

<b>Tab 1</b>	<b>CS/SB 284</b> by <b>CA, Perry (CO-INTRODUCERS) Hutson</b> ; (Identical to CS/CS/H 00055) Building Design					
<b>Tab 2</b>	<b>SB 1120</b> by <b>Gibson (CO-INTRODUCERS) Powell</b> ; (Identical to H 00857) Commercial Telephone Solicitation					
456696	A	S	RCS	RI, Gruters	Before L.24:	03/23 05:24 PM
<b>Tab 3</b>	<b>SB 208</b> by <b>Brandes</b> ; (Identical to H 00775) Renewable Energy					
<b>Tab 4</b>	<b>SPB 7066</b> by <b>RI</b> ; Public Records and Public Meetings/Public Service Commission					

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

**REGULATED INDUSTRIES**

**Senator Hutson, Chair**

**Senator Book, Vice Chair**

**MEETING DATE:** Tuesday, March 23, 2021

**TIME:** 3:30—6:00 p.m.

**PLACE:** *Pat Thomas Committee Room, 412 Knott Building*

**MEMBERS:** Senator Hutson, Chair; Senator Book, Vice Chair; Senators Albritton, Gruters, Hooper, Passidomo, Rodrigues, Rouson, and Stewart

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A3 AT THE DONALD L. TUCKER CIVIC CENTER, 505 W. PENSACOLA STREET, TALLAHASSEE, FL 32301			
1	<b>CS/SB 284</b> Community Affairs / Perry (Identical CS/CS/H 55)	Building Design; Prohibiting certain regulations relating to building design elements from being applied to certain dwellings, etc.  CA 03/16/2021 Fav/CS RI 03/23/2021 Favorable RC	Favorable Yeas 8 Nays 1
2	<b>SB 1120</b> Gibson (Identical H 857)	Commercial Telephone Solicitation; Prohibiting a commercial telephone seller or salesperson from using automated dialing or recorded messages to make certain commercial telephone solicitation phone calls; prohibiting commercial telephone sellers or salespersons from making a specified number of commercial telephone solicitation phone calls to a person over a specified timeframe, etc.  CM 03/09/2021 Favorable RI 03/23/2021 Fav/CS RC	Fav/CS Yeas 9 Nays 0
3	<b>SB 208</b> Brandes (Identical H 775)	Renewable Energy; Authorizing owners of commercial or industrial businesses, or third parties contracted by such owners, to install, maintain, and operate a renewable energy source device on or about the structure in which the business operates or on a property the business owns or leases; authorizing owners or contracted third parties to sell electricity generated from the device to certain businesses regardless of whether the device is located in a utility's service territory; authorizing utilities to recover the full cost of providing services to an energy-producing business or its customers, under certain circumstances, etc.  RI 03/23/2021 Favorable CM RC	Favorable Yeas 9 Nays 0

Consideration of proposed bill:

**COMMITTEE MEETING EXPANDED AGENDA**

Regulated Industries

Tuesday, March 23, 2021, 3:30—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SPB 7066</b>	Public Records and Public Meetings/Public Service Commission; Exempting discussions of certain confidential information by the Public Service Commission during certain hearings from public meetings requirements; requiring such hearings to be recorded by a certified court reporter; providing that only redacted transcripts are subject to public records requirements; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc.	Submitted and Reported Favorably as Committee Bill Yeas 9 Nays 0

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
<b>Senate Confirmation Hearing:</b> A public hearing will be held for consideration of the below-named executive appointment to the office indicated.			
<b>Secretary of Business and Professional Regulation</b>			
5	Brown, Julie I. (Tampa)	Pleasure of Governor	Recommend Confirm Yeas 9 Nays 0
<b>Secretary of the Department of the Lottery</b>			
6	Davis, John F. (Tallahassee)	Pleasure of Governor	Recommend Confirm Yeas 9 Nays 0
<b>Florida Public Service Commission</b>			
7	La Rosa, Michael (St. Cloud)	01/01/2025	Recommend Confirm Yeas 9 Nays 0

Other Related Meeting Documents

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

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

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

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BILL: CS/SB 284

INTRODUCER: Community Affairs Committee and Senator Perry and others

SUBJECT: Building Design

DATE: March 18, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	<b>Fav/CS</b>
2.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	<b>Favorable</b>
3.	<u>                    </u>	<u>                    </u>	<u>RC</u>	<u>                    </u>

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

PLEASE MAKE SELECTION

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**I. Summary:**

CS/SB 284 amends the Community Planning Act to prohibit local governments from regulating specific building design elements for residential dwellings, with certain exceptions. Property development in Florida is governed in part by both the Community Planning Act and the Florida Building Code. The Community Planning Act governs how local governments create and adopt local comprehensive plans, implement land development regulations, and issue development orders and permits.

The bill:

- Prohibits local governments from adopting zoning and development regulations that require specific building design elements for single-family or two-family dwellings, unless certain conditions are met.
- Provides that local governments may adopt zoning and development regulations requiring certain building design elements for residential dwellings when:
  - The dwelling is a historic property or a contributing property to a historic district; or
  - The regulations are adopted in order to implement the National Flood Insurance Program;
  - The regulations are adopted pursuant to and meet the building construction standards in ch. 553, F.S.;
  - The dwelling is located in a community redevelopment area; or
  - The dwelling is located in a pre-existing planned unit development or master planned community.

- Defines the term “building design elements” to mean the exterior color, the type or style of exterior cladding, the style or material of roof structures or porches, the exterior nonstructural architectural ornamentation, the location or architectural styling of windows or doors, the location or orientation of the garage, and the number, type, and layout of rooms.
- Provides that the term “building design elements” does not include the height, bulk, orientation, or location of a dwelling on a zoning lot, or the use of buffering or screening to minimize potential adverse physical or visual impacts or protect the privacy of neighbors.

The bill takes effect July 1, 2021.

## II. Present Situation:

### The Community Planning Act

Adopted in 1985, the Local Government Comprehensive Planning and Land Development Regulation Act, also known as Florida’s Growth Management Act, was significantly revised in 2011, becoming the Community Planning Act.<sup>1</sup> The Community Planning Act governs how local governments create and adopt their local comprehensive plans.

It is the intent of the Community Planning Act that local governments manage growth through comprehensive land use plans that preserve, promote, protect, and improve the public health, safety, comfort, good order, appearance, convenience, law enforcement and fire prevention, and general welfare.<sup>2</sup>

Local comprehensive plans must include “principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area that reflects community commitments to implement the plan and its elements.”<sup>3</sup> Plans also are required to identify procedures for monitoring, evaluating, and appraising implementation of the plan.<sup>4</sup> Plans may include optional elements,<sup>5</sup> but must include the following nine elements:

- Capital improvements;<sup>6</sup>
- Future land use plan;<sup>7</sup>
- Intergovernmental coordination;<sup>8</sup>
- Conservation;<sup>9</sup>
- Transportation;<sup>10</sup>
- Sanitary sewer, solid waste, drainage, potable water and aquifer recharge;<sup>11</sup>

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<sup>1</sup> Ch. 2011-139, Laws of Fla.

<sup>2</sup> Section 163.3161(4), F.S.

<sup>3</sup> Section 163.3177(1), F.S.

<sup>4</sup> Section 163.3177(1)(d), F.S.

<sup>5</sup> Section 163.3177(1)(a), F.S.

<sup>6</sup> Section 163.3177(3)(a), F.S. The capital improvements element must be reviewed by local governments annually. *See* s. 163.3177(3)(b), F.S.

<sup>7</sup> Section 163.3177(6)(a), F.S.

<sup>8</sup> Section 163.3177(6)(h), F.S.

<sup>9</sup> Section 163.3177(6)(d), F.S.

<sup>10</sup> Section 163.3177(6)(b), F.S.

<sup>11</sup> Section 163.3177(6)(c), F.S.

- Recreation and open space;<sup>12</sup>
- Housing;<sup>13</sup> and
- Coastal management (for coastal local governments).<sup>14</sup>

All local government land development regulations must be consistent with the local comprehensive plan.<sup>15</sup> Additionally, all public and private development, including special district projects, must be consistent with the local comprehensive plan.<sup>16</sup> However, plans cannot require any special district to undertake a public facility project which would impair the district's bond covenants or agreements.<sup>17</sup>

### **Land Development Regulations**

The comprehensive plan is implemented through enactment by local government of land development regulations. Land development regulations are ordinances that regulate any aspect of development including any local government zoning, rezoning, subdivision, building construction, sign regulations, or any regulation that controls the development of land.<sup>18</sup>

Counties and municipalities are required to adopt or amend land development regulations within one year after submitting its comprehensive or revised comprehensive plan for review.<sup>19</sup> Section 163.3202(2), F.S., outlines the minimum provisions that counties and municipalities must include in their local government land development regulations. These provisions include:

- Regulating the subdivision of land;
- Regulating the use of land and water;
- Providing for protection of potable water wellfields;
- Regulating areas subject to seasonal and periodic flooding and provide for drainage and stormwater management;
- Ensuring the protection of environmentally sensitive lands designated in the comprehensive plan;
- Regulating signage;
- Addressing concurrency;
- Ensuring safe and convenient onsite traffic flow; and
- Maintaining the existing density of residential properties or recreational vehicle parks.

Under certain circumstances, the Department of Economic Opportunity (DEO), the state land planning agency, may require a local government to submit one or more land development regulations for the agency's review.<sup>20</sup> The DEO is required to adopt rules for review and schedules for adoption of land development regulations.<sup>21</sup>

<sup>12</sup> Section 163.3177(6)(e), F.S.

<sup>13</sup> Section 163.3177(6)(f), F.S.

<sup>14</sup> Section 163.3177(6)(g), F.S.

<sup>15</sup> Section 163.3194(1)(b), F.S.

<sup>16</sup> See ss. 163.3161(6) and 163.3194(1)(a), F.S.

<sup>17</sup> Section 189.081(1)(b), F.S.

<sup>18</sup> Sections 163.3164(26) & 163.3202(1), F.S.

<sup>19</sup> Section 163.3202(1), F.S.

<sup>20</sup> Sections 163.3164(44) and 163.3202(4), F.S.

<sup>21</sup> Section 163.3202(5), F.S.

Some local governments in Florida have adopted land development regulations that place restrictions on the design of new single- and two- family buildings such as the:

- External paint color;<sup>22</sup>
- Architectural style of:
  - Windows;
  - Doors, including garage doors;
  - Front porches; and
  - Roofs.<sup>23</sup>
- Exterior building material;<sup>24</sup> and
- Location of windows and garage doors.<sup>25</sup>

### States that Prohibit Local Government Regulations for Building Design Elements

North Carolina and Arkansas are two states that prohibit local governments from adopting regulations that require specific building design elements for single-family and two-family dwellings unless certain conditions exist.<sup>26</sup> Tennessee and Georgia considered bills to enact laws similar to North Carolina and Arkansas; however, the bills did not pass.<sup>27</sup>

Passed in 2015 and amended in 2020, North Carolina's law prohibits cities and counties from adopting regulations that require "building design elements" or a minimum square footage for single-family and two-family dwellings. The North Carolina law also prohibits such regulations

<sup>22</sup> Osceola County Land Development Code, Ch. 3, Art. 3.2.2, *available at* [https://library.municode.com/fl/osceola\\_county/codes/land\\_development\\_code?nodeId=LAND\\_DEVELOPMENT\\_CODE\\_CH3PESIST\\_ART3.2DIDEST](https://library.municode.com/fl/osceola_county/codes/land_development_code?nodeId=LAND_DEVELOPMENT_CODE_CH3PESIST_ART3.2DIDEST) (last visited Mar. 18, 2021); Code of the City of Orlando, Ch. 58, Part 3, s. 58.517; Orange County Code, Ch. 38, Art. VIII, Division 8, *available at* [Mini TOC: Chapter 58 - ZONING DISTRICTS AND USES | Code of Ordinances | Orlando, FL | Municode Library](#) (last visited Mar. 18, 2021).

<sup>23</sup> Osceola County Land Development Code, s. Ch. 3, Article 3.2.2., *supra* n. 22; Code of the City of Orlando, Ch. 58, Part 3, Section 58.517, *supra* n. 22; City of Winter Park Code of Ordinances, s. Ch. 58, Art. 3, s. 58-67, *available at* [ARTICLE III. - ZONING | Code of Ordinances | Winter Park, FL | Municode Library](#); Orange County Code, Ch. 38, Art. VIII, Division 8, *available at* [Mini TOC: ARTICLE VIII. - P-D PLANNED DEVELOPMENT DISTRICT | Code of Ordinances | Orange County, FL | Municode Library](#) (all last visited Mar. 18, 2021).

<sup>24</sup> Orange County Code, Ch. 38, Art. VIII, Division 8, *supra* n. 22; City of Winter Park Code of Ordinances, Ch. 58, Art. 3, s. 58-67, *supra* n. 23 (both last visited Mar. 18, 2021).

<sup>25</sup> Code of the City of Orlando, Ch. 58, Part 3, s. 58.517, *supra* n. 22 (last visited Mar. 18, 2021).

<sup>26</sup> N.C. Gen. Stat. s. 160D-702, as amended by 15, Session Law 2020-25 (2019 Session), *available at* <https://www.ncleg.gov/EnactedLegislation/SessionLaws/PDF/2019-2020/SL2020-25.pdf>; Ark. Code Ann. s. 14-17-212, *available at* [https://advance.lexis.com/documentpage/?pdmfid=1000516&crd=6a4a4908-dbc8-43cd-9ed8-2bccdf000d36&config=00JAA2ZjZiM2VhNS0wNTVILTQ3NzUtYjQzYy0yYWZmODJiODRmMDYKAFBvZENhdGFsb2fXiYCNsel0pllgqpYkw9PK&pddocfullpath=%2Fshared%2Fdocument%2Fstatutes-legislation%2Furn%3AcontentItem%3A5VSN-D4R0-R03K-N11B-00008-00&pdcontentcomponentid=234170&pdteaserkey=sr0&pdtab=allpods&ecomp=L5w\\_kkk&earg=sr0&prid=6bfe3e0a-c2e5-40e1-a90e-bef6c97ccf07](https://advance.lexis.com/documentpage/?pdmfid=1000516&crd=6a4a4908-dbc8-43cd-9ed8-2bccdf000d36&config=00JAA2ZjZiM2VhNS0wNTVILTQ3NzUtYjQzYy0yYWZmODJiODRmMDYKAFBvZENhdGFsb2fXiYCNsel0pllgqpYkw9PK&pddocfullpath=%2Fshared%2Fdocument%2Fstatutes-legislation%2Furn%3AcontentItem%3A5VSN-D4R0-R03K-N11B-00008-00&pdcontentcomponentid=234170&pdteaserkey=sr0&pdtab=allpods&ecomp=L5w_kkk&earg=sr0&prid=6bfe3e0a-c2e5-40e1-a90e-bef6c97ccf07) and Ark. Code Ann., s. 14-56-204, *available at* [https://advance.lexis.com/documentpage/?pdmfid=1000516&crd=a8de7f95-1022-4544-997e-17735d0b47f&config=00JAA2ZjZiM2VhNS0wNTVILTQ3NzUtYjQzYy0yYWZmODJiODRmMDYKAFBvZENhdGFsb2fXiYCNsel0pllgqpYkw9PK&pddocfullpath=%2Fshared%2Fdocument%2Fstatutes-legislation%2Furn%3AcontentItem%3A5VSN-DBJ0-R03J-P11G-00008-00&pdcontentcomponentid=234170&pdteaserkey=sr0&pdtab=allpods&ecomp=L5w\\_kkk&earg=sr0&prid=9a148755-666d-4208-89b7-4feed3ebdab4](https://advance.lexis.com/documentpage/?pdmfid=1000516&crd=a8de7f95-1022-4544-997e-17735d0b47f&config=00JAA2ZjZiM2VhNS0wNTVILTQ3NzUtYjQzYy0yYWZmODJiODRmMDYKAFBvZENhdGFsb2fXiYCNsel0pllgqpYkw9PK&pddocfullpath=%2Fshared%2Fdocument%2Fstatutes-legislation%2Furn%3AcontentItem%3A5VSN-DBJ0-R03J-P11G-00008-00&pdcontentcomponentid=234170&pdteaserkey=sr0&pdtab=allpods&ecomp=L5w_kkk&earg=sr0&prid=9a148755-666d-4208-89b7-4feed3ebdab4) (both last visited Mar. 18, 2021).

<sup>27</sup> Georgia General Assembly, 2019-2020 Regular Session - HB 302, <http://www.legis.ga.gov/Legislation/en-US/display/20192020/HB/302> (last visited Mar. 18, 2021); Tennessee General Assembly, 2017-2018 Session – HB 476 <http://wapp.capitol.tn.gov/apps/Billinfo/default.aspx?BillNumber=HB0476&ga=110> (last visited Mar. 18, 2021).

from being applied to any zoning district or conditional district unless voluntarily consented to by the owners of all the properties subject to the proposed regulation.<sup>28</sup> The North Carolina law defines “building design elements”<sup>29</sup> and allows cities and counties to adopt and enforce regulations that require “building design elements” for single-family and two-family dwellings in certain situations.<sup>30</sup>

In 2019, Arkansas passed a similar law that also prohibited cities and counties from adopting regulations that require “building design elements” for single-family dwellings.<sup>31</sup> In addition to the exceptions provided in the North Carolina law, Arkansas also allows cities and counties to adopt and enforce building design elements regulations under certain circumstances, including within central business districts and by pre-existing local regulations.<sup>32</sup>

### III. Effect of Proposed Changes:

The bill amends s. 163.3202, F.S., to prohibit local governments from adopting zoning and development regulations that relate to building design elements for single-family or two-family dwellings.

The bill allows local governments to adopt and enforce regulations that require “building design elements” for single-family or two-family dwellings if:

- The dwelling is listed in the National Register of Historic Places;<sup>33</sup>
- The dwelling is located in a National Register Historic District;
- The dwelling is designated as a historic property or located in a historic district by a local preservation ordinance;
- The regulations are adopted in order to implement the National Flood Insurance Program;
- The regulations are adopted pursuant to and meet the building construction standards in ch. 553, F.S.;
- The dwelling is located in a community redevelopment area, as defined in s. 163.340(10), F.S.;<sup>34</sup> or

<sup>28</sup> N.C. Gen. Stat. s. 160D-702, *supra* n. 26; see General Assembly of North Carolina, Session Law 2015-86 Senate Bill 25, June 9, 2015, available at <https://www.ncleg.gov/Sessions/2015/Bills/Senate/PDF/S25v3.pdf> and R. Erika Churchill, Staff Attorney for the North Carolina General Assembly, *Analysis of S.L. 2015-86* (last updated 10/12/2015), available at <https://www.ncleg.gov/Legislation/Bills/Summaries/2015/S25> (both last visited Mar. 18, 2021).

<sup>29</sup> The term “building design element” in the North Carolina law means exterior building color, type or style of exterior cladding material; style or materials of roof structures or porches; exterior nonstructural architectural ornamentation; location or architectural styling of windows and doors, including garage doors; number and types of rooms; and interior layout of rooms. The phrase does not include a single and two-family dwelling’s height, bulk, orientation, and location of a structure on a zoning lot. See N.C. Gen. Stat. s. 160D-702, *supra* n. 26.

<sup>30</sup> *Id.*

<sup>31</sup> Ark. Code Ann. ss. 14-17-212 and 14-56-204, *supra* n. 26; SB 170, 92nd Leg. Reg. Sess. (AR 2019) available at <https://legiscan.com/AR/text/SB170/2019> (last visited Mar. 18, 2021).

<sup>32</sup> *Id.*

<sup>33</sup> Section 267.021(5), F.S., relating to historical resources, provides the term “National Register of Historic Places” means “the list of historic properties significant in American history, architecture, archaeology, engineering, and culture, maintained by the Secretary of the Interior, as established by the National Historic Preservation Act of 1966, as amended.”

<sup>34</sup> Under s. 163.340(10), F.S., the term “community redevelopment area” means “a slum area, a blighted area, or an area in which there is a shortage of housing that is affordable to residents of low or moderate income, including the elderly, or a coastal and tourist area that is deteriorating and economically distressed due to outdated building density patterns, inadequate transportation and parking facilities, faulty lot layout or inadequate street layout, or a combination thereof which the

- The dwelling is located in a pre-existing planned unit development or master planned community created pursuant to local ordinance enacted on or before July 1, 2021.

The bill defines the term “building design elements” to mean:

- External building color;
- Type or style of exterior cladding material;
- Style or material of roof structures or porches;
- Exterior nonstructural architectural ornamentation;
- Location or architectural styling of windows or doors;
- Location and orientation of the garage;
- Number and type of rooms; and
- Interior layout of rooms.
- The term does not include a dwelling’s height, bulk, orientation, location on a zoning lot, or the use of buffering or screening to minimize potential adverse physical or visual impacts or protect the privacy of neighbors.

The bill defines “planned unit development” and “master planned community” as:

an area of land that is planned and developed as a single entity or in approved stages with uses and structures substantially related to the character of the entire development, or a self-contained development in which the subdivision and zoning controls are applied to the project as a whole rather than to individual lots.

The bill also provides that the prohibition of zoning and development regulations that relate to building design elements does not affect the validity or enforceability of private covenants or other contractual agreements relating to building design elements.

The bill takes effect July 1, 2021.

#### **IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

None.

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

None.

**C. Trust Funds Restrictions:**

None.

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governing body designates as appropriate for community redevelopment. For community redevelopment agencies created after July 1, 2006, a community redevelopment area may not consist of more than 80 percent of a municipality.”

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate. However, prohibiting certain building design elements ordinances and other regulations may lead to a decrease in the cost of construction of affected single-family or two-family dwellings.

C. Government Sector Impact:

Indeterminate. Local governments may experience costs associated with repealing, amending, and defending existing ordinances, zoning codes, and regulations prohibited by this bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill provides that zoning and development regulations enacted by local governments may not relate to “building design elements.” However, the term “zoning and development regulations” is not defined in the Community Planning Act. The term “land development regulations” is, however, defined in the Community Planning Act to mean ordinances enacted by governing bodies for the regulation of any aspect of development, and includes any local government zoning, rezoning, subdivision, building construction, sign regulations, or any other regulation controlling the development of land.<sup>35</sup>

The bill provides the term “building design elements” does not include location on a zoning lot. The term “zoning lot” used in the bill is not defined in the bill or in the Florida Statutes.

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<sup>35</sup> Section 163.3164(25), F.S., also provides the definition does not apply in s. 163.3213, F.S., relating to administrative review of land development regulations; in that section, the term “land development regulation” means “an ordinance enacted by a local governing body for the regulation of any aspect of development, including a subdivision, building construction, landscaping, tree protection, or sign regulation or any other regulation concerning the development of land. This term shall include a general zoning code, but shall not include a zoning map, an action which results in zoning or rezoning of land, or any building construction standard adopted pursuant to and in compliance with the provisions of chapter 553.”

**VIII. Statutes Affected:**

This bill substantially amends the following section 163.3202 of the Florida Statutes.

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

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

**CS by Community Affairs on March 16, 2021:**

The committee substitute adds exceptions to the bill's preemption to include regulations adopted pursuant to ch. 553, F.S. (regarding local amendments to the Florida Building Code), dwellings in community redevelopment areas, and dwellings located in a planned unit development or master planned community created by ordinance before July 1, 2021. It also adds the location or orientation of the garage to the definition of "building design elements."

**B. Amendments:**

None.

By the Committee on Community Affairs; and Senators Perry and Hutson

578-02919-21

2021284c1

A bill to be entitled

An act relating to building design; amending s. 163.3202, F.S.; prohibiting certain regulations relating to building design elements from being applied to certain dwellings; providing exceptions; defining terms; providing construction; providing an effective date.

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

Section 1. Present subsection (5) of section 163.3202, Florida Statutes, is redesignated as subsection (6), and a new subsection (5) is added to that section, to read:

163.3202 Land development regulations.—

(5) (a) Land development regulations relating to building design elements may not be applied to a single-family or two-family dwelling unless:

1. The dwelling is listed in the National Register of Historic Places, as defined in s. 267.021(5); is located in a National Register Historic District; or is designated as a historic property or located in a historic district, under the terms of a local preservation ordinance;

2. The regulations are adopted in order to implement the National Flood Insurance Program;

3. The regulations are adopted pursuant to and in compliance with chapter 553;

4. The dwelling is located in a community redevelopment area, as defined in s. 163.340(10); or

5. The dwelling is located in a planned unit development or

578-02919-21

2021284c1

master planned community created pursuant to a local ordinance enacted on or before July 1, 2021.

(b) For purposes of this subsection, the term:

1. "Building design elements" means the external building color; the type or style of exterior cladding material; the style or material of roof structures or porches; the exterior nonstructural architectural ornamentation; the location or architectural styling of windows or doors; the location or orientation of the garage; the number and type of rooms; and the interior layout of rooms. The term does not include the height, bulk, orientation, or location of a dwelling on a zoning lot; or the use of buffering or screening to minimize potential adverse physical or visual impacts or to protect the privacy of neighbors.

2. "Planned unit development" or "master planned community" means an area of land that is planned and developed as a single entity or in approved stages with uses and structures substantially related to the character of the entire development, or a self-contained development in which the subdivision and zoning controls are applied to the project as a whole rather than to individual lots.

(c) This subsection does not affect the validity or enforceability of private covenants or other contractual agreements relating to building design elements.

Section 2. This act shall take effect July 1, 2021.

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

**APPEARANCE RECORD**

3/23/21

Meeting Date

284

Bill Number (if applicable)

Topic Building Designs

Amendment Barcode (if applicable)

Name Edward Briggs

Job Title Director of Government Relations

Address 235 W. Brandon Blvd. Ste. 640

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FL

33511

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City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Highland Homes

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3/23/2021

*Meeting Date*

CS/SB 284

*Bill Number (if applicable)*

Topic Building Design

*Amendment Barcode (if applicable)*

Name Tara Taggart

Job Title Legislative Policy Analyst

Address 301 S. Bronough Street #300

Phone 850-701-3603

*Street*

Tallahassee

FL

32301

Email ttaggart@flcities.com

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)



The Florida Senate

## Committee Agenda Request

**To:** Senator Travis Hutson, Chair  
Committee on Regulated Industries

**Subject:** Committee Agenda Request

**Date:** March 17, 2021

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I respectfully request that **Senate Bill #284**, relating to Building Design, be placed on the:

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

A handwritten signature in black ink that reads "W. Keith Perry". The signature is written in a cursive style with a long, sweeping underline.

---

Senator Keith Perry  
Florida Senate, District 8

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

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

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

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BILL: CS/SB 1120

INTRODUCER: Regulated Industries Committee and Senators Gibson and Powell

SUBJECT: Commercial Telephone Solicitation

DATE: March 25, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<b>Favorable</b>
2.	<u>Sharon</u>	<u>Imhof</u>	<u>RI</u>	<b>Fav/CS</b>
3.	_____	_____	<u>RC</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1120 requires all sales telephone calls, text messages, and direct-to-voicemail transmissions to have the receiving consumer's prior express written consent if the call will be made using an automated machine to dial the recipient's phone number or will play a recorded message upon connection with the recipient.

The bill creates a rebuttable presumption that a sales call made to a Florida area code is made either to a Florida resident or to a person in this state at the time of the call.

The bill creates a private right of action to enforce the provisions in the bill. An aggrieved party may petition a court to enjoin the violating party. A prevailing plaintiff may recover the greater sum of either their actual monetary damages or \$500, plus attorney fees and costs. Additionally, a court may increase damages by up to three times, for a willful or knowing violation.

The bill amends the Florida Telemarketing Act to prohibit telephone sellers or salespersons from calling consumers outside of the hours between 8 a.m. and 8 p.m. in the consumer's time zone and prohibits telephone sellers or salespersons from contacting consumer on the same subject matter more than three times in a 24-hour period. The bill also clarifies that calls made through an automated dialer or recorded message are subject to the same prohibitions.

The bill is effective July 1, 2021.

## II. Present Situation:

### Unsolicited Phone Calls

Consumers are often inundated with unwanted calls. In fiscal year 2020, the Federal Trade Commission (FTC) received 293,071 complaints from Florida consumers about unwanted telephone calls.<sup>1</sup> The Federal Communications Commission (FCC) reports that unwanted calls constitute their top consumer complaint.<sup>2</sup> Unwanted calls can come in many forms, including robocalls<sup>3</sup>, which use an “automatic telephone dialing system,”<sup>4</sup> referred to as an autodialer, and play a recorded message upon connection with the consumer; “spoofing” or “spoofed calls,” which transmit falsified information to a consumer’s caller ID to disguise the solicitor’s identity; and unwanted telemarketing calls.<sup>5</sup>

State and federal action to combat these issues are limited because there are legitimate and legal uses of this technology. For example, a doctor’s office may legally use a robocall to remind one of an upcoming appointment.<sup>6</sup> Additionally, some solicitors act outside the scope of federal or state enforcement authority.

### Federal Law

#### *Telephone Consumer Protection Act*<sup>7</sup>

The Telephone Consumer Protection Act of 1991 (TCPA) protects U.S. consumers from unwanted communications by restricting the use of autodialers, prerecorded sales messages, and unsolicited sales calls, text messages, or faxes.

The TCPA prohibits telephone solicitations that:

- Are made to residences before 8 a.m. and after 9 p.m.;

<sup>1</sup> Federal Trade Commission, *Do Not Call Data Book 2020* (Oct. 2020), [https://www.ftc.gov/system/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2020/dnc\\_data\\_book\\_2020.pdf](https://www.ftc.gov/system/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2020/dnc_data_book_2020.pdf) (last visited Mar. 17, 2021).

<sup>2</sup> Federal Communications Commission, *Stop Unwanted Calls and Texts* (Mar. 2, 2021), <https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts> (last visited Mar. 17, 2021).

<sup>3</sup> “At the FCC, we use the term ‘robocalls’ to refer not to just prerecorded calls but also autodialed calls, regardless of whether the call is live or prerecorded.” *Stopping Fraudulent Robocall Scams: Can More Be Done?*, Hearing Before the S. Subcomm. on Consumer Protection, Product Safety, and Insurance of the Comm. on Commerce, Science, and Transportation, 113th Cong. (July 10, 2013) (Statement of Eric J. Bash, Associate Chief, Enforcement Bureau, Federal Communications Commission) <https://www.govinfo.gov/content/pkg/CHRG-113shrg85765/pdf/CHRG-113shrg85765.pdf> (last visited Mar. 17, 2021).

<sup>4</sup> An “automatic telephone dialing system” or “autodialer” is equipment that has the capacity to produce or store phone numbers using a random or sequential number generator, and to call those phone numbers. 47 U.S.C. s. 227(a)(1).

<sup>5</sup> “Fraudsters have also further exploited caller ID spoofing, which induces the consumer to pick up the phone, while at the same time enabling the scammer to hide its identity and location.” *Stopping Fraudulent Robocall Scams*, Hearing, *supra* at n. 3 (Statement of Lois Greisman, Associate Director, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission).

<sup>6</sup> Federal Communication Commission, Consumer and Governmental Affairs Bureau, *Report on Robocalls* (Feb. 2019), CG Docket No. 17-59, <https://www.fcc.gov/document/fcc-issues-report-illegal-robocalls> (last visited Mar. 17, 2021). *See also*, Federal Communications Commission, *Stop Unwanted Calls and Texts--Spoofing*, (Mar. 2, 2021) <https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts> (last visited Mar. 17, 2021).

<sup>7</sup> 47 U.S.C. s. 227. *See also*, 47 CFR s. 64.1200 (2012).

- Fail to provide the consumer with the solicitor's identity, including his or her true phone number via caller identification service,<sup>8</sup> and an opportunity to opt out of the current call, and all future calls, made by that solicitor;
- Send artificial or pre-recorded messages to a residential line; and
- Use an autodialer, artificial message, or pre-recorded messages to a cellular, emergency, or hospital room line.

The TCPA grants a private right of action to pursue actual monetary damages or up to \$500 per violation.<sup>9</sup> State attorneys general and the FCC also have jurisdiction to investigate and file civil claims based on violations of the TCPA.<sup>10</sup>

The TCPA's protections extend to text messaging in the same manner that they apply to telephone calls.<sup>11</sup>

### ***Federal Do Not Call Program***

The FTC, in concert with the FCC, administers the National Do Not Call Program.<sup>12</sup> Telephone solicitors may not contact a consumer who participates in the National Do Not Call Program, unless the calls are:

- Made with a consumer's prior, express permission;
- Informational in nature, such as those made to convey a utility outage, school closing, or flight information; or
- Made by a tax-exempt organization.<sup>13</sup>

### ***Truth in Caller ID Act***

The Truth in Caller ID Act of 2009<sup>14</sup> protects consumers by prohibiting any person from transmitting misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value. The FCC investigates and prosecutes violations of the act under its rules.<sup>15</sup> The FCC has taken enforcement actions totaling \$450 million in fines, in recent years against telemarketers for call spoofing violations—of note, the FCC imposed its largest fine ever against a Florida-based timeshare marketing operation.<sup>16</sup>

<sup>8</sup> 47 C.F.R. s. 64.1601(e). *See also*, Federal Communications Commission, *Public Notice: FCC's Caller ID Rules for Telemarketers Become Effective* (Jan. 29, 2004) [https://apps.fcc.gov/edocs\\_public/attachmatch/DA-04-206A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-04-206A1.pdf) (last visited Mar. 17, 2021).

<sup>9</sup> 47 U.S.C. s. 227 (c)(5).

<sup>10</sup> 47 U.S.C. s. 227 (f).

<sup>11</sup> Federal Communications Commission, *FCC Strengthens Consumer Protections against Unwanted Calls and Texts* (Jun. 18, 2015), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-333993A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-333993A1.pdf) (last visited Mar. 17, 2021).

<sup>12</sup> Federal Communications Commission, *Stop Unwanted Calls and Texts* (Mar. 2, 2021), <https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts> (last visited Mar. 17, 2021).

<sup>13</sup> 47 U.S.C. s. 227(a)(4). *See also*, 47 C.F.R. s. 64.1200.

<sup>14</sup> 47 U.S.C. s. 227 (e).

<sup>15</sup> *See*, 47 CFR s. 64.

<sup>16</sup> Federal Communications Commission, *The FCC's Push to Combat Robocalls & Spoofing*, <https://www.fcc.gov/spoofed-robocalls> (last visited Mar. 17, 2021). *See also*, Federal Communications Commission, *FCC Fines Massive Neighbor Spoofing Robocall Operation \$120 Million* (May 10, 2018) <https://www.fcc.gov/document/fcc-fines-massive-neighbor-spoofing-robocall-operation-120-million> (last visited Mar. 17, 2021).

To protect individual privacy concerns, an individual caller may still request to hide his or her phone number when making a call.<sup>17</sup>

## **Florida Law**

### ***Florida Telemarketing Act***

The Florida Telemarketing Act (Telemarketing Act)<sup>18</sup>, requires commercial telephone sellers, usually a business entity, and their individual salespersons to obtain a license from the Department of Agriculture and Consumer Services (department). An applicant for licensure as a commercial telephone seller must submit, among other information:

- Its criminal, civil, and administrative disciplinary background;
- All phone numbers from which the applicant will solicit business and the physical address at which the phones will be located;
- The script it will use during a solicitation, or any informational literature it will provide to a consumer; and
- A bond, letter of credit, or certificate of deposit to serve as security in any future case of fraud, breach of contract, financial failure, or violation by the licensee.<sup>19</sup>

As part of their licensure, individual salespersons, who are hired by commercial telephone sellers to act as their salespersons, undergo a similar review of their criminal, civil, administrative or regulatory disciplinary history, but they are not required to post a bond, letter of credit, or certificate of deposit.<sup>20</sup>

Many solicitors are exempt from licensure under the Telemarketing Act, including religious, charitable, political, or educational organizations that have a s. 501(c)(3) or (6) exemption from the Internal Revenue Code; licensed securities, commodities, or investment brokers and dealers; and newspaper or cable television sellers, among others.<sup>21</sup>

Licensed telephone sellers and solicitors must identify themselves to the consumer within 30 seconds of the beginning of the phone call.<sup>22</sup> To ensure that the department can conduct thorough investigations, when needed, a licensed telephone seller must also maintain copies of their business records for at least two years—including all of the names and telephone numbers that they contacted.<sup>23</sup>

All telephone sellers and solicitors, whether exempt or not, are prohibited from calling consumers outside of the hours between 8:00 a.m. and 9:00 p.m., local time, in the called person's time zone.<sup>24</sup> Additionally, all solicitors must allow their name or telephone number to

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<sup>17</sup> 47 CFR s. 64.1601.

<sup>18</sup> Part IV of ch. 501, F.S.

<sup>19</sup> Section 501.605, F.S.

<sup>20</sup> Section 501.607, F.S.

<sup>21</sup> See, s. 501.604, F.S.

<sup>22</sup> Section 501.613, F.S.

<sup>23</sup> Section 501.6175, F.S.

<sup>24</sup> Section 501.616(6). See also, s. 501.604, F.S., which provides a general exemption from the Telemarketing Act, "except ss. 501.608 and 501.616(6) and (7)."

be transmitted to the consumer if the equipment they use is capable.<sup>25</sup> This prevents solicitors from “spoofing” a different number or otherwise blocking their caller identification to induce a consumer to answer the phone.

### ***Florida Do Not Call Act***

#### **Do Not Call List**

The department also administers the Florida Do Not Call Act (also called the “Do Not Call List”), which prohibits unsolicited phone calls and text messages.<sup>26</sup> Residents who do not wish to receive sales calls may request to have their residential, mobile, or paging device telephone number included on the department’s list.<sup>27</sup>

A communication is unsolicited, and therefore prohibited under the Do Not Call List, unless the contact is made:

- At the consumer’s request;
- By a charitable or political organization that is seeking donations;
- As part of a survey, or for the purpose of research seeking an opinion;
- In connection with an existing debt or contract for which payment is due; or
- By a newspaper publisher, or his or her agent or employee, in connection with the publisher’s business.<sup>28</sup>

#### **Continued Solicitations**

Section 501.059, F.S., further prohibits a telephone solicitor<sup>29</sup> from calling, text messaging, sending a direct voicemail transmission, or using automated telephone equipment to contact any consumer who has previously communicated to the solicitor that he or she does not wish to receive a telephone call, whether or not he or she is part of the Do Not Call List. However, this prohibition applies only to calls made by or on behalf of a seller who offers goods or services or a charity that solicits a charitable contribution.

#### **Automated Dialers and Recorded Messages**

Section 501.059(8), F.S., prohibits solicitations via telephone calls, text messages, and direct-to-voicemail transmissions if the communication is initiated with an automated system that selects or dials the telephone numbers (autodialer), or if the communication plays a recorded message upon connection with the consumer. Autodialed calls and recorded messages are permitted if (1) they are in response to a call that the consumer initiated, (2) the person initiating the call screens out unlisted telephone numbers and numbers that are on the Do Not Call list, or (3) made regarding goods or services that the consumer previously purchased.

This section also prevents call spoofing (in cases of solicitation calls), where a telephone call, text message, or direct-to-voicemail transmission does not transmit the correct originating

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<sup>25</sup> Section 501.616(7), F.S.

<sup>26</sup> See, s. 501.059, F.S. Florida Department of Agriculture and Consumer Services, *Florida Do Not Call*, <https://www.fdacs.gov/Consumer-Resources/Florida-Do-Not-Call> (last visited Mar. 17, 2021).

<sup>27</sup> Section 501.059(3)-(4), F.S.

<sup>28</sup> Section 501.059(1)(h), F.S.

<sup>29</sup> Section 501.059(1)(f), F.S., defines a ‘telephone solicitor’ as a natural person or business that does business in this state by making or causing to be made a telephone sales call.

telephone number; and fraudulent attempts to disguise the caller's identity in order to defraud, confuse, or otherwise injure the call's recipient.

### Penalties

A telephone solicitor who violates the provisions of the Florida Do Not Call Act is subject to a civil penalty with a maximum fine of \$10,000 per violation, or an administrative fine with a maximum of \$1,000 per violation, in addition to attorney's fees and costs.<sup>30</sup> The act does not provide for a private cause of action. The Department of Agriculture and Consumer Services and the Office of the Attorney General have exclusive enforcement authority.

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

**Section 1** amends s. 501.059, F.S., to require any person making a sales call using an autodialer or playing a recorded message upon connection with the consumer to obtain signed prior express written consent from the consumer.

The bill defines the terms "called party," "prior express written consent," and "signature."

Under the bill, "called party" means a person who is the regular user of the telephone number receiving telephonic sales calls.

"Prior express written consent" is defined by the bill to mean a written agreement that has the signature of the called party; authorizes the person making the call, text, or voicemail to deliver it using an automated system or recorded message; includes the number authorized to be contacted; and includes a clear and conspicuous disclosure informing the called party that they are:

- Authorizing the call to be made using an automated system or recorded message; and
- Not required to sign the written agreement as a condition of purchasing any property, goods, or services.

"Signature" means an electronic or digital signature recognized as valid under applicable federal or state contract law.

The bill deletes the provision authorizing the use of automated telephone dialing systems when:

- The call is made in response to calls initiated by the called party;
- The number called has been screened to exclude numbers on the DACS "no sales solicitation calls" list or any unlisted telephone number; or
- The call concerns goods or services previously purchased by the called party.

A rebuttable presumption is created by the bill, that a sales call made to any area code in the state is made to a Florida resident or a person in the state at the time of the call.

The bill provides a private cause of action for violations to s. 501.059, F.S., which allow the aggrieved party to obtain an injunction and recover their actual monetary damages or \$500, whichever is greater. It authorizes a court to increase the award for willful and knowing

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<sup>30</sup> Section 501.059(9), F.S.

violations and revises the attorney fees and costs provision from being available to the prevailing party to only being available in favor of a prevailing plaintiff.

**Section 2** amends s. 501.616(6), F.S., to reduce the hours during which telephone sellers and salespersons may call consumers. Currently, telephone sellers and salespersons may solicit between 8 a.m. and 9 p.m. local time in the consumer's location. The bill permits solicitations during 8 a.m. and 8 p.m. in the consumer's time zone.

The bill further prohibits telephone sellers and salespersons from calling a consumer more than three times over a 24-hour period about the same subject matter. This prohibition applies, regardless of the phone number a telephone seller or salesperson uses to call the consumer.

The bill also applies these prohibitions to a commercial telephone seller or salesperson's use of an automated dialer or recorded message.

The provisions of the bill will apply to licensed telephone sellers and salespersons, and those entities who solicit under the s. 501.604, F.S., licensure exemptions of the Telemarketing Act.

**Sections 3 and 4** reenact ss. 501.604 and 648.44(1)(c), F.S., respectively, to incorporate the changes made to s. 501.616, F.S.

**Section 5** provides that the bill takes effect July 1, 2021.

#### **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:**

In *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, the Supreme Court of the United States held that commercial speech should receive First Amendment protections.<sup>31</sup> The Court based its opinion on the public's right to receive a

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<sup>31</sup> See *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 96 S. Ct. 1817 (1976).

free flow of commercial information.<sup>32</sup> Although commercial speech does receive protection, it is below the protection provided to completely protected speech, and states retain the ability to regulate commercial speech that is inherently misleading or that has proven to be misleading in practice.<sup>33</sup>

In *Central Hudson Gas & Elec. Corp. v. Public Service Commission of New York*, the Supreme Court of the United States established a four-part test for analyzing the limitations of advertising regulations.<sup>34</sup> Under the *Central Hudson* test, a state must show that any commercial speech regulation is aimed at regulating lawful and “non-misleading” commercial speech in service of a substantial state interest, in a manner that directly advances that interest, and that is no more extensive than necessary to serve that interest.<sup>35</sup> Although commercial speech regulations must meet the *Central Hudson* test, in *Bates v. State Bar of Arizona*, the Supreme Court held that reasonable time, place, and manner restrictions on advertising is authorized if the content or subject matter is not regulated.<sup>36</sup>

A state law that has the practical effect of regulating commerce that occurs entirely outside of the state’s borders is invalid under the Commerce Clause of the of the U.S. Constitution, regardless of its intent to reach outside of the state’s borders.<sup>37</sup> Conversely, the dormant commerce clause prohibits states from enacting laws that unduly burden interstate commerce.<sup>38</sup>

A Florida law that prohibited persons from causing false information to be displayed on the call recipient’s caller ID system was found to impermissibly regulate commerce wholly outside of Florida by making it impossible for parties to use or offer caller ID spoofing services anywhere.<sup>39</sup> The Court reasoned that the law affected interstate commerce because the increased use of mobile phones and call forwarding make it impossible to be certain where the parties called are located.

For example, a business located in New York might place a call, using caller ID spoofing services, to a telephone number with an Ohio area code. Because of call forwarding and the mobility of cellular telephones, the recipient of that call might be present in Florida, and the New York business would be criminally liable for violating [the law] when they called the Ohio telephone number. . . . The logical consequence of this impossibility is that Plaintiffs are unable to offer caller ID spoofing services anywhere in the country without risking criminal liability under Florida’s statute.<sup>40</sup>

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<sup>32</sup> *Id.*

<sup>33</sup> *See In re R.M.J.*, 102 S. Ct. 929 (1982).

<sup>34</sup> *See Central Hudson Gas & Elec. Corp. v. Public Service Commission of New York*, 100 S. Ct. 2343 (1980).

<sup>35</sup> *Id.*

<sup>36</sup> *See Bates v. State Bar of Arizona*, 97 S. Ct. 2691 (1977).

<sup>37</sup> *Healy v. Beer Institute, Inc.*, 491 U.S. 324, 332 (1989). *See also*, U.S. CONST. art. 1 § 8, cl. 3.

<sup>38</sup> *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 90 S.Ct. 844 (1970).

<sup>39</sup> *Taltech Systems, Inc. v. McCollum*, 2009 WL 10626585 (S.D. Fla. July 16, 2009).

<sup>40</sup> *Id.*

As recently as 2020, the United States District Court for North Dakota used the reasoning in this Florida case to rule that a North Dakota anti-spoofing statute violated the Commerce Clause, despite an exemption that would have exculpated the caller if they reasonably believed the called-party was not physically within North Dakota.<sup>41</sup>

It is unclear whether the bill's presumption regarding Florida area codes will have an effect on interstate commerce to an extent that it has the practical effect of regulating commerce outside of Florida's borders.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill adds prohibited acts to the Florida Telemarketing Act. The department, as enforcing authority of the act, estimates that it may see an increase in consumer complaints and prosecutions as a result; it also states that it will be required to expand its rulemaking to allow for implementation of these changes. The department states that this may result in an indeterminate costs to the department.<sup>42</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends s. 501.616, F.S.

This bill reenacts the following sections of the Florida Statutes ss. 501.604 and 648.44, F.S.

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<sup>41</sup> *SpoofCard, LLC v. Burgum*, No. 1:19-CV-00276, 2020 WL 7234159 (D.N.D. Nov. 9, 2020).

<sup>42</sup> Department of Agriculture and Consumer Services, *SB 1120 Agency Analysis* (Feb. 24, 2021) (on file with the Senate Committee on Regulated Industries).

**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 Regulated Industries on March 9, 2021:****The Committee Substitute:**

- Amends s. 501.059, F.S., relating to Telephone solicitation.
- Defines the terms “called party,” “prior express written consent,” and “signature.”
- Prohibits sales calls without prior express written consent of the called party.
- Removes the provision of law authorizing the use of automated telephone dialing systems under certain circumstances.
- Provides a rebuttable presumption that a sales call made to any area code in the state is made to a Florida resident or a person in the state at the time of the call.
- Provides a cause of action, which allows the aggrieved party to obtain an injunction and recover their actual monetary damages or \$500, whichever is greater.
- Authorizes a court to increase the award for willful and knowing violations.
- Revises the attorney fees and costs provision to be in favor of a prevailing plaintiff.

- B. **Amendments:**

None.



456696

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2021	.	
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The Committee on Regulated Industries (Gruters) recommended the following:

**Senate Amendment (with title amendment)**

Before line 24

insert:

Section 1. Present paragraphs (a) through (e) and (f) through (i) of subsection (1) of section 501.059, Florida Statutes, are redesignated as paragraphs (b) through (f) and (i) through (l), respectively, new paragraphs (a), (g), and (h) are added to that subsection, and subsections (8) and (10) and present subsections (11) and (12) are amended, to read:



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501.059 Telephone solicitation.—

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

(a) "Called party" means a person who is the regular user of the telephone number that receives a telephonic sales call.

(g) "Prior express written consent" means a written agreement that:

1. Bears the signature of the called party;

2. Clearly authorizes the person making or allowing the placement of a telephonic sales call by telephone call, text message, or voicemail transmission to deliver or cause to be delivered to the called party a telephonic sales call using an automated system for the selection or dialing of telephone numbers, the playing of a recorded message when a connection is completed to a number called, or the transmission of a prerecorded voicemail;

3. Includes the telephone number to which the signatory authorizes a telephonic sales call to be delivered; and

4. Includes a clear and conspicuous disclosure informing the called party that:

a. By executing the agreement, the called party authorizes the person making or allowing the placement of a telephonic sales call to deliver or cause to be delivered a telephonic sales call to the called party using an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called; and

b. He or she is not required to directly or indirectly sign the written agreement or to agree to enter into such an agreement as a condition of purchasing any property, goods, or



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services.

(h) "Signature" includes an electronic or digital signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

(8) (a) A ~~no~~ person may not ~~shall~~ make or knowingly allow a telephonic sales call to be made if such call involves an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called without the prior express written consent of the called party.

~~(b) Nothing herein prohibits the use of an automated telephone dialing system with live messages if the calls are made or messages given solely in response to calls initiated by the persons to whom the automatic calls or live messages are directed or if the telephone numbers selected for automatic dialing have been screened to exclude any telephone subscriber who is included on the department's then-current "no sales solicitation calls" listing or any unlisted telephone number, or if the calls made concern goods or services that have been previously ordered or purchased.~~

~~(c)~~ It shall be unlawful for any person who makes a telephonic sales call or causes a telephonic sales call to be made to fail to transmit or cause not to be transmitted the originating telephone number and, when made available by the telephone solicitor's carrier, the name of the telephone solicitor to any caller identification service in use by a recipient of a telephonic sales call. However, it is ~~shall~~ not be a violation to substitute, for the name and telephone number



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used in or billed for making the call, the name of the seller on behalf of which a telephonic sales call is placed and the seller's customer service telephone number, which is answered during regular business hours. If a telephone number is made available through a caller identification service as a result of a telephonic sales call, the solicitor must ensure that telephone number is capable of receiving telephone calls and must connect the original call recipient, upon calling such number, to the telephone solicitor or to the seller on behalf of which a telephonic sales call was placed. For purposes of this section, the term "caller identification service" means a service that allows a telephone subscriber to have the telephone number and, where available, the name of the calling party transmitted contemporaneously with the telephone call and displayed on a device in or connected to the subscriber's telephone.

(c) ~~(d)~~ It shall be unlawful for any person who makes a telephonic sales call or causes a telephonic sales call to be made to intentionally alter the voice of the caller in an attempt to disguise or conceal the identity of the caller in order to defraud, confuse, or financially or otherwise injure the recipient of a telephonic sales call or in order to obtain personal information from the recipient of a telephonic sales call which may be used in a fraudulent or unlawful manner.

(d) There is a rebuttable presumption that a telephonic sales call made to any area code in this state is made to a Florida resident or to a person in this state at the time of the call.

(10) (a) A called party who is aggrieved by a violation of



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98 this section may bring an action to:

99 1. Enjoin such violation.

100 2. Recover actual damages or \$500, whichever is greater.

101 (b) If the court finds that the defendant willfully or  
102 knowingly violated this section or rules adopted pursuant to  
103 this section, the court may, in its discretion, increase the  
104 amount of the award to an amount equal to not more than three  
105 times the amount available under paragraph (a).

106 (11)(a) If a plaintiff prevails in any civil litigation  
107 resulting from a ~~transaction involving a~~ violation of this  
108 section, ~~the prevailing party,~~ after judgment in the trial court  
109 and exhaustion of all appeals, if any, the plaintiff shall  
110 receive his or her reasonable attorney ~~attorney's~~ fees and costs  
111 from the defendant ~~nonprevailing party.~~

112 (b) The attorney for the prevailing plaintiff ~~party~~ shall  
113 submit a sworn affidavit of his or her time spent on the case  
114 and his or her costs incurred for all the motions, hearings, and  
115 appeals to the trial judge who presided over the civil case.

116 (c) The trial judge shall award the prevailing plaintiff  
117 ~~party~~ the sum of reasonable costs incurred in the action plus a  
118 reasonable legal fee for the hours actually spent on the case as  
119 sworn to in an affidavit.

120 (d) Any award of attorney ~~attorney's~~ fees or costs shall  
121 become a part of the judgment and subject to execution as the  
122 law allows.

123 (e) In any civil litigation initiated by the department or  
124 the Department of Legal Affairs, the court may award to the  
125 prevailing party reasonable attorney ~~attorney's~~ fees and costs  
126 if the court finds that there was a complete absence of a



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justiciable issue of either law or fact raised by the losing party or if the court finds bad faith on the part of the losing party.

(12)~~(11)~~ Telecommunications companies shall inform their customers of the provisions of this section. The notification may be made by:

(a) Annual inserts in the billing statements mailed to customers; and

(b) Conspicuous publication of the notice in the consumer information pages of the local telephone directories.

(13)~~(12)~~ The department may adopt rules to implement this section.

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

And the title is amended as follows:

Delete line 2  
and insert:

An act relating to telephone solicitation; amending s. 501.059, F.S.; defining terms; prohibiting certain telephonic sales calls without the prior express written consent of the called party; removing provisions authorizing the use of certain automated telephone dialing systems; providing a rebuttable presumption for certain calls made to any area code in this state; providing a cause of action for aggrieved called parties; authorizing a court to increase an award for willful and knowing violations; revising awards of attorney fees and costs for violations to authorize only a prevailing plaintiff to receive such



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an award;

By Senator Gibson

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1 A bill to be entitled  
 2 An act relating to commercial telephone solicitation;  
 3 amending s. 501.616, F.S.; prohibiting a commercial  
 4 telephone seller or salesperson from using automated  
 5 dialing or recorded messages to make certain  
 6 commercial telephone solicitation phone calls;  
 7 revising the timeframe during which a commercial  
 8 telephone seller or salesperson may make commercial  
 9 solicitation phone calls; prohibiting commercial  
 10 telephone sellers or salespersons from making a  
 11 specified number of commercial telephone solicitation  
 12 phone calls to a person over a specified timeframe;  
 13 reenacting s. 501.604, F.S., relating to exemptions to  
 14 the Florida Telemarketing Act, to incorporate the  
 15 amendment made to s. 501.616, F.S., in a reference  
 16 thereto; reenacting s. 648.44(1)(c), F.S., relating to  
 17 prohibitions regarding bail bond agent telephone  
 18 solicitations, to incorporate the amendment made to s.  
 19 501.616, F.S., in a reference thereto; providing an  
 20 effective date.  
 21  
 22 Be It Enacted by the Legislature of the State of Florida:  
 23  
 24 Section 1. Subsection (6) of section 501.616, Florida  
 25 Statutes, is amended to read:  
 26 501.616 Unlawful acts and practices.—  
 27 (6) A commercial telephone seller or salesperson may not  
 28 make any of the following types of phone calls, including calls  
 29 made through automated dialing or recorded messages:

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

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30 (a) A commercial telephone solicitation phone call before 8  
 31 a.m. or after 8 9 p.m. local time in at the called person's time  
 32 zone location.  
 33 (b) More than three commercial telephone solicitation phone  
 34 calls from any number to a person over a 24-hour period on the  
 35 same subject matter or issue, regardless of the phone number  
 36 used to make the call.  
 37 Section 2. For the purpose of incorporating the amendment  
 38 made by this act to section 501.616, Florida Statutes, in a  
 39 reference thereto, section 501.604, Florida Statutes, is  
 40 reenacted to read:  
 41 501.604 Exemptions.—The provisions of this part, except ss.  
 42 501.608 and 501.616(6) and (7), do not apply to:  
 43 (1) A person engaging in commercial telephone solicitation  
 44 where the solicitation is an isolated transaction and not done  
 45 in the course of a pattern of repeated transactions of like  
 46 nature.  
 47 (2) A person soliciting for religious, charitable,  
 48 political, or educational purposes. A person soliciting for  
 49 other noncommercial purposes is exempt only if that person is  
 50 soliciting for a nonprofit corporation and if that corporation  
 51 is properly registered as such with the Secretary of State and  
 52 is included within the exemption of s. 501(c)(3) or (6) of the  
 53 Internal Revenue Code.  
 54 (3) A person who does not make the major sales presentation  
 55 during the telephone solicitation and who does not intend to,  
 56 and does not actually, complete or obtain provisional acceptance  
 57 of a sale during the telephone solicitation, but who makes the  
 58 major sales presentation and completes the sale at a later face-

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

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to-face meeting between the seller and the prospective purchaser in accordance with the home solicitation provisions in this chapter. However, if a seller, directly following a telephone solicitation, causes an individual whose primary purpose it is to go to the prospective purchaser to collect the payment or deliver any item purchased, this exemption does not apply.

(4) A licensed securities, commodities, or investment broker, dealer, or investment adviser, when soliciting within the scope of his or her license, or a licensed associated person of a securities, commodities, or investment broker, dealer, or investment adviser, when soliciting within the scope of his or her license. As used in this section, "licensed securities, commodities, or investment broker, dealer, or investment adviser" means a person subject to license or registration as such by the Securities and Exchange Commission, by the Financial Industry Regulatory Authority or other self-regulatory organization as defined by the Securities Exchange Act of 1934, 15 U.S.C. s. 781, or by an official or agency of this state or of any state of the United States. As used in this section, "licensed associated person of a securities, commodities, or investment broker, dealer, or investment adviser" means an associated person registered or licensed by the Financial Industry Regulatory Authority or other self-regulatory organization as defined by the Securities Exchange Act of 1934, 15 U.S.C. s. 781, or by an official or agency of this state or of any state of the United States.

(5) A person primarily soliciting the sale of a newspaper of general circulation.

(6) A book, video, or record club or contractual plan or

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arrangement:

(a) Under which the seller provides the consumer with a form which the consumer may use to instruct the seller not to ship the offered merchandise.

(b) Which is regulated by the Federal Trade Commission trade regulation concerning "use of negative option plans by sellers in commerce."

(c) Which provides for the sale of books, records, or videos which are not covered under paragraph (a) or paragraph (b), including continuity plans, subscription arrangements, standing order arrangements, supplements, and series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive such merchandise on a periodic basis.

(7) A supervised financial institution or parent, subsidiary, or affiliate thereof operating within the scope of supervised activity. As used in this section, "supervised financial institution" means a commercial bank, trust company, savings and loan association, mutual savings bank, credit union, industrial loan company, consumer finance lender, commercial finance lender, or insurer, provided that the institution is subject to supervision by an official or agency of this state, of any state, or of the United States. For the purposes of this exemption, "affiliate" means a person who directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a supervised financial institution.

(8) Any licensed insurance broker, agent, customer representative, or solicitor when soliciting within the scope of

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his or her license. As used in this section, "licensed insurance broker, agent, customer representative, or solicitor" means any insurance broker, agent, customer representative, or solicitor licensed by an official or agency of this state or of any state of the United States.

(9) A person soliciting the sale of services provided by a cable television system operating under authority of a franchise or permit.

(10) A business-to-business sale where:

(a) The commercial telephone seller has been lawfully operating continuously for at least 3 years under the same business name and has at least 50 percent of its dollar volume consisting of repeat sales to existing businesses;

(b) The purchaser business intends to resell or offer for purposes of advertisement or as a promotional item the property or goods purchased; or

(c) The purchaser business intends to use the property or goods purchased in a recycling, reuse, remanufacturing, or manufacturing process.

(11) A person who solicits sales by periodically publishing and delivering a catalog of the seller's merchandise to prospective purchasers, if the catalog:

(a) Contains a written description or illustration of each item offered for sale.

(b) Includes the business address or home office address of the seller.

(c) Includes at least 20 pages of written material and illustrations and is distributed in more than one state.

(d) Has an annual circulation by mailing of not less than

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150,000.

(12) A person who solicits contracts for the maintenance or repair of goods previously purchased from the person making the solicitation or on whose behalf the solicitation is made.

(13) A commercial telephone seller licensed pursuant to chapter 516 or part III of chapter 520. For purposes of this exemption, the seller must solicit to sell a consumer good or service within the scope of his or her license and the completed transaction must be subject to the provisions of chapter 516 or part III of chapter 520.

(14) A telephone company subject to chapter 364, or affiliate thereof or its agents, or a telecommunications business that is regulated by the Florida Public Service Commission, or a Federal Communications Commission licensed cellular telephone company or other bona fide radio telecommunication services provider. For the purposes of this exemption, "affiliate" means a person who directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a telephone company subject to chapter 364.

(15) A person who is licensed pursuant to chapter 497 and who is soliciting within the scope of the license.

(16) An issuer or a subsidiary of an issuer that has a class of securities which is subject to s. 12 of the Securities Exchange Act of 1934, 15 U.S.C. s. 781, and which is either registered or exempt from registration under paragraph (A), paragraph (B), paragraph (C), paragraph (E), paragraph (F), paragraph (G), or paragraph (H) of subsection (g) (2) of that section.

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- 175 (17) A business soliciting exclusively the sale of  
 176 telephone answering services provided that the telephone  
 177 answering services will be supplied by the solicitor.
- 178 (18) A person soliciting a transaction regulated by the  
 179 Commodity Futures Trading Commission if the person is registered  
 180 or temporarily licensed for this activity with the Commodity  
 181 Futures Trading Commission under the Commodity Exchange Act, 7  
 182 U.S.C. ss. 1 et seq., and the registration or license has not  
 183 expired or been suspended or revoked.
- 184 (19) A person soliciting the sale of food or produce as  
 185 defined in chapter 500 or chapter 504 if the solicitation  
 186 neither intends to result in, or actually results in, a sale  
 187 which costs the purchaser in excess of \$500.
- 188 (20) A person who is registered pursuant to part XI of  
 189 chapter 559 and who is soliciting within the scope of the  
 190 registration.
- 191 (21) A person soliciting business from prospective  
 192 consumers who have an existing business relationship with or who  
 193 have previously purchased from the business enterprise for which  
 194 the solicitor is calling, if the solicitor is operating under  
 195 the same exact business name.
- 196 (22) A person who has been operating, for at least 1 year,  
 197 a retail business establishment under the same name as that used  
 198 in connection with telemarketing, and both of the following  
 199 occur on a continuing basis:
- 200 (a) Either products are displayed and offered for sale or  
 201 services are offered for sale and provided at the business  
 202 establishment.
- 203 (b) A majority of the seller's business involves the buyer

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- 204 obtaining such products or services at the seller's location.
- 205 (23) A person who is a registered developer or exchange  
 206 company pursuant to chapter 721 and who is soliciting within the  
 207 scope of the chapter.
- 208 (24) Any person who has been lawfully providing  
 209 telemarketing sales services continuously for at least 5 years  
 210 under the same ownership and control and who derives 75 percent  
 211 of its gross telemarketing sales revenues from contracts with  
 212 persons exempted in this section.
- 213 (25) A person licensed pursuant to chapter 475 and who is  
 214 soliciting within the scope of the chapter.
- 215 (26) A publisher, or an agent of a publisher by written  
 216 agreement, who solicits the sale of his or her periodical or  
 217 magazine of general, paid circulation. The term "paid  
 218 circulation" shall not include magazines that are only  
 219 circulated as part of a membership package or that are given as  
 220 a free gift or prize from the publisher or agent of the  
 221 publisher by written agreement.
- 222 (27) A person who is a licensed operator or an  
 223 identification cardholder as defined in chapter 482, and who is  
 224 soliciting within the scope of the chapter.
- 225 (28) A licensee, or an affiliate of a licensee, regulated  
 226 under chapter 560, the Money Transmitters' Code, for foreign  
 227 currency exchange services.
- 228 Section 3. For the purpose of incorporating the amendment  
 229 made by this act to section 501.616, Florida Statutes, in a  
 230 reference thereto, paragraph (c) of subsection (1) of section  
 231 648.44, Florida Statutes, is reenacted to read:
- 232 648.44 Prohibitions; penalty.—

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233 (1) A bail bond agent or temporary bail bond agent may not:  
234 (c) Initiate in-person or telephone solicitation after 9:00  
235 p.m. or before 8:00 a.m., in the case of domestic violence  
236 cases, at the residence of the detainee or the detainee's  
237 family. Any solicitation not prohibited by this chapter must  
238 comply with the telephone solicitation requirements in ss.  
239 501.059(2) and (4), 501.613, and 501.616(6).  
240 Section 4. This act shall take effect July 1, 2021.



FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES  
COMMISSIONER NICOLE "NIKKI" FRIED

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February 24, 2021

**Agency Affected:** Dept. of Agriculture and Consumer Services

**Telephone:** 850-617-7000

**Agency Contact:** Emily Buckley, Legislative Affairs Director

**Telephone:** 850-617-7700

---

**Senate Bill Number:** 1120

**Senate Bill Sponsor:** Senator Gibson

**Bill Title:** Commercial Telephone Solicitation

**Effective Date:** July 1, 2021

**Similar Bill(s):** Yes ☐ No ☒

**Similar Bill(s):**

**Identical Bill:** Yes ☒ No ☐

**Identical Bill:** HB 857: Commercial Telephone Solicitation by Rep. Morales

---

**1. SUMMARY**

SB 1120 would amend s. 501.616(6), F.S., to prohibit commercial telephone sellers and salespersons from making calls before 8 a.m. or after 8 p.m. in the call recipient's time zone. It would also prohibit making more than three commercial telephone solicitation calls to the same person regarding the same subject matter within any 24-hour period. In addition, the law would be revised to clarify that both of the aforementioned prohibitions apply to calls made using automated dialers or recorded messages. Section 501.604, F.S., would be reenacted (without revision) to incorporate those amendments.

**2. PRESENT SITUATION**

Under existing law, commercial telephone solicitation calls may be made from 8 a.m. to 9 p.m., and there is no limit to the number of calls that may be lawfully placed by the same caller to the same phone number regarding the same subject in a single day.

Currently, the introductory language of s. 501.616(6), F.S., does not explicitly include reference to the use of automated dialers or recorded messages when establishing specific prohibitions.

### 3. EFFECT OF PROPOSED CHANGES

The number of hours during which commercial telephone solicitation calls may be made will be reduced from thirteen (8 a.m. to 9 p.m.) to twelve (8 a.m. to 8 p.m.). A commercial telephone seller or salesperson will be limited to three calls related to the same subject matter to any given person during a 24-hour period; using different phone numbers to make the calls will not affect this limitation.

The law will explicitly state that these limitations apply to calls made using automated dialers or recorded messages.

### 4. FISCAL IMPACT ON FDACS

Currently, the Florida Department of Agriculture and Consumer Services is unable to estimate a fiscal impact, if any, the proposed bill may have on the Department.

However, with the addition of another prohibited act, there may be an increase in the number of complaints filed with and cases worked by the Department.

	(FY 21-22) Amount/ FTE	(FY 22-23) Amount/ FTE	(FY 23-24) Amount/ FTE
<b>A. Revenues</b>			
Recurring			
Non-Recurring			
TOTAL REVENUES	N/A	N/A	N/A
<b>B. Expenditures</b>			
Recurring			
Non-Recurring			
TOTAL EXPENDITURES	N/A	N/A	N/A
<b>C. NET TOTAL</b>	N/A	N/A	N/A

### 5. IS THERE AN ESTIMATED FISCAL IMPACT ON LOCAL GOVERNMENT(s)?

No.

**6. IS THERE AN ESTIMATED FISCAL IMPACT ON THE PRIVATE SECTOR?**

Potentially. The number of hours during which calls may be lawfully made will be reduced by one.

**7. ARE THERE ESTIMATED TAXES, FEES, OR FINES ASSOCIATED WITH THE PROPOSED BILL?** (If yes, please explain the impact in A and/or B below)

**A. Does the proposed bill create new or increase existing taxes, fees, or fines? If so, please explain.**

A new violation will be created, and an existing violation will be expanded. Both violations are punishable through the imposition of existing fines.

**B. Does the proposed bill repeal or decrease existing taxes, fees, or fines? If so, please explain.**

No.

**C. DOES THE BILL DIRECT OR ALLOW THE DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES?**

a. Yes: ☒ No: ☐

b. If yes please explain:

The Department's rulemaking authority would be expanded to the extent necessary to allow for the implementation of these statutory changes.

**8. DOES THE PROPOSED BILL REQUIRE THE DEPARTMENT TO PARTICIPATE IN OR PRODUCE ANY REPORTS OR STUDIES?**

a. Yes: ☐ No: ☒

b. If yes please explain:

**9. ARE THERE ANY APPOINTMENTS, CREATION OF, OR CHANGES TO ANY BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. THAT WILL IMPACT THE DEPARTMENT?**

a. Yes: ☐ No: ☒

b. If yes please explain:

**LEGAL ISSUES**

**10. Does the proposed bill conflict with existing federal law or regulations that impact the department? If so, what laws and/or regulations?**

No.

**11. Does the proposed bill 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) that impacts the department?**

No.

**12. Is the proposed bill likely to generate litigation for the department and, if so, from what interest groups or parties?**

Unknown.

**COMMENTS:**



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Judiciary, Vice Chair  
Appropriations  
Appropriations Subcommittee on Education  
Appropriations Subcommittee on  
Transportation, Tourism, and Economic  
Development  
Military and Veterans Affairs, Space,  
and Domestic Security  
Rules

**JOINT COMMITTEE:**  
Joint Legislative Budget Commission

**SENATOR AUDREY GIBSON**  
8th District

March 9, 2021

Senator Travis Hutson, Chair  
Committee on Regulated Industries  
325 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Chair Hutson:

I respectfully request that SB 1120, be placed on the next committee agenda.

SB 1120, will limit telemarketing calls to the same recipient over a 24-hour period, on the same subject matter or issue and regardless of phone number used to make the call. Currently, a commercial telephone seller or salesperson can contact an individual via direct call, automated calls or recorded messages continuously, with no restrictions. Solicitation numbers are often altered persuading the recipient to answer. This bill passed unanimously in the first committee.

Thank you for your kind and consideration.

Sincerely,

Audrey Gibson  
State Senator  
District 6

101 East Union Street, Suite 104, Jacksonville, Florida 32202 (904) 358-2553  
410 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

**WILTON SIMPSON**  
President of the Senate

**AARON BEAN**  
President Pro Tempore

Sincerely,  
*Farisha Hamid*  
Sr. Legislative Assistant  
Office of Senator Audrey Gibson – SD 06  
101 E. Union Street, Suite 104  
Jacksonville, FL 32202

**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 208

INTRODUCER: Senator Brandes

SUBJECT: Renewable Energy

DATE: March 23, 2021

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

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Sharon	Imhof	RI	<b>Fav</b>
2. _____	_____	CM	_____
3. _____	_____	RC	_____

---

**I. Summary:**

SB 208 provides an exemption from regulation by the Florida Public Service Commission (PSC) for commercial or industrial businesses with a “renewable energy source device” that sell renewable energy produced to another business located in the same or an adjacent parcel of land.

The bill defines the term “renewable energy source device” as having the same meaning in s. 193.624(1), F.S., which means equipment that collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits.

The bill authorizes owners of commercial or industrial businesses, or third parties contracted by such owners, to install, maintain, and operate a renewable energy source device on the structure in which the business operates or a property owned or leased by the business. It authorizes such parties to sell the electricity generated from the device to a business on the same or on an adjacent parcel of land.

The bill provides that a utility may recover the full cost of providing services, such as backup generation capacity or transmission, if the energy-producing business or its customers require these additional related services.

Upon petition of a utility, the bill allows the PSC to make a determination for cost recovery if there is a significant enough adverse impact to the rates of other customers in the rate territory. The bill provides a mechanism for customer to challenge such assessed cost.

The bill provides the PSC with rulemaking authority for such cost-recovery, including the costs of providing redundant capacity.

The bill clarifies that renewable energy rebates and incentives are the sole property of the owner of the renewable energy source device.

The bill is effective July 1, 2021.

## II. Present Situation:

### Florida Public Service Commission

The PSC is an arm of the legislative branch of government charged with regulating utilities.<sup>1</sup> The role of the PSC is to ensure that Florida's consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe, affordable, and reliable manner.<sup>2</sup> In order to do so, the PSC exercises authority over public utilities in one or more of the following areas: (1) Rate or economic regulation; (2) Market competition oversight; and/or (3) Monitoring of safety, reliability, and service issues.<sup>3</sup>

The PSC does not fully regulate publicly owned municipal electric utilities.<sup>4</sup> However, it does have jurisdiction over municipally owned electric systems with regard to rate structure, territorial boundaries, bulk power supply operations, and planning.<sup>5</sup> Additionally, the PSC has jurisdiction over 27 municipally owned natural gas utilities and four gas districts with regard to territorial boundaries, safety, and safety authority over all electric and natural gas systems operating in the state.<sup>6</sup>

A public utility includes any person or legal entity supplying electricity or gas, including natural, manufactured, or similar gaseous substance, to or for the public within the state.<sup>7</sup> Notably, courts have ruled that the sale of electricity to even a single customer makes the provider a "public utility" subjecting them to the PSC's regulatory jurisdiction, under s. 366.02(1), F.S.<sup>8</sup> The PSC's jurisdiction over public utilities is exclusive and superior to all other boards, agencies, political subdivisions, municipalities, towns, villages, or counties, and in cases of conflict the PSC is to prevail.<sup>9</sup>

### Renewable Energy

Section 377.803, F.S., defines "renewable energy" to mean "electrical, mechanical, or thermal energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen, biomass, as defined in s. 366.91, F.S., solar energy, geothermal energy, wind energy, ocean energy, waste heat, or hydroelectric power."

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<sup>1</sup> Section 350.001 F.S.

<sup>2</sup> See Florida Public Service Commission, *The PSC's Role*, <http://www.psc.state.fl.us> (last visited Mar. 18, 2021).

<sup>3</sup> *Id.*

<sup>4</sup> Florida Public Service Commission, *2020 FPSC Annual Report*, available at <http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Annualreports/2020.pdf> (last visited Mar. 18, 2021).

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

<sup>6</sup> *Id.*

<sup>7</sup> Section 366.02(1), F.S.

<sup>8</sup> *Florida Public Service Com'n v. Bryson*, 569 So. 2d 1253, 1255 (Fla. 1990) (finding that even a property management company is a public utility within the PSC's regulatory jurisdiction); *PW Ventures, Inc. v. Nichols*, 533 So. 2d 281, 284 (Fla. 1988) (finding that "to the public," as used in ch. 366, F.S., means "to any member of the public," rather than "to the general public").

<sup>9</sup> Section 366.04 (1), F.S.

Section 366.91, F.S.<sup>10</sup>, requires utilities, including municipal electric utilities and rural electric cooperatives whose annual sales are greater than 2,000 gigawatt hours, to continuously offer a purchase contract to renewable energy producers for a minimum of ten years.<sup>11</sup>

### ***Renewable Energy Source Device***

“Renewable energy source device” is defined in s. 193.624(1), F.S., as equipment that collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits. It includes:

- Solar energy collectors, photovoltaic modules, and inverters;
- Storage tanks and other storage systems, excluding swimming pools used as storage tanks;
- Rockbeds;
- Thermostats and other control devices;
- Heat exchange devices;
- Pumps and fans;
- Roof ponds;
- Freestanding thermal containers;
- Pipes, ducts, wiring, structural supports, refrigerant handling systems, and other components used as integral parts of such systems; however, such equipment does not include conventional backup systems of any type or any equipment or structure that would be required in the absence of the renewable energy source device;
- Windmills and wind turbines;
- Wind-driven generators;
- Power conditioning and storage devices that store or use solar energy, wind energy, or energy derived from geothermal deposits to generate electricity or mechanical forms of energy;
- Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

A renewable energy device “does not include equipment that is on the distribution or transmission side of the point at which a renewable energy source device is interconnected to an electric utility’s distribution grid or transmission lines.”

### ***Cogeneration and Small Power Producers***

The Florida Statutes expressly provide for self-generation, and for the sale of any excess electricity to a public utility.<sup>12</sup> Cogeneration is the sequential production of thermal energy and electrical or mechanical energy from the same fuel source.<sup>13</sup> A small-power producer generates

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<sup>10</sup> Chapter 2005-259, s. 1 Laws of Fla.

<sup>11</sup> Section 366.91, F.S.

<sup>12</sup> See s. 366.051, F.S.

<sup>13</sup> See ScienceDirect, *Cogeneration*,

<https://www.sciencedirect.com/topics/engineering/cogeneration#:~:text=Cogeneration%E2%80%94also%20referred%20to%20as,potential%20to%20perform%20useful%20work>. (last visited Mar. 18, 2021).

electricity from facilities using biomass, solid waste, geothermal energy or renewable resources, including wind, solar, and small hydroelectric, as their primary energy sources.<sup>14</sup>

In 1978, the federal government enacted the Public Utility Regulatory Policies Act (PURPA),<sup>15</sup> which required promotion of energy efficiency and use of renewables.<sup>16</sup> The act required utilities to purchase power from “qualifying facilities,” which fall into two categories: qualifying small power production facilities and qualifying cogeneration facilities.<sup>17</sup> The PURPA directed the Federal Energy Regulatory Commission to implement the provisions, which in turn, directed the states to implement the provisions. In response, the Florida Legislature created s. 366.051, F.S., to direct utilities to purchase power from the cogenerators or small power producers and defining “full avoided costs.”<sup>18</sup>

“A utility’s ‘full avoided costs’ are the incremental costs to the utility of the electric energy or capacity, or both, which, but for the purchase from cogenerators or small power producers, such utility would generate itself or purchase from another source.”<sup>19</sup> Traditionally, the PSC has approved electric utilities power purchase contracts that include provisions for payment, capacity, and energy based upon either the utility’s cost to construct and operate its next planned generating unit or the cost of purchasing capacity and energy from generating units owned by other utilities in the interchange market.<sup>20</sup>

### ***Net Metering***

Net metering allows customers with renewable generation capability to offset their energy consumption with any excess energy that is delivered to the grid, through a credit applied against the customer’s energy bill in subsequent months.<sup>21</sup> The PSC rule states that customer-owned renewable generation can include systems that are leased from a third party, provided the lease does not include the sale of electricity.<sup>22</sup> In 2018, the PSC affirmed that a third-party equipment lease does not constitute a retail sale of electricity and would not be subject to the PSC’s regulation, opening up another avenue for customer financing of solar generation.<sup>23</sup> Section

<sup>14</sup> U.S. Energy Information Administration, *Glossary: Small power producer (SPP)*, [https://www.eia.gov/tools/glossary/?id=electricity#:~:text=Small%20power%20producer%20\(SPP\)%3A,as%20a%20primary%20energy%20source](https://www.eia.gov/tools/glossary/?id=electricity#:~:text=Small%20power%20producer%20(SPP)%3A,as%20a%20primary%20energy%20source). (last visited Mar. 18, 2021).

<sup>15</sup> 16 U.S.C. ch. 46 s. 2601 et seq.

<sup>16</sup> Federal Energy Regulatory Commission, *PURPA Qualifying Facilities*, <https://www.ferc.gov/qf> (last visited Mar. 18, 2021).

<sup>17</sup> *Id.*

<sup>18</sup> Ch. 89-292, s. 5, Laws of Fla.

<sup>19</sup> Sections 366.051(3) and (4), F.S.

<sup>20</sup> Florida Public Service Commission, *States’ Electric Restructuring Activities Update: Wholesale Sales* <http://www.psc.state.fl.us/Publications/ElectricRestructuringDetails#4> (last visited Mar. 18, 2021); Florida Public Service Commission, *States’ Electric Restructuring Activities Update: Federal Legislation - Public Utilities Regulatory Policy Act* <http://www.psc.state.fl.us/Publications/ElectricRestructuringDetails#5> (last visited Mar. 18, 2021).

<sup>21</sup> See ScienceDirect, *Net Metering*, <https://www.sciencedirect.com/topics/engineering/net-metering> (last visited Mar. 18, 2021); National Conference of State Legislatures, *State Net Metering Policies*, <https://www.ncsl.org/research/energy/net-metering-policy-overview-and-state-legislative-updates.aspx> (last visited Mar. 18, 2021).

<sup>22</sup> Fla. Admin. Code R. 25-6.065.

<sup>23</sup> See Order No. PSC-2018-0251-DS-EQ, issued May 17, 2018, in Docket No. 20170273-EQ, *In re: Petition by Sunrun Inc. for Declaratory Statement Concerning Leasing of Solar Equipment*, <http://www.psc.state.fl.us/ClerkOffice/ShowDocket?orderNum=PSC-2018-0251-DS-EQ> (last visited Mar. 18, 2021).

366.91, F.S., requires all electric utilities to develop a standardized interconnection agreement and net metering program for customer-owned renewable generation, and requires the PSC to establish rules for investor-owned electric utilities' net metering programs. Utilities are required to offer standard interconnection agreements and net metering for customer-owned renewable generation up to two megawatts in capacity.<sup>24</sup>

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

Under the Florida Energy Efficiency and Conservation Act (FEECA),<sup>25</sup> enacted in 1980, the Legislature directed the PSC to develop and adopt programs for increasing energy efficiency and conservation, intending, in part, that solar energy and renewable energy sources be encouraged.<sup>26</sup> The Legislature's goal is to advance the conservation of expensive resources, such as petroleum fuels, in order to reduce and control electric consumption.<sup>27</sup>

### ***Renewable Portfolio Standards and Goals***

Renewable portfolio standards (RPS) are policies, either voluntary or formal, designed to increase the use of renewable energy sources for electricity generation.<sup>28</sup> RPS policies require that a specified percentage of the electricity sold by utilities comes from renewable resources.<sup>29</sup> Currently, there is not a national RPS in place.<sup>30</sup> However, most states have enacted their own RPS programs. Over the past year, state governments nationwide have revised their RPS policies to require that a specified percentage of electricity sold come from renewable sources.<sup>31</sup>

In 2007, Florida Governor Crist signed a series of three executive orders initiating Florida's energy policy and declaring Florida's commitment to be a leader in establishing energy security and reducing greenhouse gases:

- Executive Order 07-126; Establishing Climate Change Leadership by Example: Immediate Actions to Reduce Greenhouse Gas Emissions from Florida State Government.<sup>32</sup>
- Executive Order 07-127; Establishing Immediate Actions to Reduce Greenhouse Gas Emissions within Florida.<sup>33</sup>

<sup>24</sup> Fla. Admin. Code R. 25-6.065.

<sup>25</sup> Sections 366.80-366.85, F.S.

<sup>26</sup> Section 366.81, F.S.

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

<sup>28</sup> U.S. Energy Information Administration, *Renewable Energy Explained: Portfolio Standards*, [https://www.eia.gov/energyexplained/renewable-sources/portfolio-standards.php#:~:text=Renewable%20portfolio%20standards%20\(RPS\)%2C,energy%20sources%20for%20electricity%20generation.&text=However%2C%20most%20states%20have%20enacted%20their%20own%20RPS%20programs](https://www.eia.gov/energyexplained/renewable-sources/portfolio-standards.php#:~:text=Renewable%20portfolio%20standards%20(RPS)%2C,energy%20sources%20for%20electricity%20generation.&text=However%2C%20most%20states%20have%20enacted%20their%20own%20RPS%20programs) (last visited Mar. 18, 2021).

<sup>29</sup> National Conference of State Legislatures, *State Renewable Portfolio Standards and Goals*, <https://www.ncsl.org/research/energy/renewable-portfolio-standards.aspx> (last visited Mar. 18, 2021).

<sup>30</sup> U.S. Energy Information Administration, *Renewable Energy Explained: Portfolio Standards*, <https://www.eia.gov/energyexplained/renewable-sources/portfolio-standards.php> (last visited Mar. 18, 2021).

<sup>31</sup> *Id.*

<sup>32</sup> Fla. Exec. Order No. 07-126, available at <http://www.fsec.ucf.edu/en/media/enews/2007/pdf/07-126-actions.pdf> (last visited Mar. 18, 2021).

<sup>33</sup> Fla. Exec. Order No. 07-127, available at <http://www.fsec.ucf.edu/en/media/enews/2007/pdf/07-127-emissions.pdf> (last visited Mar. 18, 2021).

- Executive Order 07-128; Florida Governor’s Action Team on Energy and Climate Change.”<sup>34</sup>

In Executive Order 07-127, the Governor requested the PSC to initiate rulemaking to require that utilities produce at least 20 percent of their electricity from renewable sources with a strong focus on solar and wind energy. In September 2007, the PSC began holding workshops to study the issue of renewable portfolio standards. Currently, Florida is one of only 12 states that does not have either a formal renewable energy portfolio or a voluntary renewable energy portfolio.<sup>35</sup>

### III. Effect of Proposed Changes:

SB 208 amends s. 366.91, F.S., to provide an exemption from regulation by the PSC for commercial or industrial businesses with a “renewable energy source device” that sell renewable energy produced to another business located in the same parcel of land or an adjacent parcel.

The bill defines the term “renewable energy source device” as having the same meaning as in s. 193.624(1), F.S.

The bill authorizes owners of commercial or industrial businesses, or third parties contracted by such owners, to install, maintain, and operate a renewable energy source device on the structure in which the business operates or any property owned or leased by the business. It authorizes such parties to sell the electricity generated from a device to a commercial or industrial business on the same parcel or a business on an immediately adjacent parcel, regardless of whether the device is located in a utility’s service territory. The bill provides that a business cannot be obligated to purchase the electricity produced, whether directly or indirectly, by lease or by other contractual arrangement.

Under the bill, a utility may recover the full cost of providing services such as backup generation capacity or transmission, if the energy-producing business or its customers requires these additional related services.

A utility may enter into a contract with a commercial or industrial business for installation, maintenance, and operation of a renewable energy source device and to sell the electricity generated to that business, or a business on the parcel, or a business on an immediately adjacent parcel. The bill provides that such sales are not retail sales for purposes of ch. 366, F.S., and do not subject the energy-producing business to regulation by the PSC.

If the PSC makes a determination, by a supermajority of the voting members, that there is a significant enough adverse impact to the rates of other customers in the rate territory, the bill authorizes the PSC to approve a utility’s request to recover its costs of providing capacity, generation, and distribution of the electricity needed by all customers, including customers using a renewable energy source device. The cost recovered must be an appropriate amount of fixed

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<sup>34</sup> See Sellers, Lawrence E. & Curtin, Lawrence N., *Holland & Knight Newsletter: Florida Addresses Greenhouse Gas Issues* <https://www.hklaw.com/en/insights/publications/2007/09/florida-addresses-greenhouse-gas-issues> (last visited Mar. 18, 2021).

<sup>35</sup> NCSL, *State Renewable Portfolio Standards and Goals*, *supra* at n. 61.

costs to avoid the adverse impact and may only be assessed to customers using electricity generated from a renewable energy source device. A customer assessed such cost can file a petition with the PSC to challenge the cost recovery as excessive. If granted, the customer must be refunded any excess funds.

The bill provides the PSC with rulemaking authority for such cost-recovery, including the costs of providing redundant capacity.<sup>36</sup>

The bill clarifies that renewable energy rebates and incentives are the sole property of the owner of the renewable energy source device.

The bill is effective July 1, 2021.

#### **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:**

Based on potential changes to an investor owned electric utility's existing territories, there may be an impairment of contract or a takings issue associated with lines 39-51 of the bill.<sup>37</sup>

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<sup>36</sup> "Redundant capacity," typically refers to backup or additional power generation, transmission or distribution facilities to serve a customer's load. For example, a customer with what it considers a critical load, such as manufacturing or public health, may wish to pay for additional facilities to reduce the risk of an interruption to electric service. *See e.g.*, Kentucky Public Service Commission, *Kentucky Utilities Company: Standard Rate Rider-Redundant Capacity*, <https://psc.ky.gov/tariffs/Electric/Kentucky%20Utilities%20Company/Cancelled%20Tariff%20Pages/2019/RC-Redundant%20Capacity/05-01.pdf> (last visited Mar. 18, 2021). "Such facilities represent a redundant delivery to provide electric service to the Customer's facility in the event that an emergency or unusual occurrence renders the Customer's principal delivery unavailable for providing service."

<sup>37</sup> *See* Public Service Commission, *Bill Analysis for SB 208* (Jan. 14, 2021) (on file with the Senate Committee on Regulated Industries).

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

None.

**B. Private Sector Impact:**

Non-utility, third party renewable energy producers and their customers may benefit, to the extent that renewable energy is generated and sold for a lower price.<sup>38</sup>

**C. Government Sector Impact:**

Allowing third-party power generation and sales may result in stranded<sup>39</sup> costs that may increase costs for customers purchasing or generating renewable energy under s. 366.91, F.S., and utilities may also face revenue lost to third-party sellers.<sup>40</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill provides that a customer may challenge the cost recovery assessed by filing a petition with the PSC for a determination of whether the costs recovered are excessive. In its analysis, the PSC states that litigation related to this bill is explicit and anticipated.<sup>41</sup>

Since the bill exempts businesses selling electricity from a renewable energy source device from regulation by the PSC, it is unclear how the bill will affect grid reliability caused by businesses selling electricity on an industrial scale.<sup>42</sup>

Lines 55-58 of the bill provide that a utility may recover the full cost of providing services such as backup generation capacity or transmission, however, it does not express how a utility should address billing. The current net metering program only applies to customer-owned renewable generation under two megawatts and also excludes energy sold by a third party.<sup>43</sup>

Lines 59-68 of the bill, allows electric utilities to engage in renewable energy sales and exempts these sales from PSC regulation. Since the bill does not require these sales to take place within

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<sup>38</sup> See Department of Agriculture and Consumer Services, *Bill Analysis for SB 208* (Dec. 21, 2020) (on file with the Senate Committee on Regulated Industries).

<sup>39</sup> “A ‘stranded cost’ occurs when customers of one utility leave that utility and have power brought to them from some other supplier, thereby leaving the original utility with debts for plants and equipment it may no longer need and without the revenue from the ratepayers the plants were built to serve. Tennessee Power Company, *What’s Stranded Cost?* <https://web.archive.org/web/20100104092419/http://home.earthlink.net/~tpco/stranded.html> (last visited Mar. 18, 2021).

<sup>40</sup> See PSC Analysis *supra* at n. 37.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

that utility's service area, the PSC has raised the concern that a utility may be allowed to poach the customers of another utility through the sale of renewable energy produced on the same or adjacent parcel of land.<sup>44</sup>

Also according to the PSC, certain terms in the bill lack a clear definition as it pertains to this section of statute, or are terms that are not generally used in the industry, such as:

- "Business;"
- "Rate territory;"
- "Costs that *impact the rates* of utility customers;"
- "Super majority" of the PSC's voting members; and
- "Customer."<sup>45</sup>

### **VIII. Statutes Affected:**

This bill substantially amends s. 366.91, F.S.

### **IX. Additional Information:**

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

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

None.

#### **B. Amendments:**

None.

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

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<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

By Senator Brandes

24-00349-21

2021208\_\_

A bill to be entitled

An act relating to renewable energy; amending s. 366.91, F.S.; defining the term "renewable energy source device"; authorizing owners of commercial or industrial businesses, or third parties contracted by such owners, to install, maintain, and operate a renewable energy source device on or about the structure in which the business operates or on a property the business owns or leases; authorizing owners or contracted third parties to sell electricity generated from the device to certain businesses regardless of whether the device is located in a utility's service territory; providing applicability; authorizing utilities to recover the full cost of providing services to an energy-producing business or its customers, under certain circumstances; authorizing utilities to install, maintain, and operate certain renewable energy source devices; exempting from regulation the sale of electricity produced by such devices; authorizing utilities to recover certain costs under certain circumstances; authorizing customers to challenge such cost recovery and receive refunds following a successful challenge; clarifying applicability and the eligibility requirements of certain energy rebate or incentive programs established by law; authorizing the Florida Public Service Commission to adopt rules; providing an effective date.

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

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2021208\_\_

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

Section 1. Paragraph (e) is added to subsection (2) of section 366.91, Florida Statutes, and subsection (9) is added to that section, to read:

366.91 Renewable energy.—

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

(e) "Renewable energy source device" has the same meaning as in s. 193.624(1).

(9) (a) An owner of a commercial or industrial business or a contracted third party may install, maintain, and operate a renewable energy source device on or about the structure in which the business operates or on any property the business owns or leases. The owner of the business or the contracted third party may sell the electricity generated from the device, regardless of whether the device is located in a utility's service territory, to a commercial or industrial business that is located immediately adjacent to the structure, within the same parcel as the structure, or on an immediately adjacent parcel. Such sales are not retail sales of electricity for purposes of this chapter and do not subject the energy-producing business to regulation under this chapter.

(b) A business entity is not required to purchase directly or indirectly, by lease or by other contractual arrangement, the electricity produced pursuant to paragraph (a).

(c) If the energy-producing business or its customers require additional related services from a utility, such as backup generation capacity or transmission services, the utility may recover the full cost of providing these services.

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

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(d) A utility may enter into a contract with a commercial or industrial business to install, maintain, and operate any type of renewable energy source device on or about the structure in which the business operates and to sell the electricity generated from the device to that business or to a commercial or industrial business located immediately adjacent to the structure, within the same parcel as the structure, or on an immediately adjacent parcel. Such sales are not retail sales for purposes of this chapter and are not subject to regulation under this chapter.

(e) If the commission determines that the level of reduction in electricity purchases by customers using renewable energy source devices under this section is significant enough to adversely impact the rates other customers pay in the rate territory, the commission may approve a utility's request to recover its costs of providing capacity, generation, and distribution of the electricity needed by all customers, including customers using a renewable energy source device. The cost recovered must be an appropriate amount of fixed costs to avoid the adverse impact and may be assessed only to customers engaged in activity under this section. The cost-recovery elements that are intended for recovery of the fixed costs of capacity, generation, and distribution of electricity must be based on actual costs or on projected costs, must be approved by the commission by a super majority of the voting members of the commission, and are subject to adjustment. A customer may challenge the cost recovery established pursuant to this paragraph by filing with the commission a petition for a determination of whether the costs recovered are excessive. Upon

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a determination by the commission of any excessive cost recovery, the customer must be refunded any excess funds collected by the utility.

(f) For the purpose of any renewable energy rebate or incentive program established by law, and for application exclusively in this section, the rebate or incentive is the sole property of the owner of the renewable energy source device, and the customer of any electricity sale pursuant to this section is not eligible to receive the rebate or incentive unless the customer owns the renewable energy source device.

(g) The commission may adopt rules to provide guidance, requirements, and procedures to ensure that each utility continues to recover costs, including the costs of providing redundant capacity.

Section 2. This act shall take effect July 1, 2021.



FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES  
COMMISSIONER NICOLE "NIKKI" FRIED

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December 21, 2020

**Agency Affected:** Dept. of Agriculture and Consumer Services

**Telephone:** 850-617-7000

**Agency Contact:** Emily Buckley, Legislative Affairs Director

**Telephone:** 850-617-7700

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**Senate Bill Number:** 208

**Senate Bill Sponsor:** Sen. Brandes

**Bill Title:** Renewable Energy

**Effective Date:** July 1, 2021

**Similar Bill(s):** Yes ☐ No ☒

**Similar Bill(s):**

**Identical Bill:** Yes ☐ No ☒

**Identical Bill:**

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**1. SUMMARY**

SB 208 provides an exemption from regulation under Chapter 366, F.S., for certain sales of electricity generated from renewable energy source devices to commercial or industrial businesses. The bill would apply to retail sales made by owners of commercial or industrial businesses, contracted third parties, or utilities who install, maintain, and operate renewable energy resource devices on or about the structure in which the business operates. The retail sales could be made to a business located immediately adjacent to the structure, within the same parcel as the structure, or on an immediately adjacent parcel.

The bill provides for full cost recovery for additional related services, such as backup generation capacity or transmission services; a process by which the Florida Public Service Commission (FPSC) can make a cost recovery determination if customers of renewable energy resource devices adversely impact the rates of other customers in the rate territory; and a stipulation that any renewable energy rebate or incentive belongs, solely, to the owner of the renewable energy resource device.

## 2. PRESENT SITUATION

### Public Utility Regulation

Chapter 366, F.S., provides for the regulation of electric utilities by the FPSC. Section 366.02, F.S., defines “public utility” as every person supplying electricity to or for the public within this state, but the term does not include either a cooperative or a municipality. All public utilities are subject to full FPSC economic and reliability regulation.

Subsection 366.04(5), F.S., provides the FPSC with jurisdiction “over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities.”

Under economic regulation, each utility:

- Has an obligation to serve, meaning utilities are required to provide reliable electric service at all times to all paying customers within that service territory at fair and reasonable rates;<sup>1</sup>
- Is vertically integrated, owning and operating all the facilities for the entire process of producing, selling, and delivering the electricity to the end-use customer;
- Has a protected monopoly within a defined service territory; and
- Is authorized to recover all prudent and reasonable costs and to earn a profit within a regulator-determined range of levels of return on investment.

The obligation to serve requires regulated utilities to construct and maintain sufficient generation infrastructure to meet all needs at all times. Each utility, therefore, must have generation facilities that are sufficient in quantity and quality to always produce enough electricity to meet all levels of demand. This, in turn, requires a reserve margin, an excess of generation facilities to meet peak demand even when a generation plant is out of service or down for maintenance.

### Non-Utility Sales to the Public

The Florida Supreme Court (Court) has held that the Florida Statutes mandate that any person who sells electricity to even a single person is a public utility subject to regulation by the FPSC.<sup>2</sup> Prior to starting construction of a cogeneration electric power plant on land that it leased, PW Ventures sought a declaratory statement from the FPSC that it would not be a public utility subject to regulation. The FPSC ruled that the proposed transaction would fall within its regulatory jurisdiction. The Court then reviewed similar Florida regulatory statutes where the Legislature had expressly provided for exclusions from regulation based on a stated limited number of customers and found that the failure of the Legislature to create such an exclusion for electric services indicated its intent that the term “to the public” is constituted by a sale to even one person.

The Court further noted that if the proposed sale of electricity by PW Ventures was outside of FPSC jurisdiction, duplication of facilities could occur in contradiction to the statutory direction to the FPSC to exercise its powers to avoid uneconomic duplication of generation,

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<sup>1</sup> Sections 366.03, 366.041, 366.06(2), and 366.81, F.S.

<sup>2</sup> *PW Ventures, Inc. v. Nichols*, 533 So. 2d 281 (Fla. 1988).

transmission, and distribution facilities. The Court stated that what PW Ventures proposed was to go into an area served by a utility and take one of its major customers. “The effect of this practice would be that revenue that otherwise would have gone to the regulated utilities which serve the affected areas would be diverted to unregulated producers. This revenue would have to be made up by the remaining customers of the regulated utilities since the fixed costs of the regulated systems would not have been reduced.”<sup>3</sup> Finally, the Court found that the Legislature had determined that the protection of the public interest required limiting competition in the sale of electric service.

Thus, current law allows non-utilities to produce electricity for their own use and sell any excess to a utility but prohibits all non-utility sales of electricity to anyone other than a utility.

### Renewable Energy Source Devices

The term “renewable energy source device” is defined by s. 193.624(1), F.S., to mean any of the following equipment that collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:

- (a) Solar energy collectors, photovoltaic modules, and inverters.
- (b) Storage tanks and other storage systems, excluding swimming pools used as storage tanks.
- (c) Rockbeds.
- (d) Thermostats and other control devices.
- (e) Heat exchange devices.
- (f) Pumps and fans.
- (g) Roof ponds.
- (h) Freestanding thermal containers.
- (i) Pipes, ducts, wiring, structural supports, refrigerant handling systems, and other components used as integral parts of such systems; however, such equipment does not include conventional backup systems of any type or any equipment or structure that would be required in the absence of the renewable energy source device.
- (j) Windmills and wind turbines.
- (k) Wind-driven generators.
- (l) Power conditioning and storage devices that store or use solar energy, wind energy, or energy derived from geothermal deposits to generate electricity or mechanical forms of energy.
- (m) Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

The term does not include equipment that is on the distribution or transmission side of the point at which a renewable energy source device is interconnected to an electric utility’s distribution grid or transmission lines.

Section 377.803, F.S., defines “Renewable energy” to mean “electrical, mechanical, or thermal energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen, biomass, as defined in s. 366.91, solar energy, geothermal energy, wind energy, ocean energy, waste heat, or hydroelectric power.”

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<sup>3</sup> *PW Ventures*, 533 So. 2d at 283.

### Cogeneration and Small Power Producers

The Florida Statutes expressly provide for self-generation, and for the sale of any excess electricity to a public utility. Cogeneration is the sequential production of thermal energy and electrical or mechanical energy from the same fuel source.<sup>4</sup> A small-power producer generates electricity from facilities using biomass, solid waste, geothermal energy or renewable resources (including wind, solar, and small hydroelectric) as their primary energy sources.<sup>5</sup> A public utility is required to purchase electricity from a cogenerator or small power producer located in that public utility's service territory.<sup>6</sup> The FPSC is required to establish guidelines relating to the purchase of power or energy and may set rates at which a public utility must purchase the power or energy.<sup>7</sup> In fixing rates, the FPSC must authorize a rate equal to the purchasing utility's full avoided costs, defined as the incremental costs to the utility of the electric energy or capacity, or both, which, but for the purchase from cogenerators or small power producers, such utility would generate itself or purchase from another source.<sup>8</sup>

### Standard Purchase Contract

Each public utility and each municipal electric utility or rural electric cooperative that meets specified criteria must continuously offer a purchase contract to producers of renewable energy.<sup>9</sup> The contracts must contain payment provisions for energy and capacity which are based upon the utility's full avoided costs. Each contract must be for a term of at least 10 years.

## **3. EFFECT OF PROPOSED CHANGES**

The bill amends s. 366.91, F.S., related to renewable energy, to create a new subsection of law, 366.91(9), F.S. Under the proposed legislation, an owner of a commercial or industrial business or a contracted third party could make retail sales of electricity to another commercial or industrial business located within the same parcel, or on an immediately adjacent parcel, without being regulated as a public utility, for the purposes of Chapter 366, F.S. Such sales would presumably still be considered retail sales for other purposes, such as taxation.

The bill provides that a business cannot be obligated to purchase electricity produced by the renewable energy generator, such as through lease or other contractual arrangement. Additional related services required by the customer or renewable energy generator, such as backup generation capacity or transmission services, would be subject to full cost recovery.

The bill also provides that utilities would likewise be able to enter contracts with commercial or industrial customers to similarly provide electricity generated from renewable energy source devices, and those retail sales would be exempt from regulation.

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<sup>4</sup> *Florida's Electric Utilities: A Reference Guide*, Revised 1994 Edition, Florida Electric Power Coordinating Group, Inc., Tampa, Florida, page 30.

<sup>5</sup> *Id.*, at 188.

<sup>6</sup> Section 366.051, F.S., as mandated by the federal Public Utility Regulatory Policies Act of 1978.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Section 366.91(3) and (4), F.S.

The bill provides for cost recovery from the customers using the electricity generated from renewable energy resource devices, upon a determination of the FPSC, made by a supermajority vote of the voting members, that there is a significant adverse impact to the rates other customers pay in the rate territory. A customer may challenge the cost recovery by filing a petition for determination by the FPSC of any excessive cost recovery. While the bill explicitly provides the FPSC rulemaking authority for cost-recovery, including the costs of providing redundant capacity, it is unclear to what extent the FPSC would have jurisdiction over any other pricing disputes, as well as reliability, siting, and customer satisfaction.

The bill clarifies that renewable energy rebates and incentives are the sole property of the owner of the renewable energy source device.

The types of renewable energy source devices that would be eligible would be those listed in s. 193.624, F.S., that rely on three renewable energies: solar energy, wind energy, or energy derived from geothermal deposits.

#### 4. FISCAL IMPACT ON FDACS

	(FY 21-22) Amount/ FTE	(FY 22-23) Amount/ FTE	(FY 23-24) Amount/ FTE
<b>A. Revenues</b>			
Recurring			
Non-Recurring			
TOTAL REVENUES			
<b>B. Expenditures</b>			
Recurring			
Non-Recurring			
TOTAL EXPENDITURES			
<b>C. NET TOTAL</b>			
<b>COMMENTS:</b> None.			

#### 5. IS THERE AN ESTIMATED FISCAL IMPACT ON LOCAL GOVERNMENT(s)?

Municipal electrical utilities may incur expenses to incorporate unregulated, intermittent power producers into a continuously balanced and reliable grid.

To the extent that the bill encourages businesses to install renewable energy source devices, local governments may receive more ad valorem tax revenue from these improvements. It should be noted, however, that for nonresidential purposes, eighty percent of the just value of property attributable to a renewable energy source device may not be considered in determining the assessed value of real property.<sup>10</sup> Additionally, eighty percent of the assessed value of a renewable energy source device that is considered tangible personal property is exempt from ad valorem taxation.<sup>11</sup> Therefore, to the extent that the bill encourages businesses to choose to install renewable energy source devices instead of making other property purchases or improvements that would be subject to full ad valorem taxation, local governments may receive less ad valorem tax revenue than otherwise.

**6. IS THERE AN ESTIMATED FISCAL IMPACT ON THE PRIVATE SECTOR?**

Non-utility, third party renewable energy producers will benefit, as will their customers, to the extent that renewable energy is generated and sold for a lower price.

**7. ARE THERE ESTIMATED TAXES, FEES, OR FINES ASSOCIATED WITH THE PROPOSED BILL?** (If yes, please explain the impact in A and/or B below)

**A. Does the proposed bill create new or increase existing taxes, fees, or fines? If so, please explain.**

**B. Does the proposed bill repeal or decrease existing taxes, fees, or fines? If so, please explain.**

**C. DOES THE BILL DIRECT OR ALLOW THE DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES?**

a. Yes: ☐ No: ☒

b. If yes please explain:

**8. DOES THE PROPOSED BILL REQUIRE THE DEPARTMENT TO PARTICIPATE IN OR PRODUCE ANY REPORTS OR STUDIES?**

a. Yes: ☐ No: ☒

b. If yes please explain:

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<sup>10</sup> Section 193.624(2), F.S.

<sup>11</sup> Section 196.182, F.S.

**9. ARE THERE ANY APPOINTMENTS, CREATION OF, OR CHANGES TO ANY BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. THAT WILL IMPACT THE DEPARTMENT?**

- a. Yes: ☐ No: ☒  
b. If yes please explain:

**LEGAL ISSUES**

**10. Does the proposed bill conflict with existing federal law or regulations that impact the department? If so, what laws and/or regulations?**

**11. Does the proposed bill 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) that impacts the department?**

**12. Is the proposed bill likely to generate litigation for the department and, if so, from what interest groups or parties?**

**COMMENTS:**

The Connecticut Supreme Court, in 1998, limited the ability to sell at retail, specifically denying the ability of foreign corporations to sell electricity in-state.<sup>12</sup> The bill does not address whether it applies equally to businesses registered in Florida, and to out of state businesses; or whether electricity could be sold across state lines within a contiguous or immediately adjacent parcel.

It is unclear whether businesses that have already entered into a standard purchase contract with their public utility or municipal electric utility or rural electric cooperative would be able to sell electricity as contemplated by this proposed legislation without having to negotiate a new standard purchase contract.

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<sup>12</sup> *Connecticut Light & Power Co. v. Texas-Ohio Power Co.*, 708 A.2d 202 (Conn. 1998).

Date: January 14, 2021

Agency Affected:	Public Service Commission	Telephone: 413.6524
Program Manager:	Adam Potts	Telephone: 413.6596
Agency Contact:	Adam Potts	Telephone: 413.6596
Respondent:	Kaley Slattery	Telephone: 408.1181

RE: SB 208

## I. SUMMARY

SB 208, sponsored by Senator Brandes, would allow businesses to sell renewable energy to other businesses located in the same parcel of land or an adjacent parcel without being regulated by the Florida Public Service Commission (FPSC or Commission). The bill would also allow a utility facing reduced sales due to any of the renewable energy installations, including the third-party sales allowed by the bill, to petition for a customer charge that applies to purchasers of renewable electricity to make up for lost revenue. The bill would take effect July 1, 2021.

## II. PRESENT SITUATION

Section 366.02, F.S., defines any entity that supplies electricity to or for the public as a public utility, except municipal or rural cooperative utilities. Status as a public utility carries with it certain obligations to serve, and renders the entity subject to the jurisdiction of the FPSC with regard to rates and all aspects of service. Municipal electric utilities and rural electric cooperative utilities are only subject to specific Commission authority such as safety, grid coordination and planning, and the need for certain new generation and transmission facilities.

A 1988 Florida Supreme Court decision, known as the “PW Ventures”<sup>1</sup> case, upheld a decision of the FPSC and ruled that a sale of energy to a single customer is considered a sale to the public, and therefore an entity making such sales (known as third-party sales) would be a public utility regulated by the FPSC. Currently, entities can lease generation equipment to customers on a fixed-rate basis, and even include operations and maintenance costs in the terms of the lease, but cannot sell the electricity to the customers at a rate based on the level of consumption.<sup>2</sup>

Although third-party retail sales of electricity by unregulated entities are prohibited, other options exist for customer generated power. Section 366.91, F.S., requires all electric utilities to develop a standardized interconnection agreement and net metering program for customer-owned renewable generation, and requires the Commission to establish rules for investor-owned electric utilities’ (IOUs) net metering programs. Rule 25-6.065, Florida Administrative Code (F.A.C.), requires IOUs to offer standard interconnection agreements and net metering for customer-owned renewable generation up to 2 MW in

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<sup>1</sup> *PW Ventures v. Nichols*, 533 So. 2d 281 (Fla. 1988).

<sup>2</sup> See Order No. 20180413, issued August 21, 2018, in Docket No. 20180124-EQ, *In re: Petition for declaratory statement concerning leasing of solar equipment by Vivant Solar Developer, LLC*; Order No. 23729, issued November 7, 1990, in Docket No. 19900699-EQ, *In re: Petition of Seminole Fertilizer Corporation for a Declaratory Statement Concerning the Financing of a Cogeneration Facility*; Order No. 18302-A, issued October 22, 1987, in Docket No. 19870446-EU, *In re: Petition of PW Ventures Inc., for declaratory statement in Palm Beach County*; Order No. 17009-A, issued March 9, 1987, in Docket No. 19860725-EU, *In Re: Petition of Monsanto Company for a Declaratory Statement Concerning the Lease Financing of a Cogeneration Facility*; and Order No. 17009, issued December 22, 1986, in Docket No. 19860725-EU, *In re: Petition of Monsanto Company for a Declaratory Statement Concerning the Lease Financing of a Cogeneration Facility*.

capacity. Net metering allows a customer with renewable generation capability to offset their energy usage with any excess energy delivered to the grid credited against usage in subsequent months. Rule 25-6.065, F.A.C., states that customer-owned renewable generation can include systems that are leased from a third party, provided the lease does not include the sale of electricity. In 2018, the Commission affirmed that a third-party equipment lease does not constitute a retail sale of electricity and would not be subject to the Commission's regulation, opening up another avenue for customer financing of solar generation.<sup>3</sup>

Stranded costs result when a utility invests in the electrical system, such as transmission and distribution assets, but will not be able to recover the costs from the customers these assets were built to serve due to lessened or absent demand. If the stranded costs are recovered from the general body of ratepayers, a subsidy occurs. Third-party sales can result in stranded costs to the utilities if any customers receive all of their energy from a third-party seller. Utilities have already invested in transmission and distribution facilities for customers who may remove themselves from the grid or reduce their power usage due to receiving power from third-party sellers.

Section 193.624(1), F.S., defines "renewable energy source device" as any of the following equipment that collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:

- Solar energy collectors, photovoltaic modules, and inverters.
- Storage tanks and other storage systems, excluding swimming pools used as storage tanks.
- Rockbeds.
- Thermostats and other control devices.
- Heat exchange devices.
- Pumps and fans.
- Roof ponds.
- Freestanding thermal containers.
- Pipes, ducts, wiring, structural supports, refrigerant handling systems, and other components used as integral parts of such systems; however, such equipment does not include conventional backup systems of any type or any equipment or structure that would be required in the absence of the renewable energy source device.
- Windmills and wind turbines.
- Wind-driven generators.
- Power conditioning and storage devices that store or use solar energy, wind energy, or energy derived from geothermal deposits to generate electricity or mechanical forms of energy.
- Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

The term does not include equipment that is on the distribution or transmission side of the point at which a renewable energy source device is interconnected to an electric utility's distribution grid or transmission lines.

### **III. EFFECT OF PROPOSED CHANGES**

The bill adds Subsection 366.91(2)(e), F.S., to the section of the statute addressing renewable energy, and adopts the definition of "renewable energy source device" from subsection 193.624(1), F.S. The bill also adds paragraph (9) to Section 366.91, F.S., which would exempt from Commission regulation businesses selling renewable energy to end-use customers under the terms of this paragraph. The various components of this new exemption are described in detail:

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<sup>3</sup> See Order No. PSC-2018-0251-DS-EQ, issued May 17, 2018, in Docket No. 20170273-EQ, In re: Petition by Sunrun Inc. for declaratory statement concerning leasing of solar equipment.

### 366.91(9)(a)

Paragraph (9)(a) would allow the owner of a commercial or industrial business, or a contracted third party, to install, maintain, and operate any type of renewable energy source device on or about the structure within which the business operates or on any property owned or leased by the business. The owner of the renewable energy source device would be able to sell the electricity generated from the device to a commercial or industrial business that is located immediately adjacent to the structure, within the same parcel of the structure, or on an immediately adjacent parcel, regardless of whether the device is located in a utility's service territory.

The bill does not define "business" for the purposes of this section of the statute, and, since anyone selling renewable energy could be said to be operating a business, the business limitation may not be a meaningful one. Similarly, the bill allows sales to other businesses, but does not clarify whether someone operating a small craft business out of their home, for example, would be eligible to purchase renewable energy under this provision.

The limitations on location are also potentially unclear. The bill allows energy sales to a commercial or industrial business located immediately adjacent to the structure, within the same parcel of the structure, or on an immediately adjacent parcel, but does not clarify if it limits which structure this section refers to. As a result, a business that has multiple locations could potentially sell energy to a business that neighbors any of its locations.

The bill does not appear to allow the FPSC to regulate the sellers of electricity operating under this section. It is therefore unclear how impacts to grid reliability caused by businesses selling electricity, especially on an industrial scale, would be addressed.

The bill also does not establish how the utility should address billing related to any excess energy above that used by the customer. At present, the FPSC's net metering program applies only to customer-owned renewable generation under 2 MW, and specifically excludes any energy sold by a third party or generators over 2 MW. The bill does not place an upper limit on the size of the renewable generation that it allows to be sold under paragraph (9). The bill also does not address whether any sales of renewable energy under this new third party program are intended to be eligible for net metering.

### 366.91(9)(b)

Paragraph (9)(b) states that "A business entity is not required to purchase directly or indirectly, by lease or by other contractual arrangement, the electricity produced" by renewable energy generators selling electricity under paragraph (9). This provision presumably means that the bill does not require tenants of these renewable energy sellers to purchase energy produced in this arrangement, but this provision could also be interpreted to mean that renewable energy producers will not be able to require purchase of this electricity as part of a lease. Absent clarification, the FPSC would have to interpret how to implement this subsection.

### 366.91(9)(c)

Paragraph (9)(c) ensures that if a renewable energy purchaser requires services from a utility such as backup generation capacity or transmission services, the utility may recover the full actual cost of providing these services. A utility presumably may determine these costs on a case-by-case basis, or could potentially develop a tariff that would apply to all of its customers in this specific service class.

### 366.91(9)(d)

Paragraph (9)(d) allows electric utilities in Florida to also engage in renewable energy sales under paragraph (9), and exempts these sales from regulation as a public utility. The bill does not require that these sales take place within the service area of the utility making the sale, raising the possibility that one utility could "poach" another utility's customer by selling renewable energy produced on-site or nearby to

the other utility's customer.

Additionally, any investor-owned utility engaging in such a sale of electricity would be a regulated entity engaging in unregulated activity, and such sales would have to be accounted for separately from regulated activity. Any profits or losses from this unregulated activity could not be allowed to affect the balance sheets for the regulated side of the utility.

#### 366.91(9)(e)

Paragraph (9)(e) allows a utility to petition the FPSC to apply a special charge to customers purchasing electric power from a renewable energy seller. If the FPSC determines that the lost revenues or stranded costs resulting from the customers of a renewable energy seller are "significant enough to adversely impact the rates charged to other customers in the rate territory," the FPSC may approve a special rate applied only to those customers purchasing power from these third-party sellers. This rate is to recover only actual costs, and must be approved by a super majority of the voting members of the FPSC. These costs will be subject to a true-up in the even of an over- or under-recovery. Customers assessed this special charge can protest this assessment with the FPSC, and, if the charge is found to be excessive, can have any excess funds refunded to them. This charge would presumably be an annual charge that would need to be periodically adjusted and true-up as the amount eligible for cost recovery changes.

Paragraph (9)(e) would allow a utility to petition for this special charge not only for lost sales resulting from the newly-allowed third-party sales, but also potentially for any other renewable energy purchases specifically allowed "under this section." Section 366.91, F.S., contains language requiring utilities to develop programs for the interconnection and net metering of renewable energy, conjunctive billing for customers with anaerobic digesters, and standard offer contracts for renewable energy at avoided cost rates. All of these programs make use of generation that falls under the definition of "renewable energy source device" as defined in Section 193.624(1), F.S. A utility could file for cost recovery for lost sales or stranded costs resulting from any of these programs and have charges assessed solely to the customers participating in the renewable energy programs.

Certain terms used by the bill lack a clear definition in either general use or Florida law. The bill allows any costs that "impact the rates" of utility customers, but does not set a clear threshold. Even a small amount of lost sales can affect rates, if only by pennies or less on a typical bill. The term "rate territory" is not in general use, and presumably refers to service territory, but may refer to rate class. The bill requires "a super majority of the voting members" of the FPSC to approve the special customer charge, but does not clarify how many commissioners would be considered a super majority. Since a majority vote would be three out of five, presumably a super majority would require four of five Commissioners. The bill allows "a customer" to challenge the special charge, but does not clarify whether this right applies to a customer of a utility, a customer of a renewable energy supplier, a customer of an affected business, or someone else. Finally, the amount recovered is limited to fixed costs, and does not appear to address variable costs. Certain generation, transmission, and distribution expenses are variable.

#### 366.91(9)(f)

Paragraph (9)(f) establishes that any renewable energy rebate or incentive is the sole property of the owner of the renewable energy source device, and ownership is not assigned to the customer buying this renewable energy unless the customer has ownership of the renewable energy source device. At present, there is no Florida program offered at a state level that this provision clearly applies to, but such rebates or incentives could exist in the future. Some local governments may offer rebates or incentives from which the owners of the renewable generation could benefit.

#### 366.91(9)(g)

Paragraph (9)(g) grants the FPSC the authority to engage in any rulemaking required to provide guidance, requirements, and procedures to ensure that "each utility continues to recover costs, including the costs of providing redundant capacity." Currently, the FPSC only has full regulatory authority over

public utilities as described by Section 366.02, F.S. This provision seems to apply to any utility, including municipal and rural electric cooperatives, over which the FPSC currently has limited oversight. For purposes of public utilities, this authority would cover any rulemaking required to address the hearings anticipated by Paragraph 366.91(9)(e), F.S., as noted above.

The bill takes effect July 1, 2021.

#### IV. ESTIMATED FISCAL IMPACTS ON STATE AGENCIES:

The bill may require rulemaking, which the FPSC should be able to conduct with existing staff. The charge allowed by 366.91(9)(e), F.S., will also result in some ongoing responsibilities if any utilities petition for such charges.

	(FY 21-22) <u>Amount / FTE</u>	(FY 22-23) <u>Amount / FTE</u>	(FY 23-24) <u>Amount / FTE</u>
<b>A. Revenues</b>			
1. Recurring	\$0/0 FTE	\$0/0 FTE	\$0/0 FTE
2. Non-Recurring	\$0/0 FTE	\$0/0 FTE	\$0/0 FTE
<b>B. Expenditures</b>			
1. Recurring	\$0/0 FTE	\$0/0 FTE	\$0/0 FTE
2. Non-Recurring	\$0/0 FTE	\$0/0 FTE	\$0/0 FTE

#### V. ESTIMATED FISCAL IMPACTS ON LOCAL GOVERNMENTS:

Municipal utilities may face lost revenue and stranded investment from third-party sellers.

#### VI. ESTIMATED IMPACTS ON PRIVATE SECTOR:

The changes to policy regarding third-party sales could result in stranded costs, potentially increasing costs for customers purchasing or generating renewable energy under any provision Section 366.91, F.S. Utilities would also face revenue lost to third-party sellers. Renewable energy developers are likely to see increased opportunities from the bill.

#### VII. LEGAL ISSUES

*A. Does the proposed legislation conflict with existing federal law or regulations? If so, what laws and/or regulations?*

No.

*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, and impairment of contracts)?*

Based on potential changes to IOUs' existing territories, there may be an impairment of contract and/or taking issue associated with Subsection 9(a).

*C. Is the proposed legislation likely to generate litigation and, if so, from what interest groups or parties?*

Litigation related to rate impact is explicitly anticipated by the legislation. Additionally, utilities may assert a violation of their exclusive service territories.

## **VIII. COMMENTS**

No additional comments at this time.

Prepared by: Benjamin Crawford and Gabriella Passidomo

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/23/2021  
Meeting Date

208  
Bill Number (if applicable)

Topic Renewable Energy

Amendment Barcode (if applicable)

Name Jonathan Webber

Job Title Deputy Director

Address 1700 N. Monroe St. #11-286

Phone 954-593-4449

Tallahassee FL 32303  
City State Zip

Email JWEBBER@FCVOTERS.ORG

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA CONSERVATION VOTERS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/23/2021  
Meeting Date

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

SB 208  
Bill Number (if applicable)

Topic Renewable Energy

Amendment Barcode (if applicable)

Name Katie Chiles Offenweller

Job Title Southeast Director, Vote Solar

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30307

City

State

Zip

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Speaking: ☐ For ☒ Against ☐ Information

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

Representing Vote Solar

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)



The Florida Senate

## Committee Agenda Request

**To:** Senator Travis Hutson, Chair  
Committee on Regulated Industries

**Subject:** Committee Agenda Request

**Date:** December 18, 2020

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I respectfully request that **Senate Bill # 208**, relating to Renewable Energy, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", with a long horizontal line extending to the right.

---

Senator Jeff Brandes  
Florida Senate, District 24

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

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

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Prepared By: The Professional Staff of the Committee on Committee Code Not Found

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BILL: SPB 7066

INTRODUCER: Committee on Regulated Industries

SUBJECT: Public Records and Public Meetings/Public Service Commission

DATE: March 23, 2021

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

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Sharon	Imhof		<b>RI Submitted as Comm. Bill/Fav</b>

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**I. Summary:**

SPB 7066 creates a public meetings and public records exemption for certain confidential information discussed at a Public Service Commission (PSC) hearing, where it is found that the hearing cannot otherwise be fully and fairly conducted.

The bill expressly exempts any hearing or portion of a hearing before the PSC, which it finds cannot be fully and fairly conducted without revealing information that has been made confidential by order, in response to a claim of proprietary confidential business information, or a request for confidentiality.

The bill requires the PSC to make a finding of confidentiality no later than 20 days before the scheduled hearing. Additionally, the entire hearing, including confidential portions, must be recorded by a certified court reporter.

The bill provides a 21-day time frame, after the transcript is filed with the clerk, during which parties may make a claim that certain portions of the transcript should remain exempt from public disclosure, otherwise the claim is waived. The bill requires the PSC clerk to prepare a transcript redacting information approved by the PSC for confidential treatment. The redacted transcript is subject to public records laws at the conclusion of the underlying proceeding.

The bill provides a mechanism for a court to review the transcript to determine if the redactions do not comply with applicable confidentiality orders. If a judicial determination is made, only the portion of the recording or transcript found to be non-exempt may be disclosed to the public.

Under the bill, the PSC is not required to live-stream or make a recording available on its website for any portion of a hearing made exempt under its provisions.

The bill provides a statement of public necessity.

In accordance with s. 119.15, F.S., the bill provides that these exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill is effective upon becoming law.

## **II. Present Situation:**

### **Public Records**

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>2</sup> However, the Legislature may provide a public records exemption from the requirements of Article I, section 24(a) through general law.<sup>3</sup> The law must state with specificity the public necessity justifying the exemption and must be no more broad than necessary to accomplish its purpose.<sup>4</sup>

### **Public Meetings**

The Florida Constitution sets forth the state's public policy regarding access to government meetings.<sup>5</sup> All meetings of any collegial public body of the executive branch of state government or of a county, municipality, school district, or special district where public business will be transacted or discussed must be open to the public and noticed.

Florida Statute addresses public meetings in more detail within the "Government in the Sunshine Law" or "Sunshine Law."<sup>6</sup> This act requires meetings of any board or commission of any state agency, in which official acts are to be taken, to be open to the public at all times.<sup>7</sup> The board or commission is required to provide reasonable notice of all such meetings.<sup>8</sup> Entities subject to the Sunshine Law are "prohibited from holding meetings at any facility or location which discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in such a manner as to unreasonably restrict public access to such a facility."<sup>9</sup> Minutes must be kept for all public meetings and promptly recorded.<sup>10</sup> These records are open to public inspection and this right is enforceable in state circuit court, authorized to issue injunctive relief.<sup>11</sup>

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<sup>1</sup> FLA. CONST. art. I, s. 24(a).

<sup>2</sup> *Id.*

<sup>3</sup> FLA. CONST. art. I, s. 24(c).

<sup>4</sup> *Id.*

<sup>5</sup> FLA. CONST. art. I, s. 24(b).

<sup>6</sup> Section 286.011, F.S.

<sup>7</sup> *Id.*

<sup>8</sup> Section 286.011(1), F.S.

<sup>9</sup> Section 286.011(6), F.S.

<sup>10</sup> Section 286.011(2), F.S.

<sup>11</sup> *Id.*

## Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>12</sup> (act) prescribes a legislative review process for newly created or substantially amended<sup>13</sup> public records or open meetings exemptions, with specified exceptions.<sup>14</sup> It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>15</sup>

This act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>16</sup> An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;<sup>17</sup>
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>18</sup> or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>19</sup>

## The Public Service Commission

The Florida Public Service Commission (PSC) is an arm of the legislative branch of government.<sup>20</sup> The role of the PSC is to ensure that Florida's consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe, affordable, and reliable manner.<sup>21</sup> In order to do so, the PSC exercises authority over public utilities in one or more of the following areas: (1) Rate or economic regulation; (2) Market competition oversight; and/or (3) Monitoring of safety, reliability, and service issues.<sup>22</sup>

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<sup>12</sup> Section 119.15, F.S.

<sup>13</sup> An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

<sup>14</sup> Sections 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

<sup>15</sup> Section 119.15(3), F.S.

<sup>16</sup> Section 119.15(6)(b), F.S.

<sup>17</sup> Section 119.15(6)(b)1., F.S.

<sup>18</sup> Section 119.15(6)(b)2., F.S.

<sup>19</sup> Section 119.15(6)(b)3., F.S.

<sup>20</sup> Section 350.001 F.S.

<sup>21</sup> See Florida Public Service Commission, *The PSC's Role*, <http://www.psc.state.fl.us> (last visited Mar. 22, 2021).

<sup>22</sup> *Id.*

The PSC is comprised of five commissioners.<sup>23</sup> They are appointed by the Governor and confirmed by the Florida Senate.<sup>24</sup> Commissioners are appointed to four-year terms, not to exceed three terms.<sup>25</sup> In administering their duties, commissioners serve in both a quasi-legislative and quasi-judicial capacity, as they adopt rules and render decisions in complex matters that are infused with legislative policy considerations.<sup>26</sup> They are regarded as subject matter experts as it relates to utility operations.<sup>27</sup>

### *Proceedings before the PSC*

Any meeting or proceeding with two or more PSC commissioners in attendance and any proceeding where a decision concerning the rights or obligations of any person is made, must be streamed live on the internet and a copy of the meeting or proceeding must be made available on the PSC's website.<sup>28</sup>

During the PSC's hearings, commissioners rule on procedural matters, establish evidence of record, weigh record evidence, and apply the law to the facts of the case.<sup>29</sup> Many hearings involve proprietary confidential business information, which is exempt from public disclosure by statute.<sup>30</sup> The PSC has established practices and procedures which allow their hearings to be conducted in compliance with the Sunshine Law while still protecting proprietary confidential business information from disclosure.<sup>31</sup> In these hearings, confidential material typically plays a minor role in the resolution of any particular issue, and the parties avoid public disclosure of this material by stipulating to certain facts and keeping discussions of confidential matters minimal.<sup>32</sup>

The PSC is authorized to refer matters to the Division of Administrative Hearings (DOAH) for formal evidentiary hearings and fact finding.<sup>33</sup> However, the PSC conducts nearly all of its own hearings.<sup>34</sup> Historically, the PSC has only referred cases to the DOAH in rare instances, where the PSC has found that one or more issues in the docket are so inextricably intertwined with confidential information, and the volume of that information is so substantial, that it cannot afford the parties a full and fair hearing in the public while also protecting sensitive confidential information.<sup>35</sup>

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<sup>23</sup> Section 350.01, F.S.

<sup>24</sup> Section 350.031, F.S.

<sup>25</sup> Section 350.01, F.S.

<sup>26</sup> See PSC, *HB 1311 House Companion Agency Analysis* (Mar. 4, 2021) (on file with the Senate Committee on Regulated Industries).

<sup>27</sup> See s. 350.042(3)(a), F.S. providing legislative findings that commissioners should be “educated and informed on regulatory policies and developments in science, technology, business management, finance, law, and public policy which are associated with the industries that the commissioners regulate.”

<sup>28</sup> Section 350.01(8), F.S.

<sup>29</sup> PSC, *HB 1311 Analysis*, *supra* at n. 23.

<sup>30</sup> See s. 350.121, F.S.

<sup>31</sup> PSC, *HB 1311 Analysis*, *supra* at n. 23.

<sup>32</sup> *Id.*

<sup>33</sup> Sections 350.125 and 120.569(2), F.S.

<sup>34</sup> PSC, *HB 1311 Analysis*, *supra* at n. 23.

<sup>35</sup> *Id.*

***Treatment of Proprietary Confidential Business Information before the PSC***

The following provisions require records received by the PSC, which are claimed or found to be proprietary confidential business information by the PSC, to be kept confidential and exempt from public disclosure:

- Section, 364.183, F.S., relating to Telecommunications Companies;
- Section, 366.093, F.S., relating to Public Utilities;
- Section 367.156, F.S., relating to Water and Wastewater Systems; and
- Section 368.108, F.S., relating to Gas Transmission and Distribution.

“Proprietary confidential business information,” means:

information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person’s or company’s business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public.<sup>36</sup>

It includes, but is not limited to the following:

- Trade secrets;
- Internal auditing controls and reports of internal auditors;
- Security measures, systems, or procedures;
- Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms;
- Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information; and
- Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.<sup>37</sup>

A PSC finding on proprietary confidential business information is effective for a period set by the PSC, but may not exceed 18 months, unless the PSC also finds good cause that the information warrants protection from disclosure for a longer period of time.<sup>38</sup>

**III. Effect of Proposed Changes:**

**Section 1** amends s. 286.0113, F.S., relating to general exemptions from public meetings to provide a public meetings exemption for a hearing, or portions of a hearings, before the PSC which the PSC finds cannot be fully and fairly conducted without revealing confidential information. Such information must have been made confidential by PSC order in response to a

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<sup>36</sup> Sections 364.183, 366.093, 367.156, and 368.108, F.S.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

claim of proprietary confidential business information, pursuant to s. 364.183, F.S., or request for confidentiality pursuant to ss. 366.093, 367.156, or 368.108, F.S.

The bill requires a finding of confidentiality to be made no later than 20 days before the scheduled hearing. Additionally, the entire hearing, including confidential portions, must be recorded by a certified court reporter and the redacted transcript made subject to Florida's public records laws.

The bill provides a 21-day time frame, after the transcript is filed with the clerk, during which parties may make a claim that certain portions of the transcript should remain exempt, otherwise the claim is waived.

The bill requires the PSC clerk to prepare a transcript redacting information approved by the PSC for confidential treatment. The redacted transcript is subject to public records laws at the conclusion of the underlying proceeding.

The bill provides a mechanism for a court to review the transcript to determine if the redactions do not comply with applicable confidentiality orders. If a judicial determination is made, only the portion of the recording or transcript found to be non-exempt may be disclosed to the public.

The bill is subject to the Open Government Sunset Review Act, in accordance with s. 119.15, F.S., and will stand repealed on October 2, 2026, unless reenacted by the Legislature.

**Section 2** amends s. 350.01, F.S., to provide that the PSC is not required to live-stream or make a recording available on its website for any portion of a hearing made exempt under its provisions.

**Section 3** provides a statement of public necessity stating that:

- The PSC is charged by statute with establishing just, fair, and compensatory utility rates, and the fact-finding role of the PSC is integral in its decision making, as all PSC decisions must be supported by a record of competent, substantial evidence;
- Under certain circumstances, the PSC must be able to evaluate and discuss proprietary confidential business information in order to make a determination in the public interest, and parties must be able to conduct cross-examination on such information in formal evidentiary proceedings;
- The PSC and parties to PSC proceedings are constrained from asking questions about essential proprietary confidential business information important to the outcome of a case; and
- It is a public necessity that those portions of formal administrative hearings before the PSC at which proprietary confidential business information is discussed, and the associated portions of hearing transcripts, be made exempt from the Sunshine Law to allow parties to conduct cross-examination on such information and the PSC to evaluate the information and make a determination in the public interest.

**Section 4** provides that the bill is effective upon becoming law.

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

None.

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

Article I, section 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public meeting or public record exemption. The bill creates a new public meeting and public record exemption; thus, it requires a two-thirds vote for final passage.

Article I, section 24(c) of the Florida Constitution, requires a newly created public meeting or public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public meeting exemption for only the portion of a formal administrative hearing held by the PSC that would reveal information specifically identified as confidential proprietary business information exempt from disclosure under existing public record exemptions in ss. 364.183, 366.093, 367.156, and 368.108, F.S. and creates a public record exemption for only those portions of the hearing transcripts found confidential pursuant to an order by the PSC.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 286.0113 and 350.01.

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

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

None.

**B. Amendments:**

None.

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

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FOR CONSIDERATION By the Committee on Regulated Industries

580-00572C-21

20217066pb

A bill to be entitled

An act relating to public records and public meetings; amending s. 286.0113, F.S.; exempting discussions of certain confidential information by the Public Service Commission during certain hearings from public meetings requirements; requiring such hearings to be recorded by a certified court reporter; providing that only redacted transcripts are subject to public records requirements; requiring certain parties to request, within a specified timeframe, that portions of the transcript remain exempt from disclosure; providing that failure to timely file a redacted version of the transcript and a request for confidentiality constitutes a waiver of a claim of confidentiality to that portion of the transcript; providing requirements for the redacted transcripts; providing for future legislative review and repeal of the exemptions; amending s. 350.01, F.S.; exempting certain closed hearings or portions of hearings of the Public Service Commission from the requirement that each hearing of the commission be streamed live and made available on the commission's website; providing a statement of public necessity; providing an effective date.

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

Section 1. Present subsection (4) of section 286.0113, Florida Statutes, is redesignated as subsection (5), and a new

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

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subsection (4) is added to that section, to read:

286.0113 General exemptions from public meetings.—

(4) (a) Any hearing or portion of a hearing before the Public Service Commission conducted pursuant to ss. 120.569 and 120.57 which the commission finds cannot be fully and fairly conducted without necessarily revealing information that has been made confidential by prior order of the commission, or for which a request for confidentiality has been filed pursuant to s. 366.093, s. 367.156, or s. 368.108 or a claim of proprietary confidential business information has been filed pursuant to s. 364.183, is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. The commission must make any such finding no later than 20 days before the scheduled hearing.

(b) The entire hearing, including any confidential portion, must be recorded by a certified court reporter. Only the redacted version of the transcript prepared as set forth in paragraph (d) is subject to disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution, in accordance with s. 364.183, s. 366.093, s. 367.156, or s. 368.108, as applicable.

(c) Within 21 days after filing the transcript, or a shorter timeframe if required by the commission, each party asserting that one or more portions of the transcript contains confidential information that should remain exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution shall provide to the commission clerk redacted versions of that information and an accompanying request for confidential treatment. Failure to timely file such redacted versions and request constitutes a waiver of any continued claim of confidentiality to only that portion of the transcript.

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

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(d) The commission clerk shall prepare a transcript redacting all information requested by a party pursuant to paragraph (c) and for which confidentiality orders have been entered. The redacted transcript must be made part of the public record at the conclusion of the underlying hearing. The information redacted in the transcript shall remain exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless a court of competent jurisdiction, after an in camera review of the transcript, determines that any information redacted does not comply with applicable confidentiality orders. In the event of such a judicial determination, only the portion of the recording or transcript which the court determines reveals nonexempt data and information may be disclosed to the public.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Subsection (8) of section 350.01, Florida Statutes, is amended to read:

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

(8) Each meeting, including each internal affairs meeting, workshop, hearing, or other proceeding attended by two or more commissioners, and each such meeting, workshop, hearing, or other proceeding where a decision that concerns the rights or obligations of any person is made, must ~~shall~~ be streamed live on the Internet, and a recorded copy of the meeting, workshop,

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hearing, or proceeding must ~~shall~~ be made available on the commission's website. This subsection does not apply to any hearing or portion of a hearing before the Public Service Commission conducted pursuant to ss. 120.569 and 120.57 which has been closed to the public pursuant to s. 286.0113(4) and s. 24(b), Art. 1 of the State Constitution.

Section 3. (1) The Legislature finds that it is a public necessity that those portions of hearings of the Public Service Commission conducted pursuant to ss. 120.569 and 120.57, Florida Statutes, at which proprietary confidential business information under ss. 364.183, 366.093, 367.156, and 368.108, Florida Statutes, is discussed be made exempt from public meetings requirements. As used in this section, the term "proprietary confidential business information" has the same meaning as in s. 364.183, s. 366.093, s. 367.156, or s. 368.108, Florida Statutes, and includes information that has been made confidential by prior order of the commission and is necessary for the commission to discuss in order to evaluate it and make a determination in the public interest.

(2) The Legislature further finds that the commission and parties to commission hearings are constrained from asking questions about essential proprietary confidential business information important to the outcome of a case. Pursuant to its legislative directive under chapters 364, 366, 367, and 368, Florida Statutes, the commission is the tribunal charged with establishing just, fair, and compensatory rates for utilities or companies under its jurisdiction. As such, the commission has the authority to adjudicate all matters within its jurisdiction, and its administrative hearings are conducted in compliance with

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chapter 120, Florida Statutes. The fact-finding role of the commission is integral to its decisionmaking, and all commission decisions must be supported by competent, substantial record evidence. Accordingly, under certain circumstances, the commission must be able to fully evaluate and discuss proprietary confidential business information in order to make a determination in the public interest. In addition, parties must be allowed to conduct full and fair cross-examination when testimony is taken or documents are made a part of the record pursuant to s. 120.569(2)(j), Florida Statutes.

(3) The Legislature further finds that the public disclosure of proprietary confidential business information, through discussion of such information in a formal administrative hearing or portion thereof conducted in the sunshine pursuant to ss. 120.569 and 120.57, Florida Statutes, would significantly harm utilities by impairing the ability of utilities regulated by the Public Service Commission to fairly negotiate with third parties and compete for goods and services within the marketplace. Such disclosure would also harm the businesses with which such utilities contract by disclosing such businesses' proprietary or confidential information and make it less likely for such businesses to do business with regulated utilities in the future. Additionally, the Legislature finds that the public disclosure of proprietary confidential business information would cause harm to the company's ratepayers or business operations, resulting in higher utility prices or lower quality of service.

(4) The Legislature further finds that the public and private harm in the public disclosure of the information made

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exempt by this act outweighs any public benefit derived from the disclosure of such information.

(5) Therefore, the Legislature finds that it is a public necessity to make those portions of hearings of the Florida Public Service Commission at which proprietary confidential business information is discussed exempt from public meetings requirements and the commission's livestreaming requirements, and to make the recordings and transcripts thereof exempt from public records requirements.

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

Date: March 4, 2021

Agency Affected:	Public Service Commission	Telephone: 413.6524
Program Manager:	Adam Potts	Telephone: 413.6596
Agency Contact:	Adam Potts	Telephone: 413.6596
Respondent:	Kaley Slattery	Telephone: 413.6125

RE: BILL # HB1311

## **I. SUMMARY:**

HB 1311, sponsored by Representative Payne, amends Section 286.0113, Florida Statutes (F.S.), to create a limited exemption from public meeting requirements. The exemption would allow the Public Service Commission to close hearings or portions thereof where a full and fair hearing cannot be conducted in the public without discussing and thereby divulging confidential information. Any closed hearings or portions thereof will be recorded by a certified court reporter. The transcript will become public record at the conclusion of the proceeding. Those portions of the transcript where confidential matters are discussed will be redacted. The bill provides opportunity for judicial review of the redactions to ensure they address only confidential information. HB 1311 contains a related amendment to Section 350.01, F.S., which would except these same hearings or portions thereof from the existing statutory requirement that all Commission hearings be streamed live on the Internet. The bill takes effect upon becoming law.

## **II. PRESENT SITUATION:**

The Public Service Commission was created by the legislature, as a legislative entity, to regulate Florida's investor owned utilities and to make decisions relative to utility operations which are in the public interest and which ensure the provision of safe, affordable and reliable energy to Floridians. The Commission possesses extensive knowledge of the unique legal and policy considerations applicable to Florida's regulated utilities and their ratepayers. The Commission employs this expertise when it conducts a hearing, acts as the fact-finder, and is afforded the opportunity to critically analyze all information, question witnesses, and independently weigh the evidence. Unlike other agencies, the Commission has historically conducted all of its own hearings. Virtually all of these hearings involve some amount of confidential information that is exempted by statute from public disclosure.

Florida has a very broad "Sunshine Law." Section 286.011(1), F.S., provides that meetings "at which official acts are to be taken [by a board or commission] are declared to be public meetings open to the public at all times...." Reasonable notice of these meetings must be provided. Thus, all Commission meetings, including administrative hearings, are noticed and open to the public.

The Commission has established practices and procedures that have allowed hearings to be conducted in a manner that complies with the Sunshine Law and protects confidential information from disclosure. In those hearings, the confidential material has been a relatively minor portion of any particular issue, and the parties have worked around public disclosure by stipulating to certain matters and keeping discussions of confidential matters – which generally occurs during cross examination – minimal and without mention of critical details. However, the Commission has recently found certain dockets where fact-finding on one or more issues is so inextricably intertwined with confidential information, and the volume of that information is so substantial, that it cannot afford the parties a full and fair hearing in the public and also protect sensitive confidential information.

The Commission has concluded that it must refer such cases to the Division of Administrative Hearings, where the Sunshine Law does not apply and the hearing may be closed to the public. All information can be presented to an Administrative Law Judge in a closed hearing, can be fully explored by all parties

through cross-examination, and will remain confidential. This process protects discussions of the information but eliminates an important function of the Commission. Because the Administrative Law Judge conducts the hearing and becomes the fact-finder with sole authority to weigh the evidence and credibility of witnesses, the Commission cannot use its expertise and experience to ensure all issues are fully vetted and weighed. Instead of acting as a policy body and implementing its legislative mandates, the Commission is limited to considering a Recommended Order from the Administrative Law Judge under very restrictive administrative law standards.

### III. EFFECT OF PROPOSED CHANGES:

HB1311 creates an exemption from public meeting requirements which would allow the Public Service Commission, in limited circumstances, to close only a formal administrative hearing or portion thereof being conducted before the Commission. The hearing would be closed only where the Commission makes a finding and provides notice in advance of the hearing that it is necessary to allow questions by the Commission, parties, and staff about certain confidential information associated with critical issues, where the absence of such questioning or discussion would call into question the validity and fairness of the hearing. Only that portion of the hearing at which questions or discussions occur about confidential information would be closed.

Currently, all hearings before the Commission are recorded by a certified court reporter and a copy of the transcript is subsequently made part of the public record. HB 1311 would continue the practice of the certified court reporter recording the entire hearing, even those portions of a closed hearing where confidential information is discussed. However, in the case where a portion of a hearing is closed for the purpose of allowing the Commission, parties and staff to ask questions or discuss confidential information, HB 1311 provides that the transcript will be provided first to the parties, who will be afforded the opportunity (21 days), to review and identify those portions of the transcript where confidential matters are discussed. The portions that are identified by the parties will be redacted by the Commission clerk's office. The redacted transcript will then be made part of the public record. The bill provides opportunity for judicial review of the redactions to ensure that the redacted information resulting from questions or related discussions are limited only to confidential information.<sup>1</sup>

Existing Section 350.01(8), F.S., provides that each meeting, workshop, hearing, or other proceeding that is attended by two or more commissioners shall be streamed live on the Internet, with a recorded copy being thereafter being made available on the Commission's website. HB 1311 would provide an exemption from these requirements for hearings and portions thereof that are closed by the Commission to protect confidential information as set forth above.

### IV. ESTIMATED FISCAL IMPACTS ON STATE AGENCIES:

The impact on state agencies is not known at this time. The impacts to the Public Service Commission's clerk's office from the changed transcript requirements and to information technology from the amendment to Section 350.01, F.S., are not known.

	(FY 21-22) Amount / FTE	(FY 22-23) Amount / FTE	(FY 23-24) Amount / FTE
<b>A. Revenues</b>			
1. Recurring	\$0/0 FTE	\$0/0 FTE	\$0/0 FTE

<sup>1</sup>Pursuant to Subsection 364.183(4), 366.093(4), 367.156(4), or 368.108(4), F.S., the redacted portions of the transcript for which confidential classification is granted would remain protected from disclosure for a period of up to 18 months from the date of issuance of the order granting confidential treatment. At the conclusion of the 18-month period, the confidential information would no longer be exempt from Subsection 119.07(1), F.S., unless a substantially affected person shows, and the Commission finds, that the redacted portions of transcript continue to contain proprietary confidential business information.

2. Non-Recurring	\$0/0 FTE	\$0/0 FTE	\$0/0 FTE
<b>B. Expenditures</b>			
1. Recurring	\$0/0 FTE	\$0/0 FTE	\$0/0 FTE
2. Non-Recurring	\$0/0 FTE	\$0/0 FTE	\$0/0 FTE

**V. ESTIMATED FISCAL IMPACTS ON LOCAL GOVERNMENTS:**

None known at present.

**VI. ESTIMATED IMPACTS ON PRIVATE SECTOR:**

None known at present.

**VII. LEGAL ISSUES:**

A. Does the proposed legislation conflict with existing federal law or regulations? If so, what laws and/or regulations?

No.

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)?

No.

C. Is the proposed legislation likely to generate litigation and, if so, from what interest groups or parties?

Unknown. However, in any case where the commission finds it necessary to close a portion of a hearing to discuss confidential information, the bill allows a process for judicial review of the entire transcript to ensure that any information redacted is limited in scope to questions or discussions that directly relate to the confidential information.

D. Other:

**VIII. COMMENTS:**

*Use this section for explanations or recommendations:*

- *Suggested amendments to correct technical defects in the bill.*
- *Further explanation of methodology used to compute fiscal data.*
- *Whether the bill is supported by the agency, is part of the Governor's legislative package, is required to implement a federal program, etc.*
- *Important substantive or fiscal information not explained above.*

Prepared by: Shaw Stiller, Senior Attorney

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3/23

Meeting Date

7066

Bill Number (if applicable)

Topic SPB 7066

Amendment Barcode (if applicable)

Name Kaley Slattery

Job Title government liaison

Address \_\_\_\_\_

Phone \_\_\_\_\_

Street

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Public Service Commission

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

**The Florida Senate**  
**COMMITTEE RECOMMENDATION ON**  
**EXECUTIVE APPOINTMENT**

**COMMITTEE:** Appropriations Subcommittee on Agriculture, Environment, and General Government  
**MEETING DATE:** Wednesday, March 17, 2021  
**TIME:** 3:00—5:00 p.m.  
**PLACE:** Toni Jennings Committee Room, 110 Senate Building

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**TO:** The Honorable Wilton Simpson, President

**FROM:** Appropriations Subcommittee on Agriculture, Environment, and General Government

The committee was referred the following executive appointment subject to confirmation by the Senate:

**Office:** Secretary of Business and Professional Regulation

**Appointee:** Brown, Julie I.

**Term:** 2/18/2021-Pleasure of Governor

After inquiry and due consideration, the committee recommends that the Senate **confirm** the aforesaid executive appointment made by the Governor.

**STATE OF FLORIDA  
DEPARTMENT OF STATE**

**Division of Elections**

I, Laurel M. Lee, Secretary of State,  
do hereby certify that

***Julie I. Brown***

is duly appointed

**Secretary,  
Department of Business and Professional  
Regulation**

for a term beginning on the Eighteenth day of February, A.D.,  
2021, to serve at the pleasure of the Governor and is subject to  
be confirmed by the Senate during the next regular session of the  
Legislature.

*Given under my hand and the Great Seal of the  
State of Florida, at Tallahassee, the Capital, this  
the Fifth day of March, A.D., 2021.*



Secretary of State



**RON DESANTIS**  
GOVERNOR

RECEIVED  
DEPARTMENT OF STATE

2021 FEB 19 AM 11:41

DIVISION OF ELECTIONS  
TALLAHASSEE, FL

February 18, 2021

Secretary Laurel M. Lee  
Department of State  
R.A. Gray Building, Room 316  
500 South Bronough Street  
Tallahassee, Florida 32399-0250

Dear Secretary Lee:

Please be advised I have made the following appointment under the provisions of Section 20.165, Florida Statutes:

Ms. Julie Imanuel Brown  
2506 West Prospect Road  
Tampa, Florida 33629

as Secretary of the Department of Business and Professional Regulation, subject to confirmation by the Senate. This appointment is effective February 18, 2021.

Sincerely,

Ron DeSantis  
Governor

RD/kk

HAND DELIVERED

# OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED

STATE OF FLORIDA

2021 MAR -4 PM 2:37

County of Leon

DIVISION OF ELECTIONS  
TALLAHASSEE, FL

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Secretary of the Department of Business and Professional Regulation  
(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

Signature

Sworn to and subscribed before me by means of ☒ physical presence or  
online notarization, this 4th day of March, 2021.

Dixie Irene Parker  
Signature of Officer Administering Oath or of Notary Public

Dixie Irene Parker  
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☒ OR

Produced Identification ☐

Type of Identification Produced \_\_\_\_\_



## ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☐ Home ☒ Office

2601 Blair Stone Road

Street or Post Office Box

Tallahassee, FL 32399-100

City, State, Zip Code

Julie I. Brown

Print Name

Signature

135950

## QUESTIONNAIRE FOR SENATE CONFIRMATION

The information from this questionnaire will be used by the Florida Senate in considering action on your confirmation. The questionnaire **MUST BE COMPLETED IN FULL**. Answer "none" or "not applicable" where appropriate. Please type or print in blue or black ink.

02/24/21

Date Completed

1. Name: Mrs. Brown, Julie Imanuel  
Mr./Mrs./Ms. Last First Middle/Maiden

2. Business Address: 2601 North Blair Stone Road, Tallahassee,  
Street Office # City  
Florida 32308 850. 413.0748  
Post Office Box State Zip Code Area Code/Phone Number

3. Residence Address: 2506 West Prospect Road, Tampa, Hillsborough  
Street City  
Florida 33629  
Post Office Box State Zip Code Area Code/Phone Number

Specify the preferred mailing address: Business ☒ Residence ☐ Fax # \_\_\_\_\_ (optional)

4. A. List all your places of residence for the last five (5) years.

Address	City & State	From	To
<u>2506 W. Prospect Road, Tampa, FL</u>	<u>FL</u>	<u>10/03</u>	<u>to Present</u>
<u>2102 E. Park Ave., Tallahassee, FL</u>	<u>FL</u>	<u>04/15</u>	<u>10/17</u>
<u>1155 Seminole Dr., Tallahassee, FL</u>	<u>FL</u>	<u>06/11</u>	<u>12/14</u>

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B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.

Address	City & State	From	To
<u>NONE</u>			

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DIVISION OF ELECTIONS  
TALLAHASSEE, FL

5. Date of Birth: \_\_\_\_\_ Place of Birth: Fort Myers, Florida

6. Social Security Number: \_\_\_\_\_

7. Driver License Number: \_\_\_\_\_ Issuing State: Florida

8. Have you ever used or been known by any other legal name? Yes ☒ No ☐ If "Yes" Explain

Julie Imanuel Brown

9. Are you a United States citizen? Yes ☒ No ☐ If "No" explain:

If you are a naturalized citizen, date of naturalization: \_\_\_\_\_

10. Since what year have you been a continuous resident of Florida? BIRTH -

11. Are you a registered Florida voter? Yes ☒ No ☐ If "Yes" list:

A. County of Registration: Hillsborough

B. Current Party Affiliation: Republican

12. Education

A. High School: Cypress Lake - Ft. Myers, FL  
(Name and Location)

Year Graduated: 1993

B. List all postsecondary educational institutions attended:

Name & Location	Dates Attended	Certificates/Degrees Received
University of FL - Gainesville	08/93 - 05/97	B.S. Public Relations
University of FL College of Law	08/97 - 05/00	J.D.
University of Montpellier, France	Summer June 1998	J.D. Credits

13. Are you or have you ever been a member of the armed forces of the United States? Yes ☐ No ☒ If "Yes" list:

A. Dates of Service: \_\_\_\_\_

B. Branch or Component: \_\_\_\_\_

C. Date & type of discharge: \_\_\_\_\_

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of \$150 or less was paid.) Yes ☐ No ☒ If "Yes" give details:

Date	Place	Nature	Disposition
------	-------	--------	-------------

15. Concerning your current employer and for all of your employment during the last five years, list your employer's name, business address, type of business, occupation or job title, and period(s) of employment.

Employer's Name & Address	Type of Business	Occupation/Job Title	Period of Employment
FLA Public Service Commission, 2540 Shumard Oak Blvd. Tallahassee, FL		Commissioner & Chairman	01/11 - 02/19/21

16. Have you ever been employed by any state, district, or local governmental agency in Florida? Yes ☒ No ☐  
If "Yes", identify the position(s), the name(s) of the employing agency, and the period(s) of employment:

Position	Employing Agency	Period of Employment
City Attorney - Head Real Estate	City of Tampa	01/04 - 05/06

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.

As a Commissioner and Chairman of the Florida P.S.C., we collaboratively served as chief regulators over all Investor-Owned electric, gas, water and wastewater utilities. Had direct oversight and chief responsibility over agency. Also, served as in-house counsel and municipal attorney in related industries, as well as holding a senior position at a quick service restaurant. Finally, I hold multiple licenses and respect the proper and necessary oversight.

B. Have you received any degree(s), professional certification(s), or designations(s) related to the subject matter of this appointment? Yes ☒ No ☐ If "Yes", list:

Florida Bar. # 377510; 09/30/2000, Member in good standing - no disciplinary action  
Florida Broker's License # BK 3070037; 02/16/2003, Member in good standing - no disciplinary action

C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes ☒ No ☐ If "Yes", list:

Please Consult Resume Attached (In detail)

D. Identify all association memberships and association offices held by you that relate to this appointment:

Please Consult Resume Attached (In detail)

18. Do you currently hold an office or position (appointive, civil service, or other) with the federal or any foreign government? Yes ☒ No ☐ If "Yes", list:

Please Consult Resume Attached (In detail)

19. A. Have you ever been elected or appointed to any public office in this state? Yes ☒ No ☐ If "Yes", state the office title, date of election or appointment, term of office, and level of government (city, county, district, state, federal):

Office Title	Date of Election or Appointment	Term of Office	Level of Government
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Please Consult Resume Attached (In detail)

B. If your service was on an appointed board(s), committee(s), or council(s):

(1) How frequently were meetings scheduled: Very frequently - all Boards - and nearly perfect attendance

(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s). at all boards.

Meetings Attended

Meetings Missed

Reason for Absence

20. Has probable cause ever been found that you were in violation of Part III, Chapter 112, F.S., the Code of Ethics for Public Officers and Employees? Yes ☐ No ☒ If "Yes", give details:

Date

Nature of Violation

Disposition

21. Have you ever been suspended from any office by the Governor of the State of Florida? Yes ☐ No ☒ If "Yes", list:

A. Title of office: \_\_\_\_\_ C. Reason for suspension: \_\_\_\_\_

B. Date of suspension: \_\_\_\_\_ D. Result: Reinstated ☐ Removed ☐ Resigned ☐

22. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes ☒ No ☐  
If "Yes", list:

A. Title of Office: Public Service Confirmation

B. Term of Appointment: 2011-2014, 2015-2018, 2019-02/19/2021 (Term exp. 01/23)

C. Confirmation results: Senate Approval - 2011, 2015, 2018

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes ☐ No ☒ If "Yes", explain:

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes ☒ No ☐  
If "Yes", provide the title and number, original issue date, and issuing authority. If any disciplinary action (fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

License/Certificate

Original

Title & Number

Issue Date

Issuing Authority

Disciplinary Action/Date

Bar #37756; 09/30/20; Fla Bar, Good Standing - Zero disciplinary  
AK 3070037; 12/16/03; DBPR, Good Standing - Zero disciplinary

25. A. Have you, or businesses of which you have been and owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☐ No ☒ If "Yes", explain:

Name of Business

Your Relationship to Business

Business' Relationship to Agency

B. Have members of your immediate family (spouse, child, parents(s), siblings(s)), or businesses of which members of your immediate family have been owners, officers, or employees, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☐ No ☒ If "Yes", explain: *N/A*

Name of Business	Family Member's Relationship to You	Family Member's Relationship to Business	Business' Relationship to Agency

26. Have you ever been a registered lobbyist or have you lobbied at any level of government at any time during the past five (5) years? Yes ☒ No ☐ - *FLA PSC Standing Registration*

A. Did you receive any compensation other than reimbursement for expenses? Yes ☐ No ☒ (*Zero*)

B. Name of agency or entity you lobbied and the principal(s) you represented:

Agency Lobbied	Principal Represented
<i>Met with Legislature AT REQUEST SPECIALLY</i>	<i>FLA PSC</i>

27. List three persons who have known you well within the past five (5) years. Include a current, complete address and telephone number. Exclude your relatives and members of the Florida Senate.

Name	Mailing Address	Zip Code	Area Code/Phone Number
<i>① Chairman Gary Clark</i>			
<i>② CFO Jimmy Patronis</i>			
<i>③ Chief Counsel Liana Lipre</i>			

28. Name any business, professional, occupational, civic, or fraternal organizations(s) of which you are now a member, or of which you have been a member during the past five (5) years, the organization address(es), and date(s) of your membership(s).

Name	Mailing Address	Office(s) Held & Term	Date(s) of Membership
<i>Please See attached Resume with details</i>			

29. Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes ☐ No ☒ If "Yes", explain:

30. If required by law or administrative rule, will you file financial disclosure statements? Yes ☒ No ☐

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CERTIFICATION

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STATE OF FLORIDA

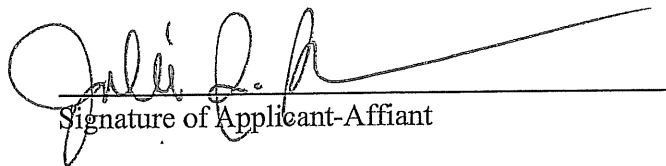
COUNTY OF Leon

DIVISION OF ELECTIONS  
TALLAHASSEE, FL

Before me, the undersigned Notary Public of Florida, personally appeared

Julie F. Brown

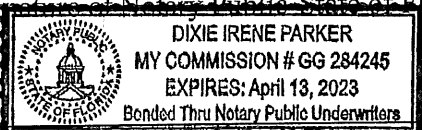
who, after being duly sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.

  
Signature of Applicant-Affiant

Sworn to and subscribed before me this 3rd day of March, 2021.

Dixie Irene Parker

Signature of Notary Public, State of Florida



(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: April 13, 2023

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced \_\_\_\_\_

(seal)

## **MEMORANDUM**

**AS A GENERAL MATTER, APPLICATIONS FOR ALL POSITIONS WITHIN STATE GOVERNMENT ARE PUBLIC RECORDS WHICH MAY BE VIEWED BY ANYONE UPON REQUEST. HOWEVER, THERE ARE SOME EXEMPTIONS FROM THE PUBLIC RECORDS LAW FOR IDENTIFYING INFORMATION RELATING TO PAST AND PRESENT LAW ENFORCEMENT OFFICERS AND THEIR FAMILIES, VICTIMS OF CERTAIN CRIMES, ETC. IF YOU BELIEVE AN EXEMPTION FROM THE PUBLIC RECORDS LAW APPLIES TO YOUR SUBMISSION, PLEASE CHECK THIS BOX.**

- ☐ Yes, I assert that identifying information provided in this application should be excluded from inspection under the Public Records Law.

Because: (please provide cite.) \_\_\_\_\_

**IF YOU NEED ADDITIONAL GUIDANCE AS TO THE APPLICABILITY OF ANY PUBLIC RECORDS LAW EXEMPTION TO YOUR SITUATION, PLEASE CONTACT THE OFFICE OF THE ATTORNEY GENERAL.**

The Office of the Attorney General  
PL-01, The Capitol  
Tallahassee, Florida 32399  
(850) 245-0150

## Senate Confirmation Questionnaire

Please mail to: Room 316, R.A. Gray Building, 500 South Bronough Street, Tallahassee, Florida 32399-0250

The information from this page has been requested and will be used exclusively for Minority Statistics.

Please type or use blue ink.

1. Board of Interest: FL DBPR
2. Current Employer and Occupation: State of Florida
3. Are you applying for reappointment: Yes ☐ No ☒
4. \*Do you have a disability? Yes ☐ No ☒ If "Yes", please describe your disability that would qualify you for this appointment, if applicable.  
\_\_\_\_\_  
\_\_\_\_\_
5. \*Sex: Male ☐ Female ☒
6. \*Race: White ☒ African-American ☐  
Hispanic-American ☐ Asian/Pacific Islander ☐  
Native-American/Alaskan Native ☐

7. Do you now, or have you, within the last three years, been a member of any club or organization that, to your knowledge, in practice or policy, restricts membership or restricted membership during the time that you belonged on the basis of race, religion, national origin, or gender? If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices, and state whether you intend to continue as a member if you appointed by the Governor. NO

8. One of the Governor's top priorities is to improve the conditions of the children living in our state. Would you be willing to spend an hour a week with a child in need in your community? If so, please identify the type of program and/or activity you would be willing to participate in as a mentor.

ABSOLUTEY!

Julie I. Brown

Applicant's Name, including name commonly used  
(Please print)

ANY MENTORSHIP  
OF BUDGING YOUNG

\* This information will be used to provide demographic statistics and is not requested for the purpose of discriminating on any basis

PROFESSIONALS!

Ken Cager  
to serve.

# JULIE IMANUEL BROWN

2506 W. PROSPECT ROAD, TAMPA 33929 ♦

## PROFESSIONAL EXPERIENCES

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### FLORIDA PUBLIC SERVICE COMMISSION

**Commissioner (appointed 01/11 to Present) and Chairman (elected 01/16 to 01/18)**

*Three-Time Appointee by Florida Governors Rick Scott and Charlie Crist*

*Confirmed by the Florida Senate in Spring 2011, Spring 2015 and Spring 2019 for 4-Year Terms*

One of five Commissioners responsible for ensuring Floridians receive electric, natural gas, telephone, water, and wastewater in a safe, reasonable, and reliable manner. Exercises regulatory authority over utilities in rate base/economic regulation, competitive market oversight, and monitoring the safety, reliability and service of utilities throughout the state. Commissioners regulate the rates and service quality for five investor-owned electric companies, eight investor-owned natural gas utilities, and 131 investor-owned water/wastewater utilities. The Commission also has competitive market oversight for more than 400 telecommunications companies. Commissioners conduct public hearings and exercise quasi-judicial and quasi-legislative functions related to regulated utilities throughout the state of Florida.

During the 2-year chairmanship, the state of Florida experienced massive hurricane impacts for the first time in over a decade from multiple catastrophic hurricanes. In addition to serving as chief administrative officer and presiding over all technical hearings as chief judge, Chair Brown led the PSC's review and recommendation for future action to bolster Florida's electric utility storm hardening efforts for years to come. In addition, Chair Brown presided and led all agenda conferences, service hearings and other administrative proceedings, while also being responsible for oversight of a \$25,000,000 budget and a technical staff of approximately 280 employees.

MEMBERSHIPS AND ASSOCIATIONS include serving as:

- ♦ **Chairman of the Florida Legislature's Study Committee on Investor-Owned Water & Wastewater Utility Systems** (Selected by Speaker Will Weatherford—Included 18 members and presented findings to the Florida Legislature on behalf of the Committee);
- ♦ **Chairman (4 years), Vice Chairman (2 years) & Advisory Member**, Gas Technology Institute;
- ♦ **Blue Ribbon Task Force Member**, Southern States Energy Board (SSEB) Blue Ribbon — advised Puerto Rico on the evaluation of its energy public policy and the regulatory framework;
- ♦ **Board Member**, National Association of Regulatory Utility Commissioners (NARUC)-  
**NARUC Task Force Member on Emergency Preparedness, Recovery and Resiliency and COVID-19 Best Practices Leader, Committee Member** of Natural Gas and Subcommittee on Nuclear Waste Disposal; **Two-Term Member**, NARUC-U.S. Department of Energy Natural Gas Infrastructure Modernization Partnership; **Task Force Member**, Presidential Natural Gas Access and Expansion Task Force;
- ♦ **Executive Board Member and Membership Chair (6 years)**, Nuclear Waste Strategy Coalition (Represents state utility regulators, attorneys general, consumer advocates, electric utilities and local governments on nuclear waste policy matters);
- ♦ **Advisory Board Member**, University of Missouri Financial Research Institute;
- ♦ **Advisory Council Member**, New Mexico State University's Center for Public Utilities; and
- ♦ **Chairman**, Florida PSC's Search Committee for Executive Director.

### FIRST AMERICAN TITLE INSURANCE COMPANY, A FORTUNE 300 COMPANY

**Associate Legal Counsel (05/06 to 01/11)**

Responsibilities included assisting the Eastern Division General Counsel, who oversaw 26 states, on various legal issues, including ensuring compliance with all governing regulatory authorities and laws. Negotiated and drafted an assortment of corporate and real estate-related agreements,

including acquisitions and dispositions. One of three employees selected to the new agency and recertification committee. Tracked legislation throughout the Division and coordinated outside lobbyist initiatives. Helped author the Company's agency manual, form agency agreements and FDIC bulletins. Previously handled employment-related issues and claims for the Company and drafted/presented legal seminars to real estate professionals throughout Florida.

#### CITY OF TAMPA ATTORNEY'S OFFICE

##### **Assistant City Attorney (01/04 to 05/06)**

Former chief real estate attorney for the City of Tampa, with a focus on complex development agreements and land use issues. Specialties include utilities, real estate, contract, administrative and regulatory law. Drafted legislation negotiated agreements and disputes and advised City Council members and staff about a variety of legal issues. Legal advisor to the Mayor's Office, and the stormwater, land development coordination (subdivisions and CDDs), wastewater, cultural arts and public arts, neighborhood and community affairs, convention center and minority business development departments.

#### CHECKERS DRIVE-IN RESTAURANTS, INC.

##### **Director of Franchise Sales & Development (09/02 to 10/03)**

Head of the Franchise Department responsible for negotiating multi-million-dollar franchise and area development agreements, reviewing and analyzing real estate site packages for prospective and current franchisees, developing infrastructure and programming, and preparing the annual Uniform Offering Circular.

#### SHUMAKER, LOOP & KENDRICK, LLP

##### **Corporate Attorney (08/00 to 09/02)**

National full-service law firm specializing in general corporate practice with a focus on mergers and acquisitions and securities law. Clients included public companies, established private enterprises, as well as start-ups. Corporate practice included counseling clients with regard to asset and stock purchase, reorganization, merger, shareholders, partnership, joint venture, licensing, real estate, franchise and other agreements. Represented both buyer and seller in M&A matters. Also experienced in general litigation with focus on commercial law and surety matters.

#### **PROFESSIONAL LICENSES**

- 
- ◆ Florida Bar License, member in good standing since 2000
  - ◆ Florida Real Estate Broker's License (Sole owner of J.T. Swann Realty, Inc.) member in good standing with the DBPR since 2003

#### **EDUCATION**

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##### **University of Florida College of Law, Juris Doctor, (May 2000)**

- ◆ President, Florida Blue Key Leadership Honorary, 1997
- ◆ Attorney General, Student Honor Court, 1999
- ◆ Member, Journal of Technology Law and Policy
- ◆ Vice Chair, Justice Campbell Thornal Moot Court Team: 2<sup>nd</sup> Place, William & Mary Competition, VA; 2<sup>nd</sup> Place 1999 Workers' Compensation Competition, FL
- ◆ Summer Abroad at University of Montpellier, France, College of Law, 1998

##### **University of Florida, B.S. Public Relations (Magna Cum Laude, May 1997)**

- ◆ Recipient, The Outstanding Female Leader Award (awarded to one female at graduation)
- ◆ Inductee, University of Florida Hall of Fame
- ◆ President, Omicron Delta Kappa Leadership Honorary, Fall 1996
- ◆ Recipient, Dean's Cup for the College of Journalism and Communications
- ◆ Vice Chair, Florida Cicerones Student Alumni Association and President's Personal Host
- ◆ Preview Freshmen Orientation Staff, 1995

- ◆ Vice President, Zeta Tau Alpha Sorority
- ◆ Student Senator

### COMMUNITY INVOLVEMENT

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- ◆ Commissioner, Florida Women's Suffrage Centennial Commission (1 of 11 appointed by Gov. DeSantis on 10/19) to ensure statewide observance of the 2020 centennial of women's suffrage
- ◆ Member, Leadership Florida (Class XXXIII)
- ◆ Commissioner, City of Tampa's Architectural Review Commission (appointed 10/06 to 12/10)
- ◆ Board Member and Legal Advisor, Tampa Firefighter's Museum (05/07 to 01/14)
- ◆ Legal Advisor to Friends of Public Art for the City of Tampa (2006 to 2008)
- ◆ Legal Advisor & Board Member, Junior League of Tampa (2005 to 2007)
- ◆ President (elected 06/03 to 05/04), President-Elect (06/02 to 05/03), Secretary (06/01 to 05/02) League of Women Voters of Hillsborough County
- ◆ Member and Vice Chairman (2005 to 2006), Judicial Campaign Practices Committee (2004 to 2006), Hillsborough County Bar Association
- ◆ Committee Member, Florida Bar's 13th Judicial Circuit Grievance Committee (2006 to 2009)
- ◆ Secretary, New Suburb Beautiful Neighborhood Association (2009 to 2011)
- ◆ 1 of 3 Finalists, Tampa Bay Business Journal Woman of the Year, Gov't Services, (2004)

### PRESENTATIONS AND PUBLICATIONS

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- ◆ *Moderator*, Florida Women In Energy Annual Forum, "Reflections By Regulators," 11/13/20
- ◆ *Inaugural Guest Speaker*, Florida Women in Energy Forum Live-Streamed Hour Interview, 08/13/20
- ◆ *Panelist*, Energy Bar Association, "Regulator Challenges During Pandemic," 07/13/20
- ◆ *Panelist and Participant*, NARUC's 8-State Delegation Providing Guidance on Grid Resiliency to Puerto Rico Energy Bureau, PREPA and Government (San Juan, PR), "Lessons Learned in Florida," 02/27/20
- ◆ *General Session Moderator*, NARUC's Winter Meeting (Washington, DC), "Pragmatic Planning for a Major Disaster," 02/12/19
- ◆ *Panelist*, NARUC's Winter Meeting (Washington, DC), EEI Breakfast, "Celebrating a Centennial of Women's Power," 02/12/19
- ◆ *Panelist*, Council of State Government National Conference (Puerto Rico), "The Role of the Regulator," 12/04/19
- ◆ *Panelist*, NARUC's Winter Meeting (San Antonio, TX), Institute for Electric Innovation, EEI Breakfast, "Energy Resiliency: How Technology and Partnerships are Creating a More Resilient Energy Grid that Provides Value to Customers," 11/19/19
- ◆ *Panelist*, Florida Internet & Television Annual Conference (Orlando, FL), "Protected & Connected: Hurricane Preparedness," 11/08/19
- ◆ *Moderator*, University of Missouri 2019 Financial Research Institute Symposium (Columbia, MO), "The Future of Customer Service," 09/25/19
- ◆ *Key Panel Address*, EY Power & Utilities Summit (New York City), "A Commissioner's Perspective: Regulatory Trends Shaping the Future of Utilities" 09/19/19
- ◆ *Co-Presenter*, Morgan Stanley's Executive Women in Energy (Columbus, OH), "Regulatory Perspectives on Meeting Customer Requirements," 06/19/19
- ◆ *Moderator of General Session*, SEARUC (Gulf Shores, AL), "Puerto Rico: From Rebuilding to Restructuring," 06/04/19
- ◆ *Keynote Address*, Florida's Women In Energy Annual (Destin, FL), "Wisdom in Energy," 11/08/18
- ◆ *Moderator*, University of Missouri 2018 Financial Research Institute Symposium (Columbia, MO), "The Nature & Economics of Public Utility Business Models," 09/26/18
- ◆ *Co-Presenter*, NAWC's 2018 Southeast Water Infrastructure Summit (New Orleans, LA), "Commissioners' Roundtable," 05/01/18
- ◆ *Co-Presenter*, Energy Bar Association's 2018 Spring Conference (Atlanta, GA), "Commissioners' Panel: Overview of Current Issues in the Southern States," 03/08/18
- ◆ *Moderator*, NARUC's Annual Meeting (Baltimore, MD), "Weathering the Storm: Communications Network Resilience," 11/14/17
- ◆ *Keynote Address*, Leadership Conference for Women In Energy (Atlanta, GA), "Obstacles or Opportunities? Embracing Life's Lessons," 11/08/17
- ◆ *Panelist*, Southeast Renewable Energy Summit (Atlanta, GA), "Perspective on Renewable Energy

- ◆ *Panelist*, EEI National Key Accounts (National Harbor, MD), “Evolving Needs and Priorities of Customers; Emerging Roles of Technologies; Commitment to a Clean and Affordable Energy Future; Investments in a Smarter Energy Infrastructure,” 10/10/17
- ◆ *Moderator*, University of Missouri 2017 Financial Research Institute Symposium (Columbia, MO), “Balancing Access with Affordability in Regulatory Design,” 09/20/17
- ◆ *Panelist*, Florida’s Women in Energy Leadership Forum (Palm Beach Gardens, FL), “Workshop-Developing Your Leadership Brand,” 06/15/17
- ◆ *Discussion Leader*, NWSC Spring 2017 Annual Meeting (Washington, DC), “NARUC Perspective and Positions on Nuclear Waste Management,” 03/27/17
- ◆ *Keynote Address*, NARUC Women’s Summit (Washington, DC), Opening Remarks, 03/15/17
- ◆ *Keynote Address*, 44<sup>th</sup> Annual PURC Conference (Gainesville, FL), Opening Remarks, 02/23/17
- ◆ *Keynote Address*, Florida Sheriff’s Association (Jacksonville, FL), Opening Remarks on Storm Preparedness, 01/31/17
- ◆ *Presenter*, 2016 NFWL Annual Conference (Orlando, FL), Energy Introduction, 11/19/16
- ◆ *Co-Moderator*, NARUC Summer Meeting (Nashville, TN), “Natural Gas Pipeline Locators-Safety and Damage Prevention Power in Cooperation,” 07/26/16
- ◆ *Keynote Address*, 2016 FNGA Annual Convention (Amelia Island), “The Importance of Natural Gas in Florida,” 06/21/16
- ◆ *Keynote Address*, 39<sup>th</sup> National Conference of Regulatory Attorneys (Tampa, FL), “Unlocking the Treasures of Utility Regulation,” 06/19/16
- ◆ *Moderator*, SEARUC Annual Meeting—Growing the Economy (Manalapan, FL), “General Session—Consumers, Convergence and Change,” 06/12/16
- ◆ *Moderator*, NWSC Annual Spring Meeting (Washington, DC), “Existing Consolidated Storage & Disposal Projects and DOE Projects,” 05/24/16
- ◆ *Keynote Address*, Women in Energy Leadership Forum (Orlando, FL), “Challenges and Opportunities in Energy,” 04/15/16
- ◆ *Moderator*, 43<sup>rd</sup> Annual PURC Conference (Gainesville, FL), “Florida’s Response to the Clean Power Plan: Strategies and Options,” 03/16/16
- ◆ *Speaker*, National Consumer Protection Week (Tallahassee, FL), “Importance of NCPW throughout Florida,” 03/07/16
- ◆ *Presenter*, 39<sup>th</sup> Annual PURC International Training Program on Utility Regulation (Gainesville, FL), “Managing the Regulatory Process: Management Issues in Regulation,” 01/15/16
- ◆ *Moderator*, University of Missouri 2015 Financial Research Institute Symposium (Columbia, MO), “Issues in Infrastructure: Replacement, Resilience and Regulation,” 09/30/15
- ◆ *Panelist*, Gulf Coast Energy Forum (Tampa, FL), “Emerging Regulatory Issues,” 08/26/15
- ◆ *Moderator*, FNGA Annual Conference (Key Largo, FL), “Incident Investigation/Crisis Management Panel,” 06/14/15
- ◆ *Moderator*, NWSC Annual Spring Meeting (Washington, DC), “Senate Energy Perspective on Nuclear Waste Reform,” 04/29/15
- ◆ *Panelist*, NMSU Center for Public Utilities Current Issues Forum (Santa Fe, NM), “EPA’s Clean Power Plan Regional Compliance and Reliability,” 04/21/15
- ◆ *Moderator*, NARUC’s 2015 Winter Meeting (Washington, DC), “Coast to Coast: Convergence in the Electricity, Gas and Water Industries and its Impact on Consumers,” 02/18/15
- ◆ *Moderator*, Women’s Energy Summit (Chicago, IL), “The Water/Energy Nexus,” 09/09/14
- ◆ *Opening Speaker*, Nuclear Energy Institute’s 2014 Used Fuel Management Conference (St. Pete, FL), “Florida’s Perspective on the Role of Safe and Efficient Used Fuel Management,” 05/06/14
- ◆ *Panelist*, NMSU Center for Public Utilities Current Issues Forum 2014 (Santa Fe, NM), “As the Revenue Tide Falls: Regulatory Strategies and Ratemaking Mechanisms to Deal with Declining Consumption across Industries,” 04/21/14
- ◆ *Moderator*, 41<sup>st</sup> Annual PURC Conference (Gainesville, FL), “Economics of Shale,” 02/19/14
- ◆ *Moderator*, NARUC’s Annual Meeting (Orlando, FL), “Tomorrow Land: Determining the Next Generation of Utility Regulation,” 11/20/13

The Florida Senate  
**Committee Notice Of Hearing**

IN THE FLORIDA SENATE  
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of  
  
Julie I. Brown  
  
Secretary of Business and Professional Regulation


**NOTICE OF HEARING**

TO: Secretary Julie I. Brown

YOU ARE HEREBY NOTIFIED that the Committee on Regulated Industries of the Florida Senate will conduct a hearing on your executive appointment on Tuesday, March 23, 2021, in the Pat Thomas Committee Room, 412 Knott Building, commencing at 3:30 p.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.  
DATED this the 18th day of March, 2021

Committee on Regulated Industries

  
\_\_\_\_\_  
Senator Travis Hutson  
As Chair and by authority of the committee

cc: Members, Committee on Regulated Industries  
Office of the Sergeant at Arms

THE FLORIDA SENATE

# COMMITTEE WITNESS OATH

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**CHAIR:**

Please raise your right hand and be sworn in as a witness.

Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?

**WITNESS'S NAME:** Julie I. Brown

**ANSWER:** I do

Pursuant to §90.605(1), *Florida Statutes*: "The witness's answer shall be noted in the record."

**COMMITTEE NAME:** Senate Committee on Regulated Industries

**DATE:** 3/23/21

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/21

Meeting Date

Bill Number (if applicable)

Topic DBPR Confirmation

Amendment Barcode (if applicable)

Name Julie Brown

Job Title Secretary

Address 2601 Blair Stone Rd

Phone (850) 487-4827

Street

Tallahassee

FL

32399

City

State

Zip

Email julie.brown@myfloridahouse.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing DBPR

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate  
**COMMITTEE RECOMMENDATION ON  
EXECUTIVE APPOINTMENT**

**COMMITTEE:** Appropriations Subcommittee on Agriculture, Environment, and General Government  
**MEETING DATE:** Wednesday, March 17, 2021  
**TIME:** 3:00—5:00 p.m.  
**PLACE:** Toni Jennings Committee Room, 110 Senate Building

---

**TO:** The Honorable Wilton Simpson, President

**FROM:** Appropriations Subcommittee on Agriculture, Environment, and General Government

The committee was referred the following executive appointment subject to confirmation by the Senate:

**Office:** Secretary of the Department of the Lottery

**Appointee:** Davis, John F.

**Term:** 10/26/2020-Pleasure of Governor

After inquiry and due consideration, the committee recommends that the Senate **confirm** the aforesaid executive appointment made by the Governor.

1405

**STATE OF FLORIDA  
DEPARTMENT OF STATE  
Division of Elections**

I, Laurel M. Lee, Secretary of State,  
do hereby certify that

***John F. Davis***

is duly appointed

**Secretary,  
Department of Lottery**

for a term beginning on the Twenty-Sixth day of October, A.D.,  
2020, to serve at the pleasure of the Governor and is subject to  
be confirmed by the Senate during the next regular session of the  
Legislature.

*Given under my hand and the Great Seal of the  
State of Florida, at Tallahassee, the Capital, this  
the Twenty-Ninth day of December, A.D., 2020.*

*Laurel M. Lee*

Secretary of State



**RON DeSANTIS**  
GOVERNOR

RECEIVED

2020 NOV -9 AM 9:21

FLORIDA ELECTIONS  
TALLAHASSEE, FL

October 28, 2020

Secretary Laurel M. Lee  
Department of State  
R.A. Gray Building, Room 316  
500 South Bronough Street  
Tallahassee, Florida 32399-0250

Dear Secretary Lee:

Please be advised I have made the following appointment under the provisions of Section 20.317, Florida Statutes:

Mr. John Davis  
3604 Oriskany Drive  
Orlando, Florida 32820

as the Secretary of the Department of Lottery, succeeding Randall Hunt, subject to confirmation by the Senate. This appointment is effective October 26, 2020, for a term ending at the pleasure of the governor.

Sincerely,

A handwritten signature in black ink, appearing to be "Ron DeSantis".

Ron DeSantis  
Governor

RD/kk

# OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED

2020 DEC 28 AM 10:08

DIVISION OF ELECTIONS  
TALLAHASSEE, FL

STATE OF FLORIDA

County of Leon

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Secretary, Department of Lottery

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

[Signature]  
Signature

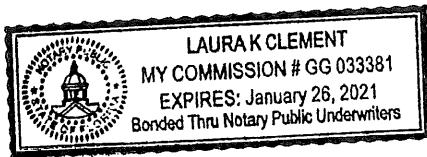
Sworn to and subscribed before me by means of ☒ physical presence or  
online notarization, this 23rd day of December, 2020

[Signature]  
Signature of Officer Administering Oath or of Notary Public

Laura K. Clement  
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced \_\_\_\_\_



## ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☐ Home ☒ Office

250 Marriott Drive

Street or Post Office Box

Tallahassee, FL 32301

City, State, Zip Code

John F. Davis

Print Name

[Signature]  
Signature

#125704

2020 DEC 28 9:10:08  
The information from this ques

Please type or print in blue or black ink.

12-23-20

Date Completed

2. Business Address:	250 Marriott Drive	N/A	Tallahassee
	Street	Office #	City
N/A	FL	32301	(850) 487-7728
Post Office Box	State	Zip Code	Area Code/Phone Number

Specify the preferred mailing address: Business ☒ Residence ☐ Fax # \_\_\_\_\_  
(optional)

<u>Address</u>	<u>City &amp; State</u>	<u>From</u>	<u>To</u>
2221 Orange Ave. East, Apt 534	Tallahassee, FL	Nov/2020	Present
3604 Oriskany Drive	Orlando, FL	Sep/2014	Present

	<u>Address</u>	<u>City &amp; State</u>	<u>From</u>	<u>To</u>
N/A				

Nickname is JD

9. Are you a United States citizen? Yes ☒ No ☐ If "No" explain:

---

---

---

If you are a naturalized citizen, date of naturalization: \_\_\_\_\_

10. Since what year have you been a continuous resident of Florida? 1971

11. Are you a registered Florida voter? Yes ☒ No ☐ If "Yes" list:

A. County of Registration: Orange

B. Current Party Affiliation: Republican

12. Education

A. High School: Pahokee Jr-Sr High, Pahokee, FL  
(Name and Location)

Year Graduated: 1989

B. List all postsecondary educational institutions attended:

<u>Name &amp; Location</u>	<u>Dates Attended</u>	<u>Certificates/Degrees Received</u>
<u>FSU, Tallahassee, FL</u>	<u>1989 - 1994</u>	<u>B.S., Political Science</u>

13. Are you or have you ever been a member of the armed forces of the United States? Yes ☐ No ☒ If "Yes" list:

A. Dates of Service: \_\_\_\_\_

B. Branch or Component: \_\_\_\_\_

C. Date & type of discharge: \_\_\_\_\_

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of \$150 or less was paid.) Yes ☒ No ☐ If "Yes" give details:

<u>Date</u>	<u>Place</u>	<u>Nature</u>	<u>Disposition</u>
<u>1998-99 (approx.; not sure of actual date);</u>	<u>Casselberry, FL;</u>	<u>violation of city ordinance;</u>	<u>case dismissed due to</u>
<u>being falsely identified.</u>	<u>Expunged</u>		

15. Concerning your current employer and for all of your employment during the last five years, list your employer's name, business address, type of business, occupation or job title, and period(s) of employment.

<u>Employer's Name &amp; Address</u>	<u>Type of Business</u>	<u>Occupation/Job Title</u>	<u>Period of Employment</u>
<u>Florida Lottery, 250 Marriott Dr, Tall, 32301; State Govt</u>		<u>Secretary</u>	<u>Nov 9, 2020-Present</u>
<u>Orlando Rgnl Chamber of Commerce, 301 E. Pine St, Orlando, 32801; Chamber; Exec VP;</u>			<u>Feb 2018-Nov 2020</u>
<u>African Am Chamber of Commerce of Central FL, 3201 E. Colonial Dr., Orlando, 32803; Pres;</u>			<u>Jan 2014-Feb 2018</u>

16. Have you ever been employed by any state, district, or local governmental agency in Florida? Yes ☒ No ☐  
If "Yes", identify the position(s), the name(s) of the employing agency, and the period(s) of employment:

<u>Position</u>	<u>Employing Agency</u>	<u>Period of Employment</u>
<u>Secretary</u>	<u>Florida Lottery</u>	<u>Nov 2020-Present</u>
<u>External Affairs Director</u>	<u>FL Dept of Children &amp; Families</u>	<u>2011-2014</u>
<u>Planning &amp; Eval Specialist</u>	<u>FL Dept of State</u>	<u>1995-1997</u>

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.

I have been a standout performer and accomplished leader for more than 20 years in both the public and private sectors.  
These accomplishments include building/establishing organizational structures that accelerates revenue and growth across diverse  
communities, organizations and businesses. I am an active member of community, noticeably volunteering my time with the  
United Way, Valencia College, Volunteer Florida, and the Kappa Alpha Psi Achievement Foundation, most of which are rooted in  
supporting youth and students to help them achieve academic success and to realize their dreams.

B. Have you received any degree(s), professional certification(s), or designations(s) related to the subject matter of this appointment? Yes ☐ No ☒ If "Yes", list:

C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes ☐ No ☒ If "Yes", list:

D. Identify all association memberships and association offices held by you that relate to this appointment:

Kappa Alpha Psi Fraternity Achievement Foundation-Board Member, 2019-Present; Valencia College-District  
Board of Trustees, 2019-Present; Commission on Community Service/Volunteer FL-Commissioner, 2018-Present  
Florida A&M Law School-Advisory Council Member, 2018-Present;  
Service Academy Nomination Board (Senator Marco Rubio), 2019 and 2020  
Youth Advocate Programs-National Board Member, 2015-2018; Florida Council on the Social Status of Black  
Men and Boys, Board Representative, 2011-2014

18. Do you currently hold an office or position (appointive, civil service, or other) with the federal or any foreign government? Yes ☐ No ☒ If "Yes", list:

19. A. Have you ever been elected or appointed to any public office in this state? Yes ☒ No ☐ If "Yes", state the office title, date of election or appointment, term of office, and level of government (city, county, district, state, federal):

<u>Office Title</u>	<u>Date of Election or Appointment</u>	<u>Term of Office</u>	<u>Level of Government</u>
District Board of Trustees, Valencia College	2019-Present	3 years	District- Orange County
Commission on Community Service,	2018-Present	2 years	Statewide
Service Academy Nomination Board (Senator Marco Rubio)	2018 and 2019		Federal

B. If your service was on an appointed board(s), committee(s), or council(s):

(1) How frequently were meetings scheduled: Monthly

(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

<u>Meetings Attended</u>	<u>Meetings Missed</u>	<u>Reason for Absence</u>
Board of Trustees, Valencia College	One	Conflicted with my job Board Meeting
Commission on Community Service	One	Conflicted with my job event

20. Has probable cause ever been found that you were in violation of Part III, Chapter 112, F.S., the Code of Ethics for Public Officers and Employees? Yes ☐ No ☒ If "Yes", give details:

<u>Date</u>	<u>Nature of Violation</u>	<u>Disposition</u>

21. Have you ever been suspended from any office by the Governor of the State of Florida? Yes ☐ No ☒ If "Yes", list:

A. Title of office: \_\_\_\_\_ C. Reason for suspension: \_\_\_\_\_

B. Date of suspension: \_\_\_\_\_ D. Result: Reinstated ☐ Removed ☐ Resigned ☐

22. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes ☒ No ☐ If "Yes", list:

A. Title of Office: Board of Trustees of Valencia College Florida Commission on Community Service

B. Term of Appointment: 8/16/2019-5/31/2022 1/19/2018-9/14/2020

C. Confirmation results: Confirmed, 3/13/2020 Confirmed, 3/07/2018

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes ☐ No ☒ If "Yes", explain:

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes ☐ No ☒ If "Yes", provide the title and number, original issue date, and issuing authority. If any disciplinary action (fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

<u>License/Certificate Title &amp; Number</u>	<u>Original Issue Date</u>	<u>Issuing Authority</u>	<u>Disciplinary Action/Date</u>

25. A. Have you, or businesses of which you have been and owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☐ No ☒ If "Yes", explain:

<u>Name of Business</u>	<u>Your Relationship to Business</u>	<u>Business' Relationship to Agency</u>

B. Have members of your immediate family (spouse, child, parents(s), siblings(s)), or businesses of which members of your immediate family have been owners, officers, or employees, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☐ No ☒ If "Yes", explain:

<u>Name of Business</u>	<u>Family Member's Relationship to You</u>	<u>Family Member's Relationship to Business</u>	<u>Business' Relationship to Agency</u>

26. Have you ever been a registered lobbyist or have you lobbied at any level of government at any time during the past five (5) years? Yes ☒ No ☐

A. Did you receive any compensation other than reimbursement for expenses? Yes ☐ No ☒

B. Name of agency or entity you lobbied and the principal(s) you represented:

<u>Agency Lobbied</u>	<u>Principal Represented</u>
Registered as a lobbyist for the Department of the Lottery	

27. List three persons who have known you well within the past five (5) years. Include a current, complete address and telephone number. Exclude your relatives and members of the Florida Senate.

<u>Name</u>	<u>Mailing Address</u>	<u>Zip Code</u>	<u>Area Code/Phone Number</u>
Jamal Sowell			
Jason Gonzalez			
Wesley Leonard			

28. Name any business, professional, occupational, civic, or fraternal organizations(s) of which you are now a member, or of which you have been a member during the past five (5) years, the organization address(es), and date(s) of your membership(s).

<u>Name</u>	<u>Mailing Address</u>	<u>Office(s) Held &amp; Term</u>	<u>Date(s) of Membership</u>
Please see attached.			

29. Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes ☐ No ☒ If "Yes", explain:


30. If required by law or administrative rule, will you file financial disclosure statements? Yes ☒ No ☐

RECEIVED

2020 DEC 28 AM 10:08

DIVISION OF ELECTIONS  
TALLAHASSEE, FL

# CERTIFICATION

STATE OF FLORIDA  
COUNTY OF

Leon

Before me, the undersigned Notary Public of Florida, personally appeared

John F. Davis

who, after being duty sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida

Signature of Applicant-Affiant

Sworn to and subscribed before me this 23rd day of December, 2020.

Laura K. Clement

Signature of Notary Public-State of Florida

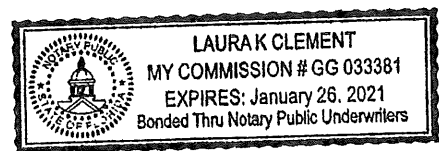
Laura K. Clement

(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: \_\_\_\_\_

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced \_\_\_\_\_



(seal)

## **MEMORANDUM**

**AS A GENERAL MATTER, APPLICATIONS FOR ALL POSITIONS WITHIN STATE GOVERNMENT ARE PUBLIC RECORDS WHICH MAY BE VIEWED BY ANYONE UPON REQUEST. HOWEVER, THERE ARE SOME EXEMPTIONS FROM THE PUBLIC RECORDS LAW FOR IDENTIFYING INFORMATION RELATING TO PAST AND PRESENT LAW ENFORCEMENT OFFICERS AND THEIR FAMILIES, VICTIMS OF CERTAIN CRIMES, ETC. IF YOU BELIEVE AN EXEMPTION FROM THE PUBLIC RECORDS LAW APPLIES TO YOUR SUBMISSION, PLEASE CHECK THIS BOX.**

☐ Yes, I assert that identifying information provided in this application should be excluded from inspection under the Public Records Law.

Because: (please provide cite.) \_\_\_\_\_

**IF YOU NEED ADDITIONAL GUIDANCE AS TO THE APPLICABILITY OF ANY PUBLIC RECORDS LAW EXEMPTION TO YOUR SITUATION, PLEASE CONTACT THE OFFICE OF THE ATTORNEY GENERAL.**

The Office of the Attorney General  
PL-01, The Capitol  
Tallahassee, Florida 32399  
(850) 245-0150

## Senate Confirmation Questionnaire

Please mail to: Room 316, R.A. Gray Building, 500 South Bronough Street, Tallahassee, Florida 32399-0250

The information from this page has been requested and will be used exclusively for Minority Statistics.  
Please type or use blue ink.

1. Board of Interest: Department of Lottery

2. Current Employer and Occupation: Florida Lottery, Secretary

3. Are you applying for reappointment: Yes ☐ No ☒

4. \*Do you have a disability? Yes ☐ No ☒ If "Yes", please describe your disability that would qualify you for this appointment, if applicable.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. \*Sex: Male ☒ Female ☐

6. \*Race: White ☐ African-American ☒  
Hispanic-American ☐ Asian/Pacific Islander ☐  
Native-American/Alaskan Native ☐

7. Do you now, or have you, within the last three years, been a member of any club or organization that, to your knowledge, in practice or policy, restricts membership or restricted membership during the time that you belonged on the basis of race, religion, national origin, or gender? If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices, and state whether you intend to continue as a member if you appointed by the Governor. No

8. One of the Governor's top priorities is to improve the conditions of the children living in our state. Would you be willing to spend an hour a week with a child in need in your community? If so, please identify the type of program and/or activity you would be willing to participate in as a mentor. WORK with programs AT DCF

John F. Davis  
Applicant's Name, including name commonly used  
(Please print)

\* This information will be used to provide demographic statistics and is not requested for the purpose of discriminating on any basis

**Questionnaire for Senate Confirmation (#28)**

**John F. Davis  
Secretary, Department of Lottery**

<b>Name</b>	<b>Mailing Address</b>	<b>Office(s) Held &amp; Term</b>	<b>Date(s) of Membership</b>
Kappa Alpha Psi Fraternity Achievement Foundation	P.O. Box 3572 Winter Park, FL 32789	Board Member	2019-Present
Valencia College	1800 S. Kirkman Rd Orlando, FL 32811	District Board of Trustees	2019-Present
Commission on Community Service/Volunteer FL	1545 Raymond Diehl Rd, Ste 250 Tallahassee, FL 32308	Commissioner	2018-Present
Florida A&M Law School	201 Beggs Ave Orlando, FL 32801	Advisory Council Member	2018-Present
Heart of Florida United Way	1940 Cannery Way Orlando, FL 32804	Board Member	2016-Present
Governor Ron DeSantis Re-Open Florida Task Force	The Honorable Ron DeSantis 400 S. Monroe St Tallahassee, FL 32399-0001	Member	2020
Merchant Marines Regional Board, Senator Marco Rubio	The Honorable Marco Rubio 201 S. Orange Ave, Ste 350 Orlando, FL 32801	Member	2019 & 2020
CareerSource, Central Florida	390 N. Orange Ave, Ste 700 Orlando, FL 32801	Board Member	2016-2019
Chronic Homelessness Committee, Central Florida	4065 L B McLeod Rd D Orlando, FL 32811	Member	2017
Orlando Economic Development Commission	301 E. Pine St, Ste 900 Orlando, FL 32801	Board Member	2016
Youth Advocate Programs	1801 Watermark Dr, Ste 200 Columbus, OH 43215	National Board Member	2015-2018
Florida Council on the Social Status of Black Men and Boys	Office of the Attorney General 107 W. Gaines St Tallahassee, FL 32301	Board Representative	2011-2014

The Florida Senate  
**Committee Notice Of Hearing**

IN THE FLORIDA SENATE  
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of  
  
John F. Davis  
  
Secretary of the Department of the Lottery


**NOTICE OF HEARING**

TO: Secretary John F. Davis

YOU ARE HEREBY NOTIFIED that the Committee on Regulated Industries of the Florida Senate will conduct a hearing on your executive appointment on Tuesday, March 23, 2021, in the Pat Thomas Committee Room, 412 Knott Building, commencing at 3:30 p.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.  
DATED this the 18th day of March, 2021

Committee on Regulated Industries

  
\_\_\_\_\_  
Senator Travis Hutson  
As Chair and by authority of the committee

cc: Members, Committee on Regulated Industries  
Office of the Sergeant at Arms

THE FLORIDA SENATE

# COMMITTEE WITNESS OATH

---

**CHAIR:**

**Please raise your right hand and be sworn in as a witness.**

**Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?**

**WITNESS'S NAME:** John F. Davis

**ANSWER:** I do

Pursuant to §90.605(1), *Florida Statutes*: "The witness's answer shall be noted in the record."

**COMMITTEE NAME:** Senate Committee on Regulated Industries

**DATE:** 3/23/21

**YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM**

**THE FLORIDA SENATE**

**APPEARANCE RECORD**

3/23/21

*Meeting Date*

*Bill Number (if applicable)*

Topic Senate Confirmation Hearing

*Amendment Barcode (if applicable)*

Name John F. Davis

Job Title Secretary of the Department of the Lottery

Address 250 Marriott Drive

Phone 850-487-7728

*Street*

Tallahassee

FL

32301

Email davisj@flalottery.com

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Department of the Lottery

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

**The Florida Senate  
Committee Notice Of Hearing**

IN THE FLORIDA SENATE  
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of  
  
Michael La Rosa  
  
Florida Public Service Commission


**NOTICE OF HEARING**

TO: Mr. Michael La Rosa

YOU ARE HEREBY NOTIFIED that the Committee on Regulated Industries of the Florida Senate will conduct a hearing on your executive appointment on Tuesday, March 23, 2021, in the Pat Thomas Committee Room, 412 Knott Building, commencing at 3:30 p.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.  
DATED this the 18th day of March, 2021

Committee on Regulated Industries

  
\_\_\_\_\_  
Senator Travis Holton  
As Chair and by authority of the committee

cc: Members, Committee on Regulated Industries  
Office of the Sergeant at Arms

2020

**STATE OF FLORIDA  
DEPARTMENT OF STATE**

**Division of Elections**

I, Laurel M. Lee, Secretary of State,  
do hereby certify that

***Michael La Rosa***

is duly appointed a member of the

**Florida Public Service Commission**

for a term beginning on the Second day of January, A.D., 2021,  
until the First day of January, A.D., 2025 and is subject to be  
confirmed by the Senate during the next regular session of the  
Legislature.

Given under my hand and the Great Seal of the  
State of Florida, at Tallahassee, the Capital, this  
the Seventeenth day of February, A.D., 2021.



Secretary of State



**RON DESANTIS**  
GOVERNOR

RECEIVED  
DEPARTMENT OF STATE  
2020 AUG 25 AM 10:56  
DIVISION OF ELECTIONS  
TALLAHASSEE, FL

August 21, 2020

Secretary Laurel Lee  
Department of State  
R. A. Gray Building  
500 South Bronough Street  
Tallahassee, Florida 32399

Dear Secretary Lee:

Please be advised I have made the following appointment under the provisions of Section 350.01, Florida Statutes:

Mr. Michael A. LaRosa  
6510 Cottage Lane  
Saint Cloud, Florida 34771

as a member of the Florida Public Service Commission, succeeding Donald J. Polmann, subject to confirmation by the Senate. This appointment is effective January 2, 2021, for a term ending January 1, 2025.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron DeSantis", with a large, stylized flourish extending from the end.

Ron DeSantis  
Governor

# OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

STATE OF FLORIDA

County of Osceola

RECEIVED  
DEPARTMENT OF STATE  
2020 SEP 10 AM 11:25

DEPARTMENT OF STATE  
DIVISION OF ELECTIONS

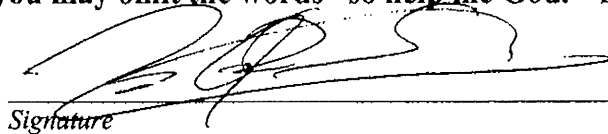
I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

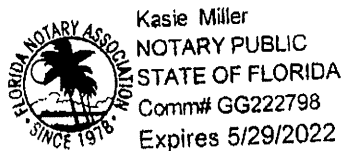
Commissioner of the Florida Public Service Commission

(Title of Office)

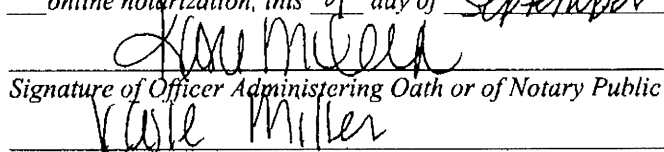
on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

  
Signature



Sworn to and subscribed before me by means of X physical presence or  
online notarization, this 9 day of September, 2020.

  
Signature of Officer Administering Oath or of Notary Public

Kasie Miller  
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☐ OR Produced Identification ☒

Type of Identification Produced FL Driver License

## ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☒ Home ☐ Office

6510 Cottage Ln

Street or Post Office Box

St. Cloud FL, 34771

City, State, Zip Code

Michael La Rosa

Print Name

  
Signature

125862

## QUESTIONNAIRE FOR SENATE CONFIRMATION

The information from this questionnaire will be used by the Florida Senate in considering action on your confirmation. The questionnaire **MUST BE COMPLETED IN FULL**. Answer "none" or "not applicable" where appropriate. Please type or print in blue or black ink.

02/15/2021

Date Completed

1. Name: Mr La Rosa Michael Andrew  
Mr./Mrs./Ms. Last First Middle/Maiden

2. Business Address: 2540 Shumard Oak Blvd. Tallahassee, FL 32399  
Street Office # City

N/A

Post Office Box State Zip Code Area Code/Phone Number

3. Residence Address: 6510 Cottage Ln St. Cloud, FL 34771  
Street City County

N/A

Post Office Box State Zip Code Area Code/Phone Number

Specify the preferred mailing address: Business ☐ Residence ☒ Fax # \_\_\_\_\_  
(optional)

4. A. List all your places of residence for the last five (5) years.

Address	City & State	From	To
6510 Cottage Ln St Cloud FL 34771			
N/A			
N/A			
N/A			
N/A			

B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.

Address	City & State	From	To
N/A			
N/A			
N/A			
N/A			
N/A			

5. Date of Birth: \_\_\_\_\_ Place of Birth: Miami, Florida

6. Social Security Number: \_\_\_\_\_

7. Driver License Number: \_\_\_\_\_ Issuing State: Florida

8. Have you ever used or been known by any other legal name? Yes ☐ No ☒ If "Yes" Explain

N/A  
N/A  
N/A  
N/A

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DEPARTMENT OF STATE  
2021 FEB 17 AM 11:39  
OFFICE OF THE SECRETARY  
DIVISION OF ELECTIONS

9. Are you a United States citizen? Yes ☒ No ☐ If "No" explain:

N/A

N/A

N/A

If you are a naturalized citizen, date of naturalization: N/A

10. Since what year have you been a continuous resident of Florida? 1982

11. Are you a registered Florida voter? Yes ☒ No ☐ If "Yes" list:

A. County of Registration: Osceola

B. Current Party Affiliation: Republican

12. Education

A. High School: Celebration School

Year Graduated: 2000

(Name and Location)

B. List all postsecondary educational institutions attended:

Name & Location

Dates Attended

Certificates/Degrees Received

University of Central Florida - Orlando, FL 2000-2004 Interpersonal Communication

Valencia College - Orlando, FL 2000- 2003

N/A

N/A

13. Are you or have you ever been a member of the armed forces of the United States? Yes ☐ No ☒ If "Yes" list:

A. Dates of Service: N/A

B. Branch or Component: N/A

C. Date & type of discharge: N/A

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of \$150 or less was paid.) Yes ☐ No ☒ If "Yes" give details:

Date

Place

Nature

Disposition

N/A

N/A

N/A

N/A

15. Concerning your current employer and for all of your employment during the last five years, list your employer's name, business address, type of business, occupation or job title, and period(s) of employment.

Employer's Name & Address

Type of Business

Occupation/Job Title

Period of Employment

Florida House of Representatives - 402 S Monroe St Tallahassee, FL 32399 - Representative- 2012-2020

La Rosa Development - 1420 Celebration Blvd Celebration, FL 34747 - Developer - 2005-2021

La Rosa Realty - 1420 Celebration Blvd Celebration, FL 34747 - Realtor- 2005-2021

N/A

16. Have you ever been employed by any state, district, or local governmental agency in Florida? Yes ☒ No ☐  
If "Yes", identify the position(s), the name(s) of the employing agency, and the period(s) of employment:

Position

Employing Agency

Period of Employment

Representative- Florida House of Representatives - 2012-2020

N/A

N/A

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.

Interest: In both my public and private sector professions, I have studied and examined  
the growth and needs necessary for a large populating state such as Florida and the challenges it may face.  
The Florida Public Service Commission oversees an important major component to the success of the state  
based on decisions and how they regulate elements that effect growth such as infrastructure and utilities.  
Personal History: as a member of the House of Representatives, I regularly was involved with regulated industry committees  
such as Energy and Utilities, Business and Professions and served as Chair of the Commerce Committee (formerly regulatory affairs).

B. Have you received any degree(s), professional certification(s), or designations(s) related to the subject matter of this appointment? Yes ☐ No ☒ If "Yes", list:

N/A  
N/A  
N/A  
N/A

C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes ☐ No ☒  
If "Yes", list:

N/A  
N/A  
N/A  
N/A

D. Identify all association memberships and association offices held by you that relate to this appointment:

None prior to appointment  
N/A  
N/A  
N/A  
N/A  
N/A

18. Do you currently hold an office or position (appointive, civil service, or other) with the federal or any foreign government?  
Yes ☐ No ☒ If "Yes", list:

N/A  
N/A  
N/A  
N/A  
N/A

19. A. Have you ever been elected or appointed to any public office in this state? Yes ☒ No ☐ If "Yes", state the office title, date of election or appointment, term of office, and level of government (city, county, district, state, federal):

Office Title	Date of Election or Appointment	Term of Office	Level of Government
FL House of Representatives	- 2012 (subsequently 2014, 2016, 2018)-	2yrs	- State
Florida Government Efficiency Task Force	- 2015	- 2 years	- State
Florida Public Service Nominating Council	2013 (served remaining length of term 12 months)		- State
Florida Public Service Nominating Council	2016	- 2 years	- State
N/A			

B. If your service was on an appointed board(s), committee(s), or council(s):

(1) How frequently were meetings scheduled: annual or bi-annual

(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

<u>Meetings Attended</u>	<u>Meetings Missed</u>	<u>Reason for Absence</u>
approximate 12	0	
N/A		
N/A		

20. Has probable cause ever been found that you were in violation of Part III, Chapter 112, F.S., the Code of Ethics for Public Officers and Employees? Yes ☐ No ☒ If "Yes", give details:

<u>Date</u>	<u>Nature of Violation</u>	<u>Disposition</u>
N/A		
N/A		
N/A		

21. Have you ever been suspended from any office by the Governor of the State of Florida? Yes ☐ No ☒ If "Yes", list:

A. Title of office: N/A C. Reason for suspension: N/A

B. Date of suspension: N/A D. Result: Reinstated ☐ Removed ☐ Resigned ☐

22. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes ☐ No ☒ If "Yes", list:

A. Title of Office: N/A

B. Term of Appointment: N/A

C. Confirmation results: N/A

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes ☐ No ☒ If "Yes", explain:

N/A

N/A

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes ☒ No ☐ If "Yes", provide the title and number, original issue date, and issuing authority. If any disciplinary action (fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

<u>License/Certificate</u>	<u>Original</u>		
<u>Title &amp; Number</u>	<u>Issue Date</u>	<u>Issuing Authority</u>	<u>Disciplinary Action/Date</u>
Real Estate Sales Associate (Lic # SL3056596)	08-11-2003	DBPR	None
N/A			
N/A			
N/A			
N/A			

25. A. Have you, or businesses of which you have been and owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☐ No ☒ If "Yes", explain:

<u>Name of Business</u>	<u>Your Relationship to Business</u>	<u>Business' Relationship to Agency</u>
N/A		
N/A		
N/A		
N/A		

B. Have members of your immediate family (spouse, child, parents(s), siblings(s)), or businesses of which members of your immediate family have been owners, officers, or employees, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☐ No ☒ If "Yes", explain:

<u>Name of Business</u>	<u>Family Member's Relationship to You</u>	<u>Family Member's Relationship to Business</u>	<u>Business' Relationship to Agency</u>
N/A			
N/A			
N/A			
N/A			

26. Have you ever been a registered lobbyist or have you lobbied at any level of government at any time during the past five (5) years? Yes ☐ No ☒

A. Did you receive any compensation other than reimbursement for expenses? Yes ☐ No ☐

B. Name of agency or entity you lobbied and the principal(s) you represented:

<u>Agency Lobbied</u>	<u>Principal Represented</u>
N/A	
N/A	
N/A	
N/A	

27. List three persons who have known you well within the past five (5) years. Include a current, complete address and telephone number. Exclude your relatives and members of the Florida Senate.

<u>Name</u>	<u>Mailing Address</u>	<u>Zip Code</u>	<u>Area Code/Phone Number</u>
Dr Earnest Page -			
Marcello Spinelli -			
Josh Fletcher -			

28. Name any business, professional, occupational, civic, or fraternal organizations(s) of which you are now a member, or of which you have been a member during the past five (5) years, the organization address(es), and date(s) of your membership(s).

<u>Name</u>	<u>Mailing Address</u>	<u>Office(s) Held &amp; Term</u>	<u>Date(s) of Membership</u>
Rotary	1850 Hotel Plaza Boulevard	member	2010 - present
Osceola County Association of Realtors	1105 Cross Prairie Pkwy, Kissimmee, FL 34744	Member	2006-pres

29. Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes ☐ No ☒ If "Yes", explain:

N/A
N/A
N/A
N/A

30. If required by law or administrative rule, will you file financial disclosure statements? Yes ☒ No ☐

CERTIFICATION

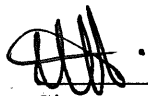
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DIVISION OF ELECTIONS

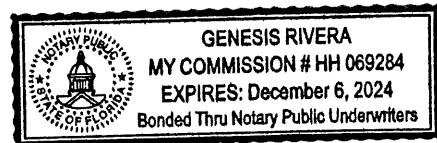
STATE OF FLORIDA  
COUNTY OF Orange

Before me, the undersigned Notary Public of Florida, personally appeared Michael La Rosa, who, after being duly sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.

  
Signature of Applicant-Affiant  
Michael A La Rosa

Sworn to and subscribed before me this 16 day of February, 2021.

  
Signature of Notary Public-State of Florida



Genesis Rivera  
(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: Dec 6, 2024

Personally Known ☐ OR Produced Identification ☒

Type of Identification Produced FI-DL

(seal)

## **MEMORANDUM**

**AS A GENERAL MATTER, APPLICATIONS FOR ALL POSITIONS WITHIN STATE GOVERNMENT ARE PUBLIC RECORDS WHICH MAY BE VIEWED BY ANYONE UPON REQUEST. HOWEVER, THERE ARE SOME EXEMPTIONS FROM THE PUBLIC RECORDS LAW FOR IDENTIFYING INFORMATION RELATING TO PAST AND PRESENT LAW ENFORCEMENT OFFICERS AND THEIR FAMILIES, VICTIMS OF CERTAIN CRIMES, ETC. IF YOU BELIEVE AN EXEMPTION FROM THE PUBLIC RECORDS LAW APPLIES TO YOUR SUBMISSION, PLEASE CHECK THIS BOX.**

- ☐ Yes, I assert that identifying information provided in this application should be excluded from inspection under the Public Records Law.

Because: (please provide cite.)

NA

**IF YOU NEED ADDITIONAL GUIDANCE AS TO THE APPLICABILITY OF ANY PUBLIC RECORDS LAW EXEMPTION TO YOUR SITUATION, PLEASE CONTACT THE OFFICE OF THE ATTORNEY GENERAL.**

The Office of the Attorney General  
PL-01, The Capitol  
Tallahassee, Florida 32399  
(850) 245-0150

## Senate Confirmation Questionnaire

**Please mail to: Room316, R.A. Gray Building, 500 South Bronough Street, Tallahassee, Florida 32399-0250**

The information from this page has been requested and will be used exclusively for Minority Statistics.

**Please type or use blue ink.**

1. Board of Interest: Florida Public Service Commission

2. Current Employer and Occupation: Florida Public Service Commission

3. Are you applying for reappointment: Yes ☒ No ☐

4. \*Do you have a disability? Yes ☐ No ☒ If "Yes", please describe your disability that would qualify you for this appointment, if applicable.

N/A

N/A

N/A

5. \*Sex: Male ☒ Female ☐

6. \*Race: White ☐ African-American ☐

Hispanic-American ☒ Asian/Pacific Islander ☐

Native-American/Alaskan Native ☐

7. Do you now, or have you, within the last three years, been a member of any club or organization that, to your knowledge, in practice or policy, restricts membership or restricted membership during the time that you belonged on the basis of race, religion, national origin, or gender? If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices, and state whether you intend to continue as a member if you appointed by the Governor. no

8. One of the Governor's top priorities is to improve the conditions of the children living in our state. Would you be willing to spend an hour a week with a child in need in your community? If so, please identify the type of program and/or activity you would be willing to participate in as a mentor. Yes, Boy's and Girls club, Coaching.



Applicant's Name, including name commonly used  
(Please print)

\* This information will be used to provide demographic statistics and is not requested for the purpose of discriminating on any basis

THE FLORIDA SENATE

# COMMITTEE WITNESS OATH

---

**CHAIR:**

**Please raise your right hand and be sworn in as a witness.**

**Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?**

**WITNESS'S NAME:** Michael La Rosa

**ANSWER:** I do

Pursuant to §90.605(1), *Florida Statutes*: "The witness's answer shall be noted in the record."

**COMMITTEE NAME:** Senate Committee on Regulated Industries

**DATE:** 3/23/21

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3/23/21  
Meeting Date

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

Topic Confirmation - La Rosa

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

Name Mike La Rosa

Job Title Commissioner

Address 6510 Cottage Ln  
Street

Phone \_\_\_\_\_

St. Cloud FL 34771  
City State Zip

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

# CourtSmart Tag Report

Room: KB 412                      Case No.: -  
Caption: Senate Committee on Regulated Industries

Type:  
Judge:

Started: 3/23/2021 3:30:05 PM  
Ends: 3/23/2021 4:17:54 PM              Length: 00:47:50

3:30:03 PM Meeting called to order, roll call  
3:30:31 PM Pledge of Allegiance  
3:30:50 PM Chair Hutson opening comments and Covid-19 precautions  
3:31:30 PM Tab 1 - CS/SB 284, Building Design by Senator Perry  
3:32:05 PM Senator Perry to present  
3:32:31 PM Question by Senator Stewart  
3:32:55 PM Response by Senator Perry  
3:33:50 PM Question by Senator Hooper  
3:34:27 PM Response by Senator Perry  
3:35:10 PM Senator Hooper for a follow-up question  
3:35:18 PM Response by Senator Perry  
3:36:05 PM Question by Senator Rouson  
3:36:10 PM Response by Senator Perry  
3:36:45 PM Follow-up question by Senator Rouson  
3:37:13 PM Response by Senator Perry  
3:37:52 PM Senator Perry closes on the bill  
3:38:51 PM Roll call on CS/SB 284  
3:39:35 PM CS/SB 284 is reported favorably  
3:39:57 PM Tab 3 - SB 208, Renewable Energy by Senator Brandes  
3:40:05 PM Senator Brandes to present  
3:40:54 PM Question by Senator Albritton  
3:41:06 PM Response by Senator Brandes  
3:41:35 PM Jonathan Webber, Florida Conservation Voters, waives against the bill  
3:41:44 PM Katie Chiles Ottenweller, Vote Solar, speaking against the bill  
3:44:09 PM Senator Brandes closes on the bill  
3:44:31 PM Roll call on SB 208  
3:45:32 PM SB 208 is reported favorably  
3:45:50 PM Tab 5, Confirmation Hearing, Secretary Julie Brown, Secretary of Business and Professional Regulation  
3:46:23 PM Secretary Brown addresses the committee  
3:51:51 PM Senator Book moves to recommend confirmation of Secretary Julie Brown  
3:52:27 PM Roll call on the confirmation of Secretary Julie Brown  
3:52:40 PM Confirmation of Julie Brown is recommended favorably  
3:52:51 PM Tab 6, Confirmation Hearing, John F. Davis, Secretary of the Department of the Lottery  
3:52:57 PM Secretary Davis addresses the committee  
3:59:06 PM Senator Stewart for a question  
3:59:57 PM Response by Secretary Davis  
4:00:26 PM Senator Book for a comment  
4:00:49 PM Response by Secretary Davis  
4:01:22 PM Senator Book moves to recommend confirmation of Secretary John Davis  
4:01:32 PM Roll call on the confirmation of Secretary John Davis  
4:01:38 PM Confirmation of John Davis is recommended favorably  
4:01:53 PM Tab 7, Confirmation Hearing, Michael LaRosa to the Florida Public Service Commission  
4:01:59 PM Commissioner LaRosa addresses the committee  
4:08:22 PM Senator Book moves to recommend confirmation of Michael LaRosa  
4:08:28 PM Roll call on the confirmation of Michael LaRosa to the Public Service Commission  
4:08:46 PM Confirmation of Michael LaRosa is recommended favorably  
4:09:03 PM Tab 2 - SB 1120, Commercial Telephone Solicitation by Senator Gibson  
4:09:06 PM Senator Gibson to present  
4:10:07 PM Amendment barcode 456696 by Senator Gruters  
4:11:17 PM Senator Gruters closes on the amendment  
4:11:54 PM Amendment barcode 456696 is favorable  
4:12:40 PM Senator Rodrigues in debate

4:13:05 PM Senator Gibson closes on the bill  
4:13:13 PM Roll call on CS/SB 1120  
4:13:47 PM CS/SB 1120 is reported favorably  
4:14:13 PM Tab 4, SPB 7066, Public Records and Public Meetings/Public Service Commission  
4:14:24 PM Shirley Sharon to explain the proposed bill  
4:16:44 PM Kaley Slatery, Public Service Commission waives in support  
4:17:00 PM Senator Books moves SPB be submitted as a committee bill  
4:17:04 PM Roll call on SPB 7066  
4:17:09 PM SPB 7066 is reported favorably as a committee bill  
4:17:26 PM Senator Albritten moves to adjourn