Tab 1	**CS/SB 340** by **CJ, Yarborough**; (Similar to CS/H 00275) Intentional Damage to Critical Infrastructure

809108	D	S	RI, Yarborough	Delete everything after	01/26 12:51 PM

Tab 2	**SB 50** by **Stewart**; (Identical to H 00059) Provision of Homeowners' Association Rules and Covenants

Tab 3	**SB 414** by **Garcia**; (Identical to H 01217) Florida Homeowners' Construction Recovery Fund

Tab 4	**SB 600** by **Ingoglia**; (Similar to CS/H 00293) Hurricane Protections for Homeowners' Associations

133120	A	S	RI, Ingoglia	Delete L.47 - 50:	01/26 03:41 PM

Tab 5	**SB 1140** by **Burton**; (Similar to H 00613) Mobile Homes

374372	D	S	RI, Burton	Delete everything after	01/25 04:55 PM

Tab 6	**SB 1090** by **Martin**; (Similar to H 01123) Unauthorized Sale of Alcoholic Beverages

Tab 7	**SB 1600** by **Collins**; (Similar to H 01381) Interstate Mobility

Tab 8	**SB 1624** by **Collins**; (Similar to H 01645) Energy Resources

Tab 9	**SB 104** by **Jones**; (Similar to CS/H 00047) Municipal Water and Sewer Utility Rates

Tab 10	**SB 1568** by **Hutson**; (Compare to H 00679) Fantasy Sports Contest Amusement Act

Tab 11	**SB 1566** by **Hutson**; Fees/Fantasy Sports Contest Operator

849050	A	S	RI, Hutson	Delete L.57:	01/26 10:28 AM

Tab 12	**SPB 7044** by **RI**; Homeowners' Associations

Tab 13	**SPB 7046** by **RI**; Homeowners' Associations

Tab 14	**SB 1548** by **Gruters**; Energy

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

REGULATED INDUSTRIES
Senator Gruters, Chair
Senator Hooper, Vice Chair

MEETING DATE: Monday, January 29, 2024
TIME: 4:00—6:00 p.m.
PLACE: *James E. "Jim" King, Jr Committee Room,* 401 Senate Building

MEMBERS: Senator Gruters, Chair; Senator Hooper, Vice Chair; Senators Bradley, Brodeur, Hutson, Jones, and Osgood

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**CS/SB 340** Criminal Justice / Yarborough (Similar CS/H 275)	Intentional Damage to Critical Infrastructure; Defining the terms “critical infrastructure” and “improperly tampers”; providing criminal penalties for improperly tampering with critical infrastructure resulting in specified monetary damage; providing criminal penalties for trespass upon a critical infrastructure; providing criminal penalties for the unauthorized access to or tampering with specified electronic devices or networks of critical infrastructure, etc. CJ 01/10/2024 Fav/CS RI 01/29/2024 FP	
2	**SB 50** Stewart (Identical H 59)	Provision of Homeowners’ Association Rules and Covenants; Requiring an association to provide copies of the association’s rules and covenants to every member before a specified date, and every new member thereafter; authorizing an association to post a complete copy of the association’s rules and covenants, or a direct link thereto, on the homepage of the association’s website under certain circumstances; requiring an association to provide specified notice to its members, etc. RI 01/29/2024 CA RC	
3	**SB 414** Garcia (Identical H 1217, Compare H 525, S 922)	Florida Homeowners’ Construction Recovery Fund; Providing a scheduled increase in the maximum payment amounts that may be made from the recovery fund for Division I and Division II individual and aggregate claims, etc. RI 01/29/2024 AEG FP	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 600** Ingoglia (Similar CS/H 293)	Hurricane Protections for Homeowners' Associations; Requiring the board or a committee of a homeowners' association to adopt hurricane protection specifications; requiring that such specifications conform to applicable building codes; prohibiting the board or a committee of an association from denying an application for the installation, enhancement, or replacement of certain hurricane protection; authorizing the requirement to adhere to certain guidelines regarding the external appearance of a structure or an improvement on a parcel, etc. RI 01/29/2024 CA RC	
5	**SB 1140** Burton (Similar H 613)	Mobile Homes; Revising the process for initiating mediation during a specified timeframe; authorizing the parties to a dispute to agree to select a mediator in accordance with specified requirements; requiring that invited live-in health care aides or assistants must have access to a mobile home owner's site; revising the amount of specified payments by the Florida Mobile Home Relocation Corporation to which certain mobile home owners are entitled, etc. RI 01/29/2024 JU RC	
6	**SB 1090** Martin (Similar H 1123)	Unauthorized Sale of Alcoholic Beverages; Revising the punishment for the unlawful sale of alcoholic beverages; revising the activities that may be declared a public nuisance under local administrative actions to abate certain activities to include persons who commit the unlicensed or unlawful sale of alcoholic beverages more than a specified number of times within a specified period, etc. RI 01/29/2024 CJ RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**SB 1600** Collins (Similar H 1381, Compare H 1549)	Interstate Mobility; Requiring the respective boards of occupations, or the Department of Business and Professional Regulation if there is no board, to allow licensure by endorsement if the applicant meets certain criteria; requiring applicants of professions that require fingerprints for criminal history checks to submit such fingerprints before the board or department issues a license by endorsement; requiring the department, and authorizing the board, to review the results of the criminal history checks according to specific criteria to determine if the applicants meet the requirements for licensure; requiring the applicable health care regulatory boards, or the Department of Health if there is no board, to issue a license or certificate to applicants who meet specified conditions, etc. HP 01/23/2024 Favorable RI 01/29/2024 FP	
8	**SB 1624** Collins (Similar H 1645)	Energy Resources; Allowing resiliency facilities in certain land use categories in local government comprehensive plans and specified districts if certain criteria are met; prohibiting amendments to a local government's comprehensive plan, land use map, zoning districts, or land development regulations in a manner that would conflict with resiliency facility classification after a specified date; requiring the Department of Management Services to develop a Florida Humane Preferred Energy Products List in consultation with the Department of Commerce and the Department of Agriculture and Consumer Services; requiring the commission to notify the Attorney General of the retirement of an electrical power plant in specified circumstances; requiring the commission to develop specified policies for smart energy, etc. RI 01/29/2024 AEG FP	
9	**SB 104** Jones (Similar CS/H 47, Compare CS/H 777, CS/H 1277, S 1088, S 1510)	Municipal Water and Sewer Utility Rates; Requiring a municipality to charge customers receiving its utility services in another municipality the same rates, fees, and charges as it charges consumers within its municipal boundaries under certain circumstances, etc. RI 01/29/2024 CA RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	**SB 1568** Hutson (Compare H 679, Linked S 1566)	Fantasy Sports Contest Amusement Act; Designating the "Fantasy Sports Contest Amusement Act"; requiring the Florida Gaming Control Commission to enforce and administer the act; providing application requirements for fantasy sports contest operator licenses; requiring a contest operator to implement specified consumer protection procedures; requiring contest operators to keep and maintain certain records for a specified period, etc. RI 01/29/2024 FP	
11	**SB 1566** Hutson (Linked S 1568)	Fees/Fantasy Sports Contest Operator; Requiring applicants for a fantasy sports contest operator license to pay a specified application fee; requiring contest operators to pay a specified annual license renewal fee; prohibiting such fees from exceeding a specified amount; requiring applicants and contest operators to provide certain written evidence; requiring contest operators to remit certain fees, etc. RI 01/29/2024 FP	
	Consideration of proposed bill:		
12	**SPB 7044**	Homeowners' Associations; (PRELIMINARY DRAFT) providing legislative intent, etc. **(Preliminary Draft Available - final draft will be made available at least 24 hours prior to the meeting)**	
	Consideration of proposed bill:		
13	**SPB 7046**	Homeowners' Associations; (PRELIMINARY DRAFT) providing legislative intent, etc. **(Preliminary Draft Available - final draft will be made available at least 24 hours prior to the meeting)**	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
14	**SB 1548** Gruters	Energy; Prohibiting the Department of Transportation from assigning or transferring its permitting rights across transportation rights-of-way operated by the department to certain third parties under certain circumstances; requiring the Public Service Commission to approve targeted storm reserve amounts for public utilities; requiring the Department of Commerce to expand categorical eligibility for the low-income home energy assistance program to include individuals who are enrolled in certain federal disability programs; requiring the Public Service Commission to conduct or cause to be conducted a feasibility study on the use of small modular nuclear reactors in this state; defining the term “small modular nuclear reactor” or “reactor”, etc. RI 01/29/2024 ATD FP	

Other Related Meeting Documents

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	CS/SB 340
INTRODUCER:	Criminal Justice Committee and Senator Yarborough
SUBJECT:	Intentional Damage to Critical Infrastructure
DATE:	January 26, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Stokes	CJ	**Fav/CS**
2.	Schrader	Imhof	RI	**Pre-meeting**
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 340 creates s. 812.141, F.S., relating to the intentional damage of, or trespass upon, certain utility, transportation, storage, mining, manufacturing, and other facilities designated to be critical infrastructure. The bill creates new felony offenses and provides for civil liability to the owner or operator of critical infrastructure if a person is found to have improperly tampered with critical infrastructure based on a conviction for one of the crimes created by the bill.

A person who improperly tampers with critical infrastructure for which the owner or operator thereof has employed measures that are designed to exclude unauthorized persons, and such improper tampering results in damage that is $200 or greater to critical infrastructure, commits a felony of the second degree, punishable by up to 15 years' imprisonment and a $10,000 fine.

A person who physically tampers with, inserts a computer contaminant into, or otherwise transmits commands or electronic communications to a computer, computer system, computer network, or electronic device that causes a disruption in any service delivered by any critical infrastructure commits a felony of the second degree, punishable by up to 15 years' imprisonment and a $10,000 fine.

A person who willfully, knowingly, and without authorization gains access to a computer, computer system, computer network, or electronic device owned, operated, or used by any critical infrastructure entity, while knowing that such access is unauthorized commits a felony of the third degree, punishable by up to 5 years' imprisonment and a $5,000 fine.

Any person who, without being authorized, licensed, or invited, willfully enters upon or remains on a physical critical infrastructure as to which notice against entering or remaining in is given, commits the offense of trespass on a critical infrastructure, a third degree felony punishable by up to 5 years' imprisonment and a $5,000 fine. The bill specifies the manner in which notice must be given against trespass on a critical infrastructure based on the size of the property and includes signage requirements.

The bill may have a positive indeterminate fiscal impact on the Department of Corrections. The bill creates additional felony offenses not taken into account since the preliminary estimate provided by the Office of Economic and Demographic Research. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2024.

II. Present Situation:

Acts of Destruction against Utilities

The National Conference of State Legislatures (NCSL) suggests that states should be aware of and be prepared for actual physical threats perpetrated by humans to energy infrastructure.[1] The U.S. Department of Energy's annual summary of Electric Emergency Incident and Disturbance Reports indicates at least 25 reports were filed as actual physical attacks in electric utilities perpetrated by humans in 2022, compared to six attacks in 2021.[2]

A sample of the attacks to critical infrastructure throughout the country in the last few years includes:

- In September 2022, six separate incidents occurred at Duke Energy substations in Central Florida.[3]
- In December 2022, 40,000 customers in Monroe County, North Carolina, lost power due to firearm attacks at two substations.[4]
- Additional such attacks – or at least thwarted plans to make them – to critical infrastructure have also occurred in Oregon, South Carolina, and Washington.[5]

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[1] The National Conference of State Legislatures, *Human-Driven Physical Threats to Energy Infrastructure*, updated May 22, 2023, available at *www.ncsl.org/energy/human-driven-physical-threats-to-energy-infrastructure* (last visited Jan. 26, 2023).
[2] *Id.;* U.S. Department of Energy, *Office of Cybersecurity, Energy Security, & Emergency Response, Electric Disturbance Events (OE-417) Annual Summaries,* available at https://www.oe.netl.doe.gov/OE417_annual_summary.aspx (last visited Jan 26, 2024).
[3] USA TODAY, *Attacks on power substations are growing. Why is the electric grid so hard to protect?*, Dinah Voyles Pulver, Grace Hauck, December 30, 2022, updated February 8, 2023, available at https://www.usatoday.com/story/news/nation/2022/12/30/power-grid-attacks-increasing/10960265002/ (last visited Jan. 26, 2024).
[4] Utility Dive News, *FBI called to investigate firearms attacks on Duke Energy substations in North Carolina; 40K without power*, Robert Walton, December 4, 2022, available at https://www.utilitydive.com/news/fbi-investigate-firearms-attacks-duke-energy-substations-North-Carolina/637927/ (last visited December 14, 2023).
[5] Koin News, *Memo: Oregon, Washington substations intentionally attacked; Aim is 'violent anti-government activity*,' Elise Haas, December 6, 2022, available at https://www.koin.com/news/oregon/memo-oregon-washington-substations-intentionally-attacked/ (last visited Jan. 26, 2024); WLTX News 19, *South Carolina lawmakers pass power grid protections after attacks, Dominion Energy said the state had 12 of these incidents last year alone*, Becky Budds, March 20, 2023,

Florida Criminal Laws that May Apply to Incidents Involving Intentional Damage of Critical Infrastructure

Although there is no current Florida criminal offense of intentional damage of critical infrastructure, under certain facts, a person may be charged under existing crimes for such damage. These crimes include, in part, the offense of trespass and criminal mischief.

A person commits the crime of trespass on a property other than a structure or conveyance if that person, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure or conveyance:

- As to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation; or
- If the property is the unenclosed curtilage of a dwelling and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass.[6]

Trespass on property other than a structure or conveyance is a first degree misdemeanor offense.[7]

If the offender is armed with a firearm or other dangerous weapon during the commission of the offense of trespass on property other than a structure or conveyance, he or she commits a third degree felony.[8,9]

A person commits the offense of criminal mischief if he or she willfully and maliciously injures or damages by any means any real or personal property belonging to another, including, but not limited to, the placement of graffiti or other acts of vandalism:[10]

- If the damage to such property is $200 or less, it is a misdemeanor of the second degree.[11]
- If the damage to such property is greater than $200 but less than $1,000, it is a misdemeanor of the first degree.[12]
- If the damage is $1,000 or greater, or if there is interruption or impairment of a business operation or public communication, transportation, supply of water, gas or power, or other public service which costs $1,000 or more in labor and supplies to restore, it is a felony of the third degree.[13]

available at https://www.wltx.com/article/news/politics/state-lawmakers-pass-power-grid-protections/101-a3c290a8-42f5-4915-94aa-533cfbed0db1 (last visited Jan. 26, 2024).

[6] Section 810.09, F.S.

[7] A first degree misdemeanor is punishable by up to 1 year in the county jail and a $1,000 fine. Sections 775.082 and 775.083, F.S.

[8] Section 810.09(2)(c), F.S.

[9] A third degree felony is punishable by up to 5 years' incarceration and a $5,000 fine. Sections 775.082 and 775.083, F.S.

[10] Section 806.13, F.S.

[11] *Id.* A second degree misdemeanor is punishable by up to 60 days in the county jail and a $500 fine. Sections 775.082 and 775.083, F.S.

[12] *Id.* A first degree misdemeanor is punishable by up to 1 year in the county jail and a $1,000 fine. Sections 775.082 and 775.083, F.S.

[13] *Id.* A third degree felony is punishable by up to 5 years' incarceration and a $5,000 fine. Sections 775.082 and 775.083, F.S.

Additionally, Florida law specifically criminalizes damage to certain telecommunications equipment. A person who, without the consent of the owner thereof, willfully destroys or substantially damages any public telephone, or telephone cables, wires, fixtures, antennas, amplifiers, or any other apparatus, equipment, or appliances, which destruction or damage renders a public telephone inoperative or which opens the body of a public telephone, commits a third degree felony.[14]

Section 815.061, F.S., also provides penalties for computer-related crimes against public utilities.[15] The section provides willfully, knowingly, and without authorization:

- Gaining access to a computer, computer system, computer network, or electronic device owned, operated, or used by a public utility while knowing that such access is unauthorized, is a felony of the third degree.[16]
- Physically tampering with, inserting a computer contaminant into, or otherwise transmitting commands or electronic communications to a computer, computer system, computer network, or electronic device that causes a disruption in any service delivered by a public utility, is a felony of the second degree.[17]

Section 815.06, F.S., is also the general cyber-crime statute for Florida. The section provides that it is unlawful to willfully, knowingly, and without authorization or exceeding authorization to:

- Access or cause to be accessed any computer, computer system, computer network, or electronic device with knowledge that such access is unauthorized or the manner of use exceeds authorization;
- Disrupt or deny or cause the denial of the ability to transmit data to or from an authorized user of a computer, computer system, computer network, or electronic device, which, in whole or in part, is owned by, under contract to, or operated for, on behalf of, or in conjunction with another;
- Destroy, take, injure, or damage equipment or supplies used or intended to be used in a computer, computer system, computer network, or electronic device;
- Destroy, injure, or damage any computer, computer system, computer network, or electronic device;
- Introduce any computer contaminant into any computer, computer system, computer network, or electronic device; or
- Engage in audio or video surveillance of an individual by accessing any inherent feature or component of a computer, computer system, computer network, or electronic device,

[14] *Id*. A conspicuous notice of the provisions of this subsection and the penalties provided must be posted on or near the destroyed or damaged instrument and visible to the public at the time of the commission of the offense.
[15] "Public utility" for this provision means the same as in s. 366.02, F.S. Under s. 366.02, F.S., a "public utility" is defined "as every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state." There are, however, several exceptions to this definition, which include, "a cooperative now or hereafter organized and existing under the Rural Electric Cooperative Law of the state; a municipality or any agency thereof; [and] any dependent or independent special natural gas district." Generally, "public utility" means investor-owned utilities.
[16] A third degree felony is punishable by up to 5 years' incarceration and a $5,000 fine. Sections 775.082 and 775.083, F.S.
[17] A second degree felony is punishable by up to 15 years' imprisonment and a fine of up to $10,000. Sections 775.082, 775.083, and 775.084, F.S.

including accessing the data or information of a computer, computer system, computer network, or electronic device that is stored by a third party.[18]

Penalties for violations of s. 815.06, F.S., range from a felony of the third degree[19] to a felony of the first degree,[20] depending on the unlawful act and the severity of the unlawful act.[21] Section 815.06(4), F.S., also provides that "a person who willfully, knowingly, and without authorization modifies equipment or supplies used or intended to be used in a computer, computer system, computer network, or electronic device commits a misdemeanor of the first degree."[22] Civil remedies are also provided under the section.

Current Florida Statutes Defining "Critical Infrastructure"

The term "critical infrastructure facility" is currently defined in two sections of Florida law.

In the context of protecting critical infrastructure from a drone's flightpath, s. 330.41, F.S., defines a "critical infrastructure facility" as any of the following, if completely enclosed by a fence or other physical barrier obviously designed to exclude intruders, or if clearly marked with a sign or signs which indicate that entry is forbidden and which are posted on the property in a manner reasonably likely to come to the attention of intruders:

- A power generation or transmission facility, substation, switching station, or electrical control center.
- A chemical or rubber manufacturing or storage facility.
- A water intake structure, water treatment facility, wastewater treatment plant, or pump station.
- A mining facility.
- A natural gas or compressed gas compressor station, storage facility, or natural gas or compressed gas pipeline.
- A liquid natural gas or propane gas terminal or storage facility.
- Any portion of an aboveground oil or gas pipeline.
- A refinery.
- A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.
- A wireless communications facility, including the tower, antennae, support structures, and all associated ground-based equipment.
- A seaport as listed in s. 311.09(1), F.S., which need not be completely enclosed by a fence or other physical barrier and need not be marked with a sign or signs indicating that entry is forbidden.
- An inland port or other facility or group of facilities serving as a point of intermodal transfer of freight in a specific area physically separated from a seaport.

[18] Section 815.06(2), F.S.
[19] A third degree felony is punishable by up to 5 years' incarceration and a $5,000 fine. Sections 775.082 and 775.083, F.S.
[20] A first degree felony is punishable by up to 30 years' incarceration or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment, and a $10,000 fine (or $15,000 for a life felony). Sections 775.082 and 775.083, F.S.
[21] Section 815.06(3), F.S.
[22] Section 815.06(4), F.S.

- An airport as defined in s. 330.27, F.S.
- A spaceport territory as defined in s. 331.303(18), F.S.
- A military installation as defined in 10 U.S.C. s. 2801(c)(4) and an armory as defined in s. 250.01, F.S.
- A dam as defined in s. 373.403(1), F.S., or other structures, such as locks, floodgates, or dikes, which are designed to maintain or control the level of navigable waterways.
- A state correctional institution as defined in s. 944.02, F.S., or a private correctional facility authorized under ch. 957, F.S.
- A secure detention center or facility as defined in s. 985.03, F.S., or a nonsecure residential facility, a high-risk residential facility, or a maximum-risk residential facility as those terms are described in s. 985.03(44), F.S.
- A county detention facility as defined in s. 951.23, F.S.
- A critical infrastructure facility as defined in s. 692.201, F.S.[23]

In Part III, ch. 692, F.S., Conveyances to Foreign Entities, "critical infrastructure facility" means any of the following, if the facility employs measures such as fences, barriers, or guard posts that are designed to exclude unauthorized persons:

- A chemical manufacturing facility.
- A refinery.
- An electrical power plant as defined in s. 403.031(20), F.S.
- A water treatment facility or wastewater treatment plant.
- A liquid natural gas terminal.
- A telecommunications central switching office.
- A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.
- A seaport as listed in s. 311.09, F.S.
- A spaceport territory as defined in s. 331.303(18), F.S.
- An airport as defined in s. 333.01, F.S.[24]

Federal Law

Energy Industry

Title 18 U.S.C. s. 1366 is a current federal criminal law that applies in cases of damaging the property of an energy facility.[25] The penalty for a violation of this section is a fine and

[23] The "Unmanned Aircraft Systems Act," Section 330.41(1) and (2)(a)1.-20., F.S.
[24] Section 692.201(2), F.S.
[25] 18 U.S.C. s. 1366(a), (b), and (d), provide:
(a) Whoever knowingly and willfully damages or attempts or conspires to damage the property of an energy facility in an amount that in fact exceeds or would if the attempted offense had been completed, or if the object of the conspiracy had been achieved, have exceeded $100,000, or damages or attempts or conspires to damage the property of an energy facility in any amount and causes or attempts or conspires to cause a significant interruption or impairment of a function of an energy facility, shall be punishable by a fine under this title or imprisonment for not more than 20 years, or both.
(b) Whoever knowingly and willfully damages or attempts to damage the property of an energy facility in an amount that in fact exceeds or would if the attempted offense had been completed have exceeded $5,000 shall be punishable by a fine under this title, or imprisonment for not more than five years, or both….

imprisonment for up to 20 years. If such a violation results in the death of a person, the penalty can rise to a term of life.

"Energy facility" is defined as:

> A facility that is involved in the production, storage, transmission, or distribution of electricity, fuel, or another form or source of energy, or research, development, or demonstration facilities relating thereto, regardless of whether such facility is still under construction or is otherwise not functioning, except a facility subject to the jurisdiction, administration, or in the custody of the Nuclear Regulatory Commission or an interstate gas pipeline facility.[26]

Natural Gas Industry

Title 49 U.S.C. s. 60123(b), provides penalties "for knowingly and willfully damaging or destroying an interstate gas pipeline facility, an interstate hazardous liquid pipeline facility, or either an intrastate gas pipeline facility or intrastate hazardous liquid pipeline facility that is used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce, or attempting or conspiring to do such an act." Such an act is punishable by a under the U.S. criminal code, imprisonment for not more than 20 years, or both; and, if death results to any person from such an act, imprisonment of a "term of years or for life."

Public Water Systems

Title 42 U.S.C. s. 300i–1 provides penalties for tampering with public water systems. The section defines "tampering" as:

- Introducing a contaminant into a public water system with the intention of harming persons; or
- Otherwise interfering with the operation of a public water system with the intention of harming persons.[27]

The section provides for differing penalties:

- Tampering with a water system: fine or imprisonment of not more than 20 years.
- Attempting or threatening to tamper: fine or imprisonment of not more than 10 years.

The Administrator of the Environmental Protection Agency may also bring a civil action against violators of the section, with civil penalties of not more than $1,000,000 for tampering and $100,000 for attempts or threats to tamper.[28]

(d) Whoever is convicted of a violation of subsection (a) or (b) that has resulted in the death of any person shall be subject to imprisonment for any term of years or life.

[26] 18 U.S.C. s. 1366(c)

[27] 42 U.S.C. s. 300i–1(d).

[28] 42 U.S.C. s. 300i–1(c).

Transportation Systems and Carriers

Title 18 U.S.C. s. 1992, provides penalties for terrorist attacks and other violence against railroad carriers and against mass transportation systems on land, on water, or through the air. A person who, under qualifying circumstances,[29] knowingly and without lawful authority or permission:

- Wrecks, derails, sets fire to, or disables railroad on-track equipment or a mass transportation vehicle;
- Places any biological agent or toxin, destructive substance, or destructive device in, upon, or near railroad on-track equipment or a mass transportation vehicle with intent to endanger the safety of any person, or with a reckless disregard for the safety of human life;
- Sets fire to, undermines, makes unworkable, unusable, or hazardous to work on or use, or places any biological agent or toxin, destructive substance, or destructive device in, upon, or near:
  - Certain railroad carrier facilities, and with intent to, or knowing or having reason to know, such activity would likely derail, disable, or wreck railroad on-track equipment; or
  - Certain structures or facilities used in the operation of, or in support of the operation of, a mass transportation vehicle, and with intent to, or knowing or having reason to know such activity would likely, derail, disable, or wreck a mass transportation vehicle used, operated, or employed by a mass transportation provider;
- Places or releases a hazardous material or a biological agent or toxin on or near any railroad carrier or mass transportation property described above, with intent to endanger the safety of any person; or with reckless disregard for the safety of human life or commits an act, including the use of a dangerous weapon, with the intent to cause death or serious bodily injury to any person who is on railroad carrier or mass transportation property described above;
- Removes an appurtenance from, damages, or otherwise impairs the operation of a railroad signal system or mass transportation signal or dispatching system, including a train control system, centralized dispatching system, or highway-railroad grade crossing warning signal;
- With intent to endanger the safety of any person, or with a reckless disregard for the safety of human life, interferes with, disables, or incapacitates any dispatcher, driver, captain, locomotive engineer, railroad conductor, or other person while the person is employed in dispatching, operating, controlling, or maintaining railroad on-track equipment or a mass transportation vehicle;
- Surveils, photographs, videotapes, diagrams, or otherwise collects information with the intent to plan or assist in planning any of the acts described above;
- Conveys false information, knowing the information to be false, concerning an attempt or alleged attempt to engage acts above; or
- Attempts, threatens, or conspires to engage in any violation of any of the acts above.

Such acts are punishable by fine and imprisonment of not more than 20 years, or both; and, if death results to any person from certain above acts, imprisonment of a "term of years or for life."

[29] The qualifying circumstances are that any "of the conduct required for the offense is, or, in the case of an attempt, threat, or conspiracy to engage in conduct, the conduct required for the completed offense would be, engaged in, on, against, or affecting a mass transportation provider, or a railroad carrier engaged in interstate or foreign commerce," or traveling or communicating across a state line to commit the offense, or transporting materials across a state line in aid of the offense. 18 U.S.C. s. 1992(c).

Certain aggravated violations of 18 U.S.C. s. 1992, can result in a term of life or be a capital offense.

National Defense

Title 18 U.S. Code s. 2155 provides penalties for destruction of national-defense materials, national-defense premises, or national-defense utilities. Under the section, a person who acts with "intent to injure, interfere with, or obstruct the national defense of the United States, willfully injures, destroys, contaminates or infects, or attempts to so injure, destroy, contaminate or infect any national-defense material, national-defense premises, or national-defense utilities" may be fined and "imprisoned not more than 20 years, or both, and, if death results to any person, shall be imprisoned for any term of years or for life."

III. Effect of Proposed Changes:

The bill creates s. 812.141, F.S., relating to the intentional damage to and trespass upon critical infrastructure.

The term "improperly tampers" as used in the bill means to intentionally and knowingly cause, or attempt to cause, a significant interruption or impairment of a function of critical infrastructure by:

- Changing the physical location or physical or virtual condition of the property without authorization;
- Otherwise moving, damaging, or destroying the property without authorization; or
- The unauthorized access, introduction of malware, or any action that compromises the integrity or availability of the critical infrastructure's digital systems.

The bill provides that a person who "improperly tampers" with critical infrastructure for which the owner or operator thereof has employed measures that are designed to exclude unauthorized persons, which may include physical or digital measures such as fences, barriers, or guard posts, or identity and access management, firewalls, virtual private networks, encryption, multi-factor authentication, passwords, or other cybersecurity systems and controls, and such improper tampering that results in damage that is $200 or greater to critical infrastructure commits a second degree felony.[30]

Additionally, a person who physically tampers with, inserts a computer contaminant into, or otherwise transmits commands or electronic communications to a computer, computer system, computer network, or electronic device that causes a disruption in any service delivered by any critical infrastructure commits a second degree felony.[31]

The bill provides that a person who willfully, knowingly, and without authorization gains access to a computer, computer system, computer network, or electronic device owned, operated, or

[30] A second degree felony is punishable by up to 15 years' imprisonment and a fine of up to $10,000. Sections 775.082, 775.083, or 775.084, F.S.
[31] *Id*.

used by any critical infrastructure entity, while knowing that such access is unauthorized, commits a third degree felony.[32]

Under the bill it is a third degree felony[33] for any person who, without being authorized, licensed, or invited, to willfully enter upon or remain on a physical critical infrastructure as to which notice against entering or remaining in is given as provided in the bill, commits the offense of trespass on a critical infrastructure. The bill specifies the manner in which notice must be given against trespass on a critical infrastructure based on the size of the property, including signage requirements.

The bill defines the term "critical infrastructure" as any of the following:

- An electrical power generation, transmission, or distribution facility, or a substation, a switching station, or an electrical control center.
- A chemical or rubber manufacturing or storage facility.
- A mining facility.
- A natural gas or compressed gas compressor station, storage facility, or natural gas or compressed gas pipeline.
- A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.
- A liquid natural gas or propane gas terminal or storage facility with a capacity of 4,000 gallons or more.
- Any portion of an aboveground oil or gas pipeline.
- A wireless or wired communications network, including the tower, antennae, support structures, and all associated ground-based equipment, including equipment intended to provide communications to governmental entities, including but not limited to, law enforcement agencies, fire emergency medical services, emergency management agencies, or any other governmental entity.
- A water intake structure, water treatment facility, wastewater treatment plant, pump station, or lift station.
- A deepwater port, railroad switching yard, airport, trucking terminal, or other freight transportation facility.
- A facility used for the operation, landing, takeoff, or surface maneuvering of vehicles or aircraft.
- A transmission facility used by a federally licensed radio or television station.
- A military base or military facility conducting research and development of military weapons systems, subsystems, components, or parts.
- Cyber or virtual assets, including electronic systems, networks, servers, data centers, devices, hardware, software, or data that are essential to the reliable operations, monitoring, and security of any critical infrastructure.
- Dams and other water control structures.

The bill provides for civil damages against a person who is found to have improperly tampered with critical infrastructure based on a conviction for the crime created by the bill. The person is

[32] A third degree felony is punishable by up to 5 years' imprisonment and a $5,000 fine.
[33] *Id.*

civilly liable to the operator or owner of the critical infrastructure for damages in an amount equal to three times the actual damage sustained by the operator or owner due to any personal injury, wrongful death, or property damage caused by the act, or for an amount equal to three times any claim made against the operator or owner for any personal injury, wrongful death, or property damage caused by the malfunction of the critical infrastructure resulting from the act, whichever is greater.

The bill becomes effective July 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:

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 Office of Economic and Demographic Research has provided a preliminary proposed estimate which determines that the bill may have a positive indeterminate fiscal impact on the Department of Corrections. A positive indeterminate fiscal impact means that the number of prison beds that may result from the bill is unquantifiable at this time.[34]

[34] Office of Economic and Demographic Research, *SB340 Preliminary Estimate* (on file with the Senate committee for Criminal Justice).

However, the CS creates additional felony offenses that may affect the preliminary proposed estimate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 812.141 of the Florida Statutes.

IX. Additional Information:

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

CS by Criminal Justice on January 10, 2024:
The committee substitute:

- Amends the definition of "improperly tampers," to clarify that a person must intentionally and knowingly cause, or attempt to cause, a significant interruption or impairment of a function of critical infrastructure by:
  - Changing the physical or virtual condition of the property without authorization; or
  - The unauthorized access, introduction of malware, or any action that compromises the integrity or availability of the critical infrastructure's digital systems.
- Requires proof of resulting damage of $200 or greater if the owner or operator has taken measures to exclude unauthorized persons to prove the second degree felony crime of improperly tampering with critical infrastructure existing in the original bill.
- Expands the list of measures designed to exclude unauthorized persons.
- Creates an additional second degree felony for physically tampering, etc., with a computer, computer system, computer network, or electronic device that causes a disruption in any service delivered by any critical infrastructure.
- Creates a third degree felony of trespass on a critical infrastructure, and specifies the requirements that constitute notice against entering or remaining in a physical critical infrastructure.
- Creates a new third degree felony, for willfully, knowingly, and without authorization gaining access to a computer, etc., owned, operated, or used by any critical infrastructure entity, while knowing that such access is unauthorized.
- Provides for civil damages against a person who is found to have improperly tampered with critical infrastructure.
- Expands the definition of "critical infrastructure" by including additional facilities, etc.
- Removes Section 2. of the bill.

- Makes technical changes.

B. Amendments:

None.

809108

LEGISLATIVE ACTION

Senate . House

. . . . .

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 812.141, Florida Statutes, is created to read:

812.141 Offenses involving critical infrastructure; improper tampering; civil remedies; trespass on critical infrastructure; computer offenses involving critical infrastructure.—

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

(a) "Critical infrastructure" means:

1. Any linear asset; or

2. Any of the following for which the owner or operator thereof has employed physical or digital measures designed to exclude unauthorized persons, including, but not limited to, fences, barriers, guard posts, identity and access management, firewalls, virtual private networks, encryption, multifactor authentication, passwords, or other cybersecurity systems and controls:

a. An electric power generation, transmission, or distribution facility, or a substation, a switching station, or an electrical control center.

b. A chemical or rubber manufacturing or storage facility.

c. A mining facility.

d. A natural gas or compressed gas compressor station, storage facility, or pipeline.

e. A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.

f. A liquid natural gas or propane gas terminal or storage facility with a capacity of 4,000 gallons or more.

g. Any portion of an aboveground oil or gas pipeline.

h. A wireless or wired communications network, including the tower, antennae, support structures, and all associated ground-based equipment, including equipment intended to provide communications to governmental entities, including, but not limited to, law enforcement agencies, fire emergency medical services, emergency management agencies, or any other governmental entity.

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i. A water intake structure, water treatment facility, wastewater treatment plant, pump station, or lift station.

j. A deepwater port, railroad switching yard, airport, trucking terminal, or other freight transportation facility.

k. A facility used for the operation, landing, takeoff, or surface maneuvering of vehicles, aircraft, or spacecraft.

l. A transmission facility used by a federally licensed radio or television station.

m. A military base or military facility conducting research and development of military weapons systems, subsystems, components, or parts.

n. A civilian defense industrial base conducting research and development of military weapons systems, subsystems, components, or parts.

o. Cyber or virtual assets, including electronic systems, networks, servers, data centers, devices, hardware, software, or data that are essential to the reliable operations, monitoring, and security of any critical infrastructure.

p. Dams and other water control structures.

(b) "Improperly tampers" means to knowingly and intentionally cause, or attempt to cause, a significant interruption or impairment of a function of critical infrastructure by:

1. Changing the physical location or physical or virtual condition of the critical infrastructure, or any portion thereof, without permission or authority to do so;

2. Otherwise moving, damaging, or destroying the critical infrastructure or any portion thereof, without permission or authority to do so; or

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3. Accessing without authorization, introducing malware, or taking any other action that compromises the integrity or availability of the critical infrastructure's digital systems.

(c) "Linear asset" means any electric distribution or transmission asset, gas distribution or transmission pipeline, communication wirelines, or railway, and any attachments thereto.

(2) A person who improperly tampers with critical infrastructure resulting in damage to critical infrastructure that is $200 or more or in the interruption or impairment of the function of critical infrastructure which costs $200 or more in labor and supplies to restore, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person who is found in a civil action to have improperly tampered with critical infrastructure based on a conviction for a violation of subsection (2) is liable to the owner or operator of the critical infrastructure for damages in an amount equal to three times the actual damage sustained by the owner or operator due to any property damage, personal injury, or wrongful death, caused by the act or an amount equal to three times any claim made against the owner or operator for any property damage, personal injury, or wrongful death caused by the malfunction of the critical infrastructure resulting from the act, whichever is greater.

(4) A person commits the offense of trespass on critical infrastructure, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if he or she without being authorized, licensed, or invited, willfully enters

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upon or remains on physical critical infrastructure as to which notice against entering or remaining in is given, either by actual communication to the offender or by posting, fencing, or cultivation as described in s. 810.011.

(5)(a) A person who willfully, knowingly, and without authorization gains access to a computer, a computer system, a computer network, or an electronic device that is owned, operated, or used by any critical infrastructure entity while knowing that such access is unauthorized commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person who willfully, knowingly, and without authorization physically tampers with, inserts a computer contaminant into, or otherwise transmits commands or electronic communications to, a computer, a computer system, a computer network, or an electronic device that causes a disruption in any service delivered by any critical infrastructure commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) For purposes of this subsection, the terms "computer," "computer system," "computer network," and "electronic device" have the same meanings as in s. 815.03.

Section 2. This act shall take effect July 1, 2024.

================ 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

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An act relating to offenses involving critical infrastructure; creating s. 812.141, F.S.; providing definitions; providing criminal penalties for improperly tampering with critical infrastructure resulting in specified monetary damage or cost to restore; providing for civil liability upon a conviction for such violations; providing criminal penalties for trespass upon critical infrastructure; providing notice requirements; providing criminal penalties for the unauthorized access to or tampering with specified electronic devices or networks of critical infrastructure; providing definitions; providing an effective date.

By the Committee on Criminal Justice; and Senator Yarborough

591-02005-24 2024340c1

A bill to be entitled

An act relating to intentional damage to critical infrastructure; creating s. 812.141, F.S.; defining the terms "critical infrastructure" and "improperly tampers"; providing criminal penalties for improperly tampering with critical infrastructure resulting in specified monetary damage; providing for civil liability upon a conviction for such violations; providing criminal penalties for trespass upon a critical infrastructure; providing signage posting requirements; providing criminal penalties for the unauthorized access to or tampering with specified electronic devices or networks of critical infrastructure; providing an effective date.

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

Section 1. Section 812.141, Florida Statutes, is created to read:

812.141 Intentional damage to critical infrastructure.—

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

(a) "Critical infrastructure" means any of the following:

1. An electrical power generation, transmission, or distribution facility, or a substation, a switching station, or an electrical control center.

2. A chemical or rubber manufacturing or storage facility.

3. A mining facility.

4. A natural gas or compressed gas compressor station, storage facility, or natural gas or compressed gas pipeline.

591-02005-24 2024340c1

5. A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.

6. A liquid natural gas or propane gas terminal or storage facility with a capacity of 4,000 gallons or more.

7. Any portion of an aboveground oil or gas pipeline.

8. A wireless or wired communications network, including the tower, antennae, support structures, and all associated ground-based equipment, including equipment intended to provide communications to governmental entities, including, but not limited to, law enforcement agencies, fire emergency medical services, emergency management agencies, or any other governmental entity.

9. A water intake structure, water treatment facility, wastewater treatment plant, pump station, or lift station.

10. A deepwater port, railroad switching yard, airport, trucking terminal, or other freight transportation facility.

11. A facility used for the operation, landing, takeoff, or surface maneuvering of vehicles or aircraft.

12. A transmission facility used by a federally licensed radio or television station.

13. A military base or military facility conducting research and development of military weapons systems, subsystems, components, or parts.

14. Cyber or virtual assets, including electronic systems, networks, servers, data centers, devices, hardware, software, or data that are essential to the reliable operations, monitoring, and security of any critical infrastructure.

15. Dams and other water control structures.

(b) "Improperly tampers" means to intentionally and

knowingly cause, or attempt to cause, a significant interruption or impairment of a function of critical infrastructure by:

1. Changing the physical location or physical or virtual condition of the property, or any portion thereof, without permission or authority to do so;

2. Otherwise moving, damaging, or destroying the property or any portion thereof, without permission or authority to do so; or

3. The unauthorized access, introduction of malware, or any action that compromises the integrity or availability of the critical infrastructure's digital systems.

(2) A person who improperly tampers with critical infrastructure for which the owner or operator thereof has employed measures that are designed to exclude unauthorized persons, which may include physical or digital measures, such as fences, barriers, or guard posts, or identity and access management, firewalls, virtual private networks, encryption, multi-factor authentication, passwords, or other cybersecurity systems and controls, and such improper tampering results in damage that is $200 or greater to critical infrastructure, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person who is found in a civil action to have improperly tampered with critical infrastructure based on a conviction of a violation of subsection (2) is liable to the operator or owner of the critical infrastructure for damages in an amount equal to three times the actual damage sustained by the operator or owner due to any personal injury, wrongful death, or property damage caused by the act or an amount equal

to three times any claim made against the operator or owner for any personal injury, wrongful death, or property damage caused by the malfunction of the critical infrastructure resulting from the act, whichever is greater.

(4)(a) A person who, without being authorized, licensed, or invited, willfully enters upon or remains on physical critical infrastructure as to which notice against entering or remaining in is given as provided in paragraph (b) commits the offense of trespass on critical infrastructure.

(b)1. For physical critical infrastructure that is:

a. One acre or less in area, a sign must be posted that appears prominently, in letters of not less than 2 inches in height, and reads in substantially the following manner: "This area is a designated critical infrastructure facility and anyone who trespasses on this property commits a felony."

b. More than one acre in area, signs must be placed not more than 500 feet apart along and at each corner of the boundaries of the land or, for land owned by a water control district that exists pursuant to chapter 298 or was created by special act of the Legislature, signs must be placed at or near the intersection of any district canal right-of-way and a road right-of-way.

2. Signs must be placed along the boundary line of posted land in a manner and in such position as to be clearly noticeable from outside the boundary line. The signs, in letters of not less than 2 inches in height, must read in substantially the following manner: "This area is a designated critical infrastructure facility and anyone who trespasses on this property commits a felony."

(c) A person who trespasses on physical critical infrastructure in violation of this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5)(a) A person who willfully, knowingly, and without authorization gains access to a computer, computer system, computer network, or electronic device owned, operated, or used by any critical infrastructure entity while knowing that such access is unauthorized commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person who physically tampers with, inserts a computer contaminant into, or otherwise transmits commands or electronic communications to, a computer, computer system, computer network, or electronic device that causes a disruption in any service delivered by any critical infrastructure commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. This act shall take effect July 1, 2024.

The Florida Senate

Committee Agenda Request

To: Senator Joe Gruters, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: January 15, 2024

I respectfully request that **Senate Bill #340**, relating to Intentional Damage to Critical Infrastructure, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Clay Yarborough

Senator Clay Yarborough
Florida Senate, District 4

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 50
INTRODUCER:	Senator Stewart
SUBJECT:	Provision of Homeowners' Association Rules and Covenants
DATE:	January 26, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Pre-meeting**
2.			CA	
3.			RC	

I. Summary:

SB 50 requires homeowners' associations to provide, before October 1, 2024, a physical or digital copy of the association's rules and covenants to every member of the association, including new members.

In addition, homeowners' associations must give every member an updated copy of the rule or covenants if the rules or covenants are amended. Under the bill, associations may adopt rules establishing standards for the manner of distribution and timeframe for providing copies of updated rules or covenants.

The bill permits associations to meet the requirement in the bill by posting a complete copy of the association's rules and covenants, or a direct link thereto, on the homepage of the association's website, if the website is accessible to the members of the association and the association sends notice to each member of the association of its intent to utilize the website for this purpose. The notice of the association's intent to use a website to meet the requirements of the bill may be delivered electronically or by mail.

The bill takes effect July 1, 2024.

II. Present Situation:

Homeowners' Associations

Chapter 720, F.S., provides statutory recognition to corporations that operate residential communities in Florida as well as procedures for operating homeowners' associations. These

laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.[1]

A "homeowners' association" is defined as a:[2]

> Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.

Unless specifically stated to the contrary in the articles of incorporation, homeowners' associations are also governed by ch. 607, F.S., relating to for-profit corporations, or by ch. 617, F.S., relating to not-for-profit corporations.[3]

Homeowners' associations are administered by a board of directors that is elected by the members of the association.[4] The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include a recorded declaration of covenants, bylaws, articles of incorporation, and duly-adopted amendments to these documents.[5] The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.[6]

Unlike condominium associations, homeowners' associations are not regulated by a state agency. Section 720.302(2), F.S., expresses the legislative intent regarding the regulation of homeowners' associations:

> The Legislature recognizes that it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations. However, in accordance with s. 720.311, [F.S.,] the Legislature finds that homeowners' associations and their individual members will benefit from an expedited alternative process for resolution of election and recall disputes and presuit mediation of other disputes involving covenant enforcement and authorizes the department to hear, administer, and determine these disputes as more fully set forth in this chapter. Further, the Legislature recognizes that certain contract rights have been created for the benefit of homeowners' associations and members thereof before the effective date of this act and that ss. 720.301-720.407[, F.S.], are not intended to impair such contract rights, including, but not limited to, the rights of the developer to complete the community as initially contemplated.

[1] *See* s. 720.302(1), F.S.
[2] Section 720.301(9), F.S.
[3] Section 720.302(5), F.S.
[4] *See* ss. 720.303 and 720.307, F.S.
[5] *See* ss. 720.301 and 720.303, F.S.
[6] Section 720.303(1), F.S.

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business the Professional Regulation has limited regulatory authority over homeowners' associations. The division's authority is limited to the arbitration of recall election disputes.[7]

The governing documents of a homeowners' association are:[8]

- The recorded declaration of covenants for a community and all duly adopted and recorded amendments, supplements, and recorded exhibits thereto; and
- The articles of incorporation and bylaws of the homeowners' association and any duly adopted amendments thereto.

Section 720.301(3), F.S., defines a "community" as the real property that is or will be subject to a declaration of covenants which is recorded in the county where the property is located. The term "includes all real property, including undeveloped phases, that is or was the subject of a development-of-regional-impact development order, together with any approved modification thereto."

Florida law specifies the official records that homeowners' associations must maintain.[9] Generally, the official records must be maintained in Florida for at least seven years.[10] Certain types of these records must be accessible to the members of an association.[11] Additionally, certain records are protected or restricted from disclosure to members, such as records protected by attorney-client privilege, personnel records, and personal identifying records of owners.[12]

The official records that the association must make available to the members for inspection and copying include, in relevant part, a copy of the:[13]

- Bylaws of the association and of each amendment to the bylaws.
- Articles of incorporation of the association and of each amendment thereto.
- Declaration of covenants and a copy of each amendment thereto.
- Current rules of the homeowners' association.

III. Effect of Proposed Changes:

The bill creates s. 720.303(13), F.S., to require homeowners' associations to provide, before October 1, 2024, a physical or digital copy of the association's rules and covenants to every member of the association, including new members.

In addition, homeowners' associations must give every member an updated copy of the rule or covenants if the rules or covenants are amended. Under the bill, associations may adopt rules establishing standards for the manner of distribution and a timeframe for providing copies of updated rules or covenants.

[7] *See* s. 720.306(9)(c), F.S.
[8] Section 720.301(8), F.S.
[9] *See* s. 720.303(5), F.S.
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] Section 720.303(4), F.S.

The bill permits associations to meet the requirement in the bill by posting a complete copy of the association's rules and covenants, or a direct link thereto, on the homepage of the association's website, if the website is accessible to the members of the association and the association sends a notice to each member of its intent to utilize the website for this purpose.

The notice of the association's intent to use a website to meet the requirements of the bill may be delivered electronically to members who have consented to receive notices by electronic transmission and have provided an electronic mailing address to the association for that purpose, or by mail to all other members at the address identified in the official records of the association as the member's mailing address.

The bill takes effect July 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:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Homeowners' associations will incur costs, including copying, delivery, and processing costs, in order to provide all members of the association, including new members as they become homeowners in the community, with a copy of the association's rule and covenants, and updated copies of those documents if they are amended.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 720.303 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 Stewart

17-00217-24 202450__

A bill to be entitled

An act relating to provision of homeowners' association rules and covenants; amending s. 720.303, F.S.; requiring an association to provide copies of the association's rules and covenants to every member before a specified date, and every new member thereafter; requiring an association to provide members with an updated copy of amended rules or covenants; authorizing an association to adopt rules relating to the standards and manner in which such copies are distributed; authorizing an association to post a complete copy of the association's rules and covenants, or a direct link thereto, on the homepage of the association's website under certain circumstances; requiring an association to provide specified notice to its members; providing an effective date.

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

Section 1. Subsection (13) is added to section 720.303, Florida Statutes, to read:

720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.—

(13) REQUIREMENT TO PROVIDE COPIES OF RULES AND COVENANTS.—

(a) Before October 1, 2024, an association shall provide a physical or digital copy of the association's rules and covenants to every member of the association.

17-00217-24 202450__

(b) An association shall provide a physical or digital copy of the association's rules and covenants to every new member of the association.

(c) If an association's rules or covenants are amended, the association must provide every member of the association with an updated copy of the amended rules or covenants. An association may adopt rules establishing standards for the manner of distribution and timeframe for providing copies of updated rules or covenants.

(d) The requirements of this subsection may be met by posting a complete copy of the association's rules and covenants, or a direct link thereto, on the homepage of the association's website if such website is accessible to the members of the association and the association sends notice to each member of the association of its intent to utilize the website for this purpose. Such notice must be sent in both of the following ways:

1. By electronic mail to any member of the association who has consented to receive notices by electronic transmission and provided an electronic mailing address to the association for that purpose.

2. By mail to all other members of the association at the address identified as the member's mailing address in the official records of the association.

Section 2. This act shall take effect July 1, 2024.

The Florida Senate

Committee Agenda Request

To: Senator, Chair Joe Gruters
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: November 14, 2023

I respectfully request that **Senate Bill #50**, relating to the Provisions of Homeowners Association Rules and Covenants be placed on:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Linda Stewart

Senator Linda Stewart
Florida Senate, District 17

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 414
INTRODUCER:	Senator Garcia
SUBJECT:	Florida Homeowners' Construction Recovery Fund
DATE:	January 26, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	**Pre-meeting**
2.			AEG	
3.			FP	

I. Summary:

SB 414 amends s. 489.143, F.S., to increase the maximum amounts payable to claimants for claims that may be made against contractors from the Florida Homeowners' Construction Recovery Fund (recovery fund) for each of the next four fiscal years (through Fiscal Year 2027-2028), and to substantially increase the total lifetime aggregate limit for claim payments made against a single contractor for those same fiscal years.

For claims against general contractors, building contractors, and residential contractors (Division I licensees), the maximum amount per claim increases from $50,000 to $250,000 over the next four fiscal years, and the total lifetime aggregate limit increases from $500,000 to $1 million over the next four fiscal years.

For claims against roofing contractors, sheet metal contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, and pollutant storage systems contractors (Division II licensees), the maximum amount per claim increases from $50,000 to $250,000 over the next four fiscal years, and the total lifetime aggregate limit increases from $150,000 to $550,000 over the next four fiscal years.

Under the bill, the increased amounts for Division I claims and the total lifetime aggregate limit of all claims against a Division I licensee, apply to contracts entered into after July 1, 2004. The increased amounts for Division II claims and the total lifetime aggregate limit of all claims against a Division II licensee apply to contracts entered into after July 1, 2016 (the date that claims against Division II licensees were first authorized to be filed).[1] Current law provides the

[1] *See* ch. 2016-129, Laws of Fla.

statute of limitations to make a claim under the recovery fund is one year after the conclusion of an action or award in arbitration based on a compensable claim.[2]

According to the Department of Business and Professional Regulation, the impact on state revenues and expenditures is indeterminate and there is no impact expected on local government revenues and expenditures.[3] See Section V, Fiscal Impact Statement.

The bill takes effect July 1, 2024.

II. Present Situation:

The Legislature regulates the construction industry "in the interest of the public health, safety, and welfare,"[4] and has enacted ch. 489, F.S., relating to contracting, to address requirements for construction contracting, electrical and alarm system contracting, and septic tank contracting, and requirements for qualified persons to be licensed if they have sufficient technical expertise in the applicable trade.[5]

Contractor Licensing Exemptions; Handyman Exemption

More than 20 categories of persons are exempt[6] from the contractor licensing requirements of ch. 489, F.S., including work falling under the so-called handyman exemption, meaning the work is of a "casual, minor, or inconsequential nature," and the total contract price for labor, materials, and all other items is less than $2,500, subject to certain exceptions.[7]

Construction Professional Licenses

Chapter 489, F.S., relates to "contracting," with part I addressing the licensure and regulation of construction contracting, and part II addressing the licensure and regulation of electrical and alarm system contracting.

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[2] *See* s. 489.141(1)(f), F.S.
[3] *See* Department of Business and Professional Regulation, *2024 Agency Legislative Bill Analysis for SB 414* at 4 (Nov. 20, 2023) (on file with the Senate Committee on Regulated Industries).
[4] *See* s. 489.101, F.S.
[5] *See* parts I, II, and III, respectively, of ch. 489, F.S.
[6] Exemptions provided in s. 489.103, F.S., include: contractors in work on bridges, roads, streets, highways, or railroads, and other services defined by the Construction Industry Licensing Board and the Florida Department of Transportation; employees of licensed contractors, if acting within the scope of the contractor's license, with that licensee's knowledge; certain employees of federal, state, or local governments or districts (excluding school and university boards), under limited circumstances; certain public utilities, on construction, maintenance, and development work by employees; property owners, when acting as their own contractor and providing "direct, onsite supervision" of all work not performed by licensed contractors on one-family or two-family residences, farm outbuildings, or commercial buildings at a cost not exceeding $75,000; work undertaken on federal property or when federal law supersedes part I of ch. 489, F.S.; registered architects and engineers acting within their licensed practice, including those exempt from such licensing, but not acting as a contractor unless licensed under ch. 489, F.S.; work on one-, two-, or three-family residences constructed or rehabilitated by Habitat for Humanity, International, Inc., or a local affiliate, subject to certain requirements; certain disaster recovery mitigation or other organizations repairing or replacing a one-family, two-family or three-family residence impacted by a disaster, subject to certain requirements; and employees of an apartment community or apartment community management company who make minor repairs to existing electric water heaters, electric heating, ventilating, and air-conditioning systems, subject to certain requirements *See* s. 489.103, F.S., for additional exemptions.
[7] *See* also s. 489.103(9), F.S., and Fla. Admin. Code R. 61G-12.011(2).

Construction contractors regulated under part I of ch. 489, F.S., and electrical and alarm contractors regulated under part II of ch. 489, F.S., must satisfactorily complete a licensure examination before being licensed.[8] The Construction Industry Licensing Board (CILB) within the Department of Business and Professional Regulation (DBPR) and the Electrical Contractors' Licensing Board (ECLB) within the DBPR may deny a license application for any person found guilty of any of the grounds for discipline in s. 455.227(1), F.S., or in the profession's practice act.[9]

The CILB is responsible for licensing and regulating the construction industry in Florida under part I of ch. 489, F.S,[10] and is divided into two divisions with separate jurisdictions:

- Division I comprises the general contractor, building contractor, and residential contractor members of the CILB. Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors.[11]
- Division II comprises the roofing contractor, sheet metal contractor, air-conditioning contractor, mechanical contractor, pool contractor, plumbing contractor, and underground utility and excavation contractor members of the CILB. Division II has jurisdiction over the regulation of roofing contractors, sheet metal contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, and pollutant storage systems contractors.[12]

The ECLB is responsible for licensing and regulating electrical and alarm system contractors in Florida under part II of ch. 489, F.S.[13] Master septic tank contractors and septic tank contractors are regulated by the Department of Environmental Protection under part III of ch. 489, F.S.[14]

Construction Contractor Licensing Categories

"Certified contractors" are individuals who pass the state competency examination and obtain a certificate of competency issued by the DBPR. Certified contractors are able to obtain a certificate of competency for a specific license category and are permitted to practice in that category in any jurisdiction in the state.[15]

"Certified specialty contractors" are contractors whose scope of work is limited to a particular phase of construction, such as drywall or demolition. Certified specialty contractor licenses are created by the CILB through rulemaking. Certified specialty contractors are permitted to practice in any jurisdiction in the state.[16]

[8] *See* ss. 489.113 and 489.516, F.S., respectively.
[9] Section 455.227(2), F.S.
[10] *See* s. 489.107, F.S.
[11] *See* s. 489.105(3)(a)-(c), F.S.
[12] Section 489.105(3) (d) - (q), F.S.
[13] Section 489.507, F.S.
[14] *See* ss. 489.551-489.558, F.S. Prior to July 1, 2021, the Department of Health regulated septic tank contracting; *See* s. 50, ch. 2020-150, L.O.F.
[15] *See* ss. 489.105(6)-(8) and (11), F.S.
[16] *See* ss. 489.108, 489.113, 489.117, and 489.131, F.S.

"Registered contractors" are individuals who have paid the required fee, taken and passed a local competency examination and licensing requirements, if any, who may practice the specific category of contracting for which he or she is approved only in the local jurisdiction for which the license is issued.[17]

Florida Homeowners' Construction Recovery Fund

The Florida Homeowner's Construction Recovery Fund (recovery fund) was created by the Legislature in 1993 after Hurricane Andrew.[18] The recovery fund is the last resort to compensate homeowners who have suffered a covered financial loss at the hands of state-licensed general, building, and residential contractors. Covered losses include financial mismanagement or misconduct, project abandonment, or fraudulent statement of a contractor or related party.[19] A homeowner must have engaged a contractor for construction or improvement of the homeowner's Florida residence, and the damage must have been caused by a Division I licensee or a Division II licensee.[20]

A claim must involve an act by a contractor under specific statutory provisions relating to mismanagement, abandonment of a project, and actions that give rise to disciplinary actions by the CILB against contractors, as follows:

- Section 489.129(1)(g), F.S., allows disciplinary proceedings for committing mismanagement or misconduct in the practice of contracting that causes financial harm to a customer. Financial mismanagement or misconduct occurs when the contractor fails to remove a valid lien after payment within 75 days of the recording of the lien, the contractor has abandoned the job and has been paid for more than is completed, and the customer is made to pay more than the contract price.
- Section 489.129(1)(j), F.S., allows disciplinary proceedings for abandoning a construction project, under certain conditions. A project is presumed abandoned after 90 days if the contractor terminates the project without just cause or without proper notice to the owner, including the reason for termination, or fails to perform work without just cause for 90 consecutive days.
- Section 489.129(1)(k), F.S, allows disciplinary proceedings for signing a false statement with respect to a project or contract indicating that the work is bonded, subcontractors have been paid for all work which results in a financial loss to the owner, purchaser, or contractor, or that workers' compensation and public liability insurance are provided.

Section 713.35, F.S., provides for criminal penalties for any person who knowingly and intentionally makes an affidavit, a waiver or release of lien, or other document, whether or not under oath, with false information about the payment status of subcontractors, sub-subcontractors, or suppliers.

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[17] Section 489.117, F.S. *See also* s. 489.105(3)(a)-(o), F.S.
[18] *See* ch. 93-166, s. 21, Laws of Fla. and *see* Department of Business and Professional Regulation, *2024 Agency Legislative Bill Analysis for SB 414* at 2 (Nov. 20, 2023) (on file with the Senate Committee on Regulated Industries).
[19] *See* ss. 489.140-489.144, F.S.
[20] Section 489.1402, F.S., defines the term "residence" to mean "a single-family residence, an individual residential condominium or cooperative unit, or a residential building containing not more than two residential units in which the owner contracting for the improvement is residing or will reside 6 months or more each calendar year upon completion of the improvement."

If a final judgment, CILB-issued restitution order, or arbitration award is not expressly based on s. 489.129(1)(g), (j), or (k), F.S., the claimant must present to the CILB sufficient evidence to show that that the contractor engaged in activity that is described in those subsections.[21]

The fund is financed by a 1.5 percent surcharge on all building permit fees associated with the enforcement of the Florida Building Code.[22] The local government that collects the permit fees retains 10 percent of the surcharge, and the net surcharge proceeds are then allocated equally to the recovery fund and the operations of the Building Code Administrators and Inspectors Board.[23]

Duty of Contractor to give Notice of Fund

Section 489.1425, F.S., creates a duty for a contractor to provide notice to a customer of rights under the recovery fund. Any agreement or contract for repair, restoration, improvement, or construction to residential real property must contain a written statement explaining the consumer's rights under the recovery fund, except where the value of all labor and materials does not exceed $2,500, and must be substantially in the form required by statute.

Requirements to Make a Claim

The claimant must have obtained a final judgment, arbitration award, or CILB-issued restitution order against the contractor for damages that are a direct result of a compensable violation. The statute of limitations to make a claim is one year after the conclusion of an action or award in arbitration that is based on the misconduct.[24]Certain persons are not eligible to make a claim against the recovery fund.[25]

Limits

Section 489.143, F.S., relating to payment from the recovery fund, provides that an eligible claimant may be paid an amount equal to the judgment, award, or restitution order or $25,000, whichever is less, or an amount equal to the unsatisfied portion of such person's judgment, award, or restitution order, but only to the extent and amount of actual damages suffered by the claimant, and subject to the maximum per-claim amount and a total lifetime per-licensee maximum.[26]

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[21] Fla. Admin. Code R. 61G4-21.003.
[22] Section 468.631(1), F.S.
[23] The DBPR has the authority to transfer excess cash to the recovery fund if it determines it is not needed to support the operation of the Building Code Administrators and Inspectors Board; the amount transferred cannot exceed the amount appropriated in the General Appropriations Act or approved by the Legislative Budget Commission for payment of claims from the recovery fund. *Id*.
[24] Section 489.141(1)(f), F.S.
[25] Section 489.141(2), F.S., provides certain persons are precluded from making a claim for recovery under the recovery fund, if: (a) The claimant is the spouse of the judgment debtor or licensee or a personal representative of such spouse; (b) The claimant is a licensee who acted as the contractor in the transaction that is the subject of the claim; (c) The claim is based upon a construction contract in which the licensee was acting with respect to the property owned or controlled by the licensee; (d) The claim is based upon a construction contract in which the contractor did not hold a valid and current license at the time of the construction contract; or (e) The claimant was associated in a business relationship with the licensee other than the contract at issue.
[26] Section 489.143(2), F.S.

The maximum amounts payable for recovery fund claims and the total lifetime aggregate limits are set forth in s. 489.143, F.S,[27] as follows:

- Beginning January 1, 2005, for each Division I contract entered into after July 1, 2004, recovery fund claims are limited to a $50,000 maximum payment for each Division I claim, with a total lifetime aggregate limit of $500,000 for each Division I licensee.
- Beginning January 1, 2017, for each Division II contract entered into on or after July 1, 2016, (the date that claims against Division II licensees were first authorized to be filed), recovery fund claims are limited to a $15,000 maximum payment for each Division II claim, with a total lifetime aggregate limit of $150,000 for each Division II licensee.

Claims awarded to a claimant by the CILB are paid in the order that they are filed, up to the lifetime aggregate limits for each transaction and licensee, and to the limits of amounts appropriated to pay claims against the recovery fund.[28] Payments may not exceed the total claim limits or lifetime aggregate limits.[29]

Appropriations; Excess Funds; License Suspension

Section 489.143(8), F.S., provides that if the annual appropriation is exhausted with claims pending, the pending claims must be carried over to the next fiscal year. Monies in excess of pending claims must be paid in accordance with s. 468.631, F.S., relating to the Building Code Administrators and Inspectors Fund.

Section 489.143(9), F.S., provides that, upon payment of any amount from the recovery fund in settlement of a claim in satisfaction of a judgment, award, or restitution order against a licensee, the license of such licensee is automatically suspended, without further administrative action, upon the date of payment from the recovery fund. The license may not be reinstated until the licensee has repaid in full the amount paid from the recovery fund, plus interest.

III. Effect of Proposed Changes:

The bill amends s. 489.143, F.S., to increase the maximum amounts payable to claimants for claims that may be made against contractors from the recovery fund for each of the next four fiscal years (through Fiscal Year 2027-2028), and to substantially increase the total lifetime aggregate limit for claim payments made against a single contractor for those same fiscal years.

For claims against general contractors, building contractors, and residential contractors (Division I licensees), contracts entered into after July 1, 2004, the maximum per-claim amount increases from $50,000 in current law, as follows:

- $75,000 for Fiscal Year 2024-2025;
- $125,000 for Fiscal Year 2025-2026;
- $175,000 for Fiscal Year 2026-2027; and
- $250,000 for Fiscal Year 2027-2028.

[27] For recovery fund claims for contracts entered into before July 1, 2004, see s. 489.143(6), F.S.
[28] Section 489.143(7), F.S.
[29] *Id*.

Under the bill, the lifetime aggregate limits for each Division I licensee for Division I contracts entered into after July 1, 2004, are increased from $500,000 in current law, as follows:

- $700,000 for Fiscal Year 2024-2025;
- $800,000 for Fiscal Year 2025-2026;
- $900,000 for Fiscal Year 2026-2027; and
- $1,000,000 for Fiscal Year 2027-2028;

For claims against roofing contractors, sheet metal contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, and pollutant storage systems contractors (Division II licensees), contracts entered into after July 1, 2016, (the date that claims against Division II licensees were first authorized to be filed), the maximum amount per claim increases from $15,000 in current law, as follows:

- $25,000 for Fiscal Year 2024-2025;
- $35,000 for Fiscal Year 2025-2026;
- $45,000 for Fiscal Year 2026-2027; and
- $65,000 for Fiscal Year 2027-2028.

Under the bill, the lifetime aggregate limits for each Division II licensee for Division II contracts entered into after July 1, 2016, (the date that claims against Division II licensees were first authorized to be filed), are increased from $150,000 in current law, as follows:

- $250,000 for Fiscal Year 2024-2025;
- $350,000 for Fiscal Year 2025-2026;
- $450,000 for Fiscal Year 2026-2027; and
- $550,000 for Fiscal Year 2027-2028;

The bill does not revise current law providing that the statute of limitations to make a claim under the recovery fund is one year after the conclusion of an action or award in arbitration based on a compensable claim.[30] Therefore, even with the increased maximum per-claim amounts and lifetime aggregate limits contemplated in the bill, claimants must continue to meet the statute of limitations deadline to pursue a claim against the recovery fund.

The bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[30] *See* s. 489.141(1)(f), 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 DBPR indicates that increasing the per-claim maximum payment and the aggregate lifetime limit for licensees, the number of claimants who receive compensation from the recovery fund and the amount of compensation will increase, but the impact is indeterminate.[31]

C. Government Sector Impact:

According to the DBPR, approximately $4.5 million is appropriated annually to pay recovery fund claims,[32] and the recovery fund balances and revenues are as follows:[33]

As of July 31, 2023, the overall Recovery Fund balance was $23,235,064.00. For fiscal years 20/21, 21/22, and 22/23, the average amount of revenue going into the Recovery Fund from the surcharge per fiscal year was $6,188,495.00, and the average amount of claims awarded was $2,882,184 per fiscal year. However, between FY 20/21 and FY 22/23, the number of claims presented and awarded each year more than doubled. In FY 22/23, 232 claims were awarded for a total amount of $4,449,552.00.[34]

The increased claim cap amounts proposed in the bill will impact on expenditures as it would cause an increase to the overall amount disbursed by the Division to approved claimants. The extent of the increase will depend on the number of claims awarded and

[31] *See* Department of Business and Professional Regulation, *2024 Agency Legislative Bill Analysis for SB 414* at 4-5 (Nov. 20, 2023) (on file with the Senate Committee on Regulated Industries).
[32] *Id*. at 2.
[33] *Id*.
[34] *Id*.

the cost of those claims, which can vary from year to year and has more than doubled over the last 2 fiscal years.35

The proposed claim caps outlined within this bill could increase the overall number of claims by significant amounts from year to year and would have the potential to outpace annual revenues into the Recovery Fund. This would eat into the fund's balance or require General Revenue to supplement if revenues were not adjusted to increase along with the cap increases.[36]

Revenues have averaged $6,118,496 over the past 3 years but have been at least $6,500,000 for the last two years, and the cost of claims in the last fiscal year was $4,462,465. If we take the Fund's starting balance of $23,235,064 and project for the proposed increases through the 2027/28 Fiscal Year, the estimates are as follows:[37]

Fiscal Year	Estimated Fund Balance (July 1)	Estimated Revenues	% of Cap Increase from Prior Year for Division I	% of Cap Increase from Prior Year for Division II	Estimated Expenditures after Proposed Cap Increases	**Estimated End Fund Balance (June 30)**
23/24	$23,235,064	$6,014,764	-	-	$ 4,981,181	**$24,268,647**
24/25	$25,235,064	$6,158,696	50%	66.67%	$ 7,617,696	**$22,809,647**
25/26	$24,610,064	$6,238,878	66.67%	40%	$11,424,110	**$17,624,415**
26/27	$20,185,064	$6,339,727	40%	28.57%	$15,177,893	**$8,786,249**
27/28	$12,014,350	$6,167,422	42.86%	44.44%	$21,567,992	**($6,614,320)**

These are estimated claim increases based on a corresponding increase in the cap amounts, and preliminary estimates show a possible fund deficit by the 2027/28 Fiscal Year. This estimate assumes revenues and claims remain about the same from year to year. But it is also worth noting that as the aggregate caps also increase from year to year as outlined in the Bill, the Division [of Professions] has expressed the possibility for cases to remain open year to year as they would not be able to close them for hitting an aggregate cap due to that cap being increased the following year.[38]

With all of this considered, preliminary estimates show that claims would start to outpace revenues in FY 24-25, which would eventually result in a negative cash balance in the Construction Recovery Fund.[39]

Under the bill, the maximum claim amounts increase each fiscal year for four years, which may create an incentive to delay the filing of a claim to increase the potential payment amount from the recovery fund, provided the claimant complies with the statute of limitations to make a claim, which is one year after the conclusion of any civil,

[35] *Id.* at 6.
[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] *Id.*

criminal, or administrative action or award in arbitration based on a compensable violation.[40]

The bill does not indicate whether the maximum per-claim and lifetime aggregate limits for Fiscal Year 2027-2028 continue to apply in subsequent fiscal years.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DBPR has concerns about the impact of the bill on its operations in processing and paying claims based on the age of a claim, and the application of the increased maximum per-claim amounts and lifetime aggregate limits each fiscal year, as follows:

> It is recommended that the bill specify that the increases only apply to contracts entered after a specific date (such as July 1, 2024) and beginning January 1, 2025) to be consistent with previous increases in the caps.[41]
>
> ***
>
> It is also unclear what the per-claim and aggregate caps will be after fiscal year 2027/2028.[42]

VIII. Statutes Affected:

This bill substantially amends section 489.143 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.

[40] Section 489.141(1)(f), F.S.
[41] *See* Department of Business and Professional Regulation, *2024 Agency Legislative Bill Analysis for SB 414* at 5 (Nov. 20, 2023) (on file with the Senate Committee on Regulated Industries).
[42] *Id*. at 6.

By Senator Garcia

36-00024-24 2024414__

A bill to be entitled

An act relating to the Florida Homeowners' Construction Recovery Fund; amending s. 489.143, F.S.; providing a scheduled increase in the maximum payment amounts that may be made from the recovery fund for Division I and Division II individual and aggregate claims; providing an effective date.

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

Section 1. Subsections (3) and (6) of section 489.143, Florida Statutes, are amended to read:

489.143 Payment from the fund.—

(3)(a) ~~Beginning January 1, 2005,~~ For each Division I contract entered into after July 1, 2004, payment from the recovery fund is subject to the following maximum payment amounts for each Division I claim:

1. For the 2024-2025 fiscal year, $75,000 ~~a $50,000 maximum payment for each Division I claim~~.

2. For the 2025-2026 fiscal year, $125,000.

3. For the 2026-2027 fiscal year, $175,000.

4. For the 2027-2028 fiscal year, $250,000.

(b) ~~Beginning January 1, 2017,~~ For each Division II contract entered into on or after July 1, 2016, payment from the recovery fund is subject to the following maximum payment amounts for each Division II claim:

1. For the 2024-2025 fiscal year, $25,000 ~~a $15,000 maximum payment for each Division II claim~~.

2. For the 2025-2026 fiscal year, $35,000.

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3. For the 2026-2027 fiscal year, $45,000.

4. For the 2027-2028 fiscal year, $65,000.

(6)(a) For contracts entered into before July 1, 2004, payments for claims against any one licensee may not exceed, in the aggregate, $100,000 annually, up to a total aggregate of $250,000. For any claim approved by the board which is in excess of the annual cap, the amount in excess of $100,000 up to the total aggregate cap of $250,000 is eligible for payment in the next and succeeding fiscal years, but only after all claims for the then-current calendar year have been paid. Payments may not exceed the aggregate annual or per claimant limits under law.

(b) ~~Beginning January 1, 2005,~~ For each Division I contract entered into after July 1, 2004, payment from the recovery fund is subject only to a total aggregate cap of the following amounts ~~$500,000~~ for each Division I licensee:

1. For the 2024-2025 fiscal year, $700,000.

2. For the 2025-2026 fiscal year, $800,000.

3. For the 2026-2027 fiscal year, $900,000.

4. For the 2027-2028 fiscal year, $1 million.

(c) ~~Beginning January 1, 2017,~~ For each Division II contract entered into on or after July 1, 2016, payment from the recovery fund is subject only to a total aggregate cap of the following amounts ~~$150,000~~ for each Division II licensee:

1. For the 2024-2025 fiscal year, $250,000.

2. For the 2025-2026 fiscal year, $350,000.

3. For the 2026-2027 fiscal year, $450,000.

4. For the 2027-2028 fiscal year, $550,000.

Section 2. This act shall take effect July 1, 2024.

The Florida Senate

Committee Agenda Request

To: Senator Joe Gruters, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: December 4, 2023

I respectfully request that **Senate Bill #414**, relating to Florida Homeowners' Construction Recovery Fund, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Ileana Garcia
Florida Senate, District 36

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 600
INTRODUCER:	Senator Ingoglia
SUBJECT:	Hurricane Protections for Homeowners' Associations
DATE:	January 26, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Pre-meeting**
2.			CA	
3.			RC	

I. Summary:

SB 600 requires homeowners' associations, or any architectural, construction improvement, or similar committee (committee) to adopt hurricane protection specifications for each structure or other improvement on a parcel governed by the homeowners' association.

The specifications may include the color and style of hurricane protection products and any other factor deemed relevant by the board. All specifications adopted by the homeowners' association must comply with the applicable building code. The bill allows the homeowners' association or committee to require parcel owners to adhere to an existing unified building scheme regarding the external appearance of the structure or other improvement on the parcel.

The bill provides that, regardless of any other provision in association governing documents, the homeowners' associations and committees may not deny an application for the installation, enhancement, or replacement of hurricane protection by a parcel owner which conforms to the specifications adopted by the homeowners' association or committee.

The bill defines the term "hurricane protection" to include, but not be limited to, metal roofs, permanent fixed storm shutters, roll-down track storm shutters, impact-resistant windows and doors, polycarbonate panels, reinforced garage doors, erosion controls, and other hurricane protection products used to preserve and protect the structures or improvements on a parcel governed by the association.

The bill provides, as a statement of legislative intent, that in order to protect the health, safety, and welfare of the people of the state and to ensure uniformity and consistency in the hurricane protection installed by parcel owners, the bill applies to all homeowners' associations in the state, regardless of when the community was created.

The bill takes effect upon becoming law.

II. Present Situation:

Homeowners' Associations

Chapter 720, F.S., provides statutory recognition to corporations that operate residential communities in Florida as well as procedures for operating homeowners' associations. These laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.[1]

A "homeowners' association" is defined as a:[2]

> Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.

Unless specifically stated to the contrary in the articles of incorporation, homeowners' associations are also governed by ch. 607, F.S., relating to for-profit corporations, or by ch. 617, F.S., relating to not-for-profit corporations.[3]

Homeowners' associations are administered by a board of directors that is elected by the members of the association.[4] The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include a recorded declaration of covenants, bylaws, articles of incorporation, and duly-adopted amendments to these documents.[5] The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.[6]

Unlike condominium associations, homeowners' associations are not regulated by a state agency. Section 720.302(2), F.S., expresses the legislative intent regarding the regulation of homeowners' associations:

> The Legislature recognizes that it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations. However, in accordance with s. 720.311, [F.S.,] the Legislature finds that homeowners' associations and their individual members will benefit from an expedited alternative process for resolution of election and recall disputes and presuit mediation of other disputes involving covenant enforcement and authorizes the department to hear, administer, and determine these

[1] *See* s. 720.302(1), F.S.
[2] Section 720.301(9), F.S.
[3] Section 720.302(5), F.S.
[4] *See* ss. 720.303 and 720.307, F.S.
[5] *See* ss. 720.301 and 720.303, F.S.
[6] Section 720.303(1), F.S.

> disputes as more fully set forth in this chapter. Further, the Legislature recognizes that certain contract rights have been created for the benefit of homeowners' associations and members thereof before the effective date of this act and that ss. 720.301-720.407[, F.S.], are not intended to impair such contract rights, including, but not limited to, the rights of the developer to complete the community as initially contemplated.

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business the Professional Regulation has limited regulatory authority over homeowners' associations. The division's authority is limited to the arbitration of recall election disputes.[7]

The governing documents of a homeowners' association are:[8]

- The recorded declaration of covenants for a community and all duly adopted and recorded amendments, supplements, and recorded exhibits thereto; and
- The articles of incorporation and bylaws of the homeowners' association and any duly adopted amendments thereto.

Section 720.301(3), F.S., defines a "community" as the real property that is or will be subject to a declaration of covenants which is recorded in the county where the property is located. The term "includes all real property, including undeveloped phases, that is or was the subject of a development-of-regional-impact development order, together with any approved modification thereto."

The term "common areas" means all real property within a community which is owned or leased by an association or dedicated for use or maintenance by the association or its members, including, regardless of whether title has been conveyed to the association:[9]

- Real property the use of which is dedicated to the association or its members by a recorded plat; or
- Real property committed by a declaration of covenants to be leased or conveyed to the association.

HOA Architectural and Construction Improvement Covenants and Rules

If the governing documents allow, a homeowners' association or committee may:[10]

- Require a review and approval of plans and specifications for the location, size, type, or appearance of any structure or other improvement on a parcel before a parcel owner makes such improvement.
- Enforce standards for the external appearance of any structure or improvement located on a parcel.

[7] Section 720.306(9)(c), F.S.
[8] Section 720.301(8), F.S.
[9] Section 720.307(2), F.S.
[10] Section 720.3035(1), F.S.

A homeowners' association or committee may not restrict the right of a parcel owner to select from any options given in the governing documents for the use of material, the size of the structure or improvement, the design of the structure or improvement, or the location of the structure or improvement on the parcel.[11]

Each parcel owner is entitled to the rights and privileges set forth in the governing documents concerning the architectural use of the parcel, and the construction of permitted structures and improvements on the parcel and such rights and privileges may not be unreasonably infringed upon or impaired by the homeowners' association or committee. If the homeowners' association or committee unreasonably, knowingly, and willfully infringes upon or impairs such rights and privileges, the adversely affected parcel owner may recover damages, including any costs and reasonable attorney's fees.[12]

A homeowners' association or committee may not enforce any policy or restriction that is inconsistent with the rights and privileges of a parcel owner set forth in the governing documents, whether uniformly applied or not.[13]

Levying Fines

Parcel owners, tenants, and guests must comply with a homeowners' association's governing documents, including those related to architectural or construction improvements. Homeowners' associations may levy fines against or suspend the right of a parcel owner, tenant, or a guest of an owner or occupant, to use the common areas,[14] or any other association property, for failing to comply with any provision in the HOA's governing documents.[15]

No fine may exceed $100 per violation, although a fine may be levied on the basis of each day of a continuing violation provided that fine does not exceed $1,000 in the aggregate. However, a fine may exceed $1,000 if the homeowners' association's governing documents authorize such a higher fine. A fine of more than $1,000 may not become a lien on the property.[16]

Hurricane Hardening

Generally, hurricane hardening involves improvements to a building structure and its openings to make it less susceptible to damage from extreme wind, flooding, or flying debris. Hardening improves the durability and stability of a structure, making it better able to withstand the impacts of hurricanes and weather events without sustaining major damage.[17]

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[11] Section 720. 3035(2), F.S.
[12] Section 720.3035(4), F.S.
[13] Section 720.3035(5), F.S.
[14] However, s. 720.305(2)(a), F.S., provides that the right to use common areas does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may not prohibit an owner or tenant of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.
[15] Section 720.305, F.S.
[16] Section 720.305(2), F.S.
[17] WGI, *Hurricane Hardening*, June 14, 2018, available at: https://wginc.com/hurricane-hardening/ (last visited Jan. 21, 2024); U.S. Department of Energy, *Hardening and Resiliency U.S. Energy Industry Response to Recent Hurricane Seasons*, Aug. 2010, p.8, https://www.oe.netl.doe.gov/docs/HR-Report-final-081710.pdf (last visited Jan. 21, 2024).

Hurricane hardening includes installing hurricane impact-rated doors, windows with impact-resistant glass, reinforced roof and wall structures that meet or exceed high-velocity impact codes, independent emergency power systems, potable water storage, fuel stores, and other supplies and systems that will sustain those within the building for a certain time period after a storm.[18]

Most hurricane hardening must be installed in compliance with applicable codes, including the Florida Building Code, and by a licensed construction contractor.[19]

Condominium Hurricane Protection Specifications

Homeowners' associations under ch. 720, F.S., are not required to adopt hurricane shutter standards or any other type of hurricane protection standards. However, each residential condominium must adopt hurricane shutter specifications for each building of the condominium, which must include color, style, and other factors deemed relevant by the condominium. All such specifications must comply with the applicable building code.[20] A condominium is not required to adopt other hurricane protection specifications.

A condominium may not refuse to approve the installation or replacement of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection by a condominium unit owner conforming to the condominium's adopted specifications.[21]

III. Effect of Proposed Changes:

The bill amends s. 720.3035, F.S., to require homeowners' associations, or any architectural, construction improvement, or similar committee (committee) to adopt hurricane protection specifications for each structure or other improvement on a parcel governed by the homeowners' association.

The specifications may include the color and style of hurricane protection products and any other factor deemed relevant by the board. All specifications adopted by a homeowners' association must comply with the applicable building code.

The bill allows the homeowners' association or committee to require parcel owners to adhere to an existing unified building scheme regarding the external appearance of the structure or other improvement on the parcel.

The bill provides that, regardless of any other provision in association governing documents, a homeowners' association and committee may not deny an application for the installation,

[18] U.S. Department of Energy, *Hardening and Resiliency U.S. Energy Industry Response to Recent Hurricane Seasons*, Aug. 2010, p.8, https://www.oe.netl.doe.gov/docs/HR-Report-final-081710.pdf (last visited Jan. 21, 2024).
[19] *See* s. 553.72(1), F.S., relating to purpose and intent of the Florida Building Code, and s. 489.105, F.S., defining the term "contractor" for the purpose of the licensing and the regulation of construction contracting.
[20] Section 718.113(5), F.S.
[21] Section 718.113(5)(d), F.S.

enhancement, or replacement of hurricane protection by a parcel owner which conforms to the specifications adopted by the homeowners' association or committee.

The bill provides that the term "hurricane protection" includes, but is not limited to:

- Metal roofs;
- Permanent fixed storm shutters;
- Roll-down track storm shutters;
- Impact-resistant windows and doors;
- Polycarbonate panels;
- Reinforced garage doors;
- Erosion controls;
- Exterior fixed generators;
- Fuel tanks; and
- Other hurricane protection products used to preserve and protect the structures or improvements on a parcel governed by the homeowners' association.

The bill provides, as a statement of legislative intent, that in order to protect the health, safety, and welfare of the people of the state and to ensure uniformity and consistency in the hurricane protection installed by parcel owners, the bill applies to all homeowners' associations in the state, regardless of when the community was created.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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:

Homeowners' associations may incur increased expenses related to the requirement in the bill for the association to adopt hurricane protection specifications for each structure or other improvement on a parcel governed by the homeowners' association. Homeowners' associations may need to retain the services of qualified professionals, such as architects or engineers, to advise the board of the association on the appropriate hurricane protection standards for the communities.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 720.3035 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.

133120

LEGISLATIVE ACTION

Senate . House

. . . . .

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

Senate Amendment

Delete lines 47 - 50
and insert:
protection" includes, but is not limited to, roof systems recognized by the Florida Building Code that meet ASCE 7-22 standards, permanent fixed storm shutters, roll-down track storm shutters, impact-resistant windows and doors, polycarbonate panels, reinforced garage doors, erosion controls, exterior fixed generators, fuel storage tanks, and other hurricane

By Senator Ingoglia

11-00773-24 2024600__

A bill to be entitled

An act relating to hurricane protections for homeowners' associations; amending s. 720.3035, F.S.; providing applicability; requiring the board or a committee of a homeowners' association to adopt hurricane protection specifications; requiring that such specifications conform to applicable building codes; prohibiting the board or a committee of an association from denying an application for the installation, enhancement, or replacement of certain hurricane protection; authorizing the requirement to adhere to certain guidelines regarding the external appearance of a structure or an improvement on a parcel; defining the term "hurricane protection"; providing an effective date.

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

Section 1. Subsection (6) is added to section 720.3035, Florida Statutes, to read:

720.3035 Architectural control covenants; parcel owner improvements; rights and privileges.—

(6)(a) To protect the health, safety, and welfare of the people of the state and to ensure uniformity and consistency in the hurricane protection installed by parcel owners, this subsection applies to all homeowners' associations in the state, regardless of when the community was created. The board or any architectural, construction improvement, or other such similar committee of an association shall adopt hurricane protection specifications for each structure or other improvement on a parcel governed by the association. The specifications may include the color and style of hurricane protection products and any other factor deemed relevant by the board. All specifications adopted by the board must comply with the applicable building code.

(b) Notwithstanding any other provision in the governing documents of the association, the board or any architectural, construction improvement, or other such similar committee may not deny an application for the installation, enhancement, or replacement of hurricane protection by a parcel owner which conforms to the specifications adopted by the board or committee. The board or committee may require a parcel owner to adhere to an existing unified building scheme regarding the external appearance of the structure or other improvement on the parcel.

(c) For purposes of this subsection, the term "hurricane protection" includes, but is not limited to, metal roofs, permanent fixed storm shutters, roll-down track storm shutters, impact-resistant windows and doors, polycarbonate panels, reinforced garage doors, erosion controls, and other hurricane protection products used to preserve and protect the structures or improvements on a parcel governed by the association.

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

THE FLORIDA SENATE

Tallahassee, Florida. 32399-1100

COMMITTEES:
Finance and Tax, *Chair*
Appropriations
Banking and Insurance
Criminal Justice
Ethics and Elections

SELECT COMMITTEE:
Select Committee on Resiliency

JOINT COMMITTEE:
Joint Administrative Procedures Committee, *Alternating Chair*

Senator Blaise Ingoglia
11th District

December 7, 2023

The Honorable Joe Gruters, Chair
Regulated Industries Committee
413 Senate Office Building
402 South Monroe Street
Tallahassee, FL 32399

Re: SB 600 Hurricane Protections for Homeowners' Associations

Chair Gruters,

SB 600 has been referred to the Regulated Industries Committee as its first committee of reference. I respectfully request that it be placed on the agenda at your earliest convenience.

If I may answer questions or be of assistance, please do not hesitate to contact me. Thank you for your leadership and consideration.

Regards,

Blaise Ingoglia
State Senator, District 11

Cc: Booter Imhof, Staff Director, Susan Datres, Committee 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 Committee on Regulated Industries

BILL:	SB 1140
INTRODUCER:	Senator Burton
SUBJECT:	Mobile Homes
DATE:	January 26, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Pre-meeting**
2.			JU	
3.			RC	

I. Summary:

SB 1140 revises provisions in ch. 723, F.S., relating to mobile homes. The bill allows park owners and homeowners in a dispute related to lot rental increases to select a mediator and initiate mediation proceedings before submitting a petition for mediation with the Division of Condominiums, Timeshares, and Mobile Homes. The mediator selected by the parties must be a qualified mediator selected from the list of circuit court mediators in each judicial circuit or the list maintained by the Florida Growth Management Conflict Resolution Consortium. It is not clear under current law that the homeowners and the park owner may agree on a mediator before submitting a petition for mediation with the division, as provided in the bill.

The bill allows homeowners, after the majority of the affected home owners have agreed in writing to file an action, to file an action in circuit court if the responding party park owner refuses or fails to participate in mediation. Current law provides that either party may file an action in circuit court if the mediation failed to provide a resolution to the dispute.

The bill provides that a mobile home owner's live-in health care aide or assistant be allowed to enter or leave the home owner's site without that person being required to pay additional rent, a fee, or any charge whatsoever. However, the mobile home owner must pay the cost of a background check for the live-in health care aide or assistant if one is necessary. The bill provides that a live-in health care aide or assistant does not have any rights of tenancy in the park. The bill requires the mobile home owner to notify the park owner or park manager of the name of the live-in health care aide or assistant, if that becomes necessary, and that the mobile home owner to cover any costs associated with the removal of a live-in health care aide or assistant.

The bill provides that the purpose of the Florida Mobile Home Relocation Corporation (corporation) is to address voluntary closures of mobile home parks due to a change in the use of land. The corporation pays homeowners the actual cost for relocating a mobile home to a new

location within a 50-mile radius of the vacated park or $3,000 for a single-section mobile home and $6,000 for a multi-section mobile home, whichever is less. The bill increases the maximum payment amount to $6,500 for a single-section mobile home and $11,500 for a multi-section mobile home.

Currently, a mobile home owner can choose to abandon their mobile home instead of relocating the home. The bill increases the maximum amount the corporation may pay if a mobile home owner chooses to abandon the home and collect payment from the corporation from $1,375 to $5,000 for a single section mobile home and from $2,750 to $7,000 for a multi-section mobile home.

If the mobile home owner chooses to abandon the mobile home and receives payment from the corporation, the bill requires that the park owner must pay the corporation $1,375 for a single section mobile home and $2,750 for a multi-section mobile home. The total dollar amount of the park owner's payment obligation is the same as under current law.

The bill takes effect July 1, 2024.

II. Present Situation:

Chapter 723, F.S., the "Florida Mobile Home Act" (act) addresses the unique relationship between a mobile home owner and a mobile home park owner.[1] The provisions in ch. 723, F.S., apply to residential tenancies where a mobile home is placed upon a lot that is rented or leased from a mobile home park that has 10 or more lots offered for rent or lease.[2]

Chapter 723.003, F.S., provides the following relevant definitions:

- "Mobile home park" or "park" means a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes and in which the primary use of the park is residential.[3]
- "Mobile home owner," "mobile homeowner," "home owner," or "homeowner" means a person who owns a mobile home and rents or leases a lot within a mobile home park for residential use.[4]

Mobile home parks are regulated by the Division of Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation. The division may adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., relating to the requirements in the Administrative Procedures Act for the adoption of rules by agencies, to implement and enforce the provisions of ch. 723, F.S, including rules to authorize amendments to an approved prospectus or offering circular and to establish a category of minor violations of ch. 723, F.S., or rules promulgated pursuant hereto.[5] The division may also adopt rules for mediation procedures.[6]

[1] Section 723.004, F.S.
[2] Section 723.002(1), F.S.
[3] Section 723.003(12), F.S.
[4] Section 723.003(11), F.S.
[5] *See* ss. 723.006(7), (8), (9), and (10), F.S.
[6] Section 723.038, F.S.

A mobile home park owner must pay to the division, on or before October 1 of each year, an annual fee of $4 for each mobile home lot within a mobile home park which he or she owns.[7] If the fee is not paid by December 31, a penalty of 10 percent of the amount due must be assessed. Additionally, if the fee is not paid, the park owner does not have standing to maintain or defend any action in court until the amount due, plus any penalty, is paid.[8]

Additionally, there is a $1 surcharge on each annual fee. The collected surcharge must be deposited in the Florida Mobile Home Relocation Trust Fund by the division.[9]

Mobile Home Park Rent Increases

A purchaser of a mobile home has the right to assume the remainder of the term of any rental agreement in effect between the mobile home park owner and the seller.[10] The purchaser is also entitled to rely on the terms and conditions of the prospectus or offering circular as delivered to the initial recipient.[11]

The mobile home park owner may increase the rental amount upon the expiration of the assumed rental agreement "in an amount deemed appropriate by the mobile home park owner."[12] The park owner must give affected mobile home owners and the board of directors of the homeowners' association, if one has been formed, at least a 90-day notice of a lot rental increase.[13]

Upon the sale of a mobile home on a rented lot, the amount of a lot rental increase is to be disclosed and agreed to by the purchaser by executing a rental agreement that sets forth the new lot rental amount.[14] A lot rental amount may not be increased during the term of a rental agreement. However, if the rental agreement is for a term of more than 12 months, the lot rental amount may be increased during the rental term but not more frequently than annually. Pass-through charges[15] may also be increased during the term of the rental agreement.[16]

Lot rental increases may not be arbitrary or discriminatory between similarly situated tenants in the park, and the lot rental may not increase during the term of the rental agreement.[17] However, the mobile home park owner may pass on, at any time during the term of the rental agreement, ad valorem property taxes and utility charges, or increases of either, if the passing on of these costs was disclosed prior to the tenancy.[18]

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[7] Section 723.007(1), F.S.
[8] *Id.*
[9] Section 723.007(2), F.S.
[10] Section 723.059(3), F.S.
[11] *Id.*
[12] Section 723.059(4), F.S.
[13] Section 723.037(1), F.S.
[14] Section 723.031(5), F.S.
[15] Section 723.003(17), F.S, defines the term "pass-through charge" to mean "the mobile home owner's proportionate share of the necessary and actual direct costs and impact or hookup fees for a governmentally mandated capital improvement, which may include the necessary and actual direct costs and impact or hookup fees incurred for capital improvements required for public or private regulated utilities."
[16] Section 723.031(5)(b), F.S.
[17] Section 723.031(5), F.S.
[18] Section 723.031(5)(c), F.S.

A park owner is deemed to have disclosed the passing on of ad valorem property taxes and non-ad valorem assessments if ad valorem property taxes or non-ad valorem assessments were disclosed as a factor for increasing the lot rental amount in the prospectus[19] or rental agreement.[20]

A park owner must give written notice to each affected mobile home owner and the board of directors of the homeowners' association, if one has been formed, at least 90 days before any increase in the lot rental amount or reduction in services or utilities provided by the park owner or change in rules and regulations. [21] The notice must identify all other affected homeowners, which may be by lot number, name, group, or phase. If the affected homeowners are not identified by name, the park owner must make the names and addresses available upon request.[22]

Dispute Resolution

A committee of homeowners and the park owner must meet no later than 60 days before the effective date of a rent increase to discuss the reasons for the increase. The homeowners' committee may consist of no more than five people, who are mobile homeowners in the park and who are designated by a majority of the owners or by the board of directors of the homeowners' association if formed as provided under s. 723.075, F.S.[23] At the meeting, the park owner or subdivision developer must in good faith disclose and explain all material factors resulting in the decision to increase the lot rental amount, reduce services or utilities, or change rules and regulations, including how those factors justify the specific change proposed.[24]

If the meeting does not resolve the issue, then additional meetings may be requested. If subsequent meetings are unsuccessful, within 30 days of the last scheduled meeting, the mobile home owners may petition the division to initiate mediation if a majority of the affected have designated, in writing, that:[25]

- The rental increase is unreasonable;
- The rental increase has made the lot rental amount unreasonable;
- The decrease in services or utilities is not accompanied by a corresponding decrease in rent or is otherwise unreasonable; or
- The change in the rules and regulations is unreasonable.

Within 30 days of the last scheduled meeting, a park owner may also petition the division for mediation of the dispute.[26]

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[19] Before the rental of a mobile home lot, s. 723.011, F.S., requires the park owner of a mobile home park containing 26 or more lots to file a prospectus with the division. The prospectus must include written disclosers to prospective renters, as specified in s. 723.012, F.S.
[20] *Id.*
[21] Section 723.037(1), F.S.
[22] *Id.*
[23] Section 723.037(4)(a), F.S.
[24] Section 723.037(4)(b), F.S.
[25] Section 723.037(5)(a), F.S.
[26] Section 723.037(5)(b), F.S.

If the mediation does not successfully resolve the dispute, then the parties may file an action in circuit court to challenge the rental increase.[27] The court may refer the action to nonbinding arbitration pursuant to s. 44.103, F.S.

Section 723.038, F.S., provides that, upon receipt of the petition from either party, the division must appoint a qualified mediator to conduct mediation proceedings unless the parties timely notify the division in writing that they have selected a mediator. The person appointed by the division to serve as mediator must be a qualified mediator from a list of circuit court mediators in each judicial circuit and who has met training and educational requirements established by the Supreme Court. If such mediators are not available, the division may select a mediator from the list maintained by the Florida Growth Management Conflict Resolution Consortium.[28] The division must promulgate rules of procedure to govern such proceedings in accordance with the rules of practice and procedure adopted by the Supreme Court.[29] The division must also establish, by rule, the fee to be charged by a mediator which shall not exceed the fee authorized by the circuit court.[30]

The division has adopted by rule separate petitions for mediation for filing by the homeowners and the park owner.[31]

Within 20 days of receiving a petition to mediate a dispute, the division must notify the parties that a mediator has been appointed by the division. The parties may accept the mediator appointed by the division or, within 30 days, select a mediator to mediate the dispute.[32]

Each party to the mediation must pay a $250 filing fee to the mediator appointed by the division or selected by the parties, within 30 days after the division notifies the parties of the appointment of the mediator. The $250 filing fee must be used by the mediator to defray the hourly rate charged for mediation of the dispute. Any portion of the filing fee not used must be refunded to the parties.[33]

The parties may agree to select their own mediator to be governed by the rules of procedure established by the division. The parties may agree to waive mediation, or the petitioning party may withdraw the petition prior to mediation.[34]

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[27] Sections 723.038 and 723.0381, F.S.
[28] Section 1004.59, F.S., establishes the Florida Conflict Resolution Consortium at Florida State University "to reduce the public and private costs of litigation; resolve public disputes, including those related to growth management issues, more quickly and effectively; and improve intergovernmental communications, cooperation, and consensus building." *See* Florida Conflict Resolution Consortium at https://consensus.fsu.edu/index.html (last visited Jan. 23, 2024).
[29] *See* Fla. Admin. Code Ch. 61B-32, relating to mobile home mediation rules; and Fla. R. Civ. P. 1.720, providing for mediation procedures.
[30] See Fla. Admin. Code R. 61B-32.0056, relating to the fees for mediators and mediation. The fee amount is based on the county or judicial circuit in which the mobile home park is located and ranges from $175 for up to two hours of mediation to $125 per prorated hour.
[31] See DBPR, Mobile Homes – Forms and Publications, available at: http://www.myfloridalicense.com/DBPR/mobile-homes/forms-and-publications/ (last visited Jan. 24, 2024).
[32] Section 723.038(4), F.S.
[33] *Id.*
[34] Section 723.038(5), F.S.

The resolution of a dispute arising from a mediation may not be deemed to be final agency action. However, either party may initiate an action in the circuit court to enforce a resolution or agreement arising from a mediation proceeding which has been reduced to writing. The circuit court must consider such resolution or agreement made during the mediation to be a contract for the purpose of providing a remedy to the complaining party.[35]

If mediation does not resolve the dispute, either party may file an action in the circuit court.[36]

Invitees – Rights and Obligations

An invitee[37] of a mobile home owner may enter or leave the home owner's site without the home owner or invitee being required to pay additional rent, a fee, or any charge whatsoever. Any mobile home park rule or regulation is null and void if it provides fees or charges to the contrary to this right of access.[38]

All guests, family members, or invitees of a mobile home owner are required to abide by properly promulgated rules and regulations.

Section 723.051(3), F.S., provides that an "invitee" is:

> a person whose stay at the request of a mobile home owner does not exceed 15 consecutive days or 30 total days per year, unless such person has the permission of the park owner or unless permitted by a properly promulgated rule or regulation. The spouse of a mobile home owner shall not be considered an invitee.

Florida Mobile Home Relocation Corporation

In 2001, the Legislature created the Florida Mobile Home Relocation Corporation (corporation) in s. 723.0611, F.S., to provide for the collection and payment of relocation expenses for mobile home owners displaced by a change in land use for a mobile home park. [39] Specifically, s. 723.0612, F.S., provides for relocation expenses to be paid from the corporation to the mobile home owner.

The amount of the payment is the actual moving expenses of relocating the mobile home to a new location within a 50-mile radius of the vacated park, or $3,000 for a single-section mobile home or $6,000 for a multi-section mobile home, whichever is less. Moving expenses include the cost of taking down, moving, and setting up the mobile home in a new location.[40]

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[35] Section 723.038(6), F.S.
[36] Section 723.0381(1), F.S.
[37] Black's Law Dictionary (11th ed. 2019) defines the term "invitee" to mean "someone who has an express or implied invitation to enter or use another's premises, such as a business visitor or a member of the public to whom the premises are held open. The occupier has a duty to inspect the premises and to warn the invitee of dangerous conditions."
[38] Section 723.051(1), F.S.
[39] Chapter 2001-227, L.O.F.
[40] Section 723.0612(1), F.S.

In lieu of collecting moving expenses from the corporation, a mobile home owner may elect to abandon the home and collect payment from the corporation in the amount of $1,375 for a single section mobile home and $2,750 for a multi-section mobile home.[41] Upon election of abandonment, the mobile home owner must deliver to the park owner an endorsed title with a valid release of all liens on the title to the mobile home.[42]

The mobile home park owner is required to pay the corporation an amount equal to the amount the mobile home owner is entitled to receive from the corporation.[43]

The mobile home park owner is not required to make the payments, nor is the mobile home owner entitled to compensation, if: [44]

- The mobile home owner is moved to another space in the park or to another mobile home park at the park owner's expense;
- The mobile home owner notified the mobile home park owner, before the notice of a change in land use, that he or she was vacating the premises;
- A mobile home owner abandons the home in the park; or
- The mobile home owner had an eviction action for nonpayment of lot rental amount filed against him or her prior to the mailing date of the change in the use of land.

Payments received by the corporation are deposited in the Florida Mobile Home Relocation Trust Fund.[45]

III. Effect of Proposed Changes:

The bill creates s. 723.006(16), F.S., to authorize the division to adopt rules to carry out the provisions and requirements of "this act."[46]

Section 2 of the bill directs the Division of Law Revision to replace the phrase "this act" where it may occur in s. 723.006(16), F.S.

Dispute Resolution

The bill amends s. 723.037(5)(a), F.S., to clarify that any the of circumstances listed in this paragraph may form a basis to petition the division for mediation. The bill provides that, upon the park owner filing a written notice with the division of the park owner's intent to initiate mediation of the dispute petition, the park owner may enter into an agreement with the mobile home owners to select a mediator pursuant to s. 723.037(2) and (4), F.S.

[41] Section 723.0612(7), F.S.
[42] *Id.*
[43] Section 723.0612(7), F.S.
[44] Sections 723.0612(2) and (7), F.S.
[45] *Id.*
[46] *See* ss. 723.006(7), (8), (9), and (10), F.S., which authorize the division to adopt rules to implement the provisions of ch. 723, F.S.

The bill also amends s. 723.038(2) and (4), F.S., to allow the mobile home owners and the park owner to immediately agree to select a mediator and initiate mediation proceedings. The bill provides that the mediator selected by the parties must be a qualified mediator selected from the list of circuit court mediators in each judicial circuit or the list maintained by the Florida Growth Management Conflict Resolution Consortium, as provided in this section.

It is not clear under current law that the homeowners and the park owner may agree on a mediator before submitting a petition for mediation with the division, as provided in the bill.

If an "aggrieved party" serves a request for mediation and the responding party refuses or fails to participate in mediation, the bill permits an "aggrieved party" to file an action in circuit court after the majority of the affected home owners have agreed in writing to file an action. The term "aggrieved party" is not defined in the bill.

Invitees – Rights and Obligations

The bill amends s. 723.051(1), F.S., to require that park owners allow a live-in health care aide or assistant as provided under the Fair Housing Act,[47] to enter or leave the home owner's site without that person being required to pay additional rent, a fee, or any charge whatsoever. However, the mobile home owner must pay the cost of a background check for the live-in health care aide or assistant if one is necessary.

The bill provides that a live-in health care aide or assistant does not have any rights of tenancy in the park. The bill requires the mobile home owner to notify the park owner or park manager of the name of the live-in health care aide or assistant, if that becomes necessary, and that the mobile home owner cover any costs associated with the removal of a live-in health care aide or assistant.

Florida Mobile Home Relocation Corporation

The bill amends s. 723.0611, F.S., to provide that the corporation is created to address voluntary closures of mobile home parks due to a change in the use of land.

The bill increases the maximum amount the corporation may pay for relocating the mobile home to a new location within a 50-mile radius of the vacated park from $3,000 to $6,500 for a single-section mobile home and from $6,000 to $11,500 for a multi-section mobile home.

The bill increases the maximum amount the corporation must pay if a mobile home owner elects to abandon the home and collect payment from the corporation

[47] Part II of ch. 760, F.S., the Fair Housing Act, prohibits certain types of discriminatory housing practices, including in the sale and rental of housing.

from $1,375 to $5,000 for a single section mobile home and from $2,750 to $7,000 for a multi-section mobile home.

If a mobile home owner chooses to abandon the mobile home and receives payment from the corporation, under the bill, the park owner must pay the corporation $1,375 for a single section mobile home and $2,750 for a multi-section mobile home. The total dollar amount of the park owner's payment obligation under the bill is the same as under current law.

Reenacting Provisions

The bill reenacts the following provisions for the purpose of incorporating the amendments in the bill:

- Section 723.078(2)(i), F.S., relating to bylaws of homeowners' associations;
- Section 723.031(5), F.S., relating to mobile home lot rental agreements;
- Section 723.035(2), F.S., relating to the rules and regulations for mobile home parks;
- Section 723.068, F.S., relating to attorney fees;
- Section 723.002(2), F.S., relating to the application of ch. 723, F.S.;
- Section 723.003(7)(b), F.S., relating to defining the term "mediation;"
- Section 723.004(5), F.S., relating to legislative intent; and
- Section 723.033(7), F.S., relating to unreasonable lot rental agreements and increases.

Effective Date

The bill takes effect July 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:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Mobile home owners who relocate their mobile home to a new location within a 50-mile radius of the vacated park may receive a greater amount of reimbursement for moving expenses. The bill increases the maximum payment amount from $3,000 to $6,500 for a single-section mobile home and from $6,000 to $11,500 for a multi-section mobile home.

Mobile home owners who choose to abandon their mobile home instead of relocating their mobile home would receive a greater payment from the corporation. The bill increases the maximum amount the corporation must pay if a mobile home owner chooses to abandon their home and collect payment from the corporation from $1,375 to $5,000 for a single section mobile home and from $2,750 to $7,000 for a multi-section mobile home.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 2 of the bill directs the Division of Law Revision to replace the phrase "this act" where it may occur in s. 723.006(16), F.S. This provision is inconsistent with bill drafting conventions. The bill creates the cross-referenced provision (s. 723.006(16), F.S.) and revision may be made in the bill without directing the Division of Law Revision to make the revision. The term "this act" is used throughout ch. 723, F.S. The bill sponsor may wish to consider revising the bill to direct the Division of Law Revision to replace the phrase "this act" wherever it may occur in ch. 723, F.S.

The bill reenacts the following provisions for the purpose of incorporating the amendments in the bill, but these provisions do not need to be reenacted for the purpose of incorporating the amendments in the bill:

- Section 723.078(2)(i), F.S., relating to bylaws of homeowners' associations;
- Section 723.031(5), F.S., relating to mobile home lot rental agreements;
- Section 723.035(2), F.S., relating to the rules and regulation for mobile home parks;
- Section 723.068, F.S., relating to attorney fees;
- Section 723.002(2), F.S., relating to the application of ch. 723, F.S.;
- Section 723.003(7)(b), F.S., relating to defining the term "mediation;"
- Section 723.004(5), F.S., relating to legislative intent; and

- Section 723.033(7), F.S., relating to unreasonable lot rental agreements and increases.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 723.006, 723.037, 723.038, 723.0381, 723.051, 723.0611, 723.0612, 723.078, 723.031, 723.035, 723.068, 723.002, 723.003, 723.004, and 723.033.

This bill creates an undesignated section of Florida law.

IX. Additional Information:

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

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

. . . . .

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Present paragraphs (b), (c), and (d) of subsection (5) of section 723.037, Florida Statutes, are redesignated as paragraphs (c), (e), and (f), respectively, new paragraphs (b) and (d) and paragraphs (g) and (h) are added to that subsection, and present paragraph (b) of that subsection is amended, to read:

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723.037 Lot rental increases; reduction in services or utilities; change in rules and regulations; mediation.—

(5)

(b) A petition for mediation must be filed with the division in all cases for a determination of adequacy and conformance of the petition with the requirements of paragraph (a). Upon filing the petition with the division, the mobile home owners must provide to the park owner, by certified mail, return receipt requested, a copy of the following:

1. The homeowners' petition for mediation on a form adopted by rule of the division;

2. The written designation required by this subsection, which must include lot identification for each signature;

3. The notice or notices of lot rental increase, reduction in services or utilities, or change in rules and regulations that is being challenged as unreasonable; and

4. The records that verify the selection of the homeowners' committee in accordance with subsection (4).

(c) ~~(b)~~ A park owner, within the same time period, may also petition the division to initiate mediation of the dispute pursuant to s. 723.038.

(d) As an alternative to the appointment of a mediator by the division, the park owner and the mobile home owners may, by mutual agreement, select a mediator pursuant to s. 723.038(2) and (4).

(g) The division shall dismiss a petition for mediation in the event that the park owner and mobile home owners fail to comply with this section.

(h) Within 10 days after receipt of the petition from the

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homeowners, the park owner may file objections to the petition with the division. The division shall dismiss any petition that is not timely filed, that does not meet the requirements of this subsection, or that is otherwise found deficient by the division. If a mediator has not been selected pursuant to paragraph (d), the division must assign a mediator within 10 days after receipt of the petition by the park owner.

The purpose of this subsection is to encourage discussion and evaluation by the parties of the comparable mobile home parks in the competitive market area. The requirements of this subsection are not intended to be enforced by civil or administrative action. Rather, the meetings and discussions are intended to be in the nature of settlement discussions prior to the parties proceeding to litigation of any dispute.

Section 2. Subsections (1), (2), (4), and (9) of section 723.038, Florida Statutes, are amended to read:

723.038 Dispute settlement; mediation.—

(1) Either party may petition the division to appoint a mediator and initiate mediation proceedings, or the parties may agree to immediately select a mediator and initiate mediation proceedings pursuant to the criteria outlined in subsections (2) and (4).

(2) The division, upon receipt of a petition, shall appoint a qualified mediator to conduct mediation proceedings and notify the parties within 20 days after such appointment, unless the parties timely notify the division in writing that they have selected a mediator. A person appointed by the division or selected by the parties must ~~shall~~ be a qualified mediator from

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a list of circuit court mediators in each judicial circuit who has met training and educational requirements established by the Supreme Court. If such mediators are not available, the division or the parties may select a mediator from the list maintained by the Florida Growth Management Conflict Resolution Consortium. The division shall promulgate rules of procedure to govern such proceedings in accordance with the rules of practice and procedure adopted by the Supreme Court. The division shall also establish, by rule, the fee to be charged by a mediator which shall not exceed the fee authorized by the circuit court.

(4) Following the date of the last scheduled meeting held pursuant to s. 723.037(4), the parties to a dispute may agree immediately to select a mediator and initiate mediation proceedings pursuant to this section ~~Upon receiving a petition to mediate a dispute, the division shall, within 20 days, notify the parties that a mediator has been appointed by the division~~. The parties may accept the mediator appointed by the division or, within 30 days, select a mediator to mediate the dispute pursuant to subsection (2). The parties shall each pay a $250 filing fee to the mediator appointed by the division or selected by the parties, within 30 days after the division notifies the parties of the appointment of the mediator. The $250 filing fee shall be used by the mediator to defray the hourly rate charged for mediation of the dispute. Any portion of the filing fee not used shall be refunded to the parties.

(9) A mediator appointed by the division or selected by the parties pursuant to this section shall have judicial immunity in the same manner and to the same extent as a judge.

Section 3. Subsection (1) of section 723.0381, Florida

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Statutes, is amended to read:

723.0381 Civil actions; arbitration.—

(1) A civil action may not be initiated unless the dispute has been submitted to mediation pursuant to s. 723.037(5). After mediation of a dispute pursuant to s. 723.038 has failed to provide a resolution of the dispute, either party may file an action in the circuit court.

Section 4. Subsection (1) of section 723.051, Florida Statutes, is amended to read:

723.051 Invitees; rights and obligations.—

(1) An invitee of a mobile home owner, or a live-in health care aide as provided for in the Federal Fair Housing Act, must ~~shall~~ have ingress and egress to and from the mobile home owner's site without the mobile home owner, ~~or~~ invitee, or live-in health care aide being required to pay additional rent, a fee, or any charge whatsoever, except that the mobile home owner must pay the cost of a background check for the live-in health care aide if one is required. Any mobile home park rule or regulation providing for fees or charges contrary to the terms of this section is null and void. The live-in health care aide does not have any rights of tenancy in the park, and the mobile home owner must notify the park owner or park manager of the name of the live-in health care aide and provide the information required to have the background check, if one is necessary. The mobile home owner has the responsibility to remove the live-in health care aide should it become necessary and to cover the costs associated with the removal.

Section 5. Paragraph (a) of subsection (1) of section 723.0611, Florida Statutes, is amended to read:

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723.0611 Florida Mobile Home Relocation Corporation.—

(1)(a) There is created the Florida Mobile Home Relocation Corporation. The purpose of the corporation is to address the voluntary closure of mobile home parks due to a change in use of the land. The corporation shall be administered by a board of directors made up of six members, three of whom shall be appointed by the Secretary of Business and Professional Regulation from a list of nominees submitted by the largest nonprofit association representing mobile home owners in this state, and three of whom shall be appointed by the Secretary of Business and Professional Regulation from a list of nominees submitted by the largest nonprofit association representing the manufactured housing industry in this state. All members of the board of directors, including the chair, shall be appointed to serve for staggered 3-year terms.

Section 6. Subsections (1), (4), and (7) of section 723.0612, Florida Statutes, are amended to read:

723.0612 Change in use; relocation expenses; payments by park owner.—

(1) If a mobile home owner is required to move due to a change in use of the land comprising the mobile home park as set forth in s. 723.061(1)(d) and complies with the requirements of this section, the mobile home owner is entitled to payment from the Florida Mobile Home Relocation Corporation of:

(a) The amount of actual moving expenses of relocating the mobile home to a new location within a 50-mile radius of the vacated park, or

(b) The amount of $6,500 ~~$3,000~~ for a single-section mobile home or $11,500 ~~$6,000~~ for a multisection mobile home, whichever

is less. Moving expenses include the cost of taking down, moving, and setting up the mobile home in a new location.

(4) The Florida Mobile Home Relocation Corporation must approve payment within 45 days after receipt of the information set forth in subsection (3), or payment is deemed approved. A copy of the approval must be forwarded to the park owner with an invoice for payment. Upon approval, the corporation shall issue a voucher in the amount of the contract price for relocating the mobile home. The moving contractor may redeem the voucher from the corporation following completion of the relocation and upon approval of the relocation by the mobile home owner for up to 2 years after the date of issuance.

(7) In lieu of collecting payment from the Florida Mobile Home Relocation Corporation as set forth in subsection (1), a mobile home owner may abandon the mobile home in the mobile home park and collect $3,000 ~~$1,375~~ for a single section and $5,000 ~~$2,750~~ for a multisection from the corporation as long as the mobile home owner delivers to the park owner the current title to the mobile home duly endorsed by the owner of record and valid releases of all liens shown on the title. If a mobile home owner chooses this option, the park owner must ~~shall~~ make payment to the corporation of $1,375 for a single section and $2,750 for a multisection ~~in an amount equal to the amount the mobile home owner is entitled to under this subsection~~. The mobile home owner's application for funds under this subsection requires ~~shall require~~ the submission of a document signed by the park owner stating that the home has been abandoned under this subsection and that the park owner agrees to make payment to the corporation in the amount provided to the home owner

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under this subsection. However, in the event that the required documents are not submitted with the application, the corporation may consider the facts and circumstances surrounding the abandonment of the home to determine whether the mobile home owner is entitled to payment pursuant to this subsection. The mobile home owner is not entitled to any compensation under this subsection if there is a pending eviction action for nonpayment of lot rental amount pursuant to s. 723.061(1)(a) which was filed against him or her prior to the mailing date of the notice of change in the use of the mobile home park given pursuant to s. 723.061(1)(d).

Section 7. The division shall adopt rules to implement and administer this act.

Section 8. This act shall take effect July 1, 2024.

================ 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 mobile homes; amending s. 720.037, F.S.; requiring that a petition for mediation be filed with the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation to determine the adequacy and conformance of the homeowners' petition to initiate mediation; requiring mobile home owners to provide specified documents to the park owner in a specified manner; authorizing the park owner and mobile home

owners, by mutual agreement, to select a mediator pursuant to specified provisions; requiring the division to dismiss a petition for mediation under certain circumstances; authorizing the park owner to file objections to the petition for mediation within a specified timeframe; requiring the division to assign a mediator in certain circumstances within a specified timeframe; amending s. 723.038, F.S.; authorizing parties to disputes to jointly select a mediator and initiate mediation proceedings; conforming provisions to changes made by the act; making a technical change; amending s. 723.0381, F.S.; prohibiting the initiation of civil action unless the dispute has been submitted to mediation; amending s. 723.051, F.S.; requiring that specified live-in health care aides have ingress and egress to and from a mobile home owner’s site without having to pay charges; providing that the mobile home owner must pay the cost of any necessary background check of such aides; providing that live-in heath care aides have no rights of tenancy in the park; requiring the mobile home owner to notify the park owner or manager of certain information related to such aides; providing that the mobile home owner is responsible for removing such aides if it becomes necessary and must cover related costs; amending s. 723.0611, F.S.; providing the purpose of the Florida Mobile Home Relocation Corporation; amending s. 723.0612, F.S.; revising the amounts a mobile home owner is entitled to receive from the corporation for

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single-section and multisection mobile homes in certain circumstances; revising the timeframe during which a mobile home moving contractor may redeem a voucher for the contract price for relocating a mobile home; revising the amount a mobile home owner may receive when he or she abandons the mobile home inside the mobile home park in lieu of collecting payment from the corporation; revising the amount a park owner must pay the corporation under certain circumstances; making technical changes; requiring the division to adopt rules; providing an effective date.

By Senator Burton

12-00519B-24 20241140__

A bill to be entitled

An act relating to mobile homes; amending s. 723.006, F.S.; requiring the Division of Florida Condominiums, Timeshares, and Mobile Homes to adopt rules to carry out the requirements and provisions of the act; providing a directive to the Division of Law Revision; amending s. 723.037, F.S.; revising the process for initiating mediation during a specified timeframe; amending s. 723.038, F.S.; authorizing the parties to a dispute to agree to select a mediator in accordance with specified requirements; specifying the timeframe within which the division must appoint a qualified mediator in the absence of certain notice from the parties; requiring the division to notify the parties upon appointment of a qualified mediator; authorizing the division or the parties to select the mediator; providing that, upon the filing of written notice with the division, the parties to a dispute may agree to select a mediator and initiate mediation proceedings after a specified meeting; amending s. 723.0381, F.S.; revising the circumstances under which an aggrieved party may file an action in circuit court; amending s. 723.051, F.S.; requiring that invited live-in health care aides or assistants must have access to a mobile home owner's site; prohibiting park owners from assessing additional charges for a live-in aide or assistant's access, with an exception; providing that live-in health care aides or assistants do not have any rights of tenancy in mobile home parks; requiring

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the mobile home owners to notify the park owner or park manager of certain information; requiring the mobile home owner to cover the costs of removing a live-in health care aide or assistant; amending s. 723.0611, F.S.; providing the purpose of the Florida Mobile Home Relocation Corporation; amending s. 723.0612, F.S.; revising the amount of specified payments by the Florida Mobile Home Relocation Corporation to which certain mobile home owners are entitled; providing a timeframe for use of the voucher; making technical changes; reenacting s. 723.078(2)(i), F.S., relating to homeowners' association bylaws, to incorporate the amendment made to s. 723.006, F.S., in a reference thereto; reenacting ss. 723.031(5), 723.035(2), and 723.068, F.S., relating to mobile home lot rental agreements, rules and regulations, and attorney's fees, respectively, to incorporate the amendment made to s. 723.037, F.S., in references thereto; reenacting ss. 723.002(2), 723.003(7)(b), and 723.004(5), F.S., relating to the application of chapter 723, F.S., definitions, and legislative intent, respectively, to incorporate the amendments made to ss. 723.037 and 723.038, F.S., in references thereto; reenacting s. 723.033(7), F.S., relating to unreasonable lot rental agreements, to incorporate the amendments made to ss. 723.037, 723.038, and 723.0381, F.S., in references thereto; providing an effective date.

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

Section 1. Subsection (16) is added to section 723.006, Florida Statutes, to read:

723.006 Powers and duties of division.—In performing its duties, the division has the following powers and duties:

(16) The division shall adopt rules to carry out the provisions and requirements of this act.

Section 2. The Division of Law Revision is directed to replace the phrase "this act" wherever it occurs in subsection (16) of s. 723.006, Florida Statutes, as created by this act, with the assigned chapter number of this act.

Section 3. Paragraphs (a) and (b) of subsection (5) of section 723.037, Florida Statutes, are amended, and subsection (7) of that section is reenacted, to read:

723.037 Lot rental increases; reduction in services or utilities; change in rules and regulations; mediation.—

(5)(a) Within 30 days after the date of the last scheduled meeting described in subsection (4), the homeowners may petition the division to initiate mediation of the dispute pursuant to s. 723.038 if a majority of the affected homeowners have designated, in writing, that any of the following applies:

1. The rental increase is unreasonable;

2. The rental increase has made the lot rental amount unreasonable;

3. The decrease in services or utilities is not accompanied by a corresponding decrease in rent or is otherwise unreasonable; or

4. The change in the rules and regulations is unreasonable.

(b) A park owner, within the same time period, may also petition the division to initiate mediation of the dispute as provided in s. 723.038 or, upon filing a written notice with the division of the park owner's intent to initiate mediation of the dispute, may itself, or through a representative, enter into an agreement with the mobile home owners to select a mediator pursuant to s. 723.038(2) and (4).

The purpose of this subsection is to encourage discussion and evaluation by the parties of the comparable mobile home parks in the competitive market area. The requirements of this subsection are not intended to be enforced by civil or administrative action. Rather, the meetings and discussions are intended to be in the nature of settlement discussions prior to the parties proceeding to litigation of any dispute.

(7) The term "parties," for purposes of mediation under this section and s. 723.038, means a park owner and a homeowners' committee selected pursuant to this section.

Section 4. Subsections (1), (2), (4), and (6) of section 723.038, Florida Statutes, are amended to read:

723.038 Dispute settlement; mediation.—

(1) Either party may petition the division to appoint a mediator and initiate mediation proceedings or, upon filing a written notice with the division, the parties may immediately agree to select a mediator and initiate mediation proceedings pursuant to subsections (2) and (4).

(2) Within 20 days after receipt of a petition, the division ~~upon petition~~ shall appoint a qualified mediator to conduct mediation proceedings and notify the parties, unless the

parties timely notify the division in writing that they have selected a mediator. A person appointed by the division or selected by the parties must ~~shall~~ be a qualified mediator from a list of circuit court mediators in each judicial circuit who has met training and educational requirements established by the Supreme Court. If such a mediator is ~~mediators are~~ not available, the division or the parties may select a mediator from the list maintained by the Florida Growth Management Conflict Resolution Consortium. The division shall adopt ~~promulgate~~ rules of procedure to govern such proceedings in accordance with the rules of practice and procedure adopted by the Supreme Court. The division shall also establish~~,~~ by rule~~,~~ the fee to be charged by a mediator, which may ~~shall~~ not exceed the fee authorized by the circuit court.

(4) After the last scheduled meeting held under s. 723.037(4), and upon filing a written notice with the division, the parties to a dispute may immediately agree to select a mediator and initiate mediation proceedings pursuant to this section ~~Upon receiving a petition to mediate a dispute, the division shall, within 20 days, notify the parties that a mediator has been appointed by the division~~. The parties may accept the mediator appointed by the division or, within 30 days, may select a mediator to mediate the dispute pursuant to subsection (2). The parties shall each pay a $250 filing fee to the mediator appointed by the division or selected by the parties, within 30 days after the division notifies the parties of the appointment of the mediator. The $250 filing fee shall be used by the mediator to defray the hourly rate charged for mediation of the dispute. Any portion of the filing fee not used

shall be refunded to the parties.

(6) A ~~No~~ resolution arising from a mediation proceeding as provided for in s. 723.037 or this section may not ~~shall~~ be deemed final agency action. ~~Any party,~~ However, any party may initiate an action in the circuit court to enforce a resolution or agreement arising from a mediation proceeding which has been reduced to writing. The court shall consider such resolution or agreement to be a contract for the purpose of providing a remedy to the complaining party.

Section 5. Subsection (1) of section 723.0381, Florida Statutes, is amended to read:

723.0381 Civil actions; arbitration.—

(1) If an aggrieved party serves a request for mediation and the responding party refuses or fails to participate in mediation or, if ~~After~~ mediation of a dispute pursuant to s. 723.038 has failed to provide a resolution of the dispute, either party may file an action in the circuit court after a majority of the affected mobile home owners have agreed in writing to file an action.

Section 6. Subsection (1) of section 723.051, Florida Statutes, is amended to read:

723.051 Invitees; rights and obligations.—

(1) An invitee of a mobile home owner, or a live-in health care aide or assistant as provided for in the Fair Housing Act, must ~~shall~~ have ingress and egress to and from the mobile home owner's site without the mobile home owner, ~~or~~ invitee, or live-in health care aide or assistant being required to pay additional rent, a fee, or any charge whatsoever, except that the mobile home owner must pay the cost of a background check

for the live-in health care aide or assistant if one is necessary. Any mobile home park rule or regulation providing for fees or charges contrary to the terms of this section is ~~null and~~ void. A live-in health care aide or assistant does not have any rights of tenancy in the park, and the mobile home owner must notify the park owner or park manager of the name of the live-in health care aide or assistant, if that becomes necessary, and cover any costs associated with the removal of a live-in health care aide or assistant.

Section 7. Paragraph (a) of subsection (1) and paragraph (a) of subsection (3) of section 723.0611, Florida Statutes, are amended, and paragraph (b) of subsection (4) of that section is reenacted, to read:

723.0611 Florida Mobile Home Relocation Corporation.—

(1)(a) There is created the Florida Mobile Home Relocation Corporation to address voluntary closures of mobile home parks due to a change in the use of the land. The corporation shall be administered by a board of directors made up of six members, three of whom shall be appointed by the Secretary of Business and Professional Regulation from a list of nominees submitted by the largest nonprofit association representing mobile home owners in this state, and three of whom shall be appointed by the Secretary of Business and Professional Regulation from a list of nominees submitted by the largest nonprofit association representing the manufactured housing industry in this state. All members of the board of directors, including the chair, shall be appointed to serve for staggered 3-year terms.

(3) The board of directors shall:

(a) Adopt a plan of operation and articles, bylaws, and

operating rules pursuant to ~~the provisions of~~ ss. 120.536 and 120.54 to administer ~~the provisions of~~ this section and ss. 723.06115, 723.06116, and 723.0612.

(4) The corporation may:

(b) Borrow from private finance sources in order to meet the demands of the relocation program established in s. 723.0612.

Section 8. Subsections (1), (4), (7), and (11) of section 723.0612, Florida Statutes, are amended to read:

723.0612 Change in use; relocation expenses; payments by park owner.—

(1) If a mobile home owner is required to move due to a change in use of the land comprising the mobile home park as set forth in s. 723.061(1)(d) and complies with the requirements of this section, the mobile home owner is entitled to payment from the Florida Mobile Home Relocation Corporation of either of the following:

(a) The amount of actual moving expenses of relocating the mobile home to a new location within a 50-mile radius of the vacated park.~~, or~~

(b) The amount of $6,500 ~~$3,000~~ for a single-section mobile home or $11,500 ~~$6,000~~ for a multisection mobile home, whichever is less. Moving expenses include the cost of taking down, moving, and setting up the mobile home in a new location.

(4) The Florida Mobile Home Relocation Corporation must approve payment within 45 days after receipt of the information set forth in subsection (3), or payment is deemed approved. A copy of the approval must be forwarded to the park owner with an invoice for payment. Upon approval, the corporation shall issue

a voucher in the amount of the contract price for relocating the mobile home. The moving contractor may redeem the voucher from the corporation following completion of the relocation and upon approval of the relocation by the mobile home owner; however, the voucher must be redeemed within 2 years after the date of issuance.

(7) In lieu of collecting payment from the Florida Mobile Home Relocation Corporation as set forth in subsection (1), a mobile home owner may abandon the mobile home in the mobile home park and collect $5,000 ~~$1,375~~ for a single section and $7,000 ~~$2,750~~ for a multisection from the corporation as long as the mobile home owner delivers to the park owner the current title to the mobile home duly endorsed by the owner of record and valid releases of all liens shown on the title. If a mobile home owner chooses to abandon the mobile home as provided in this subsection ~~this option~~, the park owner must ~~shall~~ make payment to the corporation of $1,375 for each single section and $2,750 for each multisection abandoned ~~in an amount equal to the amount the mobile home owner is entitled to under this subsection~~. The mobile home owner's application for funds under this subsection must ~~shall~~ require the submission of a document signed by the park owner stating that the home has been abandoned under this subsection and that the park owner agrees to make payment to the corporation in the amount provided to the home owner under this subsection. However, in the event that the required documents are not submitted with the application, the corporation may consider the facts and circumstances surrounding the abandonment of the home to determine whether the mobile home owner is entitled to payment pursuant to this subsection. The mobile home

owner is not entitled to any compensation under this subsection if there is a pending eviction action for nonpayment of lot rental amount pursuant to s. 723.061(1)(a) which was filed against him or her prior to the mailing date of the notice of change in the use of the mobile home park given pursuant to s. 723.061(1)(d).

(11) In an action to enforce ~~the provisions of~~ this section and ss. 723.0611, 723.06115, and 723.06116, the prevailing party is entitled to reasonable attorney ~~attorney's~~ fees and costs.

Section 9. For the purpose of incorporating the amendment made by this act to section 723.006, Florida Statutes, in a reference thereto, paragraph (i) of subsection (2) of section 723.078, Florida Statutes, is reenacted to read:

723.078 Bylaws of homeowners' associations.—

(2) The bylaws shall provide and, if they do not, shall be deemed to include, the following provisions:

(i) *Recall of board members.*—Any member of the board of directors may be recalled and removed from office with or without cause by the vote of or agreement in writing by a majority of all members. A special meeting of the members to recall a member or members of the board of directors may be called by 10 percent of the members giving notice of the meeting as required for a meeting of members, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for this purpose.

1. If the recall is approved by a majority of all members by a vote at a meeting, the recall is effective as provided in this paragraph. The board shall duly notice and hold a board

meeting within 5 full business days after the adjournment of the member meeting to recall one or more board members. At the meeting, the board shall either certify the recall, in which case such member or members shall be recalled effective immediately and shall turn over to the board within 5 full business days any and all records and property of the association in their possession, or shall proceed under subparagraph 3.

2. If the proposed recall is by an agreement in writing by a majority of all members, the agreement in writing or a copy thereof shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure. The board of directors shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing. At the meeting, the board shall either certify the written agreement to recall members of the board, in which case such members shall be recalled effective immediately and shall turn over to the board, within 5 full business days, any and all records and property of the association in their possession, or shall proceed as described in subparagraph 3.

3. If the board determines not to certify the written agreement to recall members of the board, or does not certify the recall by a vote at a meeting, the board shall, within 5 full business days after the board meeting, file with the division a petition for binding arbitration pursuant to the procedures of s. 723.1255. For purposes of this paragraph, the members who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for

arbitration. If the arbitrator certifies the recall of a member of the board, the recall shall be effective upon mailing of the final order of arbitration to the association. If the association fails to comply with the order of the arbitrator, the division may take action under s. 723.006. A member so recalled shall deliver to the board any and all records and property of the association in the member's possession within 5 full business days after the effective date of the recall.

4. If the board fails to duly notice and hold a board meeting within 5 full business days after service of an agreement in writing or within 5 full business days after the adjournment of the members' recall meeting, the recall shall be deemed effective and the board members so recalled shall immediately turn over to the board all records and property of the association.

5. If the board fails to duly notice and hold the required meeting or fails to file the required petition, the member's representative may file a petition pursuant to s. 723.1255 challenging the board's failure to act. The petition must be filed within 60 days after expiration of the applicable 5-full-business-day period. The review of a petition under this subparagraph is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

6. If a vacancy occurs on the board as a result of a recall and less than a majority of the board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors, notwithstanding any other provision of this chapter. If vacancies occur on the board as a result of a

recall and a majority or more of the board members are removed, the vacancies shall be filled in accordance with procedural rules to be adopted by the division, which rules need not be consistent with this chapter. The rules must provide procedures governing the conduct of the recall election as well as the operation of the association during the period after a recall but before the recall election.

7. A board member who has been recalled may file a petition pursuant to s. 723.1255 challenging the validity of the recall. The petition must be filed within 60 days after the recall is deemed certified. The association and the member's representative shall be named as the respondents.

8. The division may not accept for filing a recall petition, whether or not filed pursuant to this subsection, and regardless of whether the recall was certified, when there are 60 or fewer days until the scheduled reelection of the board member sought to be recalled or when 60 or fewer days have not elapsed since the election of the board member sought to be recalled.

Section 10. For the purpose of incorporating the amendment made by this act to section 723.037, Florida Statutes, in a reference thereto, subsection (5) of section 723.031, Florida Statutes, is reenacted to read:

723.031 Mobile home lot rental agreements.—

(5) The rental agreement must contain the lot rental amount and services included. An increase in lot rental amount upon expiration of the term of the lot rental agreement must be in accordance with ss. 723.033 and 723.037 or s. 723.059(4), whichever is applicable; provided that, pursuant to s.

723.059(4), the amount of the lot rental increase is disclosed and agreed to by the purchaser, in writing. An increase in lot rental amount shall not be arbitrary or discriminatory between similarly situated tenants in the park. A lot rental amount may not be increased during the term of the lot rental agreement, except:

(a) When the manner of the increase is disclosed in a lot rental agreement with a term exceeding 12 months and which provides for such increases not more frequently than annually.

(b) For pass-through charges as defined in s. 723.003.

(c) That a charge may not be collected which results in payment of money for sums previously collected as part of the lot rental amount. The provisions hereof notwithstanding, the mobile home park owner may pass on, at any time during the term of the lot rental agreement, ad valorem property taxes, non-ad valorem assessments, and utility charges, or increases of either, provided that the ad valorem property taxes, non-ad valorem assessments, and utility charges are not otherwise being collected in the remainder of the lot rental amount and provided further that the passing on of such ad valorem taxes, non-ad valorem assessments, or utility charges, or increases of either, was disclosed prior to tenancy, was being passed on as a matter of custom between the mobile home park owner and the mobile home owner, or such passing on was authorized by law. A park owner is deemed to have disclosed the passing on of ad valorem property taxes and non-ad valorem assessments if ad valorem property taxes or non-ad valorem assessments were disclosed as a separate charge or a factor for increasing the lot rental amount in the prospectus or rental agreement. Such ad valorem taxes, non-ad

valorem assessments, and utility charges shall be a part of the lot rental amount as defined by this chapter. The term "non-ad valorem assessments" has the same meaning as provided in s. 197.3632(1)(d). Other provisions of this chapter notwithstanding, pass-on charges may be passed on only within 1 year of the date a mobile home park owner remits payment of the charge. A mobile home park owner is prohibited from passing on any fine, interest, fee, or increase in a charge resulting from a park owner's payment of the charge after the date such charges become delinquent. A mobile home park owner is prohibited from charging or collecting from the mobile home owners any sum for ad valorem taxes or non-ad valorem tax charges in an amount in excess of the sums remitted by the park owner to the tax collector. Nothing herein shall prohibit a park owner and a homeowner from mutually agreeing to an alternative manner of payment to the park owner of the charges.

(d) If a notice of increase in lot rental amount is not given 90 days before the renewal date of the rental agreement, the rental agreement must remain under the same terms until a 90-day notice of increase in lot rental amount is given. The notice may provide for a rental term shorter than 1 year in order to maintain the same renewal date.

Section 11. For the purpose of incorporating the amendment made by this act to section 723.037, Florida Statutes, in a reference thereto, subsection (2) of section 723.035, Florida Statutes, is reenacted to read:

723.035 Rules and regulations.—

(2) No rule or regulation shall provide for payment of any fee, fine, assessment, or charge, except as otherwise provided

in the prospectus or offering circular filed under s. 723.012, if one is required to be provided, and until after the park owner has complied with the procedure set forth in s. 723.037.

Section 12. For the purpose of incorporating the amendment made by this act to section 723.037, Florida Statutes, in a reference thereto, section 723.068, Florida Statutes, is reenacted to read:

723.068 Attorney's fees.—Except as provided in s. 723.037, in any proceeding between private parties to enforce provisions of this chapter, the prevailing party is entitled to a reasonable attorney's fee.

Section 13. For the purpose of incorporating the amendments made by this act to sections 723.037 and 723.038, Florida Statutes, in references thereto, subsection (2) of section 723.002, Florida Statutes, is reenacted to read:

723.002 Application of chapter.—

(2) The provisions of ss. 723.035, 723.037, 723.038, 723.054, 723.055, 723.056, 723.058, and 723.068 are applicable to mobile home subdivision developers and the owners of lots in mobile home subdivisions.

Section 14. For the purpose of incorporating the amendments made by this act to section 723.037 and 723.038, Florida Statutes, in references thereto, paragraph (b) of subsection (7) of section 723.003, Florida Statutes, is reenacted to read:

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

(7)

(b) For purposes of mediation under ss. 723.037 and 723.038, the term "parties" means a park owner as defined in subsection (13) and a homeowners' committee selected pursuant to

s. 723.037.

Section 15. For the purpose of incorporating the amendments made by this act to sections 723.037 and 723.038, Florida Statutes, in references thereto, subsection (5) of section 723.004, Florida Statutes, is reenacted to read:

723.004 Legislative intent; preemption of subject matter.—

(5) Nothing in this chapter shall be construed to prevent the enforcement of a right or duty under this section, s. 723.022, s. 723.023, s. 723.031, s. 723.032, s. 723.033, s. 723.035, s. 723.037, s. 723.038, s. 723.061, s. 723.0615, s. 723.062, s. 723.063, or s. 723.081 by civil action after the party has exhausted its administrative remedies, if any.

Section 16. For the purpose of incorporating the amendments made by this act to sections 723.037, 723.038, and 723.0381, Florida Statutes, in references thereto, subsection (7) of section 723.033, Florida Statutes, is reenacted to read:

723.033 Unreasonable lot rental agreements; increases, changes.—

(7) An arbitrator or mediator under ss. 723.037, 723.038, and 723.0381 shall employ the same standards as set forth in this section.

Section 17. This act shall take effect July 1, 2024.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Health Policy, *Chair*
Judiciary, *Vice Chair*
Appropriations Committee on Health and Human Services
Banking and Insurance
Fiscal Policy
Rules

JOINT COMMITTEE:
Joint Administrative Procedures Committee

SENATOR COLLEEN BURTON
12th District

January 10, 2024

The Honorable Joe Gruters
Committee on Regulated Industries
525 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Chair Gruters,

I respectfully request SB 1140: Mobile Homes be placed on the Committee on Regulated Industries agenda at your earliest convenience.

Thank you for your consideration.

Regards,

Colleen Burton
State Senator, District 12

CC: Booter Imhof, Staff Director
Susan Datres, Administrative Assistant

REPLY TO:
❒ 100 South Kentucky Avenue, Suite 260, Lakeland, Florida 33801 (863) 413-1529
❒ 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5012

Senate's Website: *www.flsenate.gov*

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 1090
INTRODUCER:	Senator Martin
SUBJECT:	Unauthorized Sale of Alcoholic Beverages
DATE:	January 26, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Pre-meeting**
2.			CJ	
3.			RC	

I. Summary:

SB 1090 increases the criminal penalties for the unlicensed or unlawful sale of alcoholic beverages under s. 562.12, F.S., which prohibits the sale of alcoholic beverages without a license or in a manner not permitted by the license. The bill increases the penalty for a violation of this provision to a felony of the third degree and a fine of not less than $5,000 and not more than $10,000. The fine provided in the bill for a violation of s. 562.12(1), F.S., is greater than the standard fine for a felony of the third degree, which is a fine not to exceed $5,000. A felony of the third degree is also punishable by a term of imprisonment not to exceed five years

The bill provides that any person who commits a second or subsequent violation of s. 562.12(1), F.S., commits a felony of the second degree and must pay a fine of not less than $15,000 and not more than $20,000. The fine provided in the bill for a second or subsequent violation of s. 562.12(1), F.S., is greater than the standard fine for a felony of the second degree, which is a fine not to exceed $10,000. A felony of the second degree is punishable by a term of imprisonment not exceeding 15 years.

The bill provides additional grounds for local nuisance abatement boards to declare a place or premises a public nuisance. Under the bill, a place or premises may be declared a public nuisance, if used on more than two occasions within a 6-month period, as the site of a violation of s. 562.12, F.S., relating to the unlicensed or unlawful sale of alcoholic beverages. Local nuisance abatement boards are authorized to prohibit specified nuisances, including ordering the closure of any place or premises that has been used as the site of certain specified nuisances, such as being the site of repeated controlled substances criminal violations.

The bill takes effect July 1, 2024.

II. Present Situation:

Alcoholic Beverages

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law, which regulates the manufacture, distribution, and sale of wine, beer, and liquor. The division is also responsible for the administration and enforcement of tobacco products under ch. 569, F.S.

Section 562.12(1), F.S., prohibits the sale of alcoholic beverages without a license issued by the division. An alcoholic beverage licensee may only sell alcoholic beverages in the manner permitted by her or his license. In addition, a licensee or other person who keeps or possesses alcoholic beverages not permitted to be sold by her or his license, or not permitted to be sold without a license, with intent to sell or dispose of same unlawfully, or who keeps and maintains a place where alcoholic beverages are sold unlawfully, is guilty of a misdemeanor of the second degree.[1]

Section 562.12(2),F.S., provides that it is unlawful for any person to operate as an exporter[2] of alcoholic beverages within the state without registering as an exporter pursuant to s. 561.17, F.S. A person who violates this prohibition is guilty of a misdemeanor of the second degree.[3]

Section 561.01(4)(a), F.S., defines the term "alcoholic beverages" to mean distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume.

Nuisance Abatement

Section 893.138, F.S., allows local governments to establish a nuisance abatement board to hear public nuisance complaints. These boards may take various administrative actions to abate a violence-related, drug-related, prostitution-related, or stolen property-related public nuisance and criminal gang activity, including a closure of the place or premises.

Under s. 893.138(5), F.S., a local administrative board created to address public nuisances may order the owner of such place or premises to adopt appropriate procedures to abate a nuisance, the immediate prohibiting of the nuisance, the closure or operation of the place or premises, and administrative fines and penalties.

Section 893.138(2), F.S., lists criminal activities which, if committed at any place or premises during a specified period of time, may be declared to be a public nuisance, and such nuisance abated by order of a nuisance abatement board. Those properties subject to nuisance abatement by the board include any place or premises that has been used:

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[1] Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S., provides that a misdemeanor of the second degree is punishable by a fine not to exceed $500.

[2] Section 561.01(16), F.S., defines an "exporter" as "any person that sells alcoholic beverages to persons for use outside the state and includes a ship's chandler and a duty-free shop."

[3] Section 561.17(4), F.S., requires persons to register with the division before engaging in the business of exporting alcoholic beverages.

- On more than two occasions within a 6-month period as the site of a violation of s. 796.07, F.S., prohibiting prostitution;
- On more than two occasions within a 6-month period as a site for the unlawful sale, delivery, manufacture, or cultivation of a controlled substance;
- On one occasion as the site of a felony involving the unlawful possession of a controlled substance and that has been previously used as the site for the unlawful sale, delivery, manufacture, or cultivation of a controlled substance;
- By a criminal street gang for a pattern of criminal street gang activity, as defined in s. 874.03, F.S.;
- On more than two occasions within a 6-month period for a violation of s. 812.019, F.S., relating to stolen property;
- On two or more occasions within a 6-month period, as the site of a violation of ch. 499, F.S., relating to the Florida Drug and Cosmetic Act; or
- On more than two occasions within a 6-month period, as the site of a violation of any combination of murder and other specified aggravated batteries.

Local governments may adopt an ordinance to:[4]

- Impose additional penalties for public nuisances, including fines not to exceed $250 per day;
- Require the payment of reasonable costs, including reasonable attorney fees associated with investigations of and hearings on public nuisances;
- Provide continuing jurisdiction for a period of one year over any place or premises that has been or is declared to be a public nuisance;
- Impose penalties, including fines not to exceed $500 per day for recurring public nuisances;
- Require the recording of orders on public nuisances so that notice must be given to subsequent purchasers, successors in interest, or assigns of the real property that is the subject of the order;
- Provide that recorded orders on public nuisances may become liens against the real property that is the subject of the order; and
- Provide for the foreclosure of property subject to a lien and the recovery of all costs, including reasonable attorney fees, associated with the recording of orders and foreclosure. However a lien may not be created to foreclose on real property which is a homestead under s. 4, Art. X of the State Constitution.

The nuisance abatement board may also bring a complaint under s. 60.05, F.S., seeking temporary and permanent injunctive relief against any nuisance described in s. 893.138(2), F.S.

Section 60.05, F.S., also provides a process for an Attorney General, state attorney, city attorney, county attorney, sheriff, or any citizen of the county to sue in the name of the state on his or her relation to enjoin the nuisance, the person or persons maintaining it, and the owner or agent of the building or ground on which the nuisance exists. For other types of public nuisances such as the disposal of dead animals, the abandonment of refrigerators and other appliances, and abandoned or derelict vessels, ch. 823, F.S., provides penalties for the maintenance of those nuisances.

[4] Section 893.138(11), F.S.

III. Effect of Proposed Changes:

Section 562.12(1), F.S., is amended by the bill to increase the criminal penalties for a violation of this provision, to a felony of the third degree and a fine of not less than $5,000 and not more than $10,000. The fine provided in the bill for a violation of s. 562.12(1), F.S., is greater than the standard fine for a felony of the third degree, which is a fine not to exceed $5,000.[5]

The bill provides that any person who commits a second or subsequent violation of s. 562.12(1), F.S., commits a felony of the second degree and must pay a fine of not less than $15,000 and not more than $20,000. The fine provided in the bill for a second or subsequent violation of s. 562.12(1), F.S., is greater than the standard fine for a felony of the second degree, which is a fine not to exceed $10,000.[6]

The bill amends s. 893.138(2), F.S., to provide that a place or premises may be declared a public nuisance, if used on more than two occasions within a 6-month period, as the site of a violation of s. 562.12, F.S., relating to the unlicensed or unlawful sale of alcoholic beverages.

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.

[5] Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed $5,000.
[6] Section 775.082, F.S., provides that a felony of the second degree is punishable by a term of imprisonment not exceeding 15 years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not exceeding $10,000.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Representatives from the Orange County Sheriff indicated that many after-hours clubs and hookah lounges serve alcoholic beverages without a liquor license and that the current penalty of a second degree misdemeanor has had little deterrent effect.[7] Persons consume alcohol all night long and shootings and other crimes have been committed at these establishments.[8].

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 562.12 and 893.138.

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.

[7] *See* Orange County Sheriff calls for legislative changes to combat illegal alcohol sales, *Orlando Spectrum News13*, (Oct. 31, 2023), available at: https://mynews13.com/fl/orlando/news/2023/10/31/orange-county-sheriff-calls-for-legislative-changes-to-combat-illegal-alcohol-sales (last visited January 24, 2024).
[8] *Id.*

By Senator Martin

33-01407-24 20241090__

A bill to be entitled

An act relating to the unauthorized sale of alcoholic beverages; amending s. 562.12, F.S.; revising the punishment for the unlawful sale of alcoholic beverages; amending s. 893.138, F.S.; revising the activities that may be declared a public nuisance under local administrative actions to abate certain activities to include persons who commit the unlicensed or unlawful sale of alcoholic beverages more than a specified number of times within a specified period; providing an effective date.

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

Section 1. Present subsections (2), (3), and (4) of section 562.12, Florida Statutes, are redesignated as subsections (3), (4), and (5), respectively, a new subsection (2) is added to that section, and subsection (1) of that section is amended, to read:

562.12 Beverages sold with improper license, or without license or registration, or held with intent to sell prohibited.—

(1) It is unlawful for any person to sell alcoholic beverages without a license, and it is unlawful for any licensee to sell alcoholic beverages except as permitted by her or his license, or to sell such beverages in any manner except that permitted by her or his license; and any licensee or other person who keeps or possesses alcoholic beverages not permitted to be sold by her or his license, or not permitted to be sold

33-01407-24 20241090__

without a license, with intent to sell or dispose of same unlawfully, or who keeps and maintains a place where alcoholic beverages are sold unlawfully, commits ~~is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and must pay a fine of not less than $5,000 and not more than $10,000 ~~misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083~~.

(2) Any person who commits a second or subsequent violation of subsection (1) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and must pay a fine of not less than $15,000 and not more than $20,000.

Section 2. Subsection (2) of section 893.138, Florida Statutes, is amended to read:

893.138 Local administrative action to abate certain activities declared public nuisances.—

(2) Any place or premises that has been used:

(a) On more than two occasions within a 6-month period, as the site of a violation of s. 796.07;

(b) On more than two occasions within a 6-month period, as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;

(c) On one occasion as the site of the unlawful possession of a controlled substance, where such possession constitutes a felony and that has been previously used on more than one occasion as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;

(d) By a criminal gang for the purpose of conducting criminal gang activity as defined by s. 874.03;

(e) On more than two occasions within a 6-month period, as the site of a violation of s. 812.019, relating to dealing in stolen property;

(f) On two or more occasions within a 6-month period, as the site of a violation of chapter 499; ~~or~~

(g) On more than two occasions within a 6-month period, as the site of a violation of any combination of the following:

1. Section 782.04, relating to murder;

2. Section 782.051, relating to attempted felony murder;

3. Section 784.045(1)(a)2., relating to aggravated battery with a deadly weapon; ~~or~~

4. Section 784.021(1)(a), relating to aggravated assault with a deadly weapon without intent to kill; or~~,~~

(h) On more than two occasions within a 6-month period, as the site of a violation of s. 562.12, relating to the unlicensed or unlawful sale of alcoholic beverages,

may be declared to be a public nuisance, and such nuisance may be abated pursuant to the procedures provided in this section.

Section 3. This act shall take effect July 1, 2024.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 1600
INTRODUCER:	Senator Collins
SUBJECT:	Interstate Mobility
DATE:	January 26, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	**Favorable**
2.	Kraemer	Imhof	RI	**Pre-meeting**
3.			FP	

I. Summary:

SB 1600 creates s. 455.2135, F.S., to require the regulatory boards in the Department of Professional Regulation (DBPR), or the DBPR itself when there is no regulatory board for a profession, and when endorsement based on years of licensure is not otherwise provided by law in the practice act for a profession, to allow licensure by endorsement for any individual who applies for licensure by endorsement if the applicant meets certain specified criteria. The bill does not apply to harbor pilots.

SB 1600 also creates s. 456.0145, F.S., which requires the Department of Health (DOH) to issue a license or certificate by endorsement within 15 days of receipt of all required documents for each of the 59 health care professions[1] regulated by the DOH when the applicant meets specific criteria. The DOH boards, or the DOH when there is no board, may continue processing applications for licensure by endorsement as authorized under the Florida Statutes (2023) until rules adopted by the boards, or the DOH, to implement the changes made by SB 1600 take effect or until six months after the bill's effective date, whichever occurs first.

The bill provides an effective date of July 1, 2024.

[1] Office of Program Analysis and Government Accountability, Department of Health, Medical Quality Assurance, *Who Regulates practitioners?* available at https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=5041#:~:text=Currently%2C%20the%20program%2C%20in%20conjunction%20with%2022%20boards,pharmacies%2C%20and%20resident%20and%20nonresident%20sterile%20compounding%20pharmacies.%29 (last visited Jan. 24, 2024).

II. Present Situation:

Department of Business and Professional Regulation

Chapter 455, F.S., applies to the regulation of professions by the DBPR.[2] The chapter also provides the procedural and administrative framework for its divisions and the professional boards within the DBPR.[3] In this context, the term "profession" means any activity, occupation, profession, or vocation regulated by the DBPR in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.[4] When a person is authorized to engage in a pertinent profession or occupation in Florida, the DBPR issues a "permit, registration, certificate, or license" to the licensee.

Organizational Structure 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;
- Technology; and
- Service Operations.

Permits, Registrations, Certificates, and Licenses Issued by the DBPR

The following boards and programs are established within the Division of Professions:

- Board of Architecture and Interior Design;[5]
- Florida Board of Auctioneers;[6]
- Barbers' Board;[7]
- Florida Building Code Administrators and Inspectors Board;[8]
- Board of Construction Industry Licensing;[9]
- Board of Cosmetology;[10]

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[2] Section 455.01(6), F.S.
[3] *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.
[4] Section 455.01(6), F.S.
[5] *See* part I, ch. 481, F.S.
[6] *See* part VI, ch. 468, F.S.
[7] *See* ch. 476, F.S.
[8] *See* part XII, ch. 468, F.S.
[9] *See* part I, ch. 489, F.S.
[10] See ch. 477, F.S.

- Electrical Contractors' Licensing Board;[11]
- Board of Employee Leasing Companies;[12]
- Board of Landscape Architecture;[13]
- Board of Pilot Commissioners;[14]
- Florida Board of Professional Engineers;[15]
- Board of Professional Geologists;[16]
- Board of Veterinary Medicine;[17]
- Home inspection services licensing program;[18] and
- Mold-related services licensing program.[19]

The following board and commission are established within the Division of Real Estate:
- Florida Real Estate Appraisal Board; [20]and
- Florida Real Estate Commission.[21]

The board of Accountancy is established within the Division of Certified Public Accounting.[22]

The following additional professions are licensed and regulated within the DBPR, in various other divisions, for a total of 22[23] regulated professions throughout the DBPR:[24]
- Asbestos contractors and consultants;
- Athletic agent;[25]
- Community association managers;[26] and
- Talent agencies.[27]

[11] *See* part II, ch. 489, F.S.
[12] *See* Part XI, ch. 468, F.S.
[13] *See* Part II, ch. 481, F.S.
[14] *See* ch. 310, F.S.
[15] *See* ch. 471, F.S.
[16] *See c*h. 492, F.S.
[17] See ch. 474, F.S.
[18] *See* part XV, ch. 468, F.S.
[19] *See* part XVI, ch. 468, F.S.
[20] *See* part II, ch. 475, F.S.
[21] *See* part I, ch. 475. F.S.
[22] *See* ch. 473, F.S.
[23] *See* Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2022-2023*, at pp. 18 and 87, available at http://www.myfloridalicense.com/DBPR/os/documents/Division%20Annual%20Report%20FY%2022-23.pdf (last visited Jan. 23, 2024).
[24] The Florida Athletic Commission is assigned to the DBPR for administrative and fiscal accountability purposes only; and The DBPR also administers the Child Labor Law and Farm Labor Contractor Registration Law. *See* s. 548.003(1), F.S., and parts I and III, ch. 450, F.S., respectively.
[25] *See* part IX, ch., 468 F.S.
[26] *See* s. 468.432, F.S.
[27] *See* part VII, ch. 468, F.S.

DBPR Licensure by Endorsement

Of the 22 professions that fall under ch. 455, F.S., sixteen of the professions currently have one or more licensure by endorsement provisions in their practice act. The following six professions do not have provisions for licensure by endorsement:

- Harbor pilots;
- Talent agents;
- Community association managers;
- Athletic agents;
- Employee leasing companies; and
- Real estate appraisers.

The following DBPR-regulated professions have endorsement provisions but do not specify the number of years of licensure that are required for endorsement:

- Auctioneers;
- Architecture and interior design;
- Real estate brokers, sales associates, and schools; and
- Cosmetology specialists.

Department of Health

One of the many enumerated missions of the DOH is to regulate health practitioners for the preservation of the health, safety, and welfare of the public.[28] The Division of Medical Quality Assurance (MQA), within the DOH, has general regulatory authority over health care practitioners.[29] The MQA works in conjunction with 22 regulatory boards and four councils to license and regulate 364 health care professions.[30] 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.

Regulation of Health Care Practitioners

The MQA is statutorily responsible for assisting the following boards and professions in the regulation of their health care practitioner members:[31]

- The Board of Acupuncture;[32]
- The Board of Medicine;[33]

[28] Section 20.43, F.S.
[29] 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, dieticians, athletic trainers, orthotists, prosthetists, electrologists, massage therapists, clinical laboratory personnel, medical physicists, genic counselors, dispensers of optical devices or hearing aids, physical therapists, psychologists, social workers, counselors, and psychotherapists, among others.
[30] Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2022-2023*, at pg. 4, available at https://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/annual-reports.html (last visited Jan. 23, 2024).
[31] Section 456.001(4), F.S.
[32] *See* ch. 457, F.S.
[33] *See* ch. 458, F.S.

- The Board of Osteopathic Medicine;[34]
- The Board of Chiropractic Medicine;[35]
- The Board of Podiatric Medicine;[36]
- Naturopathy;[37]
- The Board of Optometry;[38]
- The Board of Nursing;[39]
- Nursing assistants;[40]
- The Board of Pharmacy;[41]
- The Board of Dentistry; [42]
- Midwifery; [43]
- The Board of Speech-Language Pathology and Audiology; [44]
- The Board of Nursing Home Administrators; [45]
- The Board of Occupational Therapy;[46]
- Respiratory therapy, practices under the Board of Respiratory Care;[47]
- Dietetics and nutritionists practice under the Board of Medicine;[48]
- The Board of Athletic Training;[49]
- The Board of Orthotists and Prosthetists;[50]
- Electrolysis practices under the Board of Medicine;[51]
- The Board of Massage Therapy;[52]
- The Board of Clinical Laboratory Personnel;[53]
- Medical physicists;[54]
- Genetic counselors;[55]
- The Board of Opticianry;[56]
- The Board of Hearing Aid Specialists;[57]

[34] See ch. 459, F.S.
[35] See ch. 460, F.S.
[36] *See* ch. 461, F.S.
[37] *See* ch. 462, F.S.
[38] *See* ch. 463, F.S.
[39] *See* part I, ch. 464, F.S.
[40] *See* part II, Ch. 464, F.S.
[41] See ch. 465, F.S.
[42] *See* ch. 466, F.S.
[43] *See* ch. 467, F.S.
[44] *See* part I, ch. 468, F.S.
[45] *See* part II, ch. 468, F.S.
[46] *See* part III, ch. 468, F.S.
[47] *See* part V, ch. 468, F.S.
[48] *See* part X, ch. 468, F.S.
[49] *See* part XIII, ch. 468, F.S.
[50] *See* part XIV, ch. 468, F.S.
[51] *See* ch. 478, F.S.
[52] *See* ch. 480, F.S.
[53] *See* part I, ch. 483, F.S.
[54] *See* part II, ch. 483, F.S.
[55] See part III, ch. 483, F.S.
[56] *See* part I, ch. 484, F.S.
[57] *See* part II, ch. 484, F.S.

- The Board of Physical Therapy;[58]
- The Board of Psychology;[59]
- School psychologists;[60]
- The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling;[61]
- Radiation technologists;[62]
- Emergency medical technicians;[63] and
- Paramedics.[64]

The DOH and the health care practitioner boards have different roles in the regulatory system. Boards establish practice standards by rule, pursuant to specific legislative grants of statutory authority and directives. The DOH receives and investigates complaints about health care practitioners and prosecutes cases for disciplinary action against practitioners. The boards determine the course of action and any disciplinary action to be taken against a practitioner under the applicable practice act.[65] The DOH is then responsible for ensuring that the licensee complies with the terms and penalties imposed by the board. If a case is appealed, the DOH's attorneys defend the final actions of the boards before the appropriate appellate court.

For professions for which there is no board, the DOH determines the action and discipline to be taken against a health care practitioner and issues the final orders. Those professions include the following:

- Emergency medical technicians (EMTs);
- Paramedics;
- Genetic counselors ;
- Radiation technologists;
- Naturopathy; and
- Medical physicists.

The DOH rules and board rules apply to all statutory grounds for discipline against a health care 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.

[58] *See* ch. 486, F.S.
[59] *See* ch. 490, F.S.
[60] *Id*.
[61] *See* ch. 491, F.S.
[62] *See* part III, ch. 468, F.S.
[63] *See* part III, ch. 401, F.S.
[64] *Id*.
[65] Section 456.072(2), F.S.

Licensure of Health Care Practitioners

Licensure by examination is the most common pathway for individuals seeking initial licensure, particularly among health care professionals educated and trained in Florida. The requirements to qualify for licensure by examination are legislatively specified in each profession's respective practice act and vary widely based on the profession. However, licensure by examination has some common elements for most health care professions, and those include the following:

- Completion of an approved or legislatively mandated educational training program;
- Completion of an approved or legislatively mandated licensure or certification examination with a passing score; and
- Submission of a legislatively mandated application, approved by the DOH, fingerprints for a criminal background check, and an application fee.

Licensure by Endorsement of Health Care Professionals

Licensure by endorsement is the most common alternative to licensure by examination in Florida. Licensure by endorsement is an expedited licensure process which allows a health care professional to become licensed in Florida based upon holding a substantially equivalent or similar health care professional license from another state. Currently, 20 health care professionals regulated by the DOH and the boards are legislatively authorize to offer licensure by endorsement. Seventeen are not. See lists below.

Health Care Professions with Licensure by Endorsement	Health Care Professions without Licensure by Endorsement
Acupuncturist	Anesthesiologist Assistant
Allopathic Physician (MD)	Athletic Trainer
Audiologist	Chiropractor
Certified Nursing Assistant (CNA)	Clinical Laboratory Personnel
Mental Health Professions	Dental Hygienist
Dietitian	Dentist
Electrologist	EMT/Paramedic
Licensed Practical Nurse (LPN)	Genetic Counselor
Massage Therapist	Hearing Aid Specialist
Midwifery	Medical Physicist
Nursing Home Administrator	Optometrist
Occupational Therapist	Optician
Pharmacist	Orthotist and Prosthetist
Physical Therapist/Physical Therapy Assist.	Osteopathic Physician (DO)
Physical Therapist Assistant	Physician Assistant
Psychologist/School Psychologist	Podiatrist
Radiation Technician	Registered Pharmacy Technician
Registered Nurse (RN/APRN)	
Respiratory Therapist	
Speech-Language Pathologist	

Even among the health care professions which allow licensure by endorsement, there is no universal set of requirements. Requirements to obtain licensure by endorsement vary widely by profession. For example, the Legislature has mandated in some professions that applicants seeking licensure by endorsement have graduated from a school or college approved by a specific governmental accrediting body, jurisdictional accrediting body, or private accrediting body; submit fingerprints for a background screening;[66] have a certain amount of prior practice experience;[67] have a specific proficiency in English; or pass a statutorily-specified national or regional examination and an examination on Florida laws and rules relevant to the applicant's profession.[68]

Acupuncture Licensure by Endorsement

In s. 457.105(2)(c), F.S., the Legislature authorizes acupuncturists to obtain Florida licensure by endorsement if an applicant has successfully completed a board-approved national certification process and is actively licensed in a state that had examination requirements that were substantially equivalent to, or more stringent than, those of Florida. The Board of Acupuncture enacted Florida Administrative Code Rule 64B1-3.009, specifying that it would certify an applicant for licensure by endorsement under s. 457.105(2), F.S., upon proof of the following:

- An active certification in Oriental Medicine from the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM);
- An age of 21 or older;
- Good moral character;
- The ability to communicate in English;
- Having 60 hours of study in injection therapy, including:
  - History and development of acupuncture injection therapy;
  - Differential diagnosis;
  - Definitions, concepts, and pathophysiology;
  - The nature, function, channels entered, and contraindications of herbal, homeopathic, and nutritional injectables;
  - Diseases amenable to treatment with acupuncture injection therapy and the injectables appropriate to treat them;
  - Identification of appropriate points for treatment, including palpatory diagnosis;
  - A review of anatomy and referral zones;
  - Universal precautions including management of blood borne pathogens and biohazardous waste;
  - Procedures for injections, including preparing the injectables, contraindications and precautions;
  - Ten hours of clinical practice on a patient or patients; and
  - Administration techniques and equipment needed.
- That he or she has successfully complete 15 hours of supervised instruction in universal precautions and 20 hours of supervised instruction in Florida Statutes and Rules, including chs. 456 and 457, F.S., and the acupuncture administrative rules;

[66] Allopathic Physicians, Certified Nursing Assistants, Licensed Practice Nurses, Registered Nurses, and Massage Therapists.
[67] Allopathic Physicians, Mental Health Professionals, Licensed Practical Nurses, Registered Nurses, Nursing Home Administrators, Pharmacists, and Psychologists.
[68] Mental Health Professions, Licensed Practical Nurses, Registered Nurses, Nursing Home Administrators, Pharmacists, Psychologists, and Radiology Technicians.

- That he or she has completed an eight-hour program, or its equivalent, that incorporates the safe and beneficial use of laboratory testing and imaging findings in the practice of acupuncture and oriental medicine;
- That he or she has obtained professional liability insurance;[69] and
- That he or she has paid the fee for licensure by endorsement as established by the board.

Medical Licensure by Endorsement

The DOH must issue an allopathic medical license to an applicant for a license by endorsement, if he or she meets the following requirements set out in s. 458.313, F.S., which includes first meeting the qualifications for licensure set out in s. 458.311(1)(b) -(g), F.S., or s. 458.311(1)(b) -(e),(g) and (3), F.S., pertaining to licensure by examination. Section 458. 311(1)(b) -(g), F.S., for licensure by examination, first requires the applicant to prove he or she:

- Is 21 year of age or older;
- Is of good moral character;
- Has not committed any act or offense in Florida or any other jurisdiction that would constitute the basis for disciplinary action;
- If a medical school graduate after October 1, 1992, that he or she must have completed the equivalent of two academic years of pre-professional, postsecondary education, as determined by rule of the board, which must include, courses in anatomy, biology, and chemistry prior to entering medical school;
- Meets one of the following medical education and post graduate training requirements:[70]
    - Is a graduate of a U.S. allopathic medical school recognized and approved by the U.S. Office of Education (AMG); is competent in English and completed at least one year of approved residency; or
    - Is a graduate of an international allopathic medical school registered with the World Health Organization (WHO) that has been certified by the DOH under s. 458.314, F.S., as having met the standards required to be an accredited medical school in the U.S.; and
        - Has a valid Educational Commission for Foreign Medical Graduates (ECFMG) certificate; and
        - Has completed an approved residency of at least two years in one specialty area; or
    - Is a graduate of an international medical school that has not been certified by the DOH under s. 458.314, F.S., as having met the standards equal to an accredit U.S. medical schools; and
        - Has had his or her medical credentials evaluated by the ECFMG;
        - Holds an active, valid certificate issued by the ECFMG;
        - Has passed the examination utilized by the ECFMG; and
        - Has completed an approved residency or fellowship of at least two years in one specialty area.[71]

[69] *See* s. 456.048, F.S.
[70] Section 458.311(1)(f), F.S.
[71] *See* s. 458.311(1)(f)3.c., F.S. To be acceptable, the fellowship experience and training must count toward regular or subspecialty certification by a board recognized and certified by the American Board of Medical Specialties.

The alternative first requirement for licensure by examination and by endorsement under s. 358.313, F. S., replaces the education and post-graduate training requirements of s. 458.311(1)(f), F.S., with those in s. 458.311(3), F.S., which exempts graduates of foreign medical schools from the need to present a certificate issued by the ECFMG, and from passing an ECFMG examination, if the graduate:

- Has received a bachelor's degree from an accredited U.S. college or university;
- Has studied at a medical school which is recognized by the WHO;
- Has completed all of the formal requirements of the foreign medical school, except the internship or social service requirements;
- Has passed part I of the National Board of Medical Examiners (NBME) examination or the ECFMG examination; and
- Has completed an academic year of supervised clinical training in a hospital affiliated with a medical school approved by the Council on Medical Education of the American Medical Association (CME-AMA) and upon completion has passed part II of the National Board of Medical Examiners examination or the Educational Commission for Foreign Medical Graduates examination equivalent.

Allopathic medical applicants for licensure by endorsement must also submit fingerprints for a criminal background screening and provide evidence of:

- A passing score on the FLEX, USMLE or NBME; and
- An active medical license in another jurisdiction for at least two of the immediately preceding four years; or
- Successful completion of either a board-approved postgraduate training program within two years preceding the filing of an application; or
- Passage of a board-approved clinical competency examination within the year preceding the filing of an application for licensure.

Nursing Licensure by Endorsement - CNA, LPN, RN, ARNP

The DOH must issue an professional (RN) or practical (LPN) nursing license to an applicant for a license by endorsement if he or she meets the following requirements set out in s. 464.009, F.S.:

- Hold a valid license to practice professional or practical nursing in another state or territory of the U.S. obtained by one of the following measures:
  - By completing an approved or accredited nursing education program[72] and passing the State Board Test Pool Examination (SBTPE) or the NCLEX; or
  - By having actively practiced nursing in another state, jurisdiction, or territory of the U.S. for two of the preceding three years without any criminal history or having his or her license acted against by the licensing authority of any jurisdiction.
- Submit a set of fingerprints for a background screening; and
- Not be under investigation in another state, jurisdiction, or territory of the U.S. for an act which would constitute a violation of nurse practice act or ch. 456, F.S.

[72] *See* s 464.008, F.S.

An RN or LPN holding an active multistate license in another state is not required to obtain a license by endorsement to practice in Florida.[73]

The Legislature has also directed the Board of Nursing (BON) to issue certificates to certified nursing assistants (CNAs) by endorsement. Section 464.203, F.S., requires the BON to issue a certificate to practice as a CNA to any person who demonstrates the following:

- A minimum competency to read and write;
- Passage of the required background screening;[74]
- A current CNA certification in another state, U.S. territory, or the District of Columbia;
- Registration on that jurisdiction's CNA registry; and
- The absence of any findings of abuse, neglect, or exploitation by the applicant in that jurisdiction.

An advanced practice registered nurses (APRN) may also obtain licensure by endorsement in Florida by submitting proof of all of the following to the DOH:[75]

- A valid RN license from any U.S. jurisdiction or a multistate RN license;
- A master's degree or post-master's degree certification;
- A national advanced practice certification from an approved nursing specialty board;
- Malpractice insurance or exemption; and
- Fingerprints for back ground screening for initial licensure.

Pharmacist Licensure by Endorsement

Section 465.0075, F.S., requires the DOH to issue a license by endorsement to an applicant who remits an application fee and whom the Board of Pharmacy (BOP) certifies:

- Is 18 years of age or older;[76]
- Has a degree from a school or college of pharmacy accredited by an agency recognized and approved by the U.S. Office of Education ;[77]
- Has submitted proof that he or she has completed a BOP-approved internship program not to exceed 2,080 hours, all of which may be obtained prior to graduation;[78]
- Has obtained a passing score on the National Association of Boards of Pharmacy (NABP) licensure examination or a similar nationally recognized examination, if the board certifies that the applicant has taken the required examination;
- Has submitted evidence of:
    - An active license to practice pharmacy, including practice in community or public health by persons employed by a governmental entity, in another jurisdiction for at least two of the immediately preceding five years, or
    - The completion of a board-approved postgraduate training or clinical competency examination within the year immediately preceding application; and

[73] *See* s. 464.0095, F.S.
[74] *See* s. 400.215, F.S.
[75] *See* s. 464.012, F.S.
[76] Sections 465.0075(1)(a) and 465.007(1)(b), F.S.
[77] *Id.*
[78] Sections 465.0075(1)(a) and 465.007(1)(c), F.S.

- Has obtained a passing score on the pharmacy jurisprudence portions of the licensure examination; and
- Is not under investigation in any jurisdiction for an act or offense that would constitute a violation of the pharmacy practice act or ch. 456, F.S.

An applicant licensed in another state for a period in excess of two years from the date of application for licensure by endorsement must also submit a total of at least 30 hours of BOP approved continuing education (CE) for the two years immediately preceding application.

Section 465.0075, F.S., requires the DOH to issue a non-U.S. pharmacist graduate a license by endorsement who remits an application fee and whom the BOP certifies:

- Is 18 years of age or older;
- Has a BS or BA from a four-year undergraduate pharmacy program from a school or college of pharmacy located outside the U.S.;
- Has demonstrated proficiency in English by passing both the Test of English as a Foreign Language (TOEFL) and the Test of Spoken English (TSE);
- Has passed the Foreign Pharmacy Graduate Equivalency Examination (FPGEE) that is approved by BOP rule;
- Has completed a minimum of 500 hours in a supervised, BOP-approved work activity program within Florida under the supervision of a pharmacist licensed by the DOH;
- Has submitted proof that he or she has completed a BOP-approved internship program not to exceed 2,080 hours, all of which may be obtained prior to graduation;[79]
- Has obtained a passing score on the National Association of Boards of Pharmacy (NABP) licensure examination or a similar nationally recognized examination, if the board certifies that the applicant has taken the required examination;
- Has submitted evidence of:
  - An active license to practice pharmacy, including practice in community or public health by persons employed by a governmental entity, in another jurisdiction for at least two of the immediately preceding five years, or
  - The completion of a board-approved postgraduate training or clinical competency examination within the year immediately preceding application; and
  - Has obtained a passing score on the pharmacy jurisprudence portions of the licensure examination; and
- Is not under investigation in any jurisdiction for an act or offense that would constitute a violation of the pharmacy practice act or ch. 456, F.S.

Midwifery Licensure by Endorsement

Midwifery is the practice of a midwife supervising normal labor and childbirth and the practice of rendering prenatal and postpartum care.[80] Midwives are not physicians or certified nurse midwives but must be 21 years of age and licensed under ch. 467, F.S.[81]

[79] Sections 465.0075(1)(a) and 465.007(1)(c), F.S.
[80] Section 467.003(8), F.S.
[81] Section 467.003, (7), F.S.

Section 467.0125, F.S., requires the DOH to issue a license to a midwife by endorsement to any applicants who demonstrates to the DOH that he or she:

- Holds an active, unencumbered license to practice midwifery in another state, jurisdiction, or territory, provided the licensing requirements of that state, jurisdiction, or territory at the time the license was issued were substantially equivalent to or exceeded those established under the midwifery practice act and rules adopted hereunder;
- Has successfully completed a pre-licensure course conducted by an accredited and approved midwifery program;
- Submits an application for licensure on a DOH-approved form; and
- Pays the application fee.

Speech and Language Pathologist and Audiologist Licensure by Endorsement

Section 468.1185, F.S., requires the DOH to issue a license by endorsement to a speech and language pathologist or audiologist applicant when the Board of Speech and Language Pathology and Audiology certifies that the applicant is qualified after he or she demonstrates:

- One of the following:
  - A valid license or certificate in another state or territory of the U.S. to practice the profession for which the application for licensure is made, if the criteria for issuance of such license were substantially equivalent to or more stringent than the licensure criteria which existed in this state at the time the license was issued; or
  - Holds a valid certificate of clinical competence from the American Speech-Language and Hearing Association; or
  - Is board certified in audiology by the American Board of Audiology; and
- That he or she is not under investigation in any jurisdiction for an act or offense that would constitute a violation of the speech and language pathology and audiology practice act or ch. 456, F.S.

Nursing Home Administrators Licensure by Endorsement

Section 468.1705, F.S., requires the DOH to issue a license by endorsement for a nursing home administrator who applies to the DOH, paid the applicable fee; and

- Meets one of the following requirements:
  - Holds a valid, active license to practice nursing home administration in another U.S. state, provided that the current requirements for licensure in that state are substantially equivalent to, or more stringent than, current requirements in this state; or
  - Meets the qualifications for licensure in s. 468.1695, F.S.; and
- Has completed a national examination which is substantially equivalent to, or more stringent than, the examination given by the DOH;
- Has passed an examination on the laws and rules of Florida governing the administration of nursing homes;
- Has worked as a fully-licensed nursing home administrator for two of the last five years immediately preceding the application; and
- Is not under investigation in this or another state for any act which would constitute a violation of the nursing home administrators practice act or ch. 456, F.S.

A temporary license may be issued one time only to an applicant who has filed an application for licensure by endorsement, has paid the fee for the next laws and rules examination offered, and who meets the following requirements:

- Has filed an application for a temporary license and paid an application fee;
- Has taken, or applied to take, the licensure examination;[82]
- Has worked as a fully licensed nursing home administrator for two of the last five year period immediately preceding application for a temporary license.

Occupational Therapy Licensure by Endorsement

In s. 468.213, F.S., the Legislature authorizes the Board of Occupational Therapy to waive the examination requirements for licensure and grant a license without examination in two situations:

- To any person who presents proof of a current certification as an occupational therapist or occupational therapy assistant by a national certifying organization if the board determines the requirements for such certification to be equivalent to the requirements for licensure in the practice act; and
- To any person who presents proof of a current license as an occupational therapist or occupational therapy assistant in another state, the District of Columbia, or any territory or jurisdiction of the U.S., or foreign national jurisdiction which required standards for licensure equivalent to the requirements for licensure in the practice act as determined by the board.

Radiation Technicians Licensure by Endorsement

Section 468.3065, F.S., authorizes the DOH to issue a certificate by endorsement to practice as a radiologist assistant to an applicant who, upon applying to the DOH and remitting an application fee, demonstrates to the DOH that he or she holds a current certificate or registration as a radiologist assistant granted by the American Registry of Radiologic Technologists.

Section 468.3065, F.S. also authorizes the DOH to issue a certificate by endorsement to practice radiologic technology to an applicant who, upon applying to the DOH and remitting a fee, demonstrates to the DOH that he or she holds a current certificate, license, or registration to practice radiologic technology, provided that the requirements for such certificate, license, or registration are deemed by the DOH to be substantially equivalent to those established under Section 468.3065, F.S., and rules adopted pursuant thereto.

Finally, the DOH may issue a certificate by endorsement to practice radiologic technology to an applicant who, upon applying to the DOH, remits an appropriate fee and demonstrates to the DOH that he or she holds a current certificate, license, or registration to practice radiologic technology, provided that the requirements for such certificate, license, or registration are deemed by the DOH to be substantially equivalent to those established under the practice act and rules adopted under the radiation technicians practice act.

[82] *See* ss. 468.1695(1), and 468.1705(4), F.S.

Respiratory Therapy Licensure by Endorsement

Section 468.358, F.S., authorizes the DOH to grant licenses by endorsement to certified respiratory therapists and registered respiratory therapists if credentialed by the National Board for Respiratory Care or a board-approved equivalent credential acceptable to the board. Licensure by this mechanism requires verification under oath and satisfactory evidence establishing that the credential is held.

Section 468.358, F.S., also authorizes the DOH to grant licenses by endorsement to individuals who have been granted licensure, certification, registration, or other authority, by whatever name known, to deliver respiratory care services in another state or country. Those persons may petition the board for consideration for licensure, and upon verification under oath and submission of evidence of licensure, certification, registration, or other authority acceptable to the board, may be granted licensure by endorsement.

Dietetics and Nutrition Licensure by Endorsement

Section 468.513, F,S., requires the DOH to issue a license by endorsement to practice dietetics and nutrition to any applicant that the Board of Medicine certifies is qualified, upon receipt of a completed application, the appropriate fee, and satisfactory evidence that he or she:

- Is a registered dietitian; or
- Holds a valid license to practice dietetics or nutrition issued by another state, district, or territory of the U.S., if the criteria for issuance of such license are determined by the board to be substantially equivalent to or more stringent than those of Florida; and
- Is not under investigation in any jurisdiction for an act or offense that would constitute a violation of the dietician and nutritionist practice act or ch. 456, F.S.

Electrologist Licensure by Endorsement

Section 478.47, F.S., requires the DOH to issue a license by endorsement to an electrologist applicant who submits an application, the required application fees and who holds an active license or other authority to practice electrology in a jurisdiction whose licensure requirements are determined by the Board of Medicine to be equivalent to the requirements for licensure in Florida.

Massage Therapy Licensure by Endorsement

The Legislature created the Board of Massage Therapy (BMT) within the DOH.[83] The BMT developed Florida Administrative Code Rule 64B7-25.004, *Endorsements*,[84] to require the DOH to issue a massage therapy license by endorsement to all applicants who satisfy the following criteria:

- Pay the initial license application fee;[85]

[83] Section 480.035, F.S.
[84] *See* Fla. Admin. Code R. 64B7-25.004, *Endorsements*, lists Rulemaking Authority as ss. 456.013(2), 480.035(7), 480.041(4)(c), F.S. There is no longer a s. 480.041(4)(c), F.S.
[85] Fla. Admin. Code R. 64B7-27.100 (2023).

- Submit a completed application;[86]
- Demonstrate a current license to practiced massage therapy in another state; and
- Demonstrate that the license was required to meet education standards or apprenticeship training substantially similar to, equivalent to, or more stringent than those required for licensure by chs. 456 and 480, F.S., and applicable Florida administrative code rules; and
- Demonstrate that the out-of-state license was issued upon:
  - The satisfactory completion of an examination comparable to the examination approved by the BMT; or
  - Present a certification to the BMT of successful completion of an approved examination for licensure subsequent to the issuance of the out-of-state license;
- Have no outstanding or unresolved complaints in any jurisdiction where licensure is held; and,
- Complete a 10-hour course of Florida Laws and Rules CE offered by a BMT-approved massage therapy school or BMT-approved continuing education provider.

Physical Therapy Practice by Endorsement

In s. 486.081, F.S., the Legislature has authorized the Board of Physical Therapy (BPT) to issue through the DOH a physical therapy (PT) license without examination to any applicant who presents evidence of the following:
- Having passed the American Registry Examination prior to 1971; or
- Having passed an examination in PT before a similar examining board of another state, the District of Columbia, a territory, or a foreign country, if the standards for licensure in physical therapy in such other state, district, territory, or foreign country are determined by the BPT to be as high as those of Florida.

In s. 486.107, F.S., the Legislature has authorized the BPT to issue through the DOH a license for a physical therapy assistant (PTA) without examination to any applicant who presents evidence to the BPT, under oath, of a license in another state, the District of Columbia, or a territory, if the standards for registering as a PTA or licensing of a PTA, in the other state are determined by the BPT to be as high as those of Florida.

Psychologist or School Psychologist Licensure by Endorsement

In s. 490.006, F.S., the Legislature requires the DOH to issue a license to a person as a psychologist or school psychologist who applies to the DOH, pays the appropriate application fee, and demonstrates to the Board of Psychology, or in the case of the school psychologist, to the DOH, that the applicant:
- Is a diplomate with the American Board of Professional Psychology, Inc.; or
- Possesses a doctoral degree in psychology and has at least 10 years of experience as a licensed psychologist in any jurisdiction or territory of the U.S. within the 25 years preceding the date of application;
- Has passed that portion of the psychology or school psychology licensure examinations pertaining to the laws and rules related to the practice of psychology or school psychology in Florida; and

[86] Fla. Admin. Code R. 64B7-25.001.

- Is not under investigation in any jurisdiction for an act or offense that would constitute a violation of the psychological services practice act or ch. 456, F.S.

A person licensed as a psychologist in another state who is practicing pursuant to the Psychology Interjurisdictional Compact under s. 490.0075, F.S., and only within the scope provided therein, is exempt from the licensure by endorsement requirements of s. 490.006, F.S.

Clinical Social Work, Marriage & Family Therapy, and Mental Health Counseling Licensure by Endorsement

In s. 491.006, F.S., the Legislature requires the DOH to issue licenses or certificates, as appropriate, to a person applying for licensure by endorsement as a clinical social worker, marriage and family therapist, or mental health counselor who remits the appropriate fee and demonstrates to the Board of Clinical Social Work, Marriage & Family Therapy, and Mental Health Counseling that he or she:

- Has knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling;
- Holds an active license to practice and has actively practiced the licensed profession in another state for three of the last five years immediately preceding licensure;
- Has passed:
  - A substantially equivalent licensing examination in another state; or
  - Has passed the licensure examination in Florida in the profession for which the applicant is applying; and
- Holds a license in good standing;
- Is not under investigation for an act that would constitute a violation of the clinical, counseling, and psychotherapy services practice act or ch. 456, F.S.; and
- Has not been found to have committed any act that would constitute a violation of the clinical, counseling, and psychotherapy services practice act or ch. 456, F.S.

III. Effect of Proposed Changes:

Licensure by Endorsement - DBPR-Regulated Professions

SB 1600 creates s. 455.2135, F.S., to require the regulatory boards in the DBPR, or the DBPR itself when there is no regulatory board for a profession, when endorsement based on years of licensure is not otherwise provided by law in the practice act of a profession, to allow licensure by endorsement for any individual who applies if he or she meets the following criteria:

- Holds a valid, current license to practice the profession issued by another state or territory of the U.S. for at least five years before the date of application and be applying for the same or similar Florida license;
- Submits an application either:
  - When the license in another state or territory is active; or
  - Within two years after such license was last active;
- Has passed the recognized national licensing exam, if the exam is established as a requirement for licensure in the profession;
- Has no pending disciplinary actions and all sanctions for any prior disciplinary actions have been satisfied;

- Shows proof of compliance with any federal regulation, training, or certification, if the board or the DBPR requires such proof, regarding licensure in the profession;
- Has completed Florida-specific continuing education courses or passed a jurisprudential examination specific to the state laws and rules for the applicable profession as established by the board or the DBPR; and
- Has complied with any insurance or bonding requirements as required for the profession.

SB 1600 further provides that if the ch. 455, F.S., professional practice act for a profession requires the submission of fingerprints, the applicant must submit and pay for a complete set of fingerprints to the Department of Law Enforcement (FDLE) for a statewide criminal history check. The FDLE must forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The DBPR must review the results of the criminal history checks according to the level II screening standards in s. 435.04, F.S, and determine whether the applicant meets the licensure requirements. The boards are not required to make such a review.

Section 455.2135, F.S., exempts harbor pilots licensed under ch. 310, F.S., from these requirements.

Licensure by Endorsement - DOH-Regulated Professions

SB 1600 creates s. 456.0145, F.S., the MOBILE Act, which requires the DOH to issue a license or certificate by endorsement within 15 days of receipt of all required documents for any of the health care professions regulated by the DOH when the applicant meets all of the following specific criteria:

- Submits a completed application;
- Holds an active, unencumbered license issued by another state, the District of Columbia, or a possession or territory of the U.S. in a profession with a similar "scope of practice," as determined by the board or the DOH, as applicable. Section 456.0145(2)(a)2., F.S., defines the term "scope of practice" as the full spectrum of functions, procedures, actions, and services that a health care practitioner is deemed competent and authorized to perform under a Florida license; and delegates to the boards, or the DOH where there is no board, to determine what that means for each of the 364 professions licensed by the DOH;
- Has obtained:
  - A passing score on a national licensure examination or holds a national certification recognized by the board, or the DOH if there is no board, as applicable to the profession for which the applicant is seeking licensure; or
  - If the profession applied for does not require a national examination or national certification and the applicable board, or the DOH, if there is no board, determines that the jurisdiction in which the applicant currently holds an active, unencumbered license:
    - Meets established minimum education requirements; and
    - The work experience, and clinical supervision requirements are substantially similar to the requirements for licensure in that profession in Florida;
- Has actively practiced the profession for at least three years during the four year period immediately preceding the application submission;
- Attests that he or she is not, at the time of application submission, the subject of a disciplinary proceeding in a jurisdiction in which he or she holds a license or by the U.S.

Department of Defense for reasons related to the practice of the profession for which he or she is applying;
- Has not had professional disciplinary action taken against him or her in the seven years preceding the application submission application;
- Meets the financial responsibility requirements of s. 456.048, F.S., or the applicable practice act; and
- Submits a set of fingerprints for a background check pursuant to s. 456.0135, F.S., or the applicable practice act.

The bill requires the DOH to verify the information above submitted by the applicant using the National Practitioner Data Bank.[87]

The bill defines a person as ineligible for a license under s. 456.0145, F.S., if he or she:
- Has a complaint, an allegation, or an investigation pending before a licensing entity in another state, the District of Columbia, or a possession or territory of the U.S.;
- Has been convicted of or pled nolo contendere to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession;
- Has had a health care provider license revoked or suspended by another state, the District of Columbia, or a possession or territory of the U.S. or has voluntarily surrendered any license;
- Has been reported to the National Practitioner Data Bank, unless the applicant has successfully appealed to have his or her name removed; or
- Has previously failed the Florida examination required to receive a license to practice the profession for which the applicant is seeking a license.

The bill authorizes the board, or the DOH where there is no board, under s. 456.0145, F.S., to revoke a license upon finding that the licensee provided false or misleading material information or intentionally omitted material information in an application.

The bill authorizes the board, or the DOH where there is no board, to require an applicant to successfully complete a state jurisprudential examination on laws and rules for the applicable profession, if the applicable practice act requires such examination.

The bill requires the DOH to submit an annual report by December 31 to the Governor, the President of the Senate, and the Speaker of the House of Representatives which provides all of the following information for the previous fiscal year, by profession and in total:
- The number of applications for licensure received under the MOBILE Act;
- The number of licenses issued under the MOBILE Act; and
- The number of applications submitted under the MOBILE Act which were denied and the reason for such denials.

The bill requires each applicable board, or the DOH if there is no board, to adopt rules to implement s. 456.0145, F.S., within six months after its effective date, including rules relating to

[87] The National Practitioner Data Bank is an Internet-based repository of reports containing information on medical malpractice payments and certain adverse actions related to health care practitioners, providers, and suppliers. Established by Congress in 1986, it is a workforce tool that prevents practitioners from moving state to state without disclosure or discovery of previous damaging performance.

legislative intent provided under s. 456.025(1), F.S.,[88] and the requirements of s. 456.025(3), F.S.[89]

Health Care Professions with Licensure by Endorsement Under Current Law

The bill amends current law for licensure by endorsement in various practice acts to conform to provisions found in the MOBILE Act and to retain statutory guidance for the maximum amounts of related application fees.

The bill provides an effective date of July 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:

None.

E. Other Constitutional Issues:

Some portions of SB 1600 may represent an unconstitutional delegation of legislative authority to the boards, or the agencies where there is no board, under Article II, Section 3, of the Florida Constitution. The bill gives the boards, and agencies when there is no board, the right to exercise broad discretion as to what constitutes a similar scope of practice between licensed professions in Florida versus other states. However, the exercise of such discretion is conditioned upon the existence of eligibility requirements and licensing in the same or similar profession. Under current law, many boards and the agencies evaluate whether licensing and examination standards for a profession are

[88] Section 456.025(1), F.S., provides, in part, that "It is the intent of the Legislature that all costs of regulating health care professions and practitioners shall be borne solely by licensees and licensure applicants. It is also the intent of the Legislature that fees should be reasonable and not serve as a barrier to licensure."

[89] Section 456.025(3), F.S., requires, in part, that "Each board within the jurisdiction of the department, or the department when there is no board, shall determine by rule the amount of license fees for the profession it regulates, based upon long-range estimates prepared by the department of the revenue required to implement laws relating to the regulation of professions by the department and the board. Each board, or the department if there is no board, shall ensure that license fees are adequate to cover all anticipated costs and to maintain a reasonable cash balance, as determined by rule of the agency, with advice of the applicable board."

substantially similar to those in Florida.[90] See *Askew v. Cross Key Waterways*, 372 So. 2d 913, 918-918 (Fla. 1978) (*rehearing den. Feb. 15, 1979*) ("[w]hen legislation is so lacking in guidelines that neither the agency nor the courts can determine whether the agency is carrying out the intent of the legislature in its conduct, then, in fact, the agency becomes the lawgiver rather than the administrator of the law).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Individuals seeking to work in Florida may be eligible under the additional pathways created by the bill to obtain a license to work in specified professions in Florida.

C. Government Sector Impact:

No analysis by the Department of Business and Professional Regulation of the impact of the bill on its operations, revenue, and expenditures has been provided as of the date of this analysis.

According to the Florida Department of Law Enforcement (FDLE), although SB 1600 does not require additional programing of the department's Biometric Identification System (BIS), if the population targeted in the bill were to submit fingerprints for a state and national criminal history record check and the FDLE were to retain the fingerprints, the bill, along with other bills requiring background screening that are currently being considered by the Legislature, would add to the workload on the FDLE's BIS. The FDLE is currently in the process of migrating the current system to the new generation of BIS. With the capacity limitations of the current system, this could cause undue strain. [91]

The FDLE also indicates that SB 1600 does not appear to create the need for additional full-time equivalent positions or other resources; however, the bill, along with other bills requiring background screening that are currently being considered by the Legislature, could rise to the level of requiring additional staffing and other resources.[92]

VI. Technical Deficiencies:

None.

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[90] *See* e.g., s. 455.213(14), F.S., relating to reciprocal licensing agreements, and s. 456.47, F.S., relating to registration of out-of-state telehealth providers.
[91] Florida Department of Law Enforcement, *2024 FDLE Legislative Bill Analysis: SB 1600*, Jan. 19, 2024 (on file with the Senate Committee on Regulated Industries).
[92] *Id.*

VII. Related Issues:

Regarding lines 93-98 and 102-106, the FDLE indicates a need for the bill to ensure compliance with federal law and the U.S. Department of Justice (DOJ)-established criteria for the submission of fingerprints to the FBI's Criminal Justice Information Services Division for a national criminal history background check. The department points out that access to FBI criminal history record information is not allowed unless all criteria specified within Public Law 92-544 are satisfied. Such compliance already exists for the current law requirements for submission of fingerprints to the DBPR and the DOH for review as part of licensing under the various practice acts, and is applicable to the additional licensing pathways described in the bill.[93]

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 455.2135 and 456.0145.

The bill substantially amends the following sections of the Florida Statutes: 457.105, 458.313, 464.009, 465.0075, 467.0125, 468.1185, 468.1705, 468.213, 468.3065, 468.358, 468.513, 478.47, 480.041, 484.007, 486.031, 486.081, 486.102, 486.107, 490.006, and 491.006.

IX. Additional Information:

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

B. Amendments:

None.

[93] *Id.*

By Senator Collins

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A bill to be entitled

An act relating to interstate mobility; creating s. 455.2135, F.S.; requiring the respective boards of occupations, or the Department of Business and Professional Regulation if there is no board, to allow licensure by endorsement if the applicant meets certain criteria; requiring applicants of professions that require fingerprints for criminal history checks to submit such fingerprints before the board or department issues a license by endorsement; requiring the department, and authorizing the board, to review the results of the criminal history checks according to specific criteria to determine if the applicants meet the requirements for licensure; requiring that the costs associated with fingerprint processing be borne by the applicant; if fingerprints are submitted through an authorized agency or vendor, requiring such agency or vendor to collect the processing fees and remit them to the Department of Law Enforcement; providing an exemption; creating s. 456.0145, F.S.; providing a short title; requiring the applicable health care regulatory boards, or the Department of Health if there is no board, to issue a license or certificate to applicants who meet specified conditions; defining the term "scope of practice"; requiring the department to verify certain information using the National Practitioner Data Bank, as applicable; specifying circumstances under which a person is ineligible for a license; authorizing boards

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or the department, as applicable, to revoke a license upon a specified finding; requiring boards or the department, as applicable, to issue licenses within a specified timeframe; authorizing boards or the department, as applicable, to require that applicants successfully complete a jurisprudential examination under certain circumstances; requiring the department to submit an annual report to the Governor and the Legislature by a specified date; providing requirements for the report; requiring the boards and the department, as applicable, to adopt certain rules within a specified timeframe; amending ss. 457.105, 458.313, 464.009, 465.0075, 467.0125, 468.1185, 468.1705, 468.213, 468.3065, 468.358, 468.513, 478.47, 480.041, 484.007, 486.081, 486.107, 490.006, and 491.006, F.S.; revising licensure by endorsement requirements for the practice of acupuncture, medicine, professional or practical nursing, pharmacy, midwifery, speech-language pathology and audiology, nursing home administration, occupational therapy, radiology, respiratory therapy, dietetics and nutrition, electrology, massage therapy, opticianry, physical therapy, physical therapist assistantship, psychology and school psychology, and clinical social work, marriage and family therapy, and mental health counseling, respectively; amending ss. 486.031 and 486.102, F.S.; conforming provisions to changes made by the act; authorizing the boards and the Department of Health, as applicable, to continue processing

applications for licensure by endorsement, as authorized under the Florida Statutes (2023), for a specified timeframe; providing an effective date.

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

Section 1. Section 455.2135, Florida Statutes, is created to read:

455.2135 Interstate mobility.—

(1) When endorsement based on years of licensure is not otherwise provided by law in the practice act for a profession, the board, or the department if there is no board, shall allow licensure by endorsement for any individual applying who:

(a) Has held a valid, current license to practice the profession issued by another state or territory of the United States for at least 5 years before the date of application and is applying for the same or similar license in this state;

(b) Submits an application either when the license in another state or territory is active or within 2 years after such license was last active;

(c) Has passed the recognized national licensing exam, if such exam is established as a requirement for licensure in the profession;

(d) Has no pending disciplinary actions and all sanctions of any prior disciplinary actions have been satisfied;

(e) Shows proof of compliance with any federal regulation, training, or certification, if the board or the department requires such proof, regarding licensure in the profession;

(f) Completes Florida-specific continuing education courses

or passes a jurisprudential examination specific to the state laws and rules for the applicable profession as established by the board or department; and

(g) Complies with any insurance or bonding requirements as required for the profession.

(2) If the practice act for a profession requires the submission of fingerprints, the applicant must submit a complete set of fingerprints to the Department of Law Enforcement for a statewide criminal history check. The Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The department shall, and the board may, review the results of the criminal history checks according to the level 2 screening standards in s. 435.04 and determine whether the applicant meets the licensure requirements. The costs of fingerprint processing are borne by the applicant. If the applicant's fingerprints are submitted through an authorized agency or vendor, the agency or vendor must collect the required processing fees and remit the fees to the Department of Law Enforcement.

(3) This section does not apply to harbor pilots licensed under chapter 310.

Section 2. Section 456.0145, Florida Statutes, is created to read:

456.0145 Mobile Opportunity by Interstate Licensure Endorsement (MOBILE) Act.—

(1) SHORT TITLE.—This section may be cited as the "Mobile Opportunity by Interstate Licensure Endorsement Act" or the "MOBILE Act."

(2) LICENSURE BY ENDORSEMENT.—

(a) An applicable board, or the department if there is no board, shall issue a license or certificate to practice in this state to an applicant who meets all of the following criteria:

1. Submits a completed application.

2. Holds an active, unencumbered license issued by another state, the District of Columbia, or a possession or territory of the United States in a profession with a similar scope of practice, as determined by the board or department, as applicable. As used in this subparagraph, the term "scope of practice" means the full spectrum of functions, procedures, actions, and services that a health care practitioner is deemed competent and authorized to perform under a license issued in this state.

3.a. Has obtained a passing score on a national licensure examination or holds a national certification recognized by the board, or the department if there is no board, as applicable to the profession for which the applicant is seeking licensure in this state; or

b. Meets the requirements of paragraph (b).

4. Has actively practiced the profession for which the applicant is applying for at least 3 years during the 4-year period immediately preceding the date of submission of the application.

5. Attests that he or she is not, at the time of submission of the application, the subject of a disciplinary proceeding in a jurisdiction in which he or she holds a license or by the United States Department of Defense for reasons related to the practice of the profession for which he or she is applying.

6. Has not had professional disciplinary action taken

against him or her in the 7 years immediately preceding the date of submission of the application.

7. Meets the financial responsibility requirements of s. 456.048 or the applicable practice act, if required for the profession for which the applicant is seeking licensure.

8. Submits a set of fingerprints for a background check pursuant to s. 456.0135 or the applicable practice act, if required for the profession for which he or she is applying.

The department shall verify information submitted by the applicant under this subsection using the National Practitioner Data Bank, as applicable.

(b) An applicant for a profession that does not require a national examination or national certification is eligible for licensure if an applicable board, or the department if there is no board, determines that the jurisdiction in which the applicant currently holds an active, unencumbered license meets established minimum education requirements and, if applicable, examination, work experience, and clinical supervision requirements that are substantially similar to the requirements for licensure in that profession in this state.

(c) A person is ineligible for a license under this section if the applicant:

1. Has a complaint, an allegation, or an investigation pending before a licensing entity in another state, the District of Columbia, or a possession or territory of the United States;

2. Has been convicted of or pled nolo contendere to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession;

3. Has had a health care provider license revoked or suspended by another state, the District of Columbia, or a possession or territory of the United States, or has voluntarily surrendered any such license;

4. Has been reported to the National Practitioner Data Bank, unless the applicant has successfully appealed to have his or her name removed from the data bank; or

5. Has previously failed the Florida examination required to receive a license to practice the profession for which the applicant is seeking a license.

(d) The board, or the department if there is no board, may revoke a license upon finding that the licensee provided false or misleading material information or intentionally omitted material information in an application for licensure.

(e) The board, or the department if there is no board, shall issue a license within 15 days after receipt of all documentation required for an application.

(3) STATE EXAMINATION.—The board, or the department if there is no board, may require an applicant to successfully complete a jurisprudential examination specific to state laws and rules for the applicable profession, if this chapter or the applicable practice act requires such examination.

(4) ANNUAL REPORT.—By December 31 of each year, the department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which provides all of the following information for the previous fiscal year, per profession and in total:

(a) The number of applications for licensure received under this section.

(b) The number of licenses issued under this section.

(c) The number of applications submitted under this section which were denied and the reason for such denials.

(5) RULES.—Each applicable board, or the department if there is no board, shall adopt rules to implement this section within 6 months after this section's effective date, including rules relating to legislative intent under s. 456.025(1) and the requirements of s. 456.025(3).

Section 3. Subsection (2) of section 457.105, Florida Statutes, is amended to read:

457.105 Licensure qualifications and fees.—

(2) A person may become licensed to practice acupuncture if the person applies to the department and meets all of the following criteria:

(a) Is 21 years of age or older, has good moral character, and has the ability to communicate in English, which is demonstrated by having passed the national written examination in English or, if such examination was passed in a foreign language, by also having passed a nationally recognized English proficiency examination.~~;~~

(b) Has completed 60 college credits from an accredited postsecondary institution as a prerequisite to enrollment in an authorized 3-year course of study in acupuncture and oriental medicine, and has completed a 3-year course of study in acupuncture and oriental medicine, and effective July 31, 2001, a 4-year course of study in acupuncture and oriental medicine, which meets standards established by the board by rule, which standards include, but are not limited to, successful completion of academic courses in western anatomy, western physiology,

western pathology, western biomedical terminology, first aid, and cardiopulmonary resuscitation (CPR). However, any person who enrolled in an authorized course of study in acupuncture before August 1, 1997, must have completed only a 2-year course of study which meets standards established by the board by rule, which standards must include, but are not limited to, successful completion of academic courses in western anatomy, western physiology, and western pathology.~~;~~

(c) Has successfully completed a board-approved national certification process, meets the requirements for licensure by endorsement under s. 456.0145 ~~is actively licensed in a state that has examination requirements that are substantially equivalent to or more stringent than those of this state~~, or passes an examination administered by the department, which examination tests the applicant's competency and knowledge of the practice of acupuncture and oriental medicine. At the request of any applicant, oriental nomenclature for the points shall be used in the examination. The examination shall include a practical examination of the knowledge and skills required to practice modern and traditional acupuncture and oriental medicine, covering diagnostic and treatment techniques and procedures.~~; and~~

(d) Pays the required fees set by the board by rule not to exceed the following amounts:

1. Examination fee: $500 plus the actual per applicant cost to the department for purchase of the written and practical portions of the examination from a national organization approved by the board.

2. Application fee: $300.

3. Reexamination fee: $500 plus the actual per applicant cost to the department for purchase of the written and practical portions of the examination from a national organization approved by the board.

4. Initial biennial licensure fee: $400, if licensed in the first half of the biennium, and $200, if licensed in the second half of the biennium.

Section 4. Section 458.313, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 458.313, F.S., for present text.)

458.313 Licensure by endorsement; requirements; fees.—The department shall issue a license by endorsement to any applicant who, upon applying to the department on forms furnished by the department and remitting a fee set by the board in an amount not to exceed $500, the board certifies has met the requirements for licensure by endorsement under s. 456.0145.

Section 5. Section 464.009, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 464.009, F.S., for present text.)

464.009 Licensure by endorsement.—

(1) The department shall issue the appropriate license by endorsement to practice professional or practical nursing to any applicant who, upon applying to the department and remitting a fee set by the board in an amount not to exceed $100, demonstrates to the board that he or she meets the requirements for licensure by endorsement under s. 456.0145.

(2) A person holding an active multistate license in

another state pursuant to s. 464.0095 is exempt from the requirements for licensure by endorsement in this section.

Section 6. Section 465.0075, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 465.0075, F.S., for present text.)

465.0075 Licensure by endorsement; requirements; fee.—The department shall issue a license by endorsement to any applicant who, upon applying to the department and remitting a nonrefundable fee set by the board in an amount not to exceed $100, the board certifies has met the requirements for licensure by endorsement under s. 456.0145.

Section 7. Subsection (1) of section 467.0125, Florida Statutes, is amended to read:

467.0125 Licensed midwives; qualifications; endorsement; temporary certificates.—

(1) The department shall issue a license by endorsement to practice midwifery to an applicant who, upon applying to the department on a form approved by the department and remitting the appropriate fee, demonstrates to the department that she or he meets the requirements for licensure by endorsement under s. 456.0145 ~~all of the following criteria:~~

~~(a) Holds an active, unencumbered license to practice midwifery in another state, jurisdiction, or territory, provided the licensing requirements of that state, jurisdiction, or territory at the time the license was issued were substantially equivalent to or exceeded those established under this chapter and the rules adopted hereunder.~~

~~(b) Has successfully completed a prelicensure course~~

~~conducted by an accredited and approved midwifery program.~~

~~(c) Submits an application for licensure on a form approved by the department and pays the appropriate fee~~.

Section 8. Subsections (3) and (4) of section 468.1185, Florida Statutes, are amended to read:

468.1185 Licensure.—

~~(3) The board shall certify as qualified for a license by endorsement as a speech-language pathologist or audiologist an applicant who:~~

~~(a) Holds a valid license or certificate in another state or territory of the United States to practice the profession for which the application for licensure is made, if the criteria for issuance of such license were substantially equivalent to or more stringent than the licensure criteria which existed in this state at the time the license was issued; or~~

~~(b) Holds a valid certificate of clinical competence of the American Speech-Language and Hearing Association or board certification in audiology from the American Board of Audiology.~~

(3)~~(4)~~ The board may refuse to certify any person applying for licensure under this section ~~applicant~~ who is under investigation in any jurisdiction for an act which would constitute a violation of this part or chapter 456 until the investigation is complete and disciplinary proceedings have been terminated.

Section 9. Subsections (1), (2), and (3) of section 468.1705, Florida Statutes, are amended to read:

468.1705 Licensure by endorsement; temporary license.—

(1) The department shall issue a license by endorsement to any applicant who, upon applying to the department and remitting

a fee set by the board not to exceed $500, demonstrates to the board that he or she meets the requirements for licensure by endorsement under s. 456.0145~~:~~

~~(a) Meets one of the following requirements:~~

~~1. Holds a valid active license to practice nursing home administration in another state of the United States, provided that the current requirements for licensure in that state are substantially equivalent to, or more stringent than, current requirements in this state; or~~

~~2. Meets the qualifications for licensure in s. 468.1695; and~~

~~(b)~~ 1. ~~Has successfully completed a national examination which is substantially equivalent to, or more stringent than, the examination given by the department;~~

~~2. Has passed an examination on the laws and rules of this state governing the administration of nursing homes; and~~

~~3. Has worked as a fully licensed nursing home administrator for 2 years within the 5-year period immediately preceding the application by endorsement.~~

~~(2) National examinations for licensure as a nursing home administrator shall be presumed to be substantially equivalent to, or more stringent than, the examination and requirements in this state, unless found otherwise by rule of the board~~.

(2) ~~(3)~~ The department may ~~shall~~ not issue ~~a license by endorsement or~~ a temporary license to any applicant who is under investigation in this or another state for any act which would constitute a violation of this part until such time as the investigation is complete and disciplinary proceedings have been terminated.

Section 10. Section 468.213, Florida Statutes, is amended to read:

468.213 Licensure by endorsement; waiver of examination requirement.—

(1) The board may ~~waive the examination and~~ grant a license to any person who meets the requirements for licensure by endorsement under s. 456.0145 ~~presents proof of current certification as an occupational therapist or occupational therapy assistant by a national certifying organization if the board determines the requirements for such certification to be equivalent to the requirements for licensure in this act~~.

(2) The board may waive the examination and grant a license to any applicant who presents proof of current licensure as an occupational therapist or occupational therapy assistant in a ~~another state, the District of Columbia, or any territory or jurisdiction of the United States or~~ foreign national jurisdiction which requires standards for licensure determined by the board to be equivalent to the requirements for licensure in this part ~~act~~.

Section 11. Section 468.3065, Florida Statutes, is amended to read:

468.3065 Certification by endorsement.—

(1) The department may issue a certificate by endorsement to practice as a radiologist assistant to an applicant who, upon applying to the department and remitting a nonrefundable fee not to exceed $50, demonstrates to the department that he or she meets the requirements for licensure by endorsement under s. 456.0145 ~~holds a current certificate or registration as a radiologist assistant granted by the American Registry of~~

~~Radiologic Technologists~~.

(2) The department may issue a certificate by endorsement to practice radiologic technology to an applicant who, upon applying to the department and remitting a nonrefundable fee not to exceed $50, demonstrates to the department that he or she meets the requirements for licensure by endorsement under s. 456.0145 ~~holds a current certificate, license, or registration to practice radiologic technology, provided that the requirements for such certificate, license, or registration are deemed by the department to be substantially equivalent to those established under this part and rules adopted under this part~~.

(3) The department may issue a certificate by endorsement to practice as a specialty technologist to an applicant who, upon applying to the department and remitting a nonrefundable fee not to exceed $100, demonstrates to the department that he or she meets the requirements for licensure by endorsement under s. 456.0145 ~~holds a current certificate or registration from a national organization in a particular advanced, postprimary, or specialty area of radiologic technology, such as computed tomography or positron emission tomography~~.

Section 12. Section 468.358, Florida Statutes, is amended to read:

468.358 Licensure by endorsement.—

(1) Licensure as a certified respiratory therapist must ~~shall~~ be granted by endorsement to an individual who meets the requirements for licensure by endorsement under s. 456.0145 ~~holds the "Certified Respiratory Therapist" credential issued by the National Board for Respiratory Care or an equivalent credential acceptable to the board. Licensure by this mechanism~~

~~requires verification by oath and submission of evidence satisfactory to the board that such credential is held.~~

~~(2) Licensure as a registered respiratory therapist shall be granted by endorsement to an individual who holds the "Registered Respiratory Therapist" credential issued by the National Board for Respiratory Care or an equivalent credential acceptable to the board. Licensure by this mechanism requires verification by oath and submission of evidence satisfactory to the board that such credential is held~~.

(2)~~(3)~~ An individual who has been granted licensure, certification, registration, or other authority, by whatever name known, to deliver respiratory care services in a foreign ~~another state or~~ country may petition the board for consideration for licensure in this state and, upon verification by oath and submission of evidence of licensure, certification, registration, or other authority acceptable to the board, may be granted licensure by endorsement.

(3)~~(4)~~ Licensure may ~~shall~~ not be granted by endorsement as provided in this section without the submission of a proper application and the payment of the requisite fees therefor.

Section 13. Section 468.513, Florida Statutes, is amended to read:

468.513 Dietitian/nutritionist; licensure by endorsement.—

~~(1)~~ The department shall issue a license to practice dietetics and nutrition by endorsement to any applicant who meets the requirements for licensure by endorsement under s. 456.0145 ~~the board certifies as qualified~~, upon receipt of a completed application and the fee specified in s. 468.508.

~~(2) The board shall certify as qualified for licensure by~~

~~endorsement under this section any applicant who:~~

~~(a) Presents evidence satisfactory to the board that he or she is a registered dietitian; or~~

~~(b) Holds a valid license to practice dietetics or nutrition issued by another state, district, or territory of the United States, if the criteria for issuance of such license are determined by the board to be substantially equivalent to or more stringent than those of this state.~~

~~(3) The department shall not issue a license by endorsement under this section to any applicant who is under investigation in any jurisdiction for any act which would constitute a violation of this part or chapter 456 until such time as the investigation is complete and disciplinary proceedings have been terminated.~~

Section 14. Section 478.47, Florida Statutes, is amended to read:

478.47 Licensure by endorsement.—The department shall issue a license by endorsement to any applicant who, upon submitting ~~submits~~ an application and the required fees as set forth in s. 478.55, demonstrates to the board that he or she meets the requirements for licensure by endorsement under s. 456.0145 ~~and who holds an active license or other authority to practice electrology in a jurisdiction whose licensure requirements are determined by the board to be equivalent to the requirements for licensure in this state~~.

Section 15. Paragraph (c) of subsection (5) of section 480.041, Florida Statutes, is amended to read:

480.041 Massage therapists; qualifications; licensure; endorsement.—

(5) The board shall adopt rules:

(c) Specifying licensing procedures for practitioners desiring to be licensed in this state who meet the requirements for licensure by endorsement under s. 456.0145 or hold an active license and have practiced in ~~any other state, territory, or jurisdiction of the United States or~~ any foreign national jurisdiction which has licensing standards substantially similar to, equivalent to, or more stringent than the standards of this state.

Section 16. Present subsections (3) and (4) of section 484.007, Florida Statutes, are redesignated as subsections (4) and (5), respectively, a new subsection (3) is added to that section, and subsection (1) of that section is amended, to read:

484.007 Licensure of opticians; permitting of optical establishments.—

(1) Any person desiring to practice opticianry shall apply to the department, upon forms prescribed by it, to take a licensure examination. The department shall examine each applicant who the board certifies meets all of the following criteria:

(a) Has completed the application form and remitted a nonrefundable application fee set by the board, in the amount of $100 or less, and an examination fee set by the board, in the amount of $325 plus the actual per applicant cost to the department for purchase of portions of the examination from the American Board of Opticianry or a similar national organization, or less, and refundable if the board finds the applicant ineligible to take the examination.~~;~~

(b) Is not younger ~~less~~ than 18 years of age.~~;~~

(c) Is a graduate of an accredited high school or possesses a certificate of equivalency of a high school education.~~; and~~

(d)1. Has received an associate degree, or its equivalent, in opticianry from an educational institution the curriculum of which is accredited by an accrediting agency recognized and approved by the United States Department of Education or the Council on Postsecondary Education or approved by the board;

~~2. Is an individual licensed to practice the profession of opticianry pursuant to a regulatory licensing law of another state, territory, or jurisdiction of the United States, who has actively practiced in such other state, territory, or jurisdiction for more than 3 years immediately preceding application, and who meets the examination qualifications as provided in this subsection;~~

~~3. Is an individual who has actively practiced in another state, territory, or jurisdiction of the United States for more than 5 years immediately preceding application and who provides tax or business records, affidavits, or other satisfactory documentation of such practice and who meets the examination qualifications as provided in this subsection;~~ or

2.~~4.~~ Has registered as an apprentice with the department and paid a registration fee not to exceed $60, as set by rule of the board. The apprentice shall complete 6,240 hours of training under the supervision of an optician licensed in this state for at least 1 year or of a physician or optometrist licensed under the laws of this state. These requirements must be met within 5 years after the date of registration. However, any time spent in a recognized school may be considered as part of the apprenticeship program provided herein. The board may establish

administrative processing fees sufficient to cover the cost of administering apprentice rules as promulgated by the board.

(3) The board shall certify to the department for licensure by endorsement any applicant who meets the requirements for licensure by endorsement under s. 456.0145.

Section 17. Section 486.081, Florida Statutes, is amended to read:

486.081 Physical therapist; issuance of license by endorsement; issuance of license without examination to person passing examination of another authorized examining board in a foreign country; fee.—

(1) The board may cause a license by endorsement to be issued through the department ~~without examination~~ to any applicant who meets the requirements for licensure by endorsement under s. 456.0145 or, without examination, to any applicant who presents evidence satisfactory to the board of having passed ~~the American Registry Examination prior to 1971 or~~ an examination in physical therapy before a similar lawfully authorized examining board of ~~another state, the District of Columbia, a territory, or~~ a foreign country~~,~~ if the standards for licensure in physical therapy in such ~~other state, district, territory, or~~ foreign country are determined by the board to be as high as those of this state, as established by rules adopted pursuant to this chapter. Any person who holds a license pursuant to this section may use the words “physical therapist” or “physiotherapist” or the letters “P.T.” in connection with her or his name or place of business to denote her or his licensure hereunder. A person who holds a license pursuant to this section and obtains a doctoral degree in physical therapy

may use the letters "D.P.T." and "P.T." A physical therapist who holds a degree of Doctor of Physical Therapy may not use the title "doctor" without also clearly informing the public of his or her profession as a physical therapist.

(2) At the time of making application for licensure under ~~without examination pursuant to the terms of~~ this section, the applicant shall pay to the department a nonrefundable fee set by the board in an amount not to exceed $175 ~~as fixed by the board, no part of which will be returned~~.

Section 18. Section 486.107, Florida Statutes, is amended to read:

486.107 Physical therapist assistant; issuance of license by endorsement ~~without examination to person licensed in another jurisdiction~~; fee.—

(1) The board may cause a license by endorsement to be issued through the department ~~without examination~~ to any applicant who presents evidence to the board, under oath, of meeting the requirements for licensure by endorsement under s. 456.0145 ~~licensure in another state, the District of Columbia, or a territory, if the standards for registering as a physical therapist assistant or licensing of a physical therapist assistant, as the case may be, in such other state are determined by the board to be as high as those of this state, as established by rules adopted pursuant to this chapter~~. Any person who holds a license pursuant to this section may use the words "physical therapist assistant," or the letters "P.T.A.," in connection with her or his name to denote licensure hereunder.

(2) At the time of making application for licensure by

endorsement under ~~licensing without examination pursuant to the terms of~~ this section, the applicant shall pay to the department a nonrefundable fee set by the board in an amount not to exceed $175 ~~as fixed by the board, no part of which will be returned~~.

Section 19. Subsections (1), (2), and (3) of section 490.006, Florida Statutes, are amended to read:

490.006 Licensure by endorsement.—

(1) The department shall license a person as a psychologist or school psychologist who, upon applying to the department and remitting the appropriate fee, demonstrates to the department or, in the case of psychologists, to the board that the applicant meets the requirements for licensure by endorsement under s. 456.0145~~:~~

~~(a) Is a diplomate in good standing with the American Board of Professional Psychology, Inc.; or~~

~~(b) Possesses a doctoral degree in psychology and has at least 10 years of experience as a licensed psychologist in any jurisdiction or territory of the United States within the 25 years preceding the date of application.~~

~~(2) In addition to meeting the requirements for licensure set forth in subsection (1), an applicant must pass that portion of the psychology or school psychology licensure examinations pertaining to the laws and rules related to the practice of psychology or school psychology in this state before the department may issue a license to the applicant.~~

~~(3) The department shall not issue a license by endorsement to any applicant who is under investigation in this or another jurisdiction for an act which would constitute a violation of this chapter until such time as the investigation is complete,~~

~~at which time the provisions of s. 490.009 shall apply~~.

Section 20. Subsections (1) and (2) of section 491.006, Florida Statutes, are amended to read:

491.006 Licensure or certification by endorsement.—

(1) The department shall license or grant a certificate to a person in a profession regulated by this chapter who, upon applying to the department and remitting the appropriate fee, demonstrates to the board that he or she meets the requirements for licensure by endorsement under s. 456.0145~~:~~

~~(a) Has demonstrated, in a manner designated by rule of the board, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.~~

~~(b)1. Holds an active valid license to practice and has actively practiced the licensed profession in another state for 3 of the last 5 years immediately preceding licensure;~~

~~2. Has passed a substantially equivalent licensing examination in another state or has passed the licensure examination in this state in the profession for which the applicant seeks licensure; and~~

~~3. Holds a license in good standing, is not under investigation for an act that would constitute a violation of this chapter, and has not been found to have committed any act that would constitute a violation of this chapter~~.

(2) The fees paid by any applicant for certification as a master social worker under this section are nonrefundable.

~~(2) The department shall not issue a license or certificate by endorsement to any applicant who is under investigation in this or another jurisdiction for an act which would constitute a violation of this chapter until such time as the investigation is complete, at which time the provisions of s. 491.009 shall apply.~~

Section 21. Subsection (3) of section 486.031, Florida Statutes, is amended to read:

486.031 Physical therapist; licensing requirements.—To be eligible for licensing as a physical therapist, an applicant must:

(3)(a) Have been graduated from a school of physical therapy which has been approved for the educational preparation of physical therapists by the appropriate accrediting agency recognized by the Commission on Recognition of Postsecondary Accreditation or the United States Department of Education at the time of her or his graduation and have passed, to the satisfaction of the board, the American Registry Examination prior to 1971 or a national examination approved by the board to determine her or his fitness for practice as a physical therapist as hereinafter provided;

(b) Have received a diploma from a program in physical therapy in a foreign country and have educational credentials deemed equivalent to those required for the educational preparation of physical therapists in this country, as recognized by the appropriate agency as identified by the board, and have passed to the satisfaction of the board an examination to determine her or his fitness for practice as a physical therapist as hereinafter provided; or

(c) Be entitled to licensure by endorsement or without examination as provided in s. 486.081.

Section 22. Subsection (3) of section 486.102, Florida

Statutes, is amended to read:

486.102 Physical therapist assistant; licensing requirements.—To be eligible for licensing by the board as a physical therapist assistant, an applicant must:

(3)(a) Have been graduated from a school giving a course of not less than 2 years for physical therapist assistants, which has been approved for the educational preparation of physical therapist assistants by the appropriate accrediting agency recognized by the Commission on Recognition of Postsecondary Accreditation or the United States Department of Education, at the time of her or his graduation and have passed to the satisfaction of the board an examination to determine her or his fitness for practice as a physical therapist assistant as hereinafter provided;

(b) Have been graduated from a school giving a course for physical therapist assistants in a foreign country and have educational credentials deemed equivalent to those required for the educational preparation of physical therapist assistants in this country, as recognized by the appropriate agency as identified by the board, and passed to the satisfaction of the board an examination to determine her or his fitness for practice as a physical therapist assistant as hereinafter provided;

(c) Be entitled to licensure by endorsement or without examination as provided in s. 486.107; or

(d) Have been enrolled between July 1, 2014, and July 1, 2016, in a physical therapist assistant school in this state which was accredited at the time of enrollment; and

1. Have been graduated or be eligible to graduate from such

school no later than July 1, 2018; and

2. Have passed to the satisfaction of the board an examination to determine his or her fitness for practice as a physical therapist assistant as provided in s. 486.104.

Section 23. Notwithstanding the changes made to the Florida Statutes (2023) by this act, a board as defined in s. 456.001, Florida Statutes, or the Department of Health, as applicable, may continue processing applications for licensure by endorsement as authorized under the Florida Statutes (2023) until the rules adopted by such board or the department to implement the changes made by this act take effect or until 6 months after the effective date of this act, whichever occurs first.

Section 24. This act shall take effect July 1, 2024.

The Florida Senate

Committee Agenda Request

To: Senator Joe Gruters, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: January 24, 2024

I respectfully request that **Senate Bill #1600**, relating to Interstate Mobility, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Jay Collins
Florida Senate, District 14

File signed original with committee office

S-020 (03/2004)

2024 FDLE LEGISLATIVE BILL ANALYSIS

BILL INFORMATION	
BILL NUMBER:	SB 1600
BILL TITLE:	Interstate Mobility
BILL SPONSOR:	Senator Collins
EFFECTIVE DATE:	July 1, 2024

COMMITTEES OF REFERENCE
1) Health Policy
2) Regulated Industries
3) Fiscal Policy
4)
5)

CURRENT COMMITTEE
Health Policy

SIMILAR BILLS	
BILL NUMBER:	HB 1381
SPONSOR:	Rep. Alvarez

PREVIOUS LEGISLATION	
BILL NUMBER:	
SPONSOR:	
YEAR:	
LAST ACTION:	

IDENTICAL BILLS	
BILL NUMBER:	
SPONSOR:	

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	January 19, 2024
LEAD AGENCY ANALYST:	Lucy Saunders
ADDITIONAL ANALYST(S):	Ashley Black, Becky Bezemek
LEGAL ANALYST:	Jim Martin, Jason Harrison
FISCAL ANALYST:	Elizabeth Martin

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Requiring the respective boards of occupations, or the Department of Business and Professional Regulation (DBPR) if there is no board, to allow licensure by endorsement if the applicant meets certain criteria; requiring applicants of professions that require fingerprints for criminal history checks to submit such fingerprints before the board or department issues a license by endorsement; requiring the department, and authorizing the board, to review the results of the criminal history checks according to specific criteria to determine if the applicants meet the requirements for licensure; requiring the applicable health care regulatory boards, or the Department of Health (DOH) if there is no board, to issue a license or certificate to applicants who meet specified conditions.

2. SUBSTANTIVE BILL ANALYSIS

1. **PRESENT SITUATION:** Currently Florida does not have a Mobile Opportunity by Interstate Licensure Endorsement under ch. 456, Florida Statutes (F.S.), nor an interstate mobility by endorsement under ch. 455, F.S.

2. **EFFECT OF THE BILL:** Creates s. 455.2135, F.S., allowing licensure by endorsement for specified professions regulated by DBPR if the applicant meets certain criteria. This bill also creates s. 456.0145, F.S., establishing the "Mobile Opportunity by Interstate Licensure Endorsement Act" ("MOBILE Act"), authorizing applicable boards (defined in s. 455.01(1), F.S.), or DBPR if there is no board, to issue a license or certificate to practice in Florida to an applicant who meets certain criteria; if the practice act for a profession requires the submission of fingerprints, the applicant is subject to Level 2 screening standards, pursuant to s. 435.04, F.S. and s. 456.0135, F.S. Further, this bill amends specified sections within chs. 457, 458, 464, 465, 467, 468, 478, 480, 484, 486, 490, and 491, F.S., revising licensure by endorsement requirements for certain professions regulated by DOH.

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:	
What is the expected impact to the agency's core mission?	
Rule(s) impacted (provide references to F.A.C., etc.):	

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

List any known proponents and opponents:	
Provide a summary of the proponents' and opponents' positions:	

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

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

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

Board:	

Board Purpose:	
Who Appointments:	
Appointee Term:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y ☐ N ☒

Revenues:	
Expenditures:	
Does the legislation increase local taxes or fees?	
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. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y ☒ N ☐

Revenues:	The Florida Department of Law Enforcement (FDLE) has made inquiry with DBPR and DOH to obtain an estimate of the potential increase (if any) to the number of additional screenings which may be required if the bill should pass; as such, the fiscal impact to state government is currently indeterminate. **Applicants screened through DBPR** The total fiscal revenue for the state portion of a state and national criminal history record check is $24, which goes into FDLE's Operating Trust Fund. **Applicants screened through DOH (Clearinghouse)** The total fiscal revenue for the state portion of a state and national criminal history record check with five (5) years of fingerprint retention within the Care Provider Background Screening Clearinghouse (Clearinghouse) retention is $48. These fees will go into FDLE's Operating Trust Fund. The cost for state level criminal history record checks is $24. Since persons screened pursuant to this bill will be entered in the Clearinghouse, $24 for five (5) years of state fingerprint retention will be paid up front. There will be no fees required by the Federal Bureau of Investigation (FBI) for federal fingerprint retention.
Expenditures:	
Does the legislation contain a State Government appropriation?	
If yes, was this appropriated last year?	

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y ☒ N ☐

Revenues:	
Expenditures:	The Florida Department of Law Enforcement (FDLE) has made inquiry with DBPR and DOH to obtain an estimate of the potential increase (if any) to the number of additional screenings which may be required if the bill should pass; as such, the fiscal impact to the private sector is currently indeterminate. **Applicants screened through DBPR** The total fiscal impact to the private sector for a state and national criminal history record check is $37.25. Of this total amount, the cost for the national portion of the criminal history record check is $13.25 and the cost for the state portion is $24, which goes into FDLE's Operating Trust Fund. **Applicants screened through DOH (Clearinghouse)** The total fiscal impact to the private sector for state and national criminal history record checks with five (5 years of Clearinghouse retention is $61.25. Of this total amount, the cost for a state and national criminal history record check is $37.25; the cost for the national portion of the criminal history record check is $13.25 and the cost for the state portion is $24, which goes into FDLE's Operating Trust Fund. Since persons screened pursuant to this bill will be entered in the Clearinghouse, $24 for five (5) years of state fingerprint retention will be paid up front and will go into FDLE's Operating Trust Fund. There will be no fees required by the FBI for federal fingerprint retention. **Additional Fees** It should be noted that the cost of the criminal history record check does not include any additional servicing fees which may be assessed by a Livescan Service Provider.
Other:	

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

Does the bill increase taxes, fees or fines?	
Does the bill decrease taxes, fees or fines?	
What is the impact of the increase or decrease?	
Bill Section Number:	

TECHNOLOGY IMPACT

1. DOES THE LEGISLATION 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.	Although there is no programing required, if it is decided that the population specified in the bill will submit fingerprints for a state and national criminal history record check and FDLE will retain the fingerprints, this bill combined with other background screening bills adds to the workload on FDLE's Biometric Identification System. FDLE is currently in the process of migrating the current system to the new generation of Biometric Identification Systems. With the state and capacity limitations of the current system, this could cause undue strain.

FEDERAL IMPACT

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

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

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments and recommended action:	No additional comments or concerns.

ADDITIONAL COMMENTS

- Lines 93-94 and 151-153: In instances where, if the practice act for a profession that does not require the submission of fingerprints for state and national criminal history record check, or a statewide, name-based criminal history record check, it is unclear on how the department or board would be able to review the applicant's record to determine eligibility for endorsement. FDLE has made inquiry with DBPR to obtain further clarification in this regard.

- Lines 93-98 and 102-106: To facilitate fingerprint-based, state and national criminal history record checks (i.e., Level 2 background checks), the following language should be included in applicable sections within Florida Statutes to ensure compliance with federal law and the United State Department of Justice (DOJ)-established criteria for the submission of fingerprints to the FBI's Criminal Justice Information Services (CJIS) Division for a national criminal history background check. It should be noted that a statute cannot be approved for access to FBI criminal history record information unless all criterion specified within Public Law 92-544 are satisfied.

  An applicant must submit a full set of fingerprints to the department or to a vendor, entity, or agency authorized by s. 943.053(13). The department, vendor, entity, or agency shall forward the fingerprints to the Department of Law Enforcement for state processing and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing.

  Fees for state and federal fingerprint processing shall be borne by the applicant. The state cost for fingerprint processing shall be as provided in s. 943.053(3)(e) for records provided to persons or entities other than those specified as exceptions therein.

- The impact of this bill does not appear to necessitate additional FTE and other resources; however, this bill, in combination with additional criminal history record check bills, could rise to the level of requiring additional staffing and other resources.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 1624
INTRODUCER:	Senator Collins
SUBJECT:	Energy Resources
DATE:	January 26, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Imhof	RI	**Pre-meeting**
2.			AEG	
3.			FP	

I. Summary:

SB 1624 amends several sections of Florida law and creates new statutory provisions relating to energy resources. In summary, the bill:

- Creates limitations on local government regulation of natural gas resiliency and reliability infrastructure;
- Revises energy guidelines for public businesses, deleting requirements relating to the Florida Climate-Friendly Preferred Products List, and state vehicle fuel efficiency.
- Creates a provision requiring the Department of Agriculture and Consumer Services (DACS) to develop a Florida Humane Preferred Products List, and requiring state agencies and political subdivisions to consult the list when procuring certain energy products.
- Effective July 1, 2025, creates an electric vehicle battery deposit program within the Department of Highway Safety and Motor Vehicles (DHSMV) and requires the DHSMV to submit a report on the program to the Governor, the President of the Senate, and the Speaker of the House of Representatives.
- Requires the Florida Department of Transportation (FDOT), when it enters a contract or has entered into a contract or license to allow a vendor to sell motor fuel or charging services along the turnpike system, offer access to potential vendors of other motor vehicle fuels or repowering services along the turnpike system.
- Adds "development districts" to a provision that prohibits a municipality, county, special district, or other political subdivision of the state from enacting or enforcing a resolution, ordinance, rule, code, or policy or taking any action that restricts or prohibits or has the effect of restricting or prohibiting the types or fuel sources of energy production which may be used, delivered, converted, or supplied by utilities, gas districts, natural gas transmission companies, and certain liquefied petroleum gas dealers, dispensers, and cylinder exchange operators.

- Adds "development districts" to a provision that prohibits a municipality, county, special district, or other political subdivision of the state from restricting or prohibiting the use of an appliance using the fuels or energy types supplied by the entities above.
- Creates a requirement that, before a public utility retires an electrical power plant, it must petition the Public Service Commission (PSC) for approval.
- Permits the PSC to approve voluntary public utility programs for residential, customer-specific electric vehicle charging if the PSC determines that the rates and rate structure of a proposed program would not adversely impact the public utility's general body of ratepayers.
- Substantially revises legislative intent as it pertains to part II, of ch. 377, F.S., which provides energy resource planning and development policies for Florida. The revisions also provide updated energy policy goals and state policies as they relate to energy resource planning and development.
- Eliminates a requirement that the DACS, when analyzing the energy data collected and preparing long-range forecasts of energy supply and demand, forecasts contain plans for the development of renewable energy resources and reduction in dependence on depletable energy resources, particularly oil and natural gas. Instead, such forecasts must contain an analysis of the extent to which domestic energy resources, including renewable energy sources, are being utilized in the state. It also revises certain related considerations and assessments.
- Repeals:
  - Sections 377.801-804, F.S., providing the Florida Energy and Climate Protection Act;
  - Section 377.808, F.S., providing the Florida Green Governments Grant Act;
  - Section 377.809, F.S., providing the Energy Economic Zone Pilot Program; and
  - Section 377.816, F.S., providing a program operated by the Office of Energy within the DACS for allocating or reallocating the qualified energy conservation bond volume limitation provided by 26 U.S.C. s. 54D.
- Provides provisions for handling existing applications and contracts relating to the above repealed programs.
- Revises a current provision that the Natural Gas Transmission Pipeline Siting Act does not apply to natural gas transmission pipelines which are less than 15 miles in length or which do not cross a county line, unless the applicant has elected to apply for certification of that pipeline. The bill increases the 15 mile limit for non-applicability to 100 miles.
- Directs the PSC to ensure technologies that allow businesses and consumers to generate, store, and manage electrical energy for their own use are used in a way that best maintains the integrity of the state electricity grid through market-based policies for consumers and public utilities and through electric grid improvements that ensure the safe, reliable, and cost-effective use of electrical power. The provision also requires the PSC to establish programs and rate mechanisms, and submit a report to the legislature.
- Directs the PSC to conduct an assessment of the security and resiliency of the state's electric grid and natural gas facilities against both physical threats and cyber threats. The provision also requires the PSC to submit a report to the Legislature.
- Directs the PSC to study and evaluate the technical and economic feasibility of using advanced nuclear power technologies, including small modular reactors (SMRs), to meet the state's electrical power needs, and research means to encourage and foster the installation and use of such technologies at military installations in the state. The provision also requires

the PSC to submit a report to the Governor, President of the Senate, and Speaker of the House of Representatives.
- Directs the FDOT, in consultation with the Office of Energy within the DACS, to study and evaluate the potential development of hydrogen fueling infrastructure, including fueling stations, to support hydrogen-powered vehicles that use the state highway system. The provision also requires the FDOT to the Governor, President of the Senate, and Speaker of the House of Representatives.
- Makes conforming changes.

Except as expressly provided, the bill takes effect July 1, 2024.

II. Present Situation:

Renewable Energy

Section 366.91, F.S., establishes a number of renewable policies for the state. The purpose of these policies, as established in statute, states that it is in the public interest to promote the development of renewable energy resources in this state.[1] Further, the statute is intended to encourage fuel diversification to meet Florida's growing dependency on natural gas for electric production, minimize the volatility of fuel costs, encourages investment within the state, improve environmental conditions, and make Florida a leader in new and innovative technologies.[2]

The section defines "renewable energy" as:

> [E]lectrical energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen produced or resulting from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power. The term includes the alternative energy resource, waste heat, from sulfuric acid manufacturing operations and electrical energy produced using pipeline-quality synthetic gas produced from waste petroleum coke with carbon capture and sequestration.[3]

The section defines "biogas" as "a mixture of gases produced by the biological decomposition of organic materials which is largely comprised of carbon dioxide, hydrocarbons, and methane gas,"[4] and "biomass" as "a power source that is comprised of, but not limited to, combustible residues or gases from forest products manufacturing, waste, byproducts, or products from agricultural and orchard crops, waste or coproducts from livestock and poultry operations, waste or byproducts from food processing, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, and landfill gas."[5]

[1] Section 366.91(1), F.S
[2] *Id.*
[3] Section 366.91(2)(e), F.S.
[4] Section 366.91(2)(a), F.S.
[5] Section 366.91(2)(b), F.S.

Biofuels

Unlike other renewable energy sources, biomass can be converted directly into a liquid fuel. These fuels, called "biofuels" can be used for transportation fuel and other energy uses. The most common types of biofuels currently in use are ethanol and biodiesel.[6]

Ethanol is made from various plant material and is an alcohol blending agent mixed with traditional gasoline to reduce emissions. The most common type is E10 (10 percent ethanol and 90 percent gasoline) and it is approved for use in most conventional gasoline powered engines. Some vehicles, called flexible fuel vehicles, are designed to run on E15 (15 percent ethanol and 85 percent gasoline). Approximately 97 percent of gasoline sold in the United States has some amount of ethanol in it. The most common method of producing ethanol is through fermentation, where microorganisms metabolize plant sugars to produce ethanol.[7]

Biodiesel differs from ethanol in that it is meant as a cleaner-burning replacement for conventional (i.e. petroleum-based) diesel fuel. It is derived, generally, from new and used vegetable oils and animal fats. Biodiesel is produced by combining alcohol with fats.[8] Biodiesel is generally blended with petroleum-based diesel for consumption as a vehicle fuel.[9]

Renewable diesel fuel is a growing industry. The fuel, chemically similar to petroleum-based diesel fuel, can be used as a "drop-in" replacement for petroleum-based diesel fuel and can be seamlessly blended, transported, and even co-processed with petroleum-based diesel.[10] The production method for renewable diesel fuel is more complex than biodiesel and most is produced by hydrogenation of triglycerides, a similar process to that used for desulfurization of petroleum diesel. Other methods can also be used for renewable diesel production, including gasification and pyrolysis.[11]

Other biofuels, including renewable heating oil, renewable jet fuel (sustainable aviation fuel, alternative jet fuel, biojet), renewable naphtha, and renewable gasoline are also currently in various stages of development and commercial implementation.[12]

Natural Gas and Renewable Natural Gas

Natural gas is a fossil energy source which forms beneath the earth's surface. Natural gas contains many different compounds, the largest of which is methane. [13] Conventional natural gas is primarily extracted from subsurface porous rock reservoirs via gas and oil well drilling and

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[6] United States Department of Energy, *Biofuel Basics*, https://www.energy.gov/eere/bioenergy/biofuel-basics#:~:text=The%20two%20most%20common%20types,first%20generation%20of%20biofuel%20technology (last visited Jan. 24, 2024).
[7] *Id.*
[8] *Id.*
[9] United States Energy Information Administration, *Biofuels explained*, Jul. 19. 2022, https://www.eia.gov/energyexplained/biofuels/ (last visited Jan. 24, 2024).
[10] United States Energy Information Administration. *Biofuels explained: Biodiesel, renewable diesel, and other biofuels*, Jul. 29, 2022, https://www.eia.gov/energyexplained/biofuels/biodiesel-rd-other-basics.php, (last visited Jan. 24, 2024).
[11] *Id.*
[12] United States Energy Information Administration, *Biofuels explained*, *supra* note 9.
[13] United States Energy Information Administration, *Natural gas explained*, Dec. 27, 2022, https://www.eia.gov/energyexplained/natural-gas/ (last visited Jan. 25, 2024)

hydraulic fracturing, commonly referred to as "fracking." The term renewable natural gas (RNG) refers to biogas that has been upgraded to use in place of fossil fuel natural gas (i.e. conventional natural gas).[14]

Section 366.91, F.S., identifies sources for producing RNG as a potential source of renewable energy.[15] The section specifically defines renewable natural gas as anaerobically generated biogas, landfill gas, or wastewater treatment gas refined to a methane content of 90 percent or greater. Under the definition, such gas may be used as a transportation fuel or for electric generation, or is of a quality capable of being injected into a natural gas pipeline.

Biogas used to produce RNG comes from various sources, including municipal solid waste landfills, digesters at water resource recovery facilities, livestock farms, food production facilities, and organic waste management operations.[16] Raw biogas has a methane content between 45 and 65 percent.[17] Once biogas is captured, it is treated in a process called conditioning or upgrading, which involves the removal of water, carbon dioxide, hydrogen sulfide, and other trace elements. After this process, the nitrogen and oxygen content is reduced and the RNG has a methane content comparable to natural gas and is thus a suitable energy source in applications that require pipeline-quality gas, such as vehicle applications.[18]

RNG meeting certain standards, qualifies as an advanced biofuel under the Federal Renewable Fuel Standard Program.[19] This program was enacted by Congress in order to reduce greenhouse gas emissions by reducing reliance on imported oil and expanding the nation's renewable fuels sector.[20]

Hydrogen Fuel

The production of hydrogen involves the separation of the element from other elements in which it occurs. While there are many different sources of hydrogen and methods for producing it as a fuel, the most common methods used currently are steam-methane reforming and electrolysis.[21]

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[14] Environmental Protection Agency, *Landfill Methane Outreach Program (LMOP): Renewable Natural Gas*, https://www.epa.gov/lmop/renewable-natural-gas (last visited Jan. 25, 2024).
[15] Section 366.91(2)(e), F.S., defines "renewable energy, in part, as energy produced from biomass. Section 366.91(2)(b), F.S., defines "biomass" in part, as "a power source that is comprised of, but not limited to, combustible residues or gases from…waste, byproducts, or products from agricultural and orchard crops, waste or coproducts from livestock and poultry operations, waste or byproducts from food processing, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, and landfill gas." RNG would be such a combustible gas.
[16] Environmental Protection Agency, *supra* note 14.
[17] *Id.*
[18] United States Department of Energy, *Renewable Natural Gas Production*, https://afdc.energy.gov/fuels/natural_gas_renewable.html (last visited Jan. 25, 2024).
[19] United States Department of Energy, *Renewable Fuel Standard*, https://afdc.energy.gov/laws/RFS#:~:text=The%20Renewable%20Fuel%20Standard%20(RFS,Act%20of%202007%20(EISA) (last visited: Jan. 25, 2024).
[20] Environmental Protection Agency, *Renewable Fuel Standard Program*, https://www.epa.gov/renewable-fuel-standard-program (last visited Jan. 25, 2024).
[21] United States Energy Information Administration, *Hydrogen Explained: Production of Hydrogen*, Jan. 21, 2022, https://www.eia.gov/energyexplained/hydrogen/production-of-hydrogen.php#:~:text=The%20two%20most%20common%20methods,electrolysis%20(splitting%20water%20with%20electricity.(last visited Jan. 25, 2024)

Through either method, hydrogen is not an energy source, per se, since it is produced using other energy sources. Rather, produced hydrogen is an energy carrier.[22]

Steam-Methane Reforming

The most-widely used method for hydrogen production, which accounts for nearly all commercially-produced hydrogen in the United States, is steam-methane reforming. With steam-methane reforming, hydrogen atoms are separated from carbon atoms in methane using high temperature (1,300-1,800 degrees Fahrenheit) under 3-25 bar pressure[23] in the presence of a catalyst. The end-result of this process is the production of hydrogen, carbon-monoxide, and a small amount of carbon dioxide.[24]

For industrial facilities and petroleum refineries, natural gas is the typical base material from which to produce hydrogen by steam-methane reforming. Biogas and landfill gas is also a base material to produce hydrogen used by several fuel cell power plants in the United States.

Electrolysis

Electrolysis, in the sense of hydrogen production, means a process where hydrogen is split from water using an electric current. On a large, commercial scale, the process may be referred to as power-to-gas, where power is electricity and gas is hydrogen.[25] This hydrogen is then captured and used or sold as an end product or as a fuel to generate electricity.[26] The electrolysis process itself is emission-free and has no by-products other than hydrogen and oxygen. However, the energy source used to power the electrolysis (which could be from renewables, nuclear, or fossil fuels) may or may not be emission-free or have other byproducts.

Hydrogen Categories

Recently, to distinguish between the energy sources used to power hydrogen production, hydrogen producers, marketers, government agencies, and others have used a color-coded system. The nine commonly used color categories are detailed below:

- Green: Hydrogen produced by water electrolysis and employing renewable electricity as the fuel source. It is so called because the process itself does not produce emissions.
- Blue: Hydrogen produced from fossil fuels, but the carbon dioxide produced by the process is sequestered underground. Thus, the process is considered carbon neutral.
- Gray: Hydrogen produced by steam-methane reforming and the emissions produced from the burning of fossil fuels in the method are released into the atmosphere.

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[22] International Renewable Energy Agency, *Hydrogen*, available at https://www.irena.org/Energy-Transition/Technology/Hydrogen (last visited Jan. 25, 2024).

[23] One bar equals 14.5 pounds per square inch of pressure. For comparison, at sea level, the average air pressure on Earth is 1.0132 bars. National Oceanic and Atmospheric Administration, *Air Pressure*, https://www.noaa.gov/jetstream/atmosphere/air-pressure#:~:text=The%20standard%20pressure%20at%20sea,the%20atmosphere%20decreases%20with%20height (last visited Jan. 25, 2024).

[24] United States Energy Information Administration, *Hydrogen Explained: Production of Hydrogen*, *supra* note 21.

[25] *Id*.

[26] Florida Public Service Commission, *Bill Analysis for SB 1162* (Mar. 14, 2023) (on file with the Senate Regulated Industries Committee).

- Black or Brown: Hydrogen produced from the burning of coal, "black" being from the burning of bituminous coal and "brown" being from the burning of lignite coal. A comparatively large amount of carbon dioxide and carbon monoxide is released into the atmosphere with this type of production.
- Turquoise: This now experimental method of hydrogen production involves the thermal splitting of methane through pyrolysis. Though carbon is formed in this process, it is in a solid state that can be stored and not a carbon dioxide gas.
- Purple: Hydrogen made using nuclear power and heat through the combined chemo thermal electrolysis splitting of water.
- Pink: This is the production of hydrogen through electrolysis where the energy source is electricity from a nuclear power plant.
- Red: Hydrogen produced through high-temperature catalytic splitting of water using nuclear power thermal energy as an energy source.
- White: Naturally-occurring hydrogen.[27]

Transmission and Use of Hydrogen Fuel

Due to hydrogen's low volumetric energy density, transportation, storage, and final delivery to the point of use, it can have a significant impact on the cost of using hydrogen as a fuel carrier. These factors can lead to inefficiencies that increase the farther hydrogen must be transported before reaching its end use.[28] Thus, currently, most hydrogen is produced in close proximity to its end use.[29] However, technology is in development that may bring these costs down and allow for easier transport and transmission of hydrogen.[30]

The two typical methods for transporting hydrogen fuel currently are via pipeline or by truck through the use of cryogenic liquid tanker trucks or gaseous tube trailers. Pipelines are most popular in areas where demand is high and expected to remain stable or grow. Trucking of hydrogen is used in areas with less demand.[31]

Potential uses for hydrogen are in:[32]

- Industrial uses such as powering oil refineries and powering ammonia, methanol, and steel production. Currently, this is the largest use, by far, for hydrogen.
- Transportation, powering hydrogen-fueled vehicles.
- Buildings where hydrogen can be blended into existing natural gas networks. It is possible currently to blend small amounts of hydrogen in existing natural gas transmission systems with little to no changes to infrastructure, equipment, and appliances.
- Power generation where emerging technology is available to use hydrogen as a medium to store renewable energy, such as solar and wind. Hydrogen and ammonia can be used in gas

[27] Bulletin H2, *Hydrogen Colours Codes*, available at https://www.h2bulletin.com/knowledge/hydrogen-colours-codes/ (last visited: Jan. 25, 2024).
[28] United States Office of Energy Efficiency and Renewable Energy, *Hydrogen Delivery*, available at https://www.energy.gov/eere/fuelcells/hydrogen-delivery (last visited: Jan. 25, 2024).
[29] Florida Public Service Commission, *Bill Analysis for SB 1162*, *supra* note 26.
[30] *See* Florida Public Service Commission, *Bill Analysis for SB 1162*, *supra* note 26, which describes potential new technologies that can overcome the transportation and transmission cost hurdle for hydrogen.
[31] United States Office of Energy Efficiency and Renewable Energy, *supra* note 28.
[32] International Renewable Energy Agency, *supra* note 22.

turbines to increase power system flexibility, and ammonia can be used to reduce emissions from coal-fired power plants.

Florida Public Service Commission

The Florida Public Service Commission (PSC) is an arm of the legislative branch of government.[33] The role of the PSC is to ensure Florida's consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe, affordable, and reliable manner.[34] In order to do so, the PSC exercises authority over public utilities in one or more of the following areas: rate base or economic regulation; competitive market oversight; and monitoring of safety, reliability, and service issues.[35]

Electric and Gas Utilities

The PSC monitors the safety and reliability of the electric power grid[36] and may order the addition or repair of infrastructure as necessary.[37] The PSC has broad jurisdiction over the rates and service of investor-owned electric and gas utilities.[38] However, the PSC does not fully regulate municipal electric utilities (utilities owned or operated on behalf of a municipality) or rural electric cooperatives. The PSC does have jurisdiction over these types of utilities with regard to rate structure, territorial boundaries, bulk power supply operations, and planning.[39] Municipally-owned utility rates and revenues are regulated by their respective local governments or local utility boards. Rates and revenues for a cooperative utility are regulated by its governing body elected by the cooperative's membership.

Municipal Electric and Gas Utilities, and Special Gas Districts, in Florida

A municipal electric or gas utility is an electric or gas utility owned and operated by a municipality. Chapter 366, F.S., provides the majority of electric and gas utility regulations for Florida. While ch. 366, F.S., does not provide a definition, per se, for a "municipal utility," variations of this terminology and the concept of these types of utilities appear throughout the chapter. Currently, Florida has 33 municipal electric utilities that serve over 14 percent of the state's electric utility customers.[40] Florida also has 27 municipally-owned gas utilities and four special gas districts.[41]

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[33] Section 350.001, F.S.
[34] *See* Florida Public Service Commission, *Florida Public Service Commission Homepage*, http://www.psc.state.fl.us (last visited Jan. 25, 2024).
[35] Florida Public Service Commission, *About the PSC*, https://www.psc.state.fl.us/about (last visited Jan. 25, 2024).
[36] Section 366.04(5) and (6), F.S.
[37] Section 366.05(1) and (8), F.S.
[38] Section 366.05, F.S.
[39] Florida Public Service Commission, *About the PSC*, *supra* note 35.
[40] Florida Municipal Electric Association, *About Us*, https://www.flpublicpower.com/about-us (last visited Jan. 25, 2024).
[41] Florida Public Service Commission, *2023 Facts and Figures of the Florida Utility Industry*, pg. 13, Apr. 2023 (available at: https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/FactsAndFigures/April%202023.pdf). A "special gas district" is a dependent or independent special district, setup pursuant to ch. 189, F.S., to provide natural gas service. Section 189.012(6), F.S., defines a "special district" as "a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a limited geographic boundary and is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet."

Rural Electric Cooperatives in Florida

At present, Florida has 18 rural electric cooperatives, with 16 of these cooperatives being distribution cooperatives and two being generation and transmission cooperatives.[42] These cooperatives operate in 57 of Florida's 67 counties and have more than 2.7 million customers.[43] Florida rural electric cooperatives serve a large percentage of area, but have a low customer density. Specifically, Florida cooperatives serve approximately 10 percent of Florida's total electric utility customers, but their service territory covers 60 percent of Florida's total land mass. Each cooperative is governed by a board of cooperative members elected by the cooperative's membership.[44]

Public Electric and Gas Utilities in Florida

There are four investor-owned electric utility companies (electric IOUs) in Florida: Florida Power & Light Company (FPL), Duke Energy Florida (Duke), Tampa Electric Company (TECO), and Florida Public Utilities Corporation (FPUC).[45] In addition, there are eight investor-owned natural gas utility companies (gas IOUs) in Florida: Florida City Gas, Florida Division of Chesapeake Utilities, FPUC, FPUC-Fort Meade Division, FPUC-Indiantown Division, Peoples Gas System, Sebring Gas System, and St. Joe Natural Gas Company. Of these eight gas IOUs, five engage in the merchant function servicing residential, commercial, and industrial customers: Florida City Gas, FPUC, FPUC-Fort Meade Division, Peoples Gas System, and St. Joe Natural Gas Company. Florida Division of Chesapeake Utilities, FPUC-Indiantown Division, and Sebring Gas System are only engaged in firm transportation service.[46]

Electric IOU and Gas IOU rates and revenues are regulated by the PSC and the utilities must file periodic earnings reports, which allow the PSC to monitor earnings levels on an ongoing basis and adjust customer rates quickly if a company appears to be overearning.[47]

Section 366.041(2), F.S., requires public utilities to provide adequate service to customers. As compensation for fulfilling that obligation, s. 366.06, F.S., requires the PSC to allow the IOUs to recover honestly and prudently invested costs of providing service, including investments in infrastructure and operating expenses used to provide electric service.[48]

Retirement of Power Plants

In recent years hundreds of power plants have retired across the United States.[49] Plants can be retired for many reasons, including:

- Inability to compete with newer, more efficient, resources;

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[42] Florida Electric Cooperative Association, *Members*, https://feca.com/members/ (last visited Jan. 25, 2024).
[43] Florida Electric Cooperative Association, *Our History*, https://feca.com/our-history/ (last visited Jan. 25, 2024).
[44] *Id*.
[45] Florida Public Service Commission, *2023 Facts and Figures of the Florida Utility Industry*, *supra* note 41, at 5.
[46] *Id* at 14. Firm transportation service is offered to customers under schedules or contracts which anticipate no interruption under almost all operating conditions. *See* Firm transportation service, 18 CFR s. 284.7.
[47] PSC, *2022 Annual Report*, p. 6, (available at: https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/AnnualReports/2022.pdf) (last visited Jan. 25, 2024).
[48] *Id*.
[49] Resources for the Future, *Decommissioning US Power Plants: Decisions, Costs, and Key Issues*, https://www.rff.org/publications/reports/decommissioning-us-power-plants-decisions-costs-and-key-issues/ (last visited Jan. 25, 2024).

- Inability to upgrade to comply with environmental regulations and still remain competitive; and
- Rising maintenance costs.[50]

Retiring a power plant can take months, or even years.[51] Most power plants being retired today were built in the 1940s to 1960s, before the federal Clean Air Act was passed in 1970. Once a power plant closes, it generally is no longer creating revenue, but costs generally will continue until the plant is fully deconstructed.[52] Generally, there is no legal requirement that a power plant be demolished upon retirement, and often management of utility companies opt to avoid this because decommissioning a site can be very expensive.[53]

Utility companies have several options for power plant sites post-retirement:
- Decommissioning;
- Retrofitting to use a new type of fuel, such as converting from coal to natural gas;
- Replacement with newer generation plant;
- Selling the power plant site for redevelopment;
- No action at all.[54]

Ten-Year Site Plans

Section 186.801, F.S., requires each electric utility to submit a 10-year site plan to the PSC at least every two years. The site plan estimates the power-generating needs for the utility and its proposed power plant sites. The PSC makes a preliminary study of these site plans and classifies them as "suitable" or "unsuitable." The commission may also suggest alternatives to a submitted plan. In reviewing plans, the PSC reviews all of the following:
- The need, including the need as determined by the PSC, for electrical power in the area to be served.
- The effect on fuel diversity within the state.
- The anticipated environmental impact of each proposed electrical power plant site.
- Possible alternatives to the proposed plan.
- The views of appropriate local, state, and federal agencies, including the views of the appropriate water management district as to the availability of water and its recommendation as to the use by the proposed plant of salt water or fresh water for cooling purposes.
- The extent to which the plan is consistent with the state comprehensive plan.
- The plan with respect to the information of the state on energy availability and consumption.
- The amount of renewable energy resources the utility produces or purchases.

[50] PJM, *Explaining Power Plant Retirements in PJM*, https://learn.pjm.com/three-priorities/planning-for-the-future/explaining-power-plant-retirements#:~:text=Power%20plants%20are%20retired%20for,required%20to%20retire%20by%20law (last visited Jan. 25, 2024).
[51] *Id.*
[52] Power, *Coal Power Plant Post-Retirement Options*, https://www.powermag.com/coal-power-plant-post-retirement-options/ (last visited Jan. 25, 2024).
[53] *Id.*
[54] *Id.*

- The amount of renewable energy resources the utility plans to produce or purchase over the 10-year planning horizon and the means by which the production or purchases will be achieved.
- A statement describing how the production and purchase of renewable energy resources impact the utility's present and future capacity and energy needs.

Any completed application for a new electrical power plant that is not identified in a utility's current site plan is deemed an amendment to the site plan.[55]

Natural Gas Transmission

Natural gas transmission companies are regulated by the PSC under ch. 368, F.S. The term "natural gas transmission company," as defined in s. 368.103, F.S., "means any person owning or operating for compensation facilities located wholly within this state for the transmission or delivery for sale of natural gas." The term does not include "any person that owns or operates facilities primarily for the local distribution of natural gas or that is subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. ss. 717 et seq., or any municipalities or any agency thereof, or a special district created by special act to distribute natural gas." Section 364.104, F.S., authorizes the PSC to "fix and regulate rates and services of natural gas transmission companies, including, without limitation, rules and regulations for:"

- Determining customers and services classifications;
- Determining rate applicability; and
- "Ensuring that the provision (including access to transmission) or abandonment of service by a natural gas transmission company is not unreasonably preferential, prejudicial, or unduly discriminatory."

Section 368.105, F.S., provides the procedures for the PSC to set rates and services requirements for natural gas transmission companies in Florida.

Under chapter 368, F.S., the PSC is authorized to inspect intrastate natural gas systems to ensure compliance with rules and regulations regarding safety standards.[56] Currently, Florida has 3 major pipelines: Florida Gas Transmission Company, Gulfstream Natural Gas System, and Sabal Trail Interstate Pipeline. The state also has two minor pipelines: Gulf South Pipeline Company and Southern Natural Gas.[57]

Preemption over Utility Service Restrictions

Section 366.032, F.S., provides that "a municipality, county, special district, or other political subdivision of the state may not enact or enforce a resolution, ordinance, rule, code, or policy or take any action that restricts or prohibits or has the effect of restricting or prohibiting the types or fuel sources of energy production which may be used, delivered, converted, or supplied" by the following:[58]

[55] Section 186.801, F.S.
[56] Florida Public Service Commission, *2023 Facts and Figures of the Florida Utility Industry*, *supra* note 41, at 13.
[57] *Id.*
[58] To the extent of serving the customers they are authorized to serve.

- Investor-owned electric utilities;
- Municipal electric utilities;
- Rural electric cooperatives;
- Entities formed by interlocal agreement to generate, sell, and transmit electrical energy;
- Investor-owned gas utilities;
- Gas districts;
- Municipal natural gas utilities;
- Natural gas transmission companies; and
- Category I liquefied petroleum gas dealers, Category II liquefied petroleum gas dispensers, or Category III liquefied petroleum gas cylinder exchange operator as defined in s. 527.01, F.S.

Section 366.032(2), F.S, also prohibits (except to enforce the Florida Building Code and Florida Fire Prevention Code) a municipality, county, special district, or other political subdivision of the state from restricting or prohibiting the use of an appliance using the fuels or energy types used, delivered, converted, or supplied by the entities above.

The section also provides that it acts retroactively to any provision that existed before its enactment in 2021.

Electric Vehicles

The U.S. Department of Energy's Alternative Fuels Data Center (AFDC) uses the term, "electric-drive vehicles," as referring collectively to hybrid electric vehicles (HEV), plug-in hybrid electric vehicles (PHEV), and all-electric vehicles (EV).[59] According to the AFDC:

- HEVs are primarily powered by an internal combustion engine that runs on conventional or alternative fuel and an electric motor using energy stored in a battery. The battery is charged through regenerative braking and the internal combustion engine, not by plugging in to charge.
- PHEVs are powered by an internal combustion engine and an electric motor using energy stored in a battery. They can operate in all-electric mode through a larger battery, which can be plugged in to an electric power source to charge. Most can travel between 20 and 40 miles on electricity alone, and then will operate solely on gasoline, similar to a conventional hybrid.

EVs use a battery to store the electric energy that is charged by plugging the vehicle into charging equipment. EVs always operate in all-electric mode and have typical driving ranges from 150 to 400 miles.[60]

The primary difference between an EV and a traditional internal combustion engine (ICE) vehicle lies in their drive trains. The main components of an EV power train are its battery, a motor, and ancillary systems. The main components of an ICE power train are its liquid fuel

[59] U.S. Dept. Energy, AFDC, *Hybrid and Plug-In Electric Vehicles*, https://afdc.energy.gov/vehicles/electric.html (last visited Jan. 25, 2024).
[60] *Id*.

storage, combustion chambers and related cooling system, transmission, and an exhaust system.[61]

For purposes of vehicle registration, Florida law currently defines the term "electric vehicle" to mean "a motor vehicle that is powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other sources of electrical current."[62]

Increased interest in EVs has been driven by higher gas prices and greenhouse gas emission concerns.[63] However, limited EV range (and the related and range anxiety[64]), limitations in charging infrastructure, charging speed as it relates to time to refuel a traditional gasoline vehicle, and EV cost are some of the factors negatively impacting EV adoption.[65]

Electric Vehicle Charging Stations

EVs need access to charging stations. For most EV users, charging starts at home or at fleet facilities. Charging stations at other commonly-visited locations, however, such as work, public destinations, and along roadways, can offer more flexible fueling charging opportunities. The growth of charging stations has made longer distance travel with EVs more feasible and has helped grow the market for EVs. [66]

There are three general types of chargers:

- Level 1: Level 1 chargers use a standard 120-volt home outlet (i.e. a standard wall socket). Often EV automakers will include with the vehicle a charging cord that can plug directly into a 120-volt outlet. These are the slowest types of chargers and, on average, provide about five miles of driving distance per hour of charging.
- Level 2: Level 2 chargers use a 240-volt outlet. Such outlets are often used for larger home appliances with greater power needs, such as electric ovens and clothes dryers. To use such chargers at home, homeowners may need a professional to install a 240-volt outlet in a vehicle-accessible location and additional equipment installation may be necessary. Level 2 chargers can also be found in some public charging stations. Level two chargers, on average, provide about 25 miles of driving distance per hour of charging.
- Direct Charge Fast Chargers (DCFC): DCFC are the fastest types of chargers. These are not typically not found in homes, but are available at public charging stations and along roadways and highway routes. These types of chargers provide approximately 100 to 300 miles of driving for a 30-minute charge; some DCFC can charge even faster than this.[67]

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[61] Brandon S. Tracy, Cong. Research Serv., R47227, *Critical Minerals in Electric Vehicle Batteries*, (2022) (available at https://crsreports.congress.gov/product/pdf/R/R47227).
[62] Section 320.01(36), F.S.
[63] *Id*.
[64] Range anxiety is the feeling an EV driver has when the battery charge is low, and the usual sources of electricity are unavailable, striking a fear of being stranded. J.D. Power, *What is Range Anxiety with Electric Vehicles?*, Nov. 3, 2020, https://www.jdpower.com/cars/shopping-guides/what-is-range-anxiety-with-electric-vehicles (last visited Jan. 24, 2024).
[65] EV Connect, *10 Factors That Affect Widespread EV Adoption*, https://www.evconnect.com/blog/10-factors-affecting-ev-adoption (last visited Jan. 25, 2024).
[66] U.S. Dept. of Energy, *Developing Infrastructure to Charge Electric Vehicles*, https://afdc.energy.gov/fuels/electricity_infrastructure.html (Jan. 24, 2024).
[67] Environmental Protection Agency, *Plug-in Electric Vehicle Charging: The Basics*, https://www.epa.gov/greenvehicles/plug-electric-vehicle-charging-basics (Jan. 26, 2024).

EV Charging in Florida

Since the current regulatory structure of electric utilities in Florida includes exclusive service territories, the sale of electricity to retail, or end-use customers by a third party is not permitted.[68] In 2012 the Florida Legislature created an exemption for electric vehicle charging, under s. 366.94(4), F.S., declaring that the provision of electric vehicle charging to the public by a non-utility is not considered a retail sale of electricity under ch. 366, F.S. The rates, terms, and conditions of EV charging by a non-utility are not subject to PSC regulation.[69]

Statistics provided by the U.S. Department of Energy show that Florida has the third largest EV charging infrastructure in the country, behind California and New York.[70] As of January 14, 2022, Florida has the following numbers of charging infrastructure:

- Station locations – 3,260
- EV supply equipment ports – 9,072
- Level 1 chargers - 24
- Level 2 chargers – 6,843
- DCFC – 2,205

Electric Vehicle Batteries

Sales of EVs are predicted to continue to grow with some estimates indicating approximately 200 million EVs sold by 2030.[71] With this expected growth in EV, there is a growing concern about the availability of mineral inputs to make EV batteries[72] and disposal of used batteries. The most common type of batteries used in EVs today are those of the lithium-ion type.[73]

Most parts of EV batteries are recyclable,[74] however the EV battery recycling industry is very young. Most of the lithium-ion battery materials going into recycling plants today come from EV-battery production scrap material instead of end-of-life EV batteries. This is, in part, because most EV batteries produced are still currently functional and on the road.[75]

Currently, there are no federal or state laws that mandate EV battery recycling.[76] The federal Environmental Protection Agency (EPA) recently clarified, via a memo published on May 24, 2023, that end-of-life lithium-ion batteries, including those that are used in EVs, are likely hazardous waste at the end of life and should be handled pursuant to the hazardous waste

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[68] FDOT, *EV Infrastructure Master Plan* (July 2021), p. 16, https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/planning/fto/fdotevmp.pdf (last visited Jan. 25, 2024).
[69] Section 366.94(1), F.S.
[70] United States Department of Energy, *Alternative Fuels Data Center*, https://afdc.energy.gov/ (last visited Jan. 25, 2024).
[71] Tracy, *supra* note 61.
[72] *Id.*
[73] *Id.*
[74] John Voelecker, *Everything You Need to Know about EV Battery Disposal*, Car and Driver, Jun. 10, 2023
[75] Alexander Tankou and Dale Hall, International Counsel on Clean Transportation, *Will the U.S. EV Battery Recycling Industry be Ready for Millions of End-of-Life Batteries*, Sep. 29, 2023 (available at https://theicct.org/us-ev-battery-recycling-end-of-life-batteries-sept23/).
[76] *See* U.S. Dept. of Energy, *Battery Policies and Incentives Search*, https://www.energy.gov/eere/vehicles/battery-policies-and-incentives-search#/?topic=EVS&status=enacted&page=4 (last visited Jan. 23, 2024), which does not list any enacted legislation on the subject.

regulations under the federal Resource Conservation and Recovery Act.[77] Fires are common with lithium-ion batteries at the end of such batteries' life, and mismanagement and damage to such batteries makes this more likely. EV batteries, according to the EPA, generally "end up at a dealership or automobile mechanic shop, if the vehicle's battery needed to be replaced, or at an automobile disassembler, if the entire vehicle reached the end of its life."[78] From there, batteries should be identified and sorted for proper recycling and disposal, a process where they may change hands many times.[79]

As of September, 2023, Florida currently has no lithium-ion battery recycling plants in operation or in development or any electric vehicle production plant in operation. The state does have two lithium-ion battery material production plants in operation—one located in Jacksonville, the other in Sunrise.[80]

Natural Gas Transmission Pipeline Siting Act

Part VIII of Ch. 403, F.S., is the Natural Gas Transmission Pipeline Siting Act (NGTPSA), and is Florida's process for licensing the construction and operation of natural gas pipelines in the state. The Federal Energy Regulatory Commission regulates interstate natural gas transmission and reviews proposals to build interstate natural gas pipelines. The Florida Department of Environmental Protection's (DEP's) role regarding pipelines is to handle in-state environmental regulatory matters for wetlands crossings, discharge of hydrostatic test waters and other applicable areas.[81] Under s. 403.9422, F.S., the PSC also has the responsibility to determine the need for a proposed natural gas pipeline regulated by NGTPSA and issue certificates of need as appropriate.

Section 403.9405(2), F.S., provides that the NGTPSA does not apply to:

- Natural gas transmission pipelines which are less than 15 miles in length or which do not cross a county line, unless the applicant has elected to apply for certification of that pipeline;
- Natural gas transmission pipelines for which a certificate of public convenience and necessity has been issued under s. 7(c) of the Natural Gas Act, 15 U.S.C. s. 717f, or a natural gas transmission pipeline certified as an associated facility to an electrical power plant pursuant to the Florida Electrical Power Plant Siting Act, ss. 403.501-403.518, F.S., unless the applicant elects to apply for certification of that pipeline; and
- Natural gas transmission pipelines that are owned or operated by a municipality or any agency thereof, by any person primarily for the local distribution of natural gas, or by a special district created by special act to distribute natural gas, unless the applicant elects to apply for certification of that pipeline.

[77] U.S. Environmental Protection Agency, *Memo Regarding Lithium Battery Recycling Regulatory Status and Frequently Asked Questions*, May 24, 2023 (available at https://rcrapublic.epa.gov/files/14957.pdf).
[78] *Id.*
[79] *Id.*
[80] International Council on Clean Transportation, *Will the U.S. EV Battery Recycling Industry be Ready for Millions of End-of-Life Batteries*, Sep. 23, 2023, https://theicct.org/us-ev-battery-recycling-end-of-life-batteries-sept23/ (last visited Jan. 26, 2024).
[81] Florida Department of Environmental Protection, *Natural Gas Pipeline Siting Act*, https://floridadep.gov/water/siting-coordination-office/content/natural-gas-pipeline-siting-act (last visited Jan. 24, 2024).

Nuclear Power

Nuclear power plants work, in a way, similarly to any other turbine-based power plant. In turbine-based power plants a moving fluid—water, steam, combustion gases, or even air—pushes blades mounted on a rotor. The force of the moving liquid spins the shaft of a generator. That generator then converts the kinetic energy of the spinning rotor to electrical energy. Types of turbines include steam, combustion (i.e. gas), hydroelectric, and wind.[82]

Nuclear power plants work the same way, in that steam is used to spin a turbine to produce electricity. The unique part of a nuclear power plant is how that steam is produced. In a nuclear power plant, heat is used to make steam, and this heat is produced by a controlled fission nuclear reaction.[83]

In a traditional nuclear power plant, uranium, which has been processed into small ceramic pellets and stacked together in a sealed metal tube (called a fuel rod), is the fuel source. Fuel rods are bundled together (typically in bundles of more than 200 rods) to form a fuel assembly. Reactor cores are generally made up of around 200 assemblies, depending on power level. In the reactor, fuel rods are immersed in water, which acts as a coolant and moderator. Control rods are then inserted into the reactor core to reduce the nuclear reaction or removed to increase the nuclear reaction. This reaction creates heat to turn water into the steam that fuels the turbine.

There are over 400 commercial reactors worldwide, including 93 in the United States.

Advanced Small Nuclear Reactors

Advanced small nuclear reactors (SMRs) are currently under development in the United States. SMRs differ from traditional large nuclear power plants—which can take over a decade to build between planning, regulatory approval, and construction—[84]in that they are made in factories and transported to sites ready to "plug and play" upon arrival. This reduces both capital costs and construction times. The smaller size of these reactors also makes them ideal for smaller electric grids and other locations where a large nuclear power plant is not feasible.[85]

Advanced Reactor Technologies

The Office of Nuclear Energy's Office of Advanced of Advanced Reactor Technologies (ART) sponsors research, development, and deployment of emerging nuclear reactor technologies. While the technologies are varied, ART's main areas of focus currently are:

- Developing assessment methods for evaluating advanced SMR technologies and characteristics;
- Developing and testing of materials, fuels and fabrication techniques;

[82] United States Energy Information Administration, *Electricity Explained*, https://www.eia.gov/energyexplained/electricity/how-electricity-is-generated.php (last visited Jan. 25, 2024).
[83] United States Department of Energy, *NUCLEAR 101: How Does a Nuclear Reactor Work?*, https://www.energy.gov/ne/articles/nuclear-101-how-does-nuclear-reactor-work (last visited Jan. 25, 2024).
[84] United States Energy Information Administration, *Nuclear explained*, https://www.eia.gov/energyexplained/nuclear/us-nuclear-industry.php (last visited Jan. 25, 2024).
[85] United States Department of Energy, Office of Nuclear Energy, *Nuclear Reactor Technologies*, https://www.energy.gov/ne/nuclear-reactor-technologies (last visited Jan.25, 2024).

- Resolving key regulatory issues identified by Nuclear Regulatory Commission and the nuclear industry; and
- Developing advanced instrumentation and controls and human-machine interfaces.[86]

Customer-Owned Renewable Generation

Section 366.91(2)(c), F.S., defines "customer-owned renewable generation" as "an electric generating system located on a customer's premises that is primarily intended to offset part or all of the customer's electricity requirements with renewable energy." Under the traditional utility model, an electric utility would produce (or purchase at wholesale) energy which it, in turn, would provide to customers to power their homes and businesses through its energy grid. However, with the advent of technologies like electric vehicles, rooftop solar systems, battery storage systems, and smart appliances, customers are now able to provide services to support grid operations.[87]

Customer-owned generation, such as rooftop solar and other small-scale distributed energy resources (DERs), offer a number of benefits to both customers and utilities, including:

- Reduction in reliance on the centralized grid which can increase energy resilience in times of power-interruption in times such as extreme weather events;
- Supplying affordable electricity to customers; and
- Supporting decarbonization efforts.[88]

Despite its benefits, DERs can present challenges for electric utilities. Many of the electric grids today were designed, originally, for the 20th century where distributed energy generation was comparatively small or non-existent. [89] The grid was traditionally designed for centralized power generation and, primarily, a one-way power flow.[90] Greater system flexibility is needed where inputs of power may not be as predicable or controllable by the utilities themselves. The challenges for many grids include:

- The complexity of integrating a wide variety of highly-distributed energy sources.
- Variability of power production as wind and solar are not "always on" type of energy production methods, as this can present challenges in effective energy storage and management, reliability, and resilience.
- DERs can significantly influence electricity demand patterns, sometimes unpredictably. This can create issues with demand response and electricity load management.

[86] United States Department of Energy, Office of Nuclear Energy, *Advanced Reactor Technology*, https://www.energy.gov/ne/advanced-reactor-technologies (last visited Jan. 25, 2024).
[87] Utility Dive, *Consumers as partners: The evolving utility business model*, Jan. 17, 2023, https://www.utilitydive.com/spons/consumers-as-partners-the-evolving-utility-business-model/640195/ (last visited Jan. 24, 2024).
[88] International Energy Agency, *Executive summary: Unlocking the Potential of Distributed Energy Resources*, https://www.iea.org/reports/unlocking-the-potential-of-distributed-energy-resources/executive-summary (last visited Jan. 24, 2024).
[89] *Id.*
[90] Dynamic Ratings, *What are Distributed Energy Resources*, https://www.dynamicratings.com/solutions/smart-infrastructure-solutions/distributed-energy-resources/ (Jan. 24, 2024).

- The wide deployment of DERs and smart technology has raised data privacy and security concerns as these devices integrate with the grid.[91]

Smart demand response programs and load management strategies can help mitigate or reduce these issues.[92]

Climate Friendly Public Business

Section 286.29, F.S., requires state agencies to follow certain procedures to reduce greenhouse gas emissions in conducting public business. The section requires that state agencies:

- Consult with the "Florida Climate-Friendly Preferred Products List" produced by the Department of Management Services (DMS),[93] in procuring products from state term contracts.[94] If the price is comparable, they must procure such products.[95]
- Contract only with hotels or conference facilities for meetings and conferences as recognized by the Green Lodging Program.[96,97]
- Ensure vehicles meet minimum maintenance schedules shown to reduce fuel consumption and report such compliance to the DMS.[98]
- When state agencies, state universities, community colleges, and local governments that purchase vehicles under a state purchasing plan that such vehicles are selected for greatest fuel efficiency available for a given use class when fuel economy data is available.[99]
- Use ethanol and biodiesel blended fuels when available.[100]
- Procure biofuels for fleet, to the greatest extent practicable, if the agency administers central fueling operations.[101]

Department of Agriculture and Consumer Services

The DACS is a state agency created by s. 20.14, F.S., and is headed by an elected Commissioner of Agriculture—who is also designated by the Florida Constitution as one of the three members

[91] *Id.*
[92] *Id.*
[93] The DMS keeps a Florida Climate-Friendly Preferred Products List at https://www.dms.myflorida.com/business_operations/state_purchasing/state_contracts_and_agreements/florida_climate_friendly_preferred_products_list, (last visited Jan. 25, 2024).
[94] Section 286.29(1), F.S.
[95] *Id.*
[96] The Florida Department of Environmental Protection designates and recognizes lodging facilities that make a commitment to conserve and protect Florida's natural resources through the Florida Green Lodging Program. To become designated, facilities must conduct a thorough property assessment and implement a specified number of environmental practices in five areas of sustainable operations: (1) communication and education with customers, employees, and the public; (2) waste reduction, reuse and recycling; (3) water conservation; (4) energy efficiency; and (5) indoor air quality. Florida Department of Environmental Protection, *Green Lodging*, https://floridadep.gov/osi/green-lodging/content/about-florida-green-lodging-program (Last visited Jan. 25, 2024).
[97] Section 286.29(2), F.S.
[98] Section 286.29(3), F.S.
[99] Section 286.29(4), F.S.
[100] Section 286.29(5), F.S.
[101] *Id.*

of the Florida cabinet.[102] The DACS's responsibilities are wide-ranging, however, in general, they are to:

- Support and promote Florida agriculture;
- Protect the environment;
- Safeguard consumers; and
- Ensure the safety and wholesomeness of food.[103]

Energy Planning and Development

Section 377.601, F.S., provides the legislative intent in regards to part II, of ch. 377, F.S., which provides energy resource planning and development policies for Florida. The section states that the legislature finds that:

> [T]he state's energy security can be increased by lessening dependence on foreign oil; that the impacts of global climate change can be reduced through the reduction of greenhouse gas emissions; and that the implementation of alternative energy technologies can be a source of new jobs and employment opportunities for many Floridians. The Legislature further finds that the state is positioned at the front line against potential impacts of global climate change. Human and economic costs of those impacts can be averted by global actions and, where necessary, adapted to by a concerted effort to make Florida's communities more resilient and less vulnerable to these impacts. In focusing the government's policy and efforts to benefit and protect our state, its citizens, and its resources, the Legislature believes that a single government entity with a specific focus on energy and climate change is both desirable and advantageous. Further, the Legislature finds that energy infrastructure provides the foundation for secure and reliable access to the energy supplies and services on which Florida depends. Therefore, there is significant value to Florida consumers that comes from investment in Florida's energy infrastructure that increases system reliability, enhances energy independence and diversification, stabilizes energy costs, and reduces greenhouse gas emissions.

Relatedly, s. 377.601(2), F.S., provides that it is the policy of the state to:

- Develop and promote the effective use of energy, discourage all forms of energy waste, and recognize and address the potential of global climate change wherever possible;
- Play a leading role in developing and instituting energy management programs aimed at promoting energy conservation, energy security, and the reduction of greenhouse gas emissions;
- Include energy considerations in all state, regional, and local planning;
- Utilize and manage effectively energy resources used within state agencies;
- Encourage local governments to include energy considerations in all planning and to support their work in promoting energy management programs;
- Include the full participation of citizens in the development and implementation of energy programs;

[102] FLA. CONST. art. IV, s. 4.
[103] Florida Department of Agriculture and Consumer Services, *About Us*, https://www.fdacs.gov/About-Us (last visited Jan. 25, 2024).

- Consider in its decisions the energy needs of each economic sector, including residential, industrial, commercial, agricultural, and governmental uses, and reduce those needs whenever possible;
- Promote energy education and the public dissemination of information on energy and its environmental, economic, and social impact;
- Encourage the research, development, demonstration, and application of alternative energy resources, particularly renewable energy resources;
- Consider, in its decisionmaking, the social, economic, and environmental impacts of energy-related activities, including the whole-life-cycle impacts of any potential energy use choices, so that detrimental effects of these activities are understood and minimized; and
- Develop and maintain energy emergency preparedness plans to minimize the effects of an energy shortage within Florida.

Section 377.6015, F.S.,[104] provides the role of the DACS in the state's energy resource planning and development. The section provides that the DACS may employ staff and counsel as needed in the performance of its duties, prosecute and defend legal actions in its own name, and form advisory groups consisting of members of the public to provide information on specific issues.

The section also requires the DACS to:
- Administer the Florida Renewable Energy and Energy-Efficient Technologies Grants Program under s. 377.804, F.S.
- Develop policy for requiring grantees to provide royalty-sharing or licensing agreements with state government for commercialized products developed under a state grant;
- Administer the Florida Green Government Grants Act pursuant to s. 377.808, F.S., and set annual priorities for grants;
- Administer the information gathering and reporting functions pursuant to ss. 377.601-377.608, F.S.;
- Administer the provisions of the Florida Energy and Climate Protection Act pursuant to ss. 377.801-377.804, F.S.;
- Advocate for energy and climate change issues and provide educational outreach and technical assistance in cooperation with the state's academic institutions;
- Be a party in the proceedings to adopt goals and submit comments to the PSC pursuant to s. 366.82, F.S., which requires the PSC to adopt appropriate goals for increasing the efficiency of energy consumption and increasing the development of demand-side renewable energy systems; and
- Adopt rules pursuant to ch. 120, F.S., in order to implement all powers and duties described in the section.

Florida Renewable Energy and Green Government Programs

Part III of ch. 377, F.S., provides the state's renewable energy and green government programs, including the Florida Energy and Climate Protection Act in ss. 377.801-377.804, F.S.

[104] Section 377.703, F.S., also provides an extensive list of the DACS functions regarding energy supply and demand.

The purpose of the Florida Energy and Climate Protection Act is to "provide incentives for Florida's citizens, businesses, school districts, and local governments to take action to diversify the state's energy supplies, reduce dependence on foreign oil, and mitigate the effects of climate change by providing funding for activities designed to achieve these goals." The act's grant programs "are intended to stimulate capital investment in and enhance the market for renewable energy technologies and technologies intended to diversify Florida's energy supplies, reduce dependence on foreign oil, and combat or limit climate change impacts."[105]

The grants provided under the act, as part of the Renewable Energy and Energy-Efficient Technologies Grants Program administered by the DACS, "provide renewable energy matching grants for demonstration, commercialization, research, and development projects relating to renewable energy technologies and innovative technologies that significantly increase energy efficiency for vehicles and commercial buildings"[106] Grants under the program may be provided to municipalities and county governments, established for-profit companies licensed to do business in Florida, universities and colleges in the state, utilities located and operating within the state, not-for-profit organizations, and other qualified persons as determined by the DACS.

Part III of ch. 377, F.S. also includes additional programs not under the Florida Energy and Climate Protection Act:

- The energy and conservation clearinghouse which develops a clearinghouse of information regarding cost savings associated with various energy efficiency and conservation measures.[107]
- The Florida Green Governments Grant Act which provides grants to assist local governments in the development and implementation of programs that achieve green standards.[108]
- The Energy Economic Zone Pilot Program to develop "a model to help communities cultivate green economic development, encourage renewable electric energy generation, manufacture products that contribute to energy conservation and green jobs, and further implement chapter 2008-191, Laws of Florida, relative to discouraging sprawl and developing energy-efficient land use patterns and greenhouse gas reduction strategies."[109]
- The Natural Gas Fuel Fleet Vehicle Rebate Program which provides rebates for eligible expenses relating to investments in in the conversion, purchase of a natural gas fleet vehicles.[110]
- The Municipal Solid Waste-to-Energy program which provides grants to" municipal solid waste-to-energy facilities to incentivize the production and sale of energy from municipal solid waste-to-energy facilities while also reducing the amount of waste that would otherwise be disposed of in a landfill."[111]
- A program where the DACS is authorized to post information on its website information about the alternative fueling stations or electric vehicle charging stations available in the state.[112]

[105] Section 377.802, F.S.
[106] Section 377.804, F.S.
[107] Section 377.805, F.S.
[108] Section 377.808, F.S.
[109] Section 377.809, F.S.
[110] Section 377.810, F.S.
[111] Section 377.814, F.S.
[112] Section 377.815, F.S.

- A program operated by Office of Energy within the DACS for allocating or reallocating the qualified energy conservation bond volume limitation provided by 26 U.S.C. s. 54D.[113]

Florida's Turnpike

The Florida Turnpike Enterprise (FTE) within the Florida Department of Transportation (FDOT) is empowered to plan, construct, maintain, repair, and operate the Florida Turnpike System. The term, "turnpike system," is defined to mean "those limited access toll highways and associated feeder roads and other structures, appurtenances, or rights previously designated, acquired, or constructed pursuant to the Florida Turnpike Enterprise Law and such other additional turnpike projects as may be acquired or constructed as approved by the Legislature."[114] The turnpike system currently includes the mainline from Miami to Central Florida, and the First Coast Expressway, Seminole Expressway, Beachline West Expressway, Beachline East Expressway, Southern Connector Extension, Sawgrass Expressway, Polk Parkway, I-4 Connector, Veteran's Expressway, Daniel Webster Western Beltway, and Suncoast Parkway.[115]

Section 338.234, F.S., allows FDOT to enter into contracts and licenses with vendors "for the sale of services or products or business opportunities on the turnpike system, or the turnpike enterprise may sell services, products, or business opportunities on the turnpike system, which benefit the traveling public or provide additional revenue to the turnpike system." Such services may include, but are not limited to:

- Motor fuel;
- Vehicle towing and vehicle maintenance services;
- Food with attendant nonalcoholic beverages; lodging, meeting rooms, and other business services opportunities;
- Advertising and other promotional opportunities;
- State lottery tickets sold by authorized retailers;
- Games and amusements that operate by the application of skill, not including games of chance as defined in s. 849.16, F.S. or other illegal gambling games;
- Florida citrus, goods promoting the state, or handmade goods produced within the state; and
- Travel information, tickets, reservations, or other related services.

Acts of Destruction against Energy Infrastructure

The National Conference of State Legislatures (NCSL) suggests that states should be aware of and be prepared for actual physical threats perpetrated by humans to energy infrastructure.[116] The

[113] Section 377.816, F.S. Qualified energy conservation bonds (QECBs) were created in the federal 2008 Energy Improvement and Extension Act. The purpose of the bonds were to federally fund states, territories, local governments, and tribal governments to issue QECBs to finance renewable energy and efficiency projects. United States Department of Energy, *Qualified Energy Conservation Bonds,* Aug. 2016 (available at: https://www.energy.gov/sites/prod/files/2017/04/f34/qecbpaper0816.pdf) (last visited Jan. 24, 2024). 26 U.S.C. s. 54D was repealed by Pub.L. 115-97, Title I, s. 13404(a), effective Dec. 22, 2017.
[114] Section 338.221(6), F.S.
[115] Florida's Turnpike, *Florida's Turnpike System Maps*, https://floridasturnpike.com/system-maps/ (last visited Jan. 24, 2024).
[116] The National Conference of State Legislatures, *Human-Driven Physical Threats to Energy Infrastructure*, updated May 22, 2023, available at *www.ncsl.org/energy/human-driven-physical-threats-to-energy-infrastructure* (last visited December 13, 2023).

U.S. Department of Energy's annual summary of Electric Emergency Incident and Disturbance Reports indicates at least 25 reports were filed as actual physical attacks in electric utilities perpetrated by humans in 2022, compared to six attacks in 2021.[117]

Cyber-attacks are also a growing threat to energy infrastructure. The growing reliance on digital technology to better utility infrastructure and business operations in general, has increased the exposure of these industries to cyber threats.[118] The annual summary of Electric Emergency Incident and Disturbance Reports indicated six cyber-related events in 2022, compared to seven for 2021.[119] However, according to the International Energy Agency, the publicly available information available on such cyber-attacks is limited due to under-reporting and lack of detection, and there is evidence that attacks have been growing rapidly since 2018.[120]

Homeowners' Associations

Chapter 720, F.S., provides statutory recognition to corporations that operate residential communities in Florida as well as procedures for operating homeowners' associations. These laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.[121]

A "homeowners' association" is defined as a:[122]

> Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.

Unless specifically stated to the contrary in the articles of incorporation, homeowners' associations are also governed by ch. 607, F.S., relating to for-profit corporations, or by ch. 617, F.S., relating to not-for-profit corporations.[123]

Homeowners' associations are administered by a board of directors whose members are elected.[124] The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include a recorded declaration of covenants, bylaws, articles of incorporation, and duly-adopted

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[117] *Id.;* U.S. Department of Energy, *Office of Cybersecurity, Energy Security, & Emergency Response, Electric Disturbance Events (OE-417) Annual Summaries,* available at https://www.oe.netl.doe.gov/OE417_annual_summary.aspx (last visited December 13, 2023).
[118] International Energy Agency, *Cybersecurity – is the power system lagging behind?*,
[119] *Id.*
[120] *Id.*
[121] *See* s. 720.302(1), F.S.
[122] Section 720.301(9), F.S.
[123] Section 720.302(5), F.S.
[124] *See* ss. 720.303 and 720.307, F.S.

amendments to these documents.[125] The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.[126]

Unlike condominium associations, homeowners' associations are not regulated by a state agency. Section 720.302(2), F.S., expresses the legislative intent regarding the regulation of homeowners' associations:

> The Legislature recognizes that it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations. However, in accordance with s. 720.311, [F.S.,] the Legislature finds that homeowners' associations and their individual members will benefit from an expedited alternative process for resolution of election and recall disputes and presuit mediation of other disputes involving covenant enforcement and authorizes the department to hear, administer, and determine these disputes as more fully set forth in this chapter. Further, the Legislature recognizes that certain contract rights have been created for the benefit of homeowners' associations and members thereof before the effective date of this act and that ss. 720.301-720.407[, F.S.], are not intended to impair such contract rights, including, but not limited to, the rights of the developer to complete the community as initially contemplated.

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business the Professional Regulation has limited regulatory authority over homeowners' associations. The division's authority is limited to the arbitration of recall election disputes.[127]

The governing document of a homeowners' association are:[128]

- The recorded declaration of covenants for a community and all duly adopted and recorded amendments, supplements, and recorded exhibits thereto; and
- The articles of incorporation and bylaws of the homeowners' association and any duly adopted amendments thereto.

III. Effect of Proposed Changes:

Section 1 of the bill creates s. 163.3210, F.S., natural gas resiliency and reliability infrastructure. The section provides that it is the intent of the legislature to maintain, encourage, and ensure adequate and reliable fuel sources for public utilities. The section finds that resiliency and reliability of fuel sources for public utilities is critical to Florida's economy; the ability of the state to recover from natural disasters; and to the health, safety, welfare, and quality of life of Florida residents.

[125] *See* ss. 720.301 and 720.303, F.S.
[126] Section 720.303(1), F.S.
[127] *See* s. 720.306(9)(c), F.S.
[128] Section 720.301(8), F.S.

Under the section, a resiliency facility[129] is a permitted use in all commercial, industrial, and manufacturing land use categories in a local government comprehensive plan and all commercial, industrial, and manufacturing districts. Such facilities must comply with setback and landscape criteria that would apply to other similar uses and local governments may adopt ordinances specifying such requirements.[130]

The section also provides that, after July 1, 2024, local governments may not amend their comprehensive plans, land use maps, zoning districts, or land development regulations in a way that would conflict with a resiliency facility's classification as a permitted and allowable use.

Section 2 of the bill amends s. 286.29, F.S., regarding energy guidelines for public businesses. The bill deletes a provision relating to legislative intent and the following provisions:

- DMS's Florida Climate-Friendly Preferred Products List;
- A requirement that state agencies contract only with hotels or conference facilities for meetings and conferences as recognized by the Green Lodging Program;
- A requirement that, when state agencies, state universities, community colleges, and local governments purchase vehicles under a state purchasing plan that such vehicles are selected for greatest fuel efficiency available for a given use class when fuel economy data is available.

The section also creates a new provision requiring the DMS, in consultation with the Department of Commerce and the DACS, develop a Florida Humane Preferred Products List. In developing this list, the DMS must assess products currently available for purchase under state term contracts that contain or consist of an energy storage device with a capacity of greater than one kilowatt or that contain or consist of an energy generation device with a capacity of greater than 500 kilowatts. The DMS must then identify the specific products that appear to be largely made free from forced labor, irrespective of the age of the worker. The section defines "forced labor" as any work performed or service rendered that is:

- Obtained by intimidation, fraud, or coercion, including by threat of serious bodily harm to, or physical restraint against, a person, by means of a scheme intended to cause the person to believe that if he or she does not perform such labor or render such service, the person will suffer serious bodily harm or physical restraint, or by means of the abuse or threatened abuse of law or the legal process;
- Imposed on the basis of a characteristic that has been held by the United States Supreme Court or the Florida Supreme Court to be protected against discrimination under the Fourteenth Amendment to the United States Constitution or under s. 2, Art. I of the State Constitution, including race, color, national origin, religion, gender, or physical disability;
- Not performed or rendered voluntarily by a person; or
- In violation of the Child Labor Law[131] or otherwise performed or rendered through oppressive child labor.

[129] The section defines "resiliency facility" as "a facility owned and operated by a public utility for the purposes of assembling, creating, holding, securing, or deploying natural gas reserves for temporary use during a system outage or natural disaster."
[130] Provided that such requirements are not more excessive than those applied to similar other uses.
[131] Part I of ch. 450, F.S., provides the Child Labor Law for Florida.

State agencies and political subdivisions in the state must, when procuring such energy products from state term contracts, first consult the Florida Humane Preferred Energy Products List and may not purchase or procure products not included in the list.

Section 3 creates s. 320.97, F.S., to create a state EV battery deposit program within the Department of Highway Safety and Motor Vehicles (DHSMV). The section provides that the legislature has a compelling interest in facilitating the proper disposal and recycling of EV batteries at the end of their useful lives. Under the program, the DHSMV is required to, in consultation with industry experts, develop and implement a program for the collection of a deposit on EV batteries by:

- Motor vehicle dealers[132] selling, at retail, EVs not previously registered in Florida; or
- Motor vehicle repair shops selling EV batteries at retail.[133]

The deposit under the program is based upon the EV battery's gross capacity as measured in kilowatt hours (kWh), and is as follows:

- For an electric vehicle battery with a gross capacity less than or equal to 50 kWh: $500.
- For an electric vehicle battery with a gross capacity greater than 50 kWh but less than or equal to 100 kWh: $750.
- For an electric vehicle battery with a capacity greater than 100 kWh: $1,000.

The DHSMV must also designate the means by which the deposit is to be held until refunded to the titleholder. Such refund would be made subsequent to the provision of proof the relinquishment or sale of the electric vehicle or electric vehicle battery to a motor vehicle dealer or motor vehicle repair shop. The program must also allow:

- A fire department which handles an EV battery fire to claim the deposit that the titleholder would otherwise be entitled to receive under the program in order to assist with additional costs associated with extinguishing EV battery fires; and
- A means for a titleholder to recover the deposit upon providing proof of relocation to another state, sale of the EV to an out-of-state resident, or theft of the EV or its battery.

The DHSMV may adopt rules to implement the section.

This section of the bill is effective July 1, 2025.

Section 4 requires the DHSMV to prepare and submit a report, by December 1, 2024, to the Governor, the President of the Senate, and the Speaker of the House of Representatives which:

- Specifies the terms of the Electric Vehicle Battery Deposit Program consistent with Section 3 above;
- Identifies any implementation issues; and
- Makes recommendations on any further legislation that may be necessary.

The section also requires the report to provide recommendations on how the state may further facilitate proper electric vehicle battery disposal and recycling.

[132] As defined in s. 320.27(1)(c), F.S.
[133] As defined in s. 559.903, F.S.

Section 5 amends s. 338.234, F.S., to require, where the FDOT enters a contract or has entered into a contract or license to allow a vendor to sell motor fuel or charging services along the turnpike system, the FDOT must offer access to potential vendors of other motor vehicle fuels or repowering services along the turnpike system.[134]

Section 6 amends s. 366.032, F.S., to include "development districts" in a provision that states a municipality, county, special district, or other political subdivision of the state may not enact or enforce a resolution, ordinance, rule, code, or policy or take any action that restricts or prohibits or has the effect of restricting or prohibiting the types or fuel sources of energy production which may be used, delivered, converted, or supplied by utilities, gas districts, natural gas transmission companies, and certain liquefied petroleum gas dealers, dispensers, and cylinder exchange operators.

The section also includes "development districts" in a provision that prohibits a municipality, county, special district, or other political subdivision of the state from restricting or prohibiting the use of an appliance using the fuels or energy types supplied by the energy and gas providers above.

Section 7 creates s. 366.057, F.S. requiring that, before a public utility retires an electrical power plant, it must petition the PSC for approval of such, and give 30 days-notice of its intention. Once the PSC receives a petition, it has 180 days to either approve, approve with conditions, or deny the petition. In making its decision, the PSC must consider the impact of the retirement on:

- Electric system reliability, resilience, and integrity.
- The ability to provide adequate electricity at a reasonable cost, including potential rate impacts.
- Fuel diversity and supply reliability.
- The use of domestic energy resources, including renewable energy resources.
- The state's energy policy goals in the proposed s. 377.601(2), F.S., provided in Section 9 of the bill.

If the PSC determines that the basis for retirement of an electrical power plant is a requirement or inducement provided in a proposed or actual federal regulation and that such retirement is inconsistent with the state's energy policy goals, the PSC must inform the Attorney General and provide technical support to the Attorney General, as needed, to address the inconsistency.

Section 8 amends s. 366.94, F.S., to allow the PSC to approve voluntary public utility programs, to become effective on or after January 1, 2025, for residential, customer-specific electric vehicle charging if the PSC determines that the rates and rate structure of a proposed program would not adversely impact the public utility's general body of ratepayers. All utility revenue received under such programs must be credited to the public utility's retail ratepayers. The section also makes clear that it does not preclude cost recovery for electric vehicle charging programs approved by the PSC before January 1, 2025.

Section 9 amends s. 377.601, F.S., to substantially revise the legislative intent as it pertains to part II, of ch. 377, F.S., which provides energy resource planning and development policies for

[134] Such fuels could include, but not be limited to, hydrogen, compressed natural gas, and liquefied natural gas.

Florida. It deletes the legislative intent section as described on page 18 of this analysis. As rewritten, the intent provides that the purpose of the state's energy policy is to ensure an adequate and reliable supply of energy for the state in a manner that promotes the health and welfare of the public and economic growth. The revised intent further states that governance of the state's energy policy be efficiently directed toward achieving this purpose.

For the purposes of the above, the revised section states that the state's energy policy should be guided by all of the following goals:

- Ensuring a cost-effective and affordable energy supply.
- Ensuring adequate supply and capacity.
- Ensuring a secure, resilient, and reliable energy supply, with an emphasis on a diverse supply of domestic energy resources.
- Protecting public safety.
- Ensuring consumer choice.
- Protecting the state's natural resources, including its coastlines, tributaries, and waterways.
- Supporting economic growth.

In furtherance of the above goals, the rewritten section provides that it is state policy to:

- Promote the cost-effective development and effective use of a diverse supply of domestic energy resources in the state and discourage energy waste and deletes a provision on global climate change;
- Promote the cost-effective development and maintenance of energy infrastructure that is resilient to natural and manmade threats to the security and reliability of the state's energy supply and deletes programs aimed at promoting energy conservation, energy security, and the reduction of greenhouse gas emissions;
- Reduce reliance on foreign energy resources;
- Include energy considerations in all state, regional, and local planning;
- Utilize and manage effectively energy resources used within state agencies;
- Encourage local governments to include energy considerations in all planning and to support their work in promoting energy management programs;
- Include the full participation of citizens in the development and implementation of energy programs;
- Consider in its decisions the energy needs of each economic sector, including residential, industrial, commercial, agricultural, and governmental uses, and reduce those needs whenever possible;
- Promote energy education and the public dissemination of information on energy and its impacts in relation to the goals stated above;
- Encourage the research, development, demonstration, and application of domestic energy resources, including the use of renewable energy resources;
- Consider, in its decisionmaking, the impacts of energy-related activities on the goals above, including the whole-life-cycle impacts of any potential energy use choices, so that detrimental effects of these activities are understood and minimized; and
- Develop and maintain energy emergency preparedness plans to minimize the effects of an energy shortage within the state Florida.
- Deletes references to alternative energy resources and environmental, economic, and social impacts.

Section 10 amends s. 377.6015, F.S., to revise the duties of the DACS to conform to the changes made by the bill and require that the DACS advocate for energy issues consistent with the goals in proposed s. 377.601(2), F.S., provided in Section 9 of the bill.

Section 11 amends s. 377.703, F.S., to revise the duties of the DACS to conform to the changes made by the bill. It also eliminates a requirement that the DACS, when analyzing the energy data it collects and preparing long-range forecasts of energy supply and demand in coordination with the PSC (which is responsible for electricity and natural gas forecasts), that the forecasts contain plans for the development of renewable energy resources and reduction in dependence on depletable energy resources, particularly oil and natural gas. Instead, such forecasts must contain an analysis of the extent to which domestic energy resources, including renewable energy sources, are being utilized in the state.

The section also deletes a requirement that the forecasts contain:
- Consideration of alternative scenarios of statewide energy supply and demand for five, 10, and 20 years to identify strategies for long-range action, including identification of potential social, economic, and environmental effects. Instead, such consideration must be made for potential impacts in relation to the goals in proposed s. 377.601(2), F.S., provided in Section 9 of the bill.
- An assessment of the state's energy resources, including examination of the availability of commercially developable and imported fuels, and an analysis of anticipated effects on the state's environment and social services resulting from energy resource development activities or from energy supply constraints, or both. Instead, such assessments must contain an analysis of anticipated impacts in relation to the goals in proposed s. 377.601(2), F.S., provided in Section 9 of the bill, resulting from energy resource development activities or from energy supply constraints, or both.

Section 12 repeals the following sections:
- Sections 377.801-804, F.S., providing the Florida Energy and Climate Protection Act;
- Section 377.808, F.S., providing the Florida Green Governments Grant Act;
- Section 377.809, F.S., providing the Energy Economic Zone Pilot Program;
- Section 377.816, F.S., providing a program operated by Office of Energy within the DACS for allocating or reallocating the qualified energy conservation bond volume limitation provided by 26 U.S.C. s. 54D.

Section 13 provides for that for the programs deleted in Section 12 of the bill, there may not be:
- New or additional applications, certifications, or allocations approved.
- New letters of certification issued.
- New contracts or agreements executed.
- New awards made.

In addition, the section provides that all certifications or allocations issued under those programs are rescinded except for the certifications of, or allocations to, those certified applicants or projects that continue to meet the applicable criteria in effect before July 1, 2024. For existing contracts or agreements authorized under those programs, they will continue in full force and effect in accordance with the statutory requirements in effect when the contract or agreement was

executed or last modified. Any further modifications, extensions, or waivers may not be made or granted relating to those contracts or agreements, except computations by the Department of Revenue of the income generated by or arising out of a qualifying project.

Section 14 amends s. 288.9606, F.S., relating to the issue of revenue bonds, to conform to changes made by the bill.

Section 15 amends s. 380.0651, F.S., relating to statewide guidelines, standards, and exemptions, to conform to changes made by the bill.

Section 16 amends s. 403.9405, F.S., to revise a provision that the Section 403.9405(2), F.S., provides that the NGTPSA does not apply to natural gas transmission pipelines which are less than 15 miles in length or which do not cross a county line, unless the applicant has elected to apply for certification of that pipeline. The section increases the 15 mile limit for non-applicability to be 100 miles.

Section 17 amends s. 720.3075, F.S., which relates to prohibited clauses in homeowners' association documents. The section creates a prohibition that association documents, including declarations of covenants, articles of incorporation, or bylaws, may not preclude the types or fuel sources of energy production which may be used, delivered, converted, or supplied" by the following:[135]

- Investor-owned electric utilities;
- Municipal electric utilities;
- Rural electric cooperatives;
- Entities formed by interlocal agreement to generate, sell, and transmit electrical energy;
- Investor-owned gas utilities;
- Gas districts;
- Municipal natural gas utilities;
- Natural gas transmission companies; and
- Category I liquefied petroleum gas dealers, Category II liquefied petroleum gas dispensers, or Category III liquefied petroleum gas cylinder exchange operators as defined in s. 527.01, F.S.

The section also prohibits association documents, including declarations of covenants, articles of incorporation, or bylaws, may not preclude the use of an appliance[136] using the fuels or energy types used, delivered, converted, or supplied by the entities above.

Section 18 creates a directive to the PSC to ensure technologies that allow businesses and consumers to generate, store, and manage electrical energy for their own use are used in a way that best maintains the integrity of the state electricity grid through market-based policies for consumers and public utilities and through electric grid improvements that ensure the safe, reliable, and cost-effective use of electrical power. As part of this directive, the PSC is to develop policies that establish programs and rate mechanisms for smart energy demand response

[135] To the extent of serving the customers they are authorized to serve.
[136] As used in this section, "appliance" means a device or apparatus manufactured and designed to use energy and for which the Florida Building Code or the Florida Fire Prevention Code provides specific requirements.

and for customer-owned generation and energy storage that is exported to the grid, or is used to enhance grid stability or resilience and reduce costs. The policies and rate mechanisms must provide that the financial benefits are shared among users of these technologies, public utilities, and their general body of ratepayers based on the value provided by and such parties. The policies must also:

- Address the modernization of the state's electric grid to ensure that the necessary infrastructure is in place to implement these programs and rate mechanisms;
- Ensure that the equipment used by utilities and consumers to implement and participate in these programs and rate mechanisms is manufactured in the United States. Such equipment may also be manufactured in countries engaged in commerce with the United States pursuant to a free trade agreement.

The section also requires the PSC to submit a report to the Legislature, by January 1, 2025, regarding the policies developed pursuant to the section. The report must contain including the basis for each policy and any matters that the PSC finds would be relevant for the Legislature's consideration in evaluating the policies. The PSC may not implement the policies, except for pilot projects and programs, until such are approved by the Legislature.

Section 19 directs the PSC to conduct an assessment of the security and resiliency of the state's electric grid and natural gas facilities against both physical threats and cyber threats. In regards to the cyber threat assessment, the PSC is to also consult with the Florida Digital Service. The section also directs all electric utilities, natural gas utilities, and natural gas pipelines in the state to cooperate with the assessment. The PSC must deliver a report of this assessment to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2025.

Section 20 directs the PSC to study and evaluate the technical and economic feasibility of using advanced nuclear power technologies, including SMRs, to meet the state's electrical power needs, and research means to encourage and foster the installation and use of such technologies at military installations in the state. The PSC is to submit a report of its findings, along with any recommendations for potential legislative or administrative actions, to the Governor, President of the Senate, and Speaker of the House of Representatives by January 1, 2025. The findings and recommendations must be consistent with the goals proposed in s. 377.601(2), F.S., provided in Section 9 of the bill.

Section 21 directs the FDOT, in consultation with the Office of Energy within the DACS, to study and evaluate the potential development of hydrogen fueling infrastructure, including fueling stations, to support hydrogen-powered vehicles that use the state highway system. The FDOT is to submit a report of its findings, along with any recommendations for potential legislative or administrative actions, to the Governor, President of the Senate, and Speaker of the House of Representatives by January 1, 2025. The findings and recommendations must be consistent with the goals proposed in s. 377.601(2), F.S., provided in Section 9 of the bill.

Section 22 provides that, except as expressly provided, the bill shall take effect July 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:

None.

E. Other Constitutional Issues:

Section 5 of the bill, regarding concessions for the Florida Turnpike system, directs FDOT when it "enters or has entered into a contract or license with a vendor to allow for the sale of motor fuel or charging services" to offer access to other potential vendors of alternative motor vehicle fuels. It appears that the intent of the section is that it apply retroactively to existing FDOT contracts. This may raise a constitutional issue if the existing contract has any exclusivity clauses, as the directive of the section may require the FDOT to violate or amend such clauses.

Under Florida law, statutes are presumed to operate prospectively, not retroactively. In other words, statutes generally apply only to actions that occur on or after the effective date of the legislation, not before the legislation becomes effective.

The Florida Supreme Court has noted that, under the rules of statutory construction, if statutes are to operate retroactively, the Legislature must clearly express such an intent for the statute to be valid.[137] When statutes that are expressly retroactive have been litigated and appealed, the courts have been asked to determine whether the statute applies to cases that were pending at the time the statute went into effect. The conclusion often turns on whether the statute is procedural or substantive.

The Florida Supreme Court has acknowledged that "[t]he distinction between substantive and procedural law is neither simple nor certain."[138] The Court further acknowledged that their previous pronouncements regarding the retroactivity of procedural laws have been less than precise and have been unclear.[139]

[137] *Walker & LaBerge, Inc., v. Halligan*, 344 So. 2d 239 (Fla. 1977).
[138] *Love v. State*, 286 So. 3d 177, 183 (Fla. 2019) quoting *Caple v. Tuttle's Design-Build, Inc.*, 753 So. 2d 49, 53 (Fla. 2000).
[139] *Love, supra* note 138 at 184.

Courts, however, have invalidated the retroactive application of a statute if the statute impairs vested rights, creates new obligations, or imposes new penalties.[140] Still, in other cases, the courts have permitted statutes to be applied retroactively if they do not create new, or take away, vested rights, but only operate to further a remedy or confirm rights that already exist.[141]

Florida's contracts clause states that "no bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed."[142] Regarding the impairment of an existing contract by the retroactive application of a statute, the Florida Supreme Court recently said:

> "[V]irtually no degree of contract impairment is tolerable." However, we also recognized that the holding that "virtually" no impairment is tolerable "necessarily implies that some impairment is tolerable." The question thus becomes how much impairment is tolerable and how to determine that amount. To answer that question, in *Pomponio* we proposed a balancing test that "allow[ed] the court to consider the actual effect of the provision on the contract and to balance a party's interest in not having the contract impaired against the State's source of authority and the evil sought to be remedied." "[T]his becomes a balancing process to determine whether the nature and extent of the impairment is constitutionally tolerable in light of the importance of the State's objective, or whether it unreasonably intrudes into the parties' bargain to a degree greater than is necessary to achieve that objective."

An impairment may be constitutional if it is reasonable and necessary to serve an important public purpose. However, where the impairment is severe, "[t]he severity of the impairment is said to increase the level of scrutiny to which the legislation will be subjected." There must be a "significant and legitimate public purpose behind the regulation."[143]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The following provisions of the bill may have a fiscal impact on the private sector:

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[140] *R.A.M. of South Florida, Inc. v. WCI Communities, Inc.,* 869 So. 2d 1210 (Fla 2004).
[141] *Ziccardi v. Strother*, 570 So. 2d 1319 (Fla. 1990).
[142] FLA. CONST. art. I, s. 10.
[143] *Searcy, Denney, Scarola, Barnhart & Shipley, etc. v. State*, 209 So. 3d 1181, 1192 (Fla. 2017) (internal citations omitted for clarity).

- Deleting requirements relating to the Florida Climate-Friendly Preferred Products List may have a negative impact on companies that have products on that list as they may see a reduction in purchases of those products.
- The EV battery deposit program may have a negative impact on EV sales in the state.
- The provision requiring FDOT when it enters a contract or has entered into a contract or license to allow a vendor to sell motor fuel or charging services along the turnpike system, the FDOT must offer access to potential vendors of other motor vehicle fuels or repowering services along the turnpike system, may have a negative impact on existing contract-holders due to increased competition. However, vendors of other motor vehicle fuels or repowering services may see a positive economic impact from increased access to customers using the Florida Turnpike.
- The provision requiring PSC permission for power plant retirement will likely have a fiscal impact on public utilities, though the actual impact would be dependent on the situation. Public utilities will likely, however, see an increased regulatory cost relating to power plant retirements which may be passed on to their ratepayers.
- The provisions reducing the applicability of the NGTPSA will likely reduce regulatory costs for pipeline projects.

C. Government Sector Impact:

The directives of the bill likely expands the responsibilities of the following state agencies:

- The PSC;
- The DACS;
- The DHSMV; and
- The FDOT

The above agencies have not yet issued their analyses of this bill, so it is unknown at this time the extent to which the bill would impact those agencies' operations.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 5 of the bill uses the term "development district," but does not define this term. It is unclear if this is intended to mean a community development district or another entity. The sponsor may wish to revise this term or include a definition.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 286.29, 338.234, 366.032, 366.94, 377.601, 377.6015, 377.703, 288.9606, 380.0651, 403.9405, and 720.3075.

This bill creates the following sections of the Florida Statutes: 163.3210, 320.97, and 366.057.

This bill repeals the following sections of the Florida Statutes: 377.801, 377.802, 377.803, 377.804, 377.808, 377.809, and 377.816.

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 Collins

14-01315A-24 20241624__

A bill to be entitled

An act relating to energy resources; creating s. 163.3210, F.S.; providing legislative intent; providing definitions; allowing resiliency facilities in certain land use categories in local government comprehensive plans and specified districts if certain criteria are met; allowing local governments to adopt ordinances for resiliency facilities if certain requirements are met; prohibiting amendments to a local government's comprehensive plan, land use map, zoning districts, or land development regulations in a manner that would conflict with resiliency facility classification after a specified date; amending s. 286.29, F.S.; revising energy guidelines for public businesses; eliminating the requirement that the Department of Management Services develop and maintain the Florida Climate-Friendly Preferred Products List; eliminating the requirement that state agencies contract for meeting and conference space only with facilities that have a Green Lodging designations; eliminating the requirement that state agencies, state universities, community colleges, and local governments that procure new vehicles under a state purchasing plan select certain vehicles under a specified circumstance; requiring the Department of Management Services to develop a Florida Humane Preferred Energy Products List in consultation with the Department of Commerce and the Department of Agriculture and Consumer Services; providing for

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assessment considerations in developing the list; defining the term "forced labor"; requiring state agencies and political subdivisions that procure energy products from state term contracts to consult the list and purchase or procure such products; prohibiting state agencies and political subdivisions from purchasing or procuring products not included in the list; creating 320.97, F.S.; providing legislative findings; creating the Electric Vehicle Battery Deposit Program within the Department of Highway Safety and Motor Vehicles; providing the requirements of the program; allowing the department to adopt rules; providing definitions; requiring the Department of Highway Safety and Motor Vehicles to prepare and submit a report to the Governor and the Legislature as it relates to the Electric Vehicle Battery Deposit Program by a specified date; amending s. 338.234, F.S.; requiring the Department of Highway Safety and Motor Vehicles to offer access to vendors of certain fuels or services access to the turnpike system in certain instances; amending s. 366.032, F.S.; including development districts as a type of political subdivision for purposes of preemption over utility service restrictions; creating s. 366.057, F.S.; defining the term "electrical power plant"; requiring a public utility to petition the Public Service Commission within a specified time before retiring an electrical power plant; requiring the commission to enter a final order in response to the petition within

a specified time; setting forth what the commission must take into consideration in entering its final order; requiring the commission to notify the Attorney General of the retirement of an electrical power plant in specified circumstances; amending s. 366.94, F.S.; removing terminology; conforming provisions to changes made by the act; authorizing the commission upon a specified date to approve voluntary public utility programs for electric vehicle charging if certain requirements are met; requiring that all revenues received from such program be credited to the public utility's general body of ratepayers; providing applicability; amending s. 377.601, F.S.; revising legislative intent; amending s. 377.6015, F.S.; revising the powers and duties of the department; conforming provisions to changes made by the act; amending s. 377.703, F.S.; revising additional functions of the department relating to energy resources; conforming provisions to changes made by the act; repealing s. 377.801, F.S., relating to the Florida Energy and Climate Protection Act; repealing s. 377.802, F.S., relating to the purpose of the act; repealing s. 377.803, F.S., relating to definitions under the act; repealing s. 377.804, F.S., relating to the Renewable Energy and Energy-Efficient Technologies Grants Program; repealing s. 377.808, F.S., relating to the Florida Green Government Grants Act; repealing s. 377.809, F.S., relating to the Energy Economic Zone Pilot Program; repealing s. 377.816, F.S., relating to

the Qualified Energy Conservation Bond Allocation Program; prohibiting the approval of new or additional applications, certifications, or allocations under such programs; prohibiting new contracts, agreements, and awards under such programs; rescinding all certifications or allocations issued under such programs; providing an exception; providing application relating to existing contracts or agreements under such programs; amending ss. 288.9606 and 380.0651, F.S.; conforming provisions to changes made by the act; amending s. 403.9405, F.S.; revising the applicability of the Natural Gas Transmission Pipeline Siting Act; amending s. 720.3075, F.S.; prohibiting certain homeowners' association documents from precluding certain types or fuel sources of energy production and the use of certain appliances; directing the commission to ensure that electrical energy technologies are used in a specified manner through market-based policies and electric grid improvements; requiring the commission to develop specified policies for smart energy; requiring that such policies also address the modernization of the state's electric grid and ensure that equipment used is manufactured in the United States or countries engaged in commerce within the United States pursuant to free trade agreements; requiring the commission by a specified date to submit a report to the Legislature that contains such established policies; requiring the commission to conduct an assessment of the security

and resiliency of the state's electric grid and natural gas facilities against physical threats and cyber threats; requiring the commission to consult with the Florida Digital Service; requiring cooperation from all operating facilities in the state relating to such assessment; requiring the commission to submit by a specified date a report of such assessment to the Governor and the Legislature; providing additional content requirements for such report; requiring the commission to study and evaluate the technical and economic feasibility of using advanced nuclear power technologies to meet the electrical power needs of the state; requiring the commission to submit by a specified date a report to the Governor and the Legislature that contains its findings and any additional recommendations for potential legislative or administrative actions; requiring the Department of Transportation, in consultation with the Office of Energy within the Department of Agriculture and Consumer Services, to study and evaluate the potential development of hydrogen fueling infrastructure to support hydrogen-powered vehicles; requiring the department to submit by a specified date a report to the Governor and the Legislature that contains its findings and recommendations for specified actions that may accommodate the future development of hydrogen fueling infrastructure; providing effective dates.

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

Section 1. Section 163.3210, Florida Statutes, is created to read:

163.3210 Natural gas resiliency and reliability infrastructure.—

(1) It is the intent of the Legislature to maintain, encourage, and ensure adequate and reliable fuel sources for public utilities. The resiliency and reliability of fuel sources for public utilities is critical to the state's economy; the ability of the state to recover from natural disasters; and to the health, safety, welfare, and quality of life of the residents of the state.

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

(a) "Natural gas" means all forms of fuel commonly or commercially known or sold as natural gas, including compressed natural gas and liquefied natural gas.

(b) "Natural gas reserve" means a facility that is capable of storing and transporting and, when operational, actively stores and transports a supply of natural gas.

(c) "Public utility" has the same meaning as defined in s. 366.02.

(d) "Resiliency facility" means a facility owned and operated by a public utility for the purposes of assembling, creating, holding, securing, or deploying natural gas reserves for temporary use during a system outage or natural disaster.

(3) A resiliency facility is a permitted use in all commercial, industrial, and manufacturing land use categories in a local government comprehensive plan and all commercial,

industrial, and manufacturing districts. A resiliency facility must comply with the setback and landscape criteria for other similar uses. A local government may adopt an ordinance specifying buffer and landscaping requirements for resiliency facilities, provided such requirements do not exceed the requirements for similar uses involving the construction of other facilities that are permitted uses in commercial, industrial, and manufacturing land use categories and zoning districts.

(4) After July 1, 2024, a local government may not amend its comprehensive plan, land use map, zoning districts, or land development regulations in a manner that would conflict with a resiliency facility's classification as a permitted and allowable use, including, but not limited to, an amendment that causes a resiliency facility to be a nonconforming use, structure, or development.

Section 2. Section 286.29, Florida Statutes, is amended to read:

286.29 Energy guidelines for ~~Climate-friendly~~ public business.~~—The Legislature recognizes the importance of leadership by state government in the area of energy efficiency and in reducing the greenhouse gas emissions of state government operations. The following shall pertain to all state agencies when conducting public business:~~

~~(1) The Department of Management Services shall develop the "Florida Climate-Friendly Preferred Products List." In maintaining that list, the department, in consultation with the Department of Environmental Protection, shall continually assess products currently available for purchase under state term~~

~~contracts to identify specific products and vendors that offer clear energy efficiency or other environmental benefits over competing products. When procuring products from state term contracts, state agencies shall first consult the Florida Climate-Friendly Preferred Products List and procure such products if the price is comparable.~~

~~(2) State agencies shall contract for meeting and conference space only with hotels or conference facilities that have received the "Green Lodging" designation from the Department of Environmental Protection for best practices in water, energy, and waste efficiency standards, unless the responsible state agency head makes a determination that no other viable alternative exists.~~

(1)~~(3)~~ Each state agency shall ensure that all maintained vehicles meet minimum maintenance schedules shown to reduce fuel consumption, which include:

(a) Ensuring appropriate tire pressures and tread depth.~~;~~

(b) Replacing fuel filters and emission filters at recommended intervals.~~;~~

(c) Using proper motor oils.~~; and~~

(d) Performing timely motor maintenance.

Each state agency shall measure and report compliance to the Department of Management Services through the Equipment Management Information System database.

~~(4) When procuring new vehicles, all state agencies, state universities, community colleges, and local governments that purchase vehicles under a state purchasing plan shall first define the intended purpose for the vehicle and determine which~~

~~of the following use classes for which the vehicle is being procured:~~

~~(a) State business travel, designated operator;~~

~~(b) State business travel, pool operators;~~

~~(c) Construction, agricultural, or maintenance work;~~

~~(d) Conveyance of passengers;~~

~~(e) Conveyance of building or maintenance materials and supplies;~~

~~(f) Off-road vehicle, motorcycle, or all-terrain vehicle;~~

~~(g) Emergency response; or~~

~~(h) Other.~~

~~Vehicles described in paragraphs (a) through (h), when being processed for purchase or leasing agreements, must be selected for the greatest fuel efficiency available for a given use class when fuel economy data are available. Exceptions may be made for individual vehicles in paragraph (g) when accompanied, during the procurement process, by documentation indicating that the operator or operators will exclusively be emergency first responders or have special documented need for exceptional vehicle performance characteristics. Any request for an exception must be approved by the purchasing agency head and any exceptional performance characteristics denoted as a part of the procurement process prior to purchase.~~

(2) ~~(5)~~ All state agencies shall use ethanol and biodiesel blended fuels when available. State agencies administering central fueling operations for state-owned vehicles shall procure biofuels for fleet needs to the greatest extent practicable.

(3)(a) The Department of Management Services shall, in consultation with the Department of Commerce and the Department of Agriculture and Consumer Services, develop a Florida Humane Preferred Energy Products List. In developing the list, the department must assess products currently available for purchase under state term contracts that contain or consist of an energy storage device with a capacity of greater than one kilowatt or that contain or consist of an energy generation device with a capacity of greater than 500 kilowatts and identify specific products that appear to be largely made free from forced labor, irrespective of the age of the worker. For purposes of this subsection, the term "forced labor" means any work performed or service rendered that is:

1. Obtained by intimidation, fraud, or coercion, including by threat of serious bodily harm to, or physical restraint against, a person, by means of a scheme intended to cause the person to believe that if he or she does not perform such labor or render such service, the person will suffer serious bodily harm or physical restraint, or by means of the abuse or threatened abuse of law or the legal process;

2. Imposed on the basis of a characteristic that has been held by the United States Supreme Court or the Florida Supreme Court to be protected against discrimination under the Fourteenth Amendment to the United States Constitution or under s. 2, Art. I of the State Constitution, including race, color, national origin, religion, gender, or physical disability;

3. Not performed or rendered voluntarily by a person; or

4. In violation of the Child Labor Law or otherwise performed or rendered through oppressive child labor.

(b) When procuring the types of energy products described in paragraph (a) from state term contracts, state agencies and political subdivisions shall first consult the Florida Humane Preferred Energy Products List and may not purchase or procure products not included in the list.

Section 3. Effective July 1, 2025, section 320.97, Florida Statutes, is created to read:

320.97 Electric vehicle battery deposit program.—

(1) The Legislature finds that the state has a compelling interest in facilitating the proper disposal and recycling of electric vehicle batteries at the end of their useful lives.

(2) The Electric Vehicle Battery Deposit Program is created within the department.

(a) The department, in consultation with industry experts, shall develop and implement the program to provide for the collection of a deposit on electric vehicle batteries by a:

1. Motor vehicle dealer, as defined in s. 320.27(1)(c), which sells at retail an electric vehicle not previously registered in the state; or

2. Motor vehicle repair shop, as defined in s. 559.903, which sells an electric vehicle battery at retail in the state,

based on the electric vehicle battery's gross capacity as measured in kilowatt hours (kWh).

(b) For purposes of paragraph (a), the deposit amount is:

1. For an electric vehicle battery with a gross capacity less than or equal to 50 kWh: $500.

2. For an electric vehicle battery with a gross capacity greater than 50 kWh but less than or equal to 100 kWh: $750.

3. For an electric vehicle battery with a capacity greater than 100 kWh: $1,000.

(c) For purposes of paragraph (a), the department must designate the means by which the deposit must be held until it can be refunded to the titleholder of an electric vehicle in which the battery is installed upon proof of the relinquishment or sale of the electric vehicle or electric vehicle battery to a motor vehicle dealer or motor vehicle repair shop.

(d) The program shall allow a fire department which handles an electric vehicle battery fire to claim the deposit that the titleholder of the electric vehicle in which the battery fire occurred would otherwise be entitled to receive under the program in order to assist with additional costs associated with extinguishing electric vehicle battery fires.

(e) The program shall provide a means by which the titleholder of the electric vehicle may recover the deposit under the program upon providing proof of relocation to another state, sale of the electric vehicle to an out-of-state resident, or theft of the electric vehicle or electric vehicle battery.

(3) The department may adopt rules to implement this section.

(4) For the purposes of this section, the term:

(a) "Electric vehicle" has the same meaning as provided in s. 320.01(36).

(b) "Electric vehicle battery" means a rechargeable storage battery which is the exclusive source of power to an electric motor in an electric vehicle.

(c) "Motor vehicle" has the same meaning as provided in s. 320.01(1).

Section 4. (a) By December 1, 2024, the Department of Highway Safety and Motor Vehicles shall prepare and submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which:

1. Specifies the terms of the Electric Vehicle Battery Deposit Program consistent with s. 320.97, Florida Statutes.

2. Identifies any implementation issues.

3. Makes recommendations on any further legislation that may be necessary.

(b) The report shall contain recommendations on how the state may further facilitate proper electric vehicle battery disposal and recycling.

Section 5. Subsection (2) of section 338.234, Florida Statutes, is renumbered as subsection (3) and a new subsection (2) is added to that section, to read:

338.234 Granting concessions or selling along the turnpike system; immunity from taxation.—

(2) If the department enters or has entered into a contract or license with a vendor to allow for the sale of motor fuel or charging services along the turnpike system, the department must offer access to potential vendors of other motor vehicle fuels or repowering services along the turnpike system, including, but not limited to, hydrogen, compressed natural gas, and liquefied natural gas.

Section 6. Subsections (1), (2), and (5) of section 366.032, Florida Statutes, are amended to read:

366.032 Preemption over utility service restrictions.—

(1) A municipality, county, special district, development district, or other political subdivision of the state may not

enact or enforce a resolution, ordinance, rule, code, or policy or take any action that restricts or prohibits or has the effect of restricting or prohibiting the types or fuel sources of energy production which may be used, delivered, converted, or supplied by the following entities to serve customers that such entities are authorized to serve:

(a) A public utility or an electric utility as defined in this chapter;

(b) An entity formed under s. 163.01 that generates, sells, or transmits electrical energy;

(c) A natural gas utility as defined in s. 366.04(3)(c);

(d) A natural gas transmission company as defined in s. 368.103; or

(e) A Category I liquefied petroleum gas dealer or Category II liquefied petroleum gas dispenser or Category III liquefied petroleum gas cylinder exchange operator as defined in s. 527.01.

(2) Except to the extent necessary to enforce the Florida Building Code adopted pursuant to s. 553.73 or the Florida Fire Prevention Code adopted pursuant to s. 633.202, a municipality, county, special district, development district, or other political subdivision of the state may not enact or enforce a resolution, an ordinance, a rule, a code, or a policy or take any action that restricts or prohibits or has the effect of restricting or prohibiting the use of an appliance, including a stove or grill, which uses the types or fuel sources of energy production which may be used, delivered, converted, or supplied by the entities listed in subsection (1). As used in this subsection, the term “appliance” means a device or apparatus

manufactured and designed to use energy and for which the Florida Building Code or the Florida Fire Prevention Code provides specific requirements.

(5) Any municipality, county, special district, development district, or political subdivision charter, resolution, ordinance, rule, code, policy, or action that is preempted by this act that existed before or on July 1, 2021, is void.

Section 7. Section 366.057, Florida Statutes, is created to read:

366.057 Retirement of electrical power plant.—

(1) For purposes of this section, the term "electrical power plant" means any steam or solar electrical generating facility that uses any process or fuel, including nuclear materials, with a capacity of 75 megawatts or more. The term also includes all associated facilities necessary for the continued operation of the electrical power plant, such as facilities that are physically connected to the electrical power plant and facilities that are used to connect the electrical power plant to an existing transmission network.

(2) Before retiring an electrical power plant, a public utility must petition the commission for approval to retire the plant, giving not less than 30 days' notice thereof.

(3) The commission shall enter a final order approving, approving with conditions, or denying a petition within 180 days after receiving the petition. In making its determination, the commission must take into account the impact of the proposed electrical power plant retirement on:

(a) Electric system reliability, resilience, and integrity.

(b) The ability to provide adequate electricity at a

reasonable cost, including potential rate impacts.

(c) Fuel diversity and supply reliability.

(d) The use of domestic energy resources, including renewable energy resources.

(e) The state's energy policy goals in s. 377.601(2).

(4) If the commission determines that the basis for retirement of an electrical power plant is a requirement or inducement provided in a proposed or actual federal regulation and that such retirement is inconsistent with the state's energy policy goals in s. 377.601(2), the commission shall inform the Attorney General and provide technical support to the Attorney General, as needed, to address the inconsistency.

Section 8. Section 366.94, Florida Statutes, is amended to read:

366.94 Electric vehicle charging ~~stations~~.—

(1) The provision of electric vehicle charging to the public by a nonutility is not the retail sale of electricity for the purposes of this chapter. The rates, terms, and conditions of electric vehicle charging services by a nonutility are not subject to regulation under this chapter. This section does not affect the ability of individuals, businesses, or governmental entities to acquire, install, or use an electric vehicle charger for their own vehicles.

(2) The Department of Agriculture and Consumer Services shall adopt rules to provide definitions, methods of sale, labeling requirements, and price-posting requirements for electric vehicle charging ~~stations~~ to allow for consistency for consumers and the industry.

(3)(a) It is unlawful for a person to stop, stand, or park

a vehicle that is not capable of using an electrical recharging station within any parking space specifically designated for charging an electric vehicle.

(b) If a law enforcement officer finds a motor vehicle in violation of this subsection, the officer or specialist shall charge the operator or other person in charge of the vehicle in violation with a noncriminal traffic infraction, punishable as provided in s. 316.008(4) or s. 318.18.

(4) The commission may approve voluntary public utility programs to become effective on or after January 1, 2025, for residential, customer-specific electric vehicle charging if the commission determines that the rates and rate structure of the program will not adversely impact the public utility's general body of ratepayers. All revenues received from the program must be credited to the public utility's retail ratepayers. This provision does not preclude cost recovery for electric vehicle charging programs approved by the commission before January 1, 2025.

Section 9. Section 377.601, Florida Statutes, is amended to read:

377.601 Legislative intent.—

(1) The purpose of the state's energy policy is to ensure an adequate and reliable supply of energy for the state in a manner that promotes the health and welfare of the public and economic growth. The Legislature intends that governance of the state's energy policy be efficiently directed toward achieving this purpose. ~~The Legislature finds that the state's energy security can be increased by lessening dependence on foreign oil; that the impacts of global climate change can be reduced~~

~~through the reduction of greenhouse gas emissions; and that the implementation of alternative energy technologies can be a source of new jobs and employment opportunities for many Floridians. The Legislature further finds that the state is positioned at the front line against potential impacts of global climate change. Human and economic costs of those impacts can be averted by global actions and, where necessary, adapted to by a concerted effort to make Florida's communities more resilient and less vulnerable to these impacts. In focusing the government's policy and efforts to benefit and protect our state, its citizens, and its resources, the Legislature believes that a single government entity with a specific focus on energy and climate change is both desirable and advantageous. Further, the Legislature finds that energy infrastructure provides the foundation for secure and reliable access to the energy supplies and services on which Florida depends. Therefore, there is significant value to Florida consumers that comes from investment in Florida's energy infrastructure that increases system reliability, enhances energy independence and diversification, stabilizes energy costs, and reduces greenhouse gas emissions.~~

(2) For the purposes of subsection (1), the state's energy policy must be guided by the following goals:

(a) Ensuring a cost-effective and affordable energy supply.

(b) Ensuring adequate supply and capacity.

(c) Ensuring a secure, resilient, and reliable energy supply, with an emphasis on a diverse supply of domestic energy resources.

(d) Protecting public safety.

(e) Ensuring consumer choice.

(f) Protecting the state's natural resources, including its coastlines, tributaries, and waterways.

(g) Supporting economic growth.

(3) ~~(2)~~ In furtherance of the goals in subsection (2), it is the policy of the State of Florida to:

(a) ~~Develop and~~ Promote the cost-effective development and ~~effective~~ use of a diverse supply of domestic energy resources in the state and~~,~~ discourage ~~all forms of~~ energy waste~~, and recognize and address the potential of global climate change wherever possible~~.

(b) Promote the cost-effective development and maintenance of energy infrastructure that is resilient to natural and manmade threats to the security and reliability of the state's energy supply. ~~Play a leading role in developing and instituting energy management programs aimed at promoting energy conservation, energy security, and the reduction of greenhouse gas emissions.~~

(c) Reduce reliance on foreign energy resources.

(d) ~~(c)~~ Include energy considerations in all state, regional, and local planning.

(e) ~~(d)~~ Utilize and manage effectively energy resources used within state agencies.

(f) ~~(e)~~ Encourage local governments to include energy considerations in all planning and to support their work in promoting energy management programs.

(g) ~~(f)~~ Include the full participation of citizens in the development and implementation of energy programs.

(h) ~~(g)~~ Consider in its decisions the energy needs of each

economic sector, including residential, industrial, commercial, agricultural, and governmental uses, and reduce those needs whenever possible.

(i) ~~(h)~~ Promote energy education and the public dissemination of information on energy and its impacts in relation to the goals in subsection (2) ~~environmental, economic, and social impact~~.

(j) ~~(i)~~ Encourage the research, development, demonstration, and application of domestic energy resources, including the use of ~~alternative energy resources, particularly~~ renewable energy resources.

(k) ~~(j)~~ Consider, in its decisionmaking, the impacts of energy-related activities on the goals in subsection (2) ~~social, economic, and environmental impacts of energy-related activities~~, including the whole-life-cycle impacts of any potential energy use choices, so that detrimental effects of these activities are understood and minimized.

(l) ~~(k)~~ Develop and maintain energy emergency preparedness plans to minimize the effects of an energy shortage within the state ~~Florida~~.

Section 10. Subsection (2) of section 377.6015, Florida Statutes, is amended to read:

377.6015 Department of Agriculture and Consumer Services; powers and duties.—

(2) The department shall:

~~(a) Administer the Florida Renewable Energy and Energy-Efficient Technologies Grants Program pursuant to s. 377.804 to assure a robust grant portfolio.~~

(a) ~~(b)~~ Develop policy for requiring grantees to provide

royalty-sharing or licensing agreements with state government for commercialized products developed under a state grant.

~~(c) Administer the Florida Green Government Grants Act pursuant to s. 377.808 and set annual priorities for grants.~~

(b) ~~(d)~~ Administer the information gathering and reporting functions pursuant to ss. 377.601-377.608.

~~(e) Administer the provisions of the Florida Energy and Climate Protection Act pursuant to ss. 377.801-377.804~~.

(c) ~~(f)~~ Advocate for energy ~~and climate change~~ issues consistent with the goals in s. 377.601(2) and provide educational outreach and technical assistance in cooperation with the state's academic institutions.

(d) ~~(g)~~ Be a party in the proceedings to adopt goals and submit comments to the Public Service Commission pursuant to s. 366.82.

(e) ~~(h)~~ Adopt rules pursuant to chapter 120 in order to implement all powers and duties described in this section.

Section 11. Subsection (1) and paragraphs (e), (f), and (m) of subsection (2) of section 377.703, Florida Statutes, are amended to read:

377.703 Additional functions of the Department of Agriculture and Consumer Services.—

(1) LEGISLATIVE INTENT.—Recognizing that energy supply and demand questions have become a major area of concern to the state which must be dealt with by effective and well-coordinated state action, it is the intent of the Legislature to promote the efficient, effective, and economical management of energy problems, centralize energy coordination responsibilities, pinpoint responsibility for conducting energy programs, and

ensure the accountability of state agencies for the implementation of s. 377.601 ~~s. 377.601(2)~~, the state energy policy. It is the specific intent of the Legislature that nothing in this act shall in any way change the powers, duties, and responsibilities assigned by the Florida Electrical Power Plant Siting Act, part II of chapter 403, or the powers, duties, and responsibilities of the Florida Public Service Commission.

(2) DUTIES.—The department shall perform the following functions, unless as otherwise provided, consistent with the development of a state energy policy:

(e) The department shall analyze energy data collected and prepare long-range forecasts of energy supply and demand in coordination with the Florida Public Service Commission, which is responsible for electricity and natural gas forecasts. To this end, the forecasts shall contain:

1. An analysis of the relationship of state economic growth and development to energy supply and demand, including the constraints to economic growth resulting from energy supply constraints.

2. ~~Plans for the development of renewable energy resources and reduction in dependence on depletable energy resources, particularly oil and natural gas, and~~ An analysis of the extent to which domestic energy resources, including renewable energy sources, are being utilized in the state.

3. Consideration of alternative scenarios of statewide energy supply and demand for 5, 10, and 20 years to identify strategies for long-range action, including identification of potential impacts in relation to the goals in s. 377.601(2) ~~social, economic, and environmental effects~~.

4. An assessment of the state's energy resources, including examination of the availability of commercially developable and imported fuels, and an analysis of anticipated impacts in relation to the goals in s. 377.601(2) ~~effects on the state's environment and social services~~ resulting from energy resource development activities or from energy supply constraints, or both.

(f) The department shall submit an annual report to the Governor and the Legislature reflecting its activities and making recommendations for policies for improvement of the state's response to energy supply and demand and its effect on the health, safety, and welfare of the residents of this state. The report must include a report from the Florida Public Service Commission on electricity and natural gas and information on energy conservation programs conducted and underway in the past year and include recommendations for energy efficiency and conservation programs for the state, including:

1. Formulation of specific recommendations for improvement in the efficiency of energy utilization in governmental, residential, commercial, industrial, and transportation sectors.

2. Collection and dissemination of information relating to energy efficiency and conservation.

3. Development and conduct of educational and training programs relating to energy efficiency and conservation.

4. An analysis of the ways in which state agencies are seeking to implement s. 377.601 ~~s. 377.601(2)~~, the state energy policy, and recommendations for better fulfilling this policy.

(m) In recognition of the devastation to the economy of this state and the dangers to the health and welfare of

residents of this state caused by severe hurricanes, and the potential for such impacts caused by other natural disasters, the Division of Emergency Management shall include in its energy emergency contingency plan and provide to the Florida Building Commission for inclusion in the Florida Energy Efficiency Code for Building Construction specific provisions to facilitate the use of cost-effective ~~solar~~ energy technologies as emergency remedial and preventive measures for providing electric power, street lighting, and water heating service in the event of electric power outages.

Section 12. Sections 377.801, 377.802, 377.803, 377.804, 377.808, 377.809, and 377.816, Florida Statutes, are repealed.

Section 13. (1) For programs established pursuant to s. 377.804, s. 377.808, s. 377.809, or s. 377.816, Florida Statutes, there may not be:

(a) New or additional applications, certifications, or allocations approved.

(b) New letters of certification issued.

(c) New contracts or agreements executed.

(d) New awards made.

(2) All certifications or allocations issued under such programs are rescinded except for the certifications of, or allocations to, those certified applicants or projects that continue to meet the applicable criteria in effect before July 1, 2024. Any existing contract or agreement authorized under any of these programs shall continue in full force and effect in accordance with the statutory requirements in effect when the contract or agreement was executed or last modified. However, further modifications, extensions, or waivers may not be made or

granted relating to such contracts or agreements, except computations by the Department of Revenue of the income generated by or arising out of the qualifying project.

Section 14. Subsection (7) of section 288.9606, Florida Statutes, is amended to read:

288.9606 Issue of revenue bonds.—

(7) Notwithstanding any provision of this section, the corporation in its corporate capacity may, without authorization from a public agency under s. 163.01(7), issue revenue bonds or other evidence of indebtedness under this section to:

(a) Finance the undertaking of any project within the state that promotes renewable energy as defined in s. 366.91 ~~or s. 377.803~~;

(b) Finance the undertaking of any project within the state that is a project contemplated or allowed under s. 406 of the American Recovery and Reinvestment Act of 2009; ~~or~~

(c) If permitted by federal law, finance qualifying improvement projects within the state under s. 163.08; or~~.~~

(d) Finance the costs of acquisition or construction of a transportation facility by a private entity or consortium of private entities under a public-private partnership agreement authorized by s. 334.30.

Section 15. Paragraph (w) of subsection (2) of section 380.0651, Florida Statutes, is amended to read:

380.0651 Statewide guidelines, standards, and exemptions.—

(2) STATUTORY EXEMPTIONS.—The following developments are exempt from s. 380.06:

~~(w) Any development in an energy economic zone designated pursuant to s. 377.809 upon approval by its local governing~~

~~body.~~

If a use is exempt from review pursuant to paragraphs (a)-(u), but will be part of a larger project that is subject to review pursuant to s. 380.06(12), the impact of the exempt use must be included in the review of the larger project, unless such exempt use involves a development that includes a landowner, tenant, or user that has entered into a funding agreement with the state land planning agency under the Innovation Incentive Program and the agreement contemplates a state award of at least $50 million.

Section 16. Subsection (2) of section 403.9405, Florida Statutes, is amended to read:

403.9405 Applicability; certification; exemption; notice of intent.—

(2) ~~No construction of~~ A natural gas transmission pipeline may not be constructed ~~be undertaken after October 1, 1992,~~ without first obtaining certification under ss. 403.9401-403.9425, but these sections do not apply to:

(a) Natural gas transmission pipelines which are less than 100 ~~15~~ miles in length or which do not cross a county line, unless the applicant has elected to apply for certification under ss. 403.9401-403.9425.

(b) Natural gas transmission pipelines for which a certificate of public convenience and necessity has been issued under s. 7(c) of the Natural Gas Act, 15 U.S.C. s. 717f, or a natural gas transmission pipeline certified as an associated facility to an electrical power plant pursuant to the Florida Electrical Power Plant Siting Act, ss. 403.501-403.518, unless

the applicant elects to apply for certification of that pipeline under ss. 403.9401-403.9425.

(c) Natural gas transmission pipelines that are owned or operated by a municipality or any agency thereof, by any person primarily for the local distribution of natural gas, or by a special district created by special act to distribute natural gas, unless the applicant elects to apply for certification of that pipeline under ss. 403.9401-403.9425.

Section 17. Subsection (3) of section 720.3075, Florida Statutes, is amended to read:

720.3075 Prohibited clauses in association documents.—

(3) Homeowners' association documents, including declarations of covenants, articles of incorporation, or bylaws, may not preclude:

(a) The display of up to two portable, removable flags as described in s. 720.304(2)(a) by property owners. However, all flags must be displayed in a respectful manner consistent with the requirements for the United States flag under 36 U.S.C. chapter 10.

(b) Types or fuel sources of energy production which may be used, delivered, converted, or supplied by the following entities to serve customers within the association that such entities are authorized to serve:

1. A public utility or an electric utility as defined in this chapter;

2. An entity formed under s. 163.01 that generates, sells, or transmits electrical energy;

3. A natural gas utility as defined in s. 366.04(3)(c);

4. A natural gas transmission company as defined in s.

368.103; or

5. A Category I liquefied petroleum gas dealer, a Category II liquefied petroleum gas dispenser, or a Category III liquefied petroleum gas cylinder exchange operator as defined in s. 527.01.

(c) The use of an appliance, including a stove or grill, which uses the types or fuel sources of energy production which may be used, delivered, converted, or supplied by the entities listed in paragraph (b). As used in this paragraph, the term "appliance" means a device or apparatus manufactured and designed to use energy and for which the Florida Building Code or the Florida Fire Prevention Code provides specific requirements.

Section 18. (1) Recognizing the continued development and growth of markets for technologies that allow businesses and consumers to generate, store, and manage electrical energy for their own use, and recognizing that the use of these technologies has the potential to significantly impact the electric grid and consumer choice, the Legislature directs the Public Service Commission to ensure that these technologies are used in a manner that best maintains the integrity of the state electricity grid through market-based policies for consumers and public utilities and through electric grid improvements that ensure the safe, reliable, and cost-effective use of electrical power from these technologies. Specifically, the commission shall develop policies that establish programs and rate mechanisms for smart energy demand response and for customer-owned generation and energy storage exported to the grid or used to enhance grid stability or resilience and reduce costs, such

that financial benefits are shared among users of these technologies, public utilities, and their general body of ratepayers based on the value provided by and to each party. The policies shall also address the modernization of the state's electric grid to ensure that the necessary infrastructure is in place to implement these programs and rate mechanisms. The policies must ensure that equipment used by utilities and consumers to implement and participate in these programs and rate mechanisms is manufactured in the United States or in countries engaged in commerce with the United States pursuant to free trade agreements.

(2) By January 1, 2025, the commission shall submit a report to the Legislature that contains the policies developed pursuant to this section, including the basis for each policy and any matters that the commission deems relevant for the Legislature's consideration in evaluating these policies. Such policies may not be implemented until approved by the Legislature, with the exception of limited pilot projects and programs.

Section 19. (1) The Public Service Commission shall conduct an assessment of the security and resiliency of the state's electric grid and natural gas facilities against both physical threats and cyber threats. The commission shall consult with the Florida Digital Service in assessing cyber threats. All electric utilities, natural gas utilities, and natural gas pipelines operating in this state, regardless of ownership structure, shall cooperate with the commission to provide access to all information necessary to conduct the assessment.

(2) By January 1, 2025, the commission shall submit a

report of its assessment to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must also contain any recommendations for potential legislative or administrative actions that may enhance the physical security or cyber security of the state's electric grid or natural gas facilities.

Section 20. (1) Recognizing the evolution and advances that have occurred and continue to occur in nuclear power technologies, the Public Service Commission shall study and evaluate the technical and economic feasibility of using advanced nuclear power technologies, including small modular reactors, to meet the electrical power needs of the state, and research means to encourage and foster the installation and use of such technologies at military installations in the state.

(2) By January 1, 2025, the commission shall prepare and submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, containing its findings and any recommendations for potential legislative or administrative actions that may enhance the use of advanced nuclear technologies in a manner consistent with the energy policy goals in s. 377.601(2), Florida Statutes.

Section 21. (1) Recognizing the continued development of technologies that support the use of hydrogen as a transportation fuel and the potential for such use to help meet the state's energy policy goals in s. 377.601(2), Florida Statutes, the Department of Transportation, in consultation with the Office of Energy within the Department of Agriculture and Consumer Services, shall study and evaluate the potential development of hydrogen fueling infrastructure, including

fueling stations, to support hydrogen-powered vehicles that use the state highway system.

(2) By January 1, 2025, the department shall prepare and submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, containing its findings and any recommendations for potential legislative or administrative actions that may accommodate the future development of hydrogen fueling infrastructure in a manner consistent with the energy policy goals in s. 377.601(2), Florida Statutes.

Section 22. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2024.

March 14, 2023

Agency Affected:	Public Service Commission	
Program Manager:	Lance Watson	Telephone: 413.6125
Agency Contact:	Katherine Pennington	Telephone: 413.6596
Respondent:	Katherine Pennington	Telephone: 413.6596

RE: SB 1162

I. SUMMARY:

SB 1162 amends Section 366.91(9), Florida Statutes (F.S.), to include, as eligible for cost recovery along with renewable natural gas, contracts for the purchase of hydrogen in which the purchase price exceeds the market price for natural gas. The bill establishes new criteria for the eligibility of such contracts for cost recovery. The bill creates language that provides a public utility may recover, through the appropriate cost-recovery mechanism administered by the commission, prudently incurred costs for renewable natural gas and hydrogen fuel infrastructure projects. This bill takes effect July 1, 2023.

II. PRESENT SITUATION:

Pursuant to Section 366.91, F.S., it is in the public interest to promote the development of renewable energy resources to help diversify fuel types for electric production, minimize the volatility of fuel costs, encourage investment within the state, improve environmental conditions, and make Florida a leader in new and innovative technologies.

Renewable energy is defined in Section 366.91(2)(e), F.S., as energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen produced or resulting from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power. The term includes the alternative energy resource, waste heat, from sulfuric acid manufacturing operations and electrical energy produced using pipeline-quality synthetic gas produced from waste petroleum coke with carbon capture and sequestration.

Renewable natural gas is defined in Section 366.91(2)(f), F.S., as anaerobically generated biogas, landfill gas, or wastewater treatment gas refined to a methane content of 90 percent or greater which may be used as a transportation fuel or for electric generation or is of a quality capable of being injected into a natural gas pipeline.

Section 366.91(9), F.S., currently allows the Commission to approve cost recovery by a gas public utility for contracts for the purchase of renewable natural gas in which the pricing provisions exceed the current market price of natural gas, but which are otherwise deemed reasonable and prudent by the commission.

Current rate setting mechanisms include base rates and cost recovery clauses. Base rates allow a utility to recover capital investment in facilities and operating and maintenance expenses used to provide service to customers, along with the opportunity to earn a fair rate of return on its investment. Base rates are set during a general rate case, which is a large evidentiary proceeding where the utility's rate base is investigated and a revenue requirement is established. Base rates are then set to recover that revenue requirement, and will remain fixed until the next rate case.

Cost recovery clauses are the mechanisms by which electric and gas investor-owned utilities may petition the Commission for recovery of specified costs not otherwise recovered in base rates. Typically, cost recovery clauses allow utilities to recover costs that are not easily controlled by the utility, such as the cost of complying with new environmental regulations or fuel costs that rise and fall with the market. Utilities recover such costs by charging customers a usage-sensitive rate (e.g., cents per kWh) that is set on an annual basis. The cost recovery clauses now available to investor-owned utilities in Florida include Fuel and Purchased Power, Capacity, Environmental, Energy and Natural Gas Conservation, the Purchased Gas Adjustment, Nuclear Cost Recovery, and the Storm Protection Plan Cost Recovery Clause. The environmental, energy conservation, nuclear, and storm protection plan cost recovery clauses are established by statute.

The most common method for producing hydrogen is a process called steam-methane reforming. Steam-methane reforming uses high-temperature steam, under pressure, to react with methane in the presence of a catalyst to produce hydrogen, carbon monoxide, and a relatively small amount of carbon dioxide. Natural gas is the main methane source for this type of hydrogen production. Hydrogen can also be produced through a process called electrolysis, which utilizes electricity to separate water into hydrogen and oxygen molecules. Electrolysis itself does not produce any byproducts or emissions other than hydrogen and oxygen. Hydrogen is captured for use as a fuel, similar to natural gas, either for end use or as a fuel used to generate electricity. Hydrogen is not an energy source, but rather an energy carrier, since it is produced using other energy sources.

The overwhelming majority of hydrogen is currently produced using fossil fuels, mostly natural gas. Overall, less than 0.7% of current hydrogen production utilizes renewable energy. In recent years, colors have been used to refer to different sources of hydrogen production. "Black", "grey" or "brown" refer to the production of hydrogen using coal, natural gas and lignite respectively. "Blue" is commonly used for the production of hydrogen from fossil fuels with CO2 emissions reduced by the use of carbon capture. "Green" is a term applied to production of hydrogen using renewable energy.

Most hydrogen is currently produced near to its end use. If hydrogen can be used close to where it is made, production costs could be low. However, if the hydrogen is produced a long distance from its end use, the costs of transmission and distribution could be three times as large as the cost of hydrogen production. Long-distance transmission and local distribution of hydrogen is difficult given its low energy density. Compression, liquefaction or incorporation of the hydrogen into larger molecules are possible options to overcome this hurdle. Each option has advantages and disadvantages, and the cheapest choice will vary according to geography, distance, scale and the required end use.

It is possible to blend small shares of hydrogen in existing natural gas transmission systems with only minor changes to infrastructure, equipment and most end-user appliances, if changes are needed at all. Some new investment in hydrogen injection facilities would be needed, but in general blending at a safe level offers a relatively quick and easy way to transmit hydrogen supplies to end users, as long as hydrogen production is located near the gas transmission or distribution network.

Pipelines are likely to be the most cost-effective long-term choice for local hydrogen distribution if there is sufficiently large, sustained and localized demand. However, distribution today usually relies on trucks carrying hydrogen either as a gas or liquid, and this is likely to remain the main distribution mechanism over the next decade.

As part of a 2021 settlement agreement, Florida Power and Light (FPL) was authorized to develop a Green Hydrogen pilot project. The new hydrogen-hub facility, named the Cavendish NextGen Hydrogen Hub, is located in Okeechobee, Florida. The hydrogen-hub facility uses energy from a solar-powered facility to convert water into green hydrogen through electrolysis, which will then be burned as a fuel in its nereby natural gas-fueled electric generation plant.

III. EFFECT OF PROPOSED CHANGES:

The bill amends Section 366.91(9), F.S., to include contracts for the purchase of hydrogen as eligible for cost recovery. The amendment removes language that cost recovery may be approved for a gas public utility, but does not identify the utilities that are subject to this subsection. It is unclear whether the intent of this language is for this subsection to be applicable to all public utilities (investor-owned electric or natural gas utilities). The bill does not define hydrogen or specify the means by which it must be produced.

The bill establishes new criteria for eligibility of cost recovery for renewable natural gas and hydrogen purchase contracts. The bill deletes existing language that requires the Commission to deem the incurred costs as reasonable and prudent for cost recovery. Contracts for the purchase of renewable natural gas and hydrogen in which the pricing provisions exceed the current market price of natural gas are currently eligible for cost recovery, but only if the commission finds that the contract meets the overall goals of subsection (1) by promoting the development or use of renewable energy resources in this state and providing fuel diversification. Under the bill, it is unclear to what extent the Commission may exercise its authority in reviewing utility costs to ensure rates are fair, just and reasonable. The plain language of the bill appears to constrain the Commission's authority to limit costs to be recovered from customers.

The bill creates Section 366.91(10), F.S., which states that a public utility may recover, through the appropriate cost-recovery mechanism administered by the commission, prudently incurred costs for renewable natural gas and hydrogen fuel infrastructure projects.

Eligible infrastructure projects include, but are not limited to, capital investment in projects necessary to prepare or produce renewable natural gas and hydrogen fuel or pipeline distribution and usage; capital investment in facilities, such as fuel storage; operation and maintenance expenses associated with any such renewable natural gas and hydrogen fuel infrastructure

projects; and an appropriate return on investment consistent with that allowed for other utility plants used to provide service to customers.

It is unclear whether eligibility for cost recovery under this bill only applies to projects located in Florida. Without clarification or additional restrictions, it is unclear whether infrastructure projects to prepare or produce renewable natural gas and hydrogen fuel for pipeline distribution, or storage facilities located in other states could be eligible for cost recovery from Florida ratepayers under the bill.

The bill also allows for the recovery of costs associated with the production of a fuel used to generate electricity or used in the natural gas distribution system for service to end-use customers. This new policy is in contrast with the 2016 Florida Supreme Court reversal of the Commission's approval of the capital investment and expenses associated with Florida Power and Light Company's Woodford Project. The Supreme Court found that the exploration, drilling, and production of fuel falls outside the purview of an electric utility and that costs associated with the exploration and recovery of natural gas were not part of the generation, transmission and distribution of electricity.

It is unclear what methodology should be used as the appropriate cost-recovery mechanism. Currently, costs for fuel infrastructure used in the generation of electricity or in the distribution of natural gas are recovered in base rates. An alternative option for cost-recovery would be through a new or existing clause. Cost-recovery clauses for gas utilities include the Purchased Gas Adjustment Cost Recovery Clause (PGA) and the Natural Gas Conservation Cost Recovery Clause (NGCCR). The PGA is intended to compensate for day-to-day fluctuations in the cost of gas, however, it does not account for costs related to infrastructure. The NGCCR is intended for the recovery of costs associated with conservation programs for natural gas local distribution companies. As such, these two existing clauses may not be compatible with the type of capital cost-recovery addressed in the bill. Therefore, a new clause may need to be established.

This bill states that for the purposes of cost recovery for infrastructure projects, renewable natural gas may include a mixture of natural gas and renewable natural gas. The bill does not provide a ratio of renewable natural gas to regular natural gas in the fuel mixture in order for an infrastructure project to be eligible. As written, it appears any injection of renewable natural gas, no matter how small, would make an infrastructure project eligible under the bill.

IV. ESTIMATED FISCAL IMPACTS ON STATE AGENCIES:

Incremental workload on the Commission is dependent upon utility decisions to seek cost recovery of contracts and infrastructure projects. We expect that the workload can be absorbed.

V. ESTIMATED FISCAL IMPACTS ON LOCAL GOVERNMENTS:

None known at this time.

VI. ESTIMATED IMPACTS ON PRIVATE SECTOR:

Private utility companies will likely expand the use and sale of hydrogen, either through new purchase contracts or new infrastructure projects.

VII. LEGAL ISSUES:

A. Does the proposed legislation conflict with existing federal law or regulations? If so, what laws and/or regulations?

None known at this time.

B. Does the proposed legislation raise significant constitutional concerns under the U.S. or Florida Constitutions (e.g. separation of powers, access to the courts, equal protection, free speech, establishment clause, impairment of contracts)?

None known at this time.

C. Is the proposed legislation likely to generate litigation and, if so, from what interest groups or parties?

None known at this time.

D. Other:

VIII. COMMENTS:

Prepared by: David Frank
Date: March 10, 2023

The Florida Senate

Committee Agenda Request

To: Senator Joe Gruters, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: January 17, 2024

I respectfully request that **Senate Bill #1624**, relating to Energy Resources, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Jay Collins
Florida Senate, District 14

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 104
INTRODUCER:	Senator Jones
SUBJECT:	Municipal Water and Sewer Utility Rates
DATE:	January 26, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Imhof	RI	**Pre-meeting**
2.			CA	
3.			RC	

I. Summary:

SB 104 creates an exception to the maximum rates that may be charged to municipal water and sewer utility customers who are outside of the corresponding municipality's boundaries. The bill provides that if a municipal utility provides water and sewer services to another municipality, and serves that other municipality using a facility or water or sewer plant located within that other municipality, then the utility must charge its customers within that other municipality the same rates, fees, and charges as it does for those customers within its own municipal boundaries.

The bill has an effective date of July 1, 2024.

II. Present Situation:

Florida Public Service Commission

The Florida Public Service Commission (PSC) is an arm of the legislative branch of government.[1] The role of the PSC is to ensure Florida's consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe, affordable, and reliable manner.[2] In order to do so, the PSC exercises authority over public utilities[3] in one or more of the following areas: rate base or economic regulation; competitive market oversight; and

[1] Section 350.001, F.S.

[2] *See* Florida Public Service Commission, About Us, https://www.psc.state.fl.us/about (last visited Jan. 22, 2024).

[3] Under s. 366.02, F.S., a "public utility" is defined "as every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state." There are, however, several exceptions to this definition, which include, "a cooperative now or hereafter organized and existing under the Rural Electric Cooperative Law of the state; a municipality or any agency thereof; [and] any dependent or independent special natural gas district." Generally, "public utility" means investor-owned utilities.

monitoring of safety, reliability, and service issues.[4] PSC authority over municipal utilities is more limited, however.

Water and Wastewater Utilities

Florida's Water and Wastewater System Regulatory Law, ch. 367, F.S., regulates water and wastewater systems in the state. Section 367.011, F.S., grants the PSC exclusive jurisdiction over each utility with respect to its authority, service, and rates. For the chapter, a "utility" is defined as "a water or wastewater utility and, except as provided in s. 367.022, F.S., includes every person, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing, or proposes to provide, water or wastewater service to the public for compensation." In 2022, the PSC had jurisdiction over 149 investor-owned water and/or waste-water utilities in 38 of Florida's 67 counties.[5]

Section 367.022, F.S., exempts certain types of water and wastewater operations from PSC jurisdiction and the provisions of ch. 367, F.S. (except as expressly provided in the chapter). Such exempt operations include: municipal water and wastewater systems, public lodging systems that only provide service to their guests, systems with a 100-person or less capacity, landlords that include service to their tenants without specific compensation for such service, and mobile home parks operating both as a mobile home park and a mobile home subdivision that provide "service within the park and subdivision to a combination of both tenants and lot owners, provided that the service to tenants is without specific compensation," and others.[6] The PSC also does not regulate utilities in counties that have exempted themselves from PSC regulation pursuant to s. 367.171, F.S. However, under s. 367.171(7), F.S., the PSC retains exclusive jurisdiction over all utility systems whose service crosses county boundaries, except for utility systems that are subject to interlocal utility agreements.

According to a 2017 research report from the University of North Carolina, there were 1,647 community water systems in Florida. Of those, 973 were privately owned. Florida had 371 publicly-owned treatment works facilities. The privately-owned community water systems served almost 1.4 million people, the government-owned community water systems served more than 18.4 million people, and the publicly-owned treatment works facilities served just over 13 million people.[7]

[4] Florida Public Service Commission, *About the PSC*, *supra* note 2.
[5] Florida Public Service Commission, *2023 Facts and Figures of the Florida Utility Industry*, https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/FactsAndFigures/April%202023.pdf *(last visited Jan. 22, 2024).*
[6] Section 367.022, F.S.
[7] University of North Carolina Environmental Finance Center, *Navigating Legal Pathways to Rate-Funded Customer Assistance Programs, A Guide for Water and Wastewater Utilities (2017),* available at https://efc.sog.unc.edu/wp-content/uploads/sites/1172/2021/06/Nagivating-Pathways-to-Rate-Funded-CAPs.pdf (last visited Jan. 22, 2024).

Municipal Water and Sewer Utilities in Florida

A municipality[8] may establish a utility by resolution or ordinance under s. 180.03, F.S. A municipality may establish a service area within its municipal boundary or within five miles of its corporate limits of the municipality.[9]

Under s. 180.19, F.S., a municipality may permit another municipality and the owners or association of owners of lands outside of its corporate limits or within another municipality's corporate limits to connect to its utilities upon such terms and conditions as may be agreed upon between the municipalities.

Municipal Water and Sewer Utility Rate Setting

The PSC does not have jurisdiction over municipal water and sewer utilities, and as such, has no authority over the rates for such utilities. Municipally-owned water and sewer utility rates and revenues are regulated by their respective local governments, sometimes through a utility board or commission.

Municipal Water and Sewer Utility Rates for Customers Outside of Corporate Limits

Section 180.191, F.S., provides limitations on the rates that can be charged to customers outside their municipal boundaries. The first option is that such a municipality may charge the same rates inside as outside its municipal boundaries, but may add a 25 percent surcharge to those outside the boundaries.[10]

Alternatively, a municipality may charge rates that are just and equitable and based upon the same factors used in fixing the rates for the customers within the boundaries of the municipality. In addition, the municipality may add a 25 percent surcharge. When a municipality uses this methodology, the total of all rates, fees, and charges for the services charged to customers outside the municipal boundaries may not be more than 50 percent in excess of the total amount the municipality charges consumers within its municipal boundaries, for corresponding service.[11]

The rates, fees, and charges may not be set until a public hearing is held and the users, owners, tenants, occupants of property served or to be served, and all other interested parties have an opportunity to be heard on the rates, fees, and charges. Any change in the rates, fees, and charges must also have a public hearing unless the change is applied pro rata to all classes of service, both inside and outside of the municipality.[12]

The provisions of s. 180.191, F.S., may be enforced by civil action. Whenever any municipality violates, or if reasonable grounds exist to believe that a municipality is about to violate, s. 180.191, F.S., an aggrieved party may seek preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order.[13]

[8] Defined by s. 180.01, F.S., "as any city, town, or village duly incorporated under the laws of the state."
[9] Section 180.02, F.S.
[10] Section 180.191(1)(a), F.S.
[11] Section 180.191(1)(b), F.S.
[12] *Id.*
[13] Section 180.191(2), F.S.

III. Effect of Proposed Changes:

Section 1 of the bill creates an exception to the maximum rates that may be charged to municipal water and sewer utility customers that are outside of the municipality's boundaries in s. 180.191, F.S. The bill provides that if a municipal utility provides water and sewer services to a second municipality, and serves that second municipality using a facility or water or sewer plant located within that second municipality, it must charge its customers within that second municipality the same rates, fees, and charges as the customers within its own municipal boundaries.

Section 2 of the bill provides an effective date of the bill of July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds, limit the ability of counties and municipalities to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

Subsection (b) of Art. VII, s. 18 of the Florida Constitution provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandates requirements do not apply to laws having an insignificant impact,[14] which is $2.3 million or less for Fiscal Year 2024-2025.[15]

The Revenue Estimating Conference has not reviewed SB 104. Staff estimates an indeterminate impact to municipal utility revenues. Therefore, the mandate provision may apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

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[14] FLA. CONST. art. VII, s. 18(d). An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by $0.10. *See* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), *available at* http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited Jan. 22, 2024).

[15] Based on the Demographic Estimating Conference's estimated population adopted on November 28, 2023. The conference packet is *available at* http://edr.state.fl.us/Content/conferences/population/index.cfm (last visited Jan. 22, 2024).

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Municipal water and sewer utility customers that are located in a different municipality than the municipality that operates the utility may see a water and sewer rate reduction under the provisions of the bill if that customer's municipality contains facilities or water or sewer plants for the utility.

C. Government Sector Impact:

Municipal governments that operate a municipal water and sewer utility, with facilities or water or sewer plants located in a second municipality, may see a reduction in utility revenue under the provisions of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The sponsor may wish to clarify the meaning of "facility" as it is used on line 56 of the bill. It is potentially ambiguous the type of utility infrastructure would qualify as a "facility." Also, to remove a potential ambiguity in the bill as to whether a facility or plant is "providing service" to customers, the sponsor may wish to consider an amendment to revise the bill to state that any facility or water or sewer plant located in a second municipality would give rise to the rate-restriction provisions of the bill.

VIII. Statutes Affected:

This bill substantially amends section 180.191 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 Jones

34-00193-24 2024104__

A bill to be entitled

An act relating to municipal water and sewer utility rates; amending s. 180.191, F.S.; requiring a municipality to charge customers receiving its utility services in another municipality the same rates, fees, and charges as it charges consumers within its municipal boundaries under certain circumstances; making technical changes; providing an effective date.

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

Section 1. Present subsections (2), (3), and (4) of section 180.191, Florida Statutes, are redesignated as subsections (3), (4), and (5), respectively, a new subsection (2) is added to that section, and subsection (1) of that section is amended, to read:

180.191 Limitation on rates charged consumer outside city limits.—

(1) Any municipality within this ~~the~~ state operating a water or sewer utility outside of the boundaries of such municipality shall charge consumers outside the boundaries rates, fees, and charges determined in one of the following manners:

(a) It may charge the same rates, fees, and charges as consumers inside the municipal boundaries. However, in addition ~~thereto~~, the municipality may add a surcharge of not more than 25 percent of such rates, fees, and charges to consumers outside the boundaries, except as provided in subsection (2). Fixing of such rates, fees, and charges in this manner does ~~shall~~ not require a public hearing except as may be provided for service to consumers inside the municipality.

(b) It may charge rates, fees, and charges that are just and equitable and that ~~which~~ are based on the same factors used in fixing the rates, fees, and charges for consumers inside the municipal boundaries, except as provided in subsection (2). In addition ~~thereto~~, the municipality may add a surcharge not to exceed 25 percent of such rates, fees, and charges for ~~said~~ services to consumers outside the boundaries. However, the total of all such rates, fees, and charges for the services to consumers outside the boundaries may ~~shall~~ not be more than 50 percent in excess of the total amount the municipality charges consumers served within the municipality for corresponding service. ~~No~~ Such rates, fees, and charges may not ~~shall~~ be fixed until after a public hearing at which all of the users of the water or sewer systems; owners, tenants, or occupants of property served or to be served thereby; and all others interested shall have an opportunity to be heard concerning the proposed rates, fees, and charges. Any change or revision of such rates, fees, or charges may be made in the same manner as such rates, fees, or charges were originally established, but if such change or revision is to be made substantially pro rata as to all classes of service, both inside and outside the municipality, no hearing or notice shall be required.

(2) Any municipality within this state which operates a water or sewer utility providing service to customers in another recipient municipality using a facility or water or sewer plant located in the recipient municipality shall charge consumers in the recipient municipality the same rates, fees, and charges as

it does the consumers inside its own municipal boundaries.

Section 2. This act shall take effect July 1, 2024.

The Florida Senate

Committee Agenda Request

To: Senator Joe Gruters, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: December 13, 2023

I respectfully request that **Senate Bill #104**, relating to Municipal Water and Sewer Utility Rates, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Shevrin D. "Shev" Jones
Florida Senate, District 34

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 1568
INTRODUCER:	Senator Hutson
SUBJECT:	Fantasy Sports Contest Amusement Act
DATE:	January 26, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	**Pre-meeting**
2.			FP	

I. Summary:

SB 1568 creates the Fantasy Sports Contest Amusement Act, which authorizes the offering of fantasy sports contests by contest operators to persons 21 years of age or older, and provides fantasy sports contests, as defined in the bill, involve the skill of contest participants.

The bill also authorizes the offering of fantasy sports contests by non-commercial contest operators, provided participants pay an entry fee and be 21 years of age or older. A noncommercial contest operator must pay all entry fees to participants as prizes, and may not pay fantasy sports contest prize monies exceeding $1,500 per season or $10,000 annually.

Contest operators other than noncommercial contest operators must be licensed by the Florida Gaming Control Commission (commission) and meet the requirements specified in the act for fantasy sports contests. The commission must enforce and administer the act, investigate and monitor the operation and play of fantasy sports contests, and may deny, suspend, or revoke any licenses for violation of state law or rule.

The commission must revoke a contest operator's license if the contest operator offers fantasy sports contests that violate s. 546.13(7)(c), F.S., created by the bill, if a winning outcome of a contest is:

> [B]ased on the score, point spread, or any performance or performances of any single actual team or combination of such teams; solely on any single performance of an individual athlete or player in a single actual event; on a pari-mutuel event, as the term "pari-mutuel" is defined in s. 550.002 [, F.S.]; on a game of poker or other card game; or on the performances of participants in collegiate, high school, or youth sporting events.

The impact on state revenues and expenditures is indeterminate. There is no impact expected on local government revenues and expenditures. *See* Section V, Fiscal Impact Statement.

The bill takes effect July 1, 2024.

II. Present Situation:

Background

In general, gambling is illegal in Florida.[1] Chapter 849, F.S., prohibits keeping a gambling house,[2] running a lottery,[3] or the manufacture, sale, lease, play, or possession of slot machines.[4] In Florida, if a gaming activity is not expressly authorized by law, then the activity constitutes illegal gambling. In addition to the activities the Seminole Tribe of Florida is authorized by law to conduct pursuant to ch. 285.710, F.S.,[5] the following gaming activities are authorized by law and regulated by the state:

- Pari-mutuel[6] wagering at licensed greyhound and horse tracks and jai alai frontons;[7]
- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;[8]
- Cardrooms[9] at certain pari-mutuel facilities;[10]
- The state lottery authorized by section 15 of Article X of the State Constitution and established under ch. 24, F.S.;[11]
- Skill-based amusement games and machines at specified locations as authorized by s. 546.10, F.S, the Family Amusement Games Act;[12] and
- The following activities, if conducted as authorized under ch. 849, relating to Gambling, under specific and limited conditions:
  - Penny-ante games;[13]
  - Bingo;[14]
  - Charitable drawings;[15]

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[1] See s. 849.08, F.S.
[2] *See* s. 849.01, F.S.
[3] *See* s. 849.09, F.S.
[4] Section 849.16, F.S.
[5] *See* s. 285.710(3), F.S. The activities currently authorized to be conducted by the Seminole Tribe of Florida subject to limitations described in s. 285.710, F.S., and the 2021 Gaming Compact, include the following: slot machines; banking or banked card games (such as blackjack, limited to the tribal facilities in Broward County, Collier County, and Hillsborough County); raffles and drawings; craps and other dice games; roulette; fantasy sports contests; and sports betting.
[6] "Pari-mutuel" is defined in Florida law as "a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes. *See* s. 550.002(22), F.S.
[7] *See* ch. 550, F.S., relating to the regulation of pari-mutuel activities.
[8] *See* FLA. CONST., art. X, s. 23, and ch. 551, F.S.
[9] Section 849.086, F.S. *See* s. 849.086(2)(c), F.S., which defines "cardroom" to mean "a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charged a fee for participation by the operator of such facility."
[10] *See* Florida Gaming Control Commission, *Annual Report Fiscal Year 2022-2023* (Annual Report), at p. 15, at https://flgaming.gov/pmw/annual-reports/docs/2022-2023%20FGCC%20Annual%20Report.pdf (last visited Jan. 23, 2024), which states that of 29 licensed permitholders, 26 operated at a pari-mutuel facility.
[11] Chapter 24, F.S., was enacted by ch. 87-65, Laws of Fla., to establish the state lottery; s. 24.102, F.S., states the legislative purpose and intent for the operations of the state lottery.
[12] *See* s. 546.10, F.S.
[13] *See* s. 849.085, F.S.
[14] *See* s. 849.0931, F.S.
[15] *See* s. 849.0935, F.S.

- Game promotions (sweepstakes);[16] and
- Bowling tournaments.[17]

A license to offer pari-mutuel wagering, slot machine gambling, or a cardroom at a pari-mutuel facility is a privilege granted by the state.[18]

The 1968 State Constitution states that "[l]otteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution . . ." are prohibited.[19] A constitutional amendment approved by the voters in 1986 authorized state-operated lotteries. Net proceeds of the lottery are deposited to the Educational Enhancement Trust Fund (EETF) and appropriated by the Legislature. Lottery operations are self-supporting and function as an entrepreneurial business enterprise.[20]

Enforcement of Gaming Laws and Florida Gaming Control Commission

In 202l, the Legislature updated Florida law for authorized gaming in the state, and for enforcement of the gambling laws[21] and other laws relating to authorized gaming.[22] The Office of Statewide Prosecution in the Department of Legal Affairs is authorized to investigate and prosecute, in addition to gambling offenses, any violation of ch. 24, F.S., (State Lotteries), part II of ch. 285, F.S., (Gaming Compact), ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S., (Gambling), which are referred to the Office of Statewide Prosecution by the Florida Gaming Control Commission (commission).[23]
In addition to the enhanced authority of the Office of Statewide Prosecution, the commission was created[24] within the Department of Legal Affairs. The commission has two divisions, including the Division of Gaming Enforcement (DGE), and the Division of Pari-mutuel Wagering

[16] *See* s. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.
[17] *See* s. 849.141, F.S.
[18] *See* s. 550.1625(1), F.S., "…legalized pari-mutuel betting at dog tracks is a privilege and is an operation that requires strict supervision and regulation in the best interests of the state." *See also, Solimena v. State*, 402 So.2d 1240, 1247 (Fla. 3d DCA 1981), *review denied*, 412 So.2d 470, which states "Florida courts have consistently emphasized the special nature of legalized racing, describing it as a privilege rather than as a vested right," citing *State ex rel. Mason v. Rose*, 122 Fla. 413, 165 So. 347 (1936), and *Zimmerman v. State of Florida, Fla. Gaming Control Comm'n*, ___So.3d ___ (Fla. 5th DCA Jan. 12, 2024) *(Case No. 5D23-1062; not final until disposition of motions as set forth in the opinion)*.
[19] The pari-mutuel pools that were authorized by law on the effective date of the State Constitution, as revised in 1968, include horseracing, greyhound racing, and jai alai games. The revision was ratified by the electorate on November 5, 1968.
[20] The Department of the Lottery is authorized by s. 15, Art. X of the State Constitution. Chapter 24, F.S., was enacted by ch. 87-65, Laws of Fla., to establish the state lottery. Section 24.102, F.S., states the legislative purpose and intent for the operations of the state lottery.
[21] *See* Special agents confiscate over 70 illegal gambling devices in Gadsden (tallahassee.com) and https://www.tcpalm.com/story/news/crime/st-lucie-county/2023/10/24/st-lucie-county-deputies-raid-close-arcade-accused-of-gambling/71302519007/ relating to recent enforcement by local law enforcement and agents of the Florida Gaming Control Commission (both last visited Jan. 23, 2024).
[22] See ch. 2021-268, Laws of Fla., (Implementation of 2021 Gaming Compact between the Seminole Tribe of Florida and the State of Florida); ch. 2021-269, Laws of Fla., (Gaming Enforcement), ch. 2021-270, Laws of Fla., (Public Records and Public Meetings), and 2021-271, Laws of Fla., (Gaming), as amended by ch. 2022-179, Laws of Fla., (Florida Gaming Control Commission). Conforming amendments are made in ch. 2022-7, Laws of Fla., (Reviser's Bill) and ch. 2023-8, Laws of Fla., (Reviser's Bill).
[23] Section 16.56(1)(a), F.S.
[24] Section 16.71, F.S.

(DPMW) which was transferred from the Department of Business and Professional Regulation (DBPR) effective July 1, 2022.[25]

The commission must do all of the following:[26]

- Exercise all of the regulatory and executive powers of the state with respect to gambling, including pari-mutuel wagering, cardrooms, slot machine facilities, oversight of gaming compacts executed by the state pursuant to the Federal Indian Gaming Regulatory Act, and any other forms of gambling authorized by the State Constitution or law, excluding state lottery games as authorized by the State Constitution.
- Establish procedures consistent with ch. 120, F.S., the Administrative Procedure Act, to ensure adequate due process in the exercise of the commission's regulatory and executive functions.
- Ensure that the laws of this state are not interpreted in any manner that expands the activities authorized in ch. 24, F.S. (State Lotteries), part II of ch. 285, F.S. (Gaming Compact), ch. 546, F.S. (Amusement Facilities), ch. 550, F.S. (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S. (Gambling).
- Review the rules and regulations promulgated by the Seminole Tribal Gaming Commission for the operation of sports betting and propose to the Seminole Tribe Gaming Commission any additional consumer protection measures it deems appropriate. The proposed consumer protection measures may include, but are not limited to, the types of advertising and marketing conducted for sports betting, the types of procedures implemented to prohibit underage persons from engaging in sports betting, and the types of information, materials, and procedures needed to assist patrons with compulsive or addictive gambling problems.
- Evaluate, as the state compliance agency or as the commission, information that is reported by sports governing bodies or other parties to the commission relating to:
    - Any abnormal betting activity or patterns that may indicate a concern about the integrity of a sports event or events;
    - Any other conduct with the potential to corrupt a betting outcome of a sports event for purposes of financial gain, including, but not limited to, match fixing; suspicious or illegal wagering activities, including the use of funds derived from illegal activity, wagers to conceal or launder funds derived from illegal activity, use of agents to place wagers, or use of false identification; and
    - The use of data deemed unacceptable by the commission or the Seminole Tribal Gaming Commission.
- Provide reasonable notice to state and local law enforcement, the Seminole Tribal Gaming Commission, and any appropriate sports governing body of non-proprietary information that may warrant further investigation of nonproprietary information by such entities to ensure integrity of wagering activities in the state.
- Review any matter within the scope of the jurisdiction of the DPMW.
- Review the regulation of licensees, permitholders, or persons regulated by the DPMW and the procedures used by that division to implement and enforce the law.
- Review the procedures of the DPMW which are used to qualify applicants applying for a license, permit, or registration.

[25] *See* ch. 2021-269, s. 11, Laws of Fla., which delineates the transfer of the DPMW to the commission from the DBPR.
[26] Section 16.712, F.S. The commission also administers the Pari-mutuel Wagering Trust Fund. *See* s. 16.71(6), F.S.

- Receive and review violations reported by a state or local law enforcement agency, the Department of Law Enforcement, the Department of Legal Affairs, the Department of Agriculture and Consumer Services, the Department of Business and Professional Regulation, the Department of the Lottery, the Seminole Tribe of Florida, or any person licensed under ch. 24, F.S. (State Lotteries), part II of ch. 285, F.S. (Gaming Compact), ch. 546, F.S. (Amusement Facilities), ch. 550, F.S. (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S. (Gambling), and determine whether such violation is appropriate for referral to the Office of Statewide Prosecution.
- Refer criminal violations of ch. 24, F.S., (State Lotteries), part II of ch. 285, F.S., (Gaming Compact), ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S., (Gambling) to the appropriate state attorney or to the Office of Statewide Prosecution, as applicable.
- Exercise all other powers and perform any other duties prescribed by the Legislature, and adopt rules to implement the above.

Commissioners

As set forth in s. 16.71, F.S., of the five commissioners appointed as members of the commission, at least one member must have at least 10 years of experience in law enforcement and criminal investigations, at least one member must be a certified public accountant licensed in this state with at least 10 years of experience in accounting and auditing, and at least one member must be an attorney admitted and authorized to practice law in this state for the preceding 10 years. All members serve four-year terms, but may not serve more than 12 years. As of the date of this analysis, there is one vacancy on the commission.

Division of Gaming Enforcement

Section 16.711, F.S., sets forth the duties of the Division of Gaming Enforcement (DGE) within the commission.[27] The DGE is a criminal justice agency, as defined in s. 943.045, F.S. The commissioners must appoint a director of the DGE who is qualified by training and experience in law enforcement or security to supervise, direct, coordinate, and administer all activities of the DGE.[28]

The DGE director and all investigators employed by the DGE must meet the requirements for employment and appointment provided by s. 943.13, F.S., and must be certified as law enforcement officers, as defined in s. 943.10(1), F.S. The DGE director and such investigators must be designated law enforcement officers and must have the power to detect, apprehend, and arrest for any alleged violation of ch. 24, F.S., (State Lotteries), part II of ch. 285, F.S., (Gaming Compact), ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S., (Gambling), or any rule adopted pursuant thereto, or any law of this state.[29]

Such law enforcement officers may enter upon any premises at which gaming activities are taking place in the state for the performance of their lawful duties and may take with them any

[27] For a summary of DGE investigations and actions in Fiscal Year 2022-2023, s*ee* Annual Report, *supra* n. 11 at p.5.
[28] Section 16.711(2), F.S.
[29] Section 16.711(3), F.S.

necessary equipment, and such entry does not constitute a trespass. In any instance in which there is reason to believe that a violation has occurred, such officers have the authority, without warrant, to search and inspect any premises where the violation is alleged to have occurred or is occurring.[30]

Further, any such officer may, consistent with the United States and Florida Constitutions, seize or take possession of any papers, records, tickets, currency, or other items related to any alleged violation. Investigators employed by the commission also have access to, and the right to inspect, premises licensed by the commission, to collect taxes and remit them to the officer entitled to them, and to examine the books and records of all persons licensed by the commission.[31]

The DGE and its investigators are specifically authorized to seize any contraband in accordance with the Florida Contraband Forfeiture Act. The term "contraband" has the same meaning as the term "contraband article" in s. 932.701(2)(a)2., F.S.[32] The DGE is specifically authorized to store and test any contraband that is seized in accordance with the Florida Contraband Forfeiture Act and may authorize any of its staff to implement this provision. The authority of any other person authorized by law to seize contraband is not limited by these provisions.[33]

Section 16.711(5), F.S., requires the Florida Department of Law Enforcement (FDLE) to provide assistance in obtaining criminal history information relevant to investigations required for honest, secure, and exemplary gaming operations, and such other assistance as may be requested by the commission's executive director and agreed to by the FDLE's the executive director. Any other state agency, including the DBPR and the Department of Revenue, must, upon request, provide the commission with any information relevant to any investigation conducted as described above, and the commission must reimburse any agency for the actual cost of providing any such assistance.[34]

Regulation of Pari-mutuel Wagering and Associated Licenses

The commission regulates pari-mutuel wagering and has regulatory oversight of permitted and licensed pari-mutuel wagering facilities, cardrooms located at pari-mutuel facilities, and slot machines at pari-mutuel facilities located in Miami-Dade and Broward counties.

Fantasy Sports Contests

The operation of fantasy sports activities in Florida has recently received significant publicity, much like the operation of internet cafes in recent years. Many states are now evaluating the status of fantasy gaming activities in their jurisdictions,[35] as there are millions of participants.[36]

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[30] *Id*.
[31] *Id*.
[32] Section 16.711(4), F.S.
[33] *Id*.
[34] Section 16.711(5), F.S.
[35] *See* Marc Edelman, *A Short Treatise on Fantasy Sports and the Law: How America Regulates its New National Pastime*, Journal of Sports & Entertainment Law, Harvard Law School Vol. 3 (Jan. 2012) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1907272 (last visited Jan. 23, 2024).
[36] According to the Fantasy Sports Trade Association, which states it represents the interests of 57 million fantasy sports players, fantasy sports leagues were originally referred to as "rotisserie leagues" with the development of Rotisserie League

A fantasy game typically has multiple players who select and manage imaginary teams whose players are actual professional sports players. Fantasy game players compete against one another in various formats, including weekly leagues among friends and colleagues, season-long leagues, and on-line contests (daily and weekly) entered by using the Internet through personal computers or mobile telephones and other communications devices. There are various financial arrangements among players and game operators.

Florida law does not specifically address fantasy contests. Section 849.14, F.S.,[37] provides that a person who wagers any "thing of value" upon the result of a contest of skill or endurance of human or beast, or who receives any money wagered, or who knowingly becomes the custodian of money or other thing of value that is wagered, is guilty of a second degree misdemeanor.[38] The commission has issued cease and desist correspondence to various companies operating fantasy contests in the state concerning possible violations of Florida's gambling laws. The letters have generated controversy, concern, and interest from contest operators, elected officials, and the Seminole Tribe of Florida, which has entered into gaming compacts with the state (as discussed below).[39] The legality of various forms of fantasy sports games and contests is being reviewed and addressed in a number of states.[40]

The State of Nevada has regulated gaming for more than 80 years, and its gaming control board was created by its legislature in 1955.[41] In 2015, the Office of the Nevada Attorney General provided the Nevada Gaming Control Board and the Nevada Gaming Commission the following informative summary about fantasy sports, player selection, and the types of simulated games being marketed to participants (referred to as owners in the Memorandum).[42]

Description of Fantasy Sports Games

> Fantasy sports are games where the participants, as ''owners,'' assemble ''simulated teams'' with rosters and/or lineups of actual players of a professional sport. These games are generally played over the Internet using computer or mobile software applications. Fantasy sports cover a number of actual professional sports leagues, including the NFL, the MLB, the NBA, the NHL, the MLS, NASCAR, as well as college sports such as NCAA football and basketball.

Baseball in 1980, by magazine writer/editor Daniel Okrent, who met and played it with friends at a New York City restaurant La Rotisserie Francaise. *See* https://thefsga.org/history/ (last visited Jan. 23, 2024).

[37] *See* Fla. AGO 91-03 (Jan. 7, 1991) *available at* https://www.myfloridalegal.com/ag-opinions/gambling-fantasy-sports-league (last visited Jan. 23, 2024).

[38] A conviction for a second degree misdemeanor may subject the violator to a definite term of imprisonment not exceeding 60 days, and a fine not exceeding $500. *See* ss. 775.082 and 775.083, F.S.

[39] *See* https://www.floridatrend.com/article/38854/questions-swirl-around-fantasy-sports (last visited Jan. 23, 2024).

[40] *See* State Regulators Take Closer Look At Fantasy Sports Operators (sportshandle.com) (last visited Jan. 23, 2024).

[41] *See* https://gaming.nv.gov/index.aspx?page=2 (last visited Jan. 21, 2024).

[42] See Memorandum from J. Brin Gibson, Bureau Chief of Gaming and Government Affairs, and Jetan D. Bhirud, Head of Complex Litigation, to A.G. Burnett, Chairman, Nevada Gaming Control Board; Terry Johnson, Member, Nevada Gaming Control Board; Shawn Reid, Member, Nevada Gaming Control Board (Oct. 16, 2015) (on file with the Senate Regulated Industries Committee).

Fantasy sports can be divided into two types: (1) traditional fantasy sports, which track player performance over the majority of a season, and (2) daily fantasy sports, which track player performance over a single game. The owners of these simulated teams compete against one another based on the statistical performance of actual players in actual games. The actual players' performance in specific sporting events is converted into ''fantasy points'' such that each actual player is assigned a specific score. An owner will then receive a total score that is determined by compiling the individual scores of each player in the owner's lineup. Thus, although the owners select lineups, once the lineup has been selected------at least in the context of daily fantasy sports------the owners have basically no ability to control the outcome of the simulated games. [Memorandum footnote 2: Given that lineups on some sites do not "lock" until the start of each individual game, the owners have until the tipoff of each individual game to set each particular lineup spot.]

Specifically, the owners of the simulated teams have no ability to control how many points their simulated teams receive from an actual player's performance. The actual players in the actual games control their own performance. As a result, after an owner places a bet and sets a final lineup, the owner has no ability to influence the outcome of a simulated game. At that point, the owner waits to see what happens based upon the performance of the actual players selected.

Player Selection

The three most common methods of player selection in fantasy sports are (1) a snake draft; (2) an auction draft; and (3) a salary-cap draft. [Memorandum footnote omitted.] In a snake draft, owners take turns drafting actual players for their simulated teams. In an auction draft, each owner has a maximum budget to use to bid for players. Competing owners, however, cannot select the same actual players for their simulated teams as other owners. Daily fantasy sports do not generally utilize a snake draft or an auction draft.

In a salary-cap draft, just like in an auction draft, each owner has a maximum budget. Unlike in an auction draft, however, the owners do not bid against each other. Instead, each actual player has a set fantasy salary. Although (with a few exceptions) [Memorandum footnote 4: For example, most sites require owners to select actual players from at least three different actual teams.], the owners can select any actual player for their teams, the owners cannot exceed their maximum budget. In this format, generally speaking, competing owners can select the same actual players for their simulated teams as other owners.

Types of Simulated Games

Although there are many different types of simulated games offered across the different daily fantasy websites, the simulated games can generally be divided into (1) head-to-head; and (2) tournaments.

In head-to-head simulated games, one owner competes against another owner. The owner with the highest total score will win the entire payout pool.

Tournaments are simulated games that involve more than two owners.

Amendment 3 to the State Constitution (Voter Control of Gambling)

During the 2018 General Election, the electorate approved a constitutional amendment (Amendment 3, Voter Control of Gambling in Florida). The amendment is codified as Section 30 of Article X of the State Constitution.[43]

Amendment 3 requires a vote proposed by a citizen initiative to amend the State Constitution pursuant to Section 3 of Article XI of the State Constitution to authorize "casino gambling" in Florida. Casino gambling is defined in section (b) of Amendment 3 as:

- Any of the "types of games typically found in casinos" and that are:
  - Within the definition of Class III gaming in the Federal Indian Gaming Regulatory Act, 25 U.S.C. 2701 et seq.; and
  - In 25 [Code of Federal Regulations] (C.F.R.) s. 502.4 upon the adoption of the amendment and any that are added to such definition of Class III gaming in the future.

Fantasy sports contests are not typically found in a casino and are not Class III games, and therefore, are likely not impacted by Amendment 3.

Section (b) of Amendment 3 provides that casino gambling includes, but is not limited to, the following:

- Any house banking game, including but not limited to, card games such as baccarat, chemin de fer, blackjack (21), and pai gow (if played as house banking games);
- Any player-banked game that simulates a house banking game, such as California blackjack;
- Casino games such as roulette, craps, and keno;
- Any slot machines as defined in 15 U.S.C. 1171(a)(1); and
- Any other game not authorized by Article X, section 15 [of the State Constitution, relating to state operated lotteries], whether or not defined as a slot machine, in which outcomes are determined by random number generator or are similarly assigned randomly, such as instant or historical racing.

Section (b) of Amendment 3 also further defines "casino gambling" to include the following:

- Any electronic gambling devices;

[43] *See* the text of Amendment 3, now codified as art. X, s. 30, at http://www.leg.state.fl.us/Statutes/index.cfm?Mode=Constitution&Submenu=3&Tab=statutes&CFID=44933245&CFTOKEN=f39b1ca7cab71561-BE329BC7-5056-B837-1A6123F335C4849F#A10S30 (last visited Jan. 23, 2024).

- Simulated gambling devices;
- Video lottery devices;
- Internet sweepstakes devices; and
- Any other form of electronic or electromechanical facsimiles of any game of chance, slot machine, or casino-style game, regardless of how such devices are defined under the Indian Gaming Regulatory Act.

Under Amendment 3, the term "casino gambling" does not include:

> …pari-mutuel wagering on horse racing, dog racing, or jai alai exhibitions.
>
> For the purposes of [Amendment 3], "gambling" and "gaming" are synonymous.

Additionally, Amendment 3 provides:

> Nothing [in Amendment 3] shall be deemed to limit the right of the Legislature to exercise its authority through general law to restrict, regulate, or tax any gaming or gambling activities. In addition, nothing [in Amendment 3] shall be construed to limit the ability of the state or Native American tribes to negotiate gaming compacts pursuant to the Federal Indian Gaming Regulatory Act for the conduct of casino gambling on tribal lands, or to affect any existing gambling on tribal lands pursuant to compacts executed by the state and Native American tribes pursuant to [the Indian Gaming Regulatory Act].

By its terms, Amendment 3 became effective on November 6, 2018, is self-executing, and no legislative implementation is required. If any part of Amendment 3 is held invalid for any reason, the remaining portion(s) must be severed from the invalid portion and given "the fullest possible force and effect."

Gaming Compacts

Gaming compacts between states and Indian tribes are regulated by the Federal Indian Gaming Regulatory Act, s. 25 U.S.C. 2701, et seq., and ch. 285, part II, F.S. The State of Florida (state) entered into a gaming compact with the Seminole Tribe of Florida (Seminole Tribe) on April 7, 2010 (the 2010 Compact). In Chapter 2021-268, L.O.F., the Legislature ratified a new Gaming Compact between the Seminole Tribe and the state, which was executed by Governor Ron DeSantis and the Seminole Tribe on April 23, 2021, as amended on May 17, 2021 (the 2021 Compact). The 2021 Compact was approved by the United States Department of the Interior on August 6, 2021, and became effective upon the publication of notice in the Federal Register on August 11, 2021.[44] The 2021 Compact supersedes the 2010 Compact, and has a term of 30 years beginning August 6, 2021.

The 2010 Compact, the 2021 Compact, and any future gaming compact between those parties, are not impacted by Amendment 3, as Amendment 3 expressly exempts such compacts and provides that the amendment does not limit the ability of the state and Native American tribes to:

- Negotiate gaming compacts for the conduct of casino gambling on tribal lands; or

[44] Fed. Register, Vol. 86, No. 153 at 44037.

- Affect any existing gambling on tribal lands pursuant to existing compacts.[45]

Pending Litigation

The state received payments due under the 2021 Compact beginning October 2021. The U.S. District Court for the District of Columbia set aside the federal approval of the 2021 Compact on November 22, 2021. The Seminole Tribe continued making revenue sharing payments to the state through February 2022, and then discontinued all payments. Between October 2021 and February 2022, the state received five payments of $37.5 million, totaling $187.5 million.[46] Revenue sharing payments from the Seminole Tribe to the state resumed in January 2024.[47]

Litigation relating to the legality of the 2021 Compact is currently pending in the Florida Supreme Court,[48] challenging the off-reservation mobile sports betting authorized in the 2021 Compact and in Florida law[49] as a violation of the Florida Constitution (specifically Amendment 3 adopted in 2018, now Article X, Section 30 to the Florida Constitution, as discussed above). The challenged actions include execution and ratification of the 2021 Compact and enactment of implementing legislation, as it relates to sports betting.

In addition, there is a proceeding pending in the U.S. Supreme Court challenging the legality of the 2021 Compact, but that court has not yet determined to accept the case.[50]

The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA) Did Not Legalize Fantasy Sports

The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA)[51] was signed into law by President George W. Bush on October 13, 2006.[52] Under this act, internet gambling is not determined to be legal in a state, nor illegal. Instead, UIGEA targets financial institutions in an attempt to prevent the flow of money from an individual to an internet gaming company. Congress found that enforcement of gambling laws through new mechanisms "are necessary

[45] The existing gaming compacts include the 2010 Gaming Compact and the 2021 Gaming Compact with the Seminole Tribe; the latter gaming compact is the subject of pending litigation as discussed in this analysis. The Miccosukee Tribe of Indians of Florida operates a Class II gaming facility in Florida. The Poarch Band of Creek Indians has a one acre tract of land held in trust by the United States Department of the Interior north of Pensacola, Florida.
[46] *See* the review of the Indian Gaming Revenues by the Revenue Estimating Conference/Impact Conference at http://www.edr.state.fl.us/Content/conferences/Indian-gaming/IndianGamingSummary.pdf (last visited Jan. 23, 2024). The Office of Economic and Demographic Research (EDR) is a research arm of the Legislature principally concerned with forecasting economic and social trends that affect policy making, revenues, and appropriations. At the request of the legislative committees or other members of an estimating conference, EDR conducts impact assessments of proposed policy changes. Often, EDR's estimates are incorporated in the committee bill analysis or fiscal note. In some cases, committees will request EDR to take a particular proposal to a consensus estimating conference to obtain an impact estimate that is formally agreed to by both houses of the Legislature and by the Governor's Office.
[47] The resumption of Indian Gaming Revenues will be reviewed by the Revenue Estimating Conference/Impact Conference.
[48] *West Flagler Associates, et al., v. Ron D. DeSantis, et al.*, SC 2023-1333, Petition for Writ of Quo Warranto.
[49] See s. 285.710(13(b)7., F.S.
[50] *See* Order in Pending Case, No. 23A315 (Oct. 25, 2023) in *West Flagler Associates, Ltd., et al. v. Haaland*, Application for Stay Denied with Statement of Justice Kavanaugh, 601 U.S. ___ (2023), available at 23A315 West Flagler Associates, Ltd. v. Haaland (10/25/2023) (supremecourt.gov) (both last visited Jan. 23, 2024).
[51] 31 U.S.C. ss. 5361-5366.
[52] The provisions of UIGEA were adopted in Conference Committee as an amendment to H.R. 4954 by Representative Daniel E. Lungren (CA-3), "The SAFE Ports Act of 2006."

because traditional law enforcement mechanisms are often inadequate for enforcing gambling prohibitions or regulations on the Internet, especially where such gambling crosses state or national borders."[53]

"Unlawful internet gambling" prohibited by UIGEA includes the placement, receipt, or transmission of certain bets or wagers.[54] "Bet or wager" is defined by 31 U.S.C. sec. 5362 as:
(1) Bet or wager.—The term "bet or wager"—
(A) means the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome;
(B) includes the purchase of a chance or opportunity to win a lottery or other prize (which opportunity to win is predominantly subject to chance);
(C) includes any scheme of a type described in section 3702 of title 28 [Unlawful Sports Gambling];
(D) includes any instructions or information pertaining to the establishment or movement of funds by the bettor or customer in, to, or from an account with the business of betting or wagering.

It does not include securities trading, commodity trading (including some trading exclusions), over the counter derivatives, indemnity contracts, insurance contracts, and insured deposits.[55] Also excluded is:

- Participation in any game or contest in which participants do not stake or risk anything of value other than—
  - Personal efforts of the participants in playing the game or contest or obtaining access to the Internet; or
  - Points or credits that the sponsor of the game or contest provides to participants free of charge and that can be used or redeemed only for participation in games or contests offered by the sponsor.[56]

The definition of the term "bet or wager" also specifically excludes any fantasy game or contest in which a fantasy team is not based on the current membership of a professional or amateur sports team, and:

- All prizes and awards are established and made known to the participants in advance of the game or contest and their value is not determined by the number of participants or the amount of fees by the participants;
- Prize amounts are not based on the number of participants or the amount of entry fees;
- Winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals or athletes in multiple "real-world sporting or other events;" and
- No winning outcome is based:
  - On the score, point-spread, or any performance or performances of any single "real-world" team or combination of teams; or

[53] 31 U.S.C. s. 5361(a)(4).
[54] 31 U.S.C. s. 5362(10).
[55] 31 U.S.C. s. 5362(1)(E)(i)-(vii)
[56] 31 U.S.C. s. 5362(1)(E)(viii)

- Solely on any single performance of an individual athlete in any single "real-world sporting or other event."[57]

The "unlawful Internet gambling" means to place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made.[58]

While UIGEA excludes bets or wagers of participants in certain fantasy sports games and contests,[59] fantasy sports contests and activities in Florida are not authorized as a result of such exclusion. UIGEA expressly states that none of its provisions "shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States."[60]

III. Effect of Proposed Changes:

Section 1 creates the short title the "Fantasy Sports Contest Amusement Act (act)" for ss. 546.1 through 546.18, F.S. (Sections 1 through 8).

Section 2 creates s. 542.12, F.S., to state the legislative purpose and intent for the act, which is to "ensure public confidence in the integrity of fantasy sports contests and contest operators" through the regulation of contest operators and participants and the enactment of consumer protections related to fantasy sports contests. The bill includes a legislative finding that fantasy sports contests, as defined in the act, involve the skill of contest participants.

Section 3 creates s. 546.13, F.S., to provide definitions for the terms used in the act and the requirements for such contests to comply with the act. A "fantasy sports contest" is a fantasy or simulation sports game or contest offered by a contest operator or a noncommercial contest operator in which a contest participant manages a fantasy or simulation sports team composed of athletes from a professional sports organization, and which meets the following requirements:

- Contest operators and their employees and agents may not be participants in a contest;
- Prizes and awards must be established and disclosed by a contest operator or a noncommercial operator to the participants before a game or a contest and the value of such awards is not determined by the number of participants in the contest or the amount of fees paid by those participants;
- All winning outcomes must reflect the relative knowledge and skill of participants and be determined predominantly by accumulated statistical results of the performances of individuals, including athletes in in the case of sporting events; and
- No winning outcome is based on the score, point spread, the performance of any single team or combination of teams; solely on any single performance of an individual athlete or player in a single event; on pari-mutuel events; on poker or other card games; or on performances of those participating in collegiate, high school, or youth sporting events; and

[57] *See* 31 U.S.C. s. 5362(1)(E)(ix).
[58] 31 U.S.C. s. 5362(10)
[59] *Id*.
[60] 31 U.S.C. s. 5361(b).

- Casino graphics, themes, or titles, such as slot machine symbols, cards, dice, craps, roulette, or lotto, may not be displayed or depicted.

The term "entry fee" is defined in the bill to mean the cash or cash equivalent amount that a person is required to pay to a contest operator or noncommercial contest operator to participate in a fantasy sports contest, and the term "contest participant" means a person who pays an entry fee in order to participate.

The bill authorizes fantasy sports contests in which participants, who must be 21 years of age or older, pay an entry fee to a person or entity that offers such contests for a cash prize to members of the public, defined as a "contest operator;" however, the term does not include a noncommercial operator in Florida. The term "noncommercial operator" means an individual who organizes and conducts fantasy sports contests for participants 21 years of age or older who pay an entry fee for the contest. A noncommercial contest operator must pay all entry fees to participants as prizes, and may not pay fantasy sports contest prize monies exceeding $1,500 per season or $10,000 annually.

Under the bill, the term "commission" means the Florida Gaming Control Commission (commission).

Section 4 creates s. 546.14, F.S., to require the commission to enforce and administer the act.

The commission may:
- Conduct investigations and monitor the operation and play of fantasy sports contests;
- Review the books, accounts, and records of current and former contest operators;
- Deny, suspend, or revoke licenses for any violation of state law or rule;
- Take testimony, issue witness summonses and subpoenas for matters in its jurisdiction;
- Monitor and ensure the proper collection and safeguarding of entry fees and the payment of contest prizes in accordance with the consumer protection procedures enacted pursuant to the act;
- Investigate any licensed or unlicensed persons or entities when they are:
  - Advertising as offering or providing or are engaged in conducting a fantasy sports contest which requires licensure under the act; or
  - Engaged in activities which do not comply with or are prohibited by the act; and
- Issue orders to licensed or unlicensed persons or entities, or to contest operators or noncommercial contest operators, to stop engaging in activities that require licensure or are prohibited by the act, or to seek an injunction or take other appropriate action to enforce the act.

The commission must:
- Revoke a contest operator's license if the contest operator offers fantasy sports contests in violation of the prohibition contained in s. 546.13, F.S., against betting on sports or pari-mutuel events, on poker or other card games, or on collegiate, high school, or youth sporting events; and
- Adopt rules to implement and administer the act.

Section 5 creates s. 546.15, F.S., to require licensure of contest operators by the commission to conduct fantasy sports contests in Florida. Licenses are effective for one year after issuance and must be renewed annually. Applications for licensure must include:

- The full name of the applicant; for a corporate applicant, the name of the state of incorporation, the names and addresses of the officers, directors, and shareholders who hold 15 percent or more equity in the corporation; and for an applicant that is another type of business entity, the names and addresses of:
  - Each principal, partner, or shareholder who holds 15 percent or more equity in the entity; and
  - Any person who individually or in concert with a relative beneficially owns or controls, or has the power to vote or cause the vote of, 15 percent or more equity. For the purposes of the act, the term "relative" means a spouse, father, mother, son, daughter, grandfather, grandmother, brother, sister, uncle, aunt, cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.
- The names and addresses of the ultimate equitable owners of the corporation or other business entity, if different from those otherwise provided, unless the securities of the corporation or entity are registered pursuant to the federal Securities Exchange Act of 1934, and either:
- The applicant files reports with the United States Securities and Exchange Commission as required by section 13 of that act; or
- The securities of the corporation or entity are regularly traded on an established securities market in the United States.
- The estimated number of fantasy sports contests to be conducted by the applicant annually;
- A statement of the assets and liabilities of the applicant;
- The names and addresses of the officers and directors of any creditor of the applicant and of stockholders who hold more than 10 percent of the stock of the creditor, if required by the commission;
- For each individual listed in the application, a full set of fingerprints to be submitted to the commission or to a vendor, entity, or agency authorized under s. 943.053(13), F.S., which must be:
  - Forwarded to the Department of Law Enforcement (FDLE) for state processing;
  - Forwarded to the Federal Bureau of Investigation by the FDLE for national processing.
  - Retained by the FDLE as provided in s. 943.05(2)(g) and (h), F.S.; and
  - Enrolled in the Federal Bureau of Investigation's national retained print arrest notification program when the FDLE begins participation in that program. Any arrest record identified must be reported by the FDLE to the commission.
- For each foreign national, such documents as necessary to allow the commission to conduct criminal history records checks in the individual's home country; the applicant must pay the full cost of processing fingerprints and required documentation.

The application for renewal of a license issued pursuant to the act must contain all revisions to the information submitted in the prior year's application which are necessary to maintain such information as both accurate and current, and the applicant must attest that any revisions do not affect the applicant's qualifications for license renewal.

Upon determination by the commission that an application for renewal is complete and qualifications have been met, including payment of the renewal fee, the fantasy sports contests license must be renewed annually.

Under the bill, a person or entity is not eligible for licensure as a contest operator or for licensure renewal if the commission determines after investigation that an individual required to be listed in the application, is not of good moral character or is found to have been convicted of a felony in Florida, any offense in another jurisdiction which would be considered a felony if committed in Florida, or a felony under the laws of the United States. The term "convicted" means having been found guilty, with or without adjudication of guilt, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

In addition, the bill provides the license of a contest operator is automatically suspended 30 calendar days after entry of a final order imposing an administrative fine against the contest operator, if the administrative fine has not been paid. The license of a contest operator may not be renewed, and an application for licensure as a contest operator may not be approved, if the contest operator or an applicant is liable for an outstanding administrative fine imposed under the act. A contest operator's license remains suspended until the administrative fine is paid. However, a contest operator's license may not be suspended and an application for licensure may not be denied if the contest operator or the applicant has an appeal from a final order pending in any appellate court.

Changes in ownership of or interest in a fantasy sports contests license of five percent or more of the stock or other evidence of ownership or equity in the contest operator must be approved by the commission before such change, unless the owner is an existing owner of that license who was previously approved by the commission. Changes in ownership of or interest in a fantasy sports contests license of less than five percent must be reported to the commission within 20 days after the change. The commission may then conduct an investigation to ensure that the license is properly updated to show the change in ownership or interest. This provision is similar to s. 550.054(12), F.S., relating to changes in ownership or interest in pari-mutuel permits.

Section 6 creates s. 546.16, F.S., relating to consumer protections that require a contest operator to implement fantasy sports contests procedures that:

- Prevent the contest operator's employees, their relatives, or persons living in the same household as the employees, from competing in a fantasy sports contest in which a cash prize is awarded. The term "relative" means a spouse, father, mother, son, daughter, grandfather, grandmother, brother, sister, uncle, aunt, cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister;
- Allow a commercial contest operator to offer fantasy sports contests to its employees, if the employees are the sole participants in the contest;
- Prevent the contest operator from being a contest participant in a fantasy sports contest that the contest operator offers;

- Prevent the contest operator's employees or agents from sharing with a third party confidential[61] information that could affect fantasy sports contest play until the information has been made publicly available;
- Verify that contest participants are 21 years of age or older;
- Restrict an individual who is a player, a game official, or other participant in a real-world game or competition from participating in a fantasy sports contest that is determined, in whole or in part, on the performance of that individual, the individual's real-world team, or the accumulated statistical results of the sport or competition in which he or she is a player, game official, or other participant;
- Allow individuals to restrict or prevent their own access to fantasy sports contests and take reasonable steps to prevent those individuals from entering a fantasy sports contest;
- Limit the number of entries a single contest participant may submit to each fantasy sports contest and take reasonable steps to prevent participants from submitting more than the allowable number of entries; and
- Segregate contest participants' funds from operational funds or maintain a reserve in the form of cash, cash equivalents, payment processor reserves, payment processor receivables, an irrevocable letter of credit, a bond, or a combination thereof in the total amount of deposits in contest participants' accounts for the benefit and protection of authorized contest participants' funds held in fantasy sports contest accounts.

A contest operator must annually contract with a third party to perform an independent audit, consistent with the standards established by the American Institute of Certified Public Accountants, to ensure compliance with the act, and submit the results of the independent audit to the commission no later than 90 days after the end of each annual licensing period.

The bill requires the data source used by contest operators to determine fantasy sports contest results to be complete, accurate, reliable, and appropriate to settle the outcome of the fantasy sports contests for which they are used. This requirement does not apply to noncommercial contest operators.

Section 7 creates s. 546.17, F.S., to require each contest operator to keep and maintain daily records of its operations and to maintain such records for at least three years. The records must sufficiently detail all financial transactions required to determine compliance with the requirements of the act and must be available for audit and inspection by the commission or other law enforcement agencies during the contest operator's regular business hours. The commission must adopt rules to implement s. 547.17, F.S.

Section 8 creates s. 546.18, F.S., relating to penalties for violations of the act. A contest operator, or its employee or agent, who violates the act is subject to an administrative fine, not to exceed $5,000 for each violation and not to exceed $100,000 in the aggregate, for deposit to the state's general revenue fund. An action to recover such penalties may be brought by the commission or the Department of Legal Affairs in circuit court in the name and on behalf of the state.

[61] Under the bill, the term "confidential information" means "information related to the playing of fantasy sports contests by contest participants which is obtained solely as a result of a person's employment with, or work as an agent of, a contest operator."

However, the penalty provisions do not apply to violations committed by a contest operator which occurred prior to the issuance of a license under the act if the contest operator applies for a license within 90 days after the date the commission begins accepting applications, and receives a license within 240 days after such date.

Under the bill, fantasy sports contests conducted by a contest operator or noncommercial contest operator in compliance with all fantasy sports contest requirements are not subject to certain gambling laws[62] set forth in ch. 849, F.S., relating to Gambling.

Sections 9, **10, 11,** and **12** amend provisions in ss. 16.71, 16.712, 16.713, and 16.715, F.S., relating to the Florida Gaming Control Commission (commission). The commission must receive and review violations of ch. 546, F.S., (Amusement Facilities), which includes fantasy sports contests, and prohibit certain commission candidates, members, employees, or former commissioners or employees from holding a license issued under ch. 546, F.S., prior to, during, and after appointment or employment with the commission, for the time frames described in those provisions.

Section 13 amends s. 849.142, F.S., relating to activities exempt from certain gambling laws[63] to add fantasy sports contests conducted in accordance with ch. 546, F.S., as an exempted activity; similar exemptions in current law, provided the activity is conducted pursuant to applicable Florida law, include pari-mutuel wagering, slot machine gaming, the operation of cardrooms, and bingo games.

Section 14 provides the bill takes effect July 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:

None.

[62] *See* ss. 849.01, 849.08, 849.09, 849.11, 849.14, and 849.25, F.S., relating to various activities that are prohibited by or must comply with Florida law.
[63] *Id*.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons who act as fantasy sports contest operators will be required to meet various requirements imposed by the bill, such as auditing and consumer protection measures, that will have associated costs.

C. Government Sector Impact:

According to the Florida Gaming Control Commission (commission), the impact on state revenues and expenditures is indeterminate, and there is no impact expected on local government revenues and expenditures.[64] The commission notes that the number of applicants for licenses "may requires additional FTEs and expenses to carry out the regulatory responsibilities" set forth in the bill.[65]

The commission must implement the provisions of the bill and adopt forms and procedures for the licensing of fantasy sports contest operators.

The Florida Department of Law Enforcement (FDLE) notes that the impact of the bill does not necessitate additional FTE or other resources, but "this bill, in combination with additional criminal history record check bills, could rise to the level requiring additional staffing and other resources."[66]

The Revenue Estimating Conference has not reviewed the fiscal impact of this bill.

VI. Technical Deficiencies:

None.

[64] *See* Florida Gaming Control Commission, *2024 Agency Legislative Bill Analysis for SB 1568* at 7 (Jan. 19, 2024) (on file with the Senate Committee on Regulated Industries).
[65] *Id*.
[66] *See* Florida Department of Law Enforcement (FDLE) *2024 Agency Legislative Bill Analysis for SB 1568* at 5 (Jan. 12, 2024) (on file with the Senate Committee on Regulated Industries).

VII. Related Issues:

The commission notes concerns with provisions in the bill relating to license application deadlines, clarity of defined terms, and the procedure for automatic suspension of licenses for failure to pay administrative fines.[67]

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 16.71, 16.712, 16.713, and 16.715.

This bill creates the following sections of the Florida Statutes: 546.11, 546.12, 546.13, 546.14, 546.15, 546.16, 546.17, 546.18, and 849.142.

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.

[67] *Id*. at 9.

By Senator Hutson

7-00750E-24 20241568__

A bill to be entitled

An act relating to the Fantasy Sports Contest Amusement Act; creating s. 546.11, F.S.; providing a short title; creating s. 546.12, F.S.; providing legislative findings and intent; creating s. 546.13, F.S.; defining terms; creating s. 546.14, F.S.; requiring the Florida Gaming Control Commission to enforce and administer the act; authorizing the commission to take certain actions; requiring the commission to revoke a contest operator's license under certain circumstances; requiring the commission to adopt rules; creating s. 546.15, F.S.; providing application requirements for fantasy sports contest operator licenses; providing that specified persons or entities are not eligible for licensure under certain circumstances; defining the term "convicted"; specifying that a contest operator license is automatically suspended under certain circumstances; providing an exception; requiring contest operators to report certain changes in ownership or interest; creating s. 546.16, F.S.; requiring a contest operator to implement specified consumer protection procedures; defining the term "relative"; requiring a contest operator to annually contract with a third party to perform an independent audit; requiring a contest operator to submit the audit results to the commission within a certain timeframe; requiring a contest operator to use data sources that meet specified requirements; creating s. 546.17, F.S.; requiring

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contest operators to keep and maintain certain records for a specified period; providing a requirement for such records; requiring that such records be available for audit and inspection; requiring the commission to adopt rules; creating s. 546.18, F.S.; providing a civil penalty; providing applicability; exempting fantasy sports contests from certain provisions in ch. 849, F.S.; amending s. 16.71, F.S.; prohibiting the Governor from soliciting or requesting certain information from a person who holds a license to conduct fantasy sports contests; amending s. 16.712, F.S.; conforming provisions to changes made by the act; amending s. 16.713, F.S.; revising prohibitions relating to appointment to and employment with the commission to include prohibitions relating to fantasy sports contests licenses; amending s. 16.715, F.S.; revising prohibitions relating to former commissioners and employees of the commission to include prohibitions relating to fantasy sports contests licenses; amending s. 849.142, F.S.; providing that specified provisions do not apply to participation in or the conduct of fantasy sports contests; providing an effective date.

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

Section 1. Section 546.11, Florida Statutes, is created to read:

546.11 Short title.—Sections 546.11-546.18 may be cited as

the "Fantasy Sports Contest Amusement Act."

Section 2. Section 546.12, Florida Statutes, is created to read:

546.12 Legislative intent; findings.—It is the intent of the Legislature to ensure public confidence in the integrity of fantasy sports contests and contest operators. This act is designed to regulate the contest operators and individuals who participate in such contests and to enact consumer protections related to fantasy sports contests. Furthermore, the Legislature finds that fantasy sports contests, as that term is defined in s. 546.13, involve the skill of contest participants.

Section 3. Section 546.13, Florida Statutes, is created to read:

546.13 Definitions.—As used in ss. 546.11-546.18, the term:

(1) "Act" means the Fantasy Sports Contest Amusement Act, ss. 546.11-546.18.

(2) "Commission" means the Florida Gaming Control Commission.

(3) "Confidential information" means information related to the playing of fantasy sports contests by contest participants which is obtained solely as a result of a person's employment with, or work as an agent of, a contest operator.

(4) "Contest operator" means a person or an entity that offers fantasy sports contests for a cash prize to members of the public, but does not include a noncommercial contest operator in this state.

(5) "Contest participant" means a person who pays an entry fee for the ability to participate in a fantasy or simulation sports game or contest offered by a contest operator or

noncommercial contest operator.

(6) "Entry fee" means the cash or cash equivalent amount that a person is required to pay to a contest operator or noncommercial contest operator to participate in a fantasy sports contest.

(7) "Fantasy sports contest" means a fantasy or simulation sports game or contest offered by a contest operator or a noncommercial contest operator in which a contest participant manages a fantasy or simulation sports team composed of athletes from a professional sports organization and which meets each of the following requirements:

(a) All prizes and awards offered to winning contest participants are established and made known to the contest participants in advance of the game or contest, and their value is not determined by the number of contest participants or the amount of any fees paid by those contest participants.

(b) All winning outcomes reflect the relative knowledge and skill of the contest participants and are determined predominantly by accumulated statistical results of the performance of individuals, including athletes in the case of sporting events.

(c) No winning outcome is based on the score, point spread, or any performance or performances of any single actual team or combination of such teams; solely on any single performance of an individual athlete or player in a single actual event; on a pari-mutuel event, as the term "pari-mutuel" is defined in s. 550.002; on a game of poker or other card game; or on the performances of participants in collegiate, high school, or youth sporting events.

(d) No casino graphics, themes, or titles, including, but not limited to, depictions of slot machine-style symbols, cards, dice, craps, roulette, or lotto, are displayed or depicted.

(8) "Noncommercial contest operator" means a natural person who organizes and conducts a fantasy or simulation sports game in which contest participants are charged entry fees for the right to participate; entry fees are collected, maintained, and distributed by the same natural person; the total entry fees collected, maintained, and distributed by such natural person do not exceed $1,500 per season or a total of $10,000 per calendar year; and all entry fees are returned to the contest participants in the form of prizes.

Section 4. Section 546.14, Florida Statutes, is created to read:

546.14 Enforcement and administration; rulemaking.—

(1) The commission shall enforce and administer this act.

(2) The commission may:

(a) Conduct investigations and monitor the operation and play of fantasy sports contests.

(b) Review the books, accounts, and records of any current or former contest operator.

(c) Deny, suspend, or revoke any license under this act for any violation of state law or rule.

(d) Take testimony, issue summonses and subpoenas for any witness, and issue subpoenas duces tecum in connection with any matter within its jurisdiction.

(e) Monitor and ensure the proper collection and safeguarding of entry fees and the payment of contest prizes in accordance with consumer protection procedures enacted pursuant

to s. 546.16.

(f) Investigate any licensed or unlicensed person or entity when such person or entity is advertising as offering or providing, or is engaged in conducting, a fantasy sports contest that requires licensure under this act or when a contest operator or noncommercial contest operator is engaged in activities that do not comply with or are prohibited by this act. The commission may issue an order to such licensed or unlicensed person or entity or contest operator or noncommercial contest operator to cease and desist the further conduct of such activities, may seek an injunction, or may take other appropriate action to enforce this act.

(3) The commission must revoke a contest operator's license if the contest operator offers fantasy sports contests that violate s. 546.13(7)(c).

(4) The commission shall adopt rules to implement and administer this act.

Section 5. Section 546.15, Florida Statutes, is created to read:

546.15 Licensing; renewal.—

(1) A contest operator must be licensed by the commission to conduct fantasy sports contests within this state. Licenses are effective for 1 year after issuance and must be renewed annually.

(2) The license application must include:

(a) The full name of the applicant.

(b) If the applicant is a corporation, the name of the state in which the applicant is incorporated and the names and addresses of the officers, directors, and shareholders who hold

15 percent or more equity.

(c) If the applicant is a business entity other than a corporation, the names and addresses of each principal, partner, or shareholder who holds 15 percent or more equity, and any person who individually or in concert with a relative beneficially owns or controls, or has the power to vote or cause the vote of, 15 percent or more equity. For the purposes of this act, the term "relative" means a spouse, father, mother, son, daughter, grandfather, grandmother, brother, sister, uncle, aunt, cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(d) The names and addresses of the ultimate equitable owners of the corporation or other business entity, if different from those provided under paragraph (b) or paragraph (c), unless the securities of the corporation or entity are registered pursuant to s. 12 of the Securities Exchange Act of 1934, 15 U.S.C. ss. 78a-78kk, and either:

1. The corporation or entity files with the United States Securities and Exchange Commission the reports required by s. 13 of that act; or

2. The securities of the corporation or entity are regularly traded on an established securities market in the United States.

(e) The estimated number of fantasy sports contests to be conducted by the applicant annually.

(f) A statement of the assets and liabilities of the applicant.

(g) If required by the commission, the names and addresses of the officers and directors of any creditor of the applicant and of stockholders who hold more than 10 percent of the stock of the creditor.

(h) For each individual listed in the application pursuant to paragraph (a), paragraph (b), paragraph (c), or paragraph (d), a full set of fingerprints, to be submitted to the commission or to a vendor, an entity, or an agency authorized under s. 943.053(13).

1. The commission, vendor, entity, or agency shall forward the fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing.

2. Fingerprints submitted to the Department of Law Enforcement pursuant to this paragraph must be retained by the Department of Law Enforcement as provided in s. 943.05(2)(g) and (h) and, when the Department of Law Enforcement begins participation in the program, must be enrolled in the Federal Bureau of Investigation's national retained print arrest notification program. The Department of Law Enforcement shall report to the commission any arrest record identified.

(i) For each foreign national, such documents as are necessary to allow the commission to conduct criminal history records checks in the individual's home country. The applicant must pay the full cost of processing fingerprints and required documentation.

(3) The application for renewal must contain all revisions to the information submitted in the prior year's application

which are necessary to maintain such information as both accurate and current.

(4) The applicant for renewal must attest that any revisions do not affect the applicant's qualifications for license renewal.

(5) Upon determination by the commission that the application for renewal is complete and qualifications have been met, including payment of the renewal fee, the fantasy sports contests license must be renewed annually.

(6) A person or an entity is not eligible for licensure as a contest operator or for licensure renewal if an individual required to be listed pursuant to paragraph (5)(a), paragraph (5)(b), paragraph (5)(c), or paragraph (5)(d) is determined by the commission, after investigation, not to be of good moral character or is found to have been convicted of a felony in this state, any offense in another jurisdiction which would be considered a felony if committed in this state, or a felony under the laws of the United States. As used in this subsection, the term "convicted" means having been found guilty, with or without adjudication of guilt, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

(7) The license of a contest operator is automatically suspended upon entry of a final order imposing an administrative fine against the contest operator, until the administrative fine is paid, if 30 calendar days have elapsed since the entry of the final order. The license of a contest operator may not be renewed and an application for licensure as a contest operator may not be approved if the contest operator or the applicant for licensure as a contest operator is liable for an outstanding

administrative fine imposed under this act. Notwithstanding this subsection, a contest operator's license may not be suspended and an application for licensure as a contest operator may not be denied if the contest operator or the applicant has an appeal from a final order pending in any appellate court.

(8) Changes in ownership of or interest in a fantasy sports contests license of 5 percent or more of the stock or other evidence of ownership or equity in the contest operator must be approved by the commission before such change, unless the owner is an existing owner of that license who was previously approved by the commission. Changes in ownership of or interest in a fantasy sports contests license of less than 5 percent must be reported to the commission within 20 days after the change. The commission may then conduct an investigation to ensure that the license is properly updated to show the change in ownership or interest.

Section 6. Section 546.16, Florida Statutes, is created to read:

546.16 Consumer protection.—

(1) A contest operator shall implement procedures for fantasy sports contests which:

(a) Prevent its employees, their relatives, or persons living in the same household as the employees from competing in a fantasy sports contest in which a cash prize is awarded. However, a contest operator may offer to its employees fantasy sports contests in which the employees are the sole participants. For the purposes of this paragraph, the term "relative" means a spouse, father, mother, son, daughter, grandfather, grandmother, brother, sister, uncle, aunt, cousin,

nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(b) Prohibit the contest operator from being a contest participant in a fantasy sports contest that the contest operator offers.

(c) Prevent its employees or agents from sharing with a third party confidential information that could affect fantasy sports contest play, until the information has been made publicly available.

(d) Verify that contest participants are 21 years of age or older.

(e) Restrict an individual who is a player, a game official, or other participant in a real-world game or competition from participating in a fantasy sports contest that is determined, in whole or in part, on the performance of that individual, the individual's real-world team, or the accumulated statistical results of the sport or competition in which he or she is a player, game official, or other participant.

(f) Allow individuals to restrict or prevent their own access to fantasy sports contests and take reasonable steps to prevent those individuals from entering a fantasy sports contest.

(g) Limit the number of entries a single contest participant may submit to each fantasy sports contest and take reasonable steps to prevent participants from submitting more than the allowable number of entries.

(h) Segregate contest participants' funds from operational

funds or maintain a reserve in the form of cash, cash equivalents, payment processor reserves, payment processor receivables, an irrevocable letter of credit, a bond, or a combination thereof in the total amount of deposits in contest participants' accounts for the benefit and protection of authorized contest participants' funds held in fantasy sports contest accounts.

(2)(a) A contest operator shall annually contract with a third party to perform an independent audit, consistent with the standards established by the American Institute of Certified Public Accountants, to ensure compliance with this act. The contest operator shall submit the results of the independent audit to the commission no later than 90 days after the end of each annual licensing period.

(b) Any data source and the corresponding data to determine the results of all fantasy sports contests offered by contest operators, other than noncommercial contest operators, must be complete, accurate, reliable, and appropriate to settle the outcome of the fantasy sports contests for which they are used.

Section 7. Section 546.17, Florida Statutes, is created to read:

546.17 Records and reports.—Each contest operator shall keep and maintain daily records of its operations and shall maintain such records for at least 3 years. The records must sufficiently detail all financial transactions required to determine compliance with this act and must be available for audit and inspection by the commission or other law enforcement agencies during the contest operator's regular business hours. The commission shall adopt rules to implement this section.

Section 8. Section 546.18, Florida Statutes, is created to read:

546.18 Penalties; applicability; exemption.—

(1)(a) A contest operator, or an employee or agent thereof, that violates this act is subject to an administrative fine not to exceed $5,000 for each violation and not to exceed $100,000 in the aggregate. All fines imposed and collected under this subsection must be deposited with the Chief Financial Officer to the credit of the General Revenue Fund. An action to recover such penalties may be brought by the commission or the Department of Legal Affairs in the name and on behalf of the state.

(b) The penalty provisions established in this subsection do not apply to violations committed by a contest operator which occurred before the issuance of a license under this act if the contest operator applies for a license within 90 days after the date the commission begins accepting applications and receives a license within 240 days after such date.

(2) Fantasy sports contests conducted by a contest operator or noncommercial contest operator in accordance with this act are not subject to s. 849.01, s. 849.08, s. 849.09, s. 849.11, s. 849.14, or s. 849.25.

Section 9. Paragraph (b) of subsection (3) of section 16.71, Florida Statutes, is amended to read:

16.71 Florida Gaming Control Commission; creation; meetings; membership.—

(3) REQUIREMENTS FOR APPOINTMENT; PROHIBITIONS.—

(b) The Governor may not solicit or request any nominations, recommendations, or communications about potential

candidates for appointment to the commission from:

1. Any person that holds a permit or license issued under chapter 550, or a license issued under chapter 546, chapter 551, or chapter 849; an officer, official, or employee of such permitholder or licensee; or an ultimate equitable owner, as defined in s. 550.002(37), of such permitholder or licensee;

2. Any officer, official, employee, or other person with duties or responsibilities relating to a gaming operation owned by an Indian tribe that has a valid and active compact with the state; a contractor or subcontractor of such tribe or an entity employed, licensed, or contracted by such tribe; or an ultimate equitable owner, as defined in s. 550.002(37), of such entity; or

3. Any registered lobbyist for the executive or legislative branch who represents any person or entity identified in subparagraph 1. or subparagraph 2.

Section 10. Paragraph (i) of subsection (1) of section 16.712, Florida Statutes, is amended to read:

16.712 Florida Gaming Control Commission authorizations, duties, and responsibilities.—

(1) The commission shall do all of the following:

(i) Receive and review violations reported by a state or local law enforcement agency, the Department of Law Enforcement, the Department of Legal Affairs, the Department of Agriculture and Consumer Services, the Department of Business and Professional Regulation, the Department of the Lottery, the Seminole Tribe of Florida, or any person licensed under chapter 24, part II of chapter 285, chapter 546, chapter 550, chapter 551, or chapter 849 and determine whether such violation is

appropriate for referral to the Office of Statewide Prosecution.

Section 11. Paragraph (d) of subsection (1) and paragraph (a) of subsection (2) of section 16.713, Florida Statutes, are amended to read:

16.713 Florida Gaming Control Commission; appointment and employment restrictions.—

(1) PERSONS INELIGIBLE FOR APPOINTMENT TO THE COMMISSION.—The following persons are ineligible for appointment to the commission:

(d) A person who has had a license or permit issued under chapter 546, chapter 550, chapter 551, or chapter 849 or a gaming license issued by any other jurisdiction denied, suspended, or revoked.

(2) PROHIBITIONS FOR EMPLOYEES AND COMMISSIONERS; PERSONS INELIGIBLE FOR APPOINTMENT TO AND EMPLOYMENT WITH THE COMMISSION.—

(a) A person may not, for the 2 years immediately preceding the date of appointment to or employment with the commission and while appointed to or employed with the commission:

1. Hold a permit or license issued under chapter 550 or a license issued under chapter 546, chapter 551, or chapter 849; be an officer, official, or employee of such permitholder or licensee; or be an ultimate equitable owner, as defined in s. 550.002(37), of such permitholder or licensee;

2. Be an officer, official, employee, or other person with duties or responsibilities relating to a gaming operation owned by an Indian tribe that has a valid and active compact with the state; be a contractor or subcontractor of such tribe or an entity employed, licensed, or contracted by such tribe; or be an

ultimate equitable owner, as defined in s. 550.002(37), of such entity;

3. Be a registered lobbyist for the executive or legislative branch, except while a commissioner or employee of the commission when officially representing the commission or unless the person registered as a lobbyist for the executive or legislative branch while employed by a state agency as defined in s. 110.107 during the normal course of his or her employment with such agency and he or she has not lobbied on behalf of any entity other than a state agency during the 2 years immediately preceding the date of his or her appointment to or employment with the commission; or

4. Be a bingo game operator or an employee of a bingo game operator.

For the purposes of this subsection, the term "relative" means a spouse, father, mother, son, daughter, grandfather, grandmother, brother, sister, uncle, aunt, cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

Section 12. Paragraphs (b) and (c) of subsection (2) of section 16.715, Florida Statutes, are amended to read:

16.715 Florida Gaming Control Commission standards of conduct; ex parte communications.—

(2) FORMER COMMISSIONERS AND EMPLOYEES.—

(b) A commissioner may not, for the 2 years immediately following the date of resignation or termination from the commission:

1. Hold a permit or license issued under chapter 550, or a license issued under chapter 546, chapter 551, or chapter 849; be an officer, official, or employee of such permitholder or licensee; or be an ultimate equitable owner, as defined in s. 550.002(37), of such permitholder or licensee;

2. Accept employment by or compensation from a business entity that, directly or indirectly, owns or controls a person regulated by the commission; from a person regulated by the commission; from a business entity which, directly or indirectly, is an affiliate or subsidiary of a person regulated by the commission; or from a business entity or trade association that has been a party to a commission proceeding within the 2 years preceding the member's resignation or termination of service on the commission; or

3. Be a bingo game operator or an employee of a bingo game operator.

(c) A person employed by the commission may not, for the 2 years immediately following the date of termination or resignation from employment with the commission:

1. Hold a permit or license issued under chapter 550, or a license issued under chapter 546, chapter 551, or chapter 849; be an officer, official, or employee of such permitholder or licensee; or be an ultimate equitable owner, as defined in s. 550.002(37), of such permitholder or licensee; or

2. Be a bingo game operator or an employee of a bingo game operator.

Section 13. Subsection (7) is added to section 849.142, Florida Statutes, to read:

849.142 Exempted activities.—Sections 849.01, 849.08, 849.09, 849.11, 849.14, and 849.25 do not apply to participation in or the conduct of any of the following activities:

(7) Fantasy sports contests conducted pursuant to chapter 546.

Section 14. This act shall take effect July 1, 2024.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 1566
INTRODUCER:	Senator Hutson
SUBJECT:	Fees/Fantasy Sports Contest Operator
DATE:	January 26, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	**Pre-meeting**
2.			FP	

I. Summary:

SB 1566 imposes license fees on certain fantasy sports contest operators who offer fantasy sports contests for a cash prize to members of the public in this state. Contest operators must pay an initial license application fee of $1 million and renewal fees of $250,000 annually. Such fees may not exceed 10 percent of the difference between the amount of entry fees collected by a contest operator from the operation of fantasy sports contests in this state, and the amount of cash or cash equivalents paid to contest participants in this state. These license fees do not apply to individuals who act as noncommercial contest operators, as defined in SB 1568, who collect and distribute entry fees totaling no more than $1,500 per season or $10,000 annually, and who meet other specified requirements. The fees are to be paid to the Florida Gaming Control Commission (commission) and deposited in the Pari-mutuel Wagering Trust Fund.

SB 1568 (Fantasy Sports Contest Amusement Act), is a linked bill that addresses authorized fantasy sports contests.

The impact on state revenues and expenditures is indeterminate. There is no impact expected on local government revenues and expenditures. *See* Section V, Fiscal Impact Statement.

The bill is effective on the same date that SB 1568 (Fantasy Sports Contest Amusement Act) or similar legislation) takes effect, if adopted in the same legislative session or any extension, and becomes law.

II. Present Situation:

Background

In general, gambling is illegal in Florida.[1] Chapter 849, F.S., prohibits keeping a gambling house,[2] running a lottery,[3] or the manufacture, sale, lease, play, or possession of slot machines.[4] In Florida, if a gaming activity is not expressly authorized by law, then the activity constitutes illegal gambling. In addition to the activities the Seminole Tribe of Florida is authorized by law to conduct pursuant to ch. 285.710, F.S.,[5] the following gaming activities are authorized by law and regulated by the state:

- Pari-mutuel[6] wagering at licensed greyhound and horse tracks and jai alai frontons;[7]
- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;[8]
- Cardrooms[9] at certain pari-mutuel facilities;[10]
- The state lottery authorized by section 15 of Article X of the State Constitution and established under ch. 24, F.S.;[11]
- Skill-based amusement games and machines at specified locations as authorized by s. 546.10, F.S, the Family Amusement Games Act;[12] and
- The following activities, if conducted as authorized under ch. 849, relating to Gambling, under specific and limited conditions:
  - Penny-ante games;[13]
  - Bingo;[14]
  - Charitable drawings;[15]
  - Game promotions (sweepstakes);[16] and

[1] See s. 849.08, F.S.
[2] *See* s. 849.01, F.S.
[3] *See* s. 849.09, F.S.
[4] Section 849.16, F.S.
[5] *See* s. 285.710(3), F.S. The activities currently authorized to be conducted by the Seminole Tribe of Florida subject to limitations described in s. 285.710, F.S., and the 2021 Gaming Compact, include the following: slot machines; banking or banked card games (such as blackjack, limited to the tribal facilities in Broward County, Collier County, and Hillsborough County); raffles and drawings; craps and other dice games; roulette; fantasy sports contests; and sports betting.
[6] "Pari-mutuel" is defined in Florida law as "a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes. *See* s. 550.002(22), F.S.
[7] *See* ch. 550, F.S., relating to the regulation of pari-mutuel activities.
[8] *See* FLA. CONST., art. X, s. 23, and ch. 551, F.S.
[9] Section 849.086, F.S. *See* s. 849.086(2)(c), F.S., which defines "cardroom" to mean "a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charged a fee for participation by the operator of such facility."
[10] *See* Florida Gaming Control Commission, *Annual Report Fiscal Year 2022-2023* (Annual Report), at p. 15, at https://flgaming.gov/pmw/annual-reports/docs/2022-2023%20FGCC%20Annual%20Report.pdf (last visited Jan. 23, 2024), which states that of 29 licensed permitholders, 26 operated at a pari-mutuel facility.
[11] Chapter 24, F.S., was enacted by ch. 87-65, Laws of Fla., to establish the state lottery; s. 24.102, F.S., states the legislative purpose and intent for the operations of the state lottery.
[12] *See* s. 546.10, F.S.
[13] *See* s. 849.085, F.S.
[14] *See* s. 849.0931, F.S.
[15] *See* s. 849.0935, F.S.
[16] *See* s. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.

- Bowling tournaments.[17]

A license to offer pari-mutuel wagering, slot machine gambling, or a cardroom at a pari-mutuel facility is a privilege granted by the state.[18]

The 1968 State Constitution states that "[l]otteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution . . ." are prohibited.[19] A constitutional amendment approved by the voters in 1986 authorized state-operated lotteries. Net proceeds of the lottery are deposited to the Educational Enhancement Trust Fund (EETF) and appropriated by the Legislature. Lottery operations are self-supporting and function as an entrepreneurial business enterprise.[20]

Enforcement of Gaming Laws and Florida Gaming Control Commission

In 202l, the Legislature updated Florida law for authorized gaming in the state, and for enforcement of the gambling laws[21] and other laws relating to authorized gaming.[22] The Office of Statewide Prosecution in the Department of Legal Affairs is authorized to investigate and prosecute, in addition to gambling offenses, any violation of ch. 24, F.S., (State Lotteries), part II of ch. 285, F.S., (Gaming Compact), ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S., (Gambling), which are referred to the Office of Statewide Prosecution by the Florida Gaming Control Commission (commission).[23]
In addition to the enhanced authority of the Office of Statewide Prosecution, the commission was created[24] within the Department of Legal Affairs. The commission has two divisions, including the Division of Gaming Enforcement (DGE), and the Division of Pari-mutuel Wagering

[17] *See* s. 849.141, F.S.
[18] *See* s. 550.1625(1), F.S., "…legalized pari-mutuel betting at dog tracks is a privilege and is an operation that requires strict supervision and regulation in the best interests of the state." *See also, Solimena v. State*, 402 So.2d 1240, 1247 (Fla. 3d DCA 1981), *review denied*, 412 So.2d 470, which states "Florida courts have consistently emphasized the special nature of legalized racing, describing it as a privilege rather than as a vested right," citing *State ex rel. Mason v. Rose*, 122 Fla. 413, 165 So. 347 (1936), and *Zimmerman v. State of Florida, Fla. Gaming Control Comm'n*, ___So.3d ___ (Fla. 5th DCA Jan. 12, 2024) *(Case No. 5D23-1062; not final until disposition of motions as set forth in the opinion)*.
[19] The pari-mutuel pools that were authorized by law on the effective date of the State Constitution, as revised in 1968, include horseracing, greyhound racing, and jai alai games. The revision was ratified by the electorate on November 5, 1968.
[20] The Department of the Lottery is authorized by s. 15, Art. X of the State Constitution. Chapter 24, F.S., was enacted by ch. 87-65, Laws of Fla., to establish the state lottery. Section 24.102, F.S., states the legislative purpose and intent for the operations of the state lottery.
[21] *See* Special agents confiscate over 70 illegal gambling devices in Gadsden (tallahassee.com) and https://www.tcpalm.com/story/news/crime/st-lucie-county/2023/10/24/st-lucie-county-deputies-raid-close-arcade-accused-of-gambling/71302519007/ relating to recent enforcement by local law enforcement and agents of the Florida Gaming Control Commission (both last visited Jan. 23, 2024).
[22] See ch. 2021-268, Laws of Fla., (Implementation of 2021 Gaming Compact between the Seminole Tribe of Florida and the State of Florida); ch. 2021-269, Laws of Fla., (Gaming Enforcement), ch. 2021-270, Laws of Fla., (Public Records and Public Meetings), and 2021-271, Laws of Fla., (Gaming), as amended by ch. 2022-179, Laws of Fla., (Florida Gaming Control Commission). Conforming amendments are made in ch. 2022-7, Laws of Fla., (Reviser's Bill) and ch. 2023-8, Laws of Fla., (Reviser's Bill).
[23] Section 16.56(1)(a), F.S.
[24] Section 16.71, F.S.

(DPMW) which was transferred from the Department of Business and Professional Regulation (DBPR) effective July 1, 2022.[25]

Fantasy Sports Contests

The operation of fantasy sports activities in Florida has recently received significant publicity, much like the operation of internet cafes in recent years. Many states are now evaluating the status of fantasy gaming activities in their jurisdictions,[26] as there are millions of participants.[27]

A fantasy game typically has multiple players who select and manage imaginary teams whose players are actual professional sports players. Fantasy game players compete against one another in various formats, including weekly leagues among friends and colleagues, season-long leagues, and on-line contests (daily and weekly) entered by using the Internet through personal computers or mobile telephones and other communications devices. There are various financial arrangements among players and game operators.

Florida law does not specifically address fantasy contests. Section 849.14, F.S.,[28] provides that a person who wagers any "thing of value" upon the result of a contest of skill or endurance of human or beast, or who receives any money wagered, or who knowingly becomes the custodian of money or other thing of value that is wagered, is guilty of a second degree misdemeanor.[29] The commission has issued cease and desist correspondence to various companies operating fantasy contests in the state concerning possible violations of Florida's gambling laws. The letters have generated controversy, concern, and interest from contest operators, elected officials, and the Seminole Tribe of Florida, which has entered into gaming compacts with the state (as discussed below).[30] The legality of various forms of fantasy sports games and contests is being reviewed and addressed in a number of states.[31]

III. Effect of Proposed Changes:

The bill imposes license fees on certain fantasy sports contest operators[32] who offer fantasy sports contests for a cash prize to members of the public. Contest operators must pay an initial

[25] *See* ch. 2021-269, s. 11, Laws of Fla., which delineates the transfer of the DPMW to the commission from the DBPR.
[26] *See* Marc Edelman, *A Short Treatise on Fantasy Sports and the Law: How America Regulates its New National Pastime*, Journal of Sports & Entertainment Law, Harvard Law School Vol. 3 (Jan. 2012) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1907272 (last visited Jan. 23, 2024).
[27] According to the Fantasy Sports Trade Association, which states it represents the interests of 57 million fantasy sports players, fantasy sports leagues were originally referred to as "rotisserie leagues" with the development of Rotisserie League Baseball in 1980, by magazine writer/editor Daniel Okrent, who met and played it with friends at a New York City restaurant La Rotisserie Francaise. *See* https://thefsga.org/history/ (last visited Jan. 23, 2024).
[28] *See* Fla. AGO 91-03 (Jan. 7, 1991) *available at* https://www.myfloridalegal.com/ag-opinions/gambling-fantasy-sports-league (last visited Jan. 23, 2024).
[29] A conviction for a second degree misdemeanor may subject the violator to a definite term of imprisonment not exceeding 60 days, and a fine not exceeding $500. *See* ss. 775.082 and 775.083, F.S.
[30] *See* https://www.floridatrend.com/article/38854/questions-swirl-around-fantasy-sports (last visited Jan. 23, 2024).
[31] *See* State Regulators Take Closer Look At Fantasy Sports Operators (sportshandle.com) (last visited Jan. 23, 2024).
[32] SB 1568 (Fantasy Sports Contest Amusement Act) defines the term "contest operator" to mean "a person or entity that offers fantasy sports contests for a cash prize to members of the public, but does not include a noncommercial contest operator in this state. The term "noncommercial contest operator" is defined to mean "a natural person who organizes and conducts a fantasy or simulation sports contest in which contest participants are charged entry fees for the right to participate;

license application fee of $1 million and renewal fees of $250,000 annually. Such fees may not exceed 10 percent of the difference between the amount of entry fees collected by a contest operator from the operation of fantasy sports contests in this state, and the amount of cash or cash equivalents paid to contest participants in this state.

These license fees do not apply to individuals who act as noncommercial contest operators by organizing and conducting fantasy or simulation sports contests in which:

- Contest participants are charged entry fees for the right to participate;
- Entry fees are collected, maintained, and distributed by the same natural person;
- The total entry fees collected, maintained, and distributed total no more than $1,500 per season or $10,000 per calendar year; and
- All entry fees are returned to the contest participants in the form of prizes.

The bill provides the commission must require a contest operator applicant to provide written evidence to the commission of the proposed amount of entry fees and cash or cash equivalents to be paid to contest participants during the annual license period. Before a license renewal, a contest operator must:

- Provide written evidence to the commission of the actual entry fees collected and cash or cash equivalents paid to contest participants during the previous period of licensure; and
- Remit to the commission any difference in a license fee which results from the difference between the proposed amount of entry fees and cash or cash equivalents paid to contest participants, and the actual amounts collected and paid during the previous period of licensure.

Under the bill, fees for state and federal fingerprint processing and retention must be borne by license applicants; the state cost for fingerprint processing must meet the requirements of s. 943.053(3)(e), F.S., for records provided to persons or entities other than as specified in that section. The commission also may charge a $2 handling fee for each set of fingerprints submitted for a contest operator license.

The bill requires all fees collected by the commission under s. 546.151, F.S., to be deposited into the Pari-mutuel Wagering Trust Fund.

The bill is effective on the same date that SB 1568 (Fantasy Sports Contest Amusement Act) or similar legislation) takes effect, if adopted in the same legislative session or any extension, and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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entry fees are collected, maintained, and distributed by the same natural person; the total entry fees collected, maintained, and distributed by such natural person do not exceed $1,500 per season or a total of $10,000 per calendar year; and all entry fees are returned to the contest participants in the form of prizes." *Id*.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Section 19 of Article VII of the State 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."[33]

Section 19 of Article VII of the State 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.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill imposes initial license and annual renewal fees on certain fantasy sports contest operators who offer fantasy sports contests to members of the public in this state.

B. Private Sector Impact:

Certain licensed fantasy sports contest operators who offer fantasy sports contests to members of the public in this state will be required to pay an initial application fee and annual renewal fees for licensure as a contest operator, as described in the bill.

C. Government Sector Impact:

The creation of an additional licensing and regulatory structure for the conduct of fantasy sports contests by licensed persons may result in a fiscal impact to the commission. According to the commission, the bill will likely require a Revenue Impact Conference where revenue estimates are formally adopted by conference constituents, but estimates the fiscal impact for the Pari-Mutuel Wagering Trust Fund is as follows:[34]

[33] FLA. CONST. art. VII, s. 19(d)(1).
[34] *See* Florida Gaming Control Commission, *2024 Agency Legislative Bill Analysis for SB 1566* at 4-5 (Jan. 19, 2024) (on file with the Senate Committee on Regulated Industries).

1. Positive Indeterminate due to the unknown number of fantasy sports contest operators that may apply for an initial license and renewals annually thereafter, and the language in the bill that prohibits the respective fees exceeding 10 percent of the difference between the amount of entry fees collected by a contest operator from the operation of fantasy sports contests in this state and the amount of cash or cash equivalents paid to contest participants in this state the amount of licensing fees.
2. Slight increase in revenue associated with a contest operator license applicant's fingerprint processing fee, plus the $2 handling fee the Commission may charge for each set of fingerprints submitted. Fees would be collected and deposited into the Pari-Mutuel Trust Fund and then pass-through to the Florida Department of Law Enforcement.

The commission also notes the bill will require configuration changes to the current licensing system and software, to add a new license category for fantasy contest operators.[35]

The Florida Department of Law Enforcement (FDLE) notes it has inquired of the commission to obtain an estimate of the potential increase, if any, in additional screenings required by the bill, and that the fiscal impact to state government is currently indeterminate.[36]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The number of the linked bill, SB 1568, that addresses authorized fantasy sports contests, must be inserted into the bill. Staff has prepared the required technical amendment to insert the linked bill number. *See* line 57 of the bill.

VIII. Statutes Affected:+

This bill creates section 546.151 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.

[35] *Id*. at 5.
[36] *See* Florida Department of Law Enforcement (FDLE) *2024 Agency Legislative Bill Analysis for SB 1566* at 3 (Jan. 12, 2024) (on file with the Senate Committee on Regulated Industries).

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

. . . . .

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

Senate Amendment

Delete line 57
and insert:
SB 1568 or similar legislation takes effect, if such legislation

By Senator Hutson

7-00751C-24 20241566__

A bill to be entitled

An act relating to fees; creating s. 546.151, F.S.; requiring applicants for a fantasy sports contest operator license to pay a specified application fee; requiring contest operators to pay a specified annual license renewal fee; prohibiting such fees from exceeding a specified amount; requiring applicants and contest operators to provide certain written evidence; requiring contest operators to remit certain fees; specifying that the costs for certain fingerprint processing and retention shall be borne by applicants; authorizing the Florida Gaming Control Commission to charge a specified handling fee related to fingerprint processing; requiring certain fees to be deposited into the Pari-mutuel Wagering Trust Fund; providing a contingent effective date.

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

Section 1. Section 546.151, Florida Statutes, is created to read:

546.151 Fees.—

(1) An applicant for a license as a fantasy sports contest operator shall pay an initial license application fee of $1 million to the commission, and an applicant seeking to renew a fantasy sports contest operator license shall pay an annual license renewal fee of $250,000 to the commission; however, the respective fees may not exceed 10 percent of the difference between the amount of entry fees collected by a contest operator

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from the operation of fantasy sports contests in this state and the amount of cash or cash equivalents paid to contest participants in this state. The commission shall require a contest operator applicant to provide written evidence of the proposed amount of entry fees and cash or cash equivalents to be paid to contest participants during the annual license period. Before a license renewal, a contest operator must provide written evidence to the commission of the actual entry fees collected and cash or cash equivalents paid to contest participants during the previous period of licensure. Before a license renewal, a contest operator must remit to the commission any difference in a license fee which results from the difference between the proposed amount of entry fees and cash or cash equivalents paid to contest participants and the actual amounts collected and paid during the previous period of licensure.

(2) Fees for state and federal fingerprint processing and retention shall be borne by an applicant for a contest operator license. The state cost for fingerprint processing shall be as provided in s. 943.053(3)(e) for records provided to persons or entities other than those specified as exceptions therein.

(3) The commission also may charge a $2 handling fee for each set of fingerprints submitted for a contest operator license.

(4) All fees collected by the commission under this section shall be deposited into the Pari-mutuel Wagering Trust Fund.

Section 2. 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.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SPB 7044
INTRODUCER:	For consideration by the Regulated Industries Committee
SUBJECT:	Homeowners' Associations
DATE:	January 26, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof		**Pre-meeting**

I. Summary:

SPB 7044 relates to the governance of homeowners' associations and the practice of the community association managers who manage those communities. Regarding community association managers (CAMs) and CAM firms, the bill requires CAMs and CAM firms to:

- Attend in person at least one member meeting or board meeting of the homeowners' association annually;
- Provide to community association members certain information, including the contact person and contact information, and the hours of availability;
- Provide the community's members upon request a copy of the contract between the association and the CAM or CAM firm; and
- Complete at least five hours of continuing education that pertains specifically to homeowners' associations, three hours of which must relate to recordkeeping.

Regarding the official records of a homeowners' association, the bill requires all homeowners' associations to:

- Effective January 1, 2026, maintain a digital copy of their official records on the association's website or make available through an application on a mobile device;
- Require that official records be accessible through a secure portal and the username and password be made available to parcel owners upon request;
- Ensure that the private information and records that are not allowed to be accessible to parcel owners are not posted on the website or application or are redacted; and
- Provide a copy of records or otherwise make the records available that are subpoenaed by a law enforcement agency within five days of receiving a subpoena.

The bill provides the following criminal penalties related to homeowners' associations, including matters related to the official records of the association:

- Third degree felony for an officer, director, or manager of a condominium association to knowingly solicit, offer to accept, or accept anything or service of value or kickback;

- First degree misdemeanor for knowingly or intentionally defacing or destroying required accounting records or knowingly and intentionally failing to create or maintain required accounting records, with the intent of causing harm to the association or one or more of its members;
- Second degree misdemeanor for any director or member of the board or association to knowingly, willfully, and repeatedly violate (two or more violations within a 12-month period) any specified requirements relating to inspection and copying of official records of an association; and
- Third degree felony to willfully and knowingly refuse to release or otherwise produce association records, with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape.

The bill also expands the current criminal prohibitions against fraudulent voting activity to provide that a person who performs any of the following actions commits a misdemeanor of the first degree:

- Knowingly aiding, abetting, or advising a person in the commission of a fraudulent voting activity related to association elections.
- Agreeing, conspiring, combining, or confederating with at least one other person to commit a fraudulent voting activity related to association elections.
- Having knowledge of a fraudulent voting activity related to association elections and giving any aid to the offender with intent that the offender avoid or escape detection, arrest, trial, or punishment.

The bill provides that a person commits theft by use of a debit card, if the person uses a debit card issued in the name of, or billed directly to, an association for any expense that is not a lawful obligation of the association.

Under the bill, any officer or director charged with a criminal violation under ch. 720, F.S., is deemed removed from office and a vacancy declared.

Regarding the budget of homeowners' associations, the bill requires homeowners' associations that have 2,500 or more members to:

- Use an independent certified public accountant (CPA) to prepare the association's annual budget; and
- Retain an attorney to advise the association and its members on procedural matters relating to the annual budget and to foster communications between the board and the members of the association.

The bill provides education requirements for the officers and directors of homeowners' associations to:

- Require a newly elected or appointed director to, within 90 days after being elected or appointed to the board, complete and submit a certificate of having satisfactorily completed the educational curriculum administered by a department-approved education provider.
- Provide that the certification of completion is valid up to four years.
- Require that the educational curriculum must include training relating to financial literacy and transparency, recordkeeping, levying of fines, and notice and meeting requirements.

- Require a director of an association that has:
  - Fewer than 2,500 members to complete at least four hours of continuing education annually.
  - 2,500 or more members must complete at least eight hours of continuing education annually.

Regarding the enforcement of homeowners' association covenants and rules, the bill requires associations or an architectural, construction improvement, or other similar committee of the association to:

- Uniformly apply and enforce the architectural and construction improvement standards against all parcel owners authorized by the association's governing documents; and
- Provide written notice to the parcel owner stating with specificity the rule or covenant on which the association or its committee relied upon when denying the request or application for the construction of a structure or other improvement on a parcel.

The bill takes effect July 1, 2024.

II. Present Situation:

Homeowners' Associations

Chapter 720, F.S., provides statutory recognition to corporations that operate residential communities in Florida as well as procedures for operating homeowners' associations. These laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.[1]

A "homeowners' association" is defined as a:[2]

> Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.

Unless specifically stated to the contrary in the articles of incorporation, homeowners' associations are also governed by ch. 607, F.S., relating to for-profit corporations, or by ch. 617, F.S., relating to not-for-profit corporations.[3]

Homeowners' associations are administered by a board of directors that is elected by the members of the association.[4] The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include a recorded declaration of covenants, bylaws, articles of incorporation, and duly-

[1] *See* s. 720.302(1), F.S.
[2] Section 720.301(9), F.S.
[3] Section 720.302(5), F.S.
[4] *See* ss. 720.303 and 720.307, F.S.

adopted amendments to these documents.[5] The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.[6]

Unlike condominium associations, homeowners' associations are not regulated by a state agency. Section 720.302(2), F.S., expresses the legislative intent regarding the regulation of homeowners' associations:

> The Legislature recognizes that it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations. However, in accordance with s. 720.311, [F.S.,] the Legislature finds that homeowners' associations and their individual members will benefit from an expedited alternative process for resolution of election and recall disputes and presuit mediation of other disputes involving covenant enforcement and authorizes the department to hear, administer, and determine these disputes as more fully set forth in this chapter. Further, the Legislature recognizes that certain contract rights have been created for the benefit of homeowners' associations and members thereof before the effective date of this act and that ss. 720.301-720.407[, F.S.], are not intended to impair such contract rights, including, but not limited to, the rights of the developer to complete the community as initially contemplated.

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business the Professional Regulation has limited regulatory authority over homeowners' associations. The division's authority is limited to the arbitration of recall election disputes.[7]

The governing documents of a homeowners' association are:[8]

- The recorded declaration of covenants for a community and all duly adopted and recorded amendments, supplements, and recorded exhibits thereto; and
- The articles of incorporation and bylaws of the homeowners' association and any duly adopted amendments thereto.

Section 720.301(3), F.S., defines a "community" as the real property that is or will be subject to a declaration of covenants which is recorded in the county where the property is located. The term "includes all real property, including undeveloped phases, that is or was the subject of a development-of-regional-impact development order, together with any approved modification thereto."

[5] *See* ss. 720.301 and 720.303, F.S.
[6] Section 720.303(1), F.S.
[7] Section 720.306(9)(c), F.S.
[8] Section 720.301(8), F.S.

Other Relevant Topics

For ease of reference to each of the topics addressed in the bill, the Present Situation for each topic will be described in Section III of this analysis, followed immediately by an associated section detailing the Effect of Proposed Changes.

III. Effect of Proposed Changes:

Community Association Managers

Present Situation

Community association managers (CAMs) are licensed and regulated by the Department of Business and Professional Regulation (DBPR or department) pursuant to part VIII of ch. 468, F.S.

Section 468.431(2), F.S., defines "community association management" to mean:

> any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill when done for remuneration and when the association or associations served contain more than 10 units or have an annual budget or budgets in excess of $100,000: controlling or disbursing funds of a community association, preparing budgets or other financial documents for a community association, assisting in the noticing or conduct of community association meetings, and coordinating maintenance for the residential development and other day-to-day services involved with the operation of a community association.

A license is not required for persons who perform clerical or ministerial functions under the direct supervision and control of a licensed manager or who only perform the maintenance of a community association and do not assist in any of the management services.[9]

Community association managers are regulated by the seven-member Regulatory Council of Community Association Managers (council). Five of the members must be licensed CAMs, one of whom must be a CAM for a timeshare. The other two must not be CAMs. Members are appointed to four-year terms by the Governor and confirmed by the Senate.[10]

To become licensed as a CAM, a person must apply to the department to take the licensure examination and submit to a background check. Upon determination that the applicant is of good moral character, the applicant must attend a department-approved in-person training prior to taking the examination.[11] Community association managers must successfully complete an exam and pay a fee to become licensed. They must also complete continuing education hours as approved by the council to maintain their licenses.[12]

[9] Section 468.431(2), F.S.
[10] Section 468.4315(1), F.S.
[11] Section 468.433, F.S.
[12] Sections 468.4336 and 468.4337, F.S.

Section 468.4334, F.S., delineates the professional practice standards for CAMs and CAM firms, including the duty to "discharge the duties performed on behalf of the association as authorized by [ch. 468, F.S.], loyally, skillfully, and diligently; dealing honestly and fairly; in good faith; with care and full disclosure to the community association; accounting for all funds; and not charging unreasonable or excessive fees."

In addition, if a CAM or CAM firm has a contract with a community association that has a building on the association's property that is subject to s. 553.899, F.S., the CAM or firm must comply with that section as directed by the board.

A CAM or CAM firm may be disciplined, including a suspension or revocation of their license, or denial of a license renewal, for the grounds specified in s. 468.436, F.S., including contracting, on behalf of an association, with any entity in which the CAM or CAM firm has a financial interest that is not disclosed to the association.

Effect of Proposed Changes

The bill amends s. 468.4334, F.S., to require CAMs and CAM firms to:

- Attend in person at least one member meeting or board meeting of the homeowners' association annually;
- Provide to community association members:
  - The name and contact information for each CAM or representative of the CAM firm assigned to the community association.
  - The CAM's or representative's hours of availability.
  - A summary of the duties for which the CAM or representative is responsible.

The bill requires the CAM to post this information on the association's website or make available through a mobile application. The CAM or CAM firm must update the community and its members within 14 business days after any change to such information.

Upon an association member's request, the bill requires a CAM or CAM firm to provide the member a copy of the contract between the association and the CAM or CAM firm. In addition, the CAM or CAM firm must maintain the contract as an official record of the association.

The bill amends s. 468.4337, F.S., to require CAMs who provide services to a homeowners' association to complete, every two years, at least five hours of continuing education that pertains specifically to homeowners' associations, three hours of which must relate to recordkeeping.

Official Records – Homeowners' Associations

Present Situation

Florida law specifies the official records that homeowners' associations must maintain.[13] Generally, the official records must be maintained in Florida for at least seven years.[14] Certain types of these records must be accessible to the members of an association.[15] Additionally,

[13] *See* s. 720.303(5), F.S.
[14] *Id.*
[15] *Id.*

certain records are protected or restricted from disclosure to members, such as records protected by attorney-client privilege, personnel records, and personal identifying records of owners.[16]

The official records that the association must make available to the members for inspection and copying include, in relevant part, a copy of the:[17]

- Bylaws of the association and of each amendment to the bylaws.
- Articles of incorporation of the association and of each amendment thereto.
- Declaration of covenants and a copy of each amendment thereto.
- Current rules of the homeowners' association.

Effect of Proposed Changes

The bill amends ss. 720.303(4), F.S., to provide that homeowners' associations must maintain each of the required official records for at least seven years, unless the governing documents of the association require a longer period of time.

The bill requires every homeowners' association, by January 1, 2025, to:

- Post a current digital copy of the official records on a website accessible on the Internet, or
- Make such documents available through an application that can be downloaded on a mobile device.

The application or website must have a subpage or portal inaccessible to the general public, and be accessible only to parcel owners and association employees, and the association must provide a username and password, upon request.

The association must protect information that is not accessible to unit owners, including redacting protected or restricted information, if needed. The bill provides that the association is not liable for disclosing information that is protected or restricted unless the disclosure was made with a knowing and intentional disregard of the protected or restricted nature of the information.

The bill requires associations to adopt written policies governing the method or policy by which records are to be retained.

The bill amends s. 720.303(5), F.S., to provide the following additional criminal prohibitions and penalties for violations related to the official records:

- Second degree misdemeanor[18] for any director or member of the board or association to knowingly, willfully, and repeatedly violate (two or more violations within a 12-month period) any specified requirements relating to the inspection and copying of official records of an association;

[16] *Id.*
[17] Section 720.303(4), F.S.
[18] Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S., provides that a misdemeanor of the second degree is punishable by a fine not to exceed $500.

- First degree misdemeanor[19] to knowingly or intentionally deface or destroy required accounting records or knowingly and intentionally fail to create or maintain required accounting records, with the intent of causing harm to the association or one or more of its members; and
- Third degree felony[20] to willfully and knowingly refuse to release or otherwise produce association records, with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape.

The bill provides that officers and directors charged with a criminal violation created in the bill are deemed removed from office and a vacancy declared.

The bill provides that, if an association receives a subpoena for records from a law enforcement agency, the homeowners' association must provide a copy of such records or otherwise make the records available to a law enforcement agency within five business days after receipt of the subpoena. The bill requires that homeowners' associations to assist a law enforcement agency in its investigation to the extent permissible by law.

Budgets– Homeowners' Associations

Present Situation

Every homeowners' association is required to prepare an annual budget that sets out the annual operating expenses. The budget must:[21]

- Reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year.
- Set out separately all fees or charges paid for by the association for recreational amenities, whether owned by the association, the developer, or another person.

The homeowners' association must provide each member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the member. In addition to annual operating expenses, the budget may include reserve accounts for capital expenditures and deferred maintenance for which the homeowners' association is responsible.[22] Depending on the association's governing documents, an association's budget may provide for reserve accounts.[23] Upon approval by the membership, the board of directors must include the required reserve accounts in the budget in the next fiscal year following the approval and each year thereafter.[24]

[19] Section 775.082, F.S., provides that a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year. Section 775.083, F.S., provides that a misdemeanor of the first degree is punishable by a fine not to exceed $1,000.
[20] Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed $5,000.
[21] Section 720.303(6)(a), F.S.
[22] Section 720.303(6)(b), F.S.
[23] Section 720.303(6)(d), F.S.
[24] Section 720.303(6)(c)(1), F.S.

Effect of Proposed Changes

The bill amends s. 720.303(6), F.S., to require homeowners' associations that have 2,500 or more members to:

- Use an independent certified public accountant (CPA) to prepare the association's annual budget.
- Retain an attorney to advise the association and its members on procedural matters relating to the annual budget and to foster communications between the board and the members of the association.

The bill provides that the CPA and attorney may not be the CAM, an employee of the CAM firm providing community association management services to the association, or an officer or director or immediate family member of an officer or director.

Under the bill, if the association is required to have a CPA prepare the budget, the CPA must include reserves in the budget if approved by the membership.

Debit Cards – Homeowners' Associations

Present Situation

Section 718.111(15)(a), F.S., prohibits persons from using a debit card issued in the name of, or billed directly to, a condominium association for any expense. Section 718.111(15)(b), F.S., provides that any person from using an association debit card for an unlawful expense may be prosecuted for credit card fraud under s. 718.61, F.S. Chapter 720, F.S., does not have a comparable prohibition for the use of debit cards in homeowners' associations.

Effect of Proposed Changes

The bill creates s. 720.303(13), F.S., to prohibit persons to use a debit card issued in the name of, or billed directly to, an association for any expense that is not a lawful obligation of the association.

Under the bill, a person commits theft[25] by use of a debit card, if the person uses a debit card issued in the name of, or billed directly to, an association for any expense that is not a lawful obligation of the association. The bill defines the term "lawful obligation of the association" as an obligation that has been properly preapproved by the board and is reflected in the meeting minutes or the written budget.

Under the bill, a person who violates this prohibition is deemed removed from office and a vacancy declared.

[25] Theft is generally punishable based upon the value of the property stolen. Petit theft is generally a second degree misdemeanor or first degree misdemeanor. Section 812.014(3)(a) and (b), F.S. Grand theft is generally a third degree felony, second degree felony, or first degree felony. Section 812.014(1)(a)-(c), F.S. A second degree felony is punishable by up to 15 years in state prison and a fine of up to $10,000. Sections 775.082 and 775.083, F.S. A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to $10,000. *Id.*

Officer and Director Education – Homeowners' Associations

Present Situation

Within 90 days after being elected or appointed to the board, each director must certify in writing to the secretary of the association that he or she:[26]

- Has read the association's declaration of covenants, articles of incorporation, bylaws, and current written rules and policies;
- Will work to uphold such documents and policies to the best of his or her ability; and
- Will faithfully discharge his or her fiduciary responsibility to the association's members.

Instead of such written certification, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved education provider within one year before or 90 days after the date of election or appointment.[27]

The written certification or educational certificate is valid for the uninterrupted tenure of the director on the board. A director who does not timely file the written certification or educational certificate shall be suspended from the board until he or she complies with the requirement. The board may temporarily fill the vacancy during the period of suspension.[28]

The homeowners' association must retain each director's written certification or educational certificate for inspection by the members for five years after the director's election. However, the failure to have the written certification or educational certificate on file does not affect the validity of any board action.[29]

Effect of Proposed Changes

The bill amends s. 720.3033(1), F.S., to revise the postelection educational requirements for officers and directors of homeowners' associations. The bill:

- Requires newly elected or appointed director to, within 90 days after being elected or appointed to the board, complete and submit a certificate of having satisfactorily completed the educational curriculum administered by a department-approved education provider.
- Provides that the certification of completion is valid up to four years.
- Requires a director to retake the department-approved initial education every four years.
- Requires that the educational curriculum must include training relating to financial literacy and transparency, recordkeeping, levying of fines, and notice and meeting requirements.

In addition, the bill requires a director of an association that has:

- Fewer than 2,500 members to complete at least four hours of continuing education annually.
- 2,500 or more members to complete at least eight hours of continuing education annually.

[26] Section 720.3033(1)(a), F.S.
[27] *Id.*
[28] Section 720.3033(1)(b), F.S.
[29] Section 720.3033(1)(c),F.S.

The bill requires the department to adopt rules to implement and administer the educational curriculum and continuing education requirements in the bill.

Kickbacks and Other Prohibited Activities - Homeowners' Association

Present Situation

The officers and directors of a homeowners' association have a fiduciary relationship to the members who are served by the association.[30]

Kickbacks Prohibition

An officer, a director, or a manager who knowingly solicits, offers to accept, or accepts any thing or service of value or kickback for which consideration has not been provided for his or her own benefit or that of his or her immediate family from any person providing or proposing to provide goods or services to the association is subject to monetary damages. If the board finds that an officer or director has violated this condition, the board must immediately remove the officer or director from office.[31]

The vacancy must be filled according to law until the end of the director's term of office.

However, an officer, director, or manager may accept food to be consumed at a business meeting with a value of less than $25 per individual or a service or good received in connection with trade fairs or education programs.[32]

Removal from Office for Certain Violations

Section 720.3033(4), F.S., requires a board to immediately remove from office any officer or director who is charged with:

- Forgery of a ballot envelope or voting certificate used in a homeowners' association election punishable as a felony crime as provided in s. 831.01, F.S.;[33]
- Felony theft or embezzlement involving association funds;
- Destruction of or refusal to allow inspection or copying of an official record of a homeowners' association that is accessible to parcel owners within the time periods required by general law in furtherance of any crime is punishable as tampering with physical evidence as provided in s. 918.13, F.S., or as obstruction of justice as provided in ch. 843, F.S.; or
- Obstruction of justice.

[30] Section 720.303(1), F.S.
[31] Section 720.303(3), F.S.
[32] Section 720.3033(3), F.S.
[33] Section 831.01, F.S., relates to the crime of forgery. A forgery violation is a felony of the third degree. Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed $5,000.

A vacancy must be filled as provided by s. 720.306(9), F.S., until the end of the officer's or director's period of suspension or the end of his or her term of office, whichever occurs first.[34]

If a criminal charge is pending against an officer or director, he or she may not be appointed or elected to a position as an officer or a director of any association and may not have access to the official records of any association, except pursuant to a court order. An officer or director must be reinstated for the remainder of his or her term of office if the charges are resolved without a finding of guilt.

Effect of Proposed Changes

The bill amends s. 720.3033(3), F.S., to provide that an officer, director, or manager of an association who knowingly solicits, offers to accepts, or accepts anything or service of value or kickback for which consideration has not been provided for his or her own benefit or that of his or her immediate family, from any person providing or proposing to provide goods or services to the association commits a third degree felony.[35] If the board finds that an officer or director has violated this prohibition, the officer or director is deemed removed from office and a vacancy declared.

The bill also amends s. 720.3033(4), F.S., to require the removal from office and a vacancy declared if an officer or director is charged by information or indictment with any criminal violation under ch. 720, F.S.

Architectural Control – Homeowners' Associations

Present Situation

If the governing documents allow a homeowners' association or its architectural, construction improvement, or other similar committee (committee) may:[36]

- Require a review and approval of plans and specifications for the location, size, type, or appearance of any structure or other improvement on a parcel before a parcel owner makes such improvement.
- Enforce standards for the external appearance of any structure or improvement located on a parcel.

The association or its committee may not restrict the right of a parcel owner to select from any options given in the governing documents for the use of material, the size of the structure or improvement, the design of the structure or improvement, or the location of the structure or improvement on the parcel.[37]

[34] Section 720.306(9), F.S., relates to elections and vacancies on a board. It also prohibits convicted felons, including persons who've been convicted in another jurisdiction which would be considered a felony crime in Florida, of serving on a board for at least five years as of the date the person seeks election to the board, unless their civil rights have been restored.
[35] Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed $5,000.
[36] Section 720.3035(1), F.S.
[37] Section 720. 3035(2), F.S.

Each parcel owner is entitled to the rights and privileges set forth in the governing documents concerning the architectural use of the parcel, and the construction of permitted structures and improvements on the parcel and such rights and privileges may not be unreasonably infringed upon or impaired by the association or its committee. If the association or its committee unreasonably, knowingly, and willfully infringes upon or impairs such rights and privileges, the adversely affected parcel owner may recover damages, including any costs and reasonable attorney's fees.[38]

A homeowners' association or committee may not enforce any policy or restriction that is inconsistent with the rights and privileges of a parcel owner set forth in the governing documents, whether uniformly applied or not.[39]

Effect of Proposed Changes

The bill amends s. 720.3035, F.S., to require homeowners' associations and their committees to

- Uniformly apply and enforce the architectural and construction improvement standards against all parcel owners authorized by the association's governing documents.
- Provide written notice to the parcel owner stating with specificity the rule or covenant on which the association or its relied when denying the request or application for the construction of a structure or other improvement on a parcel.

Fraudulent Voting Activities

Present Situation

Section 720.3065, F.S, provides that each of the following actions relating to homeowners' association elections is a fraudulent voting activity and constitutes a misdemeanor of the first degree:[40]

- Willfully and falsely swearing to or affirming an oath or affirmation, or willfully procuring another person to falsely swear to or affirm an oath or affirmation, in connection with or arising out of voting activities.
- Perpetrating or attempting to perpetrate, or aiding in the perpetration of, fraud in connection with a vote cast, to be cast, or attempted to be cast.
- Preventing a member from voting, or preventing a member from voting as he or she intended, by fraudulently changing or attempting to change a ballot, ballot envelope, vote, or voting certificate of the member.
- Menacing, threatening, or using bribery or any other corruption to attempt, directly or indirectly, to influence, deceive, or deter a member when voting.
- Giving or promising, directly or indirectly, anything of value to another member with the intent to buy the vote of that member or another member or to corruptly influence that member or another member in casting his or her vote. This provision does not apply to any food served which is to be consumed at an election rally or a meeting or to any item of

[38] Section 720.3035(4), F.S.
[39] S. 720.3035(5), F.
[40] Section 775.082, F.S., provides that a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year. Section 775.083, F.S. provides that a misdemeanor of the first degree is punishable by a fine not to exceed $1,000.

nominal value which is used as an election advertisement, including a campaign message designed to be worn by a member.
- Using or threatening to use, either directly or indirectly, force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel a member to vote or refrain from voting in an election or on any particular ballot measure.

Effect of Proposed Changes

The bill amends s. 720.3065, F.S, revising the list of actions that may constitute fraudulent voting activity. Under the bill, a person who performs any of the following actions relating to homeowners' association elections commits a misdemeanor of the first degree:[41]
- Knowingly aiding, abetting, or advising a person in the commission of a fraudulent voting activity related to association elections.
- Agreeing, conspiring, combining, or confederating with at least one other person to commit a fraudulent voting activity related to association elections.
- Having knowledge of a fraudulent voting activity related to association elections and giving any aid to the offender with intent that the offender avoid or escape detection, arrest, trial, or punishment.

These additional criminal prohibitions do not apply to a licensed attorney giving legal advice to a client.

Effective Date

The bill takes effect July 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:

None.

E. Other Constitutional Issues:

None.

[41] *Id.*

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: 468.4334, 468.4337, 720.303, 720.3033, 720.3035, 720.3065, and 720.3085.

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.

FOR CONSIDERATION By the Committee on Regulated Industries

580-02472A-24 20247044pb

A bill to be entitled

An act relating to homeowners' associations; amending s. 468.4334, F.S.; providing requirements for certain community association managers and community association management firms; amending s. 468.4337, F.S.; prohibiting the Regulatory Council of Community Association Managers from requiring more than a specified number of hours of continuing education annually for license renewal; requiring certain community association managers to biennially complete a specified number of hours of continuing education, including a specified number of hours on a specified subject; amending s. 720.303, F.S.; requiring an association to post such documents on its website or make such documents available through an application by a specified date; providing construction; requiring an association to provide certain information to parcel owners upon request; requiring an association to ensure certain information and records are not accessible on the website or application; providing that an association or its agent is not liable for the disclosure of certain information; requiring an association to adopt certain rules; providing criminal penalties for directors or members of the board or association and community association managers who knowingly, willfully, and repeatedly fail to maintain and make available specific records; defining the term "repeatedly"; providing criminal penalties for persons who knowingly and intentionally deface or destroy, or

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intentionally fail to maintain, specified accounting records; providing criminal penalties for persons who willfully and intentionally refuse to release certain records for specific purposes; requiring an association to provide or make available subpoenaed records within a certain timeframe; requiring an association to assist in a law enforcement investigation as allowed by law; requiring that certain associations use an independent certified public accountant to prepare their annual budgets; prohibiting an association and its officers, directors, employees, and agents from using a debit card issued in the name of the association; providing that persons who violate such prohibition commit theft under s. 812.014, F.S., punishable as provided in that section; amending s. 720.3033, F.S.; deleting a requirement that an officer or director certify in writing to the secretary of the association that they have read certain documents; requiring newly elected or appointed directors to complete certain educational curriculum approved by the department within a certain time period; requiring a director to retake the educational curriculum after a certain time period; providing subject matter for the educational curriculum; requiring certain directors of an association to annually complete a minimum amount of continuing education; requiring the department to adopt rules; providing criminal penalties for officers, directors, and managers of an association

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

who accept bribes or kickbacks; requiring a director or officer to be removed from office and a vacancy to be declared for certain actions taken; making technical changes; amending s. 720.3035, F.S.; requiring an association or any architectural, construction improvement, or other such committee of an association to apply and enforce certain standards in a specified manner with regard to all parcel owners; requiring such committees to provide certain written notice to a parcel owner if a certain request or application is denied; making technical changes; amending s. 720.3065, F.S.; providing criminal penalties for certain violations related to fraudulent voting activity related to association elections; making technical changes; amending s. 720.3085, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Section 468.4334, Florida Statutes, is amended to read:

468.4334 Professional practice standards; liability; requirements for community association managers, management firms.—

(1)(a) A community association manager or a community association management firm is deemed to act as agent on behalf of a community association as principal within the scope of authority authorized by a written contract or under this

chapter. A community association manager and a community association management firm shall discharge duties performed on behalf of the association as authorized by this chapter loyally, skillfully, and diligently; dealing honestly and fairly; in good faith; with care and full disclosure to the community association; accounting for all funds; and not charging unreasonable or excessive fees.

(b) If a community association manager or a community association management firm has a contract with a community association that is subject to s. 553.899, the community association manager or the community association management firm must comply with that section as directed by the board.

(2)(a) A contract between a community association and a community association manager or a contract between a community association and a community association management firm may provide that the community association indemnifies and holds harmless the community association manager and the community association management firm for ordinary negligence resulting from the manager or management firm's act or omission that is the result of an instruction or direction of the community association. This paragraph does not preclude any other negotiated indemnity or hold harmless provision.

(b) Indemnification under paragraph (a) may not cover any act or omission that violates a criminal law; derives an improper personal benefit, either directly or indirectly; is grossly negligent; or is reckless, is in bad faith, is with malicious purpose, or is in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(3) A community association manager or a community

association management firm that is authorized by contract to provide community association management services to a homeowners' association shall do all of the following:

(a) Attend, in person, at least one member meeting or board meeting of the homeowners' association annually.

(b) Provide to the members of the homeowners' association the name of and contact information for each community association manager or representative of the community association management firm assigned to the homeowners' association, the manager's or representative's hours of availability, and a summary of the duties for which the manager or representative is responsible. The homeowners' association shall also post this information on the association's website or the application required under s. 720.303(4)(b). The community association manager or community association management firm shall notify the homeowners' association and its members within 14 business days after any change to such information.

(c) Upon request, provide to any member a copy of the contract between the community association manager or community association management firm and the homeowners' association and keep such contract as an official record of the association.

Section 2. Section 468.4337, Florida Statutes, is amended to read:

468.4337 Continuing education.—The department may not renew a license until the licensee submits proof that the licensee has completed the requisite hours of continuing education. ~~No more than 10 hours of continuing education annually shall be required for renewal of a license.~~ The number of continuing education hours, criteria, and course content must ~~shall~~ be approved by

the council by rule. The council may not require more than 10 hours of continuing education annually for renewal of a license. A community association manager who provides community association management services to a homeowners' association must biennially complete at least 5 hours of continuing education that pertains specifically to homeowners' associations, 3 hours of which must relate to recordkeeping.

Section 3. Subsections (4) and (5) and paragraphs (a), (d), and (f) of subsection (6) of section 720.303, Florida Statutes, are amended, and subsection (13) is added to that section, to read:

720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.—

(4) OFFICIAL RECORDS.—

(a) The association shall maintain each of the following items, when applicable, for at least 7 years, unless the governing documents of the association require a longer period of time, which constitute the official records of the association:

1.~~(a)~~ Copies of any plans, specifications, permits, and warranties related to improvements constructed on the common areas or other property that the association is obligated to maintain, repair, or replace.

2.~~(b)~~ A copy of the bylaws of the association and of each amendment to the bylaws.

3.~~(c)~~ A copy of the articles of incorporation of the association and of each amendment thereto.

4.~~(d)~~ A copy of the declaration of covenants and a copy of

each amendment thereto.

5.~~(e)~~ A copy of the current rules of the homeowners' association.

6.~~(f)~~ The minutes of all meetings of the board of directors and of the members~~, which minutes must be retained for at least 7 years~~.

7.~~(g)~~ A current roster of all members and their designated mailing addresses and parcel identifications. A member's designated mailing address is the member's property address, unless the member has sent written notice to the association requesting that a different mailing address be used for all required notices. The association shall also maintain the e-mail addresses and the facsimile numbers designated by members for receiving notice sent by electronic transmission of those members consenting to receive notice by electronic transmission. A member's e-mail address is the e-mail address the member provided when consenting in writing to receiving notice by electronic transmission, unless the member has sent written notice to the association requesting that a different e-mail address be used for all required notices. The e-mail addresses and facsimile numbers provided by members to receive notice by electronic transmission must be removed from association records when the member revokes consent to receive notice by electronic transmission. However, the association is not liable for an erroneous disclosure of the e-mail address or the facsimile number for receiving electronic transmission of notices.

8.~~(h)~~ All of the association's insurance policies or a copy thereof~~, which policies must be retained for at least 7 years~~.

9.~~(i)~~ A current copy of all contracts to which the

association is a party, including, without limitation, any management agreement, lease, or other contract under which the association has any obligation or responsibility. Bids received by the association for work to be performed are ~~must also be~~ considered official records and must be kept for a period of 1 year.

10.~~(j)~~ The financial and accounting records of the association, kept according to good accounting practices. ~~All financial and accounting records must be maintained for a period of at least 7 years.~~ The financial and accounting records must include:

a.~~1.~~ Accurate, itemized, and detailed records of all receipts and expenditures.

b.~~2~~. A current account and a periodic statement of the account for each member, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.

c.~~3.~~ All tax returns, financial statements, and financial reports of the association.

d.~~4.~~ Any other records that identify, measure, record, or communicate financial information.

11.~~(k)~~ A copy of the disclosure summary described in s. 720.401(1).

12.~~(l)~~ Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by parcel owners, which must be maintained for at least 1 year after the date of the election, vote, or meeting.

13.~~(m)~~ All affirmative acknowledgments made pursuant to s. 720.3085(3)(c)3.

14.~~(n)~~ All other written records of the association not specifically included in this subsection which are related to the operation of the association.

(b)1. By January 1, 2025, an association shall post a current digital copy of the documents specified in paragraph (a) on its website or make such documents available through an application that can be downloaded on a mobile device.

2. The association's website or application must be accessible through the Internet and must contain a subpage, web portal, or other protected electronic location that is inaccessible to the general public and accessible only to parcel owners and employees of the association.

3. Upon written request by a parcel owner, the association must provide the parcel owner with a username and password and access to the protected sections of the association's website or application which contains the official documents of the association.

4. The association shall ensure that the information and records described in paragraph (5)(d), which are not allowed to be accessible to parcel owners, are not posted on the association's website or application. If protected information or information restricted from being accessible to parcel owners is included in documents that are required to be posted on the association's website or application, the association must ensure the information is redacted before posting the documents. Notwithstanding the foregoing, the association or its authorized agent is not liable for disclosing information that is protected

or restricted under paragraph (5)(d) unless such disclosure was made with a knowing or intentional disregard of the protected or restricted nature of such information.

(c) The association shall adopt written rules governing the method or policy by which the official records of the association are to be retained and for how long such records must be retained. Such information must be made available to the parcel owners through the association's website or application.

(5) INSPECTION AND COPYING OF RECORDS.—

(a) Unless otherwise provided by law or the governing documents of the association, the official records shall be maintained within the state for at least 7 years and must ~~shall~~ be made available to a parcel owner for inspection or photocopying within 45 miles of the community or within the county in which the association is located within 10 business days after receipt by the board or its designee of a written request. This subsection may be complied with by having a copy of the official records available for inspection or copying in the community or, at the option of the association, by making the records available to a parcel owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. If the association has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an

electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a fee to a member or his or her authorized representative for the use of a portable device.

(b) ~~(a)~~ The failure of an association to provide access to the records within 10 business days after receipt of a written request submitted by certified mail, return receipt requested, creates a rebuttable presumption that the association willfully failed to comply with this subsection.

(c) ~~(b)~~ A member who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply with this subsection. The minimum damages are to be $50 per calendar day up to 10 days, the calculation to begin on the 11th business day after receipt of the written request.

(d) Any director or member of the board or association or a community association manager who knowingly, willfully, and repeatedly violates paragraph (a) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and shall be deemed removed from office and a vacancy declared. For purposes of this paragraph, the term "repeatedly" means two or more violations within a 12-month period.

(e) Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to

the association or one or more of its members, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and shall be deemed removed from office and a vacancy declared.

(f) Any person who willfully and knowingly refuses to release or otherwise produce association records with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and shall be deemed removed from office and a vacancy declared.

(g) ~~(c)~~ The association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not require a parcel owner to demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records to less than one 8-hour business day per month. The association may impose fees to cover the costs of providing copies of the official records, including the costs of copying and the costs required for personnel to retrieve and copy the records if the time spent retrieving and copying the records exceeds one-half hour and if the personnel costs do not exceed $20 per hour. Personnel costs may not be charged for records requests that result in the copying of 25 or fewer pages. The association may charge up to 25 cents per page for copies made on the association's photocopier. If the association does not have a photocopy machine available where the records are kept, or if the records requested to be copied exceed 25 pages in length, the association may have copies made

by an outside duplicating service and may charge the actual cost of copying, as supported by the vendor invoice. The association shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members. Notwithstanding this paragraph, the following records are not accessible to members or parcel owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including, but not limited to, a record prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

2. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a parcel.

3. Information an association obtains in a gated community in connection with guests' visits to parcel owners or community residents.

4. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an association or management

company employee or budgetary or financial records that indicate the compensation paid to an association or management company employee.

5. Medical records of parcel owners or community residents.

6. Social security numbers, driver license numbers, credit card numbers, electronic mailing addresses, telephone numbers, facsimile numbers, emergency contact information, any addresses for a parcel owner other than as provided for association notice requirements, and other personal identifying information of any person, excluding the person's name, parcel designation, mailing address, and property address. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers of each parcel owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

7. Any electronic security measure that is used by the association to safeguard data, including passwords.

8. The software and operating system used by the association which allows the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

9. All affirmative acknowledgments made pursuant to s.

720.3085(3)(c)3.

(h) ~~(d)~~ The association or its authorized agent is not required to provide a prospective purchaser or lienholder with information about the residential subdivision or the association other than information or documents required by this chapter to be made available or disclosed. The association or its authorized agent may charge a reasonable fee to the prospective purchaser or lienholder or the current parcel owner or member for providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than that required by law, if the fee does not exceed $150 plus the reasonable cost of photocopying and any attorney fees incurred by the association in connection with the response.

(i) If an association receives a subpoena for records from a law enforcement agency, the association must provide a copy of such records or otherwise make the records available for inspection and copying to a law enforcement agency within 5 business days after receipt of the subpoena, unless otherwise specified by the law enforcement agency or subpoena. An association must assist a law enforcement agency in its investigation to the extent permissible by law.

(6) BUDGETS.—

(a)1. The association shall prepare an annual budget that sets out the annual operating expenses. The budget must reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year. The budget must set out separately all fees or charges paid for by the association for recreational amenities, whether owned by the association, the developer, or another person. The

association shall provide each member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the member. The copy must be provided to the member within the time limits set forth in subsection (5).

2. An association that has 2,500 members or more must use an independent certified public accountant to prepare the association's annual budget. Such association must also retain an attorney to advise the association and its members on procedural matters relating to the annual budget and to foster communications between the board and the members of the association. The independent certified public accountant or attorney required under this subparagraph may not be:

a. The community association manager or an employee of the community association management firm providing community association management services to the association; or

b. An officer or a director of the association or an immediate family member of an officer or a director.

(d) An association is deemed to have provided for reserve accounts upon the affirmative approval of a majority of the total voting interests of the association. Such approval may be obtained by vote of the members at a duly called meeting of the membership or by the written consent of a majority of the total voting interests of the association. The approval action of the membership must state that reserve accounts shall be provided for in the budget and must designate the components for which the reserve accounts are to be established. Upon approval by the membership, the board of directors or the independent certified public accountant, if required under paragraph (a), shall

include the required reserve accounts in the budget in the next fiscal year following the approval and each year thereafter. Once established as provided in this subsection, the reserve accounts must be funded or maintained or have their funding waived in the manner provided in paragraph (f).

(f) After one or more reserve accounts are established, the membership of the association, upon a majority vote at a meeting at which a quorum is present, may provide for no reserves or less reserves than required by this section. If a meeting of the parcel ~~unit~~ owners has been called to determine whether to waive or reduce the funding of reserves and such result is not achieved or a quorum is not present, the reserves as included in the budget go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves. Any vote taken pursuant to this subsection to waive or reduce reserves is applicable only to one budget year.

(13) DEBIT CARDS.—

(a) An association and its officers, directors, employees, and agents may not use a debit card issued in the name of the association, or billed directly to the association, for the payment of any association expense.

(b) A person who uses a debit card issued in the name of the association, or billed directly to the association, for any expense that is not a lawful obligation of the association commits theft under s. 812.014, and shall be deemed removed from office and a vacancy declared.

For the purposes of this subsection, the term "lawful obligation of the association" means an obligation that has been properly

preapproved by the board and is reflected in the meeting minutes or the written budget.

Section 4. Subsections (1), (3), and (4) of section 720.3033, Florida Statutes, are amended to read:

720.3033 Officers and directors.—

(1)(a) Within 90 days after being elected or appointed to the board, each ~~director shall certify in writing to the secretary of the association that he or she has read the association's declaration of covenants, articles of incorporation, bylaws, and current written rules and policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. Within 90 days after being elected or appointed to the board, in lieu of such written certification, the newly elected or appointed~~ director must ~~may~~ submit a certificate of having satisfactorily completed the educational curriculum administered by a department-approved, division-approved education provider.

1. The newly elected or appointed director must complete the department-approved education for newly elected or appointed directors within 90 days after being elected or appointed.

2. The certificate of completion is valid for a maximum of 4 years.

3. At least every 4 years, a director must complete the education specific to newly elected or appointed directors.

4. The department-approved educational curriculum specific to newly elected or appointed directors must include training relating to financial literacy and transparency, recordkeeping,

levying of fines, and notice and meeting requirements.

5. In addition to the educational curriculum specific to newly elected or appointed directors:

a. A director of an association that has fewer than 2,500 members must complete at least 4 hours of continuing education annually.

b. A director of an association that has 2,500 members or more must complete at least 8 hours of continuing education annually ~~within 1 year before or 90 days after the date of election or appointment~~.

(b) ~~The written certification or educational certificate is valid for the uninterrupted tenure of the director on the board.~~ A director who does not timely file the ~~written certification or~~ educational certificate is ~~shall be~~ suspended from the board until he or she complies with the requirement. The board may temporarily fill the vacancy during the period of suspension.

(c) The association shall retain each director's ~~written certification or~~ educational certificate for inspection by the members for 5 years after the director's election. However, the failure to have the written certification or educational certificate on file does not affect the validity of any board action.

(d) The department shall adopt rules to implement and administer the educational curriculum and continuing education requirements under this subsection.

(3) An officer, a director, or a manager may not solicit, offer to accept, or accept any thing or service of value for which consideration has not been provided for his or her benefit or for the benefit of a member of his or her immediate family

from any person providing or proposing to provide goods or services to the association. An officer, a director, or a manager who knowingly solicits, offers to accept, or accepts any thing or service of value or kickback for which consideration has not been provided for his or her own benefit or that of his or her immediate family from any person providing or proposing to provide goods or services to the association commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and is subject to monetary damages under s. 617.0834. If the board finds that an officer or a director has violated this subsection, the officer or director is deemed removed from office and a vacancy declared ~~board shall immediately remove the officer or director from office~~. The vacancy shall be filled according to law until the end of the officer's or director's term of office. However, an officer, a director, or a manager may accept food to be consumed at a business meeting with a value of less than $25 per individual or a service or good received in connection with trade fairs or education programs.

(4)(a) A director or an officer charged by information or indictment with any of the following crimes is deemed ~~must be~~ removed from office and a vacancy declared:

1. Forgery of a ballot envelope or voting certificate used in a homeowners' association election as provided in s. 831.01.

2. Theft or embezzlement involving the association's funds or property as provided in s. 812.014.

3. Destruction of or the refusal to allow inspection or copying of an official record of a homeowners' association which is accessible to parcel owners within the time periods required

by general law, in furtherance of any crime. Such act constitutes tampering with physical evidence as provided in s. 918.13.

4. Obstruction of justice as provided in chapter 843.

5. Any criminal violation under this chapter.

Section 5. Subsections (1) and (4) of section 720.3035, Florida Statutes, are amended to read:

720.3035 Architectural control covenants; parcel owner improvements; rights and privileges.—

(1) The authority of an association or any architectural, construction improvement, or other such similar committee of an association to review and approve plans and specifications for the location, size, type, or appearance of any structure or other improvement on a parcel, or to enforce standards for the external appearance of any structure or improvement located on a parcel, is ~~shall be~~ permitted only to the extent that the authority is specifically stated or reasonably inferred as to such location, size, type, or appearance in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants. An association or any architectural, construction improvement, or similar committee of an association must reasonably and equitably apply and enforce on all parcel owners the architectural and construction improvement standards authorized by the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants.

(4) Each parcel owner is ~~shall be~~ entitled to the rights and privileges set forth in the declaration of covenants or other published guidelines and standards authorized by the

declaration of covenants concerning the architectural use of the parcel, and the construction of permitted structures and improvements on the parcel and such rights and privileges may ~~shall~~ not be unreasonably infringed upon or impaired by the association or any architectural, construction improvement, or other such similar committee of the association. If the association or any architectural, construction improvement, or other such similar committee of the association denies a parcel owner's request or application for the construction of a structure or other improvement on a parcel, the association or committee must provide written notice to the parcel owner stating with specificity the rule or covenant on which the association or committee relied when denying the request or application and the specific aspect or part of the proposed improvement that does not conform to such rule or covenant. If the association or any architectural, construction improvement, or other such similar committee of the association should unreasonably, knowingly, and willfully infringe upon or impair the rights and privileges set forth in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants, the adversely affected parcel owner is ~~shall be~~ entitled to recover damages caused by such infringement or impairment, including any costs and reasonable attorney ~~attorney's~~ fees incurred in preserving or restoring the rights and privileges of the parcel owner set forth in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants.

Section 6. Section 720.3065, Florida Statutes, is amended to read:

720.3065 Fraudulent voting activities relating to association elections; penalties.—

(1) A person who engages in any ~~Each~~ of the following acts of ~~is a~~ fraudulent voting activity relating to association elections commits ~~and constitutes~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083:

(a) ~~(1)~~ Willfully and falsely swearing to or affirming an oath or affirmation, or willfully procuring another person to falsely swear to or affirm an oath or affirmation, in connection with or arising out of voting activities.

(b) ~~(2)~~ Perpetrating or attempting to perpetrate, or aiding in the perpetration of, fraud in connection with a vote cast, to be cast, or attempted to be cast.

(c) ~~(3)~~ Preventing a member from voting or preventing a member from voting as he or she intended by fraudulently changing or attempting to change a ballot, ballot envelope, vote, or voting certificate of the member.

(d) ~~(4)~~ Menacing, threatening, or using bribery or any other corruption to attempt, directly or indirectly, to influence, deceive, or deter a member when the member is voting.

(e) ~~(5)~~ Giving or promising, directly or indirectly, anything of value to another member with the intent to buy the vote of that member or another member or to corruptly influence that member or another member in casting his or her vote. This subsection does not apply to any food served which is to be consumed at an election rally or a meeting or to any item of nominal value which is used as an election advertisement, including a campaign message designed to be worn by a member.

(f) ~~(6)~~ Using or threatening to use, directly or indirectly,

force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel a member to vote or refrain from voting in an election or on a particular ballot measure.

(2) A person who engages in any of the following acts commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083:

(a) Knowingly aiding, abetting, or advising a person in the commission of a fraudulent voting activity related to association elections.

(b) Agreeing, conspiring, combining, or confederating with at least one other person to commit a fraudulent voting activity related to association elections.

(c) Having knowledge of a fraudulent voting activity related to association elections and giving any aid to the offender with intent that the offender avoid or escape detection, arrest, trial, or punishment.

This subsection does not apply to a licensed attorney giving legal advice to a client.

Section 7. Paragraph (c) of subsection (3) of section 720.3085, Florida Statutes, is amended to read:

720.3085 Payment for assessments; lien claims.—

(3) Assessments and installments on assessments that are not paid when due bear interest from the due date until paid at the rate provided in the declaration of covenants or the bylaws of the association, which rate may not exceed the rate allowed by law. If no rate is provided in the declaration or bylaws, interest accrues at the rate of 18 percent per year.

(c)1. If an association sends out an invoice for

assessments or a parcel's statement of the account described in s. 720.303(4)(a)10.b. ~~s. 720.303(4)(j)2.~~, the invoice for assessments or the parcel's statement of account must be delivered to the parcel owner by first-class United States mail or by electronic transmission to the parcel owner's e-mail address maintained in the association's official records.

2. Before changing the method of delivery for an invoice for assessments or the statement of the account, the association must deliver a written notice of such change to each parcel owner. The written notice must be delivered to the parcel owner at least 30 days before the association sends the invoice for assessments or the statement of the account by the new delivery method. The notice must be sent by first-class United States mail to the owner at his or her last address as reflected in the association's records and, if such address is not the parcel address, must be sent by first-class United States mail to the parcel address. Notice is deemed to have been delivered upon mailing as required by this subparagraph.

3. A parcel owner must affirmatively acknowledge his or her understanding that the association will change its method of delivery of the invoice for assessments or the statement of the account before the association may change the method of delivering an invoice for assessments or the statement of account. The parcel owner may make the affirmative acknowledgment electronically or in writing.

Section 8. This act shall take effect July 1, 2024.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SPB 7046
INTRODUCER:	For consideration by the Regulated Industries Committee
SUBJECT:	Homeowners' Associations
DATE:	January 26, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof		**Pre-meeting**

I. Summary:

SPB 7046 relates to the governance of homeowners' associations.

Regarding fines assessed in homeowners' associations, the bill:

- Allows association members to make a written request for a detailed accounting of any amounts owed to the association, and provides that, if the association fails to provide the accounting within 15 business days of a written request, any outstanding fines of the person who requested such accounting are waived if the fine is more than 30 days past due and the association did not give prior written notice of the fines.
- Increases the prohibition against fines of less $1,000 becoming a lien against the parcel to fines of less than $2,500.
- Requires the association to apply the payment for a fine to the fine amount before satisfying any other amounts due to the association, and provides that attorney fees and costs may not continue to accrue after the fine is paid.
- Prohibits certain fines from becoming a lien on a parcel, such as violations related to lawn, landscaping, grass maintenance, and traffic violations.
- Prohibits homeowners' associations from issuing fines or imposing a suspension based on:
  - Leaving garbage receptacles on the street for a certain time period; and
  - Leaving holiday decorations or lights up under certain circumstances.
- Prohibits homeowners' associations from preventing a homeowner from installing or displaying vegetable gardens and clotheslines in areas not visible from the frontage or adjacent parcels.

The bill prohibits homeowners' associations from retroactively applying a new rule or covenant against a parcel owner, except against a parcel owner who consented to the new covenant or rule and a parcel owner who acquires the title to the parcel after the effective date of the new covenant or rule.

The bill also provides that homeowners' associations may not prohibit a homeowner or their tenant, guest, or invitee from parking:

- A personal vehicle, including a pickup truck, in the property owner's driveway or in common parking lots.
- A work vehicle, which is not a commercial motor vehicle, in the property owner's driveway.
- Their assigned law enforcement vehicle on public roads or rights-of-way within the homeowners' association.

The bill provides the following criminal penalties related to homeowners' associations, including matters related to the official records of the association:

- Third degree felony for an officer, director, or manager of a condominium association to knowingly solicit, offer to accept, or accept any thing or service of value or kickback;
- First degree misdemeanor for knowingly or intentionally defacing or destroying required accounting records or knowingly and intentionally failing to create or maintain required accounting records, with the intent of causing harm to the association or one or more of its members;
- Second degree misdemeanor for any director or member of the board or association to knowingly, willfully, and repeatedly violate (two or more violations within a 12-month period) any specified requirements relating to inspection and copying of official records of an association; and
- Third degree felony to willfully and knowingly refuse to release or otherwise produce association records, with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape.

The bill also expands the current criminal prohibitions against fraudulent voting activity to provide that a person who performs any of the following actions commits a misdemeanor of the first degree:

- Knowingly aiding, abetting, or advising a person in the commission of a fraudulent voting activity related to association elections;
- Agreeing, conspiring, combining, or confederating with at least one other person to commit a fraudulent voting activity related to association elections; or
- Having knowledge of a fraudulent voting activity related to association elections and giving any aid to the offender with intent that the offender avoid or escape detection, arrest, trial, or punishment.

The bill provides that a person commits theft by use of a debit card, if the person uses a debit card issued in the name of, or billed directly to, an association for any expense that is not a lawful obligation of the association.

Under the bill, any officer or director charged with a criminal violation under ch. 720, F.S., is deemed removed from office and a vacancy declared. The bill also provides that directors and officers of a homeowners' association are subject to the general standards for directors outlined in the Florida Not For Profit Corporations Act, s. 617.0830, F.S.

The bill takes effect July 1, 2024.

II. Present Situation:

Homeowners' Associations

Chapter 720, F.S., provides statutory recognition to corporations that operate residential communities in Florida as well as procedures for operating homeowners' associations. These laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.[1]

A "homeowners' association" is defined as a:[2]

> Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.

Unless specifically stated to the contrary in the articles of incorporation, homeowners' associations are also governed by ch. 607, F.S., relating to for-profit corporations, or by ch. 617, F.S., relating to not-for-profit corporations.[3]

Homeowners' associations are administered by a board of directors that is elected by the members of the association.[4] The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include a recorded declaration of covenants, bylaws, articles of incorporation, and duly-adopted amendments to these documents.[5] The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.[6]

Unlike condominium associations, homeowners' associations are not regulated by a state agency. Section 720.302(2), F.S., expresses the legislative intent regarding the regulation of homeowners' associations:

> The Legislature recognizes that it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations. However, in accordance with s. 720.311, [F.S.,] the Legislature finds that homeowners' associations and their individual members will benefit from an expedited alternative process for resolution of election and recall disputes and presuit mediation of other disputes involving covenant enforcement and authorizes the department to hear, administer, and determine these disputes as more fully set forth in this chapter. Further, the Legislature

[1] *See* s. 720.302(1), F.S.
[2] Section 720.301(9), F.S.
[3] Section 720.302(5), F.S.
[4] *See* ss. 720.303 and 720.307, F.S.
[5] *See* ss. 720.301 and 720.303, F.S.
[6] Section 720.303(1), F.S.

> recognizes that certain contract rights have been created for the benefit of homeowners' associations and members thereof before the effective date of this act and that ss. 720.301-720.407[, F.S.], are not intended to impair such contract rights, including, but not limited to, the rights of the developer to complete the community as initially contemplated.

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business the Professional Regulation has limited regulatory authority over homeowners' associations. The division's authority is limited to the arbitration of recall election disputes.[7]

The governing documents of a homeowners' association are:[8]

- The recorded declaration of covenants for a community and all duly adopted and recorded amendments, supplements, and recorded exhibits thereto; and
- The articles of incorporation and bylaws of the homeowners' association and any duly adopted amendments thereto.

Section 720.301(3), F.S., defines a "community" as the real property that is or will be subject to a declaration of covenants which is recorded in the county where the property is located. The term "includes all real property, including undeveloped phases, that is or was the subject of a development-of-regional-impact development order, together with any approved modification thereto."

Other Relevant Topics

For ease of reference to each of the topics addressed in the bill, the Present Situation for each topic will be described in Section III of this analysis, followed immediately by an associated section detailing the Effect of Proposed Changes.

III. Effect of Proposed Changes:

Official Records – Homeowners' Associations

Present Situation

Florida law specifies the official records that homeowners' associations must maintain.[9] Generally, the official records must be maintained in Florida for at least seven years.[10] Certain types of these records must be accessible to the members of an association.[11] Additionally, certain records are protected or restricted from disclosure to members, such as records protected by attorney-client privilege, personnel records, and personal identifying records of owners.[12]

[7] Section 720.306(9)(c), F.S.
[8] Section 720.301(8), F.S.
[9] *See* s. 720.303(5), F.S.
[10] *Id.*
[11] *Id.*
[12] *Id.*

The official records that the association must make available to the members for inspection and copying include, in relevant part, a copy of the:[13]

- Bylaws of the association and of each amendment to the bylaws.
- Articles of incorporation of the association and of each amendment thereto.
- Declaration of covenants and a copy of each amendment thereto.
- Current rules of the homeowners' association.

Effect of Proposed Changes

The bill amends s. 720.303(5), F.S., to provide the following additional criminal prohibitions and penalties for violations related to the official records:

- Second degree misdemeanor[14] for any director or member of the board or association to knowingly, willfully, and repeatedly violate (two or more violations within a 12-month period) any specified requirements relating to the inspection and copying of official records of an association;
- First degree misdemeanor[15] to knowingly or intentionally deface or destroy required accounting records or knowingly and intentionally fail to create or maintain required accounting records, with the intent of causing harm to the association or one or more of its members; and
- Third degree felony[16] to willfully and knowingly refuse to release or otherwise produce association records, with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape.

The bill provides that officers and directors charged with a criminal violation created in the bill are deemed removed from office and a vacancy declared.

Financial Accounting – Homeowners' Associations

Present Situation

Every homeowners' association is required to prepare an annual budget that sets out the annual operating expenses. The budget must:[17]

- Reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year.
- Set out separately all fees or charges paid for by the association for recreational amenities, whether owned by the association, the developer, or another person.

[13] Section 720.303(4), F.S.
[14] Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S., provides that a misdemeanor of the second degree is punishable by a fine not to exceed $500.
[15] Section 775.082, F.S., provides that a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year. Section 775.083, F.S., provides that a misdemeanor of the first degree is punishable by a fine not to exceed $1,000.
[16] Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed $5,000.
[17] Section 720.303(6)(a), F.S.

The homeowners' association must provide each member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the member. In addition to annual operating expenses, the budget may include reserve accounts for capital expenditures and deferred maintenance for which the homeowners' association is responsible.[18] Depending on the association's governing documents, an association's budget may provide for reserve accounts.[19] Upon approval by the membership, the board of directors must include the required reserve accounts in the budget in the next fiscal year following the approval and each year thereafter.[20]

The financial and accounting records of a homeowners' association are required official records and must be maintained by the association and made available to its members for inspection and copying.[21] Additionally, the homeowners' association is required to maintain the current account and a periodic statement of the account for each member, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due. These records must also be available upon written request for a member of the association to inspect and copy.

Effect of Proposed Changes

The bill creates s. 720.303(14), F.S., to provide that a parcel owner or any occupant, licensee, or invitee of the parcel owner may, at any time, make a written request to the board for a detailed accounting of any amounts he or she owes to the association, and the board must provide such information within 15 business days after receipt of the written request. After a person makes a written request for a detailed accounting, he or she may not ask for another detailed accounting for 90 calendar days.

Under the bill, the board's failure to respond to a written request for a detailed accounting constitutes a complete waiver of any outstanding fines of the person who requested such accounting which are more than 30 days past due and the association did not give prior written notice of the fines.

Debit Cards – Homeowners' Associations

Present Situation

Section 718.111(15)(a), F.S., prohibits persons from using a debit card issued in the name of, or billed directly to, a condominium association for any expense. Section 718.111(15)(b), F.S., provides that any person using an association debit card for an unlawful expense may be prosecuted for credit card fraud under s. 718.61, F.S.

[18] Section 720.303(6)(b), F.S.
[19] Section 720.303(6)(d), F.S.
[20] Section 720.303(6)(c)(1), F.S.
[21] Section 720.303(4), F.S.

Effect of Proposed Changes

The bill creates s. 720303(13), F.S., to prohibit persons to use a debit card issued in the name of, or billed directly to, an association for any expense that is not a lawful obligation of the association.

Under the bill, a person commits theft[22] by use of a debit card, if the person uses a debit card issued in the name of, or billed directly to, an association for any expense that is not a lawful obligation of the association. The bill defines the term "lawful obligation of the association" as an obligation that has been properly preapproved by the board and is reflected in the meeting minutes or the written budget.

Under the bill, a person who violates this prohibition is deemed removed from office and a vacancy declared.

Officers and Directors - Fiduciary Duty - Homeowners' Associations

Present Situation

The officers and directors of a homeowners' association have a fiduciary relationship to the members who are served by the association.[23] Homeowners' associations created under ch. 720, F.S., are corporations governed by and subject to part I of ch. 607, F.S., relating to the Florida Business Corporation Act, if the association was incorporated under that part, or to ch. 617, F.S., relating to corporations not for profit, if the association was incorporated under that chapter.

Section 617.0830, F.S., provides general standards for directors of a non-profit corporation, and also specifies when a director is not personally liable for actions he or she takes or fails to take as a director. A director must discharge his or her duties as a director, including his or her duties as a member of a committee, in good faith, with the care an ordinarily prudent person in a similar position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the best interests of the corporation.[24] A director is not liable for any action taken as a director, or any failure to take any action, if the duties of office are performed in compliance with s. 617.0830, F.S.[25]

Kickbacks Prohibition

An officer, a director, or a manager who knowingly solicits, offers to accept, or accepts any thing or service of value or kickback for which consideration has not been provided for his or her own benefit or that of his or her immediate family from any person providing or proposing to provide goods or services to the association is subject to monetary damages. If the board finds that an

[22] Theft is generally punishable based upon the value of the property stolen. Petit theft is generally a second degree misdemeanor or first degree misdemeanor. Section 812.014(3)(a) and (b), F.S. Grand theft is generally a third degree felony, second degree felony, or first degree felony. Section 812.014(1)(a)-(c), F.S. A second degree felony is punishable by up to 15 years in state prison and a fine of up to $10,000. Sections 775.082 and 775.083, F.S. A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to $10,000. *Id.*
[23] Section 720.303(1), F.S.
[24] Section 617.0830(1), F.S.
[25] Section 617.0830(4), F.S.

officer or director has violated this condition, the board must immediately remove the officer or director from office.[26]

The vacancy must be filled according to law until the end of the director's term of office.

However, an officer, director, or manager may accept food to be consumed at a business meeting with a value of less than $25 per individual or a service or good received in connection with trade fairs or education programs.[27]

Removal from Office for Certain Violations

Section 720.3033(4), F.S., requires a board to immediately remove from office any officer or director who is charged with:

- Forgery of a ballot envelope or voting certificate used in a homeowners' association election punishable as a felony crime as provided in s. 831.01, F.S.;[28]
- Felony theft or embezzlement involving association funds;
- Destruction of or refusal to allow inspection or copying of an official record of a homeowners' association that is accessible to parcel owners within the time periods required by general law in furtherance of any crime is punishable as tampering with physical evidence as provided in s. 918.13, F.S., or as obstruction of justice as provided in ch. 843, F.S.; or
- Obstruction of justice.

A vacancy must be filled as provided by s. 720.306(9), F.S., until the end of the officer's or director's period of suspension or the end of his or her term of office, whichever occurs first.[29]

If a criminal charge is pending against an officer or director, he or she may not be appointed or elected to a position as an officer or a director of any association and may not have access to the official records of any association, except pursuant to a court order. An officer or director must be reinstated for the remainder of his or her term of office if the charges are resolved without a finding of guilt.

Effect of Proposed Changes

The bill amends s. 720.303(1), F.S., relating to the powers and duties of homeowners' associations, to provide that the officers and directors of a homeowners' association are subject to s. 617.0830, F.S.

The bill amends s. 720.3033(3), F.S., to provide that an officer, director, or manager of an association who knowingly solicits, offers to accepts, or accepts any thing or service of value or kickback for which consideration has not been provided for his or her own benefit or that of his

[26] Section 720.303(3), F.S.
[27] Section 720.3033(3), F.S.
[28] Section 831.01, F.S., relates to the crime of forgery. A forgery violation is a felony of the third degree. Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed $5,000.
[29] Section 720.306(9), F.S., relates to elections and vacancies on a board. It also prohibits convicted felons, including persons who've been convicted in another jurisdiction which would be considered a felony crime in Florida, of serving on a board for at least five years as of the date the person seeks election to the board, unless their civil rights have been restored.

or her immediate family, from any person providing or proposing to provide goods or services to the association commits a third degree felony.[30] If the board finds that an officer or director has violated this prohibition, the officer or director is deemed removed from office and a vacancy declared.

The bill also amends s. 720.3033(4), F.S., to require the removal from office and a vacancy declared if an officer or director is charged by information or indictment with any criminal violation under ch. 720, F.S.

Architectural Control – Homeowners' Associations

Present Situation

If the governing documents allow, a homeowners' association or its architectural, construction improvement, or other similar committee (committee) may:[31]

- Require a review and approval of plans and specifications for the location, size, type, or appearance of any structure or other improvement on a parcel before a parcel owner makes such improvement.
- Enforce standards for the external appearance of any structure or improvement located on a parcel.

The association or its committee may not restrict the right of a parcel owner to select from any options given in the governing documents for the use of material, the size of the structure or improvement, the design of the structure or improvement, or the location of the structure or improvement on the parcel.[32]

Each parcel owner is entitled to the rights and privileges set forth in the governing documents concerning the architectural use of the parcel, and the construction of permitted structures and improvements on the parcel and such rights and privileges may not be unreasonably infringed upon or impaired by the association or its committee. If the association or its committee unreasonably, knowingly, and willfully infringes upon or impairs such rights and privileges, the adversely affected parcel owner may recover damages, including any costs and reasonable attorney's fees.[33]

A homeowners' association or committee may not enforce any policy or restriction that is inconsistent with the rights and privileges of a parcel owner set forth in the governing documents, whether uniformly applied or not.[34]

Effect of Proposed Changes

The bill amends s. 720.3035(1), F.S., to prohibit homeowners' associations and their committees from enforcing or adopting a covenant, rule, or guideline that:

[30] Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed $5,000.
[31] Section 720.3035(1), F.S.
[32] Section 720. 3035(2), F.S.
[33] Section 720.3035(4), F.S.
[34] Section 720.3035(5), F.S.

- Limits or places requirements on the interior of a structure that is not visible from the parcel's frontage or an adjacent parcel.
- Requires the review and approval of plans and specifications for a central air-conditioning, refrigeration, heating, or ventilating system by the association or any architectural, construction improvement, or other such similar committee of an association, if such system is not visible from the parcel's frontage and is substantially similar to a system that is approved or recommended by the association or a committee thereof.

Prohibited Clauses in Governing Documents

Present Situation

Under current Florida law, homeowners' associations may not restrict the installation, display and storage of any items on a parcel that are not visible from the parcel's frontage or an adjacent parcel, unless the item is prohibited by general law or local ordinance. Such items include, but are not limited to artificial turf, boats, flags of specified sizes, flag poles, and recreational vehicles.[35]

Homeowners' association's governing documents may not prohibit:

- A homeowner from displaying up to two portable, removable flags in a respectful manner. However, all flags must be displayed in a respectful manner consistent with the requirements for the United States flag.[36]
- Any property owner from implementing Florida-friendly landscaping[37] on his or her land or create any requirement or limitation in conflict with any provision of part II of ch. 373, F.S., relating to the permitting of consumptive uses of water or a water shortage order, other order, consumptive use permit, or rule adopted or issued pursuant to part II of ch. 373, F.S.

Effect of Proposed Changes

The bill amends s. 720.3045, F.S., to expand the list of items that homeowners' associations are prohibited from preventing homeowners from installing, displaying, or storing on their property to include vegetable gardens and clotheslines in areas not visible from the frontage or adjacent parcels.

The bill also amends s. 720.3075(3), F.S., to provide that the homeowners' association's governing documents cannot prohibit a property owner, a guest, tenant, or invitee from parking his or her:

- Personal vehicle, including a pickup truck in the property owner's driveway or in common parking lots.
- Work vehicle, which is not a commercial motor vehicle,[38] in the property owner's driveway.

[35] Section 720.3045, F.S.
[36] Section 720.3075(3), F.S.
[37] *See* s. 373.185(1)(b), F.S., defining the term "Florida-friendly landscaping.
[38] Section 320.01(25), F.S., defines the term "commercial motor vehicle" to mean "any vehicle which is not owned or operated by a governmental entity, which uses special fuel or motor fuel on the public highways, and which has a gross vehicle weight of 26,001 pounds or more, or has three or more axles regardless of weight, or is used in combination when the weight of such combination exceeds 26,001 pounds gross vehicle weight."

In addition, the governing documents may not prohibit a property owner from:

- Inviting, hiring, or allowing entry to a contractor or worker on the owner's parcel solely because the contractor or worker is not on a preferred vendor list of the homeowners' association.
- Inviting, hiring, or allowing entry to a contractor or worker on his or her parcel solely because the contractor or worker does not have a professional or an occupational license. The homeowners' association may not require a contractor or worker to present or prove possession of a professional or an occupational license to be allowed entry onto a property owner's parcel.
- Installing code-compliant hurricane protection or home hardening, such as hurricane shutters, impact glass, code-compliant windows or doors, or other similar protection that complies with or exceeds the applicable building code.
- Installing a metal roof, artificial turf, vegetable garden, or clotheslines or other energy-efficient device.

The bill also provides that the association's documents may not limit landscaping to grass-only or grass-majority lawns, or issue a mandatory watering schedule to property owners. However, the association may generally require that a property owner keep any lawn, landscaping, and grass on the property owner's parcel well-maintained.

Fines

Present Situation

Parcel owners, tenants, and guests must comply with the homeowners' association's declaration, bylaws, and rules. Homeowners' associations may levy fines against or suspend the right of a parcel owner, occupant, or a guest of an owner or occupant, to use the common areas[39] or any other association property for failing to comply with any provision in the association's governing documents. A suspension for failing to comply with an association's declaration, bylaws, or rules may not be for an unreasonable amount of time.[40]

Homeowners' associations may levy reasonable fines for violations of the declaration, bylaws, or reasonable rules of the association. No fine may exceed $100 per violation, although a fine may be levied on the basis of each day of a continuing violation provided that fine does not exceed $1,000 in the aggregate. However, a fine may exceed $1,000 if the association's governing documents authorize such a fine. A fine that is less than $1,000 may not become a lien on the property.[41]

Before a homeowners' association levies a fine or a suspension, it must give the person receiving the fine or suspension at least 14 days' notice of an opportunity for a hearing. Notice must be provided at the designated mailing or e-mail address in the association's official records. A hearing must be provided before a committee of at least three members appointed by the board

[39] This does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may not prohibit an owner or tenant of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park. Section 720.305(2)(a), F.S.
[40] Section 720.305(2), F.S.
[41] Section 720.305(2), F.S.

who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. The notice must include a description of the alleged violation, the specific action required to cure such violation, and the date and location of the hearing. A parcel owner has the right to attend a hearing by telephone or other electronic means.

The committee must approve the fine or suspension by majority vote or the proposed fine or suspension may not be imposed.[42] After the hearing, the committee must provide written notice to the parcel owner at his or her designated mailing or e-mail address in the association's official records, of the committee's findings related to the violation, including any applicable fines or suspensions that the committee approved or rejected, and how the parcel owner or any occupant, licensee, or invitee of the parcel owner may cure the violation, if applicable.[43]

If the proposed fine or suspension levied by the board is approved by the committee by a majority vote, the fine payment is due five days after notice of the approved fine is provided to the parcel owner and, if applicable, to any occupant, licensee, or invitee of the parcel owner. Written notice of the fine or suspension must also be provided to the person by mail or hand delivery.[44]

If a person is more than 90 days delinquent in paying any fee, fine, or other monetary obligation due to the homeowners' association, the association may suspend the rights of the member, or the member's tenant, guest, or invitee, to use common areas and facilities until it is paid in full.[45]

A homeowners' association may suspend the voting rights of a parcel or member for the nonpayment of any fee, fine, or other monetary obligation due to the association that is more than 90 days delinquent. The suspension ends upon full payment of all obligations currently due or overdue to the association.[46]

The notice and hearing requirements for levying fines do not apply to a suspension imposed for delinquent payment.[47]

All suspensions imposed for delinquent payment of any fee, fine, or other monetary obligation due to the homeowners' association must be approved at a properly noticed board meeting. Upon approval, the association must send written notice to the parcel owner and, if applicable, the parcel's occupant, licensee, or invitee by mail or hand delivery to the parcel owner's designated mailing or e-mail address in the association's official records.[48]

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[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] A suspension may not prohibit an owner or tenant of a parcel from having access to a portion of common areas used to provide access or utility services to the parcel, or from having vehicular and pedestrian ingress to and egress from the parcel. Section 720.305(4), F.S.
[46] Section 720.305(4), F.S.
[47] Section 720.305(3), (4), F.S.
[48] Section 720.305(5), F.S.

Effect of Proposed Changes

The bill amends s. 720.305(2), F.S., to provide that a fine of less than $2,500 may not become a lien against the parcel.

The bill amends s. 720.305(2)(b), F.S., to require that the 14-day notice of the parcel owner's right to a hearing must be in writing, and requires that the hearing must be held within 30 days after issuance of the notice. The bill allows the committee to hold the hearing by telephone or other electronic means. If the hearing is held by telephone or other electronic means, the notice must include the access information required to attend the telephonic conference or other electronic means.

The bill amends s. 720.305(2)(d), F.S., to require that the committee's written notice of its findings related to the violation must be provided to the parcel owner, or to any occupant, licensee, or invitee of the parcel owner who is subject to the fine or suspension, within seven days after the hearing. If applicable, the written notice of the committee's findings must provide instructions on how a suspension is to be fulfilled, or the date by which a fine must be paid. The written notice must also state the date the fine is due, which must be at least 30 days after the notice is delivered.

Under the bill, the homeowners' association must apply the payment for a fine to the fine amount before satisfying any other amounts due to the association, and attorney's fees and costs may not continue to accrue after the fine is paid.

The bill creates s. 720.305(7), F.S., to prohibit homeowners' associations filing a lien on the parcel based on fines relating to lawn, landscaping, or grass maintenance. In addition, a fine based on a traffic infraction may not become a lien on the parcel.

The bill creates s. 720.305(8), F.S., to prohibit homeowners' associations from issuing a fine or suspension for:

- Leaving garbage receptacles at the curb or end of the driveway less than 24 hours before or after the designated garbage collection day or time.
- Leaving holiday decorations or lights up longer than indicated in the governing documents, unless such decorations or lights are left up for longer than one week after the association provides written notice of the violation to the parcel owner.

Section 720.305(9), F.S., prohibits associations from retroactively applying a new rule or covenant against a parcel owner, except against a parcel owner who consented to the new covenant or rule and a parcel owner who acquires title to the parcel after the effective date of the new covenant or rule.

Fraudulent Voting Activities

Present Situation

Section 720.3065, F.S, provides that each of the following actions relating to homeowners' association elections is a fraudulent voting activity and constitutes a misdemeanor of the first degree:[49]

- Willfully and falsely swearing to or affirming an oath or affirmation, or willfully procuring another person to falsely swear to or affirm an oath or affirmation, in connection with or arising out of voting activities.
- Perpetrating or attempting to perpetrate, or aiding in the perpetration of, fraud in connection with a vote cast, to be cast, or attempted to be cast.
- Preventing a member from voting, or preventing a member from voting as he or she intended, by fraudulently changing or attempting to change a ballot, ballot envelope, vote, or voting certificate of the member.
- Menacing, threatening, or using bribery or any other corruption to attempt, directly or indirectly, to influence, deceive, or deter a member when voting.
- Giving or promising, directly or indirectly, anything of value to another member with the intent to buy the vote of that member or another member or to corruptly influence that member or another member in casting his or her vote. This provision does not apply to any food served which is to be consumed at an election rally or a meeting or to any item of nominal value which is used as an election advertisement, including a campaign message designed to be worn by a member.
- Using or threatening to use, either directly or indirectly, force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel a member to vote or refrain from voting in an election or on any particular ballot measure.

Effect of Proposed Changes

The bill amends s. 720.3065, F.S, revising the list of actions that may constitute fraudulent voting activity. Under the bill, a person who performs any of the following actions relating to homeowners' association elections commits a misdemeanor of the first degree:[50]

- Knowingly aiding, abetting, or advising a person in the commission of a fraudulent voting activity related to association elections.
- Agreeing, conspiring, combining, or confederating with at least one other person to commit a fraudulent voting activity related to association elections.
- Having knowledge of a fraudulent voting activity related to association elections and giving any aid to the offender with intent that the offender avoid or escape detection, arrest, trial, or punishment.

These additional criminal prohibitions do not apply to a licensed attorney giving legal advice to a client.

[49] Section 775.082, F.S., provides that a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year. Section 775.083, F.S. provides that a misdemeanor of the first degree is punishable by a fine not to exceed $1,000.
[50] *Id.*

Law Enforcement Vehicles

Present Situation

Section 720.318, F.S., prohibits homeowners' associations from preventing a law enforcement officer[51] who is a parcel owner, or who is a tenant, guest, or invitee of a parcel owner, from parking his or her assigned law enforcement vehicle where the parcel owner, or the tenant, guest, or invitee of the parcel owner has a right to park.[52]

Effect of Proposed Changes

The bill amends s. 720.318, F.S., to provide that homeowners or their tenant, guest, or invitee may park their assigned law enforcement vehicle on public roads or rights-of-way within the homeowners' association.

Effective Date

The bill takes effect July 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:

None.

E. Other Constitutional Issues:

The governing documents of a homeowners' association are a contract. To the extent this bill affects previously recorded governing documents by prohibiting the enforcement of governing documents, the bill may unconstitutionally impair a contract, under s. 10, Art. I, Fla. Const., which provides in relevant part, "No… law impairing the obligation of contracts shall be passed." This provision empowers the courts to strike laws that retroactively burden or alter contractual relations. Article I, s. 10 of the United States Constitution provides in relevant part that "No state shall . . . pass any . . . law impairing the obligation of contracts."

[51] *See* s. 943.10(1), F.S., defining the term "law enforcement officer."
[52] Section 720.318, F.S.

In *Pomponio v. Claridge of Pompano Condominium, Inc*.,[53] the Florida Supreme Court stated that some degree of flexibility has developed over the last century in interpreting the contract clause in order to ameliorate the harshness of the original rigid application used by the United States Supreme Court. The court set forth several factors in balancing whether a state law operates as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear. The court stated that if there is minimal alteration of contractual obligations the inquiry can end at its first stage. Severe impairment can push the inquiry to a careful examination of the nature and purpose of the state legislation. The factors to be considered are:

- Was the law enacted to deal with a broad, generalized economic or social problem;
- Does the law operate in an area that was already subject to state regulation at the time the contract was entered into; and
- Is the law's effect on the contractual relationships temporary or is it severe, permanent, immediate, and retroactive.[54]

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: 720.303, 720.3033, 720.3035, 720.3045, 720.305, 720.3065, 720.3075, 720.3085, and 720.318.

[53] *Pomponio v. Claridge of Pompano Condominium, Inc*., 378 So. 2d 774, 776 (Fla. 1979).
[54] *Id*. at 779.

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.

FOR CONSIDERATION By the Committee on Regulated Industries

A bill to be entitled

An act relating to homeowners' associations; amending s. 720.303, F.S.; conforming a cross-reference; providing criminal penalties for directors or members of the board or association who fail to maintain and make available specified records; defining the term "repeatedly"; providing criminal penalties for persons who knowingly and intentionally deface, destroy, or fail to maintain specified accounting records; providing criminal penalties for persons who willfully and intentionally refuse to release certain records for specific purposes; authorizing a parcel owner or any occupant, licensee, or invitee of the parcel owner to make a written request to the board for a detailed accounting of any debts owed to the association; requiring the board to provide such information within a specified timeframe; prohibiting subsequent requests from being made within a specified period after the initial request; requiring the board to waive all outstanding fines if it fails to provide a detailed accounting within a specified timeframe when such fines owed are past due more than a specified number of days; prohibiting an association and its officers, directors, employees, and agents from using a debit card issued in the name of the association for specified purposes; defining the term "lawful obligation of the association"; requiring the board to provide a detailed accounting within a specified timeframe upon written request by certain persons;

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prohibiting such persons from making more than one request within a specified time period; requiring the board to waive certain outstanding fines owed to the association by such persons if the board fails to respond within a specified timeframe; amending s. 720.3033, F.S.; providing criminal penalties for certain actions by an officer, a director, or a manager of an association; requiring that a director or an officer be removed from office and a vacancy declared for certain actions taken; amending s. 720.3035, F.S.; prohibiting an association or any architectural, construction improvement, or other such similar committee of an association from enforcing or adopting certain covenants, rules, or guidelines; requiring an association or any architectural, construction improvement, or other such similar committee of an association to provide a parcel owner with an appeals process under certain circumstances; making technical changes; amending s. 720.3045, F.S.; prohibiting a homeowners' association from restricting residents from installing certain vegetable gardens and clotheslines under certain circumstances; amending s. 720.305, F.S.; revising the fines prohibited from being aggregated to create a lien against a parcel; requiring that certain notices be provided to parcel owners; requiring that certain hearings be held within a specified timeframe; authorizing that such hearings may be conducted by telephone or other electronic means; providing a specified timeframe after a hearing

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

for a committee to send a parcel owner certain information related to a violation; requiring the committee to provide written notice to the parcel owner within a specified timeframe after the hearing; revising what information must be included in such written notice; requiring that the date the committee sets for payment of a fine be a specified time after delivery of the required notice to the parcel owner; deleting a specified timeframe that a fine is due after notice to the parcel owner is mailed or hand delivered; specifying the priority of applying payments made by a parcel owner to an association; prohibiting the accrual of attorney fees and costs before a specified time; prohibiting attorney fees and costs from continuing to accrue after a fine is paid; prohibiting certain fines levied to become a lien on the parcel; authorizing certain persons to request a hearing to dispute certain fees and costs; prohibiting an association from retroactively applying a fine or imposing a suspension for certain actions; providing an exception; prohibiting an association from enforcing certain rules or covenants under certain circumstances; conforming a cross-reference; amending s. 720.3065, F.S.; providing criminal penalties for certain voting violations; providing applicability; making technical changes; amending s. 720.3075, F.S.; prohibiting certain homeowners' association documents from precluding property owners or tenants, guests, or invitees from taking certain actions; prohibiting

homeowners' association documents from limiting or requiring certain actions; amending s. 720.3085, F.S.; deleting provisions relating to the priority of certain liens, mortgages, or certified judgments; amending s. 720.318, F.S.; prohibiting an association from prohibiting certain law enforcement officers from parking their assigned vehicles on public roads and rights-of-way; providing an effective date.

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

Section 1. Subsections (1) and (5) of section 720.303, Florida Statutes, are amended, and subsections (13) and (14) are added to that section, to read:

720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.—

(1) POWERS AND DUTIES.—An association that ~~which~~ operates a community as defined in s. 720.301, must be operated by an association that is a Florida corporation. After October 1, 1995, the association must be incorporated and the initial governing documents must be recorded in the official records of the county in which the community is located. An association may operate more than one community. The officers and directors of an association are subject to s. 617.0830 and have a fiduciary relationship to the members who are served by the association. The powers and duties of an association include those set forth in this chapter and, except as expressly limited or restricted in this chapter, those set forth in the governing documents.

After control of the association is obtained by members other than the developer, the association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all members concerning matters of common interest to the members, including, but not limited to, the common areas; roof or structural components of a building, or other improvements for which the association is responsible; mechanical, electrical, or plumbing elements serving an improvement or building for which the association is responsible; representations of the developer pertaining to any existing or proposed commonly used facility; and protesting ad valorem taxes on commonly used facilities. The association may defend actions in eminent domain or bring inverse condemnation actions. Before commencing litigation against any party in the name of the association involving amounts in controversy in excess of $100,000, the association must obtain the affirmative approval of a majority of the voting interests at a meeting of the membership at which a quorum has been attained. This subsection does not limit any statutory or common-law right of any individual member or class of members to bring any action without participation by the association. A member does not have authority to act for the association by virtue of being a member. An association may have more than one class of members and may issue membership certificates. An association of 15 or fewer parcel owners may enforce only the requirements of those deed restrictions established prior to the purchase of each parcel upon an affected parcel owner or owners.

(5) INSPECTION AND COPYING OF RECORDS.—

(a) The official records shall be maintained within the

state for at least 7 years and shall be made available to a parcel owner for inspection or photocopying within 45 miles of the community or within the county in which the association is located within 10 business days after receipt by the board or its designee of a written request. This subsection may be complied with by having a copy of the official records available for inspection or copying in the community or, at the option of the association, by making the records available to a parcel owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. If the association has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a fee to a member or his or her authorized representative for the use of a portable device.

(b) ~~(a)~~ The failure of an association to provide access to the records within 10 business days after receipt of a written request submitted by certified mail, return receipt requested, creates a rebuttable presumption that the association willfully failed to comply with this subsection.

(c) ~~(b)~~ A member who is denied access to official records is

entitled to the actual damages or minimum damages for the association's willful failure to comply with this subsection. The minimum damages are to be $50 per calendar day up to 10 days, the calculation to begin on the 11th business day after receipt of the written request.

(d) Any director or member of the board or association or a community association manager who knowingly, willfully, and repeatedly violates paragraph (a) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and shall be deemed removed from office and a vacancy declared. For purposes of this paragraph, the term "repeatedly" means two or more violations within a 12-month period.

(e) Any person who knowingly or intentionally defaces or destroys accounting records during a period in which such accounting records are required by this chapter to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required by this chapter to be created or maintained, with the intent of causing harm to the association or one or more of its members, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. If the person who commits this offense is an association board member, director, or community association manager, he or she shall be deemed removed from office and a vacancy declared.

(f) Any person who willfully and intentionally refuses to release or otherwise produce association records with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape, commits a felony of the third degree,

punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and shall be deemed removed from office and a vacancy declared.

(g) ~~(c)~~ The association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not require a parcel owner to demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records to less than one 8-hour business day per month. The association may impose fees to cover the costs of providing copies of the official records, including the costs of copying and the costs required for personnel to retrieve and copy the records if the time spent retrieving and copying the records exceeds one-half hour and if the personnel costs do not exceed $20 per hour. Personnel costs may not be charged for records requests that result in the copying of 25 or fewer pages. The association may charge up to 25 cents per page for copies made on the association's photocopier. If the association does not have a photocopy machine available where the records are kept, or if the records requested to be copied exceed 25 pages in length, the association may have copies made by an outside duplicating service and may charge the actual cost of copying, as supported by the vendor invoice. The association shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members. Notwithstanding this paragraph, the following records are not accessible to members or parcel owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-

product privilege, including, but not limited to, a record prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

2. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a parcel.

3. Information an association obtains in a gated community in connection with guests' visits to parcel owners or community residents.

4. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an association or management company employee or budgetary or financial records that indicate the compensation paid to an association or management company employee.

5. Medical records of parcel owners or community residents.

6. Social security numbers, driver license numbers, credit card numbers, electronic mailing addresses, telephone numbers, facsimile numbers, emergency contact information, any addresses for a parcel owner other than as provided for association notice requirements, and other personal identifying information of any

person, excluding the person's name, parcel designation, mailing address, and property address. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers of each parcel owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

7. Any electronic security measure that is used by the association to safeguard data, including passwords.

8. The software and operating system used by the association which allows the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

9. All affirmative acknowledgments made pursuant to s. 720.3085(3)(c)3.

(h) ~~(d)~~ The association or its authorized agent is not required to provide a prospective purchaser or lienholder with information about the residential subdivision or the association other than information or documents required by this chapter to be made available or disclosed. The association or its authorized agent may charge a reasonable fee to the prospective purchaser or lienholder or the current parcel owner or member for providing good faith responses to requests for information

by or on behalf of a prospective purchaser or lienholder, other than that required by law, if the fee does not exceed $150 plus the reasonable cost of photocopying and any attorney fees incurred by the association in connection with the response.

(13) DEBIT CARDS.—

(a) An association and its officers, directors, employees, and agents may not use a debit card issued in the name of the association, or billed directly to the association, for the payment of any association expense that is not a lawful obligation of the association.

(b) A person who uses a debit card issued in the name of the association, or billed directly to the association, for any expense that is not a lawful obligation of the association commits theft under s. 812.014, and shall be deemed removed from office and a vacancy declared.

For the purposes of this subsection, the term "lawful obligation of the association" means an obligation that has been properly preapproved by the board and is reflected in the meeting minutes or the written budget.

(14) REQUIREMENT TO PROVIDE AN ACCOUNTING.—A parcel owner or any occupant, licensee, or invitee of the parcel owner may make a written request to the board for a detailed accounting of any amounts he or she owes to the association, and the board shall provide such information within 15 business days after receipt of the written request. After the parcel owner or any occupant, licensee, or invitee of the parcel owner makes such a written request to the board, he or she may not ask for another detailed accounting for at least 90 calendar days. Failure by

the board to respond within 15 business days to a written request for a detailed accounting constitutes a complete waiver of any outstanding fines owed by the person who requested such an accounting which are more than 30 days past due and for which the association has not given prior written notice of the imposition of the fines.

Section 2. Subsection (3) and paragraph (a) of subsection (4) of section 720.3033, Florida Statutes, are amended to read:

720.3033 Officers and directors.—

(3) An officer, a director, or a manager may not solicit, offer to accept, or accept any thing or service of value for which consideration has not been provided for his or her benefit or for the benefit of a member of his or her immediate family from any person providing or proposing to provide goods or services to the association. An officer, a director, or a manager who knowingly solicits, offers to accept, or accepts any thing or service of value or kickback for which consideration has not been provided for his or her own benefit or that of his or her immediate family from any person providing or proposing to provide goods or services to the association commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and is subject to monetary damages under s. 617.0834. If the board finds that an officer or a director has violated this subsection, the officer or director is deemed removed from office and a vacancy declared ~~board shall immediately remove the officer or director from office~~. The vacancy shall be filled according to law until the end of the officer's or director's term of office. However, an officer, a director, or a manager may accept food to be consumed at a

business meeting with a value of less than $25 per individual or a service or good received in connection with trade fairs or education programs.

(4)(a) A director or an officer charged by information or indictment with any of the following crimes is deemed ~~must be~~ removed from office and a vacancy declared:

1. Forgery of a ballot envelope or voting certificate used in a homeowners' association election as provided in s. 831.01.

2. Theft or embezzlement involving the association's funds or property as provided in s. 812.014.

3. Destruction of or the refusal to allow inspection or copying of an official record of a homeowners' association which is accessible to parcel owners within the time periods required by general law, in furtherance of any crime. Such act constitutes tampering with physical evidence as provided in s. 918.13.

4. Obstruction of justice as provided in chapter 843.

5. Any criminal violation under this chapter.

Section 3. Subsection (1) of section 720.3035, Florida Statutes, is amended to read:

720.3035 Architectural control covenants; parcel owner improvements; rights and privileges.—

(1)(a) The authority of an association or any architectural, construction improvement, or other such similar committee of an association to review and approve plans and specifications for the location, size, type, or appearance of any structure or other improvement on a parcel, or to enforce standards for the external appearance of any structure or improvement located on a parcel, shall be permitted only to the

extent that the authority is specifically stated or reasonably inferred as to such location, size, type, or appearance in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants.

(b) An association or any architectural, construction improvement, or other such similar committee of an association may not enforce or adopt a covenant, rule, or guideline that:

1. Limits or places requirements on the interior of a structure that is not visible from the parcel's frontage or an adjacent parcel; or

2. Requires the review and approval of plans and specifications for a central air-conditioning, refrigeration, heating, or ventilating system by the association or any architectural, construction improvement, or other such similar committee of an association, if such system is not visible from the parcel's frontage and is substantially similar to a system that is approved or recommended by the association or a committee thereof.

Section 4. Section 720.3045, Florida Statutes, is amended to read:

720.3045 Installation, display, and storage of items.—Regardless of any covenants, restrictions, bylaws, rules, or requirements of an association, and unless prohibited by general law or local ordinance, an association may not restrict parcel owners or their tenants from installing, displaying, or storing any items on a parcel which are not visible from the parcel's frontage or an adjacent parcel, including, but not limited to, artificial turf, boats, flags, vegetable gardens, clotheslines, and recreational vehicles.

Section 5. Subsections (1) and (2) of section 720.305, Florida Statutes, are amended, and subsections (7) through (10) are added to that section, to read:

720.305 Obligations of members; remedies at law or in equity; levy of fines and suspension of use rights.—

(1) Each member and the member's tenants, guests, and invitees, and each association, are governed by, and must comply with, this chapter, the governing documents of the community, and the rules of the association. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions may be brought by the association or by any member against:

(a) The association;

(b) A member;

(c) Any director or officer of an association who willfully and knowingly fails to comply with these provisions; and

(d) Any tenants, guests, or invitees occupying a parcel or using the common areas.

The prevailing party in any such litigation is entitled to recover reasonable attorney fees and costs as provided in paragraph (2)(f) ~~(2)(c)~~. A member prevailing in an action between the association and the member under this section, in addition to recovering his or her reasonable attorney fees, may recover additional amounts as determined by the court to be necessary to reimburse the member for his or her share of assessments levied by the association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law. This section does not deprive any person of any

other available right or remedy.

(2) An association may levy reasonable fines for violations of the declaration, association bylaws, or reasonable rules of the association. A fine may not exceed $100 per violation against any member or any member's tenant, guest, or invitee for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association unless otherwise provided in the governing documents. A fine may be levied by the board for each day of a continuing violation, with a single notice and opportunity for hearing, except that the fine may not exceed $1,000 in the aggregate unless otherwise provided in the governing documents. A fine of less than $2,500 ~~$1,000~~ may not become a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to reasonable attorney fees and costs from the nonprevailing party as determined by the court.

(a) An association may suspend, for a reasonable period of time, the right of a member, or a member's tenant, guest, or invitee, to use common areas and facilities for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. This paragraph does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may not prohibit an owner or tenant of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

(b) A fine or suspension levied by the board of

administration may not be imposed unless the board first provides at least 14 days' written notice of the parcel owner's right to a hearing to the parcel owner at his or her designated mailing or e-mail address in the association's official records and, if applicable, to any occupant, licensee, or invitee of the parcel owner, sought to be fined or suspended. Such ~~and a~~ hearing must be held within 30 days after issuance of the notice before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. The committee may conduct the hearing by telephone or other electronic means. The notice must include a description of the alleged violation; the specific action required to cure such violation, if applicable; and the hearing date, ~~and~~ location, and access information if conducted by telephone or other electronic means ~~of the hearing~~. A parcel owner has the right to attend a hearing by telephone or other electronic means.

(c) If the committee, by majority vote, does not approve a proposed fine or suspension, the proposed fine or suspension may not be imposed. The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board.

(d) Within 7 days after the hearing, the committee shall provide written notice to the parcel owner at his or her designated mailing or e-mail address in the association's official records and, if applicable, any occupant, licensee, or invitee of the parcel owner, of the committee's findings related to the violation, including any applicable fines or suspensions

that the committee approved or rejected, and how the parcel owner or any occupant, licensee, or invitee of the parcel owner may cure the violation, if applicable, or fulfill a suspension, or the date by which a fine must be paid.

(e) If a violation found by the committee and the proposed fine or suspension levied by the board is approved by the committee by a majority vote, the committee must set a date by which the fine must be paid, which date must be at least 30 days after delivery of the written notice required in paragraph (d).

(f) Upon receipt of a payment for any outstanding fines from a parcel owner or any occupant, licensee, or invitee of the parcel owner, the board must apply the payment first to the fine before satisfying any other amounts due to the association. Attorney fees and costs may not continue to accrue after a parcel owner or any occupant, licensee, or invitee of the parcel owner pays the fine ~~payment is due 5 days after notice of the approved fine required under paragraph (d) is provided to the parcel owner and, if applicable, to any occupant, licensee, or invitee of the parcel owner. The association must provide written notice of such fine or suspension by mail or hand delivery to the parcel owner and, if applicable, to any occupant, licensee, or invitee of the parcel owner~~.

(7) If an association allows a fine to be levied for an infraction relating to lawn, landscaping, or grass maintenance, such fine may not become a lien on a parcel. A fine for a traffic infraction may not become a lien on the parcel.

(8) Notwithstanding any provision to the contrary in an association's governing documents, an association may not levy a fine or impose a suspension for any of the following:

(a) Leaving garbage receptacles at the curb or end of the driveway within 24 hours before or after the designated garbage collection day or time.

(b) Leaving holiday decorations or lights on a structure or other improvement on a parcel longer than indicated in the governing documents, unless such decorations or lights are left up for longer than 1 week after the association provides written notice of the violation to the parcel owner.

(9) An association may not retroactively apply a new rule or covenant against a parcel owner, except against a parcel owner who consented to the new covenant or rule and a parcel owner who acquires title to a parcel after the effective date of the new covenant or rule.

Section 6. Section 720.3065, Florida Statutes, is amended to read:

720.3065 Fraudulent voting activities relating to association elections; penalties.—

(1) A person who engages in ~~Each of~~ the following acts of ~~is a~~ fraudulent voting activity relating to association elections commits ~~and constitutes~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083:

(a) ~~(1)~~ Willfully and falsely swearing to or affirming an oath or affirmation, or willfully procuring another person to falsely swear to or affirm an oath or affirmation, in connection with or arising out of voting activities.

(b) ~~(2)~~ Perpetrating or attempting to perpetrate, or aiding in the perpetration of, fraud in connection with a vote cast, to be cast, or attempted to be cast.

(c) ~~(3)~~ Preventing a member from voting or preventing a

member from voting as he or she intended by fraudulently changing or attempting to change a ballot, ballot envelope, vote, or voting certificate of the member.

(d) ~~(4)~~ Menacing, threatening, or using bribery or any other corruption to attempt, directly or indirectly, to influence, deceive, or deter a member when the member is voting.

(e) ~~(5)~~ Giving or promising, directly or indirectly, anything of value to another member with the intent to buy the vote of that member or another member or to corruptly influence that member or another member in casting his or her vote. This paragraph ~~subsection~~ does not apply to any food served which is to be consumed at an election rally or a meeting or to any item of nominal value which is used as an election advertisement, including a campaign message designed to be worn by a member.

(f) ~~(6)~~ Using or threatening to use, directly or indirectly, force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel a member to vote or refrain from voting in an election or on a particular ballot measure.

(2) Each of the following acts constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083:

(a) Knowingly aiding, abetting, or advising a person in the commission of a fraudulent voting activity related to association elections.

(b) Agreeing, conspiring, combining, or confederating with at least one other person to commit a fraudulent voting activity related to association elections.

(c) Having knowledge of a fraudulent voting activity related to association elections and giving any aid to the

offender with intent that the offender avoid or escape detection, arrest, trial, or punishment.

This subsection does not apply to a licensed attorney giving legal advice to a client.

Section 7. Subsection (3) of section 720.3075, Florida Statutes, is amended, and paragraph (c) is added to subsection (4) of that section, to read:

720.3075 Prohibited clauses in association documents.—

(3) Homeowners' association documents, including declarations of covenants, articles of incorporation, or bylaws, may not preclude:

(a) The display of up to two portable, removable flags as described in s. 720.304(2)(a) by property owners. However, all flags must be displayed in a respectful manner consistent with the requirements for the United States flag under 36 U.S.C. chapter 10.

(b) A property owner or a tenant, a guest, or an invitee of the property owner from parking his or her personal vehicle, including a pickup truck, in the property owner's driveway, or in common parking lots. The homeowners' association documents, including declarations of covenants, articles of incorporation, or bylaws, may not prohibit a property owner or a tenant, a guest, or an invitee of the property owner from parking his or her work vehicle, which is not a commercial motor vehicle as defined in s. 320.01(25), in the property owner's driveway.

(c) A property owner from inviting, hiring, or allowing entry to a contractor or worker on the owner's parcel solely because the contractor or worker is not on a preferred vendor

list of the association. Additionally, homeowners' association documents may not preclude a property owner from inviting, hiring, or allowing entry to a contractor or worker on his or her parcel solely because the contractor or worker does not have a professional or an occupational license. The association may not require a contractor or worker to present or prove possession of a professional or an occupational license to be allowed entry onto a property owner's parcel.

(d) Operating a vehicle that is not a commercial motor vehicle as defined in s. 320.01(25) in conformance with state traffic laws, on public roads or rights-of-way or the property owner's parcel.

(e) A property owner from installing code-compliant hurricane protection or home hardening, such as hurricane shutters, impact glass, code-compliant windows or doors, or other similar protection that complies with or exceeds the applicable building code.

(f) A property owner from installing a metal roof, artificial turf, a vegetable garden, or a clothesline, or other energy-efficient device.

(4)

(c) Homeowners' association documents, including declarations of covenants, articles of incorporation, or bylaws, may not limit landscaping to grass-only or grass-majority lawns, or issue a mandatory watering schedule to property owners. However, the association's documents may generally require that a property owner keep any lawn, landscaping, or grass on the property owner's parcel well-maintained.

Section 8. Section 720.318, Florida Statutes, is amended to

read:

720.318 Law enforcement vehicles.—An association may not prohibit a law enforcement officer, as defined in s. 943.10(1), who is a parcel owner, or who is a tenant, guest, or invitee of a parcel owner, from parking his or her assigned law enforcement vehicle in an area where the parcel owner, or the tenant, guest, or invitee of the parcel owner, otherwise has a right to park, including on public roads or rights-of-way.

Section 9. This act shall take effect July 1, 2024.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 1548
INTRODUCER:	Senator Gruters
SUBJECT:	Energy
DATE:	January 26, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Imhof	RI	**Pre-meeting**
2.			ATD	
3.			FP	

I. Summary:

SB 1548 amends several sections of Florida law and creates new statutory provisions relating to energy. In summary, the bill:

- Prohibits the Florida Department of Transportation (FDOT) from assigning or transferring its permitting rights across any transportation right-of-way operated by the FDOT to a third party or governmental entity that does not operate the transportation right-of-way without prior approval of the Legislature.
- Prohibits the FDOT and local government entities from requiring a utility within a public road operated by the authority to be relocated on behalf of any other third-party or governmental agency project related to a separate public or private road or transportation corridor.
- Requires the Public Service Commission (PSC) to create targeted storm reserve amounts for public utilities.
- Directs the Florida Department of Commerce (FDC) to expand eligibility for the Low-Income Energy Assistance Program (LIHEAP) to persons in certain federal disability programs.
- Directs the FDC to develop a process for automated LIHEAP payments to home energy suppliers.
- Directs the PSC to conduct, or cause to be conducted, a study of small nuclear reactors.

The bill has an effective date of July 1, 2024.

II. Present Situation:

Disposal of Real Property Acquired for Transportation Purposes

The Florida Department of Transportation (FDOT) acquires land throughout the state to utilize for transportation facilities[1] and secure rights-of-way through purchase, lease, exchange, donation, or other types of acquisition.[2] The FDOT is authorized to convey acquired property it determines not to be needed for the construction, operation, and maintenance of a transportation facility.[3]

Generally, the FDOT may dispose of the property through negotiations, sealed competitive bids, auctions, or any other means the FDOT deems to be in its best interest.[4] A sale of unneeded property may not occur at a price less than the FDOT's current estimate of value except that:

- If the property has been donated to the state for transportation purposes and a transportation facility has not been constructed for at least 5 years, plans have not been prepared for the construction of such facility, and the property is not located in a transportation corridor, the governmental entity may authorize reconveyance of the donated property for no consideration to the original donor or the donor's heirs, successors, assigns, or representatives.[5]
- If the property is to be used for a public purpose, including, but not limited to, affordable housing as provided in ss. 125.379 and 166.0451, F.S., the property may be conveyed without consideration to a governmental entity.[6]
- If the property was originally acquired specifically to provide replacement housing for persons displaced by transportation projects, the FDOT may negotiate for the sale of such property as replacement housing.[7]
- If the FDOT determines the property requires significant costs to be incurred or that continued ownership of the property exposes the FDOT to significant liability risks, the FDOT may use the projected maintenance costs over the next ten years to offset the property's value in establishing a value for disposal of the property, even if that value is zero.[8]
- If, at the discretion of the FDOT, a sale to a person other than an abutting property owner would be inequitable, the property may be sold to the abutting owner for the FDOT's current estimate of value.

[1] "Transportation facility" means any means for the transportation of people or property from place to place which is constructed, operated, or maintained in whole or in part from public funds. The term includes the property or property rights, both real and personal, which have been or may be established by public bodies for the transportation of people or property from place to place. *See* s. 334.03(30), F.S.
[2] Section 337.25(1), F.S.
[3] Section 337.25(4), F.S.
[4] *Id*.
[5] Section 337.25(4)(a), F.S.
[6] Section 337.25(4)(b), F.S.
[7] Section 337.25(4)(c), F.S.
[8] Section 337.25(4)(d), F.S.

Payment for Moving or Removing Utilities and Exceptions

Section 337.403(1), F.S., requires utilities to bear the cost of relocating utility facilities placed upon, under, over, or within the right-of-way limits of any public road or publicly owned rail corridor which is found by the authority[9] to be unreasonably interfering in any way with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion, of such public road or publicly owned rail corridor. Utility owners, upon 30 days' notice, must eliminate the unreasonable interference within a reasonable time or an agreed time, at their own expense. Numerous exceptions are provided to this provision, and are located in s. 337.403(1)(a)-(j), F.S. The requirements of 337.403(1), F.S., apply even if the utility facility is within a public utility easement and the utility has a franchise agreement with the authority, absent some other agreement to the contrary regarding costs of relocation.[10]

Florida Public Service Commission

The Florida Public Service Commission (PSC) is an arm of the legislative branch of government.[11] The role of the PSC is to ensure Florida's consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe, affordable, and reliable manner.[12] In order to do so, the PSC exercises authority over public utilities in one or more of the following areas: rate base or economic regulation; competitive market oversight; and monitoring of safety, reliability, and service issues.[13]

Electric and Gas Utilities

The PSC monitors the safety and reliability of the electric power grid[14] and may order the addition or repair of infrastructure as necessary.[15] The PSC has broad jurisdiction over the rates and service of investor-owned electric and gas utilities.[16] However, the PSC does not fully regulate municipal electric utilities (utilities owned or operated on behalf of a municipality) or rural electric cooperatives. The PSC does have jurisdiction over these types of utilities with regard to rate structure, territorial boundaries, bulk power supply operations, and planning.[17] Municipally-owned utility rates and revenues are regulated by their respective local governments or local utility boards. Rates and revenues for a cooperative utility are regulated by their governing body elected by the cooperative's membership.

Municipal Electric and Gas Utilities, and Special Gas Districts, in Florida

A municipal electric or gas utility is an electric or gas utility owned and operated by a municipality. Chapter 366, F.S., provides the majority of electric and gas utility regulations for

[9] As used in ss. 337.401-337.404, F.S., "the authority" means the FDOT and local government entities. Section 337.401(1)(a), F.S.
[10] *Lee County Electric Coop., Inc. v. City of Cape Coral*, 159 So. 3d 126, 130 (Fla. 2d DCA 2014).
[11] Section 350.001, F.S.
[12] *See* Florida Public Service Commission, *Florida Public Service Commission Homepage*, http://www.psc.state.fl.us (last visited Jan. 25, 2024).
[13] Florida Public Service Commission, *About the PSC*, https://www.psc.state.fl.us/about (last visited Jan. 25, 2024).
[14] Section 366.04(5) and (6), F.S.
[15] Section 366.05(1) and (8), F.S.
[16] Section 366.05, F.S.
[17] Florida Public Service Commission, *About the PSC*, *supra* note 13.

Florida. While ch. 366, F.S., does not provide a definition, per se, for a "municipal utility," variations of this terminology and the concept of these types of utilities appear throughout the chapter. Currently, Florida has 33 municipal electric utilities that serve over 14 percent of the state's electric utility customers.[18] Florida also has 27 municipally-owned gas utilities and four special gas districts.[19]

Rural Electric Cooperatives in Florida

At present, Florida has 18 rural electric cooperatives, with 16 of these cooperatives being distribution cooperatives and two being generation and transmission cooperatives.[20] These cooperatives operate in 57 of Florida's 67 counties and have more than 2.7 million customers.[21] Florida rural electric cooperatives serve a large percentage of area, but have a low customer density. Specifically, Florida cooperatives serve approximately 10 percent of Florida's total electric utility customers, but their service territory covers 60 percent of Florida's total land mass. Each cooperative is governed by a board of cooperative members elected by the cooperative's membership.[22]

Public Electric and Gas Utilities in Florida

There are four investor-owned electric utility companies (electric IOUs) in Florida: Florida Power & Light Company (FPL), Duke Energy Florida (Duke), Tampa Electric Company (TECO), and Florida Public Utilities Corporation (FPUC).[23] In addition, there are eight investor-owned natural gas utility companies (gas IOUs) in Florida: Florida City Gas, Florida Division of Chesapeake Utilities, FPUC, FPUC-Fort Meade Division, FPUC-Indiantown Division, Peoples Gas System, Sebring Gas System, and St. Joe Natural Gas Company. Of these eight gas IOUs, five engage in the merchant function servicing residential, commercial, and industrial customers: Florida City Gas, FPUC, FPUC-Fort Meade Division, Peoples Gas System, and St. Joe Natural Gas Company. Florida Division of Chesapeake Utilities, FPUC-Indiantown Division, and Sebring Gas System are only engaged in firm transportation service.[24]

Electric IOU and Gas IOU rates and revenues are regulated by the PSC and the utilities must file periodic earnings reports, which allow the PSC to monitor earnings levels on an ongoing basis and adjust customer rates quickly if a company appears to be overearning.[25]

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[18] Florida Municipal Electric Association, *About Us*, https://www.flpublicpower.com/about-us (last visited Jan. 25, 2024).
[19] Florida Public Service Commission, *2023 Facts and Figures of the Florida Utility Industry*, pg. 13, Apr. 2023 (available at: https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/FactsAndFigures/April%202023.pdf). A "special gas district" is a dependent or independent special district, setup pursuant to ch. 189, F.S., to provide natural gas service. Section 189.012(6), F.S., defines a "special district" as "a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a limited geographic boundary and is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet."
[20] Florida Electric Cooperative Association, *Members*, https://feca.com/members/ (last visited Jan. 25, 2024).
[21] Florida Electric Cooperative Association, *Our History*, https://feca.com/our-history/ (last visited Jan. 25, 2024).
[22] *Id*.
[23] Florida Public Service Commission, *2023 Facts and Figures of the Florida Utility Industry*, *supra* note 19, at 5.
[24] *Id* at 14. Firm transportation service is offered to customers under schedules or contracts which anticipate no interruption under almost all operating conditions. *See* Firm transportation service, 18 CFR s. 284.7.
[25] PSC, *2022 Annual Report*, p. 6, (available at: https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/AnnualReports/2022.pdf) (last visited Jan. 25, 2024).

Section 366.041(2), F.S., requires public utilities to provide adequate service to customers. As compensation for fulfilling that obligation, s. 366.06, F.S., requires the PSC to allow the IOUs to recover honestly and prudently invested costs of providing service, including investments in infrastructure and operating expenses used to provide electric service.[26]

Storm Reserves for Public Utilities

Storm reserves are a form of self-insurance used by utilities to collect in advance from ratepayers costs to recover from storms. Such reserves are an accounting technique allowing utilities to reduce the immediate impact of storms on ratepayers and spread them over time.[27]

In Florida, the PSC allows utilities to establish storm reserve accounts and fund them according to PSC rule and orders of the PSC. Many storm restoration cost orders at the PSC include provisions for impacted utilities to replenish their storm reserve accounts.[28]

Under PSC rule, the types of storm-related costs that can be charged to a storm reserve include:

- Additional contract labor hired for storm restoration activities incurred in any month in which storm damage restoration activities are conducted, that are greater than the actual monthly average of contract labor costs charged to operation and maintenance expense for the same month in the three previous calendar years;
- Logistics for providing meals, lodging, and linens for tents and other staging areas;
- Transportation of crews and other personnel for storm restoration;
- Vehicles specifically rented for storm restoration activities;
- Waste management costs specifically related to storm restoration activities;
- Rental equipment specifically related to storm restoration activities;
- Materials and supplies used to repair and restore service and facilities to pre-storm condition, excluding those costs that normally would be charged to non-cost recovery clause operating expenses in the absence of a storm;
- Payroll and payroll-related costs for utility personnel included in storm restoration activities incurred in any month in which storm damage restoration activities are conducted, that are greater than the actual monthly average of payroll and payroll-related costs charged to operation and maintenance expense for the same month in the three previous calendar years;
- Fuel company and contractor vehicles used in storm restoration activities incurred in any month in which storm damage restoration activities are conducted, that are greater than the actual monthly average of fuel costs charged to operation and maintenance expense for the same month in the three previous calendar years;
- Public service announcements regarding key storm-related issues, such as safety and service restoration estimates;

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[26] *Id*.

[27] Energy South, *Enabling Energy Resiliency Through a Storm Reserve Fund*, https://medium.com/@EnergySouth/enabling-energy-resiliency-through-a-storm-reserve-fund-add806aa0b59, Aug. 19, 2015 (last visited Jan. 25, 2024).

[28] *See, for example, In Re: Petition for Ltd. Proceeding for Recovery of Incremental Storm Restoration Costs Related to Hurricane Idalia, by Duke Energy Florida, LLC. in Re: Petition for Ltd. Proceeding for Recovery of Incremental Storm Restoration Costs Related to Hurricanes Elsa, Eta, Isaias, Ian, Nicole, & Tropical Storm Fred, by Duke Energy Florida, LLC.*, 2023 WL 8879275 (Dec. 19, 2023); *In Re: Petition for Recovery of Costs Associated with Named Tropical Sys. During the 2018-2022 Hurricane Seasons & Replenishment of Storm Reserve, by Tampa Elec. Co.*, 2023 WL 8119138 (Nov. 20, 2023); *and In Re: Petition for Rate Increase by Florida City Gas.*, 2023 WL 3966515 (June 9, 2023).

- Vegetation management expenses specifically related to storm restoration activities incurred in any month in which storm damage restoration activities are conducted, that are greater than the actual monthly average of vegetation management costs charged to operation and maintenance expense for the same month in the previous three calendar years; and
- Other costs or expenses not specifically identified above that are directly and solely attributable to a storm restoration event.[29]

Low-Income Energy Assistance Program

The Low-Income Energy Assistance Program (LIHEAP) is a federally funded program intended to assist low income families with home heating and cooling costs. In Florida, the program is administered by the Florida Department of Commerce (FDC), which allocates funding directly to a network of community action agencies, also known as local agency providers.[30]

The FDC summarizes the program as follows:[31]

- Depending on the funds available in an applicant's county, an applicant may be able to apply for assistance up to three times a year, but not every month.
- LIHEAP may help pay natural gas or propane bills only in the winter, and only if such is the primary source of home heating. If gas or propane is used only for purposes other than heating, such as hot water or cooking, the LIHEAP cannot assist with the bill.
- LIHEAP cannot pay for water, sewer or telephone services.
- Local LIHEAP providers make the payments directly to utility companies on behalf of the awardee.

Persons may be eligible for the program if they meet the following requirements:

- Have a total income no more than 60 percent of the median income in Florida;
- Are responsible for paying home heating or cooling bills;
- Are a resident of Florida; and
- Are a U.S. Citizen, qualified alien, or permanent resident of the U.S.

[29] Fla. Admin. Code R. 25-7.0143(1)(e).
[30] Florida Department of Commerce, *Low-Income Home Energy Assistance Program*, https://www.floridajobs.org/community-planning-and-development/community-services/low-income-home-energy-assistance-program (last visited Jan. 25, 2024).
[31] *Id.*

The current household income limits for LIHEAP in Florida are as follows:[32]

Household Size	Maximum Monthly Income	Maximum Annual Income
Family of 1	$2,311.25	$27,735
Family of 2	$3,022.41	$36,269
Family of 3	$3,733.58	$44,803
Family of 4	$4,444.75	$53,337
Family of 5	$5,155.83	$61,870
Family of 6	$5,867.00	$70,404
Family of 7	$6,000.33	$72,004
Family of 8	$6,133.75	$73,605

Nuclear Power

Nuclear power plants work, in a way, similarly to any other turbine-based power plant. In turbine-based power plants a moving fluid—water, steam, combustion gases, or even air—pushes blades mounted on a rotor. The force of the moving liquid spins the shaft of a generator. That generator then converts the kinetic energy of the spinning rotor to electrical energy. Types of turbines include steam, combustion (i.e. gas), hydroelectric, and wind.[33]

Nuclear power plants work in the same way, in that steam is used to spin a turbine to produce electricity. The unique part of a nuclear power plant is how that steam is produced. In a nuclear power plant, heat is used to make steam, and this heat is produced by a controlled fission nuclear reaction.[34]

In a traditional nuclear power plant, uranium, which has been processed into small ceramic pellets and stacked together in a sealed metal tube (called a fuel rod), is the fuel source. Fuel rods are bundled together (typically in bundles of more than 200 rods) to form a fuel assembly. Reactor cores are generally made up of around 200 assemblies, depending on power level. In the reactor, fuel rods are immersed in water, which acts as a coolant and moderator. Control rods are then inserted into the reactor core to reduce the nuclear reaction or removed to increase the nuclear reaction. This reaction creates heat to turn water into the steam that fuels the turbine.[35]

There are over 400 commercial reactors worldwide, including 93 in the United States.[36]

Advanced Small Nuclear Reactors

Advanced small nuclear reactors (SMRs) are currently under development in the United States. SMRs differ from traditional large nuclear power plants—which can take over a decade to build

[32] *Id.*
[33] United States Energy Information Administration, *Electricity Explained*, https://www.eia.gov/energyexplained/electricity/how-electricity-is-generated.php (last visited Jan. 25, 2024).
[34] United States Department of Energy, *NUCLEAR 101: How Does a Nuclear Reactor Work?*, https://www.energy.gov/ne/articles/nuclear-101-how-does-nuclear-reactor-work (last visited Jan. 25, 2024).
[35] *Id.*
[36] *Id.*

between planning, regulatory approval and construction—[37]in that they are made in factories and transported to sites ready to "plug and play" upon arrival. This reduces both capital costs and construction times. The smaller size of these reactors also makes them ideal for smaller electric grids and other locations where a large nuclear power plant is not feasible.[38]

Advanced Reactor Technologies

The Office of Nuclear Energy's Office of Advanced Reactor Technologies (ART) sponsors research, development, and deployment of emerging nuclear reactor technologies. While the technologies are varied, ART's main areas of focus currently are:

- Developing assessment methods for evaluating advanced SMR technologies and characteristics;
- Developing and testing of materials, fuels and fabrication techniques;
- Resolving key regulatory issues identified by Nuclear Regulatory Commission and the nuclear industry; and
- Developing advanced instrumentation and controls and human-machine interfaces.[39]

III. Effect of Proposed Changes:

Section 1 amends s. 337.25, F.S., to prohibit the Florida Department of Transportation (FDOT) from assigning or transferring its permitting rights across any transportation right-of-way operated by the FDOT to a third party or governmental entity that does not operate the transportation right-of-way without prior approval of the Legislature.

Section 2 amends s. 337.403, F.S., regarding the obligation for utilities to bear the cost of relocating utility facilities placed upon, under, over, or within the right-of-way public road or publicly owned rail corridors. This section specifies that the authority may not require a utility within a public road operated by the authority to be relocated on behalf of any other third-party or governmental agency project related to a separate public or private road or transportation corridor.

Section 3 amends s. 366.04, F.S., regarding the jurisdiction of the Public Service Commission (PSC). This section requires the PSC to approve a targeted storm reserve amount to be effective January 1, 2025, for each public utility. This storm reserve amount must be equal to 80 percent of the approved incremental storm costs incurred for the public utility's highest cost storm impacting its service area over the 5 calendar years before January 2025. The incremental storm costs must be based on the filings of the public utility with the PSC and PSC orders.

The targeted storm reserve amount established by the PSC:

- May be adjusted on an annual basis for successive rolling 5-year periods;

[37] United States Energy Information Administration, *Nuclear explained*, https://www.eia.gov/energyexplained/nuclear/us-nuclear-industry.php (last visited Jan. 25, 2024).
[38] United States Department of Energy, Office of Nuclear Energy, *Nuclear Reactor Technologies*, https://www.energy.gov/ne/nuclear-reactor-technologies (last visited Jan.25, 2024).
[39] United States Department of Energy, Office of Nuclear Energy, *Advanced Reactor Technology*, https://www.energy.gov/ne/advanced-reactor-technologies (last visited Jan. 25, 2024).

- Must be funded by an increase in base rates[40] effective Jan. 1, 2025; and
- Must be designed to allow the public utility to recover the costs to fund the targeted reserve level over a four-year period.

The base rate adjustments and accompanying tariffs must be:
- Implemented by administrative approval of the commission and employ the most recent authorized base rate structure for the public utility;
- Filed by October 15 together with the current storm reserve and supporting documentation and the highest cost storm over the prior 5 years as reflected by orders of the PSC; and
- Approved by each November 15 to take effect on January 1 of the following year.

The suspension of base rate increases and implementation of base rate adjustments relating to the targeted storm reserve must be based on the current status of the public utility's administratively-determined storm reserve and be consistent with the dates above. Adjustments to base rates must be designed to fund the public utility storm reserves. Cost recovery of such base rates may not consider a public utility's previous, current, or projected earnings. Revenues of such base rates are not to be considered in the calculation of a public utility's earnings in earnings surveillance reports.

Section 4 amends s. 409.508, F.S., regarding the Low-Income Energy Assistance Program (LIHEAP). The bill directs the Florida Department of Commerce (FDC) to expand the eligibility for LIHEAP to Florida residence enrolled in any of the following:
- Social Security Disability Insurance program.
- Social Security Insurance program.
- United States Department of Veterans Affairs disability benefits.
- Supplemental Nutritional Assistance Program.
- Temporary Assistance for Needy Families.

The section also directs the FDC to develop a process for automatic payments on behalf of individuals to their household's home energy supplier. The process must include:
- Detailed requirements for any necessary statutory or regulatory changes, application process changes, or other requirements necessary to allow the FDC to identify individuals who qualify for automatic program payments without requiring said individuals to submit additional program applications.
- A data sharing process detailing steps the FDC will take to identify and share a list of categorically eligible residents with home energy suppliers. A home energy supplier that agrees to receive direct program payments must apply the benefits as prescribed and document such payments in its annual program performance measures report.

The section also makes technical changes.

[40] Base rates are tariffed charges, set by a utility regulator, calculated to recover a utility's operations and maintenance expenses plus a rate of return on the book value of its assets that are considered to be used and useful.

Section 5 directs the PSC to conduct, or cause to be conducted, a study regarding the feasibility of small modular reactors (SMRs)[41] use in the state. The study must include an evaluation of:

- Existing state law, to determine and identify which, if any, statutes and agency rules would need to be amended to enable the construction and operation of SMRs;
- The economic feasibility of replacing carbon-based energy sources with SMRs, while accounting for the net present value of revenue requirements that would result from the retirement of coal-fired plants;
- The safety of and the waste stream resulting from construction and operation;
- The property tax benefits to counties, school districts, and special taxing districts;
- The number of jobs that could be created and the overall impact to local economies;
- The reliability and cost of small modular nuclear reactors as compared to natural gas, wind, and solar energy production;
- Local government permitting requirements or approvals required for SMR operation; and
- Any other information that the PSC deems necessary.

The section bill also requires the PSC to submit a report to the Governor, President of the Senate, and Speaker of the House of Representatives. The report must include recommendations regarding:

- The potential for using SMRs to provide energy; and
- Administrative or legislative action needed to promote the use of SMRs.

Section 6 provides an effective date of July 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:

None.

[41] As used in the section, "SMR" means a reactor that has a rated capacity of not more than 300 megawatts of electricity; can be constructed and operated in combination with other similar reactors at a single site if multiple reactors are necessary; and has been licensed by the United States Nuclear Regulatory Commission and is in compliance with all requirements and conditions associated with the license.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Ratepayers may see, at least initially, a utility rate increase due to the targeted storm reserve provisions of the bill.

C. Government Sector Impact:

The directives of the bill likely expands the responsibilities of:

- The Public Service Commission; and
- The Department of Commerce.

The above agencies have not yet issued an analysis of this bill, so it is unknown at this time the extent to which the bill would impact those agencies' operations.

VI. Technical Deficiencies:

The "and" on line 312 of the bill should be deleted and inserted at the end of line 324, preceded by a semicolon instead of a period. In addition, the periods on lines 315, 318, and 321 should be replaced with semicolons for consistency.

VII. Related Issues:

Section 5 of the bill uses the terms "base rate," "storm reserve," and "surveillance reports." While these terms are used commonly at the Public Service Commission, they are not defined for ch. 366, F.S. In addition, the term "surveillance reports" is not used anywhere in Florida Statutes. The sponsor may wish to define these terms for this section.

The targeted storm reserves provisions are amended into the PSC's jurisdiction section. A new separate section following s. 366.96, F.S., would appear to be a more logical placement.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 337.25, 337.403, 366.04, and 409.508.

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 Gruters

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A bill to be entitled

An act relating to energy; amending s. 337.25, F.S.; prohibiting the Department of Transportation from assigning or transferring its permitting rights across transportation rights-of-way operated by the department to certain third parties under certain circumstances; amending s. 337.403, F.S.; prohibiting authorities from requiring the relocation of utilities on behalf of certain other third party or governmental agency projects; amending s. 366.04, F.S.; requiring the Public Service Commission to approve targeted storm reserve amounts for public utilities; providing requirements for the targeted storm reserve amounts; providing for base rate adjustments; amending s. 409.508, F.S.; defining and redefining terms; requiring the Department of Commerce to expand categorical eligibility for the low-income home energy assistance program to include individuals who are enrolled in certain federal disability programs; requiring the department to develop a comprehensive process for automatic payments to be made on behalf of such individuals; providing requirements for such process; making technical changes; requiring the Public Service Commission to conduct or cause to be conducted a feasibility study on the use of small modular nuclear reactors in this state; defining the term "small modular nuclear reactor" or "reactor"; providing requirements for the feasibility study; requiring the commission to submit a report on the

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findings and conclusion of the feasibility study to the Governor and the Legislature by a specified date; providing requirements for the report; providing an effective date.

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

Section 1. Paragraph (e) is added to subsection (1) of section 337.25, Florida Statutes, to read:

337.25 Acquisition, lease, and disposal of real and personal property.—

(1)

(e) The department may not, without prior approval from the Legislature, assign or transfer its permitting rights across any transportation right-of-way operated by the department to a third party or governmental entity that does not operate the transportation right-of-way.

Section 2. Subsection (1) of section 337.403, Florida Statutes, is amended to read:

337.403 Interference caused by utility; expenses.—

(1) If a utility that is placed upon, under, over, or within the right-of-way limits of any public road or publicly owned rail corridor is found by the authority to be unreasonably interfering in any way with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion, of such public road or publicly owned rail corridor, the utility owner shall, upon 30 days' written notice to the utility or its agent by the authority, initiate the work necessary to alleviate the interference at its own expense except as provided in

paragraphs (a)-(j). The authority may not require a utility within a public road operated by the authority to be relocated on behalf of any other third-party or governmental agency project related to a separate public or private road or transportation corridor. The work must be completed within such reasonable time as stated in the notice or such time as agreed to by the authority and the utility owner.

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

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

such work. The department may not participate in any utility work costs that occur as a result of changes or additions during the course of the contract.

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

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

(e) If, under an agreement between a utility and the authority entered into after July 1, 2009, the utility conveys, subordinates, or relinquishes a compensable property right to the authority for the purpose of accommodating the acquisition or use of the right-of-way by the authority, without the agreement expressly addressing future responsibility for the

cost of necessary utility work, the authority shall bear the cost of removal or relocation. This paragraph does not impair or restrict, and may not be used to interpret, the terms of any such agreement entered into before July 1, 2009.

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

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

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

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

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

(h) If a municipally owned utility or county-owned utility is located in a rural area of opportunity, as defined in s. 288.0656(2), and the department determines that the utility is

unable, and will not be able within the next 10 years, to pay for the cost of utility work necessitated by a department project on the State Highway System, the department may pay, in whole or in part, the cost of such utility work performed by the department or its contractor.

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

(j) If a utility is lawfully located within an existing and valid utility easement granted by recorded plat, regardless of whether such land was subsequently acquired by the authority by dedication, transfer of fee, or otherwise, the authority must bear the cost of the utility work required to eliminate an unreasonable interference. The authority shall pay the entire expense properly attributable to such work after deducting any

increase in the value of a new facility and any salvage value derived from an old facility.

Section 3. Subsection (10) is added to section 366.04, Florida Statutes, to read:

366.04 Jurisdiction of commission.—

(10) The commission shall approve a targeted storm reserve amount to be effective January 1, 2025, for each public utility. The targeted storm reserve amount must be set at a level equal to 80 percent of the approved incremental storm costs incurred for the public utility's highest cost storm impacting its service area over the 5 calendar years before January 2025. The approved incremental storm costs that form the basis for the targeted storm reserve amount must be based on the filings of the public utility with the commission and orders issued by the commission.

(a)1. The initial targeted storm reserve amount established by the commission:

a. Is subject to adjustment on an annual basis for successive rolling 5-year periods;

b. Must be funded by an increase in base rates effective January 1, 2025; and

c. Must be designed to allow the utility to recover the costs to fund the targeted reserve level over a 4-year period.

2. All base rate adjustments and accompanying tariffs must be:

a. Implemented by administrative approval of the commission and employ the most recent authorized base rate structure for the public utility;

b. Filed by October 15 together with the current storm

reserve and supporting documentation and the highest cost storm over the prior 5 years as reflected by commission order; and

c. Administratively approved by each November 15 to take effect on January 1 of the following calendar year.

(b) Suspension of base rate increases and implementation of base rate adjustments under this subsection based on use and depletion of the storm reserve and the determination of the annual storm reserve amount must be administratively determined and approved by the commission consistent with calendar deadlines under paragraph (a).

(c) The adjustments to base rates must be designed to fund the public utility storm reserves; the cost recovery of such base rates must be without regard to any impact on a public utility's previous, current, or projected earnings; and the revenues from such base rates may not be considered in the calculation of a public utility's earnings in earnings surveillance reports filed with the commission.

Section 4. Section 409.508, Florida Statutes, is amended to read:

409.508 Low-income home energy assistance program.—

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

(a) "Department" means the Department of Commerce.

(b) "Eligible household" means a household eligible for funds from the program ~~Low-income Home Energy Assistance Act of 1981, 42 U.S.C. ss. 8621 et seq~~.

(c)~~(b)~~ "Home energy" means a source of heating or cooling in residential dwellings.

(d) "Program" means the federal low-income home energy assistance program established pursuant to 42 U.S.C. ss. 8621 et

seq.

(e)~~(c)~~ "Utility" means any person, corporation, partnership, municipality, cooperative, association, or other legal entity and its lessees, trustees, or receivers now or hereafter owning, operating, managing, or controlling any plant or other facility supplying electricity or natural gas to or for the public within this state, directly or indirectly, for compensation.

(2) The department ~~of Economic Opportunity~~ is designated as the state agency to administer the program ~~Low-income Home Energy Assistance Act of 1981, 42 U.S.C. ss. 8621 et seq~~. The department may ~~of Economic Opportunity is authorized to~~ provide home energy assistance benefits to eligible households which may be in the form of cash, vouchers, certificates, or direct payments to electric or natural gas utilities or other energy suppliers and operators of low-rent, subsidized housing in behalf of eligible households. Priority must ~~shall~~ be given to eligible households having at least one elderly or handicapped individual and to eligible households with the lowest incomes.

(3)(a) The department shall expand categorical eligibility for the program to include households with residents of this state who are enrolled in any of the following federal disability programs:

1. Social Security Disability Insurance program.

2. Social Security Insurance program.

3. United States Department of Veterans Affairs disability benefits.

4. Supplemental Nutritional Assistance Program.

5. Temporary Assistance for Needy Families.

(b) The department shall develop a comprehensive process for automatic program payments on behalf of such individuals to be made directly to the household's home energy supplier. The process must include all of the following:

1. Detailed requirements for any necessary statutory or regulatory changes, application process changes, or other requirements necessary to allow the department to identify individuals who qualify under this subsection for automatic program payments without requiring the individual to submit additional program applications.

2. A data sharing process detailing the steps the department will take to identify and share a list of categorically eligible residents with home energy suppliers. A home energy supplier that agrees to receive direct program payments must apply the benefits as prescribed to the resident accounts identified by the department and document such payments in its annual program performance measures report.

(4) Agreements may be established between electric or natural gas utility companies, other energy suppliers, the department, and the Department of Revenue to provide~~, and the Department of Economic Opportunity for the purpose of providing~~ payments to energy suppliers in the form of a credit against sales and use taxes due or direct payments to energy suppliers for services rendered to low-income, eligible households.

(5)~~(4)~~ The department ~~of Economic Opportunity~~ shall adopt rules to carry out ~~the provisions of~~ this section ~~act~~.

Section 5. (1) The Public Service Commission shall conduct or cause to be conducted a study regarding the feasibility of using small modular nuclear reactors in this state. As used in

this section, the term "small modular nuclear reactor" or "reactor" means a nuclear reactor that:

(a) Has a rated capacity of not more than 300 megawatts of electricity;

(b) Can be constructed and operated in combination with other similar reactors at a single site if multiple reactors are necessary; and

(c) Has been licensed by the United States Nuclear Regulatory Commission and is in compliance with all requirements and conditions associated with the license.

(2) The feasibility study must include an evaluation of all of the following:

(a) Existing state law, to determine and identify which, if any, statutes and agency rules would need to be amended to enable the construction and operation of small modular nuclear reactors in this state;

(b) The economic feasibility of replacing carbon-based energy sources with reactors, while accounting for the net present value of revenue requirements that would result from the retirement of coal-fired plants;

(c) The safety of and the waste stream resulting from the construction and operation of reactors; and

(d) The property tax benefits to counties, school districts, and special taxing districts in connection with the use of reactors.

(e) The number of jobs that could be created and the overall impact to local economies in connection with the use of small modular nuclear reactors.

(f)The reliability and cost of small modular nuclear

reactors as compared to natural gas, wind, and solar energy production.

(g) Local government permitting requirements or approvals that would be required for the operation of small modular nuclear reactors in this state.

(h) Any other information that the commission deems necessary.

(3) On or before July 1, 2025, the commission shall submit a report of the findings and conclusions of the feasibility study to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must include any recommendations regarding:

(a) The potential for using small modular nuclear reactors to provide energy in this state; and

(b) Administrative or legislative action needed to promote the use of small modular nuclear reactors in this state.

Section 6. This act shall take effect July 1, 2024.