 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. ss. 151 et seq., and the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, August 10, 1993, 107 Stat. 312. The term includes service provided by any wireless real-time two-way wire communication device, including radio-telephone communications used in cellular telephone service; personal communications service; or

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the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network radio access line. The term does not include wireless providers that offer mainly dispatch service in a more localized, noncellular configuration; providers offering only data, one-way, or stored-voice services on an interconnected basis; providers of air-to-ground services; or public coast stations.

(4) POWERS AND DUTIES OF THE OFFICE.—The office shall oversee the administration of the fee authorized and imposed under subsections (8) and (9).

(5) THE EMERGENCY COMMUNICATIONS ~~E911~~ BOARD.—

(a) The Emergency Communications ~~E911~~ Board is established ~~to administer~~, with oversight by the office, to:

1. Administer governance for how emergency infrastructure and information, such as voice, text, data, and images, are handled from receipt at a PSAP and routing to first responders;

2. Establish a financial model for the state and local governments to use existing revenue sources to invest in public safety communication and technology for first responders; and

3. Administer a financially sustainable model dedicated to public safety communications and technology which will benefit the state and local governments and all state residents and visitors.

(b) Public safety funding under paragraph (a) must focus on, but not be limited to:

1. Next Generation 911.

2. Emergency services IP network (ESInet).

3. Computer-aided dispatch (CAD).

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4. Interfaces, including:

a. Land mobile radio (LMR);

b. Smart city technology data; and

c. In-building coverage.

5. Public safety broadband networks.

6. Cybersecurity.

~~, with oversight by the office, the fee imposed under subsections (8) and (9), including receiving revenues derived from the fee; distributing portions of the revenues to wireless providers, counties, and the office; accounting for receipts, distributions, and income derived by the funds maintained in the fund; and providing annual reports to the Governor and the Legislature for submission by the office on amounts collected and expended, the purposes for which expenditures have been made, and the status of E911 service in this state. In order to advise and assist the office in implementing the purposes of this section, the board, which has the power of a body corporate, has the powers enumerated in subsection (6).~~

(c) ~~(b)~~ The board shall consist of nine ~~11~~ members, one of whom must be the system director designated under s. 365.171(5), or his or her designee, who shall serve as the chair of the board. The remaining eight ~~10~~ members of the board shall be appointed by the Governor. All members shall be Florida residents. Consideration shall be given to members from rural, medium, and large counties and from a broad range of fields, including, but not limited to, members who have experience in law enforcement, fire response, emergency medical services, 911 coordination, public safety dispatch, and telecommunications and must be composed of 5 county 911 coordinators, consisting of a

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~~representative from a rural county, a representative from a medium county, a representative from a large county, and 2 at-large representatives recommended by the Florida Association of Counties in consultation with the county 911 coordinators; 3 local exchange carrier member representatives, one of whom must be a representative of the local exchange carrier having the greatest number of access lines in the state and one of whom must be a representative of a certificated competitive local exchange telecommunications company; and 2 member representatives from the wireless telecommunications industry, with consideration given to wireless providers that are not affiliated with local exchange carriers. Not more than one member may be appointed to represent any single provider on the board.~~

~~(d)~~ (e) The system director, designated under s. 365.171(5), or his or her designee, must be a permanent member of the board. Each of the remaining eight ~~10~~ members of the board shall be appointed to a 4-year term and may not be appointed to more than two successive terms. However, for the purpose of staggering terms, three ~~two~~ of the original board members shall be appointed to terms of 4 years, three ~~two~~ shall be appointed to terms of 3 years, and two ~~four~~ shall be appointed to terms of 2 years, as designated by the Governor. A vacancy on the board shall be filled in the same manner as the original appointment.

(e) The board shall be responsible for ensuring interoperability of and connectivity between public safety communication systems within this state, including, but not limited to, the following:

1. Call routing accuracy and timeliness of response.

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2. Improved interagency communication and situational awareness.

3. Improved interagency system connectivity.

4. Improved response times.

5. Maximized use of emerging technologies.

6. Improved lifecycle management of the systems, equipment, and services that enable responders and public safety officials to share information securely.

7. Developed governance, policy, and procedure across public safety agencies.

8. Established resilient and secure emergency communications systems to reduce cybersecurity threats and vulnerabilities.

(f) The board shall administer the fee imposed under subsections (8) and (9), including receiving revenues derived from the fee; distributing portions of the revenues to counties, state agencies that operate 911 centers, and the office; accounting for receipts, distributions, and income derived by the funds maintained in the fund; and providing annual reports for review and submission to the Governor and the Legislature on amounts collected and expended, the purposes for which expenditures have been made, and the status of emergency communications services in this state.

(g) The board may create subcommittees to advise the board, as needed.

(6) AUTHORITY OF THE BOARD; ANNUAL REPORT.—

(a) The board shall:

1. Administer the public safety emergency communications systems ~~E911~~ fee.

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2. Implement, maintain, and oversee the fund.

3. Review and oversee the disbursement of the revenues deposited into the fund as provided in s. 365.173.

a. The board may establish a schedule for implementing wireless NG911 systems, public safety radio communications systems, and other public safety communications improvements ~~E911 service by service area~~, and prioritize disbursements of revenues from the fund to ~~providers and~~ rural counties as provided in s. 365.173(2)(f) ~~s. 365.173(2)(e) and (g)~~ pursuant to the schedule, in order to implement 911 ~~E911~~ services in the most efficient and cost-effective manner.

b. The board shall provide 90 days' written notice to all counties and state agencies that operate 911 centers and publish electronically an approved application process. Applications shall be prioritized based on the availability of funds, current system life expectancy, and system replacement needs. The board shall take all actions within its authority to ensure that county recipients of such funds use these funds only for the purpose under which they have been provided and may take any actions within its authority to secure county repayment of revenues upon a determination that the funds were not used for the purpose for which the funds were dispersed.

~~b. Revenues in the fund which have not been disbursed because sworn invoices as required by s. 365.173(2)(e) have not been submitted to the board may be used by the board as needed to provide grants to counties for the purpose of upgrading E911 systems. The counties must use the funds only for capital expenditures or remotely provided hosted 911 answering point call-taking equipment and network services directly attributable~~

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~~to establishing and provisioning E911 services, which may include next-generation deployment. Prior to the distribution of grants, the board shall provide 90 days' written notice to all counties and publish electronically an approved application process. County grant applications shall be prioritized based on the availability of funds, current system life expectancy, system replacement needs, and Phase II compliance per the Federal Communications Commission. No grants will be available to any county for next-generation deployment until all counties are Phase II complete. The board shall take all actions within its authority to ensure that county recipients of such grants use these funds only for the purpose under which they have been provided and may take any actions within its authority to secure county repayment of grant revenues upon determination that the funds were not used for the purpose under which they were provided.~~

~~c. When determining the funding provided in a state 911 grant application request, the board shall take into account information on the amount of carryforward funds retained by the counties. The information will be based on the amount of county carryforward funds reported in the financial audit required in s. 365.173(2)(d). E911 State Grant Program funding requests will be limited by any county carryforward funds in excess of the allowable 30 percent amount of fee revenue calculated on a 2-year basis.~~

~~d. The board shall reimburse all costs of a wireless provider in accordance with s. 365.173(2)(e) before taking any action to transfer additional funds.~~

~~e. After taking the action required in sub-subparagraphs~~

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~~a.-d., the board may review and, with all members participating in the vote, adjust the percentage allocations or adjust the amount of the fee as provided under paragraph (8) (g), and, if the board determines that the revenues in the wireless category exceed the amount needed to reimburse wireless providers for the cost to implement E911 services, the board may transfer revenue to the counties from the existing funds within the wireless category. The board shall disburse the funds equitably to all counties using a timeframe and distribution methodology established by the board.~~

4. Review documentation submitted by wireless providers which reflects current and projected funds derived from the fee, and the expenses incurred and expected to be incurred in order to comply with the E911 service requirements contained in the order for the purposes of:

~~a. Ensuring that wireless providers receive fair and equitable distributions of funds from the fund.~~

~~b. Ensuring that wireless providers are not provided disbursements from the fund which exceed the costs of providing E911 service, including the costs of complying with the order.~~

~~c. Ascertaining the projected costs of compliance with the requirements of the order and projected collections of the fee.~~

~~d. Implementing changes to the allocation percentages or adjusting the fee under paragraph (8) (h).~~

5. Implement changes to the allocation percentages or adjust the fee pursuant to s. 365.173.

6.5- Meet quarterly ~~monthly~~ in the most efficient and cost-effective manner, including telephonically when practical, for the business to be conducted, to review and authorize the

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schedule of fee allocation transfer and distribution to the counties and state agencies that operate 911 centers ~~approve or reject, in whole or in part, applications submitted by wireless providers for recovery of moneys deposited into the wireless category, and to authorize the transfer of, and distribute, the fee allocation to the counties.~~

7.6- Hire and retain employees, which may include an independent executive director who shall possess experience in the area of telecommunications and emergency 911 issues, for the purposes of performing the technical and administrative functions for the board.

8.7- Make and enter into contracts, pursuant to chapter 287, and execute other instruments necessary or convenient for the exercise of the powers and functions of the board.

9.8- Sue and be sued, and appear and defend in all actions and proceedings, in its corporate name to the same extent as a natural person.

10.9- Adopt, use, and alter a common corporate seal.

11.10- Elect or appoint the officers and agents that are required by the affairs of the board.

12.11- The board may adopt rules under ss. 120.536(1) and 120.54 to implement this section and ss. 365.173 and 365.174.

13.12- Provide coordination, support, and technical assistance to counties to promote the deployment of advanced public safety emergency communications 911 and E911 systems in the state.

14.13- Provide coordination and support for educational opportunities related to 911 E911 issues for the public safety emergency communications E911 community in this state.

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~~15.14.~~ Act as an advocate for issues related to public safety emergency communications ~~E911~~ system functions, features, and operations to improve the delivery of public safety emergency communications ~~E911~~ services to the residents of and visitors to this state.

~~16.15.~~ Coordinate input from this state at national forums and associations, to ensure that policies related to public safety emergency communications ~~E911~~ systems and services are consistent with the policies of the public safety emergency communications ~~E911~~ community in this state.

~~17.16.~~ Work cooperatively with the system director established in s. 365.171(5) to enhance the state of public safety emergency communications ~~E911~~ services in this state and to provide unified leadership for all public safety emergency communications ~~E911~~ issues through planning and coordination.

~~18.17.~~ Do all acts and things necessary or convenient to carry out the powers granted in this section in a manner that is competitively and technologically neutral as to all voice communications services providers, including, but not limited to, consideration of emerging technology and related cost savings, while taking into account embedded costs in current systems.

~~19.18.~~ Have the authority to secure the services of an independent, private attorney via invitation to bid, request for proposals, invitation to negotiate, or professional contracts for legal services already established at the Division of Purchasing of the Department of Management Services.

(b) Board members shall serve without compensation; however, members are entitled to per diem and travel expenses as

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provided in s. 112.061.

(c) By February 28 of each year, the board shall prepare a report for submission by the office to the Governor, the President of the Senate, and the Speaker of the House of Representatives which addresses for the immediately preceding state fiscal year and county fiscal year:

1. The annual receipts, including the total amount of fee revenues collected by each provider, the total disbursements of money in the fund, ~~including the amount of fund-reimbursed expenses incurred by each wireless provider to comply with the order,~~ and the amount of moneys on deposit in the fund.

2. Whether the amount of the fee and the allocation percentages set forth in s. 365.173 have been or should be adjusted to comply with the ~~requirements of the order or other~~ provisions of this chapter, and the reasons for making or not making a recommended adjustment to the fee.

3. Any other issues related to providing emergency communications ~~E911~~ services.

4. The status of public safety emergency communications ~~E911~~ services in this state.

(7) REQUEST FOR PROPOSALS FOR INDEPENDENT ACCOUNTING FIRM.—

(a) The board shall issue a request for proposals as provided in chapter 287 for the purpose of retaining an independent accounting firm. The independent accounting firm shall perform all material administrative and accounting tasks and functions required for administering the fee. The request for proposals must include, but need not be limited to:

1. A description of the scope and general requirements of the services requested.

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2. A description of the specific accounting and reporting services required for administering the fund, including processing checks and distributing funds as directed by the board under s. 365.173.

3. A description of information to be provided by the proposer, including the proposer's background and qualifications and the proposed cost of the services to be provided.

(b) The board shall establish a committee to review requests for proposals which must include the statewide emergency communications systems ~~E911 system~~ director designated under s. 365.171(5), or his or her designee, and two members of the board, ~~one of whom is a county 911 coordinator and one of whom represents a voice communications services provider~~. The review committee shall review the proposals received by the board and recommend an independent accounting firm to the board for final selection. By agreeing to serve on the review committee, each member of the review committee shall verify that he or she does not have any interest or employment, directly or indirectly, with potential proposers which conflicts in any manner or degree with his or her performance on the committee.

(c) The board may secure the services of an independent accounting firm via invitation to bid, request for proposals, invitation to negotiate, or professional contracts already established at the Division of Purchasing, Department of Management Services, for certified public accounting firms, or the board may hire and retain professional accounting staff to accomplish these functions.

(8) PUBLIC SAFETY EMERGENCY COMMUNICATIONS SYSTEMS ~~E911~~ FEE.—

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(a) Each voice communications services provider shall collect the fee described in this subsection, except that the fee for prepaid wireless service shall be collected in the manner set forth in subsection (9). Each provider, as part of its monthly billing process, shall bill the fee as follows. The fee shall not be assessed on any pay telephone in the state.

1. Each voice communications service provider other than a wireless provider shall bill the fee to a subscriber based on the number of access lines having access to the 911 ~~E911~~ system, on a service-identifier basis, up to a maximum of 25 access lines per account bill rendered.

2. Each voice communications service provider other than a wireless provider shall bill the fee to a subscriber on a basis of five service-identified access lines for each digital transmission link, including primary rate interface service or equivalent Digital-Signal-1-level service, which can be channelized and split into 23 or 24 voice-grade or data-grade channels for communications, up to a maximum of 25 access lines per account bill rendered.

3. Except in the case of prepaid wireless service, each wireless provider shall bill the fee to a subscriber on a per-service-identifier basis for service identifiers whose primary place of use is within this state. The fee may ~~shall~~ not be assessed on or collected from a provider with respect to an end user's service if that end user's service is a prepaid wireless service sold before January 1, 2015.

4. Except in the case of prepaid wireless service, each voice communications services provider not addressed under subparagraphs 1., 2., and 3. shall bill the fee on a per-

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service-identifier basis for service identifiers whose primary place of use is within the state up to a maximum of 25 service identifiers for each account bill rendered.

The provider may list the fee as a separate entry on each bill, in which case the fee must be identified as a fee for 911 ~~E911~~ services. A provider shall remit the fee to the board only if the fee is paid by the subscriber. If a provider receives a partial payment for a monthly bill from a subscriber, the amount received shall first be applied to the payment due the provider for providing voice communications service.

(b) A provider is not obligated to take any legal action to enforce collection of the fees for which any subscriber is billed. A county subscribing to 911 service remains liable to the provider delivering the 911 service or equipment for any 911 service, equipment, operation, or maintenance charge owed by the county to the provider.

(c) For purposes of this subsection, the state and local governments are not subscribers.

(d) Each provider may retain 1 percent of the amount of the fees collected as reimbursement for the administrative costs incurred by the provider to bill, collect, and remit the fee. The remainder shall be delivered to the board and deposited by the board into the fund. The board shall distribute the remainder pursuant to s. 365.173.

(e) Voice communications services providers billing the fee to subscribers shall deliver revenues from the fee to the board within 60 days after the end of the month in which the fee was billed, together with a monthly report of the number of service

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identifiers in each county. Each wireless provider and other applicable provider identified in subparagraph (a)4. shall report the number of service identifiers for subscribers whose place of primary use is in each county. All provider subscriber information provided to the board is subject to s. 365.174. If a provider chooses to remit any fee amounts to the board before they are paid by the subscribers, a provider may apply to the board for a refund of, or may take a credit for, any such fees remitted to the board which are not collected by the provider within 6 months following the month in which the fees are charged off for federal income tax purposes as bad debt.

(f) The rate of the fee may not exceed 50 cents per month for each service identifier. Effective January 1, 2015, the fee shall be 40 cents per month for each service identifier. The fee shall apply uniformly and be imposed throughout the state, ~~except for those counties that, before July 1, 2007, had adopted an ordinance or resolution establishing a fee less than 50 cents per month per access line. In those counties the fee established by ordinance may be changed only to the uniform statewide rate no sooner than 30 days after notification is made by the county's board of county commissioners to the board.~~

(g) The board may adjust the allocation percentages for distribution of the fund as provided in s. 365.173. ~~No sooner than June 1, 2015, the board may adjust the rate of the fee under paragraph (f) based on the criteria in this paragraph and paragraph (h).~~ Any adjustment in the rate must be approved by a two-thirds vote of the total number of ~~E911~~ board members. When setting the percentages or contemplating any adjustments to the fee, the board shall consider the following:

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1. ~~The revenues currently allocated for wireless service provider costs for implementing E911 service and projected costs for implementing E911 service, including recurring costs for Phase I and Phase II and the effect of new technologies.~~

2. The appropriate level of funding needed to fund the rural grant program provided for in s. 365.173(2)(f) ~~or 365.173(2)(g)~~; and

~~2.3.~~ The need to fund statewide, regional, and county grants in accordance with sub-subparagraph (6)(a)3.b. and s. 365.173(2)(g) ~~s. 365.173(2)(h)~~.

(h) The board may adjust the allocation percentages or adjust the amount of the fee as provided in paragraph (g) if necessary to ensure full cost recovery or prevent over recovery ~~overrecovery~~ of costs incurred in the provision of 911 E911 service, including costs incurred or projected to be incurred ~~to~~ comply with the order. Any new allocation percentages or reduced or increased fee may not be adjusted for 1 year. In no event shall the fee exceed 50 cents per month for each service identifier. The fee, and any board adjustment of the fee, shall be uniform throughout the state, ~~except for the counties identified in paragraph (f)~~. No less than 90 days before the effective date of any adjustment to the fee, the board shall provide written notice of the adjusted fee amount and effective date to each voice communications services provider from which the board is then receiving the fee.

(i) It is the intent of the Legislature that all revenue from the fee be used as specified in s. 365.173(2)(a)-(h) ~~or 365.173(2)(a)-(i)~~.

(j) State and local taxes do not apply to the fee. The

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amount of the ~~E911~~ fee collected by a provider may not be included in the base for imposition of any tax, fee, surcharge, or other charge imposed by this state, any political subdivision of this state, or any intergovernmental agency.

(k) A local government may not levy the fee or any additional fee on providers or subscribers for the provision of 911 E911 service.

(l) For purposes of this section, the definitions contained in s. 202.11 and the provisions of s. 202.155 apply in the same manner and to the same extent as the definitions and provisions apply to the taxes levied under chapter 202 on mobile communications services.

(9) PREPAID WIRELESS PUBLIC SAFETY EMERGENCY COMMUNICATIONS SYSTEMS E911 FEE.—

(a) ~~Effective January 1, 2015, a prepaid wireless E911 fee is imposed per retail transaction at the rate established in paragraph (8)(f). In order to allow sellers of all sizes and technological capabilities adequate time to comply with this subsection, a seller of prepaid wireless service operating in this state before the prepaid wireless E911 fee is imposed shall retain 100 percent of the fee collected under this paragraph for the first 2 months to offset the cost of setup.~~

~~(b)~~ Effective July 1, 2023 ~~March 1, 2015~~, the prepaid wireless ~~E911~~ fee ~~imposed under paragraph (a)~~ shall be subject to remittance in accordance with paragraph (f) ~~(g)~~. In no event shall the fee exceed 50 cents for each retail transaction. At least 90 days before the effective date of any adjustment to the fee under paragraph (8)(g), the Department of Revenue shall provide written notice of the adjusted fee amount and its

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effective date to each seller from which the department is then receiving the fee. At least 120 days before the effective date of any adjustment to the fee imposed under this subsection, the board shall provide notice to the Department of Revenue of the adjusted fee amount and effective date of the adjustment.

(b) ~~(e)~~ The prepaid wireless ~~E911~~ fee shall be collected by the seller from the consumer with respect to each retail transaction occurring in this state. The amount of the prepaid wireless ~~E911~~ fee shall be separately stated on an invoice, receipt, or other similar document that is provided to the consumer by the seller or otherwise disclosed to the consumer.

(c) ~~(d)~~ For purposes of paragraph (b) ~~(e)~~, a retail transaction that takes place in person by a consumer at a business location of the seller shall be treated as occurring in this state if that business location is in this state. Such transaction is deemed to have occurred in the county of the business location. When a retail transaction does not take place at the seller's business location, the transaction shall be treated as taking place at the consumer's shipping address or, if no item is shipped, at the consumer's address or the location associated with the consumer's mobile telephone number. Such transaction is deemed to have occurred in the county of the consumer's shipping address when items are shipped to the consumer or, when no items are shipped, the county of the consumer's address or the location associated with the consumer's mobile telephone number. A transaction for which the specific Florida county cannot be determined shall be treated as nonspecific.

(d) ~~(e)~~ If a prepaid wireless device is sold for a single,

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nonitemized price with a prepaid wireless service of 10 minutes or less or \$5 or less, the seller may elect not to apply the prepaid wireless ~~E911~~ fee to the transaction.

(e) ~~(f)~~ The amount of the prepaid wireless ~~E911~~ fee that is collected by a seller from a consumer and that is separately stated on an invoice, receipt, or similar document provided to the consumer by the seller, may not be included in the base for imposition of any tax, fee, surcharge, or other charge that is imposed by this state, any political subdivision of this state, or any intergovernmental agency.

(f) ~~(g)~~ Beginning July 1, 2023 ~~April 1, 2015~~, each seller shall file a return and remit the prepaid wireless ~~E911~~ fees collected in the previous month to the Department of Revenue on or before the 20th day of the month. If the 20th day falls on a Saturday, Sunday, or legal holiday, payments accompanied by returns are due on the next succeeding day that is not a Saturday, Sunday, or legal holiday observed by federal or state agencies as defined in chapter 683 and s. 7503 of the Internal Revenue Code of 1986, as amended. A seller may remit the prepaid wireless ~~E911~~ fee by electronic funds transfer and file a fee return with the Department of Revenue that is initiated through an electronic data interchange.

1. When a seller is authorized by the Department of Revenue pursuant to s. 212.11(1)(c) or (d) to file a sales and use tax return on a quarterly, semiannual, or annual reporting basis, the seller may file a return and remit the prepaid wireless ~~E911~~ fees on or before the 20th day of the month following the authorized reporting period for sales and use tax.

2. A seller collecting less than \$50 per month of prepaid

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wireless ~~E911~~ fees may file a quarterly return for the calendar quarters ending in March, June, September, and December. The seller must file a return and remit the prepaid wireless ~~E911~~ fees collected during each calendar quarter on or before the 20th day of the month following that calendar quarter.

3. A seller must provide the following information on each prepaid wireless ~~E911~~ fee return filed with the Department of Revenue:

a. The seller's name, federal identification number, taxpayer identification number issued by the Department of Revenue, business location address and mailing address, and county of the business location in accordance with paragraph (c) ~~(d)~~;

b. The reporting period;

c. The number of prepaid wireless services sold during the reporting period;

d. The amount of prepaid wireless ~~E911~~ fees collected and the amount of any adjustments to the fees collected;

e. The amount of any retailer collection allowance deducted from the amount of prepaid wireless ~~E911~~ fees collected; and

f. The amount to be remitted to the Department of Revenue.

4. A seller who operates two or more business locations for which returns are required to be filed with the Department of Revenue may file a consolidated return reporting and remitting the prepaid wireless ~~E911~~ fee for all business locations. Such sellers must report the prepaid wireless ~~E911~~ fees collected in each county, in accordance with paragraph (c) ~~(d)~~, on a reporting schedule filed with the fee return.

5. A return is not required for a reporting period when no

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prepaid wireless ~~E911~~ fee is to be remitted for that period.

6. Except as provided in this section, the Department of Revenue shall administer, collect, and enforce the fee under this subsection pursuant to the same procedures used in the administration, collection, and enforcement of the general state sales tax imposed under chapter 212. The provisions of chapter 212 regarding authority to audit and make assessments, keeping of books and records, and interest and penalties on delinquent fees shall apply. The provisions of estimated tax liability in s. 212.11(1)(a) do not apply to the prepaid wireless ~~E911~~ fee.

(g) ~~(h)~~ A seller of prepaid wireless services in this state must register with the Department of Revenue for each place of business as required by s. 212.18(3) and the Department of Revenue's administrative rule regarding registration as a sales and use tax dealer. A separate application is required for each place of business. A valid certificate of registration issued by the Department of Revenue to a seller for sales and use tax purposes is sufficient for purposes of the registration requirement of this subsection. There is no fee for registration for remittance of the prepaid wireless ~~E911~~ fee.

(h) ~~(i)~~ The Department of Revenue shall deposit the funds remitted under this subsection into the Audit and Warrant Clearing Trust Fund established in s. 215.199 and retain up to 3.2 percent of the funds remitted under this subsection to reimburse its direct costs of administering the collection and remittance of prepaid wireless ~~E911~~ fees. Thereafter, the Department of Revenue shall transfer all remaining funds remitted under this subsection to the Emergency Communications ~~Number E911 System~~ Fund monthly for use as provided in s.

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871 365.173.

872 ~~(i)(j)~~ Beginning March 1, 2015, a seller may retain 5
 873 percent of the prepaid wireless ~~E911~~ fees that are collected by
 874 the seller from consumers as a retailer collection allowance.

875 ~~(j)(k)~~ A provider or seller of prepaid wireless service is
 876 not liable for damages to any person resulting from or incurred
 877 in connection with providing or failing to provide emergency
 878 communications and 911 ~~or E911~~ service or for identifying or
 879 failing to identify the telephone number, address, location, or
 880 name associated with any person or device that is accessing or
 881 attempting to access emergency communications and 911 ~~or E911~~
 882 service.

883 ~~(k)(l)~~ A provider or seller of prepaid wireless service is
 884 not liable for damages to any person resulting from or incurred
 885 in connection with providing any lawful assistance to any
 886 investigative or law enforcement officer of the United States,
 887 any state, or any political subdivision of any state in
 888 connection with any lawful investigation or other law
 889 enforcement activity by such law enforcement officer.

890 ~~(l)(m)~~ The limitations of liability under this subsection
 891 for providers and sellers are in addition to any other
 892 limitation of liability provided for under this section.

893 ~~(m)(n)~~ A local government may not levy the fee or any
 894 additional fee on providers or sellers of prepaid wireless
 895 service for the provision of 911 ~~E911~~ service.

896 ~~(n)(o)~~ For purposes of this section, the state and local
 897 governments are not consumers.

898 ~~(o)(p)~~ For purposes of this subsection, the term:

899 1. "Consumer" means a person who purchases prepaid wireless

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900 service in a retail sale.

901 2. "Prepaid wireless ~~E911~~ fee" means the fee that is
 902 required to be collected by a seller from a consumer as provided
 903 in this subsection.

904 3. "Provider" means a person that provides prepaid wireless
 905 service pursuant to a license issued by the Federal
 906 Communications Commission.

907 4. "Retail transaction" means the purchase by a consumer
 908 from a seller of prepaid wireless service that may be applied to
 909 a single service identifier for use by the consumer. If a
 910 consumer makes a purchase of multiple prepaid wireless services
 911 in a single transaction, each individual prepaid wireless
 912 service shall be considered a separate retail transaction for
 913 purposes of calculating the prepaid wireless ~~E911~~ fee.

914 5. "Seller" means a person who makes retail sales of
 915 prepaid wireless services to a consumer.

916 (10) AUTHORIZED EXPENDITURES OF PUBLIC SAFETY EMERGENCY
 917 COMMUNICATIONS SYSTEMS ~~E911~~ FEE.—

918 (a) For purposes of this section, emergency communications
 919 and 911 ~~E911~~ service includes the functions relating to the
 920 receipt and transfer of requests for emergency assistance, of
 921 database management, call taking, and location verification, ~~and~~
 922 ~~call transfer~~. Department of Health certification and
 923 recertification and training costs for ~~911~~ public safety
 924 telecommunications, including dispatching, are functions of
 925 public safety emergency telecommunications ~~911~~ services.

926 (b) All costs directly attributable to the establishment or
 927 provision of emergency communications equipment ~~E911 service~~ and
 928 ~~contracting for E911 services~~ related to a primary or secondary

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929 public safety answering point (PSAP) are eligible for
 930 expenditure of moneys derived from imposition of the fee
 931 authorized by subsections (8) and (9). These costs include the
 932 acquisition, implementation, and maintenance of PSAP Public
 933 ~~Safety Answering Point (PSAP)~~ equipment and ~~E911 service~~
 934 features, as defined in the providers' published schedules or
 935 the acquisition, installation, and maintenance of other ~~E911~~
 936 equipment, including: circuits; call answering equipment; call
 937 transfer equipment; ANI or ALI controllers; ANI or ALI displays;
 938 station instruments; NG911 ~~E911~~ telecommunications systems;
 939 emergency services IP network (ESInet); visual call information
 940 and storage devices; recording equipment; telephone devices and
 941 other equipment for the hearing impaired used in the ~~E911~~
 942 system; PSAP backup power systems; consoles; automatic call
 943 distributors; ~~and~~ interfaces, including hardware and software,
 944 for computer-aided dispatch (CAD) systems, for public safety
 945 land mobile radio systems (LMR) and radio consoles that provide
 946 two-way radio communication with responders, and for in-building
 947 coverage; integrated CAD systems for that portion of the systems
 948 used for E911 call taking; GIS system and software equipment and
 949 information displays; network clocks; cybersecurity, including
 950 hardware, software, and services; salary and associated expenses
 951 for 911 ~~E911~~ call takers and emergency dispatchers for that
 952 ~~portion of their time spent taking and transferring E911 calls,~~
 953 salary, and associated expenses for a county to employ a full-
 954 time equivalent 911 ~~E911~~ coordinator position and a full-time
 955 equivalent mapping or geographical data position, and technical
 956 system maintenance, database, and administration personnel for
 957 the portion of their time spent administrating the emergency

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958 communications ~~E911~~ system; emergency medical, fire, and law
 959 enforcement prearrival instruction software; charts and training
 960 costs; training costs for PSAP call takers, dispatchers,
 961 supervisors, and managers in the proper methods and techniques
 962 used in taking and transferring 911 ~~E911~~ calls; costs to train
 963 and educate PSAP employees regarding 911 and radio ~~E911~~ service
 964 or NG911 ~~E911~~ equipment, including fees collected by the
 965 Department of Health for the certification and recertification
 966 of 911 public safety telecommunicators as required under s.
 967 401.465; and expenses required to develop and maintain all
 968 information, including ALI and ANI databases and other
 969 information source repositories, necessary to properly inform
 970 call takers as to location address, type of emergency, smart
 971 city technology data, public safety broadband networks, and
 972 other information directly relevant to the processing of a
 973 request for emergency assistance ~~E911 call-taking and~~
 974 ~~transferring function. Moneys derived from the fee may also be~~
 975 ~~used for next-generation E911 network services, next-generation~~
 976 ~~E911 database services, next-generation E911 equipment, and~~
 977 ~~wireless E911 routing systems.~~

978 (c) The moneys may not be used to pay for any item not
 979 listed in this subsection, including, but not limited to, any
 980 capital or operational ~~costs for emergency responses which occur~~
 981 ~~after the call transfer to the responding public safety entity~~
 982 ~~and the costs for~~ utilities, constructing, leasing, maintaining,
 983 or renovating buildings, except for those building modifications
 984 necessary to maintain the security and environmental integrity
 985 of the PSAP and emergency communications ~~E911~~ equipment rooms.

986 (11) LIABILITY OF COUNTIES.—A county subscribing to 911

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service remains liable to the local exchange carrier for any 911 service, equipment, operation, or maintenance charge owed by the county to the local exchange carrier. As used in this subsection, the term "local exchange carrier" means a local exchange telecommunications service provider of 911 service or equipment to any county within its certificated area.

(12) INDEMNIFICATION AND LIMITATION OF LIABILITY.—A local government may indemnify local exchange carriers against liability in accordance with the published schedules of the company. Notwithstanding an indemnification agreement, a local exchange carrier, voice communications services provider, or other service provider that provides 911, ~~or~~ E911, or NG911 service on a retail or wholesale basis is not liable for damages resulting from or in connection with 911, ~~or~~ E911, or NG911 service, or for identification of the telephone number, or address, or name associated with any person accessing 911, ~~or~~ E911, or NG911 service, unless the carrier or provider acted with malicious purpose or in a manner exhibiting wanton and willful disregard of the rights, safety, or property of a person when providing such services. A carrier or provider is not liable for damages to any person resulting from or in connection with the carrier's or provider's provision of any lawful assistance to any investigative or law enforcement officer of the United States, this state, or a political subdivision thereof, or of any other state or political subdivision thereof, in connection with any lawful investigation or other law enforcement activity by such law enforcement officer. For purposes of this subsection, the term "911, ~~or~~ E911, or NG911 service" means a telecommunications service, voice or nonvoice

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communications service, or other wireline or wireless service, including, but not limited to, a service using Internet protocol, which provides, in whole or in part, any of the following functions: providing members of the public with the ability to reach an answering point by using the digits 9-1-1; directing 911 calls to answering points by selective routing; providing for automatic number identification and automatic location-identification features; or providing wireless E911 services as defined in the order.

(13) FACILITATING EMERGENCY COMMUNICATIONS ~~E911~~ SERVICE IMPLEMENTATION.—To balance the public need for reliable emergency communications ~~E911~~ services through reliable wireless systems and the public interest served by governmental zoning and land development regulations and notwithstanding any other law or local ordinance to the contrary, the following standards shall apply to a local government's actions, as a regulatory body, in the regulation of the placement, construction, or modification of a wireless communications facility. This subsection shall not, however, be construed to waive or alter the provisions of s. 286.011 or s. 286.0115. For the purposes of this subsection only, "local government" shall mean any municipality or county and any agency of a municipality or county only. The term "local government" does not, however, include any airport, as defined by s. 330.27(2), even if it is owned or controlled by or through a municipality, county, or agency of a municipality or county. Further, notwithstanding anything in this section to the contrary, this subsection does not apply to or control a local government's actions as a property or structure owner in the use of any property or

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structure owned by such entity for the placement, construction, or modification of wireless communications facilities. In the use of property or structures owned by the local government, however, a local government may not use its regulatory authority so as to avoid compliance with, or in a manner that does not advance, the provisions of this subsection.

(a) Colocation ~~Collocation~~ among wireless providers is encouraged by the state.

1.a. Colocations ~~Collocations~~ on towers, including nonconforming towers, that meet the requirements in sub-sub-paragraphs (I), (II), and (III), are subject to only building permit review, which may include a review for compliance with this subparagraph. Such colocations ~~collocations~~ are not subject to any design or placement requirements of the local government's land development regulations in effect at the time of the colocation ~~collocation~~ that are more restrictive than those in effect at the time of the initial antennae placement approval, to any other portion of the land development regulations, or to public hearing review. This sub-subparagraph shall not preclude a public hearing for any appeal of the decision on the colocation ~~collocation~~ application.

(I) The colocation ~~collocation~~ does not increase the height of the tower to which the antennae are to be attached, measured to the highest point of any part of the tower or any existing antenna attached to the tower;

(II) The colocation ~~collocation~~ does not increase the ground space area, commonly known as the compound, approved in the site plan for equipment enclosures and ancillary facilities; and

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(III) The colocation ~~collocation~~ consists of antennae, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with all applicable regulations, restrictions, or conditions, if any, applied to the initial antennae placed on the tower and to its accompanying equipment enclosures and ancillary facilities and, if applicable, applied to the tower supporting the antennae. Such regulations may include the design and aesthetic requirements, but not procedural requirements, other than those authorized by this section, of the local government's land development regulations in effect at the time the initial antennae placement was approved.

b. Except for a historic building, structure, site, object, or district, or a tower included in sub-subparagraph a., colocations ~~collocations~~ on all other existing structures that meet the requirements in sub-sub-paragraphs (I)-(IV) shall be subject to no more than building permit review, and an administrative review for compliance with this subparagraph. Such colocations ~~collocations~~ are not subject to any portion of the local government's land development regulations not addressed herein, or to public hearing review. This sub-subparagraph shall not preclude a public hearing for any appeal of the decision on the colocation ~~collocation~~ application.

(I) The colocation ~~collocation~~ does not increase the height of the existing structure to which the antennae are to be attached, measured to the highest point of any part of the structure or any existing antenna attached to the structure;

(II) The colocation ~~collocation~~ does not increase the ground space area, otherwise known as the compound, if any,

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approved in the site plan for equipment enclosures and ancillary facilities;

(III) The colocation ~~collocation~~ consists of antennae, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with any applicable structural or aesthetic design requirements and any requirements for location on the structure, but not prohibitions or restrictions on the placement of additional colocations ~~collocations~~ on the existing structure or procedural requirements, other than those authorized by this section, of the local government's land development regulations in effect at the time of the colocation ~~collocation~~ application; and

(IV) The colocation ~~collocation~~ consists of antennae, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with all applicable restrictions or conditions, if any, that do not conflict with sub-sub-paragraph (III) and were applied to the initial antennae placed on the structure and to its accompanying equipment enclosures and ancillary facilities and, if applicable, applied to the structure supporting the antennae.

c. Regulations, restrictions, conditions, or permits of the local government, acting in its regulatory capacity, that limit the number of colocations ~~collocations~~ or require review processes inconsistent with this subsection shall not apply to colocations ~~collocations~~ addressed in this subparagraph.

d. If only a portion of the colocation ~~collocation~~ does not meet the requirements of this subparagraph, such as an increase in the height of the proposed antennae over the existing structure height or a proposal to expand the ground space

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approved in the site plan for the equipment enclosure, where all other portions of the colocation ~~collocation~~ meet the requirements of this subparagraph, that portion of the colocation ~~collocation~~ only may be reviewed under the local government's regulations applicable to an initial placement of that portion of the facility, including, but not limited to, its land development regulations, and within the review timeframes of subparagraph (d)2., and the rest of the colocation ~~collocation~~ shall be reviewed in accordance with this subparagraph. A colocation ~~collocation~~ proposal under this subparagraph that increases the ground space area, otherwise known as the compound, approved in the original site plan for equipment enclosures and ancillary facilities by no more than a cumulative amount of 400 square feet or 50 percent of the original compound size, whichever is greater, shall, however, require no more than administrative review for compliance with the local government's regulations, including, but not limited to, land development regulations review, and building permit review, with no public hearing review. This sub-subparagraph shall not preclude a public hearing for any appeal of the decision on the colocation ~~collocation~~ application.

2. If a colocation ~~collocation~~ does not meet the requirements of subparagraph 1., the local government may review the application under the local government's regulations, including, but not limited to, land development regulations, applicable to the placement of initial antennae and their accompanying equipment enclosure and ancillary facilities.

3. If a colocation ~~collocation~~ meets the requirements of subparagraph 1., the colocation is ~~collocation shall not be~~

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1161 ~~considered~~ a modification to an existing structure or an
 1162 impermissible modification of a nonconforming structure.

1163 4. The owner of the existing tower on which the proposed
 1164 antennae are to be ~~colocated~~ collocated shall remain responsible
 1165 for compliance with any applicable condition or requirement of a
 1166 permit or agreement, or any applicable condition or requirement
 1167 of the land development regulations to which the existing tower
 1168 had to comply at the time the tower was permitted, including any
 1169 aesthetic requirements, provided the condition or requirement is
 1170 not inconsistent with this paragraph.

1171 5. An existing tower, including a nonconforming tower, may
 1172 be structurally modified in order to permit colocation
 1173 ~~collocation~~ or may be replaced through no more than
 1174 administrative review and building permit review, and is not
 1175 subject to public hearing review, if the overall height of the
 1176 tower is not increased and, if a replacement, the replacement
 1177 tower is a monopole tower or, if the existing tower is a
 1178 camouflaged tower, the replacement tower is a like-camouflaged
 1179 tower. This subparagraph shall not preclude a public hearing for
 1180 any appeal of the decision on the application.

1181 (b)1. A local government's land development and
 1182 construction regulations for wireless communications facilities
 1183 and the local government's review of an application for the
 1184 placement, construction, or modification of a wireless
 1185 communications facility shall only address land development or
 1186 zoning issues. In such local government regulations or review,
 1187 the local government may not require information on or evaluate
 1188 a wireless provider's business decisions about its service,
 1189 customer demand for its service, or quality of its service to or

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1190 from a particular area or site, unless the wireless provider
 1191 voluntarily offers this information to the local government. In
 1192 such local government regulations or review, a local government
 1193 may not require information on or evaluate the wireless
 1194 provider's designed service unless the information or materials
 1195 are directly related to an identified land development or zoning
 1196 issue or unless the wireless provider voluntarily offers the
 1197 information. Information or materials directly related to an
 1198 identified land development or zoning issue may include, but are
 1199 not limited to, evidence that no existing structure can
 1200 reasonably be used for the antennae placement instead of the
 1201 construction of a new tower, that residential areas cannot be
 1202 served from outside the residential area, as addressed in
 1203 subparagraph 3., or that the proposed height of a new tower or
 1204 initial antennae placement or a proposed height increase of a
 1205 modified tower, replacement tower, or colocation ~~collocation~~ is
 1206 necessary to provide the provider's designed service. Nothing in
 1207 this paragraph shall limit the local government from reviewing
 1208 any applicable land development or zoning issue addressed in its
 1209 adopted regulations that does not conflict with this section,
 1210 including, but not limited to, aesthetics, landscaping, land
 1211 use-based ~~land-use-based~~ location priorities, structural design,
 1212 and setbacks.

1213 2. Any setback or distance separation required of a tower
 1214 may not exceed the minimum distance necessary, as determined by
 1215 the local government, to satisfy the structural safety or
 1216 aesthetic concerns that are to be protected by the setback or
 1217 distance separation.

1218 3. A local government may exclude the placement of wireless

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communications facilities in a residential area or residential zoning district but only in a manner that does not constitute an actual or effective prohibition of the provider's service in that residential area or zoning district. If a wireless provider demonstrates to the satisfaction of the local government that the provider cannot reasonably provide its service to the residential area or zone from outside the residential area or zone, the municipality or county and provider shall cooperate to determine an appropriate location for a wireless communications facility of an appropriate design within the residential area or zone. The local government may require that the wireless provider reimburse the reasonable costs incurred by the local government for this cooperative determination. An application for such cooperative determination shall not be considered an application under paragraph (d).

4. A local government may impose a reasonable fee on applications to place, construct, or modify a wireless communications facility only if a similar fee is imposed on applicants seeking other similar types of zoning, land use, or building permit review. A local government may impose fees for the review of applications for wireless communications facilities by consultants or experts who conduct code compliance review for the local government but any fee is limited to specifically identified reasonable expenses incurred in the review. A local government may impose reasonable surety requirements to ensure the removal of wireless communications facilities that are no longer being used.

5. A local government may impose design requirements, such as requirements for designing towers to support colocation

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~~collocation~~ or aesthetic requirements, except as otherwise limited in this section, but shall not impose or require information on compliance with building code type standards for the construction or modification of wireless communications facilities beyond those adopted by the local government under chapter 553 and that apply to all similar types of construction.

(c) Local governments may not require wireless providers to provide evidence of a wireless communications facility's compliance with federal regulations, except evidence of compliance with applicable Federal Aviation Administration requirements under 14 C.F.R. part 77, as amended, and evidence of proper Federal Communications Commission licensure, or other evidence of Federal Communications Commission authorized spectrum use, but may request the Federal Communications Commission to provide information as to a wireless provider's compliance with federal regulations, as authorized by federal law.

(d)1. A local government shall grant or deny each properly completed application for a colocation ~~collocation~~ under subparagraph (a)1. based on the application's compliance with the local government's applicable regulations, as provided for in subparagraph (a)1. and consistent with this subsection, and within the normal timeframe for a similar building permit review but in no case later than 45 business days after the date the application is determined to be properly completed in accordance with this paragraph.

2. A local government shall grant or deny each properly completed application for any other wireless communications facility based on the application's compliance with the local

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government's applicable regulations, including but not limited to land development regulations, consistent with this subsection and within the normal timeframe for a similar type review but in no case later than 90 business days after the date the application is determined to be properly completed in accordance with this paragraph.

3.a. An application is deemed submitted or resubmitted on the date the application is received by the local government. If the local government does not notify the applicant in writing that the application is not completed in compliance with the local government's regulations within 20 business days after the date the application is initially submitted or additional information resubmitted, the application is deemed, for administrative purposes only, to be properly completed and properly submitted. However, the determination shall not be deemed as an approval of the application. If the application is not completed in compliance with the local government's regulations, the local government shall so notify the applicant in writing and the notification must indicate with specificity any deficiencies in the required documents or deficiencies in the content of the required documents which, if cured, make the application properly completed. Upon resubmission of information to cure the stated deficiencies, the local government shall notify the applicant, in writing, within the normal timeframes of review, but in no case longer than 20 business days after the additional information is submitted, of any remaining deficiencies that must be cured. Deficiencies in document type or content not specified by the local government do not make the application incomplete. Notwithstanding this sub-subparagraph,

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if a specified deficiency is not properly cured when the applicant resubmits its application to comply with the notice of deficiencies, the local government may continue to request the information until such time as the specified deficiency is cured. The local government may establish reasonable timeframes within which the required information to cure the application deficiency is to be provided or the application will be considered withdrawn or closed.

b. If the local government fails to grant or deny a properly completed application for a wireless communications facility within the timeframes set forth in this paragraph, the application shall be deemed automatically approved and the applicant may proceed with placement of the facilities without interference or penalty. The timeframes specified in subparagraph 2. may be extended only to the extent that the application has not been granted or denied because the local government's procedures generally applicable to all other similar types of applications require action by the governing body and such action has not taken place within the timeframes specified in subparagraph 2. Under such circumstances, the local government must act to either grant or deny the application at its next regularly scheduled meeting or, otherwise, the application is deemed to be automatically approved.

c. To be effective, a waiver of the timeframes set forth in this paragraph must be voluntarily agreed to by the applicant and the local government. A local government may request, but not require, a waiver of the timeframes by the applicant, except that, with respect to a specific application, a one-time waiver may be required in the case of a declared local, state, or

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federal emergency that directly affects the administration of all permitting activities of the local government.

(e) The replacement of or modification to a wireless communications facility, except a tower, that results in a wireless communications facility not readily discernibly different in size, type, and appearance when viewed from ground level from surrounding properties, and the replacement or modification of equipment that is not visible from surrounding properties, all as reasonably determined by the local government, are subject to no more than applicable building permit review.

(f) Any other law to the contrary notwithstanding, the Department of Management Services shall negotiate, in the name of the state, leases for wireless communications facilities that provide access to state government-owned property not acquired for transportation purposes, and the Department of Transportation shall negotiate, in the name of the state, leases for wireless communications facilities that provide access to property acquired for state rights-of-way. On property acquired for transportation purposes, leases shall be granted in accordance with s. 337.251. On other state government-owned property, leases shall be granted on a space available, first-come, first-served basis. Payments required by state government under a lease must be reasonable and must reflect the market rate for the use of the state government-owned property. The Department of Management Services and the Department of Transportation are authorized to adopt rules for the terms and conditions and granting of any such leases.

(g) If any person adversely affected by any action, or

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failure to act, or regulation, or requirement of a local government in the review or regulation of the wireless communication facilities files an appeal or brings an appropriate action in a court or venue of competent jurisdiction, following the exhaustion of all administrative remedies, the matter shall be considered on an expedited basis.

(14) MISUSE OF 911, ~~OR E911~~, OR NG911 SYSTEM; PENALTY.—911, ~~and E911~~, and NG911 service must be used solely for emergency communications by the public. Any person who accesses the number 911 for the purpose of making a false alarm or complaint or reporting false information that could result in the emergency response of any public safety agency; any person who knowingly uses or attempts to use such service for a purpose other than obtaining public safety assistance; or any person who knowingly uses or attempts to use such service in an effort to avoid any charge for service, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. After being convicted of unauthorized use of such service four times, a person who continues to engage in such unauthorized use commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, if the value of the service or the service charge obtained in a manner prohibited by this subsection exceeds \$100, the person committing the offense commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(15) TEXT-TO-911 SERVICE.—Each county shall develop a countywide implementation plan addressing text-to-911 services and, by January 1, 2022, enact a system to allow text-to-911 services.

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1393 (16) STATE LAW NOT PREEMPTED.—This section and ss. 365.173
1394 and 365.174 do not alter any state law that otherwise regulates
1395 voice communications services providers.

1396 Section 2. Section 365.173, Florida Statutes, is amended to
1397 read:

1398 365.173 Emergency Communications ~~Number E911 System~~ Fund.—

1399 (1) REVENUES.—

1400 (a) Revenues derived from the fee levied on subscribers
1401 under s. 365.172(8) must be paid by the board into the State
1402 Treasury on or before the 15th day of each month. Such moneys
1403 must be accounted for in a special fund to be designated as the
1404 Emergency Communications ~~Number E911 System~~ Fund, a fund created
1405 in the Division of Telecommunications, or other office as
1406 designated by the Secretary of Management Services.

1407 (b) Revenues derived from the fee levied on prepaid
1408 wireless service under s. 365.172(9), less the costs of
1409 administering collection of the fee, must be transferred by the
1410 Department of Revenue to the Emergency Communications ~~Number~~
1411 ~~E911 System~~ Fund on or before the 25th day of each month
1412 following the month of receipt.

1413 (c) For accounting purposes, the Emergency Communications
1414 ~~Number E911 System~~ Fund must be segregated into three separate
1415 categories:

- 1416 1. The wireless category;
- 1417 2. The nonwireless category; and
- 1418 3. The prepaid wireless category.

1419 (d) All moneys must be invested by the Chief Financial
1420 Officer pursuant to s. 17.61. All moneys in such fund are to be
1421 expended by the office for the purposes provided in this section

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1422 and s. 365.172. These funds are not subject to s. 215.20.

1423 (2) DISTRIBUTION AND USE OF FUNDS.—As determined by the
1424 board pursuant to s. 365.172(8) (g), and subject to any
1425 modifications approved by the board pursuant to s.

1426 365.172(6) (a) 3. or (8) (h), the moneys in the fund shall be
1427 distributed and used only as follows:

1428 (a) Ninety-four ~~Seventy-six~~ percent of the moneys in the
1429 wireless category shall be distributed each month to counties,
1430 based on the total number of service identifiers in each county,
1431 and 1 percent shall be distributed each month to state agencies
1432 that operate 911 centers. The distributions ~~and~~ shall be used
1433 exclusively for payment of:

1434 ~~1. authorized expenditures, as specified in s. 365.172(10).~~

1435 ~~2. Costs to comply with the requirements for E911 service~~
1436 ~~contained in the order and any future rules related to the~~
1437 ~~order.~~

1438 (b) Ninety-six percent of the moneys in the nonwireless
1439 category shall be distributed each month to counties based on
1440 the total number of service identifiers in each county and shall
1441 be used exclusively for payment of authorized expenditures, as
1442 specified in s. 365.172(10).

1443 (c) Sixty-one percent of the moneys in the prepaid wireless
1444 category shall be distributed each month to counties based on
1445 the total amount of fees reported and paid in each county and
1446 shall be used exclusively for payment of authorized
1447 expenditures, as specified in s. 365.172(10). The moneys from
1448 prepaid wireless ~~E911~~ fees identified as nonspecific in
1449 accordance with s. 365.172(9) shall be distributed as determined
1450 by the Emergency Communications ~~E911~~ Board.

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1451 (d) Any county that receives funds under paragraphs (a),
 1452 (b), and (c) shall establish a fund to be used exclusively for
 1453 the receipt and expenditure of the revenues collected under
 1454 paragraphs (a), (b), and (c). All fees placed in the fund and
 1455 any interest accrued shall be used solely for costs described in
 1456 subparagraphs (a)1. and 2. and may not be reduced, withheld, or
 1457 allocated for other purposes. The money collected and interest
 1458 earned in this fund shall be appropriated for these purposes by
 1459 the county commissioners and incorporated into the annual county
 1460 budget. The fund shall be included within the financial audit
 1461 performed in accordance with s. 218.39. The financial audit
 1462 shall assure that all emergency communications ~~E911~~ fee
 1463 revenues, interest, and emergency communications ~~E911~~ grant
 1464 funding are used for payment of authorized expenditures, as
 1465 specified in s. 365.172(10) and as specified in the Emergency
 1466 Communications ~~E911~~ Board grant and special disbursement
 1467 programs. The county is responsible for all expenditures of
 1468 revenues distributed from the county emergency communications
 1469 ~~E911~~ fund and shall submit the financial audit reports to the
 1470 board for review. A county may carry forward up to 30 percent of
 1471 the total funds disbursed to the county by the board during a
 1472 county fiscal year for expenditures for capital outlay, capital
 1473 improvements, equipment replacement, or implementation of a
 1474 hosted system if such expenditures are made for the purposes
 1475 specified in subparagraphs (a)1. and 2.; however, the 30-percent
 1476 limitation does not apply to funds disbursed to a county under
 1477 s. 365.172(6)(a)3., and a county may carry forward any
 1478 percentage of the funds, except that any grant provided shall
 1479 continue to be subject to any condition imposed by the board. In

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1480 order to prevent an excess recovery of costs incurred in
 1481 providing emergency communications ~~E911~~ service, a county that
 1482 receives funds greater than the permissible emergency
 1483 communications ~~E911~~ costs described in s. 365.172(10), including
 1484 the 30-percent carryforward allowance, must return the excess
 1485 funds to the ~~E911~~ board to be allocated under s. 365.172(6)(a).
 1486 (e) ~~Twenty percent of the moneys in the wireless category~~
 1487 ~~shall be distributed to wireless providers in response to sworn~~
 1488 ~~invoices submitted to the board by wireless providers to~~
 1489 ~~reimburse such wireless providers for the actual costs incurred~~
 1490 ~~to provide 911 or E911 service, including the costs of complying~~
 1491 ~~with the order. Such costs include costs and expenses incurred~~
 1492 ~~by wireless providers to design, purchase, lease, program,~~
 1493 ~~install, test, upgrade, operate, and maintain all necessary~~
 1494 ~~data, hardware, and software required to provide E911 service.~~
 1495 ~~Each wireless provider shall submit to the board, by August 1 of~~
 1496 ~~each year, a detailed estimate of the capital and operating~~
 1497 ~~expenses for which it anticipates that it will seek~~
 1498 ~~reimbursement under this paragraph during the ensuing state~~
 1499 ~~fiscal year. In order to be eligible for recovery during any~~
 1500 ~~ensuing state fiscal year, a wireless provider must submit all~~
 1501 ~~sworn invoices for allowable purchases made within the previous~~
 1502 ~~calendar year no later than March 31 of the fiscal year. By~~
 1503 ~~September 15 of each year, the board shall submit to the~~
 1504 ~~Legislature its legislative budget request for funds to be~~
 1505 ~~allocated to wireless providers under this paragraph during the~~
 1506 ~~ensuing state fiscal year. The budget request shall be based on~~
 1507 ~~the information submitted by the wireless providers and~~
 1508 ~~estimated surcharge revenues. Distributions of moneys in the~~

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fund by the board to wireless providers must be fair and nondiscriminatory. If the total amount of moneys requested by wireless providers pursuant to invoices submitted to the board and approved for payment exceeds the amount in the fund in any month, wireless providers that have invoices approved for payment shall receive a pro rata share of moneys in the fund and the balance of the payments shall be carried over to the following month or months until all of the approved payments are made. The board may adopt rules necessary to address the manner in which pro rata distributions are made when the total amount of funds requested by wireless providers pursuant to invoices submitted to the board exceeds the total amount of moneys on deposit in the fund.

(f) One percent of the moneys in each category of the fund shall be retained by the board to be applied to costs and expenses incurred for the purposes of managing, administering, and overseeing the receipts and disbursements from the fund and other activities as defined in s. 365.172(6). Any funds retained for such purposes in a calendar year which are not applied to such costs and expenses by March 31 of the following year shall be redistributed as determined by the board.

(f)(g) Three percent of the moneys in each category of the fund and an additional 1 percent of the moneys collected in the wireless category shall be used to make monthly distributions to rural counties for the purpose of providing facilities and network and service enhancements and assistance for the emergency communications 911 or E911 systems operated by rural counties and for the provision of grants by the office to rural counties for upgrading and replacing emergency communications

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E911 systems.

(g)(h) Thirty-five percent of the moneys in the prepaid wireless category shall be retained by the board to provide state emergency communications E911 grants to be awarded in accordance with the following order of priority:

1. For all large, medium, and rural counties to upgrade or replace emergency communications E911 systems.

2. For all large, medium, and rural counties to develop and maintain statewide 911 routing, geographic, and management information systems.

3. For all large, medium, and rural counties to develop and maintain next-generation 911 services and equipment.

(h)(i) If the wireless category has funds remaining in it on December 31 after disbursements have been made during the calendar year immediately before prior to December 31, the board may disburse the excess funds in the wireless category in accordance with s. 365.172(6)(a)3.b.

(3) The Legislature recognizes that the fee authorized under s. 365.172 may not necessarily provide the total funding required for establishing or providing the emergency communications E911 service. It is the intent of the Legislature that all revenue from the fee be used as specified in subsection (2).

Section 3. Subsection (1) of section 365.177, Florida Statutes, is amended to read:

365.177 Transfer of E911 calls between systems.—

(1) The office shall develop a plan by December 30, 2023 ~~February 1, 2020~~, to upgrade 911 public safety answering points within the state to allow the transfer of an emergency call from

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one local, multijurisdictional, or regional E911 system to another local, multijurisdictional, or regional E911 system in the state. Such transfer should include voice, text message, image, video, caller identification information, location information, and additional standards-based 911 call information.

Section 4. Subsection (10) of section 212.05965, Florida Statutes, is amended to read:

212.05965 Taxation of marketplace sales.—

(10) Notwithstanding any other law, the marketplace provider is also responsible for collecting and remitting any prepaid wireless public safety emergency communications systems ~~E911~~ fee under s. 365.172, waste tire fee under s. 403.718, and lead-acid battery fee under s. 403.7185 at the time of sale for taxable retail sales made through its marketplace.

Section 5. Section 365.171, Florida Statutes, is amended to read:

365.171 Emergency communications ~~number~~ ~~E911~~ state plan.—

(1) SHORT TITLE.—This section may be cited as the “Florida Emergency Communications ~~Number~~ ~~E911~~ State Plan Act.”

(2) LEGISLATIVE INTENT.—It is the intent of the Legislature that the communications number “911” be the designated emergency communications number. A public safety agency may not advertise or otherwise promote the use of any communications number for emergency response services other than “911.” It is further the intent of the Legislature to implement and continually update a cohesive statewide emergency communications ~~number~~ ~~“E911”~~ plan for enhanced 911 services which will provide citizens with rapid direct access to public safety agencies by accessing “911” with

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the objective of reducing the response time to situations requiring law enforcement, fire, medical, rescue, and other emergency services.

(3) DEFINITIONS.—As used in this section, the term:

(a) “Office” means the Division of Telecommunications within the Department of Management Services, as designated by the secretary of the department.

(b) “Local government” means any city, county, or political subdivision of the state and its agencies.

(c) “Public agency” means the state and any city, county, city and county, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state which provides, or has authority to provide, firefighting, law enforcement, ambulance, medical, or other emergency services.

(d) “Public safety agency” means a functional division of a public agency which provides firefighting, law enforcement, medical, or other emergency services.

(4) STATE PLAN.—The office shall develop, maintain, and implement appropriate modifications for a statewide emergency communications ~~E911 system~~ plan. The plan shall provide for:

(a) The public agency emergency communications requirements for each entity of local government in the state.

(b) A system to meet specific local government requirements. Such system shall include law enforcement, firefighting, and emergency medical services and may include other emergency services such as poison control, suicide prevention, and emergency management services.

(c) Identification of the mutual aid agreements necessary

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to obtain an effective emergency communications systems ~~E911~~
system.

(d) A funding provision that identifies the cost necessary
to implement the emergency communications ~~E911~~ system.

The office shall be responsible for the implementation and
coordination of such plan. The office shall adopt any necessary
rules and schedules related to public agencies for implementing
and coordinating the plan, pursuant to chapter 120.

(5) SYSTEM DIRECTOR.—The secretary of the department or his
or her designee is designated as the director of the statewide
emergency communications ~~number E911~~ system and, for the purpose
of carrying out the provisions of this section, is authorized to
coordinate the activities of the system with state, county,
local, and private agencies. The director in implementing the
system shall consult, cooperate, and coordinate with local law
enforcement agencies.

(6) REGIONAL SYSTEMS.—This section does not prohibit or
discourage the formation of multijurisdictional or regional
systems; and any system established pursuant to this section may
include the jurisdiction, or any portion thereof, of more than
one public agency. It is the intent of the Legislature that
emergency communications services ~~E911 service~~ be available
throughout the state. Expenditure by counties of the ~~E911~~ fee
authorized and imposed under s. 365.172 should support this
intent to the greatest extent feasible within the context of
local service needs and fiscal capability. This section does not
prohibit two or more counties from establishing a combined
emergency ~~E911~~ communications service by an interlocal agreement

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and using the fees authorized and imposed by s. 365.172 for such
combined ~~E911~~ service.

(7) TELECOMMUNICATIONS INDUSTRY COORDINATION.—The office
shall coordinate with the Florida Public Service Commission
which shall encourage the Florida telecommunications industry to
activate facility modification plans for timely emergency
communications services ~~E911~~ implementation.

(8) COIN TELEPHONES.—The Florida Public Service Commission
shall establish rules to be followed by the telecommunications
companies in this state designed toward encouraging the
provision of coin-free dialing of "911" calls wherever
economically practicable and in the public interest.

(9) SYSTEM APPROVAL.—No emergency communications number
E911 system shall be established and no present system shall be
expanded without prior approval of the office.

(10) COMPLIANCE.—All public agencies shall assist the
office in their efforts to carry out the intent of this section,
and such agencies shall comply with the developed plan.

(11) FEDERAL ASSISTANCE.—The secretary of the department or
his or her designee may apply for and accept federal funding
assistance in the development and implementation of a statewide
emergency communications ~~number E911~~ system.

(12) CONFIDENTIALITY OF RECORDS.—

(a) Any record, recording, or information, or portions
thereof, obtained by a public agency or a public safety agency
for the purpose of providing services in an emergency and which
reveals the name, address, telephone number, or personal
information about, or information which may identify any person
requesting emergency service or reporting an emergency by

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1683 accessing an emergency communications ~~E911~~ system is
 1684 confidential and exempt from the provisions of s. 119.07(1) and
 1685 s. 24(a), Art. I of the State Constitution, except that such
 1686 record or information may be disclosed to a public safety
 1687 agency. The exemption applies only to the name, address,
 1688 telephone number or personal information about, or information
 1689 which may identify any person requesting emergency services or
 1690 reporting an emergency while such information is in the custody
 1691 of the public agency or public safety agency providing emergency
 1692 services. A telecommunications company or commercial mobile
 1693 radio service provider shall not be liable for damages to any
 1694 person resulting from or in connection with such telephone
 1695 company's or commercial mobile radio service provider's
 1696 provision of any lawful assistance to any investigative or law
 1697 enforcement officer of the State of Florida or political
 1698 subdivisions thereof, of the United States, or of any other
 1699 state or political subdivision thereof, in connection with any
 1700 lawful investigation or other law enforcement activity by such
 1701 law enforcement officer unless the telecommunications company or
 1702 commercial mobile radio service provider acted in a wanton and
 1703 willful manner.

1704 (b) Notwithstanding paragraph (a), a 911 public safety
 1705 telecommunicator, as defined in s. 401.465, may contact any
 1706 private person or entity that owns an automated external
 1707 defibrillator who has notified the local emergency medical
 1708 services medical director or public safety answering point of
 1709 such ownership if a confirmed coronary emergency call is taking
 1710 place and the location of the coronary emergency is within a
 1711 reasonable distance from the location of the defibrillator, and

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1712 may provide the location of the coronary emergency to that
 1713 person or entity.

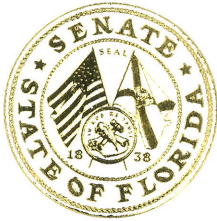
1714 Section 6. Paragraph (b) of subsection (2) of section
 1715 365.174, Florida Statutes, is amended to read:

1716 365.174 Proprietary confidential business information.—
 1717 (2)

1718 (b) The Department of Revenue may provide information
 1719 relative to s. 365.172(9) to the Secretary of Management
 1720 Services, or his or her authorized agent, or to the Emergency
 1721 Communications ~~E911~~ Board established in s. 365.172(5) for use
 1722 in the conduct of the official business of the Department of
 1723 Management Services or the Emergency Communications ~~E911~~ Board.
 1724 Section 7. This act shall take effect July 1, 2023.

Page 60 of 60

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



SENATOR JENNIFER BRADLEY
6th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Committee on Criminal
and Civil Justice, *Chair*
Criminal Justice, *Vice Chair*
Appropriations
Appropriations Committee on Health
and Human Services
Children, Families, and Elder Affairs
Community Affairs
Regulated Industries

SELECT COMMITTEE:

Select Committee on Resiliency

April 5, 2023

Senator Jason Brodeur, Chairman
Appropriations Committee on Agriculture, Environment, and General Government
405 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Brodeur:

I respectfully request that CS/SB 1418 be placed on the committee's agenda at your earliest convenience. This bill relates to emergency communications.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer Bradley".

Jennifer Bradley

cc: Giovanni Betta, Staff Director
Julie Brass, Administrative Assistant

REPLY TO:

- ☐ 1845 East West Parkway, Suite 5, Fleming Island, Florida 32003 (904) 278-2085
- ☐ 124 Northwest Madison Street, Lake City, Florida 32055 (386) 719-2708
- ☐ 410 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

Senate's Website: www.flsenate.gov

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
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4/18/2023

Meeting Date

1418

Bill Number or Topic

Approps - General Gov

Committee

Amendment Barcode (if applicable)

Name

Bob McKee

Phone

(850) 922-4300

Address

100 S Monroe

Email

bmckee@fl-counties.com

Street

Tallahassee FL

32308

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf](#) [flsenate.gov](#)

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

S-001 (08/10/2021)

4/18/23

Meeting Date

Appropriations Committee on Agriculture, Environment, and General Government

Committee

The Florida Senate
APPEARANCE RECORD

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1418

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Jeff Ivey** Phone _____

Address **4050 Esplanade Way** Email **jeff.ivey@dms.fl.gov**
Street

Tallahassee **FL** **32399**
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

**Department of Management
Services**

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
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4/18

Meeting Date

1418

Bill Number or Topic

Ag, Env. + G.G.

Committee

Amendment Barcode (if applicable)

Name

Richard Pinsky

Phone

Address

201 E. Park Ave #300

Email

Street

Tallahassee

State

FL

Zip

Speaking:

☒

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

FL. Association of 911 Coordinators

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf flsenate.gov](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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4/18/23
Meeting Date

1418
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

Casey Reed / AT&T

Phone

(850) 294-2798

Address

150 S Monroe St Ste 400
Street

Email

CR8243@ATT.com

Tallahassee FL
City State

32312
Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

AT&T

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf](#) [flsenate.gov](#)

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

S-001 (08/10/2021)

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 Appropriations Committee on Agriculture, Environment, and General Government

BILL: CS/SB 1476

INTRODUCER: Environment and Natural Resources Committee and Senator Simon

SUBJECT: State Acquisition of Lands

DATE: April 17, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Barriero</u>	<u>Rogers</u>	<u>EN</u>	Fav/CS
2.	<u>Reagan</u>	<u>Betta</u>	<u>AEG</u>	Favorable
3.	<u> </u>	<u> </u>	<u>FP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1476 directs the Department of Environmental Protection to disclose otherwise confidential appraisal reports related to the acquisition of state lands to private landowners or their representatives, provided they agree to maintain the confidentiality of the reports or information. In addition, the bill requires the contract to state that the final purchase price must be the fair market value as determined by the highest appraisal.

Regarding acquisitions of conservation easements by the Department of Agriculture and Consumer Services, the bill provides that option contracts for such acquisitions must state that final purchase price must be the fair market value as determined by the highest approved appraisal.

The bill has an effective date of July 1, 2023.

The bill has no fiscal impact on state revenues or expenditures.

II. Present Situation:

Acquisition of State Lands

The Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) holds state lands in trust for the use and benefit of the people of the state pursuant to Art. II, s. 7 and Art. X,

s. 11 of the State Constitution. The Governor, the Chief Financial Officer, the Attorney General, and the Commissioner of Agriculture constitute the trustees of the internal improvement trust fund.¹ The Department of Environmental Protection (DEP) performs all staff duties and functions related to the acquisition, administration, and disposition of state lands, title to which is or will be vested in the Board of Trustees.²

Section 253.025, F.S., outlines the procedures the state must follow when acquiring lands. Prior to the acquisition of land, a state agency is required to coordinate with the Division of State Lands (DSL) within the DEP to determine the availability of existing, suitable state-owned lands in the area and the public purpose for which the acquisition is being proposed.³ Each parcel of land that is to be acquired must have at least one appraisal.⁴ If the cost of land exceeds \$1,000,000, two appraisals are required. If a parcel is estimated to be worth \$100,000 or less and the director of the DSL finds that the cost of an outside appraisal is not justified, a comparable sales analysis, an appraisal prepared by the DSL, or other reasonably prudent procedures may be used by the DSL to estimate the value of the parcel, provided the public's interest is reasonably protected.⁵ The maximum amount that the state may pay for a parcel to be acquired is the value indicated in a single approved appraisal if only one appraisal is required.⁶ If two appraisals are required and their values do not differ significantly the maximum amount that may be paid is the higher value indicated.⁷

Appraisal reports are confidential and exempt from public records requirements for use by the agency and the Board of Trustees until an option contract is executed or, if no option contract is executed, until two weeks before a contract or agreement for purchase is considered for approval by the Board of Trustees.⁸ Appraisal reports may be disclosed to private landowners during negotiations⁹ for acquisitions using alternatives to fee simple techniques if the DEP determines the disclosure of such reports will bring the proposed acquisition to closure.¹⁰ However, the private landowner must agree to maintain the confidentiality of the reports.¹¹ In addition, appraisal information may be disclosed to public agencies or nonprofit organizations that agree to maintain the confidentiality of the information when joint acquisition of property is contemplated or when a public agency or nonprofit organization enters into a written multiparty agreement with the DEP.¹²

¹ FLA. CONST. Art. IV s. 4.

² Section 253.002, F.S.

³ Section 253.025(2), F.S.

⁴ Section 253.025(8), F.S. Appraisals are not required for lands donated to the state.

⁵ *Id.*

⁶ Fla. Admin. Code R. 18-1.006.

⁷ *Id.*

⁸ Sections 253.025(8)(f), F.S. *See also* 570.715(5), F.S. (providing identical requirements for acquisitions by the Department of Agriculture and Consumer Services (DACS))

⁹ "Negotiations" does not include preliminary contacts with the property owner to determine the availability of the property, existing appraisal data, existing abstracts, and surveys. Sections 253.05(6), F.S. *See also* 570.715(4), F.S. (providing the same for DACS acquisitions).

¹⁰ Sections 253.025(8)(f), F.S. *See also* 570.715(5), F.S. (providing the same for DACS acquisitions).

¹¹ *Id.*

¹² *Id.*

Before the appraisal of parcels approved for purchase, the DEP may enter into option contracts to buy less than fee simple interest in such parcels.¹³ Any such option contract must state that the final purchase price is subject to approval by the Board of Trustees and an appropriation by the Legislature and may not exceed the maximum offer authorized by law.¹⁴

An agreement to acquire real property must be approved by the DEP and, if any of the following conditions are met, the Board of Trustees:

- The purchase price agreed to by the seller exceeds the value as established pursuant to the rules of the Board of Trustees;
- The contract price agreed to by the seller and the acquiring agency exceeds \$1 million;
- The acquisition is the initial purchase in a Florida Forever project; or
- Other conditions that the Board of Trustees may adopt by rule.¹⁵

Upon the initiation of negotiations, the state agency must inform the owner in writing that all agreements for purchase are subject to approval by the Board of Trustees.¹⁶ Within 45 days after the DEP receives the agreement for purchase, the Board of Trustees or, if the purchase price does not exceed \$100,000, its designee must reject or approve the agreement.¹⁷

Rural and Family Lands Protection Program

The Rural and Family Lands Protection Program, created within the Department of Agriculture and Consumer Services (DACS), is an agricultural land preservation program designed to protect important agricultural lands through the acquisition of permanent agricultural land conservation easements.¹⁸ Since its inception, the program has successfully acquired conservation easements consisting of over 64,361 acres of working agricultural land.¹⁹

Under the program, the DACS, on behalf of the Board of Trustees, is authorized to acquire perpetual, less-than-fee interest in land and enter into resource conservation agreements and agricultural protection agreements for the following public purposes:²⁰

- Promotion and improvement of wildlife habitat;
- Protection and enhancement of water bodies, aquifer recharge areas, wetlands, and watersheds;
- Perpetuation of open space on lands with significant natural areas; or
- Protection of agricultural lands threatened by conversion to other uses.²¹

To achieve these purposes, the DACS may accept applications for project proposals that:

- Purchase “conservation easements.”

¹³ Sections 253.025(8)(j). *See also* 570.715(1)(d), F.S. (providing the same for DACS acquisitions).

¹⁴ *Id.*

¹⁵ Section 253.025(4), F.S.

¹⁶ Section 253.025(9)(c), F.S.

¹⁷ Section 253.025(9)(h), F.S.

¹⁸ DACS, *Rural and Family Lands Protection Program*, <https://www.fdacs.gov/Consumer-Resources/Protect-Our-Environment/Rural-and-Family-Lands-Protection-Program> (last visited Mar. 16, 2023).

¹⁹ *Id.*

²⁰ Section 570.71(1), F.S.

²¹ *Id.*

- Purchase rural-lands-protection easements pursuant to this section.
- Fund resource conservation agreements pursuant to this section.
- Fund agricultural protection agreements pursuant to this section.²²

“Conservation easements” means a right or interest in real property which is appropriate to retaining land or water areas predominantly in their natural, scenic, open, agricultural, or wooded condition; retaining such areas as suitable habitat for fish, plants, or wildlife; retaining the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance; or maintaining existing land uses and which prohibits or limits any or all of the following:²³

- Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground.
- Dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials.
- Removal or destruction of trees, shrubs, or other vegetation.
- Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface.
- Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition.
- Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.
- Acts or uses detrimental to such retention of land or water areas.
- Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.²⁴

The DACS is also authorized to acquire perpetual conservation easements that achieve the objectives of the Florida Forever program.²⁵ The DACS must follow the same appraisal process outlined above when acquiring conservation easements.²⁶

III. Effect of Proposed Changes:

Section 1 amends s. 253.025, F.S., regarding the acquisition of state lands. Currently, the DEP may disclose otherwise confidential appraisal reports to private landowners during negotiations for acquisitions using alternatives to fee simple techniques if the DEP determines that disclosure of such reports will bring the proposed acquisition to closure.²⁷ The bill amends this provision by *requiring* the DEP to disclose appraisal reports to private landowners *or their representatives*, regardless of whether alternatives to fee simple techniques are used or such disclosure would bring the proposed acquisition to closure. The bill requires such representatives to agree to maintain the confidentiality of the reports or information, as the law currently requires of private landowners.

²² Section 570.71(1), F.S.

²³ Section 704.06(1), F.S.

²⁴ *Id.*

²⁵ Section 259.105(3)(i), F.S.

²⁶ *See* section 570.715, F.S.

²⁷ Section 253.025(8)(f), F.S.

In addition, the bill provides that option contracts must state that the final purchase price must be the fair market value as determined by the highest appraisal.

Section 2 amends s. 570.715, F.S., relating to the DACS's purchase of conservation easements. The bill amends this provision by *requiring* the DACS to disclose appraisal reports to private landowners *or their representatives*, regardless of whether such disclosure will bring the proposed acquisition to closure. The bill requires such representatives to agree to maintain the confidentiality of the reports or information, as the law currently requires of private landowners. The bill provides that option contracts must state that final purchase price must be the fair market value as determined by the highest approved appraisal.

Section 3 provides an effective date of July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 253.025 and 570.715

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

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

CS by Environment and Natural Resources on March 20, 2023:

The amendment restores language deleted in the underlying bill that option contracts must state that the final purchase price is subject to approval by the Board of Trustees of the Internal Improvement Fund or, if applicable, the Secretary of Environmental Protection.

B. Amendments:

None.

By the Committee on Environment and Natural Resources; and
Senator Simon

592-02769-23

20231476c1

A bill to be entitled

An act relating to state acquisition of lands;
amending ss. 253.025 and 570.715, F.S.; requiring,
rather than authorizing, the Department of
Environmental Protection and the Department of
Agriculture and Consumer Services to disclose
appraisal reports to private landowners or their
representatives during acquisition negotiations;
requiring private landowners and their representatives
to maintain the confidentiality of such reports or
information disclosed by the Department of Agriculture
and Consumer Services; requiring the final purchase
price in certain option contracts for state land
acquisitions and less than fee simple conservation
easement acquisitions to be the fair market value as
determined by the highest appraisal; conforming a
provision to changes made by the act; providing an
effective date.

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

Section 1. Subsection (8) of section 253.025, Florida
Statutes, is amended to read:

253.025 Acquisition of state lands.—

(8) Before approval by the board of trustees, or, when
applicable, the Department of Environmental Protection, of any
agreement to purchase land pursuant to this chapter, chapter
259, chapter 260, or chapter 375, and before negotiations with
the parcel owner to purchase any other land, title to which will

Page 1 of 8

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vest in the board of trustees, an appraisal of the parcel shall
be required as follows:

(a) The board of trustees shall adopt by rule the method
for determining the value of parcels sought to be acquired by
state agencies pursuant to this section.

(b) Each parcel to be acquired shall have at least one
appraisal. Two appraisals are required when the estimated value
of the parcel exceeds \$1 million. However, if both appraisals
exceed \$1 million and differ significantly, a third appraisal
may be obtained. If a parcel is estimated to be worth \$100,000
or less and the director of the Division of State Lands finds
that the cost of an outside appraisal is not justified, a
comparable sales analysis, an appraisal prepared by the
division, or other reasonably prudent procedures may be used by
the division to estimate the value of the parcel, provided the
public's interest is reasonably protected. The state is not
required to appraise the value of lands and appurtenances that
are being donated to the state.

(c) Appraisal fees and associated costs shall be paid by
the agency proposing the acquisition. All appraisals used for
the acquisition of lands pursuant to this section shall be
prepared by a state-certified appraiser. The board of trustees
shall adopt rules for selecting individuals to perform
appraisals pursuant to this section. Each fee appraiser selected
to appraise a particular parcel shall, before contracting with
the agency or a participant in a multiparty agreement, submit to
the agency an affidavit substantiating that he or she has no
vested or fiduciary interest in such parcel.

(d) The fee appraiser and the review appraiser for the

Page 2 of 8

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agency may not act in any manner that may be construed as negotiating with the owner of a parcel proposed for acquisition.

(e) The board of trustees shall adopt by rule the minimum criteria, techniques, and methods to be used in the preparation of appraisal reports. Such rules shall incorporate, to the extent practicable, generally accepted appraisal standards. Any appraisal issued for acquisition of lands pursuant to this section must comply with the rules adopted by the board of trustees. A certified survey must be made which meets the minimum requirements for upland parcels established in the Standards of Practice for Land Surveying in Florida published by the Department of Agriculture and Consumer Services and which accurately portrays, to the greatest extent practicable, the condition of the parcel as it currently exists. The requirement for a certified survey may, in part or in whole, be waived by the board of trustees any time before submitting the agreement for purchase to the Division of State Lands. When an existing boundary map and description of a parcel are determined by the division to be sufficient for appraisal purposes, the division director may temporarily waive the requirement for a survey until any time before conveyance of title to the parcel.

(f) Appraisal reports are confidential and exempt from s. 119.07(1), for use by the agency and the board of trustees, until an option contract is executed or, if no option contract is executed, until 2 weeks before a contract or agreement for purchase is considered for approval by the board of trustees. The Department of Environmental Protection shall may disclose appraisal reports to private landowners or their representatives during negotiations for acquisitions ~~using alternatives to fee~~

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~~simple techniques, if the department determines that disclosure of such reports will bring the proposed acquisition to closure.~~ However, the private landowner or their representative must agree to maintain the confidentiality of the reports or information. The department may also disclose appraisal information to public agencies or nonprofit organizations that agree to maintain the confidentiality of the reports or information when joint acquisition of property is contemplated, or when a public agency or nonprofit organization enters into a written agreement with the department to purchase and hold property for subsequent resale to the board of trustees. In addition, the department may use, as its own, appraisals obtained by a public agency or nonprofit organization, if the appraiser is selected from the department's list of appraisers and the appraisal is reviewed and approved by the department. For purposes of this paragraph, the term "nonprofit organization" means an organization that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code and, for purposes of the acquisition of conservation lands, an organization whose purpose must include the preservation of natural resources. The agency may release an appraisal report when the passage of time has rendered the conclusions of value in the report invalid or when the acquiring agency has terminated negotiations.

(g) Before acceptance of an appraisal, the agency shall submit a copy of such report to the division. The division shall review such report for compliance with the rules of the board. Any questions of applicability of laws affecting an appraisal shall be addressed by the legal office of the agency.

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(h) The appraisal report shall be accompanied by the sales history of the parcel for at least the previous 5 years. Such sales history shall include all parties and considerations with the amount of consideration verified, if possible. If a sales history would not be useful, or it is cost prohibitive compared to the value of a parcel, the sales history may be waived by the board of trustees. The board of trustees shall adopt a rule specifying guidelines for waiver of a sales history.

(i) The board of trustees may consider an appraisal acquired by a seller, or any part thereof, in negotiating to purchase a parcel, but such appraisal may not be used in lieu of an appraisal required by this subsection or to determine the maximum offer allowed by law.

(j)1. The board of trustees shall adopt by rule the method for determining the value of parcels sought to be acquired by state agencies pursuant to this section. An offer by a state agency may not exceed the value for that parcel as determined pursuant to the highest approved appraisal or the value determined pursuant to the rules of the board of trustees, whichever value is less.

2. For a joint acquisition by a state agency and a local government or other entity apart from the state, the joint purchase price may not exceed 150 percent of the value for a parcel as determined in accordance with the limits in subparagraph 1. The state agency share of a joint purchase offer may not exceed what the agency may offer singly pursuant to subparagraph 1.

3. This paragraph does not apply to the acquisition of historically unique or significant property as determined by the

592-02769-23

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Division of Historical Resources of the Department of State.

Notwithstanding this subsection, on behalf of the board of trustees and before the appraisal of parcels approved for purchase under this chapter or chapter 259, the Secretary of Environmental Protection or the director of the Division of State Lands may enter into option contracts to buy such parcels. Except as otherwise authorized under this subsection, any such option contract shall state that the final purchase price is subject to approval by the board of trustees or, if applicable, the Secretary of Environmental Protection, and shall be the fair market value as determined by the highest appraisal and ~~that the final purchase price~~ may not exceed the maximum offer allowed by law. Any such option contract presented to the board of trustees for final purchase price approval shall explicitly state that payment of the final purchase price is subject to an appropriation from the Legislature. The consideration for such an option may not exceed \$1,000 or 0.01 percent of the estimate by the department of the value of the parcel, whichever amount is greater.

Section 2. Paragraph (d) of subsection (1) and subsection (5) of section 570.715, Florida Statutes, are amended to read:

570.715 Conservation easement acquisition procedures.—

(1) For less than fee simple acquisitions pursuant to s. 570.71, the Department of Agriculture and Consumer Services shall comply with the following acquisition procedures:

(d) On behalf of the board of trustees and before the appraisal of parcels approved for purchase under ss. 259.105(3)(i) and 570.71, the department may enter into option

592-02769-23

20231476c1

contracts to buy less than fee simple interest in such parcels. Any such option contract shall state that the final purchase price is subject to approval by the board of trustees and that the final purchase price shall be the fair market value as determined by the highest approved appraisal and may not exceed the maximum offer authorized by law. Any such option contract presented to the board of trustees for final purchase price approval shall explicitly state that payment of the final purchase price is subject to an appropriation by the Legislature. The consideration for any such option contract may not exceed \$1,000 or 0.01 percent of the estimate by the department of the value of the parcel, whichever amount is greater.

(5) Appraisal reports are confidential and exempt from s. 119.07(1), for use by the department and the board of trustees, until an option contract is executed or, if an option contract is not executed, until 2 weeks before a contract or agreement for purchase is considered for approval by the board of trustees. ~~However, The department shall have the authority, at its discretion, to~~ disclose appraisal reports to private landowners or their representatives during negotiations for acquisitions. ~~However, the private landowner or their representative must agree to maintain the confidentiality of the reports or information using alternatives to fee simple techniques, if the department determines that disclosure of such reports will bring the proposed acquisition to closure.~~ The department may also disclose appraisal information to public agencies or nonprofit organizations that agree to maintain the confidentiality of the reports or information when joint

592-02769-23

20231476c1

acquisition of property is contemplated, or when a public agency or nonprofit organization enters into a written multiparty agreement with the department. For purposes of this subsection, the term "nonprofit organization" means an organization whose purposes include the preservation of natural resources, and which is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code. The department may release an appraisal report when the passage of time has rendered the conclusions of value in the report invalid or when the department has terminated negotiations.

Section 3. This act shall take effect July 1, 2023.



The Florida Senate

Committee Agenda Request

To: Senator Jason Brodeur, Chair
Appropriations Committee on Agriculture, Environment, and General
Government

Subject: Committee Agenda Request

Date: March 20, 2023

I respectfully request that **Senate Bill # 1476**, relating to State Acquisition of Lands, be placed on the:

- ☐ Committee agenda at your earliest possible convenience.
- ☒ Next committee agenda.

Corey Simon

Senator Corey Simon
Florida Senate, District 3

By Senator Rodriguez

40-01732D-23

20231502__

1 A bill to be entitled
 2 An act relating to vessel owner and operation
 3 requirements; amending s. 327.4108, F.S.; revising
 4 anchoring limitation areas in certain sections of
 5 Biscayne Bay in Miami-Dade County; revising the
 6 timeframe during which a person may anchor a vessel in
 7 an anchoring limitation area within which such
 8 anchoring would otherwise be unlawful; amending s.
 9 327.70, F.S.; requiring law enforcement officers to
 10 conduct national criminal background checks for vessel
 11 owners who are issued citations for specified
 12 violations; providing an effective date.
 13
 14 Be It Enacted by the Legislature of the State of Florida:
 15
 16 Section 1. Subsection (1) and paragraph (c) of subsection
 17 (4) of section 327.4108, Florida Statutes, are amended to read:
 18 327.4108 Anchoring of vessels in anchoring limitation
 19 areas.—
 20 (1) The following densely populated urban areas, which have
 21 narrow state waterways, residential docking facilities, and
 22 significant recreational boating traffic, are designated as and
 23 shall be considered to be grandfathered-in anchoring limitation
 24 areas, within which, except as provided in subsections (4) and
 25 (5), a person may not anchor a vessel at any time during the
 26 period between one-half hour after sunset and one-half hour
 27 before sunrise and, at any other time, for more than 4 hours in
 28 a single day except as provided in subsections (4) and (5):
 29 (a) The section of Middle River lying between Northeast

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20231502__

30 21st Court and the Intracoastal Waterway in Broward County.
 31 (b) Sunset Lake in Miami-Dade County.
 32 (c) The sections of Biscayne Bay in Miami-Dade County lying
 33 between:
 34 1. Rivo Alto Island and Di Lido Island.
 35 2. Di Lido Island and San Marino Island.
 36 3.2- San Marino Island and San Marco Island.
 37 4.3- San Marco Island and Biscayne Island.
 38 5. Star Island and MacArthur Causeway.
 39 6. Palm Island and MacArthur Causeway.
 40 7. Hibiscus Island and Palm Island.
 41 8. Julia Tuttle Causeway and Kennedy Causeway.
 42 9. The Sunset Islands.
 43 10. Belle Isle and Rivo Alto Island.
 44
 45 For the purposes of this paragraph, the term "lying between"
 46 includes, without limitation, all of the area 200 yards to the
 47 west from the western shore of the Sunset Islands and Di Lido
 48 Island, all of the area 200 yards to the north from the northern
 49 shore of the Sunset Islands, and all of the area 200 yards to
 50 the east from the eastern shore of Di Lido Island.
 51 (4) Notwithstanding subsections (1), (2), and (3), a person
 52 may anchor a vessel in an anchoring limitation area during a
 53 time that would otherwise be unlawful:
 54 (c) For the duration of During events described in s.
 55 327.48 or ~~other special events, including, but not limited to,~~
 56 ~~public music performances, local government waterfront~~
 57 ~~activities, or fireworks displays. A vessel may anchor for the~~
 58 ~~lesser of the duration of the special event or 3 days, whichever~~

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40-01732D-23

20231502__

59 is less.

60 Section 2. Present subsection (5) of section 327.70,
61 Florida Statutes, is redesignated as subsection (6), and a new
62 subsection (5) is added to that section, to read:

63 327.70 Enforcement of this chapter and chapter 328.—

64 (5) When a law enforcement officer issues a citation to a
65 vessel owner for a violation of this chapter, the law
66 enforcement officer must conduct a national criminal background
67 check on the vessel owner.

68 Section 3. This act shall take effect July 1, 2023.

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 Appropriations Committee on Agriculture, Environment, and General Government

BILL: CS/SB 1538

INTRODUCER: Environment and Natural Resources Committee and Senator Stewart

SUBJECT: Implementation of the Recommendations of the Blue-Green Algae Task Force

DATE: April 17, 2023

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Carroll	Rogers	EN	Fav/CS
2. Reagan	Betta	AEG	Favorable
3. _____	_____	FP	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1538 requires that each project listed in a new or revised basin management action plan (BMAP) with a total cost exceeding \$1 million must be monitored to determine if it is working to reduce nutrient pollution or water use, or both, as intended. The monitoring assessments must be completed expeditiously and included in each BMAP update.

The Department of Environmental Protection (DEP) may incur indeterminate costs in monitoring and assessing certain projects for reductions in nutrient pollution or water use, or both. These costs can be absorbed within existing resources.

The bill takes effect July 1, 2023.

II. Present Situation:

Blue-Green Algae Task Force

In 2019, Governor DeSantis directed the DEP to establish a Blue-Green Algae Task Force to expedite reduction of nutrient pollution and cyanobacteria blooms in the state.¹ The task force provides guidance and specific, science-based recommendations to expedite the restoration of

¹ State of Florida, Office of the Governor, *Executive Order Number 19-12 (2019)*, available at https://www.flgov.com/wp-content/uploads/orders/2019/EO_19-12.pdf; DEP, *Blue-Green Algae Task Force*, <https://protectingfloridatogether.gov/state-action/blue-green-algae-task-force> (last visited Mar. 13, 2023).

water bodies that have been adversely affected by cyanobacteria blooms.² The task force has focused on source identification, nutrient reduction and remediation efforts, algal toxins and human health effects, and innovative technologies for the prevention, cleanup, and mitigation of harmful algal blooms.³

Water Quality and Nutrients

Phosphorus and nitrogen are naturally present in water and are essential nutrients for the healthy growth of plant and animal life.⁴ The correct balance of both nutrients is necessary for a healthy ecosystem; however, excessive nitrogen and phosphorus can cause significant water quality problems.⁵

Phosphorus and nitrogen are derived from natural and human-made sources.⁶ Human-made sources include sewage disposal systems (wastewater treatment facilities and septic systems), overflows of storm and sanitary sewers (untreated sewage), agricultural production and irrigation practices, and stormwater runoff.⁷

Excessive nutrient loads may result in harmful algal blooms, nuisance aquatic weeds, and the alteration of the natural community of plants and animals.⁸ Dense, harmful algal blooms can also cause human health problems, fish kills, problems for water treatment plants, and impairment of the aesthetics and taste of waters. Growth of nuisance aquatic weeds tends to increase in nutrient-enriched waters, which can impact recreational activities.⁹

Basin Management Action Plans

The DEP is the lead agency in coordinating the development and implementation of total maximum daily loads (TMDLs).¹⁰ Basin management action plans (BMAPs) are one of the primary mechanisms the DEP uses to achieve TMDLs.¹¹ BMAPs are plans that address the entire pollution load, including point and nonpoint discharges,¹² for a watershed. BMAPs generally include:

² DEP, *Blue-Green Algae Task Force Consensus Document #1* (Dec. 2, 2019), available at https://floridadep.gov/sites/default/files/Final%20Consensus%20%231_0.pdf.

³ *Id.*

⁴ U.S. Environmental Protection Agency, *The Issue*, <https://www.epa.gov/nutrientpollution/issue> (last visited Feb. 10, 2023).

⁵ *Id.*

⁶ *Id.*

⁷ U.S. Environmental Protection Agency (EPA), *Sources and Solutions*, <https://www.epa.gov/nutrientpollution/sources-and-solutions> (last visited Feb 10, 2023).

⁸ EPA, *The Issue*, <https://www.epa.gov/nutrientpollution/issue> (last visited Feb. 10, 2023).

⁹ *Id.*

¹⁰ Section 403.061, F.S. DEP has the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it. Furthermore, s. 403.061(21), F.S., allows DEP to advise, consult, cooperate, and enter into agreements with other state agencies, the federal government, other states, interstate agencies, etc.

¹¹ A TMDL is a scientific determination of the maximum amount of a given pollutant that can be absorbed by a waterbody and still meet water quality standards. DEP, *Total Maximum Daily Loads Program*, <https://floridadep.gov/TMDL> (last visited Mar. 24, 2023).

¹² Fla. Admin. Code R. 62-620.200(37). “Point source” is defined as “any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding

- Permitting and other existing regulatory programs, including water quality based effluent limitations;
- Best management practices and non-regulatory and incentive-based programs, including cost-sharing, waste minimization, pollution prevention, agreements, and public education;
- Public works projects, including capital facilities; and
- Land acquisition.¹³

The DEP may establish a BMAP as part of the development and implementation of a TMDL for a specific waterbody. First, the BMAP equitably allocates pollutant reductions to individual basins, to all basins as a whole, or to each identified point source or category of nonpoint sources.¹⁴ Then, the BMAP establishes the schedule for implementing projects and activities to meet the pollution reduction allocations.¹⁵ The BMAP development process provides an opportunity for local stakeholders, local government, community leaders, and the public to collectively determine and share water quality cleanup responsibilities collectively.¹⁶ BMAPs are adopted by secretarial order.¹⁷

BMAPs must include milestones for implementation and water quality improvement. They must also include an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time. An assessment of progress toward these milestones must be conducted every five years and revisions to the BMAP must be made as appropriate.¹⁸

The DEP delineates priority focus areas, in coordination with the water management districts, for Outstanding Florida Springs in BMAPs.¹⁹ A priority focus area is the area or areas of a basin where the Floridan Aquifer is generally most vulnerable to pollutant inputs and where there is a known connectivity between groundwater pathways and an Outstanding Florida Spring.²⁰ In delineating priority focus areas, the DEP must consider groundwater travel time to the spring, hydrogeology, nutrient load, and any other factors that may lead to degradation of an Outstanding Florida Spring.²¹

In 2019, the Blue-Green Algae Task Force made the following recommendations for BMAPs:

- Include regional storage and treatment infrastructure in South Florida watersheds;
- Consider land use changes, legacy nutrients, and the impact of the BMAP on downstream waterbodies;
- Develop a more targeted approach to project selection; and

operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged.” Nonpoint sources of pollution are sources of pollution that are not point sources.

¹³ Section 403.067(7), F.S.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ DEP, *Basin Management Action Plans (BMAPs)*, <https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps> (last visited Mar. 13, 2023).

¹⁷ Section 403.067(7), F.S.

¹⁸ *Id.*

¹⁹ Section 373.803, F.S. Outstanding Florida Springs include all historic first magnitude springs and associated spring runs, as well as De Leon, Peacock, Poe, Rock, Wekiwa, and Gemini springs and their associated spring runs. Section 373.802, F.S.

²⁰ Section 373.802, F.S. Outstanding Florida Springs

²¹ Section 373.803, F.S.

- Evaluate project effectiveness through monitoring.²²

III. Effect of Proposed Changes:

Section 1 amends s. 403.067, F.S., which governs establishment and implementation of total maximum daily loads. The bill requires that for each project listed in a new or revised BMAP with a total cost exceeding \$1 million, the DEP must assess through integrated and comprehensive monitoring whether the project is working to reduce nutrient pollution or water use, or both, as intended. The bill provides that the assessments must be completed expeditiously and included in each BMAP update.

The bill makes technical changes.

Section 2 provides an effective date of July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

²² DEP, *Blue-Green Algae Task Force Consensus Document #1* at 2-4.

C. **Government Sector Impact:**

The DEP may incur indeterminate costs in monitoring and assessing certain projects for reductions in nutrient pollution or water use, or both.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends section 403.067 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 Environment and Natural Resources on April 4, 2023:

The committee substitute removes provisions requiring periodic inspections of onsite sewage treatment and disposal systems. It also removes language requiring new or revised basin management action plans to include a list that identifies and prioritizes spatially focused suites of projects in areas likely to yield maximum pollutant reductions.

B. **Amendments:**

None.

By the Committee on Environment and Natural Resources; and
Senator Stewart

592-03512-23

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A bill to be entitled

An act relating to implementation of the
recommendations of the Blue-Green Algae Task Force;
amending s. 403.067, F.S.; requiring the Department of
Environmental Protection to assess certain projects;
providing requirements for the assessments; providing
an effective date.

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

Section 1. Paragraph (a) of subsection (7) of section
403.067, Florida Statutes, is amended to read:

403.067 Establishment and implementation of total maximum
daily loads.—

(7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND
IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.—

(a) *Basin management action plans.*—

1. In developing and implementing the total maximum daily
load for a water body, the department, or the department in
conjunction with a water management district, may develop a
basin management action plan that addresses some or all of the
watersheds and basins tributary to the water body. Such plan
must integrate the appropriate management strategies available
to the state through existing water quality protection programs
to achieve the total maximum daily loads and may provide for
phased implementation of these management strategies to promote
timely, cost-effective actions as provided for in s. 403.151.
The plan must establish a schedule implementing the management
strategies, establish a basis for evaluating the plan's

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effectiveness, and identify feasible funding strategies for
implementing the plan's management strategies. The management
strategies may include regional treatment systems or other
public works, when appropriate, and voluntary trading of water
quality credits to achieve the needed pollutant load reductions.

2. A basin management action plan must equitably allocate,
pursuant to paragraph (6)(b), pollutant reductions to individual
basins, as a whole to all basins, or to each identified point
source or category of nonpoint sources, as appropriate. For
nonpoint sources for which best management practices have been
adopted, the initial requirement specified by the plan must be
those practices developed pursuant to paragraph (c). When
appropriate, the plan may take into account the benefits of
pollutant load reduction achieved by point or nonpoint sources
that have implemented management strategies to reduce pollutant
loads, including best management practices, before the
development of the basin management action plan. The plan must
also identify the mechanisms that will address potential future
increases in pollutant loading.

3. The basin management action planning process is intended
to involve the broadest possible range of interested parties,
with the objective of encouraging the greatest amount of
cooperation and consensus possible. In developing a basin
management action plan, the department shall assure that key
stakeholders, including, but not limited to, applicable local
governments, water management districts, the Department of
Agriculture and Consumer Services, other appropriate state
agencies, local soil and water conservation districts,
environmental groups, regulated interests, and affected

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pollution sources, are invited to participate in the process. The department shall hold at least one public meeting in the vicinity of the watershed or basin to discuss and receive comments during the planning process and shall otherwise encourage public participation to the greatest practicable extent. Notice of the public meeting must be published in a newspaper of general circulation in each county in which the watershed or basin lies at least 5 days, but not more than 15 days, before the public meeting. A basin management action plan does not supplant or otherwise alter any assessment made under subsection (3) or subsection (4) or any calculation or initial allocation.

4.a. Each new or revised basin management action plan must ~~shall~~ include:

(I)a- The appropriate management strategies available through existing water quality protection programs to achieve total maximum daily loads, which may provide for phased implementation to promote timely, cost-effective actions as provided for in s. 403.151;

(II)b- A description of best management practices adopted by rule;

(III)e- A list of projects in priority ranking with a planning-level cost estimate and estimated date of completion for each listed project;

(IV)d- The source and amount of financial assistance to be made available by the department, a water management district, or other entity for each listed project, if applicable; and

(V)e- A planning-level estimate of each listed project's expected load reduction, if applicable.

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b. For each project listed pursuant to this subparagraph which has a total cost that exceeds \$1 million, the department must assess through integrated and comprehensive monitoring whether the project is working to reduce nutrient pollution or water use, or both, as intended. These assessments must be completed expeditiously and included in each basin management action plan update.

5. The department shall adopt all or any part of a basin management action plan and any amendment to such plan by secretarial order pursuant to chapter 120 to implement this section.

6. The basin management action plan must include milestones for implementation and water quality improvement, and an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time. An assessment of progress toward these milestones shall be conducted every 5 years, and revisions to the plan shall be made as appropriate. Revisions to the basin management action plan shall be made by the department in cooperation with basin stakeholders. Revisions to the management strategies required for nonpoint sources must follow the procedures in subparagraph (c)4. Revised basin management action plans must be adopted pursuant to subparagraph 5.

7. In accordance with procedures adopted by rule under paragraph (9)(c), basin management action plans, and other pollution control programs under local, state, or federal authority as provided in subsection (4), may allow point or nonpoint sources that will achieve greater pollutant reductions

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than required by an adopted total maximum daily load or wasteload allocation to generate, register, and trade water quality credits for the excess reductions to enable other sources to achieve their allocation; however, the generation of water quality credits does not remove the obligation of a source or activity to meet applicable technology requirements or adopted best management practices. Such plans must allow trading between NPDES permittees, and trading that may or may not involve NPDES permittees, where the generation or use of the credits involve an entity or activity not subject to department water discharge permits whose owner voluntarily elects to obtain department authorization for the generation and sale of credits.

8. The department's rule relating to the equitable abatement of pollutants into surface waters do not apply to water bodies or water body segments for which a basin management plan that takes into account future new or expanded activities or discharges has been adopted under this section.

9. In order to promote resilient wastewater utilities, if the department identifies domestic wastewater treatment facilities or onsite sewage treatment and disposal systems as contributors of at least 20 percent of point source or nonpoint source nutrient pollution or if the department determines remediation is necessary to achieve the total maximum daily load, a basin management action plan for a nutrient total maximum daily load must include the following:

a. A wastewater treatment plan developed by each local government, in cooperation with the department, the water management district, and the public and private domestic wastewater treatment facilities within the jurisdiction of the

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local government, that addresses domestic wastewater. The wastewater treatment plan must:

(I) Provide for construction, expansion, or upgrades necessary to achieve the total maximum daily load requirements applicable to the domestic wastewater treatment facility.

(II) Include the permitted capacity in average annual gallons per day for the domestic wastewater treatment facility; the average nutrient concentration and the estimated average nutrient load of the domestic wastewater; a projected timeline of the dates by which the construction of any facility improvements will begin and be completed and the date by which operations of the improved facility will begin; the estimated cost of the improvements; and the identity of responsible parties.

The wastewater treatment plan must be adopted as part of the basin management action plan no later than July 1, 2025. A local government that does not have a domestic wastewater treatment facility in its jurisdiction is not required to develop a wastewater treatment plan unless there is a demonstrated need to establish a domestic wastewater treatment facility within its jurisdiction to improve water quality necessary to achieve a total maximum daily load. A local government is not responsible for a private domestic wastewater facility's compliance with a basin management action plan unless such facility is operated through a public-private partnership to which the local government is a party.

b. An onsite sewage treatment and disposal system remediation plan developed by each local government in

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175 cooperation with the department, the Department of Health, water
176 management districts, and public and private domestic wastewater
177 treatment facilities.

178 (I) The onsite sewage treatment and disposal system
179 remediation plan must identify cost-effective and financially
180 feasible projects necessary to achieve the nutrient load
181 reductions required for onsite sewage treatment and disposal
182 systems. To identify cost-effective and financially feasible
183 projects for remediation of onsite sewage treatment and disposal
184 systems, the local government shall:

185 (A) Include an inventory of onsite sewage treatment and
186 disposal systems based on the best information available;

187 (B) Identify onsite sewage treatment and disposal systems
188 that would be eliminated through connection to existing or
189 future central domestic wastewater infrastructure in the
190 jurisdiction or domestic wastewater service area of the local
191 government, that would be replaced with or upgraded to enhanced
192 nutrient-reducing onsite sewage treatment and disposal systems,
193 or that would remain on conventional onsite sewage treatment and
194 disposal systems;

195 (C) Estimate the costs of potential onsite sewage treatment
196 and disposal system connections, upgrades, or replacements; and

197 (D) Identify deadlines and interim milestones for the
198 planning, design, and construction of projects.

199 (II) The department shall adopt the onsite sewage treatment
200 and disposal system remediation plan as part of the basin
201 management action plan no later than July 1, 2025, or as
202 required for Outstanding Florida Springs under s. 373.807.

203 10. When identifying wastewater projects in a basin

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204 management action plan, the department may not require the
205 higher cost option if it achieves the same nutrient load
206 reduction as a lower cost option. A regulated entity may choose
207 a different cost option if it complies with the pollutant
208 reduction requirements of an adopted total maximum daily load
209 and meets or exceeds the pollution reduction requirement of the
210 original project.

211 Section 2. This act shall take effect July 1, 2023.



The Florida Senate

Committee Agenda Request

To: Senator , Chair Jason Brodeur
Committee on Agriculture, Environment, and General Government Sub-
Appropriations

Subject: Committee Agenda Request

Date: March 10, 2023

I respectfully request that **Senate Bill #1538**, relating to Implementation of the Recommendations of the Blue Green Algae Task Force, be placed on:

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

A handwritten signature in cursive script that reads "Linda Stewart".

Senator Linda Stewart
Florida Senate, District 17

4/18/23

Meeting Date

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

SB 1538

Bill Number or Topic

Sen Ag Env & GG

Committee

Amendment Barcode (if applicable)

Name

Jane West

Phone

904-671-4008

Address

308 N Monroe St

Email

jwest@1000fof.org

Street

Tally

FL

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

1000 Friends of Florida

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf flsenate.gov](https://www.flsenate.gov/2020-2022/JointRules.pdf)

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

S-001 (08/10/2021)

4/18/23

Meeting Date

AEGG 110SB

Committee

Name **David Cullen**

Address **2838 Little Deal Rd**

Street

Tallahassee

City

FL

State

32308

Zip

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

1538

Bill Number or Topic

Amendment Barcode (if applicable)

Phone **941-323-2404**

Email **cullenasea@gmail.com**

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Sierra Club Florida

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

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 Appropriations Committee on Agriculture, Environment, and General Government

BILL: CS/SB 1632

INTRODUCER: Environment and Natural Resources Committee and Senator Brodeur and others

SUBJECT: Environmental Protection

DATE: April 17, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Barriero</u>	<u>Rogers</u>	<u>EN</u>	<u>Fav/CS</u>
2.	<u>Reagan</u>	<u>Betta</u>	<u>AEG</u>	<u>Favorable</u>
3.	<u> </u>	<u> </u>	<u>FP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1632 is a bill related to environmental protection. The major topics in this bill include wastewater treatment, onsite sewage treatment and disposal systems (OSTDSs), sanitary sewer services, basin management action plans (BMAPs), the wastewater grant program, the Indian River Lagoon (IRL), and the acquisition of state lands.

Regarding advanced wastewater treatment, the bill:

- Requires sewage disposal facilities to provide advanced waste treatment before discharging into certain impaired waters by January 1, 2033; and
- Requires that, for waters that become impaired after July 1, 2023, sewage disposal facilities must provide advanced waste treatment within 10 years of the designation.

Regarding OSTDS, the bill:

- Prohibits new OSTDSs within a BMAP, reasonable assurance plan, or pollution reduction plan where sewer is available. On lots one acre or less where sewer is *not* available, new OSTDSs must be an enhanced system or other treatment system that achieves at least 50 percent nutrient reduction compared to standards OSTDSs; and
- Encourages local government agencies that receive grants or loans from the Department of Environmental Protection (DEP) for connecting OSTDSs to sewer systems to notify owners of OSTDSs that such funding is available and provide this information online.
- For BMAPs that include an Outstanding Florida Spring, the bill expands the area for which an OSTDS remediation plan is required from a “priority focus area” to the entire BMAP.

Regarding sanitary sewer services, the bill:

- Requires local governments to develop a plan to provide sanitary sewer services for developments of more than 50 residential lots that have more than one OSTDS per acre within a 10-year planning horizon (not required for rural areas of opportunity);
- Requires local governments to update their comprehensive plans to include the sanitary sewer planning element by July 1, 2024; and
- Requires local governments that are subject to a BMAP (or located within the basin of waters not meeting applicable nutrient-related water quality standards) to provide the DEP with an annual update on the status of the construction of sanitary sewers to serve such areas.

Regarding BMAPs, the bill:

- Requires BMAPs to include five-year milestones for implementation and water quality improvement;
- Requires entities that have a specific pollutant load reduction requirement to submit to the DEP a list of projects that will be undertaken to meet the five-year milestones;
- Requires the DEP to coordinate with the Department of Agriculture and Consumer Services (DACS) and owners of agricultural operations in a BMAP to identify a list projects that will reduce pollutant loads for agricultural nonpoint sources; and
- Requires local governments to include in their comprehensive plans a list of projects necessary to achieve pollutant load reductions attributable to the local government as part of a BMAP.

Regarding the wastewater grant program, the bill:

- Expands the areas/types of waterbodies that are eligible to receive funding;
- Expands the types of projects that are eligible for grants to include additional wastewater projects, stormwater projects, and regional agricultural projects;
- Removes the requirement that each grant have a minimum 50 percent local match of funds, but allows the DEP to consider percent cost-share identified by an applicant (except in for rural areas of opportunity) when prioritizing projects; and
- Requires the DEP to coordinate with local governments and stakeholders to identify the most effective and beneficial water quality improvement projects.

Regarding the IRL, the bill:

- Establishes the IRL Protection Program, consisting of the Banana River Lagoon BMAP, the Central Indian River Lagoon BMAP, the North Indian River Lagoon BMAP, and the Mosquito Lagoon Reasonable Assurance Plan;
- Requires the IRL Protection Program to establish five-year milestones for implementation and water quality improvement and a water quality monitoring component to evaluate the progress of pollutant load reductions;
- Requires the DEP to evaluate the program every five years and identify any further load reductions necessary to achieve compliance with total maximum daily loads;
- Requires the DEP to identify projects necessary to achieve water quality standards within the IRL watershed;
- Prohibits new OSTDSs (unless previously permitted) within the IRL Protection Program area beginning January 1, 2024, where a central sewerage system is available. For new

developments where sewer is *not* available, only enhanced nutrient-reducing OSTDSs will be authorized; and

- Requires any commercial or residential property with an existing OSTDS located within the IRL Protection Program area to connect to central sewer or upgrade to an enhanced nutrient-reducing OSTDS (or other wastewater treatment system that achieves at least 50 percent nutrient reduction) by July 1, 2030.

Regarding the acquisition of state lands, the bill:

- Raises the property value threshold for when two appraisals of a parcel is required from \$1 million to \$5 million;
- Raises the contract price threshold for when the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) must approve an agreement to acquire real property from \$1 million to \$5 million;
- Removes the requirement that the Board of Trustees approve an acquisition if it is an initial purchase in a Florida Forever project; and provides that the Board of Trustees may expend moneys to acquire land to complete critical linkages within the Florida Wildlife Corridor.

The DEP will incur indeterminate costs related to implementing the Indian River Lagoon Protection Program, including adopting rules.

The effective date of the bill is July 1, 2023.

II. Present Situation:

Water Quality and Nutrients

Phosphorus and nitrogen are naturally present in water and are essential nutrients for the healthy growth of plant and animal life.¹ The correct balance of both nutrients is necessary for a healthy ecosystem; however, excessive nitrogen and phosphorus can cause significant water quality problems.²

Phosphorus and nitrogen are derived from natural and human-made sources.³ Human-made sources include sewage disposal systems (wastewater treatment facilities and septic systems), overflows of storm and sanitary sewers (untreated sewage), agricultural production and irrigation practices, and stormwater runoff.⁴

Excessive nutrient loads may result in harmful algal blooms, nuisance aquatic weeds, and the alteration of the natural community of plants and animals.⁵ Dense, harmful algal blooms can also cause human health problems, fish kills, problems for water treatment plants, and impairment of

¹ U.S. Environmental Protection Agency (EPA), *The Issue*, <https://www.epa.gov/nutrientpollution/issue> (last visited Mar. 10, 2023).

² *Id.*

³ *Id.*

⁴ EPA, *Sources and Solutions*, <https://www.epa.gov/nutrientpollution/sources-and-solutions> (last visited Mar. 10, 2023).

⁵ EPA, *The Issue*, <https://www.epa.gov/nutrientpollution/issue> (last visited Mar. 10, 2023).

the aesthetics and taste of waters. Growth of nuisance aquatic weeds tends to increase in nutrient-enriched waters, which can impact recreational activities.⁶

Wastewater Treatment

The proper treatment and disposal or reuse of wastewater is a crucial part of protecting Florida's water resources. The majority of the state's wastewater is controlled and treated by centralized treatment facilities regulated by the Department of Environmental Protection (DEP). Florida has approximately 2,000 permitted domestic wastewater treatment facilities.⁷

Under section 402 of the federal Clean Water Act, any discharge of a pollutant from a point source⁸ to surface waters (*i.e.*, the navigable waters of the United States or beyond) must obtain a National Pollution Discharge Elimination System (NPDES) permit.⁹ NPDES permit requirements for most wastewater facilities or activities (domestic or industrial) that discharge to surface waters are incorporated into a state-issued permit, thus giving the permittee one set of permitting requirements rather than one state and one federal permit.¹⁰ The DEP issues operation permits for a period of five years for facilities regulated under the NPDES program and up to 10 years for other domestic wastewater treatment facilities meeting certain statutory requirements.¹¹

Sewage disposal facilities are required to provide advanced waste treatment under certain circumstances or when deemed necessary by the DEP.¹² Advanced waste treatment is treatment that provides a reclaimed water product containing no more than the following concentrations of pollutants:

- 5 mg/l of Biochemical Oxygen Demand;
- 5 mg/l of Suspended Solids;
- 3 mg/l of Total Nitrogen; and
- 1 mg/l of Total Phosphorous.¹³

Advanced waste treatment also requires high-level disinfection.¹⁴ Failure to conform to this standard is punishable by a civil penalty of \$750 for each day the failure continues.¹⁵

⁶ *Id.*

⁷ Dep't of Environmental Protection (DEP), *General Facts and Statistics about Wastewater in Florida*, <https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida> (last visited Mar. 10, 2023).

⁸ "Point source" is defined as any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. Fla. Admin. Code R. 62-620.200(37).

⁹ 33 U.S.C. s. 1342.

¹⁰ Sections 403.061 and 403.087, F.S.

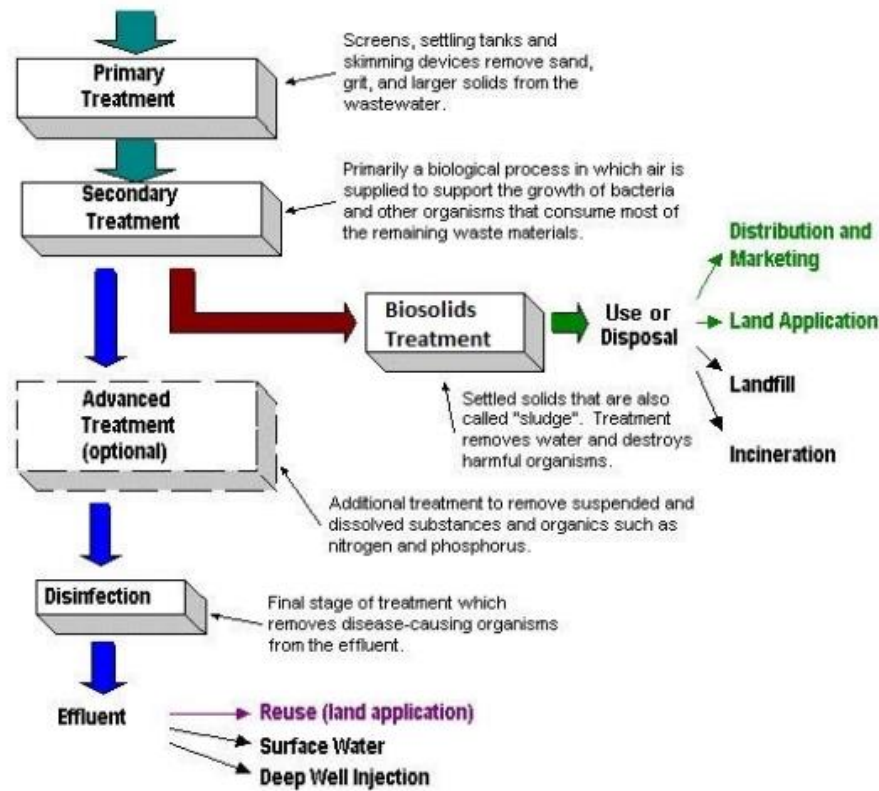
¹¹ Section 403.087(3), F.S.

¹² Section 403.086(2), F.S.

¹³ Section 403.086(4), F.S.

¹⁴ Section 403.086(4)(b), F.S.; Fla. Admin. Code R. 62-600.440(6).

¹⁵ Section 403.086(2), F.S. DEP, *Domestic Wastewater Treatment Process*, available at <https://floridadep.gov/water/domestic-wastewater/documents/domestic-wastewater-treatment-process> (showing flowchart of wastewater treatment process).



Sewage disposal facilities must provide advanced waste treatment approved by the DEP before are disposing of wastes into the following waters: Old Tampa Bay, Tampa Bay, Hillsborough Bay, Boca Ciega Bay, St. Joseph Sound, Clearwater Bay, Sarasota Bay, Little Sarasota Bay, Roberts Bay, Lemon Bay, Charlotte Harbor Bay, Biscayne Bay, and, beginning July 1, 2025, Indian River Lagoon, or into any river, stream, channel, canal, bay, bayou, sound, or other water tributary thereto.¹⁶ However, this requirement does not apply to facilities permitted before February 1987 that discharge secondary treated effluent, followed by water hyacinth treatment, to tributaries of tributaries of these waters or to facilities permitted to discharge to the nontidally influenced portions of the Peace River.¹⁷

¹⁶ Section 403.086(1)(c), F.S.

¹⁷ *Id.*

Onsite Sewage Treatment and Disposal Systems

Onsite sewage treatment and disposal systems (OSTDSs), commonly referred to as “septic systems,” generally consist of two basic parts: the septic tank and the drainfield.¹⁸ Waste from toilets, sinks, washing machines, and showers flows through a pipe into the septic tank where anaerobic bacteria break the solids into a liquid form. The liquid portion of the wastewater flows into the drainfield, which is generally a series of perforated pipes or panels surrounded by lightweight materials such as gravel or Styrofoam. The drainfield provides a secondary treatment where aerobic bacteria continue deactivating the germs. The drainfield also provides filtration of the wastewater as gravity draws the water down through the soil layers.¹⁹



There are an estimated 2.6 million OSTDSs in Florida, providing wastewater disposal for 30 percent of the state’s population.²⁰ Development in some areas is dependent on OSTDSs due to the cost and time it takes to install central sewer systems.²¹ For example, in rural areas and low-density developments, central sewer systems are not cost-effective. A 2008 study found that less than one percent of OSTDSs in Florida were actively managed under operating permits and maintenance agreements.²² The remainder of the systems are generally serviced only when they fail, often leading to costly repairs that could have been avoided with routine maintenance.²³

In a conventional OSTDS, the septic tank does not reduce nitrogen from raw sewage. Approximately 30-40 percent of the nitrogen levels are reduced in the drainfield of a system that is installed 24 inches or more from groundwater.²⁴ This still leaves a significant amount of

¹⁸ Dep’t of Health (DOH), *Septic System Information and Care*, <http://columbia.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/septic-information-and-care.html> (last visited Mar. 13, 2023); EPA, *Types of Septic Systems*, <https://www.epa.gov/septic/types-septic-systems> (last visited Mar. 13, 2023) (showing the graphic provided in the analysis).

¹⁹ *Id.*

²⁰ DEP, *Onsite Sewage Program*, <https://floridadep.gov/water/onsite-sewage#:~:text=Onsite%20sewage%20treatment%20and%20disposal%20systems%20%28OSTDS%29%2C%20commonly,represents%2012%25%20of%20the%20United%20States%E2%80%99%20septic%20systems> (last visited Mar. 13, 2023).

²¹ DOH, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, 1 (2008), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/documents/costs-implement-mandatory-statewide-inspection.pdf> (last visited Mar. 13, 2023).

²² *Id.*

²³ *Id.*

²⁴ DOH, *Florida Onsite Sewage Nitrogen Reduction Strategies Study, Final Report 2008-2015*, 21 (Dec. 2015), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/research/draftreportsm.pdf>; see Fla. Admin. Code R. 64E-6.006(2).

nitrogen to percolate into the groundwater, which makes nitrogen from OSTDSs a potential contaminant in groundwater.²⁵

Different types of advanced OSTDSs exist that can remove greater amounts of nitrogen than a typical septic system (often referred to as “advanced” or “nutrient-reducing” septic systems).²⁶ DEP publishes on its website approved products and resources on advanced systems.²⁷ Determining which advanced system is the best option can depend on site-specific conditions.

Summary of Annual One-Time Construction Cost Impact to Residential Property Owners²⁸

Type of System	Cost per System Over Conventional System Cost ⁽¹⁾	Number of Systems Upgraded Annually	Total Annual Cost – Residential Property Owners
INRB	\$3,200	1,073	\$3,433,600
ATU	\$8,200	679	\$5,567,800
PBTS	\$10,700	36	\$385,200
Total		1,788	\$9,386,600

(1) Estimated conventional system cost is \$5,400.²⁹

The owner of a properly functioning OSTDS must connect to a sewer system within one year of receiving notification that a sewer system is available for connection.³⁰ Owners of an OSTDS in need of repair or modification must connect within 90 days of notification from the DEP.³¹ Basin management action plans (BMAPs) may require the connection of new properties to central sewer or upgrade to an enhanced-nitrogen reducing system as part of an OSTDS remediation plan.³² (See below for a detailed discussion on BMAPs.) The DEP is developing a rule that includes the requirement that OSTDS permits comply with the applicable BMAP.³³

In 2020, the Clean Waterways Act provided for the transfer of the Onsite Sewage Program from the Department of Health (DOH) to the DEP.³⁴ The Onsite Sewage Program will be transferred over a period of five years, and guidelines for the transfer are provided by an interagency

²⁵ University of Florida Institute of Food and Agricultural Sciences (IFAS), *Onsite Sewage Treatment and Disposal Systems: Nitrogen*, 3 (2020), available at <http://edis.ifas.ufl.edu/pdf/SS/SS55000.pdf> (last visited Feb. 10, 2023).

²⁶ DOH, *Nitrogen-Reducing Systems for Areas Affected by the Florida Springs and Aquifer Protection Act* (updated May 2021), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/products/documents/bmap-n-reducing-tech-18-10-29.pdf>.

²⁷ DEP, *Onsite Sewage Program, Product Listings and Approval Requirements*, <https://floridadep.gov/water/onsite-sewage/content/product-listings-and-approval-requirements> (last visited Mar. 15, 2023).

²⁸ DEP, *Statement of Estimated Regulatory Cost for Proposed Changes to Rule 62-6.001, F.A.C.*, 13 (on file with the Senate Committee on Environment and Natural Resources).

²⁹ *Id.*

³⁰ Section 381.00655, F.S.

³¹ *Id.*

³² See sections 373.807, 373.811, and 403.067, F.S.

³³ See 48 Fla. Admin. Reg. 1276 (Apr. 1, 2022) available at <https://www.flrules.org/Faw/FAWDocuments/FAWVOLUMEFOLDERS2022/4864/4864doc.pdf>; see also DEP, *History of Rule 62-6.001*, <https://www.flrules.org/gateway/ruleNo.asp?id=62-6.001> (last visited Mar. 15, 2023).

³⁴ DEP, *Program Transfer*, <https://floridadep.gov/water/onsite-sewage/content/program-transfer> (last visited Feb. 10, 2023).

agreement.³⁵ Per the agreement, the DEP has the primary powers and duties of the Onsite Sewage Program, meaning that the county departments of health will implement the OSTDS program under the direction of the DEP instead of the DOH.³⁶ The county departments of health still handle permitting and inspection of OSTDSs.³⁷ In the event of an alleged violation of OSTDS laws, county departments of health will be responsible for conducting an inspection to gather information regarding the allegations.³⁸

Wastewater Grant Program

In 2020, the Legislature created a wastewater grant program in s. 403.0673, F.S., as part of the Clean Waterways Act.³⁹ The legislation authorized the DEP to provide grants to governmental entities for wastewater projects that reduce excess nutrient pollution within a BMAP, alternative restoration plan adopted by final order, or rural area of opportunity.⁴⁰ The program requires at least a 50 percent match, though this requirement can be waived for rural areas of opportunity.⁴¹ Eligible projects include:

- Projects to retrofit OSTDSs to upgrade such systems to enhanced nutrient-reducing systems;
- Projects to construct, upgrade, or expand facilities to provide advanced waste treatment; and
- Projects to connect OSTDSs to central sewer facilities.⁴²

The DEP coordinates with the water management districts to identify grant recipients in each district.⁴³ The DEP must consider the estimated reduction in nutrient load per project; project readiness; the cost-effectiveness of the project; the overall environmental benefit of a project; the location of a project; the availability of local matching funds; and projected water savings or quantity improvements associated with a project.⁴⁴ The DEP submits an annual report identifying the projects funded through the grant program to the Governor and Legislature.⁴⁵ Projects that subsidize the connection of OSTDS to wastewater treatment facilities are given priority in the following manner:

- First priority: subsidizing the connection of OSTDS to existing infrastructure.
- Second priority: any expansion of a collection or transmission system that promotes efficiency by planning the installation of wastewater transmission facilities to be constructed concurrently with other construction projects occurring within or along a transportation facility right-of-way.
- Third priority: all other connections of OSTDS to wastewater treatment facilities.

³⁵ DOH, DEP, *Interagency Agreement between DEP and DOH in Compliance with Florida's Clean Waterways Act for Transfer of the Onsite Sewage Program*, 5 (2021), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/documents/interagency-agreement-between-fdoh-fdep-onsite-signed-06302021.pdf> (last visited Feb. 10, 2023).

³⁶ *Id.* at 14.

³⁷ *Id.* at 11; DEP, *Onsite Sewage Program*, <https://floridadep.gov/water/onsite-sewage> (last visited Feb. 10, 2023).

³⁸ DOH, DEP, *Interagency Agreement between DEP and DOH in Compliance with Florida's Clean Waterways Act for Transfer of the Onsite Sewage Program* at 11.

³⁹ Chapter 2020-150, Laws of Fla., and section 403.0673, F.S.

⁴⁰ Section 403.0673(1), F.S.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Section 403.0673(4), F.S.

⁴⁴ Section 403.0673(2), F.S.

⁴⁵ Section 403.0673(5), F.S.

The wastewater grant program is funded by documentary stamp tax revenues.⁴⁶ After required distributions from documentary stamp tax revenues are disbursed,⁴⁷ an amount equaling 5.4175 percent of the remainder is paid into the Water Protection and Sustainability Program Trust Fund to be used to fund wastewater grants.⁴⁸ The Office of Economic and Demographic Research estimates that the distribution for wastewater grants in Fiscal Year 2023-2024 will be \$95.2 million.⁴⁹

Water Quality Standards

Under section 303(d) of the federal Clean Water Act, states must establish water quality standards for waters within their borders and develop a list of impaired waters that do not meet the established water quality standards, as well as a list of threatened waters that may not meet water quality standards in the following reporting cycle.⁵⁰

If the DEP determines that a waterbody or waterbody segment is impaired, it must be placed on the verified list of impaired waters and a total maximum daily load (TMDL) must be calculated.⁵¹ The waterbody or waterbody segment may be removed from the verified list if it attains water quality criteria.⁵² If the DEP determines that a waterbody is impaired, but further study is needed to determine the causative pollutants or other factors contributing to impairment before the waterbody is placed on the verified list, the waterbody or waterbody segment will be placed on the statewide comprehensive study list.⁵³

Total Maximum Daily Loads

A TMDL is a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards.⁵⁴ Pursuant to the federal Clean Water Act, the DEP must establish a TMDL for impaired waterbodies.⁵⁵ As of December 2022, a total of 459 TMDLs have been established for impaired waters in Florida.⁵⁶

⁴⁶ Section 201.15(4)(h), F.S. Documentary stamp tax revenues are collected under ch. 201, F.S., which requires an excise tax to be levied on two classes of documents: deeds and other documents related to real property, which are taxed at the rate of 70 cents per \$100; and certificates of indebtedness, promissory notes, wage assignments, and retail charge account agreements, which are taxed at 35 cents per \$100. See sections 201.02(1)(a) and 201.08(1)(a), F.S.

⁴⁷ The required distributions are to the Land Acquisition Trust Fund and the service charge representing the estimated pro rata share of the cost of general government paid from the General Revenue Fund. Section 201.15(4), F.S.

⁴⁸ Section 201.15(4)(h), F.S.

⁴⁹ Office of Economic and Demographic Research (EDR), *Conference Results*, (2023) available at <http://edr.state.fl.us/Content/conferences/docstamp/docstampresults.pdf>.

⁵⁰ EPA, *Overview of Identifying and Restoring Impaired Waters under Section 303(d) of the CWA*, <https://www.epa.gov/tmdl/overview-identifying-and-restoring-impaired-waters-under-section-303d-cwa> (last visited Mar. 13, 2023); 40 C.F.R. 130.7; DEP, *Total Maximum Daily Loads Program*, <https://floridadep.gov/dear/water-quality-evaluation-tmdl/content/total-maximum-daily-loads-tmdl-program> (last visited Mar. 13, 2023).

⁵¹ DEP, *Assessment Lists*, <https://floridadep.gov/dear/watershed-assessment-section/content/assessment-lists> (last visited Feb. 24, 2023); DEP, *Verified List Waterbody Ids (WBIDs)*, <https://geodata.dep.state.fl.us/datasets/FDEP::verified-list-waterbody-ids-wbids/about> (last visited Feb. 24, 2023); and section 403.067(4), F.S.

⁵² Section 403.067(5), F.S.

⁵³ Section 403.067(2), F.S.; ch. 62-303.150, F.A.C.

⁵⁴ Section 403.067(6)(a), F.S. See also 33 U.S.C. § 1251, s. 303(d) (the Clean Water Act).

⁵⁵ Section 403.067(1), F.S.

⁵⁶ EDR, *Annual Assessment of Florida's Water Resources: Quality*, 5 (2023), available at http://edr.state.fl.us/Content/natural-resources/2023_AnnualAssessmentWaterResources_Chapter4.pdf.

Basin Management Action Plans

BMAPs are one of the primary mechanisms the DEP uses to achieve TMDLs. BMAPs are plans that address the entire pollution load, including point and nonpoint discharges,⁵⁷ for a watershed. As of June 2022, there were 33 adopted BMAPs in Florida.⁵⁸

BMAPs generally consist of:

- Permitting and other existing regulatory programs, including water quality based effluent limitations;
- Best management practices (BMPs) (see below for further discussion of BMPs) and non-regulatory and incentive-based programs, including cost-sharing, waste minimization, pollution prevention, agreements, and public education;
- Public works projects, including capital facilities; and
- Land acquisition.⁵⁹

Producers of nonpoint source pollution included in a BMAP must comply with the established pollutant reductions by either implementing the appropriate BMPs or by conducting water quality monitoring.⁶⁰ A nonpoint source discharger may be subject to enforcement action by the DEP or a water management district based on a failure to implement these requirements.⁶¹

The DEP may establish a BMAP as part of the development and implementation of a TMDL for a specific waterbody. First, the BMAP equitably allocates pollutant reductions to individual basins, to all basins as a whole, or to each identified point source or category of nonpoint sources.⁶² Then, the BMAP establishes the schedule for implementing projects and activities to meet the pollution reduction allocations.⁶³

The BMAP development process provides an opportunity for local stakeholders, local government, community leaders, and the public to collectively determine and share water quality cleanup responsibilities collectively.⁶⁴ BMAPs are adopted by secretarial order.⁶⁵

Each BMAP must include:

- The management strategies available through existing water quality protection programs to achieve TMDLs;
- A description of BMPs adopted by rule;

⁵⁷ “Point source” is defined as any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. Nonpoint sources of pollution are sources of pollution that are not point sources. Fla. Admin. Code R. 62-620.200(37).

⁵⁸ EDR, *Annual Assessment of Florida’s Water Resources: Quality* at 5.

⁵⁹ Section 403.067(7), F.S.

⁶⁰ Section 403.067(7)(b)2.g., F.S. For example, BMPs for agriculture include activities such as managing irrigation water to minimize losses, limiting the use of fertilizers, and waste management.

⁶¹ Section 403.067(7)(b)2.h., F.S.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ DEP, *Basin Management Action Plans (BMAPs)*, <https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps> (last visited Mar. 13, 2023).

⁶⁵ Section 403.067(7), F.S.

- A list of projects in priority ranking with a planning-level cost estimate and estimated date of completion for each project;
- The source and amount of financial assistance to be made available; and
- A planning-level estimate of each project's expected load reduction, if applicable.⁶⁶

BMAPs must also include milestones for implementation and water quality improvement and an associated water quality monitoring component to evaluate the progress of pollutant load reductions.⁶⁷ Every five years an assessment of progress toward these milestones must be conducted and revisions to the plan made as appropriate.⁶⁸

In addition, a BMAP for a nutrient TMDL must include a wastewater treatment plan that addresses domestic wastewater if the DEP identifies domestic wastewater treatment facilities as contributors of at least 20 percent of point source or nonpoint source nutrient pollution or if the DEP determines remediation is necessary to achieve the TMDL.⁶⁹ This plan must provide for the construction, expansion, or upgrades necessary to achieve applicable TMDLs and include information regarding the permitted capacity of the domestic wastewater treatment facility; the average nutrient concentration and the estimated average nutrient load of the domestic wastewater; a projected timeline for the construction of any facility improvements; the estimated cost of the improvements; and the identity of responsible parties.⁷⁰

BMAPs must also include an OSTDS remediation plan if the DEP identifies OSTDSs as a contributor of at least 20 percent of point source or nonpoint source nutrient pollution or if the DEP determines remediation is necessary to achieve a TMDL.⁷¹ This remediation plan must identify cost-effective and financially feasible projects necessary to achieve the nutrient load reductions required for OSTDSs.⁷² The plan must also include an inventory of OSTDSs (including those systems that would be eliminated through connection to central domestic wastewater infrastructure or that would be upgraded to an enhanced nutrient-reducing system); the estimated cost of potential OSTDS connections, upgrades, or replacements; and deadlines and milestones for the planning, design, and construction of projects.⁷³

In addition, a BMAP must include a cooperative agricultural regional water quality improvement element, but only if:

- Agricultural measures have been adopted by the Department of Agriculture and Consumer Services (DACS) and have been implemented and the waterbody remains impaired;
- Agricultural nonpoint sources contribute to at least 20 percent of nonpoint source nutrient discharges; and
- The DEP determines that additional measures are necessary to achieve the TMDL.⁷⁴

⁶⁶ Section 403.067(7)(a)4., F.S.

⁶⁷ Section 403.067(7)(a)6., F.S.

⁶⁸ *Id.*

⁶⁹ Section 403.067(7)(a)9., F.S.

⁷⁰ Section 403.067(7)(a)9.a., F.S.

⁷¹ Section 403.067(7)(a)9.b., F.S.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Section 403.067(7)(e), F.S.

The cooperative agricultural regional water quality improvement element must be implemented through the use of cost-sharing projects and include cost-effective and technically and financially practical cooperative regional agricultural nutrient reduction projects that can be implemented on private properties on a site-specific, cooperative basis.⁷⁵

Best Management Practices

BMPs are defined in statute as a practice or combination of practices determined by the coordinating agencies—based on research, field-testing, and expert review—to be the most effective and practicable on-location means, including economic and technological considerations, for improving water quality in agricultural and urban discharges.⁷⁶ BMPs for agricultural discharges must reflect a balance between water quality improvements and agricultural productivity.⁷⁷

BMPs are designed to protect water resources from nonpoint source pollution,⁷⁸ occurring from operations like agriculture, golf courses, forestry, and stormwater management.⁷⁹ BMPs are practical measures that can reduce the effects of fertilizer, nutrients, and water use on the environment and otherwise manage the landscape to further protect water resources.⁸⁰

Alternative Restoration Plans

Alternative Restoration Plans (4b or 4e plans) employ the early implementation of restoration activities to avoid being placed on the verified list and the development of TMDLs and BMAPs.⁸¹ A waterbody can be placed in category 4e if it is impaired but recently completed restoration activities (or ongoing restoration activities are underway) to restore the designated uses of the waterbody.⁸² For 4e plans, the waterbody is still included on the Clean Water Act's 303(d) list, but placement on the verified list is postponed for one five-year assessment cycle to allow for implementation of the 4e plan and evaluation of progress toward restoration.⁸³

⁷⁵ Section 403.067(7)(e), F.S. Eligible projects include land acquisition in fee or conservation easements on the lands of willing sellers and site-specific water quality improvement or dispersed water management projects on the lands of project participants. *Id.*

⁷⁶ Section 373.4595(2)(a), F.S.; *see also* section 373.4592(2)(b), F.S.

⁷⁷ *Id.*

⁷⁸ Point sources are any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. Fla. Admin. Code R. 62-620.200(37).

⁷⁹ University of Florida Institute of Food and Agricultural Sciences (UF/IFAS), *Best Management Practices*, <https://hort.ifas.ufl.edu/yourfloridalawn/bmps.shtml> (last visited Mar. 15, 2023); DEP, *NPDES Stormwater Program*, <https://floridadep.gov/Water/Stormwater> (last visited Mar. 15, 2023).

⁸⁰ UF/IFAS, *What are Agricultural Best Management Practices?*, <https://bmp.ifas.ufl.edu/about-bmps/> (last visited Mar. 15, 2023).

⁸¹ DEP, *Alternative Restoration Plans*, <https://floridadep.gov/DEAR/Alternative-Restoration-Plans> (last visited Mar. 13, 2023).

⁸² *Id.*

⁸³ DEP, *Category 4e Assessments and Documentation*, <https://floridadep.gov/dear/alternative-restoration-plans/content/category-4e-assessments-and-documentation> (last visited Mar. 15, 2023).

Category 4b plans include waterbodies that are impaired for one or more designated uses but does not require TMDL development because existing or proposed measures will attain water quality standards.⁸⁴ These waterbodies are *not* included in the CWA 303(d) list.⁸⁵

A reasonable assurance plan (RAP) is a control measure that the DEP may implement for category 4b impaired waterbodies.⁸⁶ The DEP first determines if a waterbody is impaired or may be reasonably expected to become impaired within the next five years.⁸⁷ If a waterbody fits this criteria, the DEP evaluates whether existing or proposed technology-based effluent limitations and other pollution control programs are sufficient to result in the attainment of water quality standards. If the waterbody is expected to attain water quality standards in the future and to make reasonable progress towards attainment of those standards in a certain timeframe, the waterbody will not require a TMDL. The DEP's decision must be based on a plan that provides reasonable assurance that proposed pollution control mechanisms and expected water quality improvements in the waterbody will attain water quality standards.⁸⁸

Outstanding Florida Springs

In 2016, the Florida Legislature enacted the Florida Springs and Aquifer Protection Act (the Act) and identified 30 Outstanding Florida Springs (OFSs) that require additional protections to ensure their conservation and restoration for future generations.⁸⁹ These springs are a unique part of the state's scenic beauty, provide critical habitat, and have immeasurable natural, recreational, and economic value.⁹⁰ The Act requires the DEP to assess the water quality in the OFSs. Based on these assessments, the DEP determined that 24 of these springs are impaired.⁹¹ For these impaired springs, the DEP must adopt (or re-adopt) a BMAP to implement all the protections of the Act, including:

- Prioritized lists of restoration projects along with planning level estimates for cost, schedule, and nutrient load reduction;
- Phased milestones (five-year, 10-year, and 15-year) to achieve water quality restoration targets in 20 years;
- Estimated nutrient pollutant loads, allocated to each source or category of sources;
- Completed remediation plans for OSTDSs where septic loading accounts for at least 20 percent of the estimated nutrient input;⁹² and

⁸⁴ EDR, *Annual Assessment of Florida's Water Resources: Quality*, 14 (2023), available at http://edr.state.fl.us/Content/natural-resources/2023_AnnualAssessmentWaterResources_Chapter4.pdf.

⁸⁵ *Id.*

⁸⁶ DEP, *Alternative Restoration Plans*, <https://floridadep.gov/DEAR/Alternative-Restoration-Plans> (last visited Mar. 13, 2023).

⁸⁷ Fla. Admin. Code R. 62-303.600.

⁸⁸ *Id.*

⁸⁹ DEP, *Springs*, <https://floridadep.gov/springs/> (last visited Mar. 13, 2023). OFSs include all historic first magnitude springs and the following additional springs, including their associated spring runs: De Leon Springs, Peacock Springs, Poe Springs, Rock Springs, Wekiwa Springs, and Gemini Springs. Section 373.802(4), F.S.

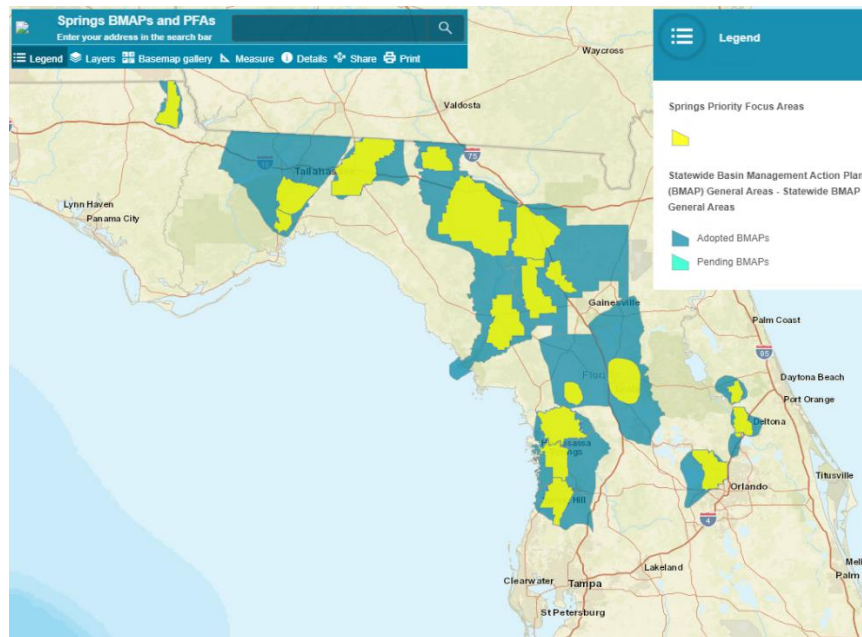
⁹⁰ DEP, *Protect and Restore Springs*, <https://floridadep.gov/springs/protect-restore> (last visited Mar. 13, 2023).

⁹¹ *Id.*

⁹² Although OSTDS remediation plans were first only required for springs, in 2020, the requirement was expanded to BMAPs statewide as part of the Clean Waterways Act. See Chapters 2016-1, s. 27 and 2020-150, s. 13, Laws of Fla. Notably, OSTDS remediation plans for springs are only required within the priority focus areas, whereas the laws governing BMAPs require OSTDS remediation plans more generally within the entire BMAP.

- Delineated “priority focus areas” where certain activities are prohibited.⁹³

A “priority focus area” is the area or areas of a basin where the Floridan Aquifer⁹⁴ is generally most vulnerable to pollutant inputs where there is a known connectivity between groundwater pathways and an OFS, as determined by the DEP in consultation with the appropriate water management districts and delineated in a BMAP.⁹⁵



The activities prohibited within priority focus areas include:

- New domestic wastewater disposal facilities with permitted capacities of 100,000 gallons per day or more, except for those facilities that meet an advanced wastewater treatment standard of no more than 3 mg/l total nitrogen, on an annual permitted basis, or a more stringent treatment standard if necessary to attain a TMDL;
- New OSTDSs on lots of less than one acre, if the addition of the specific systems conflicts with an OSTDS remediation plan incorporated into a BMAP;
- New facilities for the disposal of hazardous waste;
- The land application of Class A or Class B domestic wastewater biosolids not in accordance with a DEP-approved nutrient management plan; and

⁹³ DEP, *Protect and Restore Springs*, <https://floridadep.gov/springs/protect-restore> (last visited Mar. 13, 2023).

⁹⁴ The Floridan Aquifer is the largest aquifer in the southeastern United States and one of the most productive aquifer systems in the world. The aquifer underlies an area of about 100,000 square miles that includes all of Florida and extends into parts of Alabama, Georgia and South Carolina, as well as parts of the Atlantic Ocean and the Gulf of Mexico. St. Johns River Water Management District, *Florida's aquifers*, <https://www.sjrwmd.com/water-supply/aquifer/#:~:text=Aquifer%20facts%201%20More%20than%2090%20percent%20of,2%20C000%20feet%20below%20land%20surface.%20...%20More%20items> (last visited Mar. 13, 2023).

⁹⁵ Section 373.802(5), F.S.; DEP, *Map of Priority Focus Areas in BMAPs*, <https://fdep.maps.arcgis.com/apps/View/index.html?appid=1afdd97c67584c06840019241becde74> (last visited Mar. 13, 2023) (map of priority focus areas).

- New agriculture operations that do not implement BMPs, measures necessary to achieve pollution reduction levels established by the DEP, or groundwater monitoring plans.⁹⁶

There have been recent legal challenges to the DEP's development of BMAPs for OFSs. In *Sierra Club v. Department of Environmental Protection*, the court held that the DEP failed to comply with ss. 403.067(6)(b) and 373.801(1)(b), F.S., in creating the BMAPs because the BMAPs failed to include an identification of each *specific* point source or category of nonpoint sources and an estimated allocation of the pollutant for each point source or category of nonpoint sources.⁹⁷ Instead, the BMAPs included pie charts that only showed current estimated nitrogen loading in the various springsheds by source and allocations to entire basins, not to any point or nonpoint source.⁹⁸

Indian River Lagoon

The Indian River Lagoon (IRL) is a 156-mile-long estuary spanning approximately 40 percent of Florida's east coast.⁹⁹ There are six coastal counties in the IRL watershed: Volusia, Brevard, Indian River, St. Lucie, Martin, and Palm Beach.¹⁰⁰ The IRL extends from Ponce de Leon Inlet near New Smyrna Beach in Volusia County to the southern border of Jupiter Inlet in Martin County.¹⁰¹ There are three interconnected lagoons in the IRL basin: Mosquito Lagoon, Banana River Lagoon, and Indian River Lagoon.¹⁰²

The IRL is considered the most biologically diverse estuary in North America.¹⁰³ It is home to more than 2,000 species of plants, 600 species of fish, 300 species of birds, and 53 threatened or endangered species.¹⁰⁴ In 2014, the estimated annual economic value received from the IRL was approximately \$7.6 billion, around \$1.57 billion of which is attributable to recreation and visitor-

⁹⁶ Section 373.811, F.S.

⁹⁷ *Sierra Club v. DEP*, No. 1D21-1667, *2 (Fla. 1st DCA 2023).

⁹⁸ *Id.* at *5.

⁹⁹ DEP, Basin Management Action Plan, *Indian River Lagoon Basin Central Indian River Lagoon*, 14 (2021), available at https://publicfiles.dep.state.fl.us/DEAR/BMAP/IndianRiverLagoon/BMAP_Documents/2021_IRL_BMAP_Final/CIRL/Final_CIRL_BMAP_02102021.pdf; IRLNEP, *Importance*, <https://onelagoon.org/importance/> (last visited Mar. 10, 2023).

¹⁰⁰ DEP, Basin Management Action Plan, *Indian River Lagoon Basin Central Indian River Lagoon* at 14.

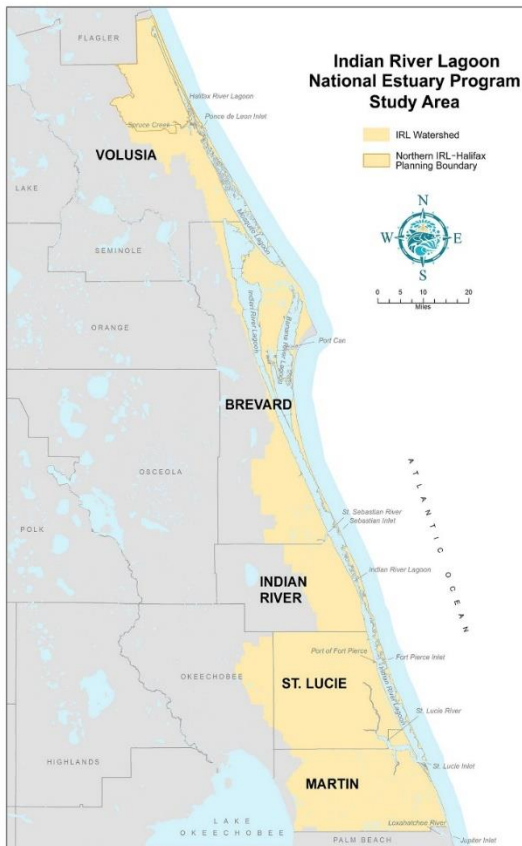
¹⁰¹ *Id.*

¹⁰² DEP, TMDL Report, *Nutrient and Dissolved Oxygen TMDLs for the Indian River Lagoon and Banana River Lagoon*, 1 (2009), available at <https://floridadep.gov/sites/default/files/indian-banana-nutrient-do-tmdl.pdf>.

¹⁰³ DEP, Basin Management Action Plan, *Indian River Lagoon Basin Central Indian River Lagoon*, 45 (2021), available at <https://floridadep.gov/sites/default/files/central-irl-bmap.pdf>; An estuary is a partially enclosed, coastal waterbody where freshwater from rivers and streams mixes with saltwater from the ocean. Estuaries are among the most productive ecosystems on earth, home to unique plant and animal communities that have adapted to brackish water: freshwater mixed with saltwater. U.S. EPA, *What Is An Estuary?*, <https://www.epa.gov/nep/basic-information-about-estuaries> (last visited Mar. 10, 2023); NOAA, *What Is An Estuary?*, <https://oceanservice.noaa.gov/facts/estuary.html> (last visited Mar. 10, 2023).

¹⁰⁴ Indian River Lagoon Species Inventory, *Biodiversity*, https://www.irlspecies.org/misc/Total_Biodiv.php#:~:text=Home%20to%20over%204%2C200%20species%20of%20plants%2C%20birds%2C,species%20of%20fish%20and%20370%20species%20of%20birds (last visited Mar. 10, 2023).

related activity.¹⁰⁵ Industry groups that are directly influenced by the IRL support nearly 72,000 jobs.¹⁰⁶



The IRL ecosystem has been harmed by human activities in the region. Stormwater runoff from urban and agricultural areas, discharges from wastewater treatment facilities, canal discharges, septic systems, animal waste, and fertilizer applications have led to harmful levels of nutrients and sediments entering the lagoon.¹⁰⁷ These pollutants create cloudy conditions, feed algal blooms, and lead to muck accumulation, all of which negatively impact the seagrass that provides habitat for much of the IRL's marine life.¹⁰⁸ During the 2011 "Superbloom," intense algal blooms of phytoplankton occurred throughout most of the IRL, lasting for seven months and resulting in massive losses of seagrass that has yet to fully recover.¹⁰⁹ There have also been recurring brown tides; unusual mortalities of dolphins, manatees, and shorebirds; and large fish kills due to low dissolved oxygen from decomposing algae.¹¹⁰ Brown tide is a type of algal bloom dominated by a brown, microscopic marine algae, which can be harmful to ecosystems in high concentrations, and was first documented in state waters in 2012.¹¹¹ The St. Lucie Estuary is a major tributary to the southern IRL, so freshwater discharges from Lake Okeechobee, which can include toxic cyanobacteria ("blue-green algae"), also impact the IRL.¹¹²

¹⁰⁵ East Central Florida Regional Planning Council and Treasure Coast Regional Planning Council, *Indian River Lagoon Economic Valuation Update*, vi, ix (Aug. 26, 2016), available at https://files.tcrpc.org/portfolio%20of%20work/Economic%20Development/IRL%20Valuation/FinalReportIRL08_26_2016.pdf.

¹⁰⁶ *Id.* at ix.

¹⁰⁷ Tetra Tech, Inc. & Closewaters, LLC, *Save Our Indian River Lagoon Project Plan 2019 Update* at xi; [Marine Resources Council, Indian River Lagoon Health Update](https://savetheirl.org/wp-content/uploads/mrc-report-card-2018-min.pdf), 4-7 (2018), available at <https://savetheirl.org/wp-content/uploads/mrc-report-card-2018-min.pdf>.

¹⁰⁸ Tetra Tech, Inc. & Closewaters, LLC, *Save Our Indian River Lagoon Project Plan 2019 Update* at xi.

¹⁰⁹ IRL 2011 Consortium, *Indian River Lagoon 2011 Superbloom - Plan of Investigation*, 2-3 (2012), available at https://www.sjrwmd.com/static/waterways/irl-technical//2011superbloom_investigationplan_June_2012.pdf; Marine Resources Council, *Indian River Lagoon Coastal Community Report Card*, 2,4 (2022), available at <https://savetheirl.org/wp-content/uploads/IRLReportCard2022-opt.pdf>.

¹¹⁰ Tetra Tech, Inc. & Closewaters, LLC, *Save Our Indian River Lagoon Project Plan 2019 Update* at xi.

¹¹¹ SJRWMD, *Renewing the Lagoon - Frequently Asked Questions*, <https://www.sjrwmd.com/waterways/renew-lagoon/#faq-01> (last visited Mar. 13, 2023); FWC, *Effects of Brown Tide in the Indian River Lagoon* (2012), <https://myfwc.com/research/redtide/monitoring/historical-events/brown-tide/> (last visited Mar. 13, 2023).

¹¹² DEP, Basin Management Action Plan, *St. Lucie River and Estuary Basin*, 15 (2020), available at https://publicfiles.dep.state.fl.us/DEAR/DEARweb/BMAP/NEEP_2020_Updates/St_Lucie_BMAP_01-31-20.pdf; DEP, Basin Management Action Plan, *Lake Okeechobee*, 14 (2020), available at https://publicfiles.dep.state.fl.us/DEAR/DEARweb/BMAP/NEEP_2020_Updates/Lake%20Okeechobee%20BMAP_01-31-20.pdf.

The St. Johns River Water Management District, the South Florida Water Management District, and local governments implement projects that address water quality issues in the IRL.¹¹³ Brevard County established the Save Our Indian River Lagoon Project Plan, which outlines local projects to meet water quality targets and improve the health, productivity, aesthetic appeal, and economic value of the IRL.¹¹⁴ In 2016, Brevard County passed a referendum, approved by 62.4 percent of voters, to authorize the issuance of a half-cent infrastructure sales tax to pay for a portion of the plan.¹¹⁵ The sales tax will generate an estimated \$542 million over ten years.¹¹⁶

OSTDSs account for much of the nitrogen enrichment in groundwater in the IRL watersheds because the six counties adjacent to the IRL rely heavily on OSTDS for wastewater management.¹¹⁷ As of 2021, there were approximately 300,000 permitted OSTDSs within the IRL watershed.¹¹⁸ Indian River and Martin counties used OSTDSs for over 50 percent of their wastewater management, and there were approximately 31,000 septic systems in each county.¹¹⁹ As of 2019, Brevard County, which borders nearly half of the IRL, had an estimated 53,204 OSTDSs and contributed approximately 17,863 pounds per year of total nitrogen from failing OSTDSs.¹²⁰

IRL National Estuary Program

Established in 1991, the IRL National Estuary Program is part of a national network of 28 estuary programs established under the federal Clean Water Act and administered nationally by the U.S. Environmental Protection Agency (EPA).¹²¹ The program was established to assist with the development a comprehensive plan to restore and protect the IRL.¹²²

Today, the program is sponsored by the IRL Council, which was established in February 2015, as a special district of Florida.¹²³ The IRL Council includes representatives of five counties bordering the lagoon (Volusia, Brevard, the Indian River County Lagoon Coalition, St. Lucie and Martin counties), the St. Johns River and South Florida Water Management Districts, and

¹¹³ SJRWMD, *The Indian River Lagoon*, <https://www.sjrwmd.com/waterways/indian-river-lagoon/> (last visited Mar. 13, 2023); SFWMD, *Celebrating the Indian River Lagoon-South C-23/24 Stormwater Treatment Area Groundbreaking*, <https://www.sfwmd.gov/news-events/news/celebrating-indian-river-lagoon-south-c-2324-stormwater-treatment-area> (last visited Feb. 15, 2023).

¹¹⁴ Tetra Tech, Inc. & Closewaters, LLC, *Save Our Indian River Lagoon Project Plan 2019 Update* at xi.

¹¹⁵ Brevard County Supervisor of Elections, *2016 General Election Official Results*, <https://enr.electionsfl.org/BRE/1616/Summary/> (last visited Mar. 13, 2023); Brevard County, *Save our Indian River Lagoon Project Plan*, <https://www.brevardfl.gov/SaveOurLagoon/ProjectPlan> (last visited Mar. 13, 2023).

¹¹⁶ *Id.*

¹¹⁷ L.W. Herren, et al., *Septic systems drive nutrient enrichment of groundwaters and eutrophication in the urbanized Indian River Lagoon, Florida*, *Marine Pollution Bulletin*, 2 (2021), available at <https://reader.elsevier.com/reader/sd/pii/S0025326X21009620?token=1384E4307B3A786FC65C7DD3270D91440566F5E2793CAE8F859A2139CF19FE68102D54027EEFF164F8492399C7F65B49&originRegion=us-east-1&originCreation=20230217141616>.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ Tetra Tech, Inc. & Closewaters, LLC, *Save Our Indian River Lagoon Project Plan 2019 Update* at 22-23.

¹²¹ One Lagoon, *The Indian River Lagoon NEP*, <https://onelagoon.org/irlnep/> (last visited Mar. 12, 2023); IRL National Estuary Program, *Second Amended and Restated IRL National Estuary Program Interlocal Agreement*, 1 (2017), available at https://onelagoon.org/wp-content/uploads/2017-2ndAmendedInterlocal_20200201.pdf.

¹²² *Id.*

¹²³ One Lagoon, *The Indian River Lagoon NEP*.

the DEP. The council's goals include (1) attaining and maintaining water and sediment of sufficient quality to support a healthy estuarine lagoon ecosystem; (2) attaining and maintaining a functioning, healthy ecosystem which supports endangered and threatened species, fisheries, commerce, and recreation; (3) promoting public awareness and coordinated interagency management of the IRL ecosystem; and (4) developing long-term funding sources for prioritized projects to preserve, protect, restore, and enhance the IRL.¹²⁴ The EPA provides guidance to the council and, every five years, evaluates the program's progress.¹²⁵

The IRL National Estuary Program identifies and implements projects to improve wastewater infrastructure, reduce reliance on conventional septic systems, retain and treat stormwater, rehabilitate habitats, and enhance planning for resilient communities.¹²⁶ A list of eligible projects is evaluated and revised annually by the program's Management Conference.¹²⁷ The program also developed strategies to, among other things:

- Remove or reduce nutrient-loading to the IRL watershed to meet water quality standards pursuant to a TMDL, BMAP, or RAP;¹²⁸
- Improve wastewater infrastructure to achieve advanced wastewater treatment and to increase capacity to accommodate septic-to-sewer conversions and the region's growing population;¹²⁹ and
- Research innovative technologies and emergence of commercial opportunities that will assist with restoration and stewardship of the IRL.¹³⁰

Board of Trustees of the Internal Improvement Trust Fund

The Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) holds state lands in trust for the use and benefit of the people of the state pursuant to Art. II, s. 7 and Art. X, s. 11 of the State Constitution. The Governor, the Chief Financial Officer, the Attorney General, and the Commissioner of Agriculture constitute the trustees of the internal improvement trust fund.¹³¹ The DEP performs all staff duties and functions related to the acquisition, administration, and disposition of state lands, title to which is or will be vested in the Board of Trustees.¹³²

Section 253.025, F.S., outlines the procedures the state must follow when acquiring lands. Prior to the acquisition of land, a state agency is required to coordinate with the Division of State Lands (DSL) within the DEP to determine the availability of existing, suitable state-owned lands

¹²⁴ IRL Program, *Looking Ahead to 2030: A 10-Year Comprehensive Conservation and Management Plan for the IRL, Florida*, 12 (2019), available at https://onelagoon.org/wp-content/uploads/IRLNPEP_Final-Draft-CCMP-REVISION_2018-12-07_LowRes_20200204.pdf.

¹²⁵ *Id.* at 13.

¹²⁶ IRL Program, *Looking Ahead to 2030: A 10-Year Comprehensive Conservation and Management Plan for the IRL, Florida* at ix.

¹²⁷ *Id.* The IRL National Estuary Program's Management Conference represents a more than 100-member citizen and scientist oversight committee that advises the IRL Council Board of Directors as they adopt policies and make annual budget and appropriation decisions to implement the comprehensive plan. *Id.* at 7.

¹²⁸ *Id.* at 20-21.

¹²⁹ *Id.* at 24, 26-27.

¹³⁰ *Id.* at 140.

¹³¹ FLA. CONST. Art. IV s. 4.

¹³² Section 253.002, F.S.

in the area and the public purpose for which the acquisition is being proposed.¹³³ Additionally, each parcel of land that is to be acquired must have at least one appraisal.¹³⁴ If the cost of land exceeds \$1,000,000 then two appraisals are required. If a parcel is estimated to be worth \$100,000 or less and the director of the DSL finds that the cost of an outside appraisal is not justified, a comparable sales analysis, an appraisal prepared by the DSL, or other reasonably prudent procedures may be used by the DSL to estimate the value of the parcel, provided the public's interest is reasonably protected.¹³⁵ The maximum amount that the state may pay for a parcel to be acquired is the value indicated in a single approved appraisal if only one appraisal is required.¹³⁶ If two appraisals are required and their values do not differ significantly the maximum amount that may be paid is the higher value indicated.¹³⁷

The Board of Trustees, by an affirmative vote of at least three members, may direct the DEP to purchase lands on an immediate basis using up to 15 percent of Florida Forever funds allocated to the DEP for the acquisition of lands that:

- Are listed or placed at auction by the Federal Government as part of the Resolution Trust Corporation sale of lands from failed savings and loan associations;
- Are listed or placed at auction by the Federal Government as part of the Federal Deposit Insurance Corporation sale of lands from failed banks;
- Will be developed or otherwise lost to potential public ownership, or for which federal matching funds will be lost, by the time the land can be purchased under the program within which the land is listed for acquisition; or
- Will prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern pursuant to Chapter 380, F.S.¹³⁸

For such acquisitions, the Board of Trustees may waive or modify all land acquisition procedures and all competitive bid procedures.¹³⁹ Additionally, lands acquired must, at the time of purchase, be on one of the acquisition lists established pursuant to Chapter 259, F.S., or be essential for water resource development, protection, or restoration, or a significant portion of the lands must contain natural communities or plant or animal species that are listed by the Florida Natural Areas Inventory as critically imperiled, imperiled, or rare, or as excellent quality occurrences of natural communities.¹⁴⁰

The Board of Trustees may expend moneys appropriated by the Legislature to acquire the fee or any lesser interest in lands for the following public purposes:

- To conserve and protect environmentally unique and irreplaceable lands that contain native, relatively unaltered flora and fauna;
- To conserve and protect lands within designated areas of critical state concern;
- To conserve and protect native species habitat or endangered or threatened species;

¹³³ Section 253.025(2), F.S.

¹³⁴ Section 253.025(8), F.S. Appraisals are not required for lands donated to the state.

¹³⁵ *Id.*

¹³⁶ Fla. Admin. Code R. 18-1.006.

¹³⁷ *Id.*

¹³⁸ Section 253.025(22), F.S.

¹³⁹ Section 253.025(24), F.S.

¹⁴⁰ Section 253.025(22), F.S.

- To conserve, protect, manage, or restore important ecosystems, landscapes, and forests, if the protection and conservation of such lands is necessary to enhance or protect significant surface water, groundwater, coastal, recreational, timber, or fish or wildlife resources;
- To promote water resource development that benefits natural systems and citizens of the state;
- To facilitate the restoration and subsequent health and vitality of the Florida Everglades;
- To provide areas, including recreational trails, for natural resource-based recreation and other outdoor recreation on any part of any site compatible with conservation purposes;
- To preserve significant archaeological or historic sites;
- To conserve urban open spaces suitable for greenways or outdoor recreation which are compatible with conservation purposes; or
- To preserve agricultural lands under threat of conversion to development through less-than-fee acquisitions.¹⁴¹

Florida Forever

As a successor to Preservation 2000, the Legislature created the Florida Forever program in 1999 as the blueprint for conserving Florida's natural resources.¹⁴² The Florida Forever Act reinforced the state's commitment to conserve its natural and cultural heritage, provide urban open space, and better manage the land acquired by the state.¹⁴³ Florida Forever encompasses a wide range of goals including: land acquisition; environmental restoration; water resource development and supply; increased public access; public lands management and maintenance; and increased protection of land through the purchase of conservation easements.¹⁴⁴ The state has acquired more than 2.6 million acres since 1991 under the Preservation 2000 and the Florida Forever programs.¹⁴⁵

The Acquisition and Restoration Council (ARC) is a 10-member body¹⁴⁶ that makes recommendations on the acquisition, management, and disposal of state-owned lands.¹⁴⁷ The ARC accepts applications from state agencies, local governments, nonprofit and for-profit organizations, private land trusts, and individuals for project proposals eligible for Florida

¹⁴¹ Section 259.032, F.S.

¹⁴² Chapter 99-247, Laws of Fla.

¹⁴³ DEP, *2021 Florida Forever Five Year Plan*, 9, available at https://floridadep.gov/sites/default/files/FLDEP_DSL_OES_FF_2021Abstract_2.pdf (last visited Mar. 15, 2023).

¹⁴⁴ Section 259.105, F.S.

¹⁴⁵ DEP, *Florida Forever*, <https://floridadep.gov/floridaforever> (last visited Mar. 15, 2023).

¹⁴⁶ Section 259.035(1), F.S. Four of ARC's 10 members are appointed by the Governor, three from scientific disciplines related to land, water, or environmental sciences and one with least five years of experience in managing lands for both active and passive types of recreation. Four of the members are the Secretary of Environmental Protection, the director of the Florida Forest Service of the Department of Agriculture and Consumer Services, the executive director of the Fish and Wildlife Conservation Commission, and the director of the Division of Historical Resources of the Department of State, or their respective designees. One member is appointed by the Commissioner of Agriculture from a discipline related to agriculture, including silviculture, and one member is appointed by the Fish and Wildlife Conservation Commission from a discipline related to wildlife management or wildlife ecology. *Id.*

¹⁴⁷ DEP, *Florida Forever Five Year Plan*, 49 (2019), available at <http://publicfiles.dep.state.fl.us/DSL/FFWeb/Current%20Florida%20Forever%20Five-Year%20Plan.pdf>.

Forever funding.¹⁴⁸ In evaluating each application, the ARC has statutory direction regarding how to prioritize purchases.¹⁴⁹

The ARC evaluates and selects projects twice per year, in June and December, and ranks the projects annually.¹⁵⁰ Each project on the priority list is placed in one of the following categories of expenditure for land conservation projects: climate change; critical natural lands; less-than-fee; partnerships or regional incentives; or substantially complete (greater than 85 percent complete).¹⁵¹ Projects are ranked within each category from highest to lowest priority.¹⁵²

Florida Wildlife Corridor

The 2021 Legislature created the Florida Wildlife Corridor Act to create incentives for conservation and sustainable development while sustaining and conserving green infrastructure that acts as the foundation of the state's economy and quality of life.¹⁵³ The Legislature appropriated \$300 million¹⁵⁴ and directed the DEP to encourage and promote investments in areas that protect and enhance the Wildlife Corridor by establishing a network of connected wildlife habitats required for the long-term survival of and genetic exchange amongst regional wildlife populations which serves to prevent fragmentation by providing ecological connectivity of the lands needed to furnish adequate habitats and allow safe movement and dispersal.¹⁵⁵

The Florida Wildlife Corridor is statutorily defined as “the conserved lands”¹⁵⁶ and “opportunity areas”¹⁵⁷ defined by the DEP as priority one, two, and three categories of the Florida Ecological Greenways Network (FEGN).¹⁵⁸ The FEGN is the primary data layer used to inform the Florida Forever program and other state, federal, and regional land acquisition programs regarding the

¹⁴⁸ DEP, *Florida Forever Frequently Asked Questions*, <https://floridadep.gov/lands/environmental-services/content/florida-forever-frequently-asked-questions> (last visited Mar. 15, 2023).

¹⁴⁹ DEP, *Acquisition and Restoration Council*, <https://floridadep.gov/lands/environmental-services/content/acquisition-and-restoration-council-arc> (last visited Mar. 15, 2023).

¹⁵⁰ DEP, *Florida Forever Frequently Asked Questions*, <https://floridadep.gov/lands/environmental-services/content/florida-forever-frequently-asked-questions> (last visited Mar. 15, 2023); DEP, *Acquisition and Restoration Council*, <https://floridadep.gov/lands/environmental-services/content/acquisition-and-restoration-council-arc> (last visited Mar. 15, 2023).

¹⁵¹ Section 259.105(17), F.S.

¹⁵² *Id.*

¹⁵³ Section 259.1055(3), F.S.

¹⁵⁴ Chapter 2021-37, s. 152, Laws of Fla.

¹⁵⁵ Section 259.1055(4)(g), F.S.

¹⁵⁶ Defined in s. 259.1055(4)(a), F.S., to mean federal, state, or local lands owned or managed for conservation purposes, including, but not limited to, federal, state, and local parks; federal and state forests; wildlife management areas; wildlife refuges; military bases and airports with conservation lands; properties owned by land trust and managed for conservation; and privately owned land with a conservation easement, including, but not limited to, ranches, forestry operations, and groves.

¹⁵⁷ “Opportunity area” means those lands and waters within the Florida wildlife corridor which are not conserved lands and the green spaces within the Florida wildlife corridor which lack conservation status, are contiguous to or between conserved lands, and provide an opportunity to develop the Florida wildlife corridor into a statewide conservation network. Section 259.1055(4)(e).

¹⁵⁸ Section 259.1055(4)(d), F.S. For a 2021 layered map reflecting the Wildlife Corridor, Florida Forever Projects and Acquisitions, and FEGN Priority Levels 1-3, see the FDEP's map available at https://floridadep.gov/sites/default/files/Florida%20Forever%20and%20Florida%20Ecological%20Greenways%20Network%20Map_0.pdf (last visited Mar. 15, 2023).

most important ecological corridors and intact landscapes across the state for protection of Florida's native wildlife, ecosystem services, and ecological resiliency.¹⁵⁹ The priority-category lands are the most important for protecting an ecologically functional connected statewide network of public and private conservation lands.¹⁶⁰

The Board of Trustees are authorized to spend appropriated funds to acquire the fee or less than-fee interest in lands for a variety of conservation and recreational purposes.¹⁶¹ Among the authorized uses of the funds is the provision of recreational trails for natural resource-based recreation and other outdoor recreation on any part of any site compatible with conservation purposes.¹⁶²

The existing Wildlife Corridor encompasses nearly 17.7 million acres. Of this, 9.6 million acres (54 percent) are already protected and 8.1 million acres (46 percent) of remaining opportunity areas that do not have conservation status.¹⁶³

Executive Order 23-06

Executive Order 23-06 (the Order) includes several directives regarding environmental protection.¹⁶⁴ The Order directs the DEP to strengthen BMAPs for nutrient-impaired waterbodies by:

- Updating all BMAPs to include the specific projects necessary to meet the requisite water quality standards to achieve restoration goals. The projects most likely to yield maximum pollutant reductions should be prioritized;
- Requiring local governments to identify and expedite high priority projects to meet the nutrient load allocations required under a BMAP; and
- Working with the DACS to identify and seek funding for regional projects that address excess nutrient impacts from agricultural nonpoint sources in BMAP areas where agriculture has been identified as a significant source of nutrient pollution.¹⁶⁵

The Order also directs the DEP to identify and prioritize strategies and projects to expedite water quality restoration in the IRL by:

- Working with the Legislature to establish the IRL Protection Program and secure at least \$100 million annually for priority projects to improve water quality in the IRL;

¹⁵⁹ DEP, *Florida Wildlife Corridor*, 1 (2022), available at https://floridadep.gov/sites/default/files/Florida_Wildlife_Corridor.pdf.

¹⁶⁰ Florida Natural Areas Inventory (FNAI), *Florida Natural Areas Inventory Geospatial Open Data, Summary*, available at <https://geodata.fnai.org/datasets/cosspp::fegn2021/about> (last visited Mar. 15, 2023). The FNAI provides scientific support to the FDEP. Section 259.1055(4)(c), F.S., defines the FEGN as a periodically updated model developed to delineate large connected areas of statewide ecological significance.

¹⁶¹ Section 259.032(2), F.S.

¹⁶² Section 259.032(2)(g), F.S.

¹⁶³ Florida Wildlife Corridor Foundation, *About the Corridor*, <https://floridawildlifecorridor.org/about/about-the-corridor/> (last visited Mar. 15, 2023).

¹⁶⁴ Office of the Governor, *Executive Order 23-06* (2023), available at <https://www.flgov.com/wp-content/uploads/2023/01/EO-23-06.pdf>.

¹⁶⁵ *Id.* at 5-6.

- Coordinating with stakeholders, including federal agencies, local governments, water management districts, and the IRL Estuary Program, to identify and prioritize projects for water quality restoration;
- Undertaking enhanced water quality monitoring in the IRL to better identify sources of nutrient loading to inform project prioritization and improve water quality in the IRL;
- Taking actions to reduce nutrient contributions to the IRL from septic tanks and wastewater facilities, stormwater discharges, and agriculture nonpoint sources; and
- Supporting innovative nature-based solutions including living shorelines, freshwater and coastal wetland restoration, and seagrass recovery utilizing strategic propagation and planting efforts.¹⁶⁶

The Order also directs the DEP to:

- Continue to seek consistent and meaningful annual funding for the Florida Forever Program; and Take all necessary steps to expedite the state's land conservation efforts, including a strategic focus on acquisitions within the Wildlife Corridor and acquisitions that benefit vulnerable ecosystems, water quality, and resilience.¹⁶⁷

III. Effect of Proposed Changes:

Section 1 amends s. 163.3177, F.S., regarding required and optional elements of a local government's comprehensive plan. The bill provides that:

- A local government's comprehensive plan must include, where applicable, a list of projects necessary to achieve the pollutant load reductions attributable to the local government pursuant to a basin management action plan (BMAP);
- The comprehensive plan's sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element must address coordinating the upgrade in treatment of facilities to meet future needs. The element must also prioritize advanced waste treatment.

The bill also provides that, within the local government's jurisdiction, for any development of more than 50 residential lots, built or unbuilt, with more than one onsite sewage treatment and disposal system (OSTDS) per acre, the element must include a plan to provide sanitary sewer services within a 10-year planning horizon. An OSTDS is presumed to exist on a parcel if sanitary sewer services are not available at or adjacent to the parcel boundary. For such developments, the plan must identify:

- The name and location of the intended wastewater facility to receive sanitary sewer flows after connection;
- The capacity of the facility and any associated transmission facilities;
- The projected wastewater flow at that facility for the next 20 years, inclusive of expected future new construction and connections of OSTDSs to sanitary sewer; and
- A timeline for the construction of the sanitary sewer system.

¹⁶⁶ *Id.* at 6-7.

¹⁶⁷ *Id.* at 8-9.

Each comprehensive plan must be updated to include this element by July 1, 2024. This requirement does not apply to a local government designated as a rural area of opportunity.¹⁶⁸

Section 2 amends s. 253.025, F.S., regarding the acquisition of state lands. The bill:

- Raises the property value threshold for when two appraisals of a parcel is required from \$1 million to \$5 million;
- Raises the contract price threshold for when the Board of Trustees of the Internal Improvement Trust Fund must approve an agreement to acquire real property from \$1 million to \$5 million; and
- Removes the requirement that the Board of Trustees of the Internal Improvement Trust Fund approve an acquisition if it is an initial purchase in a Florida Forever project.

Section 3 amends s. 259.032, F.S., regarding conservation and recreation lands, to provide that Board of Trustees of the Internal Improvement Trust Fund may expend moneys to acquire land to complete critical linkages within the Florida Wildlife Corridor.

Section 4 creates s. 373.469, F.S., to establish the Indian River Lagoon (IRL) Protection Program. The bill contains several legislative findings, including:

- The IRL is a critical water resource of this state which provides many economic, natural habitat, and biodiversity functions that benefit the public interest, including fishing, navigation, recreation, and habitat to endangered and threatened species and other flora and fauna;
- Among other causes, land use changes, OSTDSs, aging infrastructure, stormwater runoff, agriculture, and residential fertilizer have resulted in excess nutrients entering the IRL and adversely impacting the lagoon's water quality;
- Improvement to the hydrology, water quality, and associated aquatic habitats within the IRL is essential to the protection of the resource;
- It is imperative for the state, local governments, and agricultural and environmental communities to commit to restoring and protecting the surface water resources of the IRL, and a holistic approach to address these issues must be developed and implemented immediately;
- The expeditious implementation of the Banana River Lagoon BMAP, the Central Indian River Lagoon BMAP, the North Indian River Lagoon BMAP, and the Mosquito Lagoon Reasonable Assurance Plan (RAP) are necessary to improve the quality of water in the IRL ecosystem and to provide a reasonable means of achieving the total maximum daily load requirements and achieving and maintaining compliance with state water quality standards; and
- The implementation of the programs contained in this section will benefit the public health, safety, and welfare and is in the public interest.

The bill provides legislative intent that this state to protect and restore surface water resources and achieve and maintain compliance with water quality standards in the IRL through the phased, comprehensive, and innovative protection program, including long-term solutions based

¹⁶⁸ "Rural area of opportunity" means a rural community, or a region composed of rural communities, designated by the Governor, which 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. Section 288.0656(2)(d), F.S.

upon the total maximum daily loads (TMDLs) established in accordance with state law. The bill defines TMDL as the sum of the individual wasteload allocations for point sources and the load allocations for nonpoint sources and natural background adopted pursuant to s. 403.067, F.S., which provides requirements for the establishment and implementation of TMDLs. Before determining individual wasteload allocations and load allocations, the maximum amount of a pollutant that a water body or water segment can assimilate from all sources without exceeding water quality standards must first be calculated.

The bill also provides that the IRL Protection Program is watershed-based, provides for the consideration of all water quality issues needed to meet the TMDL, and includes research and monitoring, development and implementation of best management practices (BMPs), refinement of existing regulations, and structural and nonstructural projects, including public works. The bill defines BMP as a practice or combination of practices determined by the coordinating agencies, based on research, field-testing, and expert review, to be the most effective and practicable on-location means, including economic and technological considerations, for improving water quality in agricultural and urban discharges. The bill provides that BMPs for agricultural discharges must reflect a balance between water quality improvements and agricultural productivity.

The bill provides that the IRL Protection Program consists of the Banana River Lagoon BMAP, the Central Indian River Lagoon BMAP, the North Indian River Lagoon BMAP, and the Mosquito Lagoon RAP, and such plans are the components of the IRL Protection Program which achieve phosphorous and nitrogen load reductions for the IRL. The bill:

- Requires the Department of Environmental Protection (DEP) to conduct an evaluation every five years, update the applicable BMAPs and RAP in the IRL Protection Program, and identify any further load reductions necessary to achieve compliance with the relevant TMDLs;
- Requires the IRL Protection Program to include five-year milestones for implementation and water quality improvement, and a water quality monitoring component to evaluate whether reasonable progress in pollutant load reductions is being achieved over time;
- Requires the DEP, in coordination with the St. Johns River Water Management District (SJRWMD), the South Florida Water Management District (SFWMD), the IRL Estuary Program, and other stakeholders, to identify and prioritize strategies and projects necessary to achieve water quality standards within the IRL watershed and meet applicable TMDLs. Projects identified from this evaluation must be incorporated into the Banana River Lagoon BMAP, the Central Indian River Lagoon BMAP, the North Indian River Lagoon BMAP, and the Mosquito Lagoon RAP, as appropriate; and
- Requires the DEP, in coordination with the SJRWMD, the SFWMD, and the IRL Estuary Program, to implement an IRL Watershed Research and Water Quality Monitoring Program to establish a comprehensive water quality monitoring network throughout the IRL and fund research pertaining to water quality, ecosystem restoration, and seagrass impacts and restoration. The DEP must use the results from this program to inform project prioritization and to make modifications to the pertinent BMAPs and RAP.

The bill prohibits new OSTDSs (unless previously permitted) within the IRL Protection Program areas beginning January 1, 2024, where a central sewerage system is available. For new developments where sewer is not available, only enhanced nutrient-reducing OSTDSs will be

authorized. The bill defines “enhanced nutrient-reducing” OSTDS as an OSTDS approved by the DEP as capable of meeting or exceeding a 50 percent total nitrogen reduction before disposal of wastewater in the drainfield, or at least 65 percent total nitrogen reduction combined from onsite sewage tank or tanks and drainfield.

The bill also requires any commercial or residential property with an existing OSTDS located within the IRL Protection Program area to connect to central sewer or upgrade to an enhanced nutrient-reducing OSTDS or other wastewater treatment system that achieves at least 50 percent nutrient reduction compared to a standard OSTDS by July 1, 2030.

The bill provides that this section may not be construed to modify any existing state water quality standard or law. The bill also provides that this section may not be construed to restrict the authority otherwise granted to agencies pursuant to Chapter 373 of the Florida Statutes, pertaining to water resources, and Chapter 403 of the Florida Statutes, pertaining to environmental control, and this section is supplemental to the authority granted to agencies pursuant to these Chapters.

The bill also provides that the DEP and governing boards of the SJRWMD and the SFWMD may adopt rules to implement this section.

Section 5 amends s. 373.501, F.S., regarding appropriation of funds to the water management districts (WMDs). Currently, s. 373.501, F.S., authorizes the DEP to allocate to the WMDs funds appropriated to the DEP such sums as may be deemed necessary to defray the costs of the administrative, regulatory, and other activities of the WMDs. This bill would *require* the DEP to transfer the funds appropriated to the WMDs through the DEP. The bill also provides that if such sums are to defray the costs “other activities,” those activities must be operational in nature. The bill also requires the WMDs to annually report to the DEP on the use of these funds.

Section 6 amends s. 373.802, F.S., which defines terms related to the Florida Springs and Aquifer Protection Act. The bill provides that “enhanced nutrient-reducing onsite sewage treatment and disposal system” means an OSTDS approved by the DEP as capable of meeting or exceeding a 50 percent total nitrogen reduction before disposal of wastewater in the drainfield, or at least 65 percent total nitrogen reduction combined from onsite sewage tank or tanks and drainfield.

Section 7 amends s. 373.807, F.S., regarding BMAPs that include an Outstanding Florida Spring. For these BMAPs, the bill to expand the area for which an OSTDS remediation plan is required from a “priority focus area” to an entire BMAP. State law provides that a “priority focus area” is the area or areas of a basin where the Floridan Aquifer is generally most vulnerable to pollutant inputs where there is a known connectivity between groundwater pathways and an Outstanding Florida Spring.¹⁶⁹

Section 8 amends s. 373.811, F.S., regarding prohibited activities within a priority focus area. The bill expands the area for which certain activities are prohibited from a “priority focus area” to an entire BMAP. Currently, new OSTDSs are prohibited within a priority focus area on lots of

¹⁶⁹ Section 373.802(5), F.S.

less than one acre, if the addition of the specific systems conflicts with an OSTDS remediation plan incorporated into a BMAP. The bill replaces this prohibition with one on new OSTDSs within a BMAP where connection to a publicly owned or investor-owned sewerage system is available. The bill also provides that, on lots of one acre or less, if a publicly owned or investor-owned sewerage system is not available, only the installation of enhanced nutrient-reducing OSTDSs or other wastewater treatment systems that achieve at least 50 percent nutrient reduction compared to a standard OSTDS are authorized.

Section 9 amends s. 381.0065, F.S., regarding OSTDSs, to provide that “enhanced nutrient-reducing onsite sewage treatment and disposal system” means an OSTDS approved by the DEP as capable of meeting or exceeding a 50 percent total nitrogen reduction before disposal of wastewater in the drainfield, or at least 65 percent total nitrogen reduction combined from onsite sewage tank or tanks and drainfield.

Section 10 amends s. 381.00655, F.S., regarding the connection of existing OSTDSs to a central sewerage system. The bill provides that local governmental agencies¹⁷⁰ that receive grants or loans from the DEP to offset the cost of connecting OSTDSs to publicly owned or investor-owned sewerage systems are encouraged to do all of the following while such funds remain available:

- Identify the owners of OSTDSs within the jurisdiction of the respective local governmental agency who are eligible to apply for grant or loan funds and notify such owners of the funding availability; and
- Maintain a publicly available website with information relating to the availability of grant or loan funds, including the amount of funds available and information on how the owner of an OSTDS may apply for such funds.

Section 11 amends s. 403.031, F.S., which defines terms related to environmental control, to provide that “enhanced nutrient-reducing onsite sewage treatment and disposal system” means an OSTDS approved by the DEP as capable of meeting or exceeding a 50 percent total nitrogen reduction before disposal of wastewater in the drainfield, or at least 65 percent total nitrogen reduction combined from onsite sewage tank or tanks and drainfield.

The bill provides that “nutrient or nutrient-related standards” means water quality standards and criteria established for total nitrogen and total phosphorous, or their organic or inorganic forms; biological variables, such as chlorophyll-a, biomass, or the structure of the phytoplankton, periphyton, or vascular plant community, that respond to nutrient load or concentration in a predictable and measurable manner; or dissolved oxygen if it is demonstrated for the waterbody that dissolved oxygen conditions result in a biological imbalance and the dissolved oxygen responds to a nutrient load or concentration in a predictable and measurable manner.

The bill provides that OSTDS means a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry

¹⁷⁰ “Local governmental agencies” means any municipality, county, district, or authority, or any agency thereof, or a combination of two or more of the foregoing, acting jointly in connection with a project having jurisdiction over collection, transmission, treatment, or disposal of sewage, industrial wastes, stormwater, or other wastes and includes a district or authority whose principal responsibility is to provide airport, industrial or research park, or port facilities to the public. Section 403.1835(2)(c), F.S.

wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solids or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. The term does not include package sewage treatment facilities and other treatment works regulated under Chapter 403, F.S.¹⁷¹

Section 12 amends s. 403.067, F.S., regarding the development of BMAPs. The bill:

- Requires BMAPs to include five-year milestones for implementation and water quality improvement; and
- Requires entities that have a specific pollutant load reduction requirement pursuant to a BMAP to identify a list of projects that will be undertaken to meet the five-year milestones, beginning with the first five-year milestone for new BMAPs. These projects must be submitted to the DEP for inclusion in the appropriate BMAP.

The bill prohibits the installation of new OSTDSs within a BMAP, RAP, or a pollution reduction plan where connection to a publicly owned or investor-owned sewerage system is available.¹⁷² On lots of one acre or less within a BMAP, RAP, or a pollution reduction plan where a publicly owned or investor-owned sewerage system is *not* available, the installation of enhanced nutrient-reducing OSTDS or other wastewater treatment systems that achieve at least 50 percent nutrient reduction compared to a standard OSTDS is required.

Local governments subject to a BMAP or within the basin of a waterbody not attaining nutrient or nutrient-related standards must provide to the DEP an update on the status of the construction of sanitary sewers to serve such areas.

Currently, a BMAP must include a cooperative agricultural regional water quality element only if the following conditions are met: agricultural measures have been adopted by the Department of Agriculture and Consumer Services (DACS) and have been implemented and the water body remains impaired; agricultural nonpoint sources contribute to at least 20 percent of nonpoint source nutrient discharges; *and* the DEP determines that additional measures are necessary to achieve the TMDL. The bill would remove the first condition and require BMAPs to include this agricultural element where agricultural nonpoint sources contribute to at least 20 percent of nonpoint source nutrient discharges *or* where the DEP determines additional measures are necessary.

The bill also changes the types of projects that must be identified in the cooperative agricultural regional water quality element. Currently, the element must include cost-effective and technically and financially practical cooperative regional agricultural nutrient reduction projects

¹⁷¹ This definition is consistent with how the term is already defined in Florida statutes. See sections 373.802(3), 381.0065(2)(l), and 489.551(3), F.S.

¹⁷² “Available” means that the publicly owned or investor-owned sewerage system is capable of being connected to the plumbing of an establishment or residence, is not under a DEP moratorium, and has adequate permitted capacity to accept the sewage to be generated by the establishment or residence; and is within a specified distance from the property. Section 381.0065(2)(a), F.S.

that can be implemented on private properties on a site-specific, cooperative basis.¹⁷³ The bill removes the requirement that the projects be implemented on private properties on a site-specific, cooperative basis and provides that the element must include a list of regional nutrient reduction projects submitted to the DEP by the DACS which, in combination with the BMPs, additional measures, and other management strategies, will achieve the needed pollutant load reductions established for agricultural nonpoint sources. The list of regional projects must include a planning-level cost estimate of each project along with the estimated amount of nutrient reduction that such project will achieve.

The bill authorizes the DACS to submit a legislative budget request to fund a regional nutrient reduction project. Currently, only the DEP may submit such a request. The bill also provides that these projects are eligible for funding under the water quality improvement grant program.

Section 13 amends s. 403.0673, F.S., regarding the wastewater grant program. The bill, which changes the title to water quality improvement grant program, expands the existing grant program to address wastewater, stormwater, and agricultural sources of nutrient loading to surface water or groundwater. The purpose of the grant program is to fund projects that will improve the quality of certain impaired waters. Under the existing grant program, eligible projects must be within a BMAP, an alternative restoration plan, or a rural area of opportunity. The bill provides that a RAP or an *accepted* alternative restoration and expands eligible projects areas to include those with an established TMDL or a water body not attaining nutrient or nutrient-related standards.

The bill also expands the types of projects that are eligible for funding under the grant program to include the following projects that reduce the amount of nutrients entering the impaired waters protected by this section:

- To repair, upgrade, expand, or construct stormwater treatment facilities that result in improvements to surface or groundwater water quality;
- To repair, upgrade, expand, or construct domestic wastewater treatment facilities that result in improvements to surface or groundwater water quality, including domestic wastewater reuse and collection systems;
- Identified in a BMAP, including those projects identified in a wastewater treatment plan, OSTDS remediation plan, or cooperative agricultural regional water quality improvement element; and
- Identified in a local government's comprehensive plan.

Projects to retrofit and upgrade OSTDSs to enhanced nutrient-reducing systems would still be eligible for funding, but the bill requires that central sewage be unavailable. The grant program would also continue to fund projects to connect OSTDSs to central sewer facilities.

In allocating funds, the DEP is already required to consider the estimated reduction in nutrient load per project, project readiness, and the overall environmental benefit and location of a project. The bill amends these requirements by:

- Removing the requirement that priority must be given to projects that subsidize the connection of OSTDSs to wastewater treatment facilities; and

¹⁷³ Section 403.067(7)(e)2., F.S.

- Requiring the DEP to prioritize projects that:
 - Have the *maximum* estimated reduction in nutrient load per project;
 - Provide an overall environmental benefit, *including any projected water savings associated with reclaimed water*; and
 - Are in a location where reductions are most needed.

The bill also removes the requirement that each grant have a minimum 50 percent local match of funds but provides that the DEP must consider percent cost-share identified by an applicant (except in for rural areas of opportunity) when prioritizing projects. The bill also requires the DEP to coordinate with local governments and stakeholders to identify the most effective and beneficial water quality improvement projects.

The bill amends existing reporting requirements to require the DEP to submit an annual report regarding the projects funded pursuant to this section to the Governor and the Legislature beginning January 1, 2024.

Section 14 amends s. 403.086, F.S., which prohibits sewage disposal facilities from disposing of any wastes into certain specified waters¹⁷⁴ without providing advanced waste treatment approved by the DEP. The bill amends this provision by requiring sewage disposal facilities to provide advanced waste treatment—or a more stringent treatment standard if the DEP determines it is necessary to achieve a TMDL or applicable water quality criteria—before discharging into the waters already protected under this statute and waterbodies that are currently not attaining nutrient or nutrient-related standards or that are subject to a nutrient or nutrient-BMAP or adopted RAP. Wastewater facilities in these areas must meet advanced waste treatment standards by January 1, 2033.

The bill also provides that, for any waterbody not attaining nutrient or nutrient-related standards after July 1, 2023, or subject to a nutrient or nutrient-related BMAP or adopted RAP after July 1, 2023, sewage disposal facilities are prohibited from disposing any wastes into such waters without providing advanced waste treatment, as approved by the the DEP, within 10 years after such determination or adoption.

Currently, the prohibitions within s. 403.086, F.S., do not apply to facilities permitted before February 1987 that discharge secondary treated effluent, followed by water hyacinth treatment, to tributaries of tributaries of these waters or to facilities permitted to discharge to the nontidally influenced portions of the Peace River.¹⁷⁵ The bill removes this provision.

Sections 15 through 26 make conforming changes.

Section 27 reenacts s. 259.045(6), F.S., regarding the purchase of lands in areas of critical state concern, for the purpose of incorporating the amendment made by this act to s. 259.032, F.S., in a reference thereto.

¹⁷⁴ Old Tampa Bay, Tampa Bay, Hillsborough Bay, Boca Ciega Bay, St. Joseph Sound, Clearwater Bay, Sarasota Bay, Little Sarasota Bay, Roberts Bay, Lemon Bay, Charlotte Harbor Bay, Biscayne Bay, and, beginning July 1, 2025, Indian River Lagoon, or into any river, stream, channel, canal, bay, bayou, sound, or other water tributary thereto. Section 403.086(1)(c), F.S.

¹⁷⁵ Section 403.086(1)(c), F.S.

Section 28 provides that this act fulfills an important state interest.

Section 29 provides an effective date of July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county/municipality mandates provision of Art. VII, s. 18(a) of the Florida Constitution may apply to this bill because local governments may be required to expend funds to plan for sanitary sewer services and update their comprehensive plans as required by this bill. However, the law may have an insignificant fiscal impact. Therefore, an exception from Art. VII, s. 18(a) of the Florida Constitution may apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private wastewater treatment facilities may incur costs related to upgrading to advanced waste treatment. Developers may incur costs related to providing for enhanced nutrient-reducing OSTSDs for new developments.

C. Government Sector Impact:

The Department of Environmental Protection may incur costs related to implementing the Indian River Lagoon Protection Program, including adopting rules. These costs can be handled within existing resources. Local governments will incur costs to update their

comprehensive plans. Local governments that are owners of wastewater treatment facilities may incur costs related to upgrading to advanced waste treatment.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.3177, 253.025, 259.032, 373.501, 373.802, 373.807, 373.811, 381.0065, 381.00655, 403.031, 403.067, 403.0673, 403.086, 201.15, 259.105, 373.019, 373.4132, 373.414, 373.4142, 373.430, 373.4592, 403.890, 403.892, 403.9301, 403.9302, and 259.045.

This bill creates section 373.469 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 Environment and Natural Resources Committee on March 20, 2023:

- Provides that the Board of Trustees of the Internal Improvement Fund must designate an agency or agencies to manage lands concurrent with the approval of the acquisition contract for Florida Forever projects. The requirement that this designation be concurrent with the approval of the contract was removed in the underlying bill, and the amendment restores that language;
- Adds the following language to the definition of “best management practices” to make it consistent with other statutory definitions of this term: “Best management practices for agricultural discharges shall reflect a balance between water quality improvements and agricultural productivity;”
- Adds technical specificity to the definition of nutrient or nutrient-related standards;
- Changes “waters of this state” to “waters of the state,” restoring existing law and correcting a term of art;
- Specifies that projects in the agricultural element will be cost-effective and technically and financially practical regional agricultural nutrient reduction projects and can include more types of projects than those expressly listed in the statute. The amendment adds that the cost estimate for projects on the list is a “planning-level” cost estimate. The amendment also clarifies that the list of projects will achieve the needed pollutant load reductions in combination with the best management practices, additional measures, and other management strategies;
- Reorganizes the types of waters/areas that the grant program is intended to be utilized for and clarifies that the grants are for projects that reduce the nutrients entering those waters; and

Changes the term “impaired” to “not attaining nutrient or nutrient-related standards” in the provisions relating to advanced waste treatment.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/17/2023	.	
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The Appropriations Committee on Agriculture, Environment, and General Government (Brodeur) recommended the following:

Senate Amendment

Delete lines 574 - 1603

and insert:

The department, in coordination with the Department of Agriculture and Consumer Services, the St. Johns River Water Management District, South Florida Water Management District, local governments, the Indian River Lagoon National Estuary Program, and other stakeholders, shall identify and prioritize strategies and projects necessary to achieve water quality



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standards within the Indian River Lagoon watershed and meet the total maximum daily loads. Projects identified from this evaluation must be incorporated into the Banana River Lagoon Basin Management Action Plan, Central Indian River Lagoon Basin Management Action Plan, North Indian River Lagoon Basin Management Action Plan, and Mosquito Lagoon Reasonable Assurance Plan, as appropriate.

(c) Indian River Lagoon Watershed Research and Water Quality Monitoring Program.—The department, in coordination with the St. Johns River Water Management District, the South Florida Water Management District, and the Indian River Lagoon National Estuary Program, shall implement the Indian River Lagoon Watershed Research and Water Quality Monitoring Program to establish a comprehensive water quality monitoring network throughout the Indian River Lagoon and fund research pertaining to water quality, ecosystem restoration, and seagrass impacts and restoration. The department shall, in coordination with the Department of Agriculture and Consumer Services, use the results from the program to prioritize projects and to make modifications to the Banana River Lagoon Basin Management Action Plan, Central Indian River Lagoon Basin Management Action Plan, North Indian River Lagoon Basin Management Action Plan, and Mosquito Lagoon Reasonable Assurance Plan, as appropriate.

(d) Onsite sewage treatment and disposal systems.—
1. Beginning on January 1, 2024, unless previously permitted, the installation of new onsite sewage treatment and disposal systems is prohibited within the Banana River Lagoon Basin Management Action Plan, Central Indian River Lagoon Basin Management Action Plan, North Indian River Lagoon Basin



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Management Action Plan, and Mosquito Lagoon Reasonable Assurance Plan areas where a publicly owned or investor-owned sewerage system is available as defined in s. 381.0065(2)(a). Where central sewerage is not available, only enhanced nutrient-reducing onsite sewage treatment and disposal systems or other wastewater treatment systems that achieve at least 50 percent nutrient reduction compared to a standard onsite sewage treatment and disposal system are authorized.

2. By July 1, 2030, any commercial or residential property with an existing onsite sewage treatment and disposal system located within the Banana River Lagoon Basin Management Action Plan, Central Indian River Lagoon Basin Management Action Plan, North Indian River Lagoon Basin Management Action Plan, and Mosquito Lagoon Reasonable Assurance Plan areas must connect to central sewer if available or upgrade to an enhanced nutrient-reducing onsite sewage treatment and disposal system or other wastewater treatment system that achieves at least 50 percent nutrient reduction compared to a standard onsite sewage treatment and disposal system.

(4) RELATIONSHIP TO STATE WATER QUALITY STANDARDS.—This section may not be construed to modify any existing state water quality standard or to modify s. 403.067(6) and (7)(a).

(5) PRESERVATION OF AUTHORITY.—This section may not be construed to restrict the authority otherwise granted to agencies pursuant to this chapter and chapter 403, and this section is supplemental to the authority granted to agencies pursuant to this chapter and chapter 403.

(6) RULES.—The department and governing boards of the St. Johns River Water Management District and South Florida Water



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Management District may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section.

Section 5. Subsection (1) of section 373.501, Florida Statutes, is amended to read:

373.501 Appropriation of funds to water management districts.—

(1) The department shall transfer ~~may allocate~~ to the water management districts, ~~from~~ funds appropriated to the districts through the department in, such sums as ~~may be~~ deemed necessary to defray the costs of the administrative, regulatory, and other operational activities of the districts. The governing boards shall submit annual budget requests for such purposes to the department, and the department shall consider such budgets in preparing its budget request for the Legislature. The districts shall annually report to the department on the use of the funds.

Section 6. Present subsections (2) through (8) of section 373.802, Florida Statutes, are redesignated as subsections (3) through (9), respectively, and a new subsection (2) is added to that section, to read:

373.802 Definitions.—As used in this part, the term:

(2) "Enhanced nutrient-reducing onsite sewage treatment and disposal system" means an onsite sewage treatment and disposal system approved by the department as capable of meeting or exceeding a 50 percent total nitrogen reduction before disposal of wastewater in the drainfield, or at least 65 percent total nitrogen reduction combined from onsite sewage tank or tanks and drainfield.

Section 7. Subsections (2) and (3) of section 373.807, Florida Statutes, are amended to read:



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373.807 Protection of water quality in Outstanding Florida Springs.—By July 1, 2016, the department shall initiate assessment, pursuant to s. 403.067(3), of Outstanding Florida Springs or spring systems for which an impairment determination has not been made under the numeric nutrient standards in effect for spring vents. Assessments must be completed by July 1, 2018.

(2) By July 1, 2017, each local government, as defined in s. 373.802(3) ~~s. 373.802(2)~~, that has not adopted an ordinance pursuant to s. 403.9337, shall develop, enact, and implement an ordinance pursuant to that section. It is the intent of the Legislature that ordinances required to be adopted under this subsection reflect the latest scientific information, advancements, and technological improvements in the industry.

(3) As part of a basin management action plan that includes an Outstanding Florida Spring, the department, relevant local governments, and relevant local public and private wastewater utilities shall develop an onsite sewage treatment and disposal system remediation plan for a spring if the department determines onsite sewage treatment and disposal systems within a basin management action plan ~~priority focus area~~ contribute at least 20 percent of nonpoint source nitrogen pollution or if the department determines remediation is necessary to achieve the total maximum daily load. The plan must ~~shall~~ identify cost-effective and financially feasible projects necessary to reduce the nutrient impacts from onsite sewage treatment and disposal systems and shall be completed and adopted as part of the basin management action plan no later than the first 5-year milestone required by subparagraph (1)(b)8. The department is the lead agency in coordinating the preparation of and the adoption of



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the plan. The department shall:

(a) Collect and evaluate credible scientific information on the effect of nutrients, particularly forms of nitrogen, on springs and springs systems; and

(b) Develop a public education plan to provide area residents with reliable, understandable information about onsite sewage treatment and disposal systems and springs.

In addition to the requirements in s. 403.067, the plan must ~~shall~~ include options for repair, upgrade, replacement, drainfield modification, addition of effective nitrogen reducing features, connection to a central sewerage system, or other action for an onsite sewage treatment and disposal system or group of systems within a basin management action plan ~~priority focus area~~ that contribute at least 20 percent of nonpoint source nitrogen pollution or if the department determines remediation is necessary to achieve a total maximum daily load. For these systems, the department shall include in the plan a priority ranking for each system or group of systems that requires remediation and shall award funds to implement the remediation projects contingent on an appropriation in the General Appropriations Act, which may include all or part of the costs necessary for repair, upgrade, replacement, drainfield modification, addition of effective nitrogen reducing features, initial connection to a central sewerage system, or other action. In awarding funds, the department may consider expected nutrient reduction benefit per unit cost, size and scope of project, relative local financial contribution to the project, and the financial impact on property owners and the community.



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The department may waive matching funding requirements for proposed projects within an area designated as a rural area of opportunity under s. 288.0656.

Section 8. Section 373.811, Florida Statutes, is amended to read:

373.811 Prohibited activities within a basin management action plan ~~priority focus area~~.—The following activities are prohibited within a basin management action plan ~~priority focus area~~ in effect for an Outstanding Florida Spring:

(1) New domestic wastewater disposal facilities, including rapid infiltration basins, with permitted capacities of 100,000 gallons per day or more, except for those facilities that meet an advanced wastewater treatment standard of no more than 3 mg/l total nitrogen, expressed as N, on an annual permitted basis, or a more stringent treatment standard if the department determines the more stringent standard is necessary to attain a total maximum daily load for the Outstanding Florida Spring.

(2) New onsite sewage treatment and disposal systems where connection to a publicly owned or investor-owned sewerage system is available as defined in s. 381.0065(2) (a). On lots of 1 acre or less, if a publicly owned or investor-owned sewerage system is not available, only the installation of enhanced nutrient-reducing onsite sewage treatment and disposal systems or other wastewater treatment systems that achieve at least 50 percent nutrient reduction compared to a standard onsite sewage treatment and disposal system are authorized ~~on lots of less than 1 acre, if the addition of the specific systems conflicts with an onsite treatment and disposal system remediation plan incorporated into a basin management action plan in accordance~~



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with ~~s. 373.807(3)~~.

(3) New facilities for the disposal of hazardous waste.

(4) The land application of Class A or Class B domestic wastewater biosolids not in accordance with a department approved nutrient management plan establishing the rate at which all biosolids, soil amendments, and sources of nutrients at the land application site can be applied to the land for crop production while minimizing the amount of pollutants and nutrients discharged to groundwater or waters of the state.

(5) New agriculture operations that do not implement best management practices, measures necessary to achieve pollution reduction levels established by the department, or groundwater monitoring plans approved by a water management district or the department.

Section 9. Present paragraphs (f) through (r) of subsection (2) of section 381.0065, Florida Statutes, are redesignated as paragraphs (g) through (s), respectively, a new paragraph (f) is added to that subsection, and paragraph (n) of subsection (4) of that section is amended, to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.—

(2) DEFINITIONS.—As used in ss. 381.0065–381.0067, the term:

(f) "Enhanced nutrient-reducing onsite sewage treatment and disposal system" means an onsite sewage treatment and disposal system approved by the department as capable of meeting or exceeding a 50 percent total nitrogen reduction before disposal of wastewater in the drainfield, or at least 65 percent total nitrogen reduction combined from onsite sewage tank or tanks and



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drainfield.

(4) PERMITS; INSTALLATION; CONDITIONS.—A person may not construct, repair, modify, abandon, or operate an onsite sewage treatment and disposal system without first obtaining a permit approved by the department. The department may issue permits to carry out this section, except that the issuance of a permit for work seaward of the coastal construction control line established under s. 161.053 shall be contingent upon receipt of any required coastal construction control line permit from the department. A construction permit is valid for 18 months after the date of issuance and may be extended by the department for one 90-day period under rules adopted by the department. A repair permit is valid for 90 days after the date of issuance. An operating permit must be obtained before the use of any aerobic treatment unit or if the establishment generates commercial waste. Buildings or establishments that use an aerobic treatment unit or generate commercial waste shall be inspected by the department at least annually to assure compliance with the terms of the operating permit. The operating permit for a commercial wastewater system is valid for 1 year after the date of issuance and must be renewed annually. The operating permit for an aerobic treatment unit is valid for 2 years after the date of issuance and must be renewed every 2 years. If all information pertaining to the siting, location, and installation conditions or repair of an onsite sewage treatment and disposal system remains the same, a construction or repair permit for the onsite sewage treatment and disposal system may be transferred to another person, if the transferee files, within 60 days after the transfer of ownership, an



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amended application providing all corrected information and proof of ownership of the property. A fee is not associated with the processing of this supplemental information. A person may not contract to construct, modify, alter, repair, service, abandon, or maintain any portion of an onsite sewage treatment and disposal system without being registered under part III of chapter 489. A property owner who personally performs construction, maintenance, or repairs to a system serving his or her own owner-occupied single-family residence is exempt from registration requirements for performing such construction, maintenance, or repairs on that residence, but is subject to all permitting requirements. A municipality or political subdivision of the state may not issue a building or plumbing permit for any building that requires the use of an onsite sewage treatment and disposal system unless the owner or builder has received a construction permit for such system from the department. A building or structure may not be occupied and a municipality, political subdivision, or any state or federal agency may not authorize occupancy until the department approves the final installation of the onsite sewage treatment and disposal system. A municipality or political subdivision of the state may not approve any change in occupancy or tenancy of a building that uses an onsite sewage treatment and disposal system until the department has reviewed the use of the system with the proposed change, approved the change, and amended the operating permit.

(n) Evaluations for determining the seasonal high-water table elevations or the suitability of soils for the use of a new onsite sewage treatment and disposal system shall be performed by department personnel, professional engineers



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registered in the state, or such other persons with expertise, as defined by rule, in making such evaluations. Evaluations for determining mean annual flood lines shall be performed by those persons identified in paragraph (2) (1) ~~(2) (k)~~. The department shall accept evaluations submitted by professional engineers and such other persons as meet the expertise established by this section or by rule unless the department has a reasonable scientific basis for questioning the accuracy or completeness of the evaluation.

Section 10. Subsection (3) is added to section 381.00655, Florida Statutes, to read:

381.00655 Connection of existing onsite sewage treatment and disposal systems to central sewerage system; requirements.—

(3) Local governmental agencies, as defined in s. 403.1835(2), that receive grants or loans from the department to offset the cost of connecting onsite sewage treatment and disposal systems to publicly owned or investor-owned sewerage systems are encouraged to do all of the following while such funds remain available:

(a) Identify the owners of onsite sewage treatment and disposal systems within the jurisdiction of the respective local governmental agency who are eligible to apply for the grant or loan funds and notify such owners of the funding availability.

(b) Maintain a publicly available website with information relating to the availability of the grant or loan funds, including the amount of funds available and information on how the owner of an onsite sewage treatment and disposal system may apply for such funds.

Section 11. Section 403.031, Florida Statutes, is reordered



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and amended to read:

403.031 Definitions.—In construing this chapter, or rules and regulations adopted pursuant hereto, the following words, phrases, or terms, unless the context otherwise indicates, have the following meanings:

(1) "Contaminant" is any substance which is harmful to plant, animal, or human life.

(2) "Department" means the Department of Environmental Protection.

(3) "Effluent limitations" means any restriction established by the department on quantities, rates, or concentrations of chemical, physical, biological, or other constituents which are discharged from sources into waters of the state.

(5) "Enhanced nutrient-reducing onsite sewage treatment and disposal system" means an onsite sewage treatment and disposal system approved by the department as capable of meeting or exceeding a 50 percent total nitrogen reduction before disposal of wastewater in the drainfield, or at least 65 percent total nitrogen reduction combined from onsite sewage tank or tanks and drainfield.

(6)~~(4)~~ "Installation" means ~~is~~ any structure, equipment, or facility, or appurtenances thereto, or operation which may emit air or water contaminants in quantities prohibited by rules of the department.

(7) "Nutrient or nutrient-related standards" means water quality standards and criteria established for total nitrogen and total phosphorous, or their organic or inorganic forms; biological variables, such as chlorophyll-a, biomass, or the



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structure of the phytoplankton, periphyton, or vascular plant community, that respond to nutrient load or concentration in a predictable and measurable manner; or dissolved oxygen if it is demonstrated for the waterbody that dissolved oxygen conditions result in a biological imbalance and the dissolved oxygen responds to a nutrient load or concentration in a predictable and measurable manner.

(8) "Onsite sewage treatment and disposal system" means a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solids or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. The term does not include package sewage treatment facilities and other treatment works regulated under chapter 403.

(9)-(5) "Person" means the state or any agency or institution thereof, the United States or any agency or institution thereof, or any municipality, political subdivision, public or private corporation, individual, partnership, association, or other entity and includes any officer or governing or managing body of the state, the United States, any agency, any municipality, political subdivision, or public or private corporation.

(10)-(6) "Plant" is any unit operation, complex, area, or



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multiple of unit operations that produce, process, or cause to be processed any materials, the processing of which can, or may, cause air or water pollution.

(11)~~(7)~~ "Pollution" is the presence in the outdoor atmosphere or waters of the state of any substances, contaminants, noise, or manmade or human-induced impairment of air or waters or alteration of the chemical, physical, biological, or radiological integrity of air or water in quantities or at levels which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property or which unreasonably interfere with the enjoyment of life or property, including outdoor recreation unless authorized by applicable law.

(12)~~(8)~~ "Pollution prevention" means the steps taken by a potential generator of contamination or pollution to eliminate or reduce the contamination or pollution before it is discharged into the environment. The term includes nonmandatory steps taken to use alternative forms of energy, conserve or reduce the use of energy, substitute nontoxic materials for toxic materials, conserve or reduce the use of toxic materials and raw materials, reformulate products, modify manufacturing or other processes, improve in-plant maintenance and operations, implement environmental planning before expanding a facility, and recycle toxic or other raw materials.

(14)~~(9)~~ "Sewerage system" means pipelines or conduits, pumping stations, and force mains and all other structures, devices, appurtenances, and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal.



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~~(15)-(10)~~ "Source" means ~~is~~ any and all points of origin of
a contaminant ~~the item defined in subsection (1)~~, whether
privately or publicly owned or operated.

~~(21)-(11)~~ "Treatment works" and "disposal systems" mean any
plant or other works used for the purpose of treating,
stabilizing, or holding wastes.

~~(22)-(12)~~ "Wastes" means sewage, industrial wastes, and all
other liquid, gaseous, solid, radioactive, or other substances
which may pollute or tend to pollute any waters of the state.

~~(23)-(13)~~ "Waters" include, but are not limited to, rivers,
lakes, streams, springs, impoundments, wetlands, and all other
waters or bodies of water, including fresh, brackish, saline,
tidal, surface, or underground waters. Waters owned entirely by
one person other than the state are included only in regard to
possible discharge on other property or water. Underground
waters include, but are not limited to, all underground waters
passing through pores of rock or soils or flowing through in
channels, whether manmade or natural. Solely for purposes of s.
403.0885, waters of the state also include navigable waters or
waters of the contiguous zone as used in s. 502 of the Clean
Water Act, as amended, 33 U.S.C. ss. 1251 et seq., as in
existence on January 1, 1993, except for those navigable waters
seaward of the boundaries of the state set forth in s. 1, Art.
II of the State Constitution. Solely for purposes of this
chapter, waters of the state also include the area bounded by
the following:

(a) Commence at the intersection of State Road (SRD) 5
(U.S. 1) and the county line dividing Miami-Dade and Monroe
Counties, said point also being the mean high-water line of



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Florida Bay, located in section 4, township 60 south, range 39 east of the Tallahassee Meridian for the point of beginning. From said point of beginning, thence run northwesterly along said SRD 5 to an intersection with the north line of section 18, township 58 south, range 39 east; thence run westerly to a point marking the southeast corner of section 12, township 58 south, range 37 east, said point also lying on the east boundary of the Everglades National Park; thence run north along the east boundary of the aforementioned Everglades National Park to a point marking the northeast corner of section 1, township 58 south, range 37 east; thence run west along said park to a point marking the northwest corner of said section 1; thence run northerly along said park to a point marking the northwest corner of section 24, township 57 south, range 37 east; thence run westerly along the south lines of sections 14, 15, and 16 to the southwest corner of section 16; thence leaving the Everglades National Park boundary run northerly along the west line of section 16 to the northwest corner of section 16; thence east along the northerly line of section 16 to a point at the intersection of the east one-half and west one-half of section 9; thence northerly along the line separating the east one-half and the west one-half of sections 9, 4, 33, and 28; thence run easterly along the north line of section 28 to the northeast corner of section 28; thence run northerly along the west line of section 22 to the northwest corner of section 22; thence easterly along the north line of section 22 to a point at the intersection of the east one-half and west one-half of section 15; thence run northerly along said line to the point of intersection with the north line of section 15; thence easterly



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446 along the north line of section 15 to the northeast corner of
447 section 15; thence run northerly along the west lines of
448 sections 11 and 2 to the northwest corner of section 2; thence
449 run easterly along the north lines of sections 2 and 1 to the
450 northeast corner of section 1, township 56 south, range 37 east;
451 thence run north along the east line of section 36, township 55
452 south, range 37 east to the northeast corner of section 36;
453 thence run west along the north line of section 36 to the
454 northwest corner of section 36; thence run north along the west
455 line of section 25 to the northwest corner of section 25; thence
456 run west along the north line of section 26 to the northwest
457 corner of section 26; thence run north along the west line of
458 section 23 to the northwest corner of section 23; thence run
459 easterly along the north line of section 23 to the northeast
460 corner of section 23; thence run north along the west line of
461 section 13 to the northwest corner of section 13; thence run
462 east along the north line of section 13 to a point of
463 intersection with the west line of the southeast one-quarter of
464 section 12; thence run north along the west line of the
465 southeast one-quarter of section 12 to the northwest corner of
466 the southeast one-quarter of section 12; thence run east along
467 the north line of the southeast one-quarter of section 12 to the
468 point of intersection with the east line of section 12; thence
469 run east along the south line of the northwest one-quarter of
470 section 7 to the southeast corner of the northwest one-quarter
471 of section 7; thence run north along the east line of the
472 northwest one-quarter of section 7 to the point of intersection
473 with the north line of section 7; thence run northerly along the
474 west line of the southeast one-quarter of section 6 to the



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northwest corner of the southeast one-quarter of section 6;
thence run east along the north lines of the southeast one-
quarter of section 6 and the southwest one-quarter of section 5
to the northeast corner of the southwest one-quarter of section
5; thence run northerly along the east line of the northwest
one-quarter of section 5 to the point of intersection with the
north line of section 5; thence run northerly along the line
dividing the east one-half and the west one-half of Lot 5 to a
point intersecting the north line of Lot 5; thence run east
along the north line of Lot 5 to the northeast corner of Lot 5,
township 54 1/2 south, range 38 east; thence run north along the
west line of section 33, township 54 south, range 38 east to a
point intersecting the northwest corner of the southwest one-
quarter of section 33; thence run easterly along the north line
of the southwest one-quarter of section 33 to the northeast
corner of the southwest one-quarter of section 33; thence run
north along the west line of the northeast one-quarter of
section 33 to a point intersecting the north line of section 33;
thence run easterly along the north line of section 33 to the
northeast corner of section 33; thence run northerly along the
west line of section 27 to a point intersecting the northwest
corner of the southwest one-quarter of section 27; thence run
easterly to the northeast corner of the southwest one-quarter of
section 27; thence run northerly along the west line of the
northeast one-quarter of section 27 to a point intersecting the
north line of section 27; thence run west along the north line
of section 27 to the northwest corner of section 27; thence run
north along the west lines of sections 22 and 15 to the
northwest corner of section 15; thence run easterly along the



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north lines of sections 15 and 14 to the point of intersection with the L-31N Levee, said intersection located near the southeast corner of section 11, township 54 south, range 38 east; thence run northerly along Levee L-31N crossing SRD 90 (U.S. 41 Tamiami Trail) to an intersection common to Levees L-31N, L-29, and L-30, said intersection located near the southeast corner of section 2, township 54 south, range 38 east; thence run northeasterly, northerly, and northeasterly along Levee L-30 to a point of intersection with the Miami-Dade/Broward Levee, said intersection located near the northeast corner of section 17, township 52 south, range 39 east; thence run due east to a point of intersection with SRD 27 (Krome Ave.); thence run northeasterly along SRD 27 to an intersection with SRD 25 (U.S. 27), said intersection located in section 3, township 52 south, range 39 east; thence run northerly along said SRD 25, entering into Broward County, to an intersection with SRD 84 at Andytown; thence run southeasterly along the aforementioned SRD 84 to an intersection with the southwesterly prolongation of Levee L-35A, said intersection being located in the northeast one-quarter of section 5, township 50 south, range 40 east; thence run northeasterly along Levee L-35A to an intersection of Levee L-36, said intersection located near the southeast corner of section 12, township 49 south, range 40 east; thence run northerly along Levee L-36, entering into Palm Beach County, to an intersection common to said Levees L-36, L-39, and L-40, said intersection located near the west quarter corner of section 19, township 47 south, range 41 east; thence run northeasterly, easterly, and northerly along Levee L-40, said Levee L-40 being the easterly boundary of the Loxahatchee



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National Wildlife Refuge, to an intersection with SRD 80 (U.S. 441), said intersection located near the southeast corner of section 32, township 43 south, range 40 east; thence run westerly along the aforementioned SRD 80 to a point marking the intersection of said road and the northeasterly prolongation of Levee L-7, said Levee L-7 being the westerly boundary of the Loxahatchee National Wildlife Refuge; thence run southwesterly and southerly along said Levee L-7 to an intersection common to Levees L-7, L-15 (Hillsborough Canal), and L-6; thence run southwesterly along Levee L-6 to an intersection common to Levee L-6, SRD 25 (U.S. 27), and Levee L-5, said intersection being located near the northwest corner of section 27, township 47 south, range 38 east; thence run westerly along the aforementioned Levee L-5 to a point intersecting the east line of range 36 east; thence run northerly along said range line to a point marking the northeast corner of section 1, township 47 south, range 36 east; thence run westerly along the north line of township 47 south, to an intersection with Levee L-23/24 (Miami Canal); thence run northwesterly along the Miami Canal Levee to a point intersecting the north line of section 22, township 46 south, range 35 east; thence run westerly to a point marking the northwest corner of section 21, township 46 south, range 35 east; thence run southerly to the southwest corner of said section 21; thence run westerly to a point marking the northwest corner of section 30, township 46 south, range 35 east, said point also being on the line dividing Palm Beach and Hendry Counties; from said point, thence run southerly along said county line to a point marking the intersection of Broward, Hendry, and Collier Counties, said point also being the



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northeast corner of section 1, township 49 south, range 34 east;
thence run westerly along the line dividing Hendry and Collier
Counties and continuing along the prolongation thereof to a
point marking the southwest corner of section 36, township 48
south, range 29 east; thence run southerly to a point marking
the southwest corner of section 12, township 49 south, range 29
east; thence run westerly to a point marking the southwest
corner of section 10, township 49 south, range 29 east; thence
run southerly to a point marking the southwest corner of section
15, township 49 south, range 29 east; thence run westerly to a
point marking the northwest corner of section 24, township 49
south, range 28 east, said point lying on the west boundary of
the Big Cypress Area of Critical State Concern as described in
rule 28-25.001, Florida Administrative Code; thence run
southerly along said boundary crossing SRD 84 (Alligator Alley)
to a point marking the southwest corner of section 24, township
50 south, range 28 east; thence leaving the aforementioned west
boundary of the Big Cypress Area of Critical State Concern run
easterly to a point marking the northeast corner of section 25,
township 50 south, range 28 east; thence run southerly along the
east line of range 28 east to a point lying approximately 0.15
miles south of the northeast corner of section 1, township 52
south, range 28 east; thence run southwesterly 2.4 miles more or
less to an intersection with SRD 90 (U.S. 41 Tamiami Trail),
said intersection lying 1.1 miles more or less west of the east
line of range 28 east; thence run northwesterly and westerly
along SRD 90 to an intersection with the west line of section
10, township 52 south, range 28 east; thence leaving SRD 90 run
southerly to a point marking the southwest corner of section 15,



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township 52 south, range 28 east; thence run westerly crossing the Faka Union Canal 0.6 miles more or less to a point; thence run southerly and parallel to the Faka Union Canal to a point located on the mean high-water line of Faka Union Bay; thence run southeasterly along the mean high-water line of the various bays, rivers, inlets, and streams to the point of beginning.

(b) The area bounded by the line described in paragraph (a) generally includes those waters to be known as waters of the state. The landward extent of these waters shall be determined by the delineation methodology ratified in s. 373.4211. Any waters which are outside the general boundary line described in paragraph (a) but which are contiguous thereto by virtue of the presence of a wetland, watercourse, or other surface water, as determined by the delineation methodology ratified in s. 373.4211, shall be a part of this waterbody ~~water body~~. Any areas within the line described in paragraph (a) which are neither a wetland nor surface water, as determined by the delineation methodology ratified in s. 373.4211, shall be excluded therefrom. If the Florida Environmental Regulation Commission designates the waters within the boundaries an Outstanding Florida Water, waters outside the boundaries may ~~shall~~ not be included as part of such designation unless a hearing is held pursuant to notice in each appropriate county and the boundaries of such lands are specifically considered and described for such designation.

~~(16)-(14)~~ "State water resource implementation rule" means the rule authorized by s. 373.036, which sets forth goals, objectives, and guidance for the development and review of programs, rules, and plans relating to water resources, based on



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statutory policies and directives. The waters of the state are among its most basic resources. Such waters should be managed to conserve and protect water resources and to realize the full beneficial use of these resources.

~~(17)(15)~~ "Stormwater management program" means the institutional strategy for stormwater management, including urban, agricultural, and other stormwater.

~~(18)(16)~~ "Stormwater management system" means a system ~~which is~~ designed and constructed or implemented to control discharges that ~~which~~ are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, overdrainage, environmental degradation and water pollution or otherwise affect the quantity and quality of discharges from the system.

~~(19)(17)~~ "Stormwater utility" means the funding of a stormwater management program by assessing the cost of the program to the beneficiaries based on their relative contribution to its need. It is operated as a typical utility which bills services regularly, similar to water and wastewater services.

~~(24)(18)~~ "Watershed" means the land area that ~~which~~ contributes to the flow of water into a receiving body of water.

~~(13)(19)~~ "Regulated air pollutant" means any pollutant regulated under the federal Clean Air Act.

~~(4)(20)~~ "Electrical power plant" means, for purposes of this part of this chapter, any electrical generating facility that uses any process or fuel and that is owned or operated by an electric utility, as defined in s. 403.503(14), and includes



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any associated facility that directly supports the operation of the electrical power plant.

~~(20)~~⁽²¹⁾ "Total maximum daily load" is defined as the sum of the individual wasteload allocations for point sources and the load allocations for nonpoint sources and natural background. Prior to determining individual wasteload allocations and load allocations, the maximum amount of a pollutant that a waterbody ~~water body~~ or water segment can assimilate from all sources without exceeding water quality standards must first be calculated.

Section 12. Paragraphs (a) and (e) of subsection (7) of section 403.067, Florida Statutes, are amended to read:

403.067 Establishment and implementation of total maximum daily loads.—

(7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.—

(a) *Basin management action plans.*—

1. In developing and implementing the total maximum daily load for a waterbody ~~water body~~, the department, or the department in conjunction with a water management district, may develop a basin management action plan that addresses some or all of the watersheds and basins tributary to the waterbody ~~water body~~. Such plan must integrate the appropriate management strategies available to the state through existing water quality protection programs to achieve the total maximum daily loads and may provide for phased implementation of these management strategies to promote timely, cost-effective actions as provided for in s. 403.151. The plan must establish a schedule implementing the management strategies, establish a basis for



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evaluating the plan's effectiveness, and identify feasible funding strategies for implementing the plan's management strategies. The management strategies may include regional treatment systems or other public works, when appropriate, and voluntary trading of water quality credits to achieve the needed pollutant load reductions.

2. A basin management action plan must equitably allocate, pursuant to paragraph (6) (b), pollutant reductions to individual basins, as a whole to all basins, or to each identified point source or category of nonpoint sources, as appropriate. For nonpoint sources for which best management practices have been adopted, the initial requirement specified by the plan must be those practices developed pursuant to paragraph (c). When appropriate, the plan may take into account the benefits of pollutant load reduction achieved by point or nonpoint sources that have implemented management strategies to reduce pollutant loads, including best management practices, before the development of the basin management action plan. The plan must also identify the mechanisms that will address potential future increases in pollutant loading.

3. The basin management action planning process is intended to involve the broadest possible range of interested parties, with the objective of encouraging the greatest amount of cooperation and consensus possible. In developing a basin management action plan, the department shall assure that key stakeholders, including, but not limited to, applicable local governments, water management districts, the Department of Agriculture and Consumer Services, other appropriate state agencies, local soil and water conservation districts,



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environmental groups, regulated interests, and affected pollution sources, are invited to participate in the process. The department shall hold at least one public meeting in the vicinity of the watershed or basin to discuss and receive comments during the planning process and shall otherwise encourage public participation to the greatest practicable extent. Notice of the public meeting must be published in a newspaper of general circulation in each county in which the watershed or basin lies at least 5 days, but not more than 15 days, before the public meeting. A basin management action plan does not supplant or otherwise alter any assessment made under subsection (3) or subsection (4) or any calculation or initial allocation.

4. Each new or revised basin management action plan must ~~shall~~ include all of the following:

a. The appropriate management strategies available through existing water quality protection programs to achieve total maximum daily loads, which may provide for phased implementation to promote timely, cost-effective actions as provided for in s. 403.151.~~+~~

b. A description of best management practices adopted by rule.~~+~~

c. For the applicable 5-year implementation milestone, a list of projects that will achieve the pollutant load reductions needed to meet the total maximum daily load or the load allocations established pursuant to subsection (6). Each project must include a planning-level cost estimate and an estimated date of completion. ~~A list of projects in priority ranking with a planning-level cost estimate and estimated date of completion~~



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~~for each listed project;~~

d. A list of projects developed pursuant to paragraph (e),
if applicable.

~~e.d.~~ The source and amount of financial assistance to be
made available by the department, a water management district,
or other entity for each listed project, if applicable. ~~;~~ ~~and~~

~~f.e.~~ A planning-level estimate of each listed project's
expected load reduction, if applicable.

5. The department shall adopt all or any part of a basin
management action plan and any amendment to such plan by
secretarial order pursuant to chapter 120 to implement this
section.

6. The basin management action plan must include 5-year
milestones for implementation and water quality improvement, and
an associated water quality monitoring component sufficient to
evaluate whether reasonable progress in pollutant load
reductions is being achieved over time. An assessment of
progress toward these milestones shall be conducted every 5
years, and revisions to the plan shall be made as appropriate.
Any entity with a specific pollutant load reduction requirement
established in a basin management action plan shall identify the
projects or strategies that such entity will undertake to meet
current 5-year pollution reduction milestones, beginning with
the first 5-year milestone for new basin management action
plans, and submit such projects to the department for inclusion
in the appropriate basin management action plan. Each project
identified must include an estimated amount of nutrient
reduction that is reasonably expected to be achieved based on
the best scientific information available. Revisions to the



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basin management action plan shall be made by the department in cooperation with basin stakeholders. Revisions to the management strategies required for nonpoint sources must follow the procedures in subparagraph (c)4. Revised basin management action plans must be adopted pursuant to subparagraph 5.

7. In accordance with procedures adopted by rule under paragraph (9)(c), basin management action plans, and other pollution control programs under local, state, or federal authority as provided in subsection (4), may allow point or nonpoint sources that will achieve greater pollutant reductions than required by an adopted total maximum daily load or wasteload allocation to generate, register, and trade water quality credits for the excess reductions to enable other sources to achieve their allocation; however, the generation of water quality credits does not remove the obligation of a source or activity to meet applicable technology requirements or adopted best management practices. Such plans must allow trading between NPDES permittees, and trading that may or may not involve NPDES permittees, where the generation or use of the credits involve an entity or activity not subject to department water discharge permits whose owner voluntarily elects to obtain department authorization for the generation and sale of credits.

8. The department's rule relating to the equitable abatement of pollutants into surface waters do not apply to water bodies or waterbody ~~water body~~ segments for which a basin management plan that takes into account future new or expanded activities or discharges has been adopted under this section.

9. In order to promote resilient wastewater utilities, if the department identifies domestic wastewater treatment



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facilities or onsite sewage treatment and disposal systems as contributors of at least 20 percent of point source or nonpoint source nutrient pollution or if the department determines remediation is necessary to achieve the total maximum daily load, a basin management action plan for a nutrient total maximum daily load must include the following:

a. A wastewater treatment plan developed by each local government, in cooperation with the department, the water management district, and the public and private domestic wastewater treatment facilities within the jurisdiction of the local government, that addresses domestic wastewater. The wastewater treatment plan must:

(I) Provide for construction, expansion, or upgrades necessary to achieve the total maximum daily load requirements applicable to the domestic wastewater treatment facility.

(II) Include the permitted capacity in average annual gallons per day for the domestic wastewater treatment facility; the average nutrient concentration and the estimated average nutrient load of the domestic wastewater; a projected timeline of the dates by which the construction of any facility improvements will begin and be completed and the date by which operations of the improved facility will begin; the estimated cost of the improvements; and the identity of responsible parties.

The wastewater treatment plan must be adopted as part of the basin management action plan no later than July 1, 2025. A local government that does not have a domestic wastewater treatment facility in its jurisdiction is not required to develop a



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wastewater treatment plan unless there is a demonstrated need to establish a domestic wastewater treatment facility within its jurisdiction to improve water quality necessary to achieve a total maximum daily load. A local government is not responsible for a private domestic wastewater facility's compliance with a basin management action plan unless such facility is operated through a public-private partnership to which the local government is a party.

b. An onsite sewage treatment and disposal system remediation plan developed by each local government in cooperation with the department, the Department of Health, water management districts, and public and private domestic wastewater treatment facilities.

(I) The onsite sewage treatment and disposal system remediation plan must identify cost-effective and financially feasible projects necessary to achieve the nutrient load reductions required for onsite sewage treatment and disposal systems. To identify cost-effective and financially feasible projects for remediation of onsite sewage treatment and disposal systems, the local government shall:

(A) Include an inventory of onsite sewage treatment and disposal systems based on the best information available;

(B) Identify onsite sewage treatment and disposal systems that would be eliminated through connection to existing or future central domestic wastewater infrastructure in the jurisdiction or domestic wastewater service area of the local government, that would be replaced with or upgraded to enhanced nutrient-reducing onsite sewage treatment and disposal systems, or that would remain on conventional onsite sewage treatment and



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disposal systems;

(C) Estimate the costs of potential onsite sewage treatment and disposal system connections, upgrades, or replacements; and

(D) Identify deadlines and interim milestones for the planning, design, and construction of projects.

(II) The department shall adopt the onsite sewage treatment and disposal system remediation plan as part of the basin management action plan no later than July 1, 2025, or as required for Outstanding Florida Springs under s. 373.807.

10. The installation of new onsite sewage treatment and disposal systems constructed within a basin management action plan area adopted under this section, a reasonable assurance plan, or a pollution reduction plan is prohibited where connection to a publicly owned or investor-owned sewerage system is available as defined in s. 381.0065(2)(a). On lots of 1 acre or less within a basin management action plan adopted under this section, a reasonable assurance plan, or a pollution reduction plan where a publicly owned or investor-owned sewerage system is not available, the installation of enhanced nutrient-reducing onsite sewage treatment and disposal systems or other wastewater treatment systems that achieve at least 50 percent nutrient reduction compared to a standard onsite sewage treatment and disposal system is required.

11.10. When identifying wastewater projects in a basin management action plan, the department may not require the higher cost option if it achieves the same nutrient load reduction as a lower cost option. A regulated entity may choose a different cost option if it complies with the pollutant reduction requirements of an adopted total maximum daily load



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and meets or exceeds the pollution reduction requirement of the original project.

12. Annually, local governments subject to a basin management action plan or located within the basin of a waterbody not attaining nutrient or nutrient-related standards must provide to the department an update on the status of construction of sanitary sewers to serve such areas, in a manner prescribed by the department.

(e) Cooperative agricultural regional water quality improvement element.—

1. The department ~~and~~^{and} the Department of Agriculture and Consumer Services, in cooperation with ~~and~~ owners of agricultural operations in the basin, shall develop a cooperative agricultural regional water quality improvement element as part of a basin management action plan where ~~only if:~~

~~a. Agricultural measures have been adopted by the Department of Agriculture and Consumer Services pursuant to subparagraph (c)2. and have been implemented and the water body remains impaired;~~

~~b.~~ Agricultural nonpoint sources contribute to at least 20 percent of nonpoint source nutrient discharges; and

~~b.e.~~ The department determines that additional measures, in combination with state-sponsored regional projects and other management strategies included in the basin management action plan, are necessary to achieve the total maximum daily load.

2. The element will be implemented through the use of cost-effective and technically and financially practical cooperative regional agricultural nutrient reduction ~~cost-sharing~~ projects and. The element must include a list of such projects submitted



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to the department by the Department of Agriculture and Consumer Services which, in combination with the best management practices, additional measures, and other management strategies, will achieve the needed pollutant load reductions established for agricultural nonpoint sources ~~cost-effective and technically and financially practical cooperative regional agricultural nutrient reduction projects that can be implemented on private properties on a site-specific, cooperative basis.~~ Such cooperative regional agricultural nutrient reduction projects may include, but are not limited to, land acquisition in fee or conservation easements on the lands of willing sellers and site-specific water quality improvement or dispersed water management projects. The list of regional projects included in the cooperative agricultural regional water quality improvement element must include a planning-level cost estimate of each project along with the estimated amount of nutrient reduction that such project will achieve ~~on the lands of project participants.~~

3. To qualify for participation in the cooperative agricultural regional water quality improvement element, the participant must have already implemented and be in compliance with best management practices or other measures adopted by the Department of Agriculture and Consumer Services pursuant to subparagraph (c)2. The element must ~~may~~ be included in the basin management action plan as a part of the next 5-year assessment under subparagraph (a)6.

4. The department or the Department of Agriculture and Consumer Services may submit a legislative budget request to fund projects developed pursuant to this paragraph. In



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allocating funds for projects funded pursuant to this paragraph, the department shall provide at least 20 percent of its annual appropriation for projects in subbasins with the highest nutrient concentrations within a basin management action plan. Projects submitted pursuant to this paragraph are eligible for funding in accordance with s. 403.0673.

Section 13. Section 403.0673, Florida Statutes, is amended to read:

403.0673 Water quality improvement ~~Wastewater~~ grant program.—A ~~wastewater~~ grant program is established within the Department of Environmental Protection to address wastewater, stormwater, and agricultural sources of nutrient loading to surface water or groundwater.

(1) The purpose of the grant program is to fund projects that will improve the quality of waters that:

(a) Are not attaining nutrient or nutrient-related standards;

(b) Have an established total maximum daily load; or

(c) Are located ~~Subject to the appropriation of funds by the Legislature, the department may provide grants for the following projects~~ within a basin management action plan area, a reasonable assurance plan area an alternative restoration plan adopted by final order, an accepted alternative restoration plan area, or a rural area of opportunity under s. 288.0656.

(2) The department may provide grants for all of the following types of projects that reduce the amount of nutrients entering those waters identified in subsection (1):

(a) Connecting onsite sewage treatment and disposal systems to central sewer facilities.



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(b) Upgrading domestic wastewater treatment facilities to advanced waste treatment or greater.

(c) Repairing, upgrading, expanding, or constructing stormwater treatment facilities that result in improvements to surface water or groundwater quality.

(d) Repairing, upgrading, expanding, or constructing domestic wastewater treatment facilities that result in improvements to surface water or groundwater quality, including domestic wastewater reuse and collection systems.

(e) Projects identified pursuant to s. 403.067(7)(a) or (7)(e).

(f) Projects identified in a wastewater treatment plan or an onsite sewage treatment and disposal system remediation plan developed pursuant to s. 403.067(7)(a)9.a. and b.

(g) Projects listed in a city or county capital improvement element pursuant to s. 163.3177(3)(a)4.b.

(h) Retrofitting onsite sewage treatment and disposal systems to upgrade such systems to enhanced nutrient-reducing onsite sewage treatment and disposal systems where central sewerage is unavailable ~~which will individually or collectively reduce excess nutrient pollution:~~

~~(a) Projects to retrofit onsite sewage treatment and disposal systems to upgrade such systems to enhanced nutrient-reducing onsite sewage treatment and disposal systems.~~

~~(b) Projects to construct, upgrade, or expand facilities to provide advanced waste treatment, as defined in s. 403.086(4).~~

~~(c) Projects to connect onsite sewage treatment and disposal systems to central sewer facilities.~~

~~(3)(2) In allocating such funds, priority must be given to~~



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~~projects that subsidize the connection of onsite sewage treatment and disposal systems to wastewater treatment facilities. First priority must be given to subsidize the connection of onsite sewage treatment and disposal systems to existing infrastructure. Second priority must be given to any expansion of a collection or transmission system that promotes efficiency by planning the installation of wastewater transmission facilities to be constructed concurrently with other construction projects occurring within or along a transportation facility right-of-way. Third priority must be given to all other connections of onsite sewage treatment and disposal systems to wastewater treatment facilities. The~~
department shall consider and prioritize those projects that:

(a) Have the maximum estimated reduction in nutrient load per project;

(b) Demonstrate project readiness;

(c) Are cost-effective;

(d) Have a cost share identified by the applicant, except for rural areas of opportunity;

(e) Have previous state commitment and involvement in the project, considering previously funded phases, the total amount of previous state funding, and previous partial appropriations for the proposed project; or

(f) Are in a the cost-effectiveness of the project; the overall environmental benefit of a project; the location where reductions are needed most to attain the water quality standards of a waterbody not attaining nutrient or nutrient-related standards.



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Any project that does not result in reducing nutrient loading to a waterbody identified in subsection (1) is not eligible for funding under this section ~~of a project; the availability of local matching funds; and projected water savings or quantity improvements associated with a project.~~

~~(3) Each grant for a project described in subsection (1) must require a minimum of a 50 percent local match of funds. However, the department may, at its discretion, waive, in whole or in part, this consideration of the local contribution for proposed projects within an area designated as a rural area of opportunity under s. 288.0656.~~

(4) The department shall coordinate annually with each water management district, ~~as necessary,~~ to identify potential projects ~~grant recipients~~ in each district.

(5) The department shall coordinate with the Department of Agriculture and Consumer Services, local governments, and stakeholders to identify the most effective and beneficial water quality improvement projects.

(6) Beginning January 1, 2024 ~~2021~~, and each January 1 thereafter, the department shall submit a report regarding the projects funded pursuant to this section to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must include a list of those projects receiving funding and the following information for each project:

- (a) A description of the project;
- (b) The cost of the project;
- (c) The estimated nutrient load reduction of the project;
- (d) The location of the project;



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1055 (e) The waterbody or waterbodies where the project will
1056 reduce nutrients; and
1057 (f) The total cost share being provided for the project.

By the Committee on Environment and Natural Resources; and
Senator Brodeur

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1 A bill to be entitled
2 An act relating to environmental protection; amending
3 s. 163.3177, F.S.; revising the required components of
4 a local government comprehensive plan capital
5 improvements element and general sanitary sewer, solid
6 waste, drainage, potable water, and natural
7 groundwater aquifer recharge element; making technical
8 changes; requiring the update of comprehensive plans
9 by a specified date; providing applicability; amending
10 s. 253.025, F.S.; revising the real property purchase
11 agreements that must be submitted to and approved by
12 the Board of Trustees of the Internal Improvement
13 Trust Fund; increasing the estimated threshold that a
14 parcel to be acquired must meet before additional
15 appraisals are required; amending s. 259.032, F.S.;
16 authorizing the board to acquire interests in lands
17 that complete certain linkages within the Florida
18 wildlife corridor; conforming a provision to changes
19 made by the act; making technical changes; creating s.
20 373.469, F.S.; providing legislative findings and
21 intent; defining terms; providing the components of
22 the Indian River Lagoon Protection Program; requiring
23 the department to evaluate and update the basin
24 management action plans within the program at
25 specified intervals; requiring the department, in
26 coordination with specified entities, to identify and
27 prioritize strategies and projects to achieve certain
28 water quality standards and total maximum daily loads;
29 requiring the department, in coordination with

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30 specified entities, to implement the Indian River
31 Lagoon Watershed Research and Water Quality Monitoring
32 Program for specified purposes; prohibiting the
33 installation of new onsite sewage treatment and
34 disposal systems beginning on a specified date under
35 certain circumstances; requiring that commercial or
36 residential properties with existing onsite sewage
37 treatment and disposal systems be connected to central
38 sewer or be upgraded to a certain system by a
39 specified date; providing construction; authorizing
40 the department and the governing boards of the St.
41 Johns River Water Management District and the South
42 Florida Water Management District to adopt rules;
43 amending s. 373.501, F.S.; requiring, rather than
44 authorizing, the department to transfer appropriated
45 funds to the water management districts for specified
46 purposes; requiring the districts to annually report
47 to the department on the use of such funds; amending
48 s. 373.802, F.S.; defining the term "enhanced
49 nutrient-reducing onsite sewage treatment and disposal
50 system"; amending s. 373.807, F.S.; conforming a
51 cross-reference; revising requirements for onsite
52 sewage treatment and disposal system remediation plans
53 for springs; amending s. 373.811, F.S.; prohibiting
54 new onsite sewage treatment and disposal systems
55 within basin management action plans in effect for
56 Outstanding Florida Springs under certain
57 circumstances; authorizing the installation of
58 enhanced or alternative systems for certain lots;

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59 amending s. 381.0065, F.S.; defining the term
 60 "enhanced nutrient-reducing onsite sewage treatment
 61 and disposal system"; amending s. 381.00655, F.S.;
 62 encouraging local governmental agencies that receive
 63 funding for connecting onsite sewage treatment and
 64 disposal systems to central sewer facilities to
 65 provide notice of the funding availability to certain
 66 owners of onsite sewage treatment and disposal systems
 67 and to maintain a website with certain information
 68 regarding the funding; reordering and amending s.
 69 403.031, F.S.; defining and revising terms; amending
 70 s. 403.067, F.S.; revising requirements for new or
 71 revised basin management action plans; requiring that
 72 basin management action plans include 5-year
 73 milestones for implementation; requiring certain
 74 entities to identify projects or strategies to meet
 75 such milestones; prohibiting the installation of new
 76 onsite sewage treatment and disposal systems within
 77 specified areas under certain circumstances; requiring
 78 the installation of enhanced or alternative systems
 79 for certain lots; revising requirements for a basin
 80 management action plan's cooperative agricultural
 81 regional water quality improvement element; amending
 82 s. 403.0673, F.S.; renaming the wastewater grant
 83 program as the water quality improvement grant
 84 program; revising the purposes of the grant program;
 85 specifying the projects for which the department may
 86 provide grants under the program; requiring the
 87 department to prioritize certain projects; requiring

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88 the department to coordinate with each water
 89 management district to annually identify projects;
 90 requiring the department to coordinate with specified
 91 entities to identify projects; revising reporting
 92 requirements; amending s. 403.086, F.S.; revising the
 93 waters that sewage disposal facilities are prohibited
 94 from disposing wastes into; amending ss. 201.15,
 95 259.105, 373.019, 373.4132, 373.414, 373.4142,
 96 373.430, 373.4592, 403.890, 403.892, 403.9301, and
 97 403.9302, F.S.; conforming cross-references and
 98 provisions to changes made by the act; reenacting s.
 99 259.045(6), F.S., relating to the purchase of lands in
 100 areas of critical state concern, to incorporate the
 101 amendment made to s. 259.032, F.S., in a reference
 102 thereto; providing a declaration of important state
 103 interest; providing an effective date.

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

107 Section 1. Paragraph (a) of subsection (3) and paragraph
 108 (c) of subsection (6) of section 163.3177, Florida Statutes, are
 109 amended to read:

110 163.3177 Required and optional elements of comprehensive
 111 plan; studies and surveys.—

112 (3)(a) The comprehensive plan must ~~shall~~ contain a capital
 113 improvements element designed to consider the need for and the
 114 location of public facilities in order to encourage the
 115 efficient use of such facilities and set forth all of the
 116 following:

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1. A component that outlines principles for construction, extension, or increase in capacity of public facilities, as well as a component that outlines principles for correcting existing public facility deficiencies, which are necessary to implement the comprehensive plan. The components must ~~shall~~ cover at least a 5-year period.

2. Estimated public facility costs, including a delineation of when facilities will be needed, the general location of the facilities, and projected revenue sources to fund the facilities.

3. Standards to ensure the availability of public facilities and the adequacy of those facilities to meet established acceptable levels of service.

4. A schedule of capital improvements which includes any publicly funded projects of federal, state, or local government, and which may include privately funded projects for which the local government has no fiscal responsibility. Projects necessary to ensure that any adopted level-of-service standards are achieved and maintained for the 5-year period must be identified as either funded or unfunded and given a level of priority for funding.

~~5. The schedule must:~~

a. Include transportation improvements included in the applicable metropolitan planning organization's transportation improvement program adopted pursuant to s. 339.175(8) to the extent that such improvements are relied upon to ensure concurrency and financial feasibility;

b. Where applicable, include a list of projects necessary to achieve the pollutant load reductions attributable to the

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local government, as established in a basin management action plan pursuant to s. 403.067(7); and

~~c. The schedule must~~ Be coordinated with the applicable metropolitan planning organization's long-range transportation plan adopted pursuant to s. 339.175(7).

(6) In addition to the requirements of subsections (1)-(5), the comprehensive plan shall include the following elements:

(c) A general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element correlated to principles and guidelines for future land use, indicating ways to provide for future potable water, drainage, sanitary sewer, solid waste, and aquifer recharge protection requirements for the area. The element may be a detailed engineering plan including a topographic map depicting areas of prime groundwater recharge.

1. Each local government shall address in the data and analyses required by this section those facilities that provide service within the local government's jurisdiction. Local governments that provide facilities to serve areas within other local government jurisdictions shall also address those facilities in the data and analyses required by this section, using data from the comprehensive plan for those areas for the purpose of projecting facility needs as required in this subsection. For shared facilities, each local government shall indicate the proportional capacity of the systems allocated to serve its jurisdiction.

2. The element must ~~shall~~ describe the problems and needs and the general facilities that will be required for solution of the problems and needs, including correcting existing facility

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deficiencies. The element ~~must shall~~ address coordinating the extension of, ~~or~~ increase in the capacity of, or upgrade in treatment of facilities to meet future needs; prioritizing advanced waste treatment while maximizing the use of existing facilities and discouraging urban sprawl; conserving potable water resources; and protecting the functions of natural groundwater recharge areas and natural drainage features.

3. Within the local government's jurisdiction, for any development of more than 50 residential lots, whether built or unbuilt, with more than one onsite sewage treatment and disposal system per 1 acre, the element must include a plan to provide sanitary sewer services within a 10-year planning horizon. An onsite sewage treatment and disposal system is presumed to exist on a parcel if sanitary sewer services are not available at or adjacent to the parcel boundary. For such developments, the plan must identify the name and location of the intended wastewater facility to receive sanitary sewer flows after connection; the capacity of the facility and any associated transmission facilities; the projected wastewater flow at that facility for the next 20 years, inclusive of expected future new construction and connections of onsite sewage treatment and disposal systems to sanitary sewer; and a timeline for the construction of the sanitary sewer system. Each comprehensive plan must be updated to include this element by July 1, 2024. This subparagraph does not apply to a local government designated as a rural area of opportunity under s. 288.0656.

4. Within 18 months after the governing board approves an updated regional water supply plan, the element must incorporate the alternative water supply project or projects selected by the

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local government from those identified in the regional water supply plan pursuant to s. 373.709(2)(a) or proposed by the local government under s. 373.709(8)(b). If a local government is located within two water management districts, the local government ~~must shall~~ adopt its comprehensive plan amendment within 18 months after the later updated regional water supply plan. The element must identify such alternative water supply projects and traditional water supply projects and conservation and reuse necessary to meet the water needs identified in s. 373.709(2)(a) within the local government's jurisdiction and include a work plan, covering at least a 10-year planning period, for building public, private, and regional water supply facilities, including development of alternative water supplies, which are identified in the element as necessary to serve existing and new development. The work plan ~~must shall~~ be updated, at a minimum, every 5 years within 18 months after the governing board of a water management district approves an updated regional water supply plan. Local governments, public and private utilities, regional water supply authorities, special districts, and water management districts are encouraged to cooperatively plan for the development of multijurisdictional water supply facilities that are sufficient to meet projected demands for established planning periods, including the development of alternative water sources to supplement traditional sources of groundwater and surface water supplies.

~~5.4-~~ A local government that does not own, operate, or maintain its own water supply facilities, including, but not limited to, wells, treatment facilities, and distribution infrastructure, and is served by a public water utility with a

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permitted allocation of greater than 300 million gallons per day is not required to amend its comprehensive plan in response to an updated regional water supply plan or to maintain a work plan if any such local government's usage of water constitutes less than 1 percent of the public water utility's total permitted allocation. However, any such local government shall ~~is required~~ ~~to~~ cooperate with, and provide relevant data to, any local government or utility provider that provides service within its jurisdiction, and shall ~~to~~ keep its general sanitary sewer, solid waste, potable water, and natural groundwater aquifer recharge element updated in accordance with s. 163.3191.

Section 2. Subsection (4) and paragraph (b) of subsection (8) of section 253.025, Florida Statutes, are amended to read:
253.025 Acquisition of state lands.—

(4) An agreement to acquire real property for the purposes described in this chapter, chapter 259, chapter 260, or chapter 375, title to which will vest in the board of trustees, may not bind the state before the agreement is reviewed and approved by the Department of Environmental Protection as complying with this section and any rules adopted pursuant to this section. If any of the following conditions exist, the agreement must ~~shall~~ be submitted to and approved by the board of trustees:

(a) The purchase price agreed to by the seller exceeds the value as established pursuant to the rules of the board of trustees. ~~+~~

(b) The contract price agreed to by the seller and the acquiring agency exceeds \$5 ~~\$1~~ million. ~~+~~

(c) ~~The acquisition is the initial purchase in a Florida Forever project; or~~

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~~(4)~~ Other conditions that the board of trustees may adopt by rule. Such conditions may include, but are not limited to, Florida Forever projects when title to the property being acquired is considered nonmarketable or is encumbered in such a way as to significantly affect its management.

If approval of the board of trustees is required pursuant to this subsection, the acquiring agency must provide a justification as to why it is in the public's interest to acquire the parcel or Florida Forever project. Approval of the board of trustees is also required for Florida Forever projects the department recommends acquiring pursuant to subsections (11) and (22). Review and approval of agreements for acquisitions for Florida Greenways and Trails Program properties pursuant to chapter 260 may be waived by the department in any contract with nonprofit corporations that have agreed to assist the department with this program. If the contribution of the acquiring agency exceeds \$100 million in any one fiscal year, the agreement must ~~shall~~ be submitted to and approved by the Legislative Budget Commission.

(8) Before approval by the board of trustees, or, when applicable, the Department of Environmental Protection, of any agreement to purchase land pursuant to this chapter, chapter 259, chapter 260, or chapter 375, and before negotiations with the parcel owner to purchase any other land, title to which will vest in the board of trustees, an appraisal of the parcel shall be required as follows:

(b) Each parcel to be acquired must ~~shall~~ have at least one appraisal. Two appraisals are required when the estimated value

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of the parcel exceeds \$5 ~~\$1~~ million. However, if both appraisals exceed \$5 ~~\$1~~ million and differ significantly, a third appraisal may be obtained. If a parcel is estimated to be worth \$100,000 or less and the director of the Division of State Lands finds that the cost of an outside appraisal is not justified, a comparable sales analysis, an appraisal prepared by the division, or other reasonably prudent procedures may be used by the division to estimate the value of the parcel, provided the public's interest is reasonably protected. The state is not required to appraise the value of lands and appurtenances that are being donated to the state.

Notwithstanding this subsection, on behalf of the board of trustees and before the appraisal of parcels approved for purchase under this chapter or chapter 259, the Secretary of Environmental Protection or the director of the Division of State Lands may enter into option contracts to buy such parcels. Any such option contract shall state that the final purchase price is subject to approval by the board of trustees or, if applicable, the Secretary of Environmental Protection, and that the final purchase price may not exceed the maximum offer allowed by law. Any such option contract presented to the board of trustees for final purchase price approval shall explicitly state that payment of the final purchase price is subject to an appropriation from the Legislature. The consideration for such an option may not exceed \$1,000 or 0.01 percent of the estimate by the department of the value of the parcel, whichever amount is greater.

Section 3. Subsections (2) and (7), paragraph (b) of

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subsection (8), and paragraph (d) of subsection (9) of section 259.032, Florida Statutes, are amended to read:

259.032 Conservation and recreation lands.—

(2) The Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund, may expend moneys appropriated by the Legislature to acquire the fee or any lesser interest in lands for any of the following public purposes:

(a) To conserve and protect environmentally unique and irreplaceable lands that contain native, relatively unaltered flora and fauna representing a natural area unique to, or scarce within, a region of this state or a larger geographic area.†

(b) To conserve and protect lands within designated areas of critical state concern, if the proposed acquisition relates to the natural resource protection purposes of the designation.†

(c) To conserve and protect native species habitat or endangered or threatened species, emphasizing long-term protection for endangered or threatened species designated G-1 or G-2 by the Florida Natural Areas Inventory, and especially those areas that are special locations for breeding and reproduction.†

(d) To conserve, protect, manage, or restore important ecosystems, landscapes, and forests, if the protection and conservation of such lands is necessary to enhance or protect significant surface water, groundwater, coastal, recreational, timber, or fish or wildlife resources which cannot otherwise be accomplished through local and state regulatory programs.†

(e) To promote water resource development that benefits natural systems and citizens of the state.†

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(f) To facilitate the restoration and subsequent health and vitality of the Florida Everglades.

(g) To provide areas, including recreational trails, for natural resource-based recreation and other outdoor recreation on any part of any site compatible with conservation purposes.

(h) To preserve significant archaeological or historic sites.

(i) To conserve urban open spaces suitable for greenways or outdoor recreation which are compatible with conservation purposes.

(j) To preserve agricultural lands under threat of conversion to development through less-than-fee acquisitions.

(k) To complete critical linkages that will help preserve and protect this state's green infrastructure and vital habitat for wide-ranging wildlife, such as the Florida panther, within the Florida wildlife corridor.

(7) (a) All lands managed under this chapter and s. 253.034 must ~~shall~~ be:

1. ~~(a)~~ Managed in a manner that will provide the greatest combination of benefits to the public and to the resources.

2. ~~(b)~~ Managed for public outdoor recreation which is compatible with the conservation and protection of public lands. Such management may include, but not be limited to, the following public recreational uses: fishing, hunting, camping, bicycling, hiking, nature study, swimming, boating, canoeing, horseback riding, diving, model hobbyist activities, birding, sailing, jogging, and other related outdoor activities.

~~(b)~~ ~~(c)~~ Concurrent with its adoption of the annual list of acquisition projects pursuant to s. 259.035, the board shall

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adopt a management prospectus for each project. The management prospectus shall delineate:

1. The management goals for the property;

2. The conditions that will affect the intensity of management;

3. An estimate of the revenue-generating potential of the property, if appropriate;

4. A timetable for implementing the various stages of management and for providing access to the public, if applicable;

5. A description of potential multiple-use activities as described in this section and s. 253.034;

6. Provisions for protecting existing infrastructure and for ensuring the security of the project upon acquisition;

7. The anticipated costs of management and projected sources of revenue, including legislative appropriations, to fund management needs; and

8. Recommendations as to how many employees will be needed to manage the property, and recommendations as to whether local governments, volunteer groups, the former landowner, or other interested parties can be involved in the management.

~~(c)~~ ~~(d)~~ Concurrent with the approval of the acquisition contract pursuant to s. 253.025(4) (c) For any interest in lands except those lands acquired pursuant to s. 259.1052, the board shall designate an agency or agencies to manage such lands. The board shall evaluate and amend, as appropriate, the management policy statement for the project as provided by s. 259.035 to ensure that the policy statement is compatible with conservation, recreation, or both. For any fee simple

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acquisition of a parcel which is or will be leased back for agricultural purposes, or any acquisition of a less than fee interest in land that is or will be used for agricultural purposes, the board shall first consider having a soil and water conservation district, created pursuant to chapter 582, manage and monitor such interests.

(d) ~~(e)~~ State agencies designated to manage lands acquired under this chapter or with funds deposited into the Land Acquisition Trust Fund, except those lands acquired under s. 259.1052, may contract with local governments and soil and water conservation districts to assist in management activities, including the responsibility of being the lead land manager. Such land management contracts may include a provision for the transfer of management funding to the local government or soil and water conservation district from the land acquisition trust fund of the lead land managing agency in an amount adequate for the local government or soil and water conservation district to perform its contractual land management responsibilities and proportionate to its responsibilities, and which otherwise would have been expended by the state agency to manage the property.

(e) ~~(f)~~ Immediately following the acquisition of any interest in conservation and recreation lands, the department, acting on behalf of the board, may issue to the lead managing entity an interim assignment letter to be effective until the execution of a formal lease.

(8)

(b) Individual management plans required by s. 253.034(5), for parcels over 160 acres, shall be developed with input from an advisory group. Members of this advisory group shall include,

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at a minimum, representatives of the lead land managing agency, comanaging entities, local private property owners, the appropriate soil and water conservation district, a local conservation organization, and a local elected official. If habitat or potentially restorable habitat for imperiled species is located on state lands, the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services shall be included on any advisory group required under chapter 253, and the short-term and long-term management goals required under chapter 253 must advance the goals and objectives of imperiled species management without restricting other uses identified in the management plan. The advisory group shall conduct at least one public hearing within the county in which the parcel or project is located. For those parcels or projects that are within more than one county, at least one areawide public hearing shall be acceptable and the lead managing agency shall invite a local elected official from each county. The areawide public hearing shall be held in the county in which the core parcels are located. Notice of such public hearing shall be posted on the parcel or project designated for management, advertised in a paper of general circulation, and announced at a scheduled meeting of the local governing body before the actual public hearing. The management prospectus required pursuant to paragraph (7) (b) ~~(7) (e)~~ shall be available to the public for a period of 30 days before the public hearing.

By July 1 of each year, each governmental agency and each private entity designated to manage lands shall report to the Secretary of Environmental Protection on the progress of

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465 funding, staffing, and resource management of every project for
466 which the agency or entity is responsible.

467 (9)

468 (d) Up to one-fifth of the funds appropriated for the
469 purposes identified in paragraph (b) shall be reserved by the
470 board for interim management of acquisitions and for associated
471 contractual services, to ensure the conservation and protection
472 of natural resources on project sites and to allow limited
473 public recreational use of lands. Interim management activities
474 may include, but not be limited to, resource assessments,
475 control of invasive, nonnative species, habitat restoration,
476 fencing, law enforcement, controlled burning, and public access
477 consistent with preliminary determinations made pursuant to
478 paragraph (7)(e) ~~(7)(f)~~. The board shall make these interim
479 funds available immediately upon purchase.

480 Section 4. Section 373.469, Florida Statutes, is created to
481 read:

482 373.469 Indian River Lagoon Protection Program.—

483 (1) FINDINGS AND INTENT.—

484 (a) The Legislature finds that:

485 1. The Indian River Lagoon is a critical water resource of
486 this state which provides many economic, natural habitat, and
487 biodiversity functions that benefit the public interest,
488 including fishing, navigation, recreation, and habitat to
489 endangered and threatened species and other flora and fauna.

490 2. Among other causes, land use changes, onsite sewage
491 treatment and disposal systems, aging infrastructure, stormwater
492 runoff, agriculture, and residential fertilizer have resulted in
493 excess nutrients entering the Indian River Lagoon and adversely

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494 impacting the lagoon's water quality.

495 3. Improvement to the hydrology, water quality, and
496 associated aquatic habitats within the Indian River Lagoon is
497 essential to the protection of the resource.

498 4. It is imperative for the state, local governments, and
499 agricultural and environmental communities to commit to
500 restoring and protecting the surface water resources of the
501 Indian River Lagoon, and a holistic approach to address these
502 issues must be developed and implemented immediately.

503 5. The expeditious implementation of the Banana River
504 Lagoon Basin Management Action Plan, Central Indian River Lagoon
505 Basin Management Action Plan, North Indian River Lagoon Basin
506 Management Action Plan, and Mosquito Lagoon Reasonable Assurance
507 Plan are necessary to improve the quality of water in the Indian
508 River Lagoon ecosystem and to provide a reasonable means of
509 achieving the total maximum daily load requirements and
510 achieving and maintaining compliance with state water quality
511 standards.

512 6. The implementation of the programs contained in this
513 section will benefit the public health, safety, and welfare and
514 is in the public interest.

515 (b) The Legislature intends for this state to protect and
516 restore surface water resources and achieve and maintain
517 compliance with water quality standards in the Indian River
518 Lagoon through the phased, comprehensive, and innovative
519 protection program set forth in this section, including long-
520 term solutions based upon the total maximum daily loads
521 established in accordance with s. 403.067. This program is
522 watershed-based, provides for the consideration of all water

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quality issues needed to meet the total maximum daily load, and includes research and monitoring, development and implementation of best management practices, refinement of existing regulations, and structural and nonstructural projects, including public works.

(2) DEFINITIONS.—As used in this section, the term:

(a) “Best management practice” means a practice or combination of practices determined by the coordinating agencies, based on research, field-testing, and expert review, to be the most effective and practicable on-location means, including economic and technological considerations, for improving water quality in agricultural and urban discharges. Best management practices for agricultural discharges must reflect a balance between water quality improvements and agricultural productivity.

(b) “Enhanced nutrient-reducing onsite sewage treatment and disposal system” means an onsite sewage treatment and disposal system approved by the department as capable of meeting or exceeding a 50 percent total nitrogen reduction before disposal of wastewater in the drainfield, or at least 65 percent total nitrogen reduction combined from onsite sewage tank or tanks and drainfield.

(c) “Total maximum daily load” means the sum of the individual wasteload allocations for point sources and the load allocations for nonpoint sources and natural background adopted pursuant to s. 403.067. Before determining individual wasteload allocations and load allocations, the maximum amount of a pollutant that a waterbody or water segment can assimilate from all sources without exceeding water quality standards must first

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be calculated.

(3) THE INDIAN RIVER LAGOON PROTECTION PROGRAM.—The Indian River Lagoon Protection Program consists of the Banana River Lagoon Basin Management Action Plan, Central Indian River Lagoon Basin Management Action Plan, North Indian River Lagoon Basin Management Action Plan, and Mosquito Lagoon Reasonable Assurance Plan, and such plans are the components of the Indian River Lagoon Protection Program which achieve phosphorous and nitrogen load reductions for the Indian River Lagoon.

(a) *Evaluation*.—Every 5 years, the department shall evaluate and update the Banana River Lagoon Basin Management Action Plan, Central Indian River Lagoon Basin Management Action Plan, and North Indian River Lagoon Basin Management Action Plan, and identify any further load reductions necessary to achieve compliance with the relevant total maximum daily loads established pursuant to s. 403.067. As provided in s. 403.067(7)(a)6., such plans must include 5-year milestones for implementation and water quality improvement and a water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time.

(b) *Water quality standards and total maximum daily loads*.—The department, in coordination with the St. Johns River Water Management District, South Florida Water Management District, local governments, the Indian River Lagoon National Estuary Program, and other stakeholders, shall identify and prioritize strategies and projects necessary to achieve water quality standards within the Indian River Lagoon watershed and meet the total maximum daily loads. Projects identified from this

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evaluation must be incorporated into the Banana River Lagoon Basin Management Action Plan, Central Indian River Lagoon Basin Management Action Plan, North Indian River Lagoon Basin Management Action Plan, and Mosquito Lagoon Reasonable Assurance Plan, as appropriate.

(c) Indian River Lagoon Watershed Research and Water Quality Monitoring Program.—The department, in coordination with the St. Johns River Water Management District, the South Florida Water Management District, and the Indian River Lagoon National Estuary Program, shall implement the Indian River Lagoon Watershed Research and Water Quality Monitoring Program to establish a comprehensive water quality monitoring network throughout the Indian River Lagoon and fund research pertaining to water quality, ecosystem restoration, and seagrass impacts and restoration. The department shall use the results from the program to prioritize projects and to make modifications to the Banana River Lagoon Basin Management Action Plan, Central Indian River Lagoon Basin Management Action Plan, North Indian River Lagoon Basin Management Action Plan, and Mosquito Lagoon Reasonable Assurance Plan, as appropriate.

(d) Onsite sewage treatment and disposal systems.—

1. Beginning on January 1, 2024, unless previously permitted, the installation of new onsite sewage treatment and disposal systems is prohibited within the Banana River Lagoon Basin Management Action Plan, Central Indian River Lagoon Basin Management Action Plan, North Indian River Lagoon Basin Management Action Plan, and Mosquito Lagoon Reasonable Assurance Plan areas where a publicly owned or investor-owned sewerage system is available as defined in s. 381.0065(2)(a). Where

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central sewerage is not available, only enhanced nutrient-reducing onsite sewage treatment and disposal systems or other wastewater treatment systems that achieve at least 50 percent nutrient reduction compared to a standard onsite sewage treatment and disposal system are authorized.

2. By July 1, 2030, any commercial or residential property with an existing onsite sewage treatment and disposal system located within the Banana River Lagoon Basin Management Action Plan, Central Indian River Lagoon Basin Management Action Plan, North Indian River Lagoon Basin Management Action Plan, and Mosquito Lagoon Reasonable Assurance Plan areas must connect to central sewer if available or upgrade to an enhanced nutrient-reducing onsite sewage treatment and disposal system or other wastewater treatment system that achieves at least 50 percent nutrient reduction compared to a standard onsite sewage treatment and disposal system.

(4) RELATIONSHIP TO STATE WATER QUALITY STANDARDS.—This section may not be construed to modify any existing state water quality standard or to modify s. 403.067(6) and (7)(a).

(5) PRESERVATION OF AUTHORITY.—This section may not be construed to restrict the authority otherwise granted to agencies pursuant to this chapter and chapter 403, and this section is supplemental to the authority granted to agencies pursuant to this chapter and chapter 403.

(6) RULES.—The department and governing boards of the St. Johns River Water Management District and South Florida Water Management District may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section.

Section 5. Subsection (1) of section 373.501, Florida

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Statutes, is amended to read:

373.501 Appropriation of funds to water management districts.—

(1) The department ~~shall transfer~~ ~~may allocate~~ to the water management districts, ~~from~~ funds appropriated to the ~~districts~~ through the department in, such sums as ~~may be~~ deemed necessary to defray the costs of the administrative, regulatory, and other operational activities of the districts. The governing boards shall submit annual budget requests for such purposes to the department, and the department shall consider such budgets in preparing its budget request for the Legislature. The districts shall annually report to the department on the use of the funds.

Section 6. Present subsections (2) through (8) of section 373.802, Florida Statutes, are redesignated as subsections (3) through (9), respectively, and a new subsection (2) is added to that section, to read:

373.802 Definitions.—As used in this part, the term:

(2) “Enhanced nutrient-reducing onsite sewage treatment and disposal system” means an onsite sewage treatment and disposal system approved by the department as capable of meeting or exceeding a 50 percent total nitrogen reduction before disposal of wastewater in the drainfield, or at least 65 percent total nitrogen reduction combined from onsite sewage tank or tanks and drainfield.

Section 7. Subsections (2) and (3) of section 373.807, Florida Statutes, are amended to read:

373.807 Protection of water quality in Outstanding Florida Springs.—By July 1, 2016, the department shall initiate assessment, pursuant to s. 403.067(3), of Outstanding Florida

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Springs or spring systems for which an impairment determination has not been made under the numeric nutrient standards in effect for spring vents. Assessments must be completed by July 1, 2018.

(2) By July 1, 2017, each local government, as defined in s. 373.802(3) ~~s. 373.802(2)~~, that has not adopted an ordinance pursuant to s. 403.9337, shall develop, enact, and implement an ordinance pursuant to that section. It is the intent of the Legislature that ordinances required to be adopted under this subsection reflect the latest scientific information, advancements, and technological improvements in the industry.

(3) As part of a basin management action plan that includes an Outstanding Florida Spring, the department, relevant local governments, and relevant local public and private wastewater utilities shall develop an onsite sewage treatment and disposal system remediation plan for a spring if the department determines onsite sewage treatment and disposal systems within a basin management action plan ~~priority focus area~~ contribute at least 20 percent of nonpoint source nitrogen pollution or if the department determines remediation is necessary to achieve the total maximum daily load. The plan must ~~shall~~ identify cost-effective and financially feasible projects necessary to reduce the nutrient impacts from onsite sewage treatment and disposal systems and shall be completed and adopted as part of the basin management action plan no later than the first 5-year milestone required by subparagraph (1)(b)8. The department is the lead agency in coordinating the preparation of and the adoption of the plan. The department shall:

(a) Collect and evaluate credible scientific information on the effect of nutrients, particularly forms of nitrogen, on

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springs and springs systems; and

(b) Develop a public education plan to provide area residents with reliable, understandable information about onsite sewage treatment and disposal systems and springs.

In addition to the requirements in s. 403.067, the plan must ~~shall~~ include options for repair, upgrade, replacement, drainfield modification, addition of effective nitrogen reducing features, connection to a central sewerage system, or other action for an onsite sewage treatment and disposal system or group of systems within a basin management action plan priority focus area that contribute at least 20 percent of nonpoint source nitrogen pollution or if the department determines remediation is necessary to achieve a total maximum daily load. For these systems, the department shall include in the plan a priority ranking for each system or group of systems that requires remediation and shall award funds to implement the remediation projects contingent on an appropriation in the General Appropriations Act, which may include all or part of the costs necessary for repair, upgrade, replacement, drainfield modification, addition of effective nitrogen reducing features, initial connection to a central sewerage system, or other action. In awarding funds, the department may consider expected nutrient reduction benefit per unit cost, size and scope of project, relative local financial contribution to the project, and the financial impact on property owners and the community. The department may waive matching funding requirements for proposed projects within an area designated as a rural area of opportunity under s. 288.0656.

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Section 8. Section 373.811, Florida Statutes, is amended to read:

373.811 Prohibited activities within a basin management action plan priority focus area.~~—The following activities are prohibited within a basin management action plan priority focus area~~ in effect for an Outstanding Florida Spring:

(1) New domestic wastewater disposal facilities, including rapid infiltration basins, with permitted capacities of 100,000 gallons per day or more, except for those facilities that meet an advanced wastewater treatment standard of no more than 3 mg/l total nitrogen, expressed as N, on an annual permitted basis, or a more stringent treatment standard if the department determines the more stringent standard is necessary to attain a total maximum daily load for the Outstanding Florida Spring.

(2) New onsite sewage treatment and disposal systems where connection to a publicly owned or investor-owned sewerage system is available as defined in s. 381.0065(2)(a). On lots of 1 acre or less, if a publicly owned or investor-owned sewerage system is not available, only the installation of enhanced nutrient-reducing onsite sewage treatment and disposal systems or other wastewater treatment systems that achieve at least 50 percent nutrient reduction compared to a standard onsite sewage treatment and disposal system are authorized on lots of less than 1 acre, if the addition of the specific systems conflicts with an onsite treatment and disposal system remediation plan incorporated into a basin management action plan in accordance with s. 373.807(3).

(3) New facilities for the disposal of hazardous waste.

(4) The land application of Class A or Class B domestic

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wastewater biosolids not in accordance with a department approved nutrient management plan establishing the rate at which all biosolids, soil amendments, and sources of nutrients at the land application site can be applied to the land for crop production while minimizing the amount of pollutants and nutrients discharged to groundwater or waters of the state.

(5) New agriculture operations that do not implement best management practices, measures necessary to achieve pollution reduction levels established by the department, or groundwater monitoring plans approved by a water management district or the department.

Section 9. Present paragraphs (f) through (r) of subsection (2) of section 381.0065, Florida Statutes, are redesignated as paragraphs (g) through (s), respectively, a new paragraph (f) is added to that subsection, and paragraph (n) of subsection (4) of that section is amended, to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.—

(2) DEFINITIONS.—As used in ss. 381.0065-381.0067, the term:

(f) “Enhanced nutrient-reducing onsite sewage treatment and disposal system” means an onsite sewage treatment and disposal system approved by the department as capable of meeting or exceeding a 50 percent total nitrogen reduction before disposal of wastewater in the drainfield, or at least 65 percent total nitrogen reduction combined from onsite sewage tank or tanks and drainfield.

(4) PERMITS; INSTALLATION; CONDITIONS.—A person may not construct, repair, modify, abandon, or operate an onsite sewage

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treatment and disposal system without first obtaining a permit approved by the department. The department may issue permits to carry out this section, except that the issuance of a permit for work seaward of the coastal construction control line established under s. 161.053 ~~is shall be~~ contingent upon receipt of any required coastal construction control line permit from the department. A construction permit is valid for 18 months after the date of issuance and may be extended by the department for one 90-day period under rules adopted by the department. A repair permit is valid for 90 days after the date of issuance. An operating permit must be obtained before the use of any aerobic treatment unit or if the establishment generates commercial waste. Buildings or establishments that use an aerobic treatment unit or generate commercial waste shall be inspected by the department at least annually to assure compliance with the terms of the operating permit. The operating permit for a commercial wastewater system is valid for 1 year after the date of issuance and must be renewed annually. The operating permit for an aerobic treatment unit is valid for 2 years after the date of issuance and must be renewed every 2 years. If all information pertaining to the siting, location, and installation conditions or repair of an onsite sewage treatment and disposal system remains the same, a construction or repair permit for the onsite sewage treatment and disposal system may be transferred to another person, if the transferee files, within 60 days after the transfer of ownership, an amended application providing all corrected information and proof of ownership of the property. A fee is not associated with the processing of this supplemental information. A person may

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813 not contract to construct, modify, alter, repair, service,
 814 abandon, or maintain any portion of an onsite sewage treatment
 815 and disposal system without being registered under part III of
 816 chapter 489. A property owner who personally performs
 817 construction, maintenance, or repairs to a system serving his or
 818 her own owner-occupied single-family residence is exempt from
 819 registration requirements for performing such construction,
 820 maintenance, or repairs on that residence, but is subject to all
 821 permitting requirements. A municipality or political subdivision
 822 of the state may not issue a building or plumbing permit for any
 823 building that requires the use of an onsite sewage treatment and
 824 disposal system unless the owner or builder has received a
 825 construction permit for such system from the department. A
 826 building or structure may not be occupied and a municipality,
 827 political subdivision, or any state or federal agency may not
 828 authorize occupancy until the department approves the final
 829 installation of the onsite sewage treatment and disposal system.
 830 A municipality or political subdivision of the state may not
 831 approve any change in occupancy or tenancy of a building that
 832 uses an onsite sewage treatment and disposal system until the
 833 department has reviewed the use of the system with the proposed
 834 change, approved the change, and amended the operating permit.
 835 (n) Evaluations for determining the seasonal high-water
 836 table elevations or the suitability of soils for the use of a
 837 new onsite sewage treatment and disposal system shall be
 838 performed by department personnel, professional engineers
 839 registered in the state, or such other persons with expertise,
 840 as defined by rule, in making such evaluations. Evaluations for
 841 determining mean annual flood lines shall be performed by those

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842 persons identified in paragraph (2)(1) ~~(2)(*)~~. The department
 843 shall accept evaluations submitted by professional engineers and
 844 such other persons as meet the expertise established by this
 845 section or by rule unless the department has a reasonable
 846 scientific basis for questioning the accuracy or completeness of
 847 the evaluation.
 848 Section 10. Subsection (3) is added to section 381.00655,
 849 Florida Statutes, to read:
 850 381.00655 Connection of existing onsite sewage treatment
 851 and disposal systems to central sewerage system; requirements.—
 852 (3) Local governmental agencies, as defined in s.
 853 403.1835(2), that receive grants or loans from the department to
 854 offset the cost of connecting onsite sewage treatment and
 855 disposal systems to publicly owned or investor-owned sewerage
 856 systems are encouraged to do all of the following while such
 857 funds remain available:
 858 (a) Identify the owners of onsite sewage treatment and
 859 disposal systems within the jurisdiction of the respective local
 860 governmental agency who are eligible to apply for the grant or
 861 loan funds and notify such owners of the funding availability.
 862 (b) Maintain a publicly available website with information
 863 relating to the availability of the grant or loan funds,
 864 including the amount of funds available and information on how
 865 the owner of an onsite sewage treatment and disposal system may
 866 apply for such funds.
 867 Section 11. Section 403.031, Florida Statutes, is reordered
 868 and amended to read:
 869 403.031 Definitions.—In construing this chapter, or rules
 870 and regulations adopted pursuant hereto, the following words,

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phrases, or terms, unless the context otherwise indicates, have the following meanings:

(1) "Contaminant" is any substance which is harmful to plant, animal, or human life.

(2) "Department" means the Department of Environmental Protection.

(3) "Effluent limitations" means any restriction established by the department on quantities, rates, or concentrations of chemical, physical, biological, or other constituents which are discharged from sources into waters of the state.

(5) "Enhanced nutrient-reducing onsite sewage treatment and disposal system" means an onsite sewage treatment and disposal system approved by the department as capable of meeting or exceeding a 50 percent total nitrogen reduction before disposal of wastewater in the drainfield, or at least 65 percent total nitrogen reduction combined from onsite sewage tank or tanks and drainfield.

(6)(4) "Installation" means ~~is~~ any structure, equipment, or facility, or appurtenances thereto, or operation which may emit air or water contaminants in quantities prohibited by rules of the department.

(7) "Nutrient or nutrient-related standards" means water quality standards and criteria established for total nitrogen and total phosphorous, or their organic or inorganic forms; biological variables, such as chlorophyll-a, biomass, or the structure of the phytoplankton, periphyton, or vascular plant community, that respond to nutrient load or concentration in a predictable and measurable manner; or dissolved oxygen if it is

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demonstrated for the waterbody that dissolved oxygen conditions result in a biological imbalance and the dissolved oxygen responds to a nutrient load or concentration in a predictable and measurable manner.

(8) "Onsite sewage treatment and disposal system" means a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solids or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. The term does not include package sewage treatment facilities and other treatment works regulated under chapter 403.

(9)(5) "Person" means the state or any agency or institution thereof, the United States or any agency or institution thereof, or any municipality, political subdivision, public or private corporation, individual, partnership, association, or other entity and includes any officer or governing or managing body of the state, the United States, any agency, any municipality, political subdivision, or public or private corporation.

(10)(6) "Plant" is any unit operation, complex, area, or multiple of unit operations that produce, process, or cause to be processed any materials, the processing of which can, or may, cause air or water pollution.

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929 ~~(11)(7)~~ "Pollution" is the presence in the outdoor
 930 atmosphere or waters of the state of any substances,
 931 contaminants, noise, or manmade or human-induced impairment of
 932 air or waters or alteration of the chemical, physical,
 933 biological, or radiological integrity of air or water in
 934 quantities or at levels which are or may be potentially harmful
 935 or injurious to human health or welfare, animal or plant life,
 936 or property or which unreasonably interfere with the enjoyment
 937 of life or property, including outdoor recreation unless
 938 authorized by applicable law.

939 ~~(12)(8)~~ "Pollution prevention" means the steps taken by a
 940 potential generator of contamination or pollution to eliminate
 941 or reduce the contamination or pollution before it is discharged
 942 into the environment. The term includes nonmandatory steps taken
 943 to use alternative forms of energy, conserve or reduce the use
 944 of energy, substitute nontoxic materials for toxic materials,
 945 conserve or reduce the use of toxic materials and raw materials,
 946 reformulate products, modify manufacturing or other processes,
 947 improve in-plant maintenance and operations, implement
 948 environmental planning before expanding a facility, and recycle
 949 toxic or other raw materials.

950 ~~(14)(9)~~ "Sewerage system" means pipelines or conduits,
 951 pumping stations, and force mains and all other structures,
 952 devices, appurtenances, and facilities used for collecting or
 953 conducting wastes to an ultimate point for treatment or
 954 disposal.

955 ~~(15)(10)~~ "Source" means ~~is~~ any and all points of origin of
 956 a contaminant ~~the item defined in subsection (1)~~, whether
 957 privately or publicly owned or operated.

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958 ~~(21)(11)~~ "Treatment works" and "disposal systems" mean any
 959 plant or other works used for the purpose of treating,
 960 stabilizing, or holding wastes.

961 ~~(22)(12)~~ "Wastes" means sewage, industrial wastes, and all
 962 other liquid, gaseous, solid, radioactive, or other substances
 963 which may pollute or tend to pollute any waters of the state.

964 ~~(23)(13)~~ "Waters" include, but are not limited to, rivers,
 965 lakes, streams, springs, impoundments, wetlands, and all other
 966 waters or bodies of water, including fresh, brackish, saline,
 967 tidal, surface, or underground waters. Waters owned entirely by
 968 one person other than the state are included only in regard to
 969 possible discharge on other property or water. Underground
 970 waters include, but are not limited to, all underground waters
 971 passing through pores of rock or soils or flowing through in
 972 channels, whether manmade or natural. Solely for purposes of s.
 973 403.0885, waters of the state also include navigable waters or
 974 waters of the contiguous zone as used in s. 502 of the Clean
 975 Water Act, as amended, 33 U.S.C. ss. 1251 et seq., as in
 976 existence on January 1, 1993, except for those navigable waters
 977 seaward of the boundaries of the state set forth in s. 1, Art.
 978 II of the State Constitution. Solely for purposes of this
 979 chapter, waters of the state also include the area bounded by
 980 the following:

981 (a) Commence at the intersection of State Road (SRD) 5
 982 (U.S. 1) and the county line dividing Miami-Dade and Monroe
 983 Counties, said point also being the mean high-water line of
 984 Florida Bay, located in section 4, township 60 south, range 39
 985 east of the Tallahassee Meridian for the point of beginning.
 986 From said point of beginning, thence run northwesterly along

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987 said SRD 5 to an intersection with the north line of section 18,
 988 township 58 south, range 39 east; thence run westerly to a point
 989 marking the southeast corner of section 12, township 58 south,
 990 range 37 east, said point also lying on the east boundary of the
 991 Everglades National Park; thence run north along the east
 992 boundary of the aforementioned Everglades National Park to a
 993 point marking the northeast corner of section 1, township 58
 994 south, range 37 east; thence run west along said park to a point
 995 marking the northwest corner of said section 1; thence run
 996 northerly along said park to a point marking the northwest
 997 corner of section 24, township 57 south, range 37 east; thence
 998 run westerly along the south lines of sections 14, 15, and 16 to
 999 the southwest corner of section 16; thence leaving the
 1000 Everglades National Park boundary run northerly along the west
 1001 line of section 16 to the northwest corner of section 16; thence
 1002 east along the northerly line of section 16 to a point at the
 1003 intersection of the east one-half and west one-half of section
 1004 9; thence northerly along the line separating the east one-half
 1005 and the west one-half of sections 9, 4, 33, and 28; thence run
 1006 easterly along the north line of section 28 to the northeast
 1007 corner of section 28; thence run northerly along the west line
 1008 of section 22 to the northwest corner of section 22; thence
 1009 easterly along the north line of section 22 to a point at the
 1010 intersection of the east one-half and west one-half of section
 1011 15; thence run northerly along said line to the point of
 1012 intersection with the north line of section 15; thence easterly
 1013 along the north line of section 15 to the northeast corner of
 1014 section 15; thence run northerly along the west lines of
 1015 sections 11 and 2 to the northwest corner of section 2; thence

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1016 run easterly along the north lines of sections 2 and 1 to the
 1017 northeast corner of section 1, township 56 south, range 37 east;
 1018 thence run north along the east line of section 36, township 55
 1019 south, range 37 east to the northeast corner of section 36;
 1020 thence run west along the north line of section 36 to the
 1021 northwest corner of section 36; thence run north along the west
 1022 line of section 25 to the northwest corner of section 25; thence
 1023 run west along the north line of section 26 to the northwest
 1024 corner of section 26; thence run north along the west line of
 1025 section 23 to the northwest corner of section 23; thence run
 1026 easterly along the north line of section 23 to the northeast
 1027 corner of section 23; thence run north along the west line of
 1028 section 13 to the northwest corner of section 13; thence run
 1029 east along the north line of section 13 to a point of
 1030 intersection with the west line of the southeast one-quarter of
 1031 section 12; thence run north along the west line of the
 1032 southeast one-quarter of section 12 to the northwest corner of
 1033 the southeast one-quarter of section 12; thence run east along
 1034 the north line of the southeast one-quarter of section 12 to the
 1035 point of intersection with the east line of section 12; thence
 1036 run east along the south line of the northwest one-quarter of
 1037 section 7 to the southeast corner of the northwest one-quarter
 1038 of section 7; thence run north along the east line of the
 1039 northwest one-quarter of section 7 to the point of intersection
 1040 with the north line of section 7; thence run northerly along the
 1041 west line of the southeast one-quarter of section 6 to the
 1042 northwest corner of the southeast one-quarter of section 6;
 1043 thence run east along the north lines of the southeast one-
 1044 quarter of section 6 and the southwest one-quarter of section 5

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1045 to the northeast corner of the southwest one-quarter of section
 1046 5; thence run northerly along the east line of the northwest
 1047 one-quarter of section 5 to the point of intersection with the
 1048 north line of section 5; thence run northerly along the line
 1049 dividing the east one-half and the west one-half of Lot 5 to a
 1050 point intersecting the north line of Lot 5; thence run east
 1051 along the north line of Lot 5 to the northeast corner of Lot 5,
 1052 township 54 1/2 south, range 38 east; thence run north along the
 1053 west line of section 33, township 54 south, range 38 east to a
 1054 point intersecting the northwest corner of the southwest one-
 1055 quarter of section 33; thence run easterly along the north line
 1056 of the southwest one-quarter of section 33 to the northeast
 1057 corner of the southwest one-quarter of section 33; thence run
 1058 north along the west line of the northeast one-quarter of
 1059 section 33 to a point intersecting the north line of section 33;
 1060 thence run easterly along the north line of section 33 to the
 1061 northeast corner of section 33; thence run northerly along the
 1062 west line of section 27 to a point intersecting the northwest
 1063 corner of the southwest one-quarter of section 27; thence run
 1064 easterly to the northeast corner of the southwest one-quarter of
 1065 section 27; thence run northerly along the west line of the
 1066 northeast one-quarter of section 27 to a point intersecting the
 1067 north line of section 27; thence run west along the north line
 1068 of section 27 to the northwest corner of section 27; thence run
 1069 north along the west lines of sections 22 and 15 to the
 1070 northwest corner of section 15; thence run easterly along the
 1071 north lines of sections 15 and 14 to the point of intersection
 1072 with the L-31N Levee, said intersection located near the
 1073 southeast corner of section 11, township 54 south, range 38

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1074 east; thence run northerly along Levee L-31N crossing SRD 90
 1075 (U.S. 41 Tamiami Trail) to an intersection common to Levees L-
 1076 31N, L-29, and L-30, said intersection located near the
 1077 southeast corner of section 2, township 54 south, range 38 east;
 1078 thence run northeasterly, northerly, and northeasterly along
 1079 Levee L-30 to a point of intersection with the Miami-
 1080 Dade/Broward Levee, said intersection located near the northeast
 1081 corner of section 17, township 52 south, range 39 east; thence
 1082 run due east to a point of intersection with SRD 27 (Krome
 1083 Ave.); thence run northeasterly along SRD 27 to an intersection
 1084 with SRD 25 (U.S. 27), said intersection located in section 3,
 1085 township 52 south, range 39 east; thence run northerly along
 1086 said SRD 25, entering into Broward County, to an intersection
 1087 with SRD 84 at Andytown; thence run southeasterly along the
 1088 aforementioned SRD 84 to an intersection with the southwesterly
 1089 prolongation of Levee L-35A, said intersection being located in
 1090 the northeast one-quarter of section 5, township 50 south, range
 1091 40 east; thence run northeasterly along Levee L-35A to an
 1092 intersection of Levee L-36, said intersection located near the
 1093 southeast corner of section 12, township 49 south, range 40
 1094 east; thence run northerly along Levee L-36, entering into Palm
 1095 Beach County, to an intersection common to said Levees L-36, L-
 1096 39, and L-40, said intersection located near the west quarter
 1097 corner of section 19, township 47 south, range 41 east; thence
 1098 run northeasterly, easterly, and northerly along Levee L-40,
 1099 said Levee L-40 being the easterly boundary of the Loxahatchee
 1100 National Wildlife Refuge, to an intersection with SRD 80 (U.S.
 1101 441), said intersection located near the southeast corner of
 1102 section 32, township 43 south, range 40 east; thence run

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1103 westerly along the aforementioned SRD 80 to a point marking the
 1104 intersection of said road and the northeasterly prolongation of
 1105 Levee L-7, said Levee L-7 being the westerly boundary of the
 1106 Loxahatchee National Wildlife Refuge; thence run southwesterly
 1107 and southerly along said Levee L-7 to an intersection common to
 1108 Levees L-7, L-15 (Hillsborough Canal), and L-6; thence run
 1109 southwesterly along Levee L-6 to an intersection common to Levee
 1110 L-6, SRD 25 (U.S. 27), and Levee L-5, said intersection being
 1111 located near the northwest corner of section 27, township 47
 1112 south, range 38 east; thence run westerly along the
 1113 aforementioned Levee L-5 to a point intersecting the east line
 1114 of range 36 east; thence run northerly along said range line to
 1115 a point marking the northeast corner of section 1, township 47
 1116 south, range 36 east; thence run westerly along the north line
 1117 of township 47 south, to an intersection with Levee L-23/24
 1118 (Miami Canal); thence run northwesterly along the Miami Canal
 1119 Levee to a point intersecting the north line of section 22,
 1120 township 46 south, range 35 east; thence run westerly to a point
 1121 marking the northwest corner of section 21, township 46 south,
 1122 range 35 east; thence run southerly to the southwest corner of
 1123 said section 21; thence run westerly to a point marking the
 1124 northwest corner of section 30, township 46 south, range 35
 1125 east, said point also being on the line dividing Palm Beach and
 1126 Hendry Counties; from said point, thence run southerly along
 1127 said county line to a point marking the intersection of Broward,
 1128 Hendry, and Collier Counties, said point also being the
 1129 northeast corner of section 1, township 49 south, range 34 east;
 1130 thence run westerly along the line dividing Hendry and Collier
 1131 Counties and continuing along the prolongation thereof to a

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1132 point marking the southwest corner of section 36, township 48
 1133 south, range 29 east; thence run southerly to a point marking
 1134 the southwest corner of section 12, township 49 south, range 29
 1135 east; thence run westerly to a point marking the southwest
 1136 corner of section 10, township 49 south, range 29 east; thence
 1137 run southerly to a point marking the southwest corner of section
 1138 15, township 49 south, range 29 east; thence run westerly to a
 1139 point marking the northwest corner of section 24, township 49
 1140 south, range 28 east, said point lying on the west boundary of
 1141 the Big Cypress Area of Critical State Concern as described in
 1142 rule 28-25.001, Florida Administrative Code; thence run
 1143 southerly along said boundary crossing SRD 84 (Alligator Alley)
 1144 to a point marking the southwest corner of section 24, township
 1145 50 south, range 28 east; thence leaving the aforementioned west
 1146 boundary of the Big Cypress Area of Critical State Concern run
 1147 easterly to a point marking the northeast corner of section 25,
 1148 township 50 south, range 28 east; thence run southerly along the
 1149 east line of range 28 east to a point lying approximately 0.15
 1150 miles south of the northeast corner of section 1, township 52
 1151 south, range 28 east; thence run southwesterly 2.4 miles more or
 1152 less to an intersection with SRD 90 (U.S. 41 Tamiami Trail),
 1153 said intersection lying 1.1 miles more or less west of the east
 1154 line of range 28 east; thence run northwesterly and westerly
 1155 along SRD 90 to an intersection with the west line of section
 1156 10, township 52 south, range 28 east; thence leaving SRD 90 run
 1157 southerly to a point marking the southwest corner of section 15,
 1158 township 52 south, range 28 east; thence run westerly crossing
 1159 the Faka Union Canal 0.6 miles more or less to a point; thence
 1160 run southerly and parallel to the Faka Union Canal to a point

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located on the mean high-water line of Faka Union Bay; thence run southeasterly along the mean high-water line of the various bays, rivers, inlets, and streams to the point of beginning.

(b) The area bounded by the line described in paragraph (a) generally includes those waters to be known as waters of the state. The landward extent of these waters shall be determined by the delineation methodology ratified in s. 373.4211. Any waters which are outside the general boundary line described in paragraph (a) but which are contiguous thereto by virtue of the presence of a wetland, watercourse, or other surface water, as determined by the delineation methodology ratified in s. 373.4211, shall be a part of this waterbody ~~water body~~. Any areas within the line described in paragraph (a) which are neither a wetland nor surface water, as determined by the delineation methodology ratified in s. 373.4211, shall be excluded therefrom. If the Florida Environmental Regulation Commission designates the waters within the boundaries an Outstanding Florida Water, waters outside the boundaries may ~~shall~~ not be included as part of such designation unless a hearing is held pursuant to notice in each appropriate county and the boundaries of such lands are specifically considered and described for such designation.

~~(16)-(14)~~ "State water resource implementation rule" means the rule authorized by s. 373.036, which sets forth goals, objectives, and guidance for the development and review of programs, rules, and plans relating to water resources, based on statutory policies and directives. The waters of the state are among its most basic resources. Such waters should be managed to conserve and protect water resources and to realize the full

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beneficial use of these resources.

~~(17)-(15)~~ "Stormwater management program" means the institutional strategy for stormwater management, including urban, agricultural, and other stormwater.

~~(18)-(16)~~ "Stormwater management system" means a system ~~which is~~ designed and constructed or implemented to control discharges that ~~which~~ are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, overdrainage, environmental degradation and water pollution or otherwise affect the quantity and quality of discharges from the system.

~~(19)-(17)~~ "Stormwater utility" means the funding of a stormwater management program by assessing the cost of the program to the beneficiaries based on their relative contribution to its need. It is operated as a typical utility which bills services regularly, similar to water and wastewater services.

~~(24)-(18)~~ "Watershed" means the land area that ~~which~~ contributes to the flow of water into a receiving body of water.

~~(13)-(19)~~ "Regulated air pollutant" means any pollutant regulated under the federal Clean Air Act.

~~(4)-(20)~~ "Electrical power plant" means, for purposes of this part of this chapter, any electrical generating facility that uses any process or fuel and that is owned or operated by an electric utility, as defined in s. 403.503(14), and includes any associated facility that directly supports the operation of the electrical power plant.

~~(20)-(21)~~ "Total maximum daily load" is defined as the sum

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of the individual wasteload allocations for point sources and the load allocations for nonpoint sources and natural background. Prior to determining individual wasteload allocations and load allocations, the maximum amount of a pollutant that a waterbody ~~water body~~ or water segment can assimilate from all sources without exceeding water quality standards must first be calculated.

Section 12. Paragraphs (a) and (e) of subsection (7) of section 403.067, Florida Statutes, are amended to read:

403.067 Establishment and implementation of total maximum daily loads.—

(7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.—

(a) *Basin management action plans.*—

1. In developing and implementing the total maximum daily load for a waterbody ~~water body~~, the department, or the department in conjunction with a water management district, may develop a basin management action plan that addresses some or all of the watersheds and basins tributary to the waterbody ~~water body~~. Such plan must integrate the appropriate management strategies available to the state through existing water quality protection programs to achieve the total maximum daily loads and may provide for phased implementation of these management strategies to promote timely, cost-effective actions as provided for in s. 403.151. The plan must establish a schedule implementing the management strategies, establish a basis for evaluating the plan's effectiveness, and identify feasible funding strategies for implementing the plan's management strategies. The management strategies may include regional

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treatment systems or other public works, when appropriate, and voluntary trading of water quality credits to achieve the needed pollutant load reductions.

2. A basin management action plan must equitably allocate, pursuant to paragraph (6)(b), pollutant reductions to individual basins, as a whole to all basins, or to each identified point source or category of nonpoint sources, as appropriate. For nonpoint sources for which best management practices have been adopted, the initial requirement specified by the plan must be those practices developed pursuant to paragraph (c). When appropriate, the plan may take into account the benefits of pollutant load reduction achieved by point or nonpoint sources that have implemented management strategies to reduce pollutant loads, including best management practices, before the development of the basin management action plan. The plan must also identify the mechanisms that will address potential future increases in pollutant loading.

3. The basin management action planning process is intended to involve the broadest possible range of interested parties, with the objective of encouraging the greatest amount of cooperation and consensus possible. In developing a basin management action plan, the department shall assure that key stakeholders, including, but not limited to, applicable local governments, water management districts, the Department of Agriculture and Consumer Services, other appropriate state agencies, local soil and water conservation districts, environmental groups, regulated interests, and affected pollution sources, are invited to participate in the process. The department shall hold at least one public meeting in the

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vicinity of the watershed or basin to discuss and receive comments during the planning process and shall otherwise encourage public participation to the greatest practicable extent. Notice of the public meeting must be published in a newspaper of general circulation in each county in which the watershed or basin lies at least 5 days, but not more than 15 days, before the public meeting. A basin management action plan does not supplant or otherwise alter any assessment made under subsection (3) or subsection (4) or any calculation or initial allocation.

4. Each new or revised basin management action plan must ~~shall~~ include all of the following:

a. The appropriate management strategies available through existing water quality protection programs to achieve total maximum daily loads, which may provide for phased implementation to promote timely, cost-effective actions as provided for in s. 403.151.~~+~~

b. A description of best management practices adopted by rule.~~+~~

c. For the applicable 5-year implementation milestone, a list of projects that will achieve the pollutant load reductions needed to meet the total maximum daily load or the load allocations established pursuant to subsection (6). Each project must include a planning-level cost estimate and an estimated date of completion. A list of projects in priority ranking with a planning-level cost estimate and estimated date of completion for each listed project.

d. A list of projects developed pursuant to paragraph (e), if applicable.

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~~e.d.~~ The source and amount of financial assistance to be made available by the department, a water management district, or other entity for each listed project, if applicable.~~+~~ ~~and~~
~~f.e.~~ A planning-level estimate of each listed project's expected load reduction, if applicable.

5. The department shall adopt all or any part of a basin management action plan and any amendment to such plan by secretarial order pursuant to chapter 120 to implement this section.

6. The basin management action plan must include 5-year milestones for implementation and water quality improvement, and an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time. An assessment of progress toward these milestones shall be conducted every 5 years, and revisions to the plan shall be made as appropriate. Any entity with a specific pollutant load reduction requirement established in a basin management action plan shall identify the projects or strategies that such entity will undertake to meet current 5-year pollution reduction milestones, beginning with the first 5-year milestone for new basin management action plans, and submit such projects to the department for inclusion in the appropriate basin management action plan. Each project identified must include an estimated amount of nutrient reduction that is reasonably expected to be achieved based on the best scientific information available. Revisions to the basin management action plan shall be made by the department in cooperation with basin stakeholders. Revisions to the management strategies required for nonpoint sources must follow the

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procedures in subparagraph (c)4. Revised basin management action plans must be adopted pursuant to subparagraph 5.

7. In accordance with procedures adopted by rule under paragraph (9)(c), basin management action plans, and other pollution control programs under local, state, or federal authority as provided in subsection (4), may allow point or nonpoint sources that will achieve greater pollutant reductions than required by an adopted total maximum daily load or wasteload allocation to generate, register, and trade water quality credits for the excess reductions to enable other sources to achieve their allocation; however, the generation of water quality credits does not remove the obligation of a source or activity to meet applicable technology requirements or adopted best management practices. Such plans must allow trading between NPDES permittees, and trading that may or may not involve NPDES permittees, where the generation or use of the credits involve an entity or activity not subject to department water discharge permits whose owner voluntarily elects to obtain department authorization for the generation and sale of credits.

8. The department's rule relating to the equitable abatement of pollutants into surface waters do not apply to water bodies or waterbody ~~water body~~ segments for which a basin management plan that takes into account future new or expanded activities or discharges has been adopted under this section.

9. In order to promote resilient wastewater utilities, if the department identifies domestic wastewater treatment facilities or onsite sewage treatment and disposal systems as contributors of at least 20 percent of point source or nonpoint source nutrient pollution or if the department determines

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remediation is necessary to achieve the total maximum daily load, a basin management action plan for a nutrient total maximum daily load must include the following:

a. A wastewater treatment plan developed by each local government, in cooperation with the department, the water management district, and the public and private domestic wastewater treatment facilities within the jurisdiction of the local government, that addresses domestic wastewater. The wastewater treatment plan must:

(I) Provide for construction, expansion, or upgrades necessary to achieve the total maximum daily load requirements applicable to the domestic wastewater treatment facility.

(II) Include the permitted capacity in average annual gallons per day for the domestic wastewater treatment facility; the average nutrient concentration and the estimated average nutrient load of the domestic wastewater; a projected timeline of the dates by which the construction of any facility improvements will begin and be completed and the date by which operations of the improved facility will begin; the estimated cost of the improvements; and the identity of responsible parties.

The wastewater treatment plan must be adopted as part of the basin management action plan no later than July 1, 2025. A local government that does not have a domestic wastewater treatment facility in its jurisdiction is not required to develop a wastewater treatment plan unless there is a demonstrated need to establish a domestic wastewater treatment facility within its jurisdiction to improve water quality necessary to achieve a

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total maximum daily load. A local government is not responsible for a private domestic wastewater facility's compliance with a basin management action plan unless such facility is operated through a public-private partnership to which the local government is a party.

b. An onsite sewage treatment and disposal system remediation plan developed by each local government in cooperation with the department, the Department of Health, water management districts, and public and private domestic wastewater treatment facilities.

(I) The onsite sewage treatment and disposal system remediation plan must identify cost-effective and financially feasible projects necessary to achieve the nutrient load reductions required for onsite sewage treatment and disposal systems. To identify cost-effective and financially feasible projects for remediation of onsite sewage treatment and disposal systems, the local government shall:

(A) Include an inventory of onsite sewage treatment and disposal systems based on the best information available;

(B) Identify onsite sewage treatment and disposal systems that would be eliminated through connection to existing or future central domestic wastewater infrastructure in the jurisdiction or domestic wastewater service area of the local government, that would be replaced with or upgraded to enhanced nutrient-reducing onsite sewage treatment and disposal systems, or that would remain on conventional onsite sewage treatment and disposal systems;

(C) Estimate the costs of potential onsite sewage treatment and disposal system connections, upgrades, or replacements; and

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(D) Identify deadlines and interim milestones for the planning, design, and construction of projects.

(II) The department shall adopt the onsite sewage treatment and disposal system remediation plan as part of the basin management action plan no later than July 1, 2025, or as required for Outstanding Florida Springs under s. 373.807.

10. The installation of new onsite sewage treatment and disposal systems constructed within a basin management action plan area adopted under this section, a reasonable assurance plan, or a pollution reduction plan is prohibited where connection to a publicly owned or investor-owned sewerage system is available as defined in s. 381.0065(2)(a). On lots of 1 acre or less within a basin management action plan adopted under this section, a reasonable assurance plan, or a pollution reduction plan where a publicly owned or investor-owned sewerage system is not available, the installation of enhanced nutrient-reducing onsite sewage treatment and disposal systems or other wastewater treatment systems that achieve at least 50 percent nutrient reduction compared to a standard onsite sewage treatment and disposal system is required.

~~11.10.~~ When identifying wastewater projects in a basin management action plan, the department may not require the higher cost option if it achieves the same nutrient load reduction as a lower cost option. A regulated entity may choose a different cost option if it complies with the pollutant reduction requirements of an adopted total maximum daily load and meets or exceeds the pollution reduction requirement of the original project.

12. Annually, local governments subject to a basin

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management action plan or located within the basin of a waterbody not attaining nutrient or nutrient-related standards must provide to the department an update on the status of construction of sanitary sewers to serve such areas, in a manner prescribed by the department.

(e) Cooperative agricultural regional water quality improvement element.—

1. The department ~~and~~, the Department of Agriculture and Consumer Services, in cooperation with ~~and~~ owners of agricultural operations in the basin, shall develop a cooperative agricultural regional water quality improvement element as part of a basin management action plan where ~~only if~~:

a. ~~Agricultural measures have been adopted by the Department of Agriculture and Consumer Services pursuant to subparagraph (c)2. and have been implemented and the water body remains impaired;~~

~~b.~~ Agricultural nonpoint sources contribute to at least 20 percent of nonpoint source nutrient discharges; or ~~and~~

~~b.e.~~ The department determines that additional measures, in combination with state-sponsored regional projects and other management strategies included in the basin management action plan, are necessary to achieve the total maximum daily load.

2. The element will be implemented through the use of cost-effective and technically and financially practical regional agricultural nutrient reduction ~~cost-sharing~~ projects ~~and~~. ~~The element must include a list of such projects submitted to the department by the Department of Agriculture and Consumer Services which, in combination with the best management practices, additional measures, and other management strategies,~~

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will achieve the needed pollutant load reductions established for agricultural nonpoint sources ~~cost-effective and technically and financially practical cooperative regional agricultural nutrient reduction projects that can be implemented on private properties on a site specific, cooperative basis.~~ Such cooperative regional agricultural nutrient reduction projects may include, but are not limited to, land acquisition in fee or conservation easements on the lands of willing sellers and site-specific water quality improvement or dispersed water management projects. The list of regional projects included in the cooperative agricultural regional water quality improvement element must include a planning-level cost estimate of each project along with the estimated amount of nutrient reduction that such project will achieve on the lands of project participants.

3. To qualify for participation in the cooperative agricultural regional water quality improvement element, the participant must have already implemented and be in compliance with best management practices or other measures adopted by the Department of Agriculture and Consumer Services pursuant to subparagraph (c)2. The element must ~~may~~ be included in the basin management action plan as a part of the next 5-year assessment under subparagraph (a)6.

4. The department or the Department of Agriculture and Consumer Services may submit a legislative budget request to fund projects developed pursuant to this paragraph. In allocating funds for projects funded pursuant to this paragraph, the department shall provide at least 20 percent of its annual appropriation for projects in subbasins with the highest

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nutrient concentrations within a basin management action plan.
Projects submitted pursuant to this paragraph are eligible for
funding in accordance with s. 403.0673.

Section 13. Section 403.0673, Florida Statutes, is amended
to read:

403.0673 Water quality improvement ~~Wastewater~~ grant
program.—A ~~wastewater~~ grant program is established within the
Department of Environmental Protection to address wastewater,
stormwater, and agricultural sources of nutrient loading to
surface water or groundwater.

(1) The purpose of the grant program is to fund projects
that will improve the quality of waters that:

(a) Are not attaining nutrient or nutrient-related
standards;

(b) Have an established total maximum daily load; or

(c) Are located ~~Subject to the appropriation of funds by~~
~~the Legislature, the department may provide grants for the~~
~~following projects within a basin management action plan area, a~~
reasonable assurance plan area ~~an alternative restoration plan~~
adopted by final order, an accepted alternative restoration plan
area, or a rural area of opportunity under s. 288.0656.

(2) The department may provide grants for all of the
following types of projects that reduce the amount of nutrients
entering those waters identified in subsection (1):

(a) Connecting onsite sewage treatment and disposal systems
to central sewer facilities.

(b) Upgrading domestic wastewater treatment facilities to
advanced waste treatment or greater.

(c) Repairing, upgrading, expanding, or constructing

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stormwater treatment facilities that result in improvements to
surface water or groundwater quality.

(d) Repairing, upgrading, expanding, or constructing
domestic wastewater treatment facilities that result in
improvements to surface water or groundwater quality, including
domestic wastewater reuse and collection systems.

(e) Projects identified pursuant to s. 403.067(7)(a) or
(7)(e).

(f) Projects identified in a wastewater treatment plan or
an onsite sewage treatment and disposal system remediation plan
developed pursuant to s. 403.067(7)(a)9.a. and b.

(g) Projects listed in a city or county capital improvement
element pursuant to s. 163.3177(3)(a)4.b.

(h) Retrofitting onsite sewage treatment and disposal
systems to upgrade such systems to enhanced nutrient-reducing
onsite sewage treatment and disposal systems where central
sewerage is unavailable ~~which will individually or collectively~~
~~reduce excess nutrient pollution.~~

~~(a) Projects to retrofit onsite sewage treatment and~~
~~disposal systems to upgrade such systems to enhanced nutrient-~~
~~reducing onsite sewage treatment and disposal systems.~~

~~(b) Projects to construct, upgrade, or expand facilities to~~
~~provide advanced waste treatment, as defined in s. 403.086(4).~~

~~(c) Projects to connect onsite sewage treatment and~~
~~disposal systems to central sewer facilities.~~

~~(3)(2) In allocating such funds, priority must be given to~~
~~projects that subsidize the connection of onsite sewage~~
~~treatment and disposal systems to wastewater treatment~~
~~facilities. First priority must be given to subsidize the~~

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connection of onsite sewage treatment and disposal systems to existing infrastructure. Second priority must be given to any expansion of a collection or transmission system that promotes efficiency by planning the installation of wastewater transmission facilities to be constructed concurrently with other construction projects occurring within or along a transportation facility right-of-way. Third priority must be given to all other connections of onsite sewage treatment and disposal systems to wastewater treatment facilities. The department shall consider and prioritize those projects that have the maximum estimated reduction in nutrient load per project; demonstrate project readiness; are cost-effective, including the percent cost share identified by the applicant, except for rural areas of opportunity; provide an the cost-effectiveness of the project; the overall environmental benefit, including any projected water savings associated with reclaimed water use; and are in of a project; the location where reductions are most needed of a project; the availability of local matching funds; and projected water savings or quantity improvements associated with a project.

~~(3) Each grant for a project described in subsection (1) must require a minimum of a 50-percent local match of funds. However, the department may, at its discretion, waive, in whole or in part, this consideration of the local contribution for proposed projects within an area designated as a rural area of opportunity under s. 288.0656.~~

(4) The department shall coordinate annually with each water management district, ~~as necessary,~~ to identify potential projects grant recipients in each district.

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(5) The department shall coordinate with local governments and stakeholders to identify the most effective and beneficial water quality improvement projects.

(6) Beginning January 1, ~~2024~~ 2021, and each January 1 thereafter, the department shall submit a report regarding the projects funded pursuant to this section to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 14. Paragraph (c) of subsection (1) of section 403.086, Florida Statutes, is amended to read:

403.086 Sewage disposal facilities; advanced and secondary waste treatment.—

(1)

(c) 1. Notwithstanding this chapter or chapter 373, sewage disposal facilities may not dispose of any wastes into the following waters without providing advanced waste treatment, as defined in subsection (4), as approved by the department or a more stringent treatment standard if the department determines the more stringent standard is necessary to achieve the total maximum daily load or applicable water quality criteria:

a. Old Tampa Bay, Tampa Bay, Hillsborough Bay, Boca Ciega Bay, St. Joseph Sound, Clearwater Bay, Sarasota Bay, Little Sarasota Bay, Roberts Bay, Lemon Bay, Charlotte Harbor Bay, Biscayne Bay, or any river, stream, channel, canal, bay, bayou, sound, or other water tributary thereto.

b. Beginning July 1, 2025, Indian River Lagoon, or ~~into~~ any river, stream, channel, canal, bay, bayou, sound, or other water tributary thereto.

c. By January 1, 2033, waterbodies that are currently not

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attaining nutrient or nutrient-related standards or that are
subject to a nutrient or nutrient-related basin management
action plan adopted pursuant to s. 403.067 or adopted reasonable
assurance plan.

2. For any waterbody determined not to be attaining
nutrient or nutrient-related standards after July 1, 2023, or
subject to a nutrient or nutrient-related basin management
action plan adopted pursuant to s. 403.067 or adopted reasonable
assurance plan after July 1, 2023, sewage disposal facilities
are prohibited from disposing any wastes into such waters
without providing advanced waste treatment, as defined in
subsection (4), as approved by the department within 10 years
after such determination or adoption, without providing advanced
waste treatment, as defined in subsection (4), approved by the
department. This paragraph does not apply to facilities which
were permitted by February 1, 1987, and which discharge
secondary treated effluent, followed by water hyacinth
treatment, to tributaries of tributaries of the named waters; or
to facilities permitted to discharge to the nontidally
influenced portions of the Peace River.

Section 15. Paragraph (h) of subsection (4) of section
201.15, Florida Statutes, is amended to read:

201.15 Distribution of taxes collected.—All taxes collected
under this chapter are hereby pledged and shall be first made
available to make payments when due on bonds issued pursuant to
s. 215.618 or s. 215.619, or any other bonds authorized to be
issued on a parity basis with such bonds. Such pledge and
availability for the payment of these bonds shall have priority
over any requirement for the payment of service charges or costs

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of collection and enforcement under this section. All taxes
collected under this chapter, except taxes distributed to the
Land Acquisition Trust Fund pursuant to subsections (1) and (2),
are subject to the service charge imposed in s. 215.20(1).
Before distribution pursuant to this section, the Department of
Revenue shall deduct amounts necessary to pay the costs of the
collection and enforcement of the tax levied by this chapter.
The costs and service charge may not be levied against any
portion of taxes pledged to debt service on bonds to the extent
that the costs and service charge are required to pay any
amounts relating to the bonds. All of the costs of the
collection and enforcement of the tax levied by this chapter and
the service charge shall be available and transferred to the
extent necessary to pay debt service and any other amounts
payable with respect to bonds authorized before January 1, 2017,
secured by revenues distributed pursuant to this section. All
taxes remaining after deduction of costs shall be distributed as
follows:

(4) After the required distributions to the Land
Acquisition Trust Fund pursuant to subsections (1) and (2) and
deduction of the service charge imposed pursuant to s.
215.20(1), the remainder shall be distributed as follows:

(h) An amount equaling 5.4175 percent of the remainder
shall be paid into the Water Protection and Sustainability
Program Trust Fund to be used to fund water quality improvement
~~wastewater~~ grants as specified in s. 403.0673.

Section 16. Paragraph (l) of subsection (3), paragraph (a)
of subsection (5), and paragraph (i) of subsection (15) of
section 259.105, Florida Statutes, are amended to read:

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1683 259.105 The Florida Forever Act.—

1684 (3) Less the costs of issuing and the costs of funding
1685 reserve accounts and other costs associated with bonds, the
1686 proceeds of cash payments or bonds issued pursuant to this
1687 section shall be deposited into the Florida Forever Trust Fund
1688 created by s. 259.1051. The proceeds shall be distributed by the
1689 Department of Environmental Protection in the following manner:

1690 (1) For the purposes of paragraphs (e), (f), (g), and (h),
1691 the agencies that receive the funds shall develop their
1692 individual acquisition or restoration lists in accordance with
1693 specific criteria and numeric performance measures developed
1694 pursuant to s. 259.035(4). Proposed additions may be acquired if
1695 they are identified within the original project boundary, the
1696 management plan required pursuant to s. 253.034(5), or the
1697 management prospectus required pursuant to s. 259.032(7)(b) ~~s.~~
1698 ~~259.032(7)(e)~~. Proposed additions not meeting the requirements
1699 of this paragraph shall be submitted to the council for
1700 approval. The council may only approve the proposed addition if
1701 it meets two or more of the following criteria: serves as a link
1702 or corridor to other publicly owned property; enhances the
1703 protection or management of the property; would add a desirable
1704 resource to the property; would create a more manageable
1705 boundary configuration; has a high resource value that otherwise
1706 would be unprotected; or can be acquired at less than fair
1707 market value.

1708 (5) (a) All lands acquired pursuant to this section shall be
1709 managed for multiple-use purposes, where compatible with the
1710 resource values of and management objectives for such lands. As
1711 used in this section, "multiple-use" includes, but is not

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1712 limited to, outdoor recreational activities as described in ss.
1713 253.034 and 259.032(7)(a)2. ~~ss. 253.034 and 259.032(7)(b)~~, water
1714 resource development projects, sustainable forestry management,
1715 carbon sequestration, carbon mitigation, or carbon offsets.

1716 (15) The council shall submit to the board, with its list
1717 of projects, a report that includes, but need not be limited to,
1718 the following information for each project listed:

1719 (i) A management policy statement for the project and a
1720 management prospectus pursuant to s. 259.032(7)(b) ~~s.~~
1721 ~~259.032(7)(e)~~.

1722 Section 17. Subsection (17) of section 373.019, Florida
1723 Statutes, is amended to read:

1724 373.019 Definitions.—When appearing in this chapter or in
1725 any rule, regulation, or order adopted pursuant thereto, the
1726 term:

1727 (17) "Reclaimed water" means water that has received at
1728 least secondary treatment and basic disinfection and is reused
1729 after flowing out of a domestic wastewater treatment facility.
1730 Reclaimed water is not subject to regulation pursuant to s.
1731 373.175 or part II of this chapter until it has been discharged
1732 into waters as defined in s. 403.031 ~~s. 403.031(13)~~.

1733 Section 18. Section 373.4132, Florida Statutes, is amended
1734 to read:

1735 373.4132 Dry storage facility permitting.—The governing
1736 board or the department shall require a permit under this part,
1737 including s. 373.4145, for the construction, alteration,
1738 operation, maintenance, abandonment, or removal of a dry storage
1739 facility for 10 or more vessels that is functionally associated
1740 with a boat launching area. As part of an applicant's

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demonstration that such a facility will not be harmful to the water resources and will not be inconsistent with the overall objectives of the district, the governing board or department shall require the applicant to provide reasonable assurance that the secondary impacts from the facility will not cause adverse impacts to the functions of wetlands and surface waters, including violations of state water quality standards applicable to waters as defined in s. 403.031 ~~s. 403.031(13)~~, and will meet the public interest test of s. 373.414(1)(a), including the potential adverse impacts to manatees. Nothing in this section shall affect the authority of the governing board or the department to regulate such secondary impacts under this part for other regulated activities.

Section 19. Subsection (1) of section 373.414, Florida Statutes, is amended to read:

373.414 Additional criteria for activities in surface waters and wetlands.—

(1) As part of an applicant's demonstration that an activity regulated under this part will not be harmful to the water resources or will not be inconsistent with the overall objectives of the district, the governing board or the department shall require the applicant to provide reasonable assurance that state water quality standards applicable to waters as defined in s. 403.031 ~~s. 403.031(13)~~ will not be violated and reasonable assurance that such activity in, on, or over surface waters or wetlands, as delineated in s. 373.421(1), is not contrary to the public interest. However, if such an activity significantly degrades or is within an Outstanding Florida Water, as provided by department rule, the applicant

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must provide reasonable assurance that the proposed activity will be clearly in the public interest.

(a) In determining whether an activity, which is in, on, or over surface waters or wetlands, as delineated in s. 373.421(1), and is regulated under this part, is not contrary to the public interest or is clearly in the public interest, the governing board or the department shall consider and balance the following criteria:

1. Whether the activity will adversely affect the public health, safety, or welfare or the property of others;

2. Whether the activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats;

3. Whether the activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling;

4. Whether the activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity;

5. Whether the activity will be of a temporary or permanent nature;

6. Whether the activity will adversely affect or will enhance significant historical and archaeological resources under the provisions of s. 267.061; and

7. The current condition and relative value of functions being performed by areas affected by the proposed activity.

(b) If the applicant is unable to otherwise meet the criteria set forth in this subsection, the governing board or the department, in deciding to grant or deny a permit, must ~~shall~~ consider measures proposed by or acceptable to the

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applicant to mitigate adverse effects that may be caused by the regulated activity. Such measures may include, but are not limited to, onsite mitigation, offsite mitigation, offsite regional mitigation, and the purchase of mitigation credits from mitigation banks permitted under s. 373.4136. It ~~is shall be~~ the responsibility of the applicant to choose the form of mitigation. The mitigation must offset the adverse effects caused by the regulated activity.

1. The department or water management districts may accept the donation of money as mitigation only where the donation is specified for use in a duly noticed environmental creation, preservation, enhancement, or restoration project, endorsed by the department or the governing board of the water management district, which offsets the impacts of the activity permitted under this part. However, ~~the provisions of~~ this subsection does ~~shall~~ not apply to projects undertaken pursuant to s. 373.4137 or chapter 378. Where a permit is required under this part to implement any project endorsed by the department or a water management district, all necessary permits must have been issued prior to the acceptance of any cash donation. After the effective date of this act, when money is donated to either the department or a water management district to offset impacts authorized by a permit under this part, the department or the water management district shall accept only a donation that represents the full cost to the department or water management district of undertaking the project that is intended to mitigate the adverse impacts. The full cost shall include all direct and indirect costs, as applicable, such as those for land acquisition, land restoration or enhancement, perpetual land

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management, and general overhead consisting of costs such as staff time, building, and vehicles. The department or the water management district may use a multiplier or percentage to add to other direct or indirect costs to estimate general overhead. Mitigation credit for such a donation may ~~shall~~ be given only to the extent that the donation covers the full cost to the agency of undertaking the project ~~that is~~ intended to mitigate the adverse impacts. However, nothing herein may ~~shall~~ be construed to prevent the department or a water management district from accepting a donation representing a portion of a larger project, provided that the donation covers the full cost of that portion and mitigation credit is given only for that portion. The department or water management district may deviate from the full cost requirements of this subparagraph to resolve a proceeding brought pursuant to chapter 70 or a claim for inverse condemnation. Nothing in this section may ~~shall~~ be construed to require the owner of a private mitigation bank, permitted under s. 373.4136, to include the full cost of a mitigation credit in the price of the credit to a purchaser of said credit.

2. The department and each water management district shall report by March 1 of each year, as part of the consolidated annual report required by s. 373.036(7), all cash donations accepted under subparagraph 1. during the preceding water management district fiscal year for wetland mitigation purposes. The report must ~~shall~~ exclude those contributions pursuant to s. 373.4137. The report must ~~shall~~ include a description of the endorsed mitigation projects and, except for projects governed by s. 373.4135(6), must ~~shall~~ address, as applicable, success criteria, project implementation status and timeframe,

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monitoring, long-term management, provisions for preservation, and full cost accounting.

3. If the applicant is unable to meet water quality standards because existing ambient water quality does not meet standards, the governing board or the department must ~~shall~~ consider mitigation measures proposed by or acceptable to the applicant that cause net improvement of the water quality in the receiving body of water for those parameters which do not meet standards.

4. If mitigation requirements imposed by a local government for surface water and wetland impacts of an activity regulated under this part cannot be reconciled with mitigation requirements approved under a permit for the same activity issued under this part, including application of the uniform wetland mitigation assessment method adopted pursuant to subsection (18), the mitigation requirements for surface water and wetland impacts are ~~shall be~~ controlled by the permit issued under this part.

(c) Where activities for a single project regulated under this part occur in more than one local government jurisdiction, and where permit conditions or regulatory requirements are imposed by a local government for these activities which cannot be reconciled with those imposed by a permit under this part for the same activities, the permit conditions or regulatory requirements are ~~shall be~~ controlled by the permit issued under this part.

Section 20. Section 373.4142, Florida Statutes, is amended to read:

373.4142 Water quality within stormwater treatment

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

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systems.—State surface water quality standards applicable to waters of the state, as defined in s. 403.031 ~~s. 403.031(13)~~, do ~~shall~~ not apply within a stormwater management system which is designed, constructed, operated, and maintained for stormwater treatment in accordance with a valid permit or noticed exemption issued pursuant to chapter 62-25, Florida Administrative Code; a valid permit or exemption under s. 373.4145 within the Northwest Florida Water Management District; a valid permit issued on or subsequent to April 1, 1986, within the Suwannee River Water Management District or the St. Johns River Water Management District pursuant to this part; a valid permit issued on or subsequent to March 1, 1988, within the Southwest Florida Water Management District pursuant to this part; or a valid permit issued on or subsequent to January 6, 1982, within the South Florida Water Management District pursuant to this part. Such inapplicability of state water quality standards shall be limited to that part of the stormwater management system located upstream of a manmade water control structure permitted, or approved under a noticed exemption, to retain or detain stormwater runoff in order to provide treatment of the stormwater. The additional use of such a stormwater management system for flood attenuation or irrigation does ~~shall~~ not divest the system of the benefits of this exemption. This section does ~~shall~~ not affect the authority of the department and water management districts to require reasonable assurance that the water quality within such stormwater management systems will not adversely impact public health, fish and wildlife, or adjacent waters.

Section 21. Paragraph (a) of subsection (1) of section

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

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373.430, Florida Statutes, is amended to read:

373.430 Prohibitions, violation, penalty, intent.—

(1) It shall be a violation of this part, and it shall be prohibited for any person:

(a) To cause pollution, as defined in s. 403.031 ~~s. 403.031(7)~~, except as otherwise provided in this part, so as to harm or injure human health or welfare, animal, plant, or aquatic life or property.

Section 22. Paragraph (n) of subsection (2) of section 373.4592, Florida Statutes, is amended to read:

373.4592 Everglades improvement and management.—

(2) DEFINITIONS.—As used in this section:

(n) "Stormwater management program" shall have the meaning set forth in s. 403.031 ~~s. 403.031(15)~~.

Section 23. Paragraph (c) of subsection (1) of section 403.890, Florida Statutes, is amended to read:

403.890 Water Protection and Sustainability Program.—

(1) Revenues deposited into or appropriated to the Water Protection and Sustainability Program Trust Fund shall be distributed by the Department of Environmental Protection for the following purposes:

(c) The water quality improvement ~~wastewater~~ grant program as provided in s. 403.0673.

Section 24. Paragraph (b) of subsection (1) of section 403.892, Florida Statutes, is amended to read:

403.892 Incentives for the use of graywater technologies.—

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

(b) "Graywater" has the same meaning as in s. 381.0065(2) ~~s. 381.0065(2)(f)~~.

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Section 25. Paragraphs (c) and (d) of subsection (2) of section 403.9301, Florida Statutes, are amended to read:

403.9301 Wastewater services projections.—

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

(c) "Treatment works" has the same meaning as provided in s. 403.031 ~~s. 403.031(11)~~.

(d) "Wastewater services" means service to a sewerage system, as defined in s. 403.031 ~~s. 403.031(9)~~, or service to domestic wastewater treatment works.

Section 26. Paragraphs (b) and (c) of subsection (2) of section 403.9302, Florida Statutes, are amended to read:

403.9302 Stormwater management projections.—

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

(b) "Stormwater management program" has the same meaning as provided in s. 403.031 ~~s. 403.031(15)~~.

(c) "Stormwater management system" has the same meaning as provided in s. 403.031 ~~s. 403.031(16)~~.

Section 27. For the purpose of incorporating the amendment made by this act to section 259.032, Florida Statutes, in a reference thereto, subsection (6) of section 259.045, Florida Statutes, is reenacted to read:

259.045 Purchase of lands in areas of critical state concern; recommendations by department and land authorities.— Within 45 days after the Administration Commission designates an area as an area of critical state concern under s. 380.05, and annually thereafter, the Department of Environmental Protection shall consider the recommendations of the state land planning agency pursuant to s. 380.05(1)(a) relating to purchase of lands within an area of critical state concern or lands outside an

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area of critical state concern that directly impact an area of critical state concern, which may include lands used to preserve and protect water supply, and shall make recommendations to the board with respect to the purchase of the fee or any lesser interest in any such lands that are:

(6) Lands used to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern if the acquisition of such lands fulfills a public purpose listed in s. 259.032(2) or if the parcel is wholly or partially, at the time of acquisition, on one of the board's approved acquisition lists established pursuant to this chapter. For the purposes of this subsection, if a parcel is estimated to be worth \$500,000 or less and the director of the Division of State Lands finds that the cost of an outside appraisal is not justified, a comparable sales analysis, an appraisal prepared by the Division of State Lands, or other reasonably prudent procedures may be used by the Division of State Lands to estimate the value of the parcel, provided the public's interest is reasonably protected.

The department, a local government, a special district, or a land authority within an area of critical state concern may make recommendations with respect to additional purchases which were not included in the state land planning agency recommendations.

Section 28. The Legislature determines and declares that this act fulfills an important state interest.

Section 29. This act shall take effect July 1, 2023.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Committee on Agriculture,
Environment, and General Government, *Chair*
Health Policy, *Vice Chair*
Appropriations
Appropriations Committee on Health
and Human Services
Children, Families, and Elder Affairs
Community Affairs
Regulated Industries
Rules

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR JASON BRODEUR

10th District

March 20, 2023

The Honorable Jason Brodeur, Chair
Appropriations Committee on Agriculture, Environment, and General Government
405 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Brodeur,

I respectfully request that **Senate Bill 1632, Environmental Protection**, be placed on the agenda of the Appropriations Committee on Agriculture, Environment, and General Government meeting to be considered at your earliest convenience.

If you have any questions or concerns, please do not hesitate to reach out to me or my office.

Sincerely,

A handwritten signature in black ink that reads "Jason Brodeur". The signature is fluid and cursive, with the first name "Jason" and last name "Brodeur" clearly legible.

Senator Jason Brodeur – District 10

CC: Giovanni Betta – Staff Director
Julie Brass – Administrative Assistant

REPLY TO:

- ☐ 110 Timberlachen Circle, Suite 1012, Lake Mary, Florida 32746 (407) 333-1802
- ☐ 405 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5010

Senate's Website: www.flsenate.gov

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

4/18.2023

The Florida Senate
APPEARANCE RECORD

1632

Meeting Date

Appropriations Committee on Agriculture, Environment, and General Government

Deliver both copies of this form to
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Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name **Elizabeth Alvi**

Phone **850-999-1028**

Address **308 N. Monroe**

Email **beth.alvi@audubon.org**

Street

Tallahassee

FL

32301

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Audubon Florida

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

4/18/23

Meeting Date

AEGG

Committee

The Florida Senate

APPEARANCE RECORD

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1632

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Alex Kernan

Phone

Address

3900 Commonwealth Blvd

Email

Street

Tallahassee

FL

32399

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:

FL Department of Environmental
Protection



I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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4/18/23

Meeting Date

SB 1632

Bill Number or Topic

Sen Ag. Env + 66

Committee

Amendment Barcode (if applicable)

Name

Jane West

Phone

904-671-4008

Address

308 N Monroe St

Email

jwest@1000fof.org

Street

Tally

FL

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

1000 Friends of Florida

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules](https://www.flsenate.gov/2020-2022/joint-rules). [df flsenate.gov](https://www.flsenate.gov)

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S-001 (08/10/2021)

CourtSmart Tag Report

Room: SB 110

Case No.:

Type:

Caption: Senate Appropriations Committee on Agriculture, Environment, and General Government

Judge:

Started: 4/18/2023 12:01:56 PM

Ends: 4/18/2023 2:26:44 PM

Length: 02:24:49

12:01:59 PM Sen. Berman (Chair)
12:03:12 PM S 1476
12:03:21 PM Sen. Simon
12:04:35 PM Brad Burellson, Bellini Better World (waives in support)
12:04:46 PM Oscar Anderson, FL Wildlife Corridor Foundation (waives in support)
12:04:57 PM Seth Mikeel, Tall Timbers (waives in support)
12:06:04 PM Sen. Brodeur (Chair)
12:06:09 PM S 1364
12:06:22 PM Sen. Collins
12:08:06 PM Am. 749536
12:09:51 PM Chris Hansen, FL Podiatric Medical Association (waives in support)
12:10:14 PM S 1364 (cont.)
12:10:30 PM Sen. Berman (Vice Chair)
12:10:48 PM Sen. Collins
12:11:23 PM Sen. Berman
12:11:32 PM Sen. Collins
12:12:00 PM Sen. Berman
12:12:08 PM Sen. Collins
12:12:11 PM Sen. Berman
12:12:34 PM Sen. Collins
12:12:43 PM Linda McMann, America First Works (waives in support)
12:12:48 PM Kevin Comerer, Association of Dental Support Organizations (waives in support)
12:12:53 PM Steve Winn, FL Osteopathic Medical Association (waives in support)
12:13:05 PM Dr. Scot Ackerman
12:15:11 PM Sal Nuzzo, James Madison Institute (waives in support)
12:15:17 PM Christian Cauara, Institute for Justice (waives in support)
12:15:22 PM Chris Stranburg, Americans for Prosperity (waives in support)
12:15:26 PM Jarrod Fowler, FL Medical Association (waives in support)
12:15:32 PM Chad Kunde, FL Chamber of Commerce (waives in support)
12:15:36 PM Joseph Salzverg, FL Society of Health-System Pharmacists (waives in support)
12:15:49 PM Sen. Collins
12:16:56 PM S 1366
12:17:00 PM Sen. Collins
12:17:21 PM Am. 642672
12:17:42 PM S 1366 (cont.)
12:17:48 PM Sen. Berman
12:17:57 PM Sen. Collins
12:18:16 PM L. McMann (waives in support)
12:19:08 PM S 1020
12:19:18 PM Sen. Wright
12:20:21 PM Sen. Berman
12:20:41 PM Sen. Wright
12:21:25 PM S 622
12:21:32 PM Sen. Yarborough
12:22:41 PM William Stander, FL Life Care Residents Association (waives in support)
12:22:48 PM Steve Bahmer, Leading Age FL (waives in support)
12:22:59 PM Sen. Berman
12:23:23 PM Sen. Yarborough
12:24:05 PM S 1418
12:24:14 PM Sen. Bradley
12:24:19 PM Am. 347904
12:26:25 PM S 1418 (cont.)

12:26:34 PM Bob McKee, FL Association of Counties (waives in support)
12:26:37 PM Jeff Ivey, Dept. of Management Services (waives in support)
12:26:42 PM Richard Pinsky, FL Association of 911 Coordinators (waives in support)
12:26:46 PM Casey Reed, AT&T (waives in support)
12:26:58 PM Sen. Bradley
12:27:58 PM S 406
12:28:04 PM Sen. Hooper
12:29:14 PM Ellyn Bogdanoff, International Yacht Brokers Association (waives in support)
12:30:09 PM S 782
12:30:13 PM Sen. Hooper
12:32:16 PM Sen. Berman
12:33:20 PM S 1106
12:33:23 PM Sen. Hooper
12:35:00 PM Jim Duncan, Hub International (waives in support)
12:35:06 PM Gloria Pugh, Professional Movers Association of FL (waives in support)
12:35:22 PM Sen. Hooper
12:36:19 PM S 1108
12:36:24 PM Sen. Hooper
12:37:27 PM S 1262
12:37:32 PM Sen. Martin
12:38:30 PM Am. 656138
12:38:51 PM Gary Rutledge, Realtymasters Licensing (waives in support)
12:39:05 PM S 1262 (cont.)
12:39:11 PM G. Rutledge (waives in support)
12:39:14 PM Samantha Padgett, General Counsel, FL Restaurant and Lodging Association (waives in support)
12:39:18 PM David Roberts, FL Independent Spirits Association (waives in support)
12:40:13 PM S 902
12:40:20 PM Sen. Thompson
12:43:06 PM Am. 441816
12:44:22 PM Todd Michaels (waives in support)
12:44:50 PM S 902 (cont.)
12:44:57 PM T. Michaels (waives in support)
12:45:07 PM Sen. Thompson
12:46:13 PM S 904
12:46:17 PM Sen. Thompson
12:46:47 PM Am. 200150
12:47:35 PM Sen. Thompson
12:47:59 PM S 904 (cont.)
12:48:50 PM S 128
12:48:57 PM Sen. Rodriguez
12:49:43 PM Angela Bonds, Lexington Law (waives in support)
12:49:47 PM Chase Mitchell, Office of CFO Jimmy Patronis (waives in support)
12:50:38 PM S 410
12:50:43 PM Sen. Garcia
12:53:07 PM S 180
12:53:14 PM Sen. Gruters
12:54:11 PM Ash Mason, Office of Financial Regulation (waives in support)
12:55:03 PM S 580
12:55:10 PM Sen. Gruters
12:56:05 PM Sen. Berman
12:56:18 PM Sen. Gruters
12:56:53 PM Scott Jenkins, Executive Director, FL Financial Services Association
12:58:53 PM Elizabeth Hammond, Mariner Finance
1:00:13 PM Karen Woodall, FL Center for Fiscal and Economic Policy
1:01:58 PM Ezra Garrett (waives in support)
1:02:08 PM Christie Arnold, FL Conference of Catholic Bishops
1:03:19 PM Sen. Berman
1:03:54 PM Sen. Gruters
1:05:31 PM S 1056
1:05:39 PM Sen. Gruters
1:06:33 PM Am. 724178
1:07:30 PM S 1056 (cont.)

1:07:38 PM	Jonathan Rees (waives in support)
1:08:31 PM	S 1538
1:08:37 PM	Sen. Stewart
1:09:13 PM	Jane West, 1000 Friends of FL (waives in support)
1:09:19 PM	David Cullen, Sierra Club FL (waives in support)
1:10:04 PM	S 734
1:10:09 PM	Sen. Polsky
1:11:38 PM	D. Cullen (waives in support)
1:11:43 PM	J. West (waives in support)
1:12:36 PM	S 1398
1:12:40 PM	Sen. DiCeglie
1:13:30 PM	Am. 932278
1:14:31 PM	S 1398 (cont.)
1:14:36 PM	C. Mitchell (waives in support)
1:14:45 PM	Sen. Grall
1:16:52 PM	Sen. DiCeglie
1:17:56 PM	S 714
1:18:05 PM	Sen. DiCeglie
1:20:34 PM	Am. 399510
1:22:30 PM	Am. 630374
1:22:37 PM	Sen. Berman
1:23:08 PM	Sen. DiCeglie
1:24:21 PM	Sen. Berman
1:25:22 PM	Am. 494166
1:25:33 PM	Sen. DiCeglie
1:26:15 PM	Sen. Stewart
1:26:25 PM	Sen. DiCeglie
1:26:46 PM	S 714 (cont.)
1:26:53 PM	Sen. Grall
1:27:16 PM	Sen. DiCeglie
1:27:47 PM	Jack Cori, City of Jacksonville Beach
1:31:15 PM	Sen. Berman
1:31:32 PM	J. Cori
1:32:25 PM	Tara Taggart, FL League of Cities (waives against)
1:32:48 PM	Jana Caulcauli
1:35:38 PM	Dolly Duran
1:38:29 PM	Mindy Gibson, Space Coast League of Cities
1:41:08 PM	Joanne Kennedy, Mayor, City of Indian Rocks Beach
1:43:46 PM	Sen. DiCeglie
1:44:19 PM	J. Kennedy
1:46:01 PM	Sen. DiCeglie
1:46:35 PM	J. Kennedy
1:46:53 PM	Greg Mims, City Manager, City of Indian Rocks Beach
1:49:12 PM	S. Padgett
1:52:22 PM	David Will, Mayor, City of Redington Beach
1:54:52 PM	Sen. DiCeglie
1:55:16 PM	D. Will
1:55:20 PM	Sen. DiCeglie
1:55:33 PM	D. Will
1:55:37 PM	Sen. DiCeglie
1:55:41 PM	D. Will
1:55:46 PM	Sen. DiCeglie
1:55:58 PM	D. Will
1:56:08 PM	Mark Ryan
1:58:54 PM	Brian Ross
2:02:23 PM	Kathryn Levassiur
2:04:51 PM	Nancy Sikes-Kline, Mayor, City of St. Augustine (waives against)
2:05:10 PM	John Regan, City Manager, City of St. Augustine
2:07:32 PM	Jerry Richardson
2:09:17 PM	Rana Brown, City of Miami Beach (waives against)
2:09:26 PM	Jennifer Green, Expedia
2:10:22 PM	Sen. Stewart

2:11:44 PM	Sen. Mayfield
2:15:41 PM	Sen. DiCeglie
2:20:25 PM	Sen. Berman (Chair)
2:20:32 PM	S 1632
2:20:38 PM	Sen. Brodeur
2:22:28 PM	J. West (waives in support)
2:22:32 PM	Alex Kernan, FL Dept. of Environmental Protection (waives in support)
2:22:37 PM	Elizabeth Alvi, Audobon FL (waives in support)
2:22:49 PM	Sen. Stewart
2:23:08 PM	Sen. Brodeur
2:24:16 PM	Sen. Brodeur (Chair)
2:24:26 PM	Sen. Stewart
2:24:49 PM	Sen. Gruters
2:24:55 PM	Sen. Garcia
2:25:03 PM	Sen. Polsky
2:25:13 PM	Sen. Trumbull
2:25:45 PM	Sen. Brodeur
2:26:30 PM	Monitor has changed View