

Tab 1	CS/SB 26 by JU, Cruz (CO-INTRODUCERS) Thurston; (Identical to CS/H 06511) Relief of the Estate of Crystle Marie Galloway/Hillsborough County Board of County Commissioners					
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Tab 2	CS/SB 78 by JU, Rodrigues; (Identical to H 00947) Dues and Uniform Assessments					
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538638	A	S	WD	RC, Thurston	Delete L.57 - 103.	04/06 07:10 AM
417610	A	S		RC, Rodrigues	Delete L.57 - 90:	04/05 07:33 AM
841216	AA	S	WD	RC, Rodrigues	Delete L.5 - 29:	04/05 05:27 PM
520890	AA	S	L	RC, Rodrigues	Delete L.5 - 29:	04/05 05:26 PM
717212	A	S		RC, Thurston	Delete L.57 - 103.	04/05 09:00 AM

Tab 3	CS/CS/SB 90 by GO, EE, Baxley; (Compare to H 07041) Election Administration					
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940740	D	S		RC, Thurston	Delete everything after	04/05 09:01 AM
143600	A	S		RC, Farmer	Delete L.57 - 84.	04/05 09:11 AM
237818	A	S		RC, Farmer	Delete L.85 - 88.	04/05 09:09 AM
955778	A	S		RC, Farmer	Delete L.175 - 321:	04/05 09:07 AM
270846	A	S		RC, Farmer	Delete L.322 - 335.	04/05 09:04 AM
581454	A	S		RC, Farmer	Delete L.336 - 343.	04/05 09:06 AM

Tab 4	CS/SB 268 by RI, Perry; (Identical to H 00735) Preemption of Local Occupational Licensing					
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815936	A	S	L	WD	RC, Farmer	Delete L.37 - 74:	04/06 06:23 PM
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Tab 5	CS/SB 342 by TR, Diaz; (Identical to CS/H 00621) Vehicle and Vessel Registration					
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Tab 6	CS/SB 398 by JU, Rodriguez; (Similar to CS/H 06503) Relief of the Estate of Emilio Jesus Vizcaino-Aday by Miami-Dade County					
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Tab 7	CS/SB 400 by GO, Rodrigues; (Identical to CS/H 00913) Public Records					
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Tab 8	CS/SB 430 by CM, Rodriguez; (Similar to H 00991) Petroleum Fuel Measuring Devices					
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258574	A	S	L	RCS	RC, Rodriguez	Delete L.18 - 35:	04/07 10:01 AM
862802	AA	S	L	RCS	RC, Rodriguez	Delete L.68:	04/07 10:01 AM

Tab 9	HB 529 by Fine (CO-INTRODUCERS) Andrade, Drake, Fischer, Massullo; (Similar to CS/S 00282) Moments of Silence in Public Schools					
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844728	A	S	L	UNFAV	RC, Thurston	Delete L.48 - 50:	04/07 02:47 PM
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Tab 10	CS/CS/SB 582 by ED, JU, Rodrigues (CO-INTRODUCERS) Baxley; (Similar to H 00241) Parental Rights					
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Tab 11	SB 628 by Rouson; (Compare to CS/H 01013) Urban Agriculture					
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372958	A	S		RCS	RC, Rouson	Delete L.25 - 90:	04/07 09:39 AM
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Tab 12	CS/SB 714 by CF, Taddeo; (Similar to CS/CS/H 00117) Resource Information for Individuals with Disabilities					
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299350	A	S		RCS	RC, Taddeo	btw L.64 - 65:	04/07 10:05 AM
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Tab 13	SB 904 by Diaz; (Identical to H 06053) Doorstep Refuse and Recycling Collection Containers					
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Tab 14	CS/SB 932 by CF, Wright; (Compare to CS/H 00141) Minor Time-sharing for Parent Convicted of or Had Adjudication Withheld for a Specified Offense						
735846	A	S	RCS	RC, Wright	Delete L.27 - 77:	04/07 10:20 AM	
Tab 15	CS/SB 968 by GO, Gainer; (Similar to CS/H 00379) Public Records/Economic Development Agency						
Tab 16	SB 998 by Brodeur; (Similar to CS/H 00823) Contractor Advertising						
Tab 17	CS/SB 1014 by GO, Baxley; (Similar to CS/CS/H 00835) Employee Organizations						
Tab 18	CS/SB 1048 by JU, Bean (CO-INTRODUCERS) Baxley; (Similar to CS/H 00643) Public Records/Conviction Integrity Unit Reinvestigation Information						
Tab 19	SB 1136 by Rodrigues; (Identical to H 00861) Board of Directors of Florida ABLE, Inc.						
Tab 20	SB 1140 by Rodrigues (CO-INTRODUCERS) Garcia; (Similar to CS/1ST ENG/H 00833) Unlawful Use of DNA						
110124	D	S	RCS	RC, Rodrigues	Delete everything after	04/07 10:51 AM	
263794	A	S	WD	RC, Rodrigues	Delete L.69 - 75:	04/07 10:51 AM	
Tab 21	SB 1176 by Stewart (CO-INTRODUCERS) Bracy; (Identical to H 00855) Barber Services						
Tab 22	SB 1212 by Rodriguez (CO-INTRODUCERS) Hutson; (Identical to H 00369) Construction Contracting Exemptions						
Tab 23	SB 1634 by Brodeur (CO-INTRODUCERS) Ausley; (Similar to CS/H 01399) Public Records/Aquaculture/Department of Agriculture and Consumer Services						
Tab 24	CS/SB 1734 by CM, Bradley; (Compare to CS/CS/H 00969) Consumer Data Privacy						
655390	D	S	RCS	RC, Bradley	Delete everything after	04/07 11:05 AM	
960668	AA	S	L WD	RC, Gruters	Delete L.424 - 439:	04/07 11:05 AM	
968992	AA	S	L RCS	RC, Gruters	btw L.714 - 715:	04/07 11:05 AM	
286888	AA	S	L RCS	RC, Bradley	Delete L.270 - 283:	04/07 11:05 AM	
Tab 25	CS/CS/SB 1788 by GO, CA, Boyd; (Similar to CS/CS/H 01059) Construction Permits						
Tab 26	CS/SB 1802 by CJ, Pizzo; (Similar to CS/H 00583) Interception of Wire, Oral, or Electronic Communications Made in Violation of Protective Orders						
Tab 27	CS/SB 1826 by CJ, Diaz; (Compare to CS/CS/H 00523) Human Trafficking						
252674	A	S	RCS	RC, Diaz	Delete L.34 - 154:	04/07 11:18 AM	
Tab 28	CS/CS/SB 1868 by JU, CJ, Bean; (Compare to CS/H 00363) Privileged Communications Made to Crime Stoppers Organizations						

Tab 29 CS/SB 1890 by EE, Rodrigues; (Similar to CS/H 00699) Campaign Financing						
704498	A	S	UNFAV	RC, Farmer	Delete L.17 - 26:	04/07 02:51 PM
257762	A	S	L RCS	RC, Brandes	btw L.37 - 38:	04/07 02:51 PM
238640	A	S	L RCS	RC, Thurston	Delete L.25:	04/07 02:51 PM
Tab 30 CS/SB 1924 by CA, Diaz; (Similar to CS/CS/H 00945) Emergency Management Powers of Political Subdivisions						
662588	A	S	L	RC, Diaz	Delete L.192 - 201:	04/05 02:31 PM
647152	A	S		RC, Diaz	btw L.201 - 202:	04/05 07:35 AM
682262	A	S	L	RC, Farmer	Delete L.25 - 33:	04/06 08:46 AM
Tab 31 CS/SB 2006 by AP, Burgess; (Compare to H 01353) Emergency Management						
796836	A	S	RCS	RC, Burgess	Delete L.426:	04/07 12:23 PM
675998	A	S	WD	RC, Brandes	btw L.670 - 671:	04/07 12:23 PM
937570	A	S	RCS	RC, Burgess	Delete L.681 - 787:	04/07 12:23 PM
150648	A	S	WD	RC, Diaz	Delete L.788 - 890:	04/07 12:23 PM
602576	A	S	RCS	RC, Diaz	Delete L.788 - 890:	04/07 12:23 PM
942642	AA	S	L WD	RC, Gibson	Delete L.10 - 18:	04/07 12:23 PM
828322	AA	S	L UNFAV	RC, Gibson	Delete L.170 - 177:	04/07 12:23 PM
726470	AA	S	L WD	RC, Gibson	Delete L.285 - 287:	04/07 12:23 PM
673282	A	S	L WD	RC, Gruters	btw L.1038 - 1039:	04/07 12:23 PM
Tab 32 SB 7064 by CM; (Similar to CS/H 00971) Public Records/Investigations by the Department of Legal Affairs						

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

RULES

Senator Passidomo, Chair
Senator Garcia, Vice Chair

MEETING DATE: Tuesday, April 6, 2021

TIME: 9:30 a.m.—3:30 p.m.

PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Passidomo, Chair; Senator Garcia, Vice Chair; Senators Albritton, Baxley, Bean, Book, Bracy, Brandes, Diaz, Farmer, Gibson, Gruters, Hutson, Mayfield, Powell, Stargel, and Thurston

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	CS/SB 26 Judiciary / Cruz (Identical CS/H 6511)	Relief of the Estate of Crystle Marie Galloway/Hillsborough County Board of County Commissioners; Providing for the relief of the Estate of Crystle Marie Galloway by the Hillsborough County Board of County Commissioners; providing for an appropriation to compensate the estate for injuries sustained by Crystle Marie Galloway and her survivors as a result of the negligence of employees of the Hillsborough County Board of County Commissioners, etc. SM JU 03/22/2021 Fav/CS RC 04/06/2021 Favorable	Favorable Yeas 16 Nays 0
2	CS/SB 78 Judiciary / Rodrigues (Identical H 947)	Dues and Uniform Assessments; Requiring that a public employee who desires to join an employee organization sign a membership authorization form; requiring an employee organization to revoke an employee's membership upon receipt of the employee's request for revocation; providing that certain deductions commence upon the employer's receipt and confirmation of the employee's signed deduction authorization form; specifying the time period that an employee's authorization to deduct dues and uniform assessments remains in effect, etc. GO 01/27/2021 Favorable JU 02/01/2021 Temporarily Postponed JU 02/10/2021 Fav/CS RC 02/18/2021 Not Received RC 03/04/2021 Not Considered RC 04/06/2021 Temporarily Postponed	Temporarily Postponed

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	CS/CS/SB 90 Governmental Oversight and Accountability / Ethics and Elections / Baxley (Compare H 7041)	Election Administration; Limiting the duration of requests for vote-by-mail ballots to all elections through the end of the calendar year of the next regularly scheduled general election; requiring vote-by-mail ballot requests to include additional identifying information regarding the requesting elector; prohibiting the display of an absent elector's party affiliation or other partisan information on the outside of vote-by-mail ballots and return and secrecy envelopes; prohibiting the use of drop boxes for the return of vote-by-mail ballots, etc. EE 02/16/2021 Fav/CS GO 03/10/2021 Fav/CS RC 04/06/2021 Temporarily Postponed	Temporarily Postponed
4	CS/SB 268 Regulated Industries / Perry (Identical H 735)	Preemption of Local Occupational Licensing; Preempting licensing of occupations to the state; prohibiting local governments from imposing additional licensing requirements or modifying licensing unless specified conditions are met; specifying that certain specialty contractors are not required to register with the Construction Industry Licensing Board; authorizing counties and municipalities to issue certain journeyman licenses, etc. RI 03/16/2021 Fav/CS CA 03/30/2021 Favorable RC 04/06/2021 Favorable	Favorable Yeas 11 Nays 5
5	CS/SB 342 Transportation / Diaz (Identical CS/H 621)	Vehicle and Vessel Registration; Authorizing tax collectors to determine service charges collected by privately owned license plate agents for motor vehicle titles; requiring that additional service charges be itemized and disclosed to the person paying them; requiring a license plate agent to enter into a contract with the tax collector for a certain purpose; requiring tax collectors and approved license plate agents to enter into a memorandum of understanding with the department for a certain purpose, etc. TR 03/03/2021 Fav/CS FT 03/18/2021 Favorable RC 04/06/2021 Favorable	Favorable Yeas 16 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	CS/SB 398 Judiciary / Rodriguez (Similar CS/H 6503)	Relief of the Estate of Emilio Jesus Vizcaino-Aday by Miami-Dade County; Providing for the relief of the Estate of Emilio Jesus Vizcaino-Aday by Miami-Dade County; providing for an appropriation to compensate the Estate of Emilio Jesus Vizcaino-Aday for injuries and damages sustained by Emilio Jesus Vizcaino-Aday and his survivors as a result of the negligence of Miami-Dade County, etc. SM JU 03/22/2021 Fav/CS RC 04/06/2021 Favorable	Favorable Yeas 16 Nays 0
7	CS/SB 400 Governmental Oversight and Accountability / Rodrigues (Identical CS/H 913)	Public Records; Prohibiting an agency that receives a request to inspect or copy a record from responding to such request by filing an action for declaratory relief against the requester, etc. GO 01/27/2021 Fav/CS JU 03/15/2021 Favorable RC 04/06/2021 Favorable	Favorable Yeas 17 Nays 0
8	CS/SB 430 Commerce and Tourism / Rodriguez (Similar H 991)	Petroleum Fuel Measuring Devices; Preempting the regulation of petroleum fuel measuring devices to the state and the Department of Agriculture and Consumer Services; prohibiting the department from enforcing certain provisions for violations of rules relating to petroleum fuel measuring devices unless an owner or operator fails to take certain security measures; exempting department petroleum fuel measuring device rules from enforcement under specified provisions unless an owner or operator fails to take certain security measures, etc. CM 03/02/2021 Fav/CS TR 03/16/2021 Favorable RC 04/06/2021 Fav/CS	Fav/CS Yeas 16 Nays 0
9	HB 529 Fine (Similar CS/S 282)	Moments of Silence in Public Schools; Requires principals to require teachers to set aside time for moment of silence; prohibits teachers from making suggestions to nature of any reflection during moment of silence; deletes provision authorizing district school boards to provide brief period of silent prayer or meditation; requires certain teachers encourage parents or guardians to discuss moment of silence & make suggestions as to the best use of this time. RC 04/06/2021 Pending reconsideration (Favorable)	Favorable Yeas 12 Nays 5 -Pending Reconsideration

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	CS/CS/SB 582 Education / Judiciary / Rodrigues (Similar H 241)	Parental Rights; Creating the "Parents' Bill of Rights"; prohibiting the state, its political subdivisions, other governmental entities, or other institutions from infringing on parental rights unless specified conditions are met; requiring each district school board to develop and adopt a policy to promote parental involvement in the public school system; prohibiting health care practitioners and their employees from providing health care services or prescribing medicinal drugs to a minor child without a parent's written consent, etc. JU 03/02/2021 Fav/CS ED 03/23/2021 Fav/CS RC 04/06/2021 Favorable	Favorable Yeas 11 Nays 6
11	SB 628 Rouson (Compare CS/H 1013)	Urban Agriculture; Exempting farm equipment used in urban agriculture from certain provisions requiring farm equipment to be located a specified distance from a public road; providing that nonresidential farm buildings, fences, or signs located on lands used for urban agriculture are not exempt from the Florida Building Code or local governmental regulations; creating the "Florida Urban Agriculture Act"; expressly preserving local governmental authority to regulate urban agriculture under certain circumstances, etc. AG 03/03/2021 Favorable CA 03/16/2021 Favorable RC 04/06/2021 Fav/CS	Fav/CS Yeas 16 Nays 0
12	CS/SB 714 Children, Families, and Elder Affairs / Taddeo (Similar CS/CS/H 117)	Resource Information for Individuals with Disabilities; Requiring the Agency for Persons with Disabilities to provide specified written information to persons applying for certain waiver services; requiring the agency to provide a certain disclosure statement along with such information, etc. CF 03/09/2021 Fav/CS RC 04/06/2021 Fav/CS	Fav/CS Yeas 16 Nays 0
13	SB 904 Diaz (Identical H 6053)	Doorstep Refuse and Recycling Collection Containers; Deleting an obsolete provision; removing the scheduled repeal of certain provisions regulating the use of containers in exit access corridors, etc. CA 03/03/2021 Favorable EN 03/22/2021 Favorable RC 04/06/2021 Favorable	Favorable Yeas 16 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
14	CS/SB 932 Children, Families, and Elder Affairs / Wright (Compare CS/H 141)	Minor Time-sharing for Parent Convicted of or Had Adjudication Withheld for a Specified Offense; Prohibiting a court from granting time-sharing with a minor child to a parent under certain circumstances; providing an exception, etc. CF 03/02/2021 Fav/CS CJ 03/16/2021 Favorable RC 04/06/2021 Fav/CS	Fav/CS Yeas 16 Nays 0
15	CS/SB 968 Governmental Oversight and Accountability / Gainer (Similar CS/H 379)	Public Records/Economic Development Agency; Providing an exemption from public records requirements for certain information held by an economic development agency; providing that such information may be released in an aggregated and anonymized format; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CM 03/09/2021 Favorable GO 03/31/2021 Fav/CS RC 04/06/2021 Favorable	Favorable Yeas 16 Nays 0
16	SB 998 Brodeur (Similar CS/H 823, Compare CS/H 1209, CS/S 1408)	Contractor Advertising; Providing that alarm system contractors are not required to state their certification and registration numbers in or on certain advertisements if the contractor maintains an Internet website that displays such information and the advertisement directs consumers to the website; authorizing a contractor to begin repairing certain fire alarm systems after filing an application for a required permit but before receiving the permit, etc. RI 03/16/2021 Favorable CA 03/24/2021 Favorable RC 04/06/2021 Favorable	Favorable Yeas 16 Nays 0
17	CS/SB 1014 Governmental Oversight and Accountability / Baxley (Similar CS/CS/H 835)	Employee Organizations; Requiring certain employee organizations to petition the Public Employees Relations Commission for recertification; prohibiting an employee organization from having its dues and uniform assessments deducted and collected by a district school board; requiring an employee organization certified as the bargaining agent for a unit of Florida College System institution instructional personnel to include specified information and documentation in an application for registration renewal; requiring an employee organization certified as the bargaining agent for a unit of State University System institution instructional personnel to include specified information and documentation in an application for registration renewal, etc. GO 03/17/2021 Fav/CS RC 04/06/2021 Temporarily Postponed	Temporarily Postponed

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
18	CS/SB 1048 Judiciary / Bean (Similar CS/H 643)	Public Records/Conviction Integrity Unit Reinvestigation Information; Providing a public records exemption for certain conviction integrity unit reinvestigation information; providing for the future review and repeal of the exemption; providing a statement of public necessity, etc. CJ 03/02/2021 Favorable JU 03/09/2021 Fav/CS RC 04/06/2021 Favorable	Favorable Yeas 15 Nays 0
19	SB 1136 Rodrigues (Identical H 861)	Board of Directors of Florida ABLE, Inc.; Revising the composition of the membership of the Florida ABLE, Inc., board of directors; removing a limit on the number of terms that certain reappointed members may serve, etc. CF 03/09/2021 Favorable GO 03/24/2021 Favorable RC 04/06/2021 Favorable	Favorable Yeas 17 Nays 0
20	SB 1140 Rodrigues (Similar CS/H 833)	Unlawful Use of DNA; Prohibiting DNA analysis and disclosure of DNA analysis results without authorization; prohibiting the collection or retention of a DNA sample of another person without authorization for specified purposes; prohibiting specified DNA analysis and disclosure of DNA analysis results without authorization, etc. HP 03/10/2021 Favorable CM 03/22/2021 Favorable RC 04/06/2021 Fav/CS	Fav/CS Yeas 14 Nays 3
21	SB 1176 Stewart (Identical H 855)	Barber Services; Authorizing a barber to shampoo, cut, or arrange hair in a location other than a registered barbershop without specified arrangements, etc. RI 03/16/2021 Favorable CM 03/29/2021 Favorable RC 04/06/2021 Favorable	Favorable Yeas 16 Nays 0
22	SB 1212 Rodriguez (Identical H 369)	Construction Contracting Exemptions; Exempting a member of the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida from certain construction contracting regulations when constructing specified structures, etc. RI 03/01/2021 Favorable CA 03/24/2021 Favorable RC 04/06/2021 Favorable	Favorable Yeas 16 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
23	SB 1634 Brodeur (Similar CS/H 1399)	Public Records/Aquaculture/Department of Agriculture and Consumer Services; Providing a public records exemption for certain aquaculture records held by the Department of Agriculture and Consumer Services; providing that the records may be disclosed to other governmental entities under certain circumstances; providing for retroactive application of the exemption; providing for future legislative review and repeal under the Open Government Sunset Review Act; providing a statement of public necessity, etc. AG 03/10/2021 Favorable GO 03/31/2021 Favorable RC 04/06/2021 Favorable	Favorable Yeas 16 Nays 0
24	CS/SB 1734 Commerce and Tourism / Bradley (Compare CS/CS/H 969, Linked S 7064)	Consumer Data Privacy; Citing this act as the "Florida Privacy Protection Act"; requiring certain businesses that collect consumer personal information to provide certain information to the consumer; providing that consumers have the right to direct certain businesses not to sell their personal information; prohibiting businesses from selling the personal information of consumers younger than a specified age without express authorization from the consumer or the consumer's parent or guardian under certain circumstances; authorizing consumers to initiate civil actions for violations; providing civil remedies, etc. CM 03/22/2021 Fav/CS RC 04/06/2021 Fav/CS	Fav/CS Yeas 11 Nays 5
25	CS/CS/SB 1788 Governmental Oversight and Accountability / Community Affairs / Boyd (Similar CS/CS/H 1059)	Construction Permits; Revising the requirements for when a county may request certain information; authorizing all components of a completed application to be submitted electronically or in person; requiring a local enforcement agency to reduce a building permit fee by a specified percentage for failing to meet certain deadlines; requiring a local government or a local building department, respectively, to reduce a building permit fee or master building permit fee, as applicable, by a specified percentage for failing to meet certain deadlines, etc. CA 03/10/2021 Fav/CS GO 03/31/2021 Fav/CS RC 04/06/2021 Favorable	Favorable Yeas 16 Nays 0

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26	CS/SB 1802 Criminal Justice / Pizzo (Similar CS/H 583)	Interception of Wire, Oral, or Electronic Communications Made in Violation of Protective Orders; Providing an exception to prohibitions on interception and recording of communications when the communication is received in violation of a specified injunction or order; limiting the use of the intercepted communication to evidencing a violation of the specified injunction or order, etc. JU 03/15/2021 Favorable CJ 03/23/2021 Fav/CS RC 04/06/2021 Favorable	Favorable Yeas 16 Nays 0
27	CS/SB 1826 Criminal Justice / Diaz (Compare CS/H 523)	Human Trafficking; Providing the circumstances under which certain communications are confidential; creating a human trafficking victim advocate-victim privilege; providing training requirements for human trafficking victim advocates and trained volunteers; prohibiting a person from engaging in specified criminal acts relating to human trafficking with an adult believed to be a child younger than 18 years of age, etc. CF 03/16/2021 Favorable CJ 03/23/2021 Fav/CS RC 04/06/2021 Fav/CS	Fav/CS Yeas 15 Nays 1
28	CS/CS/SB 1868 Judiciary / Criminal Justice / Bean (Compare CS/H 363)	Privileged Communications Made to Crime Stoppers Organizations; Prohibiting a person from knowingly and willfully attempting to obtain, obtaining, or disclosing a privileged communication or protected information; providing a penalty; providing an exemption from criminal liability for employees, board members, or volunteers of a crime stoppers organization in certain circumstances; providing immunity from civil liability for certain actions by specified persons concerning privileged communications; limiting the uses of privileged communications or evidence of such communications, etc. CJ 03/23/2021 Fav/CS JU 03/29/2021 Fav/CS RC 04/06/2021 Favorable	Favorable Yeas 16 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
29	CS/SB 1890 Ethics and Elections / Rodrigues (Similar CS/H 699)	Campaign Financing; Providing a limitation on contributions made to political committees sponsoring a constitutional amendment proposed by initiative; specifying conditions upon which the limitation no longer applies; prohibiting a candidate from donating surplus funds to a charitable organization that employs the candidate; providing that any candidate required to dispose surplus funds may give certain surplus funds to the state or a political subdivision, to be disbursed in a specified manner, etc. EE 03/16/2021 Temporarily Postponed EE 03/30/2021 Fav/CS RC 04/06/2021 Fav/CS	Fav/CS Yeas 11 Nays 6
30	CS/SB 1924 Community Affairs / Diaz (Compare CS/H 945, H 7047)	Emergency Management Powers of Political Subdivisions; Specifying that a political subdivision has the burden of proving the proper exercise of its police power in the issuance of certain emergency orders; authorizing the Governor or the Legislature to invalidate emergency measures issued by a political subdivision under specified conditions; providing for the automatic expiration of emergency orders issued by a political subdivision; authorizing the extension of such orders if certain conditions are met; prohibiting a political subdivision from issuing a subsequent order for the same emergency that is substantially similar to the expired order, etc. CA 03/16/2021 Fav/CS MS 03/30/2021 Favorable RC 04/06/2021 Temporarily Postponed	Temporarily Postponed
31	CS/SB 2006 Appropriations / Burgess (Compare H 1353, CS/CS/H 1595, H 7047, S 1760, CS/CS/S 1892)	Emergency Management; Authorizing the Legislative Budget Commission to convene to transfer certain funds to the Emergency Preparedness and Response Fund; requiring that the state comprehensive emergency management plan provide for certain public health emergency communications and include the Department of Health's public health emergency plan; redefining the term "essentials" to include personal protective equipment used during public health emergencies; limiting the duration of emergency orders, proclamations, and rules issued by the Governor; authorizing the Governor to transfer and expend moneys in the Emergency Preparedness and Response Fund, etc. MS 03/16/2021 Favorable AP 03/31/2021 Not Considered AP 04/01/2021 Fav/CS RC 04/06/2021 Fav/CS	Fav/CS Yeas 12 Nays 5

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32	SB 7064 Commerce and Tourism (Similar CS/H 971, Linked CS/S 1734)	Public Records/Investigations by the Department of Legal Affairs; Providing an exemption from public records requirements for information relating to investigations by the Department of Legal Affairs and law enforcement agencies of certain data privacy violations; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. RC 04/06/2021 Favorable	Favorable Yeas 16 Nays 0

Other Related Meeting Documents



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
404H The Capitol

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

DATE	COMM	ACTION
3/17/21	SM	Favorable
3/22/21	JU	Fav/CS
4/6/21	RC	Favorable

March 17, 2021

The Honorable Wilton Simpson
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 26** – Senator Cruz
HB 6511 – Representative DiCeglie
Relief of Estate of Crystle Marie Galloway by the Hillsborough County
Board of County Commissioners

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF \$2,450,000. THIS AMOUNT IS THE REMAINING BALANCE OF A \$2,750,000 SETTLEMENT AGREEMENT REGARDING THE ALLEGED NEGLIGENCE OF EMPLOYEES OF HILLSBOROUGH COUNTY, WHICH RESULTED IN THE DEATH OF CRYSTLE MARIE GALLOWAY

FINDINGS OF FACT:

The Events of July 4, 2018

On the morning of July 4, 2018, Ms. Nicole Black found her daughter, Ms. Crystle Marie Galloway, in distress. At 3:02 am, Ms. Black dialed 911 to request an ambulance for Ms. Galloway.¹

In conversation with the Hillsborough County Emergency Dispatch Center (EDC) employee, Ms. Black described that she found Ms. Galloway on the floor “drooling from the mouth, lips getting bigger...” and generally unresponsive.² The EDC employee created a Computer Aided Dispatch (CAD)

¹ 911 Call Recording 1 (Jul. 3, 2018).

² *Id.*

Operations Report that reflected the above details, and described the “key question” as “Stroke (CVA) / Transient Ischemic Attack (TIA).”³

At 3:05 a.m., Hillsborough County Fire Rescue (HCFR) Rescue 43 (R43) and Squad 1 units were dispatched to the scene to assist Ms. Galloway, and were informed by a “tear and go sheet” that the nature of the call was “stroke/CVA/TIA.”⁴ Lieutenant Mike Morris was the officer in charge of, and Fire Medic Martin was the junior paramedic assigned to R43. Acting Lieutenant Courtney Barton and Fire Medic Justin Sweeney were assigned to Squad 1.

Hillsborough County Sheriff’s Office personnel were also dispatched to the scene. The sheriff’s deputies arrived at the scene first, and interviewed Ms. Black and Ms. Galloway. They learned that Ms. Galloway had recently given birth by cesarean section,⁵ was complaining of a headache and sensitivity to light, and had not consumed any medication or alcohol. Either the sheriff’s deputies, Ms. Black, or both, ultimately relayed this information to Acting Lieutenant Barton and Lieutenant Morris after their arrivals on the scene.⁶

According to Deputy Grace, he observed the HCFR medics interact with Ms. Galloway, who cried hysterically and complained of a headache and stomachache to them.⁷

HCFR personnel arrived at the scene at 3:17 a.m. Medic Sweeney reached Ms. Galloway first. He found her lying in bed, covered by a blanket; he asked her if she wanted to go to the hospital and Ms. Galloway nodded to indicate “yes.”⁸ Ms. Galloway rose from the bed, and Medic Sweeney assisted

³ Hillsborough County Emergency Dispatch Center, *CAD Operations Report: Call Number 1807-064728*, July 4, 2018. A second CAD Report was generated as a result of two 911 calls made regarding Ms. Galloway. The second call and related CAD report were aborted because it was determined that Ms. Black was on another phone line with a different dispatcher. See, Hillsborough County Emergency Dispatch Center, *CAD Operations Report: Call Number 1807-064729* (July 4, 2018).

⁴ EO Case No. 447-E8, Barton Interview, 27 (Aug. 6, 2018). EO Case No. 448-18, Morris Interview, 38-39 (Aug. 6, 2018).

⁵ Ms. Galloway gave birth to her third child, Jacob Aiden Flowers, via Cesarean section on June 27, 2018.

⁶ Arbitrator deposition of Morris, 388 (Mar. 18, 2019). Barton Statement for Incident 55108 (2018). FMCS Case No.: 191115-01560, Interview of Deputy Grace re: John Morris, 6-7 (Aug. 9, 2018); FMCS Case No.: 191115-01560, Interview of Deputy Lamb re: John Morris, 7 (Aug. 9, 2018).

⁷ Interview of Deputy Grace, 13, (Aug. 9, 2018).

⁸ Sweeney Deposition, 17 (Feb. 18, 2020).

Ms. Galloway to a nearby stair chair device;⁹ before Ms. Galloway sat down on the stair chair device, she retched. An HCFR responder handed Ms. Galloway an emesis bag from the Lifepak 15.¹⁰ HCFR employees then placed Ms. Galloway into the stair chair, helped to transport her downstairs, and assisted her into Ms. Black's car. Ms. Black and Ms. Galloway then left the scene. R43 and Squad 1 units ended the call and went back into service at approximately 3:30 a.m. HCFR responders testified that they treated this call as a "lift-assist" or citizen assist, wherein transport via ambulance was not requested or required.¹¹

During the call to Ms. Galloway's home, Ms. Galloway was able to respond non-verbally to commands and to take a few short steps with the assistance of another person.

Ms. Galloway's In-Patient Care

Ms. Black began to drive Ms. Galloway to Brandon Urgent Care Center—a standalone E.R. with no neurosurgical capabilities. While en route, Ms. Galloway began to suffer seizures. Employees of the Brandon Urgent Care Center began to treat Ms. Galloway at approximately 3:55 a.m., conducted a CT scan of her brain, diagnosed her with acute subarachnoid hemorrhage (stroke), and at approximately 5:00 a.m., requested to transfer her to Tampa General Hospital, because "services were not available at this [Brandon Urgent Care Center] Facility."¹² Ms. Galloway was intubated and then lifeflighted to Tampa General Hospital, where she arrived at approximately 6:00 a.m. Ms. Galloway was ultimately admitted as an inpatient to Tampa General Hospital's neuroscience ICU at approximately 12:00 pm.¹³ Ms. Galloway underwent diagnosis cerebral angiogram and ultimately had surgery as a course of her treatment at Tampa General.

⁹ EO Case No. 449-18, Sweeney Interview, 42-45 (Aug. 6, 2018). Medic Martin brought the stair chair device upstairs at the instruction of Lieutenant Morris.

¹⁰ EO Case No. 447-E8, Barton Interview, 30 (Aug. 6, 2018). A Lifepak 15 is a piece of medical equipment that is used to obtain vitals, such as blood pressure and pulse rate. It can also perform EKGs. Barton Deposition, 59-60 (Feb. 18, 2020).

¹¹ Arbitrator Deposition of Morris at 410, 412 (Mar. 18, 2019). EO Case No. 449E-18, Sweeney Interview at 89-90 (Aug. 6, 2018). EO Case No. 45-E8, Martin Statement re: Incident 0055108, (July 7, 2018).

¹² Brandon Regional ER patient records for Crystle Galloway at 2 (July 4, 2018). *See also, id.* at 7 (Stating the "[c]ase was discussed with neurosurgeon who at the moment stated that the patient did not need to be intubated...and to be transferred to facility who is neuro interventional capable").

¹³ Tampa General Hospital patient records for Crystle Galloway, 2-3 (July 4, 2018).

On July 9, 2018, Ms. Galloway died. She was 30 years old.¹⁴

HCFR's Electronic Patient Care Records

Both HCFR units that responded to Ms. Galloway's home created an electronic patient care record (ePCR). The ePCR created by Squad 1 classified the call as a "non-transport cancel" and the narrative further states that there was "no medical attention needed." The ePCR created by R43 classified the call as a "non-transport no patient found." R43's ePCR narrative states that the responders found that there was no medical complaint, but that the patient needed help getting down from the third story of her home into her mother's vehicle. It further states that there was "no medical patient and no need for transport or evaluation from HCFR units."

HCFR Policies and Procedures

HCFR employees are required to conform to the standards of conduct provided in the HCFR policies and procedures manual.¹⁵ Additionally, HCFR rules and regulations require its employees to "adhere to legal, professional, and trade rules and standards."¹⁶

Medic Martin, Medic Sweeney, Acting Lieutenant Barton, and Lieutenant Morris all testified that they were familiar with and received training on the below policies and procedures.

HCFR Standing Order and Protocol section 345.18-Patient Assessment, requires an HCFR responder to create a general impression of the patient,¹⁷ and then continue to a primary assessment of the patient. The primary assessment is designed to identify any immediate threat to life and allow a responder to quickly determine any need for critical intervention.

A responder must assess five priorities under the primary assessment:

1) Circulation (check pulse), 2) Airway (check that patient's airway is open), 3) Breathing (ensure patient can breathe, and

¹⁴ Crystle Galloway's Death Certificate (Jul. 24, 2018).

¹⁵ Hillsborough County, County Administrator Policy Manual, Policy Number 7.6, Rule 1 (Oct. 1, 2015).

¹⁶ Hillsborough County Fire Rescue, Policies and Procedures Manuals: Rules and Regulations—Statement of Ethics (Mar. 1, 2010).

¹⁷ HCFR Standards for Medical Documentation section 360.01 defines a "patient" as "a person encountered by a member of HCFR who by complaint of injury or illness, observation of the responder, or mechanism of injury may be expected to require medical evaluation and/or attention."

is doing so normally), 4) Disability (assess patient's ability to respond to stimuli—both verbal and physical),¹⁸ and 5) Expose (expose the body to identify threats or trauma).

At this point, the responder should make an initial determination whether the patient is a "Priority/ALS patient" who requires rapid transport to the hospital, or who needs or will benefit from paramedic level care en route.

Next, a responder is required to complete a secondary assessment, and repeat it throughout the duration of care as dictated by patient conditions. The secondary assessment requires:

- 1) Vital signs—including pulse rate, respiratory rate, blood pressure, EKG and blood oxygen monitoring as appropriate, Glasgow coma score, pupil response, and blood sugar level;
- 2) a head-to-toe exam, and 3) a focused patient history inquiring about the patient's signs and symptoms, allergies, medications, pertinent medical history, last oral intake, and events leading up to the injury or illness.

The responder must thoroughly document all information he or she gathered and interventions he or she performed during the course of care.

HCFR Standing Order and Protocol section 360.01- General Standards for Documentation, requires that "any response or encounter with a patient...shall have an ePCR (electronic patient care record) completed by all units..." The protocol then details different recording requirements for different patient situations.

First, this protocol requires the Rescue Officer to ensure proper documentation of all pertinent data as it relates to the patient encounter and all care rendered.

Second, this protocol requires a responder who encounters a patient who refuses medical transportation to ensure that the patient is competent; the responder must also completely document his or her patient encounter and exam. The responder's exam must include at least two sets of the patient's vital signs and a thorough evaluation. Additionally,

¹⁸ An assessment of the patient's disability requires that the responder communicate with the patient, and that the patient respond. EO Case No. 45-E8, *Martin Interview*, 15 (Aug. 6, 2018); and EO Case No. 449E-18, *Sweeney Interview* at 18 (Aug. 6, 2018).

the responder must document all efforts made to convince the patient to seek higher level of medical care, and receive an informed refusal document signed by a competent patient.

Third, this protocol requires a responder who assists a citizen with a citizen assist or a lift assist call to complete an ePCR, which includes the patient's demographics, mental status, vital signs, the evaluation performed to determine that there was no illness or injury present, and a description of the service provided.

Transport to Stroke Center

The responders to the scene all recognize that if a patient is identified as a stroke patient, rapid transport to a stroke center would be the appropriate standard of care.¹⁹

Performance of Patient Assessment or Evaluation of Patient's Vital Signs

At no time did HCFR personnel ask Ms. Galloway or Ms. Black why transport to the hospital had been requested.²⁰ Additionally, HCFR personnel did not obtain any of Ms. Galloway's vital signs or otherwise perform a complete assessment to determine if transportation to the hospital or medical treatment was warranted.

Fire Medic Martin:

In pertinent part, Fire Medic Martin testified that:

- He did not perform a primary assessment.
- He did not determine whether Ms. Galloway was stable, but merely brought the stair chair upstairs.
- He did not "put hands on or touch the patient."²¹
- He did not interview or talk to Ms. Galloway.²²
- He did not obtain a SAMPLE history.²³
- He did not get a refusal of treatment and transport.²⁴

Fire Medic Sweeney:

In pertinent part, Fire Medic Sweeney testified that:

¹⁹ EO Case No. 45-E8, *Martin Interview* at 60 (Aug. 6, 2018); EO Case No. 449E-18, *Sweeney Interview* at 91-92 (Aug. 6, 2018). EO Case No. 447-E8, *Barton Interview* at 58 (Aug. 6, 2018). EO Case No. 448-E18, *Morris Interview* at 75 (Aug. 6, 2018).

²⁰ EO Case No. 45-E8, *Martin Interview* at 65-66 (Aug. 6, 2018).

²¹ *Id.* at 28.

²² *Id.* at 29 and 49.

²³ *Id.* at 30.

²⁴ *Id.* at 32.

- He did not ask Ms. Galloway what was wrong with her.²⁵
- He did not take her pulse or otherwise obtain her vitals.²⁶
- He did not interview the patient.²⁷
- He did not obtain a SAMPLE history.²⁸
- He did not obtain a refusal of treatment from Ms. Galloway.²⁹

Acting Lieutenant Courtney Barton

In pertinent part, acting Lieutenant Barton testified that:

- She did not perform a primary assessment;³⁰
- She did not obtain Ms. Galloway's vitals;³¹
- She did not interview Ms. Galloway.³²

Lieutenant John Michael Morris

In pertinent part, Lieutenant Morris testified that:

- He did not take her pulse.³³
- He did not obtain a SAMPLE history.³⁴
- He did not obtain a refusal of treatment.³⁵
- "Vitals were not taken that night."³⁶

Expert Witness Testimony

Expert witness John Everlove concluded that, based on his review of relevant documents from Ms. Galloway's case, the HCFR responders' failure to perform a full assessment of or obtain baseline vitals from Ms. Galloway (among other breaches of duty) resulted in Ms. Galloway "not receiving appropriate and timely medical intervention, treatment and transportation for her life-threatening condition, contributing to her death."

²⁵ EO Case No. 449E-18-E8, Sweeney Interview at 87. Sweeney Deposition, p. 22-23.

²⁶ EO Case No. 449E-18-E8, Sweeney Interview at 48 and 52. Sweeney Deposition, pp. 13-14; 33.

²⁷ EO Case No. 449E-18-E8, Sweeney Interview at 50. Sweeney Deposition, p. 14-15.

²⁸ EO Case No. 449E-18-E8, Sweeney Interview at 51.

²⁹ EO Case No. 449E-18-E8, Sweeney Interview at 56. Sweeney Deposition, p. 19.

³⁰ EO Case No. 447-E8, Barton Interview at 46. Barton Deposition, p. 41-42.

³¹ EO Case No. 447-E8, Barton Interview at 47. Barton Deposition, p. 41.

³² *Id.* at 48.

³³ Arbitrator Deposition of Morris, at 396.

³⁴ EO Case No. 448-18, *Morris Interview* at 56.

³⁵ *Id.* at 61, 68.

³⁶ *Id.* at 67.

Additionally, expert witness Dr. Matthew Moore concluded “within a reasonable degree of medical probability, that the failure of the Hillsborough County Fire Rescue personnel to perform a physical evaluation, obtain vital signs, stabilize and transport Crystle Galloway to an appropriate facility caused or significantly contributed to her demise.”

Estimated Economic Losses

Ms. Galloway is survived by three children: Jessica Ann Flowers, Jacob Aiden Flowers, and Teneisha Adrianna Brown, who were 12 days old, 7 years old, and 13 years old, respectively, at the time of her death. An expert witness testified that the present value of the economic loss to her children as a result of Ms. Galloway's death is \$2,856,196.³⁷

Litigation History and Settlement

Ms. Black, acting as representative of Ms. Galloway's estate, filed a civil cause of action in Hillsborough County seeking relief as a result of this incident.³⁸ Prior to trial, the parties arrived at a settlement agreement³⁹ and the case was subsequently closed.⁴⁰

Settlement

Counsel for claimant's estate believed the potential jury verdict value of this matter would be between \$6 million and \$8 million. The respondent did not admit liability or responsibility for the incident, but did reach a mediated settlement agreement of \$2.75 million. As part of the agreement, the respondent agreed to be silent on the claim bill, not support or oppose the bill, and did not present a case or argument at the special master hearing.⁴¹

³⁷ Raffa Consulting Economists, A Present Value Analysis of the Loss of Dependent Support, and the Loss of the Household and Childcare Services Sustained as a Result of the Death of Ms. Crystle Marie Galloway, 10 (Apr. 17, 2020).

³⁸ *Black, as Personal Representative of the Estate of Crystle Galloway v. Hillsborough Co. Bd. of County Comm'rs.*, Case No: 19-CA-010708 Div F (Fla. 13th Jud. Circ. 2019).

³⁹ Settlement and Release Agreement (June 10, 2020), *Black, as Personal Representative of the Estate of Crystle Galloway v. Hillsborough Co. Bd. of County Comm'rs.*, Case No: 19-CA-010708 Div F (Fla. 13th Jud. Circ. 2019).

⁴⁰ Notice of Voluntary Dismissal (Aug. 31, 2020), *Black, as Personal Representative of the Estate of Crystle Galloway v. Hillsborough Co. Bd. of County Comm'rs.*, Case No: 19-CA-010708 Div F (Fla. 13th Jud. Circ. 2019).

⁴¹ Settlement and Release Agreement for *Black v. Hillsborough Co. Bd. of County Comm'rs.*, Case No: 19-CA-010708 Div. F (Fla. 13th Jud. Circ. 2019).

Funds Received by Claimants

Pursuant to settlement agreement, claimant will receive funds from the Hillsborough County Board of County Commissioners.

Respondent's Payment Pursuant to the Statutory Cap

The claimant will receive the full amount of the respondent's statutory limit (\$300,000 per incident) from the Hillsborough County Board of County Commissioners and seeks the remaining balance of the settlement (\$2.45 million) through this claim bill. According to attorney for the claimant, these funds will be divided equally among Ms. Galloway's three children and held in a trust for their education and care by a judicially-appointed trust administrator.

CONCLUSIONS OF LAW:

The claim bill hearing held on February 23, 2021, was a *de novo* proceeding to determine whether Hillsborough County is liable in negligence for damages suffered by the Claimant, and, if so, whether the amount of the claim is reasonable. This report is based on evidence presented to the Special Master prior to, during, and after the hearing. The Legislature is not bound by settlements or jury verdicts when considering a claim bill, the passage of which is an act of legislative grace.

Section 768.28, of the Florida Statutes, limits the amount of damages that a claimant can collect from a local government as a result of its negligence or the negligence of its employees to \$200,000 for one individual and \$300,000 for all claims or judgments arising out of the same incident. Funds in excess of this limit may only be paid upon approval of a claim bill by the Legislature. Thus, the claimant will not receive the full amount of its judgment unless the Legislature approves this claim bill authorizing the additional payment.

In this matter, the claimant alleges negligence on behalf of Hillsborough County Fire Rescue employees Martin, Morris, Sweeney, and Barton. The State is liable for a negligent act committed by an employee acting within the scope of his or her employment.⁴²

⁴² *City of Boynton Beach v. Weiss*, 120 So.3d 606, 611 (Fla. 4th DCA 2013).

Negligence

There are four elements to a negligence claim: (1) duty—where the defendant has a legal obligation to protect others against unreasonable risk; (2) breach—which occurs when the defendant has failed to conform to the required standard of conduct; (3) causation—where the defendant's conduct is foreseeably and substantially the cause of the resulting damages; and (4) damages—actual harm.⁴³

Duty

Statute, case law, and agency policy describe the duty of care owed by medical personnel. Generally, the standard of professional care is a level of care, skill, and treatment that, in consideration of all surrounding circumstances, is recognized as acceptable and appropriate by similar and reasonably prudent health care providers.⁴⁴

Ms. Galloway, by complaint of her illness via her mother's call to 911, was a patient who had an expectation of medical evaluation or attention. HCFR personnel therefore had a duty according to law and their employer's policies and procedures to (1) obtain vitals—including pulse—from the patient, Ms. Galloway, and (2) perform a head-to-toe examination.

Breach

HCFR personnel Barton, Morris, Martin, and Sweeney breached the duty described above when they failed to take Ms. Galloway's vitals and failed to perform a secondary assessment of Ms. Galloway.

Causation and Damages

Ms. Galloway's death was the natural and direct consequence of the HCFR personnel's breach of their duties. As a result of the HCFR responders' failure to perform their duties, Ms. Galloway was not treated for her subarachnoid hemorrhage in a timely manner and ultimately died, resulting in the loss of her potential earning.

The paramedics were acting within the course and scope of their employment with Hillsborough County at the time they failed to assess Ms. Galloway. Hillsborough County, as the

⁴³ *Saunders v. Dickens*, 151 So.3d 434, 441 (Fla. 2014); *Williams v. Davis*, 974 So.2d 1052, at 1056-1057 (Fla. 2007).

⁴⁴ *Saunders v. Dickens*, 151 So.3d 434, 441 (Fla. 2014); see also section 401.411, F.S.

employer, is liable for damages caused by its employee's negligent act.⁴⁵

According to the economic analysis done by the Raffa Consulting Economists, Ms. Galloway's estate suffered damages of at least \$2,856,196 due to her premature death. A representative of Ms. Galloway's estate and Hillsborough County have agreed to settle this matter for \$2.75 million. This figure is reasonable based on the evidence.

ATTORNEY FEES:

The attorney for Ms. Galloway's estate has agreed to limit his fees to 25 percent of any amount awarded by the Legislature (not to exceed \$612,500), and the lobbyist for Ms. Galloway's estate has agreed to limit his fees to 5 percent of any amount awarded by the Legislature (not to exceed \$122,500), in compliance with s. 768.28(8), F.S.

RECOMMENDED
AMENDMENT:

The undersigned recommends removing language from lines 41-45 of the bill, as no testimony was presented to that effect.

RECOMMENDATIONS:

Based on the foregoing, the undersigned recommends that Senate Bill 26 be reported FAVORABLY.

Respectfully submitted,

/s/Jessie Harmsen
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary

The committee substitute removes an allegation that the paramedics refused to take Ms. Galloway to the hospital because it looked like she had too much to drink. The committee substitute also replaces the limit on attorney fees expressed as a percentage of the proceeds of the bill with separate dollar value limits on attorney fees, lobbying fees, and costs.

⁴⁵ *Mercury Motors Express v. Smith*, 393 So.2d 545, 549 (Fla. 1981); *Stinson v. Prevatt*, 84 Fla. 416 (1922).

By the Committee on Judiciary; and Senator Cruz

590-03196-21

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A bill to be entitled

An act for the relief of the Estate of Crystle Marie Galloway by the Hillsborough County Board of County Commissioners; providing for an appropriation to compensate the estate for injuries sustained by Crystle Marie Galloway and her survivors as a result of the negligence of employees of the Hillsborough County Board of County Commissioners; providing a limitation on the payment of fees; providing an effective date.

WHEREAS, on or about June 27, 2018, Crystle Marie Galloway gave birth to her son, Jacob Aiden Flowers, via caesarean section and was discharged from the hospital on or about June 29, 2018, and

WHEREAS, on or about July 4, 2018, at approximately 3:02 a.m., Ms. Galloway's mother, Nicole Black, contacted the Hillsborough County Fire Rescue emergency dispatch center via 911 to request medical assistance for Ms. Galloway, and

WHEREAS, during the 911 call, Ms. Black requested an ambulance for her daughter, advising the dispatcher that Ms. Galloway had recently given birth and that she was found unconscious in the bathroom with swollen lips and drool coming out of her mouth, and

WHEREAS, the nature of the emergency was classified as a stroke or cerebrovascular accident, and at approximately 3:05 a.m., four paramedics employed by Hillsborough County Fire Rescue were dispatched to Ms. Galloway's home and arrived at approximately 3:17 a.m., and

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WHEREAS, two deputies from the Hillsborough County Sheriff's office who first arrived at Ms. Galloway's home in response to the 911 call advised the paramedics employed by Hillsborough County Fire Rescue that Ms. Galloway was complaining of a headache and sensitivity to light and sound, had not consumed any medication or alcohol, and had given birth via caesarean section a few days earlier, and

WHEREAS, although the paramedics employed by Hillsborough County Fire Rescue observed Ms. Galloway crying, complaining of a headache, and vomiting, they did not take Ms. Galloway's vitals or perform any physical examination of her, and

WHEREAS, at 3:30 a.m., approximately 13 minutes after arriving at Ms. Galloway's home, the paramedics employed by Hillsborough County Fire Rescue left without Ms. Galloway and reported the incident as "Nontransport/No Patient Found" and "Nontransport/Cancel," and

WHEREAS, while Ms. Black was transporting Ms. Galloway to the hospital in her personal vehicle, Ms. Galloway began having seizures, and a CT scan of her brain performed at the emergency room later revealed an acute subarachnoid hemorrhage, most likely secondary to an aneurysm, and

WHEREAS, as the facility where Ms. Galloway was first admitted was not equipped to handle the required neurological interventions, Ms. Galloway was later transported to Tampa General Hospital, where she underwent a cerebral angiogram with coil placement into the aneurysm, and

WHEREAS, despite efforts by physicians at Tampa General Hospital to treat Ms. Galloway, she passed away on July 9, 2018, and

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WHEREAS, as the Hillsborough County Board of County Commissioners provides emergency medical and health care services to its residents through entities that include Hillsborough County Fire Rescue, paramedics employed by Hillsborough County Fire Rescue are employees and agents of the Hillsborough County Board of County Commissioners, and

WHEREAS, such employees of the Hillsborough County Board of County Commissioners had a duty to use reasonable care in the treatment of Ms. Galloway, and

WHEREAS, such employees of the Hillsborough County Board of County Commissioners breached that duty by deviating from the acceptable and appropriate standards of care in providing inadequate care to Ms. Galloway, and

WHEREAS, the Estate of Crystle Marie Galloway alleged, through a lawsuit filed October 17, 2019, in the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, that the negligence of the Hillsborough County Board of County Commissioners, through its employees, was the proximate cause of Ms. Galloway's death, and

WHEREAS, following the filing of the lawsuit, the Hillsborough County Board of County Commissioners and the Estate of Crystle Marie Galloway reached a settlement agreement in the amount of \$2.75 million, of which \$300,000 has been paid to the Estate of Crystle Marie Galloway pursuant to the limits of liability set forth in s. 768.28, Florida Statutes, and the remainder is conditioned upon the passage of a claim bill, which is agreed to by the Hillsborough County Board of County Commissioners, in the amount of \$2.45 million, NOW, THEREFORE,

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

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

Section 2. The Hillsborough County Board of County Commissioners is authorized and directed to appropriate from funds of the county not otherwise encumbered and to draw a warrant in the sum of \$2.45 million payable to Nicole Black as personal representative of the Estate of Crystle Marie Galloway as compensation for injuries and damages sustained.

Section 3. The amount paid by the Hillsborough County Board of County Commissioners pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in the death of Crystle Marie Galloway, including injuries and damages to the Estate of Crystle Marie Galloway and her survivors. Of the amount awarded under this act, the total amount paid for attorney fees relating to this claim may not exceed \$612,500, the total amount paid for lobbying fees may not exceed \$122,500, and the total amount paid for costs or other similar expenses may not exceed \$20,906.04.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 78

INTRODUCER: Judiciary Committee and Senator Rodrigues

SUBJECT: Dues and Uniform Assessments

DATE: March 2, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2. <u>Bond</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3. <u>McVaney</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 78 requires a public employee wanting to join a union to submit a signed membership authorization form that includes a specific statutory notice. The union must revoke the membership if the employee submits a signed request for revocation. The union may not require a reason for the employee's decision to revoke membership in the union.

The bill also requires a public employee to submit a signed dues deduction form before an employer may deduct union dues from an employee's pay. The employer must, within 30 days, confirm with the employee that the employee authorized the deduction. Such authorization to deduct ends automatically when the members of the employee organization ratify a new collective bargaining agreement or after three years, whichever occurs earlier.

Public employers may experience an indeterminate, but likely insignificant, increase in workload and costs associated with the administration of the authorization and revocation of dues deductions.

The bill takes effect upon becoming a law.

II. Present Situation:

Collective Bargaining

Article 1, section 6 of the State Constitution guarantees that “the right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged.” To implement this constitutional provision, the Legislature enacted ch. 447, F.S. Part II of the chapter, which part is solely applicable to public employees and public employee unions, provides that the purpose of collective bargaining is to promote cooperative relationships between the government and its employees and to protect the public by assuring the orderly and uninterrupted operations and functions of government.¹ Through collective bargaining, public employees² may collectively negotiate with their public employer³ in the determination of the terms and conditions of their employment.⁴ The Public Employees Relations Commission is responsible for assisting in resolving disputes between public employees and public employers.⁵

An “employee organization” is any “labor organization, union, association, fraternal order, occupational or professional society, or group, however organized or constituted, which represents, or seeks to represent, any public employee or group of public employees concerning any matters relating to their employment relationship with a public employer.”⁶ When an employee organization is approved by the employees, recognized by the employer, and authorized to conduct collective bargaining, it is referred to as a certified bargaining agent, and becomes the exclusive representative of all employees in that unit.⁷

After an employee organization has been certified as the bargaining agent for a group of public employees, the bargaining agent and the chief executive officer of the appropriate public employer must bargain collectively in the determination of wages, hours, and terms and

¹ Section 447.201, F.S.

² Section 447.203(3), F.S., defines the term “public employee” to mean any person employed by a public employer except:

- (a) Persons appointed by the Governor or elected by the people, agency heads, and members of boards and commissions.
- (b) Persons holding positions by appointment or employment in the organized militia.
- (c) Individuals acting as negotiating representatives for employer authorities.
- (d) Persons who are designated by the commission as managerial or confidential employees pursuant to criteria contained herein.
- (e) Persons holding positions of employment with the Florida Legislature.
- (f) Persons who have been convicted of a crime and are inmates confined to institutions within the state.
- (g) Persons appointed to inspection positions in federal/state fruit and vegetable inspection service whose conditions of appointment are affected by the following:
 - 1. Federal license requirement.
 - 2. Federal autonomy regarding investigation and disciplining of appointees.
 - 3. Frequent transfers due to harvesting conditions.
- (h) Persons employed by the Public Employees Relations Commission.
- (i) Persons enrolled as undergraduate students in a state university who perform part-time work for the state university.

³ The term “public employer” means the state or any county, municipality, or special district or any subdivision or agency thereof that the commission determines has sufficient legal distinctiveness properly to carry out the functions of a public employer. Section 447.203(2), F.S.

⁴ Section 447.301(2), F.S.

⁵ Section 447.201(3), F.S.

⁶ Section 447.203(11), F.S.

⁷ Sections 447.203(12), 447.307(1), F.S.

conditions of employment of the employees.⁸ Any collective bargaining agreement reached between the parties must be put in writing and signed by the chief executive officer and the bargaining agent.⁹ Such agreement is not binding on the employer until the agreement has been ratified by the employer and the employees in the bargaining unit.¹⁰ Current law prohibits a collective bargaining agreement from providing for a term of existence of more than three years and requires the agreement to contain all of the terms and conditions of employment of the employees during such term.¹¹

Right-to-Work

The State Constitution forbids an employer from denying citizens the right to work based on membership or non-membership in any employee organization.¹² As such, public employees have the right to form, join, participate in, and be represented by an employee organization of their own choosing, or to refrain from forming, joining, participating in, or being represented by an employee organization.¹³

Union Dues and Deductions in Florida

Section 447.303, F.S., authorizes a certified bargaining agent, a union, to have its dues and uniform assessments collected by a public employer by deducting such payments from the salaries of those employees who choose to authorize the practice. The employee's authorization is revocable with 30 days written notice to the employer and union, but otherwise continues for the length of the union's duration as certified bargaining agent. The deductions commence upon the bargaining agent's written request to the employer. While employers may make salary deductions for dues and uniform assessments, employers are expressly prohibited from any involvement in collecting fines, penalties, or special assessments.

Section 110.114, F.S., governs all employee wage deductions for state employment. The state, its departments, bureaus, commissions, and officers are permitted to make deductions from employees' salaries when authorized and requested by the employee.¹⁴ All records of employee requests and employer authorizations for deductions from an employee's wage or salary, or the legal authority for the deduction, shall be maintained by each employing entity.¹⁵

According to the Department of Management Services, 72,356 state employees (excluding state university system employees) were represented by unions during Fiscal Year 2018-19. Of these employees, 8,998 paid union dues and assessments.¹⁶ Local government union membership levels are unknown.

⁸ Section 447.309(1), F.S.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Section 447.309(5), F.S.

¹² FLA. CONST. art. 1, s. 6.

¹³ Section 447.301(1) and (2), F.S.

¹⁴ *Id.*

¹⁵ Section 110.114(4), F.S.

¹⁶ State Personnel System, *Annual Workforce Report for Fiscal Year 2018-2019*, page 26,

[https://www.dms.myflorida.com/content/download/149462/996706/FY_2018-19_Annual_Workforce_Report_\(FINAL\).pdf](https://www.dms.myflorida.com/content/download/149462/996706/FY_2018-19_Annual_Workforce_Report_(FINAL).pdf)
(last visited January 27, 2021).

III. Effect of Proposed Changes:

Section 1 amends s. 447.301, F.S., to require a public employee wanting to join a union to sign a membership authorization form. The form must include the following acknowledgement:

I acknowledge and understand that Florida is a right-to-work state and that union membership is not required as a condition of employment. I understand that union membership and payment of union dues and assessments is voluntary and that I may not be discriminated against in any manner if I refuse to join or financially support a union.

Furthermore, the section requires an employee organization to revoke an employee's membership upon receipt of written request. Any form required to fulfill this request may not require the employee to disclose a reason for membership revocation.

Section 2 amends s. 447.303, F.S., to require that before an employer begins deducting union dues from an employee's pay, the employer must receive a signed authorization form from the bargaining agent and confirm such authorization with the employee. Confirmation must be completed within 30 days. The means of confirmation is not specified and thus will be determined by the employing entity. The section further provides that such authorization will end automatically when the employee organization ratifies a new collective bargaining agreement or after three years, whichever occurs first.

Section 3 reenacts s. 110.114(3), F.S., in order to incorporate the changes made in section 1 of the bill.

Section 4 provides that the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

The bill does not impose, authorize, or raise a state tax or fee.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent to which the new requirements depress union membership or salary deductions for union dues or increase costs associated with the creation and use of membership authorization and dues deduction forms, public sector unions may experience a negative fiscal impact.

C. Government Sector Impact:

Public agencies may experience additional workload relating to administering the authorization and revocation of dues deductions for public employees.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 447.301 and 447.303.

This bill reenacts section 110.114, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Judiciary on February 10, 2021:

The CS added a provision requiring that employer confirmation of a deduction of union dues be completed within 30 days.

B. Amendments:

None.

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



538638

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/06/2021	.	
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The Committee on Rules (Thurston) recommended the following:

Senate Amendment (with title amendment)

Delete lines 57 - 103.

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

And the title is amended as follows:

Delete lines 13 - 21

and insert:

the revocation; providing an



417610

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Rodrigues) recommended the following:

Senate Amendment (with title amendment)

Delete lines 57 - 90

and insert:

3. This paragraph does not apply to law enforcement
officers as defined in s. 943.10(1) or firefighters as defined
in s. 633.102.

Section 2. Section 447.303, Florida Statutes, is amended to
read:

447.303 Dues; deduction and collection.—

(1) An ~~Any~~ employee organization that ~~which~~ has been



417610

certified as a bargaining agent has ~~shall have~~ the right to have its dues and uniform assessments deducted and collected by the employer from the salaries of those employees who authorize the deduction of said dues and uniform assessments.

(2) (a) Deductions shall commence when the employer receives a signed deduction authorization form from the bargaining agent and confirms with the employee, electronically or by other means, that he or she authorized the deduction of dues and uniform assessments. The employer must make such confirmation within 30 days after receiving the signed deduction authorization form.

(b) An employee's authorization to deduct dues and uniform assessments remains in effect until the members of the bargaining unit approve a new collective bargaining agreement with the public employer or for 3 years after the date on which the deduction begins, whichever is earlier.

(c) This subsection does not apply to law enforcement officers as defined in s. 943.10(1) or firefighters as defined in s. 633.102.

(3) Notwithstanding paragraph (2) (b), ~~However, such~~ authorization is revocable at the employee's request upon 30 days' written notice to the employer and employee organization. ~~Said deductions shall commence upon the bargaining agent's written request to the employer.~~

(4) Reasonable costs to the employer of said deductions is ~~shall be~~ a proper subject of collective bargaining.

(5) Such right to deduction, unless revoked under ~~pursuant to~~ s. 447.507, is ~~shall be~~ in force for so long as the employee organization remains the certified bargaining agent for the



417610

employees in the unit.

(6) The public employer is expressly prohibited from any involvement in the collection of fines, penalties, or special assessments.

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

And the title is amended as follows:

Delete lines 13 - 18

and insert:

the revocation; providing applicability; amending s.
447.303, F.S.; providing that certain deductions
commence upon the employer's receipt and confirmation
of the employee's signed deduction authorization form;
specifying the time period that an employee's
authorization to deduct dues and uniform assessments
remains in effect; providing applicability; reenacting



841216

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/05/2021	.	
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The Committee on Rules (Rodrigues) recommended the following:

Senate Amendment to Amendment (417610)

Delete lines 5 - 29
and insert:

3. This paragraph does not apply to members of bargaining units that represent law enforcement officers as defined in s. 943.10 or firefighters as defined in s. 633.102.

Section 2. Section 447.303, Florida Statutes, is amended to read:

447.303 Dues; deduction and collection.—

(1) An ~~Any~~ employee organization that ~~which~~ has been



841216

certified as a bargaining agent has ~~shall have~~ the right to have its dues and uniform assessments deducted and collected by the employer from the salaries of those employees who authorize the deduction of said dues and uniform assessments.

(2) (a) Deductions shall commence when the employer receives a signed deduction authorization form from the bargaining agent and confirms with the employee, electronically or by other means, that he or she authorized the deduction of dues and uniform assessments. The employer must make such confirmation within 30 days after receiving the signed deduction authorization form.

(b) An employee's authorization to deduct dues and uniform assessments remains in effect until the members of the bargaining unit approve a new collective bargaining agreement with the public employer or for 3 years after the date on which the deduction begins, whichever is earlier.

(c) This subsection does not apply to members of bargaining units that represent law enforcement officers as defined in s. 943.10 or firefighters as defined



520890

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Rodrigues) recommended the following:

Senate Amendment to Amendment (417610)

Delete lines 5 - 29
and insert:

3. This paragraph does not apply to members of bargaining
units that represent law enforcement officers, correctional
officers, or correctional probation officers as those terms are
defined in s. 943.10 or firefighters as defined in s. 633.102.

Section 2. Section 447.303, Florida Statutes, is amended to
read:

447.303 Dues; deduction and collection.—



520890

12 (1) An ~~Any~~ employee organization that ~~which~~ has been
13 certified as a bargaining agent ~~has~~ ~~shall have~~ the right to have
14 its dues and uniform assessments deducted and collected by the
15 employer from the salaries of those employees who authorize the
16 deduction of said dues and uniform assessments.

17 (2) (a) Deductions shall commence when the employer receives
18 a signed deduction authorization form from the bargaining agent
19 and confirms with the employee, electronically or by other
20 means, that he or she authorized the deduction of dues and
21 uniform assessments. The employer must make such confirmation
22 within 30 days after receiving the signed deduction
23 authorization form.

24 (b) An employee's authorization to deduct dues and uniform
25 assessments remains in effect until the members of the
26 bargaining unit approve a new collective bargaining agreement
27 with the public employer or for 3 years after the date on which
28 the deduction begins, whichever is earlier.

29 (c) This subsection does not apply to members of bargaining
30 units that represent law enforcement officers, correctional
31 officers, or correctional probation officers as those terms are
32 defined in s. 943.10 or firefighters as defined



717212

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Thurston) recommended the following:

Senate Amendment (with title amendment)

Delete lines 57 - 103.

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

And the title is amended as follows:

Delete lines 13 - 21

and insert:

the revocation; providing an

By the Committee on Judiciary; and Senator Rodrigues

590-02047-21

202178c1

A bill to be entitled

An act relating to dues and uniform assessments; amending s. 447.301, F.S.; requiring that a public employee who desires to join an employee organization sign a membership authorization form; requiring that the form include a specified acknowledgement; requiring an employee organization to revoke an employee's membership upon receipt of the employee's request for revocation; requiring certain employees to provide specified notice to his or her employer to revoke certain deductions; providing that a revocation form may not require an employee to state a reason for the revocation; amending s. 447.303, F.S.; providing that certain deductions commence upon the employer's receipt and confirmation of the employee's signed deduction authorization form; specifying the time period that an employee's authorization to deduct dues and uniform assessments remains in effect; reenacting s. 110.114(3), F.S., relating to employee wage deductions, to incorporate the amendment made to s. 447.303, F.S., in a reference thereto; providing an effective date.

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

Section 1. Subsection (1) of section 447.301, Florida Statutes, is amended to read:

447.301 Public employees' rights; organization and representation.—

Page 1 of 4

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

590-02047-21

202178c1

(1) ~~(a)~~ Public employees ~~shall~~ have the right to form, join, and participate in, or to refrain from forming, joining, or participating in, any employee organization of their own choosing.

(b)1. An employee who desires to join an employee organization must sign a membership authorization form with the bargaining agent. The membership authorization form must contain the following acknowledgment in bold letters and in at least a 14-point type:

I acknowledge and understand that Florida is a right-to-work state and that union membership is not required as a condition of employment. I understand that union membership and payment of union dues and assessments is voluntary and that I may not be discriminated against in any manner if I refuse to join or financially support a union.

2. An employee organization must revoke an employee's membership upon receipt of his or her written request for revocation. However, an employee who has authorized the deduction of dues and uniform assessments by his or her employer must also submit notice to his or her employer as provided in s. 447.303 for the revocation of such deductions. If an employee must complete a form to request revocation from the employee organization, the form may not require a reason for the employee's decision to revoke his or her membership.

Section 2. Section 447.303, Florida Statutes, is amended to read:

Page 2 of 4

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

590-02047-21

202178c1

447.303 Dues; deduction and collection.—

(1) ~~An Any~~ employee organization ~~that which~~ has been certified as a bargaining agent ~~has shall have~~ the right to have its dues and uniform assessments deducted and collected by the employer from the salaries of those employees who authorize the deduction of said dues and uniform assessments.

(2) (a) Deductions shall commence when the employer receives a signed deduction authorization form from the bargaining agent and confirms with the employee, electronically or by other means, that he or she authorized the deduction of dues and uniform assessments. The employer must make such confirmation within 30 days after receiving the signed deduction authorization form.

(b) An employee's authorization to deduct dues and uniform assessments remains in effect until the members of the bargaining unit approve a new collective bargaining agreement with the public employer or for 3 years after the date on which the deduction begins, whichever is earlier.

(c) Notwithstanding paragraph (b), ~~However, such~~ authorization is revocable at the employee's request upon 30 days' written notice to the employer and employee organization. ~~Said deductions shall commence upon the bargaining agent's written request to the employer.~~

(3) Reasonable costs to the employer of said deductions is ~~shall be~~ a proper subject of collective bargaining.

(4) Such right to deduction, unless revoked under pursuant ~~to s. 447.507, is shall be~~ in force for so long as the employee organization remains the certified bargaining agent for the employees in the unit.

590-02047-21

202178c1

(5) The public employer is expressly prohibited from any involvement in the collection of fines, penalties, or special assessments.

Section 3. For the purpose of incorporating the amendment made by this act to section 447.303, Florida Statutes, in a reference thereto, subsection (3) of section 110.114, Florida Statutes, is reenacted to read:

110.114 Employee wage deductions.—

(3) Notwithstanding the provisions of subsections (1) and (2), the deduction of an employee's membership dues deductions as defined in s. 447.203(15) for an employee organization as defined in s. 447.203(11) shall be authorized or permitted only for an organization that has been certified as the exclusive bargaining agent pursuant to chapter 447 for a unit of state employees in which the employee is included. Such deductions shall be subject to the provisions of s. 447.303.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 90

INTRODUCER: Governmental Oversight and Accountability Committee; Ethics and Elections
Committee and Senator Baxley

SUBJECT: Election Administration

DATE: April 2, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Biehl</u>	<u>Roberts</u>	<u>EE</u>	<u>Fav/CS</u>
2.	<u>Candeleria</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>Biehl</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 90 makes the following changes to the Election Code:

- Reduces the number of elections for which one request for a vote-by-mail ballot is sufficient to all elections through the end of the calendar year of the next regularly scheduled general election;
- Moves up the starting time for canvassing vote-by-mail ballots from 22 days before an election to 35-40 days before an election;
- Limits persons who may lawfully be in possession of a vote-by-mail ballot to the voter and his or her immediate family;
- Prohibits the use of drop boxes for return of a vote-by-mail ballot;
- Prohibits a supervisor of elections from mailing or otherwise providing a vote-by-mail ballot without a request;
- Requires the signature on a voter's certificate or ballot cure affidavit to match the most recent one on file;
- Requires an additional identifier number when a written or telephonic request is made for a vote-by-mail ballot;
- Prohibits display of partisan information on the outside of vote-by-mail ballots or envelopes; and

- Requires supervisors of elections to record instances in which a signature on a completed vote-by-mail ballot does not match the one on file.

The bill takes effect July 1, 2021.

II. Present Situation:

Please see “Effect of Proposed Changes.”

III. Effect of Proposed Changes:

Request for Vote-by-Mail Ballot (Section 1)

Present Situation

Florida law allows an elector to request a vote-by-mail (VBM) ballot to be used in lieu of voting at the polls during early voting or on Election Day. An elector does not need to provide a reason for a VBM ballot request.

An elector can request a VBM ballot in person, in writing, or by telephone.¹ In addition, a request for a VBM ballot can be made by the elector’s legal guardian or, if directed by the elector, a member of the elector’s immediate family. The person making the request must disclose:

- The name of the elector for whom the ballot is requested;
- The elector’s address;
- The elector’s date of birth;
- The requester’s name;
- The requester’s address;
- The requester’s driver license number, if available;
- The requester’s relationship to the elector; and
- The requester’s signature, if the request is made in writing.²

If an elector requests a VBM ballot to be sent to an address not on file in the Florida Voter Registration System, the request must be made in writing and signed by the elector, unless the elector is an absent uniformed service voter or overseas voter.³

Current law does not specifically prohibit a supervisor of elections (supervisor) from mailing or otherwise providing a VBM ballot without a request.

For each request for a vote-by-mail ballot received, the supervisor must record:

- The date the request was made;
- The date the vote-by-mail ballot was delivered to the voter or voter’s designee⁴ or to the post office or other carrier;

¹ Sections 101.62(1)(a)-(b), F.S.

² Section 101.62(1)(b), F.S.

³ Section 101.62(1)(b), F.S.

⁴ An elector may designate in writing a person to pick up the VBM ballot for the elector, in compliance with ballot possession limitations (s. 101.62(4)(c)4., F.S.).

- The date the ballot was received by the supervisor;
- The absence of the elector's signature on the voter's certificate, if applicable; and
- Such other information he or she may deem necessary.⁵

Effect of Proposed Changes

Section 1 requires a person making a written or telephonic request for a VBM ballot to additionally provide one of the following identifiers:

- The elector's Florida driver license number;
- The elector's Florida identification card number; or
- The last four digits of the elector's social security number.

Section 1 also prohibits a supervisor from mailing or otherwise providing a VBM ballot unless a request is made.

Section 1 adds to the types of information related to vote-by-mail ballots that supervisors must record to also include whether the voter's certificate on a returned ballot contains a signature that does not match the elector's signature in the registration books or precinct register.⁶

Delivery of Vote-by-Mail Ballot (Section 2)

Present Situation

Current law requires a supervisor to enclose with each VBM ballot two envelopes:

- A secrecy envelope, into which the absent elector shall enclose his or her marked ballot; and
- A mailing envelope, into which the absent elector shall then place the secrecy envelope.⁷

Current law does not prohibit display of partisan information on the outside of VBM ballots or accompanying envelopes.

Effect of Proposed Changes

Section 2 provides that the outside of a VBM ballot and the secrecy and mailing envelopes may not display the party affiliation of the absent elector who has been issued such ballot or display any other partisan information.

Return of Vote-by-Mail Ballot (Sections 3, 5, and 6)

Present Situation

Current law allows a voter to return a completed VBM ballot via mail or drop it off at an authorized site. It requires supervisors to allow voters to physically return completed VBM ballots by placing the envelope containing the marked ballot in a secure drop box.⁸ Secure drop boxes must be placed at the main office of the supervisor, at each branch office of the supervisor, and each early voting site. Drop boxes may also be placed at any other site that would otherwise

⁵ Section 101.62(3), F.S.

⁶ Section 98.461(2), F.S., requires a computer printout or electronic database to be used at the polls as a precinct register. The precinct register must contain the date of the election, the precinct number, specified information related to each registered voter, and spaces for the voter's signature and for the initials of the witnessing clerk or inspector.

⁷ Section 101.64(1), F.S.

⁸ Section 101.69(2), F.S.

qualify as an early voting site if such site is staffed during the county's early voting hours of operation by an employee of the supervisor's office or a sworn law enforcement officer.⁹

Current law makes it a first-degree misdemeanor for a person to provide or offer to provide, and for any person to accept, a benefit in exchange for distributing, ordering, requesting, collecting, delivering, or otherwise physically possessing more than two VBM ballots per election in addition to his or her own ballot or a ballot belonging to an immediate family member.¹⁰

Effect of Proposed Changes

Section 5 prohibits the use of drop boxes for return of completed VBM ballots.

Section 6 also limits persons who may lawfully possess a VBM ballot to the voter and his or her immediate family and makes a conforming change to persons who may be designated by an elector to pick up his or her VBM ballot.

Effective Period for Vote-by-Mail Ballot Request (Sections 1 and 7)

Present Situation

A general election is held on the first Tuesday after the first Monday in November of every even-numbered year – this means that a general election is held every two years.¹¹ A primary election is held 11 weeks before each general election.¹² The dates for the next primary election and general election are:

- Primary election – August 23, 2022; and
- General election – November 8, 2022.

Florida law provides that one request from an elector for a VBM ballot is sufficient to receive a VBM ballot for all elections through the end of the calendar year of the second ensuing regularly scheduled general election,¹³ unless the elector indicates at the time of the request the elections for which he or she would like to receive a VBM ballot.¹⁴ A request for a VBM ballot may be considered canceled when any first-class mail sent by the supervisor of elections (supervisor) to the elector is returned as undeliverable.¹⁵

Since the establishment of Florida's absentee/vote-by-mail program, the number of elections for which one request for a VBM ballot is sufficient has varied, including:

- All elections held within a calendar year;¹⁶

⁹ *Id.*

¹⁰ Section 104.0616(2), F.S. The term "immediate family" means a person's spouse or the parent, child, grandparent, or sibling of the person or the person's spouse (s. 104.0616(1), F.S.).

¹¹ Article VI, s. 5(a), FLA. CONST.; and s. 100.031, F.S. A general election is held to choose a successor to each elective federal, state, county, and district officer whose term will expire before the next general election.

¹² Section 100.061, F.S. A primary election is held to determine party nominees to be on the ballot in the general election to fill each federal, state, county, or district office.

¹³ For example, under the current law, if a voter makes a general request for a VBM ballot in February 2021, then he or she would receive VBM ballots for all elections through the end of 2024, because the next two general elections will be held in November 2022 and November 2024, respectively.

¹⁴ Section 101.62(1)(a), F.S.

¹⁵ *Id.*

¹⁶ *See, e.g.,* the 2006 Florida Statutes.

- All elections through the next regularly scheduled general election;¹⁷
- All elections through the next two regularly scheduled general elections;¹⁸ and
- All elections through the end of the calendar year of the second ensuing regularly scheduled general election.¹⁹

In addition to Florida law, the federal Uniformed and Overseas Citizens Absentee Voter Act (UOCAVA) provides absentee voting requirements for federal offices for voters who are United States uniformed services members on active duty, Merchant Marine members, spouses or dependents thereof, or United States citizens residing outside of the United States.²⁰ In part, the UOCAVA requires establishment of an official post card form, known as the federal post card application (FPCA), to be used for voter registration application and absentee ballot application.²¹ The UOCAVA does not specify a length of time for which one FPCA request is effective. The Federal Voting Assistance Program, which is tasked with administrative responsibilities for the UOCAVA, currently provides guidance that the FPCA request allow an eligible voter to request an absentee ballot for all federal elections in the calendar year.²² The guidance further recommends that eligible voters send in a new FPCA request every January and each time they move.²³

Effect of Proposed Changes

Section 1 reduces the number of elections for which one request for a VBM ballot is sufficient to all elections through the end of the calendar year of the next regularly scheduled general election.²⁴

Section 7 specifically provides that if an elector has already submitted a VBM ballot request that would, under the current law, be effective through the end of the calendar year of the second ensuing regularly scheduled general election, he or she must resubmit a VBM ballot request after the effective date of the bill in order to receive VBM ballots for the 2022 primary election and general election.

¹⁷ See, e.g., ch. 2010-167, s. 7, L.O.F.

¹⁸ See, e.g., ch. 2007-30, s. 30, L.O.F.

¹⁹ See, e.g., ch. 2011-40, s. 37, L.O.F.

²⁰ 52 U.S.C. 203.

²¹ 52 U.S.C. ss. 20301(b)(2) and 20302(a)(4).

²² Federal Voting Assistance Program, *Frequently Asked Questions about Absentee Voting*, available at <https://www.fvap.gov/guide/appendix/faq>, last accessed February 17, 2021.

²³ *Id.*

²⁴ For example, under the proposed changes, if a voter makes a request for a VBM ballot on August 1, 2021, then he or she would receive VBM ballots for all elections held through December 31, 2022, which is the end of the calendar year of the next regularly scheduled general election.

Starting Date for Vote-by-Mail Canvassing Period (Section 4)

Present Situation

Florida law allows county canvassing boards²⁵ to begin canvassing VBM ballots starting at 7 a.m. on the 22nd day before an election.²⁶ In 2019, the Legislature extended this starting period from 15 days before an election to 22 days before an election.²⁷

In 2020, at the request of the supervisors and in response to the COVID-19 pandemic, Governor Ron DeSantis issued an executive order suspending the 22-day timeframe and allowing each county canvassing board to begin canvassing VBM ballots as soon as the Logic and Accuracy (L&A) testing of the machines/equipment was completed.²⁸ The L&A tests are designed to ensure the integrity and accuracy of the tabulators and voting machines.²⁹ Because the timing of these L&A tests is tied to the beginning of early voting in each county,³⁰ which varies from 10 to 15 days before an election,³¹ in 2020 counties were generally able to start their VBM canvass 35 to 40 days before the primary election and general election, which is 13 to 18 days earlier than the 22 days that the current statute provides.

The media has credited the canvassing of VBM ballots prior to Election Day as one of the reasons Florida's 2020 general election went so smoothly and why results were available so much more quickly than for states, such as Pennsylvania, that had to wait until Election Day to start counting.³²

Effect of Proposed Changes

Section 4 allows a county canvassing board to begin canvassing VBM ballots as soon as the county finishes L&A testing. In practice, this means that:

- A county that begins early voting as soon as permitted under law (15 days before an election) may begin VBM canvassing as early as the 40th day before an election instead of the 22nd day before an election, providing an additional 18 days to count; and
- A county that waits until 10 days before an election to begin early voting will be permitted to begin VBM canvassing as early as the 35th day before an election instead of the 22nd day before an election, providing an additional 13 days to count.

This change will facilitate a more orderly election administration process and quicker reporting of results.

²⁵ A county canvassing board is composed of the supervisor of elections; a county court judge, who acts as chair; and the chair of the board of county commissioners (s. 102.141(1), F.S.).

²⁶ Section 101.68(2)(a), F.S.

²⁷ Chapter 2019-162, s. 19, L.O.F.

²⁸ Office of the Governor, Executive Order No. 20-149 (June 17, 2020), available at https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-149.pdf, last accessed February 4, 2021.

²⁹ Section 101.5612(2), F.S.

³⁰ Each supervisor must complete an L&A test on any day up to 25 days before the start of early voting (*id.*).

³¹ *Id.*; see also, s. 101.657(1)(d), F.S. (counties *may* start early voting 15 days before an election, but *must* start no later than 10 days before).

³² See, e.g., Tampa Bay News 10 (WTSP), *Florida Counted Votes Quickly in the 2020 Election – What Happened in the Other States?* (Nov. 18, 2020), available at <https://www.wtsp.com/article/news/politics/florida-2020-election-counting/67-33b47308-7571-4c70-8afc-cfa8b872bcca>, last accessed February 4, 2021.

Canvassing of Vote-by-Mail Ballots/Signatures (Section 4)

Present Situation

The mailing envelope in which an absent elector sends back a marked VBM ballot must bear on the back side a voter's certificate via which the elector must affirm with a signature that he or she is a qualified and registered voter of the relevant county and that he or she has not and will not vote more than one ballot in the election.³³

If an elector returns a VBM ballot that does not include a signature or contains a signature that does not match the one in the registration books or precinct register, the supervisor must notify the elector of the signature deficiency and direct the elector to the cure affidavit³⁴ and instructions on the supervisor's website.³⁵ Along with the cure affidavit, the elector must submit a copy of one of a specified list of acceptable identifications.³⁶

During canvassing of VBM ballots, a canvassing board must, if the supervisor has not already done so, compare the elector's signature on the voter's certificate or the ballot cure affidavit with the elector's signature in the registration books or the precinct register. A VBM ballot may only be counted if:

- The signature on the voter's certificate or the cure affidavit matches the signature in the registration books or precinct register;³⁷ or
- The cure affidavit contains a signature that does not match the signature in the registration books or precinct register, but the elector has submitted a current and valid "Tier 1 identification"³⁸ that confirms the identity of the elector.³⁹

Effect of Proposed Changes

Section 4 requires the signature on a voter's certificate or ballot cure affidavit to match the *most recent* signature in the registration books or precinct register.

Effective Date of the Bill (Section 8)

The bill takes effect July 1, 2021.

³³ Section 101.64(1), F.S.

³⁴ The VBM ballot cure affidavit requires the elector to affirm with a signature that he or she requested and returned the VBM ballot and has not and will not vote more than one ballot in the election (s. 101.68(4)(c), F.S.).

³⁵ Section 101.68(4)(a), F.S. The supervisor may make the notification via email, text message, or telephone.

³⁶ Section 101.68(4)(d)3., F.S.

³⁷ In the case of a cure affidavit, the supporting identification must also confirm the identity of the elector.

³⁸ "Tier 1 identification" means a current and valid identification that includes the elector's name and photograph, including a Florida driver license; Florida identification card issued by the Department of Highway Safety and Motor Vehicles; United States passport; debit or credit card; military identification; student identification; retirement center identification; neighborhood association identification; public assistance identification; veteran health identification card issued by the United States Department of Veterans Affairs; Florida license to carry a concealed weapon or firearm; of employee identification card issued by any branch, department, agency, or entity of the federal government, the state, a county, or a municipality (s. 101.68(4)(d)2., F.S.).

³⁹ Section 101.68(2)(c)1., F.S.

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

Not applicable. Bills that affect state or local elections are exempt from the requirements of Art. VII, s. 18 of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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:

None.

C. Government Sector Impact:

If the reduced time period for which one VBM ballot request is sufficient results in a higher total number of requests, supervisors are likely to experience additional workload and incur additional processing costs.

Elimination of drop boxes as a method for returning VBM ballots may reduce supervisors' workload because supervisors will no longer be required to staff off-site drop boxes.

Requiring supervisors of elections to record instances in which a signature on a returned VBM ballot does not match the one on file may slightly increase supervisors of elections' workload.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 101.62, 101.64, 101.65, 101.68, 101.69, and 104.0616.

IX. Additional Information:

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

CS/CS by Governmental Oversight and Accountability on March 10, 2021:

The committee substitute makes the following changes:

- Reduces the number of elections for which one request for a vote-by-mail ballot is sufficient to all elections through the end of the calendar year of the next regularly scheduled general election;
- Moves up the starting time for canvassing vote-by-mail ballots from 22 days before an election to 35-40 days before an election;
- Limits persons who may lawfully be in possession of a vote-by-mail ballot to the voter and his or her immediate family;
- Prohibits the use of drop boxes for return of a vote-by-mail ballot;
- Prohibits a supervisor of elections from mailing or otherwise providing a vote-by-mail ballot without a request;
- Requires the signature on a voter's certificate or ballot cure affidavit to match the most recent one on file;
- Requires an additional identifier number when a written or telephonic request is made for a vote-by-mail ballot;
- Prohibits display of partisan information on the outside of vote-by-mail ballots or envelopes; and
- Requires supervisors of elections to record instances in which a signature on a completed vote-by-mail ballot does not match the one on file.

CS by Ethics and Elections on February 16, 2021:

As originally filed, the bill reduced the number of elections for which one VBM ballot request is sufficient to all elections held within a calendar year of the request. The committee substitute instead reduces the number to all elections through the end of the calendar year of the next regularly scheduled general election.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Thurston) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (1) of section 20.10, Florida
Statutes, is amended to read:

20.10 Department of State.—There is created a Department of
State.

(1) The head of the Department of State is the Secretary of
State. The Secretary of State shall be elected at the statewide
general election at which the Governor, Lieutenant Governor, and



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Cabinet officers are elected as provided in s. 5, Art. IV of the State Constitution, for a term of 4 years beginning on the first Tuesday after the first Monday in January of the year following such election ~~appointed by the Governor, subject to confirmation by the Senate, and shall serve at the pleasure of the Governor.~~

The Secretary of State shall perform the functions conferred by the State Constitution upon the custodian of state records.

Section 2. Subsection (6) of section 97.052, Florida Statutes, is amended to read:

97.052 Uniform statewide voter registration application.—

(6) If a voter registration applicant fails to provide any of the required information on the voter registration application form, the supervisor shall notify the applicant of the failure by mail within 5 business days after the supervisor has the information available in the voter registration system. ~~The applicant shall have an opportunity to complete the application form to vote in the next election up until the book closing for that next election.~~

Section 3. Subsections (2) and (4), paragraph (b) of subsection (5), and subsection (6) of section 97.053, Florida Statutes, are amended to read:

97.053 Acceptance of voter registration applications.—

(2) A voter registration application is complete and becomes the official voter registration record of that applicant when all information necessary to establish the applicant's eligibility pursuant to s. 97.041 is received by a voter registration official and verified pursuant to subsection (6). ~~If the applicant fails to complete his or her voter registration application prior to the date of book closing for an election,~~



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41 ~~then such applicant shall not be eligible to vote in that~~
42 ~~election.~~

43 (4) The registration date for a valid initial voter
44 registration application that has been mailed to a driver
45 license office, a voter registration agency, an armed forces
46 recruitment office, the division, or the office of any
47 supervisor in the state and bears a clear postmark is the date
48 of that postmark. If an initial voter registration application
49 that has been mailed does not bear a postmark or if the postmark
50 is unclear, the registration date is the date the application is
51 received by any supervisor or the division, ~~unless it is~~
52 ~~received within 5 days after the closing of the books for an~~
53 ~~election, excluding Saturdays, Sundays, and legal holidays, in~~
54 ~~which case the registration date is the book closing date.~~

55 (5)

56 (b) An applicant who fails to designate party affiliation
57 or affirmatively select no party affiliation may not ~~must~~ be
58 registered ~~without party affiliation~~. The supervisor must notify
59 the voter by mail that the voter has not been registered ~~without~~
60 ~~party affiliation~~ and that the voter must complete a new
61 registration application and designate a party affiliation or
62 affirmatively select no party affiliation. The voter
63 registration application must clearly denote this requirement
64 ~~may change party affiliation as provided in s. 97.1031.~~

65 (6) A voter registration application may be accepted as
66 valid only after the department has verified the authenticity or
67 nonexistence of the driver license number, the Florida
68 identification card number, or the last four digits of the
69 social security number provided by the applicant. If a completed



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voter registration application has been received ~~by the book-~~
~~closing deadline~~ but the driver license number, the Florida
identification card number, or the last four digits of the
social security number provided by the applicant cannot be
verified, the applicant shall be notified that the number cannot
be verified and that the applicant must provide evidence to the
supervisor sufficient to verify the authenticity of the
applicant's driver license number, Florida identification card
number, or last four digits of the social security number. If
the applicant provides the necessary evidence, the supervisor
shall place the applicant's name on the registration rolls as an
active voter. If the applicant has not provided the necessary
evidence or the number has not otherwise been verified prior to
the applicant presenting himself or herself to vote, the
applicant shall be provided a provisional ballot. The
provisional ballot shall be counted only if the number is
verified by the end of the canvassing period or if the applicant
presents evidence to the supervisor of elections sufficient to
verify the authenticity of the applicant's driver license
number, Florida identification card number, or last four digits
of the social security number within a reasonable amount of time
after no later than 5 p.m. of the second day following the
election.

Section 4. Sections 97.055 and 97.0555, Florida Statutes,
are repealed.

Section 5. Section 97.0556, Florida Statutes, is created to
read:

97.0556 Same-day voter registration.—A person who meets the
qualifications to register to vote in s. 97.041 and provides the



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information required for the uniform statewide voter registration application prescribed in s. 97.052 may register to vote and cast a ballot on election day or at an early voting site.

Section 6. Subsection (1) of section 97.057, Florida Statutes, is amended to read:

97.057 Voter registration by the Department of Highway Safety and Motor Vehicles.—

(1) The Department of Highway Safety and Motor Vehicles shall provide the opportunity to preregister to vote, register to vote, or ~~to~~ update a voter registration record to each individual who comes to an office of that department to:

(a) Apply for or renew a driver license;

(b) Apply for or renew an identification card pursuant to chapter 322; or

(c) Change an address on an existing driver license or identification card.

Section 7. Paragraph (a) of subsection (3) of section 97.0575, Florida Statutes, is amended to read:

97.0575 Third-party voter registrations.—

(3) (a) A third-party voter registration organization that collects voter registration applications serves as a fiduciary to the applicant, ensuring that any voter registration application entrusted to the organization, irrespective of party affiliation, race, ethnicity, or gender, shall be promptly delivered to the division or the supervisor of elections within 48 hours after the applicant completes it or the next business day if the appropriate office is closed for that 48-hour period. If a voter registration application collected by any third-party



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voter registration organization is not promptly delivered to the division or supervisor of elections, the third-party voter registration organization is liable for the following fines:

1. A fine in the amount of \$50 for each application received by the division or the supervisor of elections more than 48 hours after the applicant delivered the completed voter registration application to the third-party voter registration organization or any person, entity, or agent acting on its behalf or the next business day, if the office is closed. A fine in the amount of \$250 for each application received if the third-party voter registration organization or person, entity, or agency acting on its behalf acted willfully.

~~2. A fine in the amount of \$100 for each application collected by a third-party voter registration organization or any person, entity, or agent acting on its behalf, before book closing for any given election for federal or state office and received by the division or the supervisor of elections after the book-closing deadline for such election. A fine in the amount of \$500 for each application received if the third-party registration organization or person, entity, or agency acting on its behalf acted willfully.~~

~~3.~~ A fine in the amount of \$500 for each application collected by a third-party voter registration organization or any person, entity, or agent acting on its behalf, which is not submitted to the division or supervisor of elections. A fine in the amount of \$1,000 for any application not submitted if the third-party voter registration organization or person, entity, or agency acting on its behalf acted willfully.



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The aggregate fine pursuant to this paragraph which may be assessed against a third-party voter registration organization, including affiliate organizations, for violations committed in a calendar year is \$1,000.

Section 8. Paragraph (c) of subsection (4) of section 98.065, Florida Statutes, is amended to read:

98.065 Registration list maintenance programs.—

(4)

(c) The supervisor must designate as inactive all voters who have not voted in at least one of the last two general elections, who have been sent an address confirmation final notice, and who have not returned the postage prepaid, preaddressed return form within 30 days or for which the final notice has been returned as undeliverable. Names on the inactive list may not be used to calculate the number of signatures needed on any petition. A voter on the inactive list may be restored to the active list of voters upon the voter updating his or her registration, requesting a vote-by-mail ballot, or appearing to vote. However, if the voter does not update his or her voter registration information, request a vote-by-mail ballot, or vote by the second general election after being placed on the inactive list, the voter's name shall be removed from the statewide voter registration system and the voter shall be required to reregister to have his or her name restored to the statewide voter registration system.

Section 9. Paragraph (d) of subsection (1) and subsection (3) of section 98.0981, Florida Statutes, are amended to read:

98.0981 Reports; voting history; statewide voter registration system information; precinct-level election



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results; preelection ~~book-closing~~ statistics.—

(1) VOTING HISTORY AND STATEWIDE VOTER REGISTRATION SYSTEM
INFORMATION.—

(d) File specifications are as follows:

1. The file shall contain records designated by the
categories below for all qualified voters who, regardless of the
voter's county of residence or active or inactive registration
status on election day ~~at the book-closing~~ for the corresponding
election that the file is being created for:

a. Voted a regular ballot at a precinct location.

b. Voted at a precinct location using a provisional ballot
that was subsequently counted.

c. Voted a regular ballot during the early voting period.

d. Voted during the early voting period using a provisional
ballot that was subsequently counted.

e. Voted by vote-by-mail ballot.

f. Attempted to vote by vote-by-mail ballot, but the ballot
was not counted.

g. Attempted to vote by provisional ballot, but the ballot
was not counted in that election.

2. Each file shall be created or converted into a tab-
delimited format.

3. File names shall adhere to the following convention:

a. Three-character county identifier as established by the
department followed by an underscore.

b. Followed by four-character file type identifier of
"VHO3" followed by an underscore.

c. Followed by FVRS election ID followed by an underscore.

d. Followed by Date Created followed by an underscore.



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e. Date format is YYYYMMDD.

f. Followed by Time Created - HHMMSS.

g. Followed by ".txt".

4. Each record shall contain the following columns: Record Identifier, FVRS Voter ID Number, FVRS Election ID Number, Vote Date, Vote History Code, Precinct, Congressional District, House District, Senate District, County Commission District, and School Board District.

(3) PRECINCT-LEVEL PREELECTION ~~BOOK CLOSING~~ STATISTICS.— After the 29th day before the date of an election ~~the date of book closing~~ but before the date of an election as defined in s. 97.021 to fill a national, state, county, or district office, or to vote on a proposed constitutional amendment, the department shall compile the following precinct-level statistical data for each county:

(a) Precinct numbers.

(b) Total number of active registered voters by party for each precinct.

Section 10. Paragraph (a) of subsection (7) of section 99.061, Florida Statutes, is amended to read:

99.061 Method of qualifying for nomination or election to federal, state, county, or district office.—

(7)(a) In order for a candidate to be qualified, the following items must be received by the filing officer by the end of the qualifying period:

1. A cashier's check purchased with funds of the campaign account or a properly executed check drawn upon the candidate's campaign account payable to the person or entity as prescribed by the filing officer in an amount not less than the fee



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required by s. 99.092, unless the candidate obtained the required number of signatures on petitions pursuant to s. 99.095. The filing fee for a special district candidate is not required to be drawn upon the candidate's campaign account. If a candidate's check is returned by the bank for any reason, the filing officer shall immediately notify the candidate and the candidate shall have until the end of qualifying to pay the fee with a cashier's check purchased from funds of the campaign account. Failure to pay the fee as provided in this subparagraph shall disqualify the candidate.

2. The candidate's oath required by s. 99.021, which must contain the name of the candidate as it is to appear on the ballot; the office sought, including the district or group number if applicable; and the signature of the candidate, which must be verified under oath or affirmation pursuant to s. 92.525(1)(a).

3. If the office sought is partisan, the written statement of political party affiliation required by s. 99.021(1)(b).

4. The completed form for the appointment of campaign treasurer and designation of campaign depository, as required by s. 106.021.

5. The full and public disclosure or statement of financial interests required by subsection (5). A public officer who has filed the full and public disclosure or statement of financial interests with the Commission on Ethics or the supervisor before ~~of elections prior to~~ qualifying for office may file a copy of that disclosure at the time of qualifying.

Section 11. Subsection (7) and paragraph (a) of subsection (11) of section 100.371, Florida Statutes, are amended to read:



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100.371 Initiatives; procedure for placement on ballot.—

(7)~~(a)~~ A sponsor that collects petition forms or uses a petition circulator to collect petition forms serves as a fiduciary to the elector signing the petition form, ensuring that any petition form entrusted to the petition circulator shall be promptly delivered to the supervisor ~~of elections~~ within 30 days after the elector signs the form.

(a) If a petition form collected by any petition circulator is not promptly delivered to the supervisor of elections, the sponsor is liable for the following fines:

1. A fine in the amount of \$50 for each petition form received by the supervisor of elections more than 30 days after the elector signed the petition form or the next business day, if the office is closed. A fine in the amount of \$250 for each petition form received if the sponsor or petition circulator acted willfully.

2. A fine in the amount of \$500 for each petition form collected by a petition circulator which is not submitted to the supervisor of elections. A fine in the amount of \$1,000 for any petition form not submitted if the sponsor or petition circulator acted willfully.

(b) A showing by the sponsor that the failure to deliver the petition form within the required timeframe is based upon force majeure or impossibility of performance is an affirmative defense to a violation of this subsection. The fines described in this subsection may be waived upon a showing that the failure to deliver the petition form promptly is based upon force majeure or impossibility of performance.

(c) A sponsor shall deliver petition forms, which must be



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grouped in batches by the petition circulator who collected
them, to the supervisor.

(11)(a) An initiative petition form circulated for
signature may not be bundled with or attached to any other
petition. Each signature shall be dated when made and shall be
valid until the next February 1 occurring in an even-numbered
year for the purpose of the amendment appearing on the ballot
for the general election occurring in that same year, provided
all other requirements of law are met. The sponsor shall submit
signed and dated forms to the supervisor of elections for the
county of residence listed by the person signing the form for
verification of the number of valid signatures obtained. If a
signature on a petition is from a registered voter in another
county, the supervisor shall notify the petition sponsor of the
misfiled petition. The supervisor shall promptly verify the
signatures within 60 days after receipt of the petition forms
and payment of a fee for the actual cost of signature
verification incurred by the supervisor. However, for petition
forms submitted less than 60 days before February 1 of an even-
numbered year, the supervisor shall promptly verify the
signatures within 30 days after receipt of the form and payment
of the fee for signature verification. The supervisor shall
promptly record, in the manner prescribed by the Secretary of
State, the date each form is received by the supervisor, and the
date the signature on the form is verified as valid. The
supervisor may verify that the signature on a form is valid only
if:

1. The form contains the original signature of the
purported elector. A digital signature of the purported elector



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which complies with the requirements of part I of chapter 668 is considered an original signature for purposes of this requirement.

2. The purported elector has accurately recorded on the form the date on which he or she signed the form.

3. The form sets forth the purported elector's name, address, city, county, and voter registration number or date of birth.

4. The purported elector is, at the time he or she signs the form and at the time the form is verified, a duly qualified and registered elector in the state.

5. The signature was obtained legally, including that if a paid petition circulator was used, the circulator was validly registered under subsection (3) when the signature was obtained.

The supervisor shall retain the signature forms for at least 1 year following the election in which the issue appeared on the ballot or until the division notifies the supervisors of elections that the committee that circulated the petition is no longer seeking to obtain ballot position.

Section 12. Section 100.51, Florida Statutes, is created to read:

100.51 General Election Day paid holiday.—In order to encourage civic participation, enable more individuals to serve as poll workers, and provide additional time for the resolution of any issues that arise while an elector is casting his or her vote, General Election Day is a paid holiday. An elector is entitled to absent himself or herself from any service or employment in which he or she is engaged or employed during the



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time the polls are open on General Election Day. An elector who absents himself or herself under this section may not be penalized in any way and a deduction may not be made from his or her usual salary or wages on account of his or her absence.

Section 13. Section 101.016, Florida Statutes, is created to read:

101.016 Strategic elections equipment reserve.—The Division of Elections shall maintain a strategic elections equipment reserve of voting systems that may be deployed in the event of an emergency as defined in s. 101.732 or upon the occurrence of equipment capacity issues due to unexpected voter turnout. The reserve shall include tabulation equipment and any other necessary equipment, such as printers, that are in use by each supervisor of elections. In lieu of maintaining a physical reserve of such equipment, the division may contract with a vendor of voting equipment that shall provide such equipment on an as-needed basis.

Section 14. Subsections (1) and (2) of section 101.048, Florida Statutes, are amended to read:

101.048 Provisional ballots.—

(1) At all elections, a voter claiming to be properly registered in the state and eligible to vote ~~at the precinct~~ in the election but whose eligibility cannot be determined, a person whom an election official asserts is not eligible, and other persons specified in the code shall be entitled to vote a provisional ballot in the county in which the voter claims to be registered. Once voted, the provisional ballot shall be placed in a secrecy envelope and thereafter sealed in a provisional ballot envelope. The provisional ballot shall be deposited in a



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ballot box. All provisional ballots shall remain sealed in their envelopes for return to the supervisor of elections. The department shall prescribe the form of the provisional ballot envelope. A person casting a provisional ballot shall have the right to present written evidence supporting his or her eligibility to vote to the supervisor of elections by not later than 5 p.m. on the second day following the election.

(2)(a) The county canvassing board shall examine each Provisional Ballot Voter's Certificate and Affirmation to determine if the person voting that ballot was entitled to vote in the county in which ~~at the precinct where~~ the person cast a vote in the election and that the person had not already cast a ballot in the election. In determining whether a person casting a provisional ballot is entitled to vote, the county canvassing board shall review the information provided in the Voter's Certificate and Affirmation, written evidence provided by the person pursuant to subsection (1), information provided in any cure affidavit and accompanying supporting documentation pursuant to subsection (6), any other evidence presented by the supervisor, and, in the case of a challenge, any evidence presented by the challenger. A ballot of a person casting a provisional ballot shall be canvassed pursuant to paragraph (b) unless the canvassing board determines by a preponderance of the evidence that the person was not entitled to vote.

(b) If it is determined that the person was registered and entitled to vote in the county in which ~~at the precinct where~~ the person cast a vote in the election, the canvassing board must compare the signature on the Provisional Ballot Voter's Certificate and Affirmation or the provisional ballot cure



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affidavit with the signature on the voter's registration or precinct register. A provisional ballot may be counted only if:

1. The signature on the voter's certificate or the cure affidavit matches the elector's signature in the registration books or the precinct register; however, in the case of a cure affidavit, the supporting identification listed in subsection (6) must also confirm the identity of the elector; or

2. The cure affidavit contains a signature that does not match the elector's signature in the registration books or the precinct register, but the elector has submitted a current and valid Tier 1 form of identification confirming his or her identity pursuant to subsection (6).

For purposes of this paragraph, any canvassing board finding that signatures do not match must be by majority vote and beyond a reasonable doubt.

(c) Any provisional ballot not counted must remain in the envelope containing the Provisional Ballot Voter's Certificate and Affirmation and the envelope shall be marked "Rejected as Illegal."

(d) If a provisional ballot is validated following the submission of a cure affidavit, the supervisor must make a copy of the affidavit, affix it to a voter registration application, and immediately process it as a valid request for a signature update pursuant to s. 98.077.

Section 15. Paragraph (a) of subsection (2) and paragraph (a) of subsection (3) of section 101.151, Florida Statutes, are amended to read:

101.151 Specifications for ballots.—



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(2) (a) The ballot must include the following office titles above the names of the candidates for the respective offices in the following order:

1. The office titles of President and Vice President ~~above the names of the candidates for President and Vice President of the United States nominated by the political party that received the highest vote for Governor in the last general election of the Governor in this state, followed by the names of other candidates for President and Vice President of the United States who have been properly nominated.~~

2. The office titles of United States Senator and Representative in Congress.

3. The office titles of Governor and Lieutenant Governor; Attorney General; Chief Financial Officer; Commissioner of Agriculture; Secretary of State; State Attorney, with the applicable judicial circuit; and Public Defender, with the applicable judicial circuit.

4. The office titles of State Senator and State Representative, with the applicable district for the office printed beneath.

5. The office titles of Clerk of the Circuit Court or, when the Clerk of the Circuit Court also serves as the County Comptroller, Clerk of the Circuit Court and Comptroller, when authorized by law; Clerk of the County Court, when authorized by law; Sheriff; Property Appraiser; Tax Collector; District Superintendent of Schools; and Supervisor of Elections.

6. The office titles of Board of County Commissioners, with the applicable district printed beneath each office, and such other county and district offices as are involved in the



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election, in the order fixed by the Department of State, followed, in the year of their election, by "Party Offices," and thereunder the offices of state and county party executive committee members.

(3) (a) The names of the candidates of each ~~the party that received the highest number of votes for Governor in the last election in which a Governor was elected~~ shall be ordered randomly placed first for each office on the general election ballot, together with an appropriate abbreviation of the party name; ~~the names of the candidates of the party that received the second highest vote for Governor shall be placed second for each office, together with an appropriate abbreviation of the party name.~~

Section 16. Subsection (6) is added to section 101.5612, Florida Statutes, to read:

101.5612 Testing of tabulating equipment.—

(6) A supervisor of elections shall annually file with the Secretary of State a detailed plan for operations in the event that maximum voter turnout occurs on election day and a recount is required in each race on a ballot.

Section 17. Paragraph (a) of subsection (1), subsection (2), and paragraph (c) of subsection (4) of section 101.62, Florida Statutes, are amended, and subsection (7) is added to that section, to read:

101.62 Request for vote-by-mail ballots.—

(1) (a) The supervisor shall accept a request for a vote-by-mail ballot from an elector in person or in writing. One request shall be deemed sufficient to receive a vote-by-mail ballot for all elections until the elector or the elector's designee



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notifies the supervisor that the elector cancels such request ~~through the end of the calendar year of the second ensuing regularly scheduled general election~~, unless the elector or the elector's designee indicates at the time the request is made the elections for which the elector desires to receive a vote-by-mail ballot. Such request may be considered canceled when any first-class mail sent by the supervisor to the elector is returned as undeliverable.

(2) A request for a vote-by-mail ballot to be mailed to a voter must be received no later than 5 p.m. on the 11th ~~10th~~ day before the election by the supervisor. The supervisor shall mail vote-by-mail ballots to voters requesting ballots by such deadline no later than 8 days before the election.

(4)

(c) The supervisor shall provide a vote-by-mail ballot to each elector by whom a request for that ballot has been made by one of the following means:

1. By nonforwardable, return-if-undeliverable mail to the elector's current mailing address on file with the supervisor or any other address the elector specifies in the request.

2. By forwardable mail, e-mail, or facsimile machine transmission to absent uniformed services voters and overseas voters. The absent uniformed services voter or overseas voter may designate in the vote-by-mail ballot request the preferred method of transmission. If the voter does not designate the method of transmission, the vote-by-mail ballot shall be mailed.

3. By personal delivery before 7 p.m. on election day to the elector, upon presentation of the identification required in s. 101.043.



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4. By delivery to a designee on election day or up to 11 ~~9~~ days prior to the day of an election. Any elector may designate in writing a person to pick up the ballot for the elector; however, the person designated may not pick up more than two vote-by-mail ballots per election, other than the designee's own ballot, except that additional ballots may be picked up for members of the designee's immediate family. For purposes of this section, "immediate family" means the designee's spouse or the parent, child, grandparent, or sibling of the designee or of the designee's spouse. The designee shall provide to the supervisor the written authorization by the elector and a picture identification of the designee and must complete an affidavit. The designee shall state in the affidavit that the designee is authorized by the elector to pick up that ballot and shall indicate if the elector is a member of the designee's immediate family and, if so, the relationship. The department shall prescribe the form of the affidavit. If the supervisor is satisfied that the designee is authorized to pick up the ballot and that the signature of the elector on the written authorization matches the signature of the elector on file, the supervisor shall give the ballot to that designee for delivery to the elector.

5. Except as provided in s. 101.655, the supervisor may not deliver a vote-by-mail ballot to an elector or an elector's immediate family member on the day of the election unless there is an emergency, to the extent that the elector will be unable to go to his or her assigned polling place. If a vote-by-mail ballot is delivered, the elector or his or her designee shall execute an affidavit affirming to the facts which allow for



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delivery of the vote-by-mail ballot. The department shall adopt a rule providing for the form of the affidavit.

(7) If a deadline imposed under this section falls on a day when the office of the supervisor is usually closed, the deadline shall be extended until the next business day.

Section 18. Subsections (1) and (2) of section 101.64, Florida Statutes, are amended to read:

101.64 Delivery of vote-by-mail ballots; envelopes; form.—

(1) The supervisor shall enclose with each vote-by-mail ballot two envelopes: a secrecy envelope, into which the absent elector shall enclose his or her marked ballot; and a postage paid mailing envelope, into which the absent elector shall then place the secrecy envelope, which shall be addressed to the supervisor and also bear on the back side a certificate in substantially the following form:

Note: Please Read Instructions Carefully Before
Marking Ballot and Completing Voter's Certificate.

VOTER'S CERTIFICATE

I,, do solemnly swear or affirm that I am a qualified and registered voter of County, Florida, and that I have not and will not vote more than one ballot in this election. I understand that if I commit or attempt to commit any fraud in connection with voting, vote a fraudulent ballot, or vote more than once in an election, I can be convicted of a felony of the third degree and fined up to \$5,000 and/or imprisoned for up to 5 years. I also understand that failure to sign this certificate



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will invalidate my ballot.

...(Date)...

...(Voter's Signature or Last Four Digits of Social Security Number)...

...(E-Mail Address)... ...(Home Telephone Number)...

...(Mobile Telephone Number)...

(2) The certificate shall be arranged on the back of the mailing envelope so that the line for the signature or the last four digits of the social security number of the absent elector is across the seal of the envelope; however, no statement shall appear on the envelope which indicates that a signature or the last four digits of the social security number of the voter must cross the seal of the envelope. The absent elector shall execute the certificate on the envelope.

Section 19. Section 101.65, Florida Statutes, is amended to read:

101.65 Instructions to absent electors.—The supervisor shall enclose with each vote-by-mail ballot separate printed instructions in substantially the following form; however, where the instructions appear in capitalized text, the text of the printed instructions must be in bold font:

READ THESE INSTRUCTIONS CAREFULLY
BEFORE MARKING BALLOT.

1. VERY IMPORTANT. In order to ensure that your vote-by-mail ballot will be counted, it ~~should be completed and returned as soon as possible so that it can reach the supervisor of elections of the county in which your precinct is located no later than 7 p.m. on the day of the election. However, if you are an overseas voter casting a ballot in a presidential~~



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~~preference primary or general election, your vote by mail ballot must be postmarked or dated no later than the date of the election and received by the supervisor of elections of the county in which you are registered to vote no later than 10 days after the date of the election. Note that the later you return your ballot, the less time you will have to cure any signature deficiencies, which may cause your ballot to not be counted is authorized until 5 p.m. on the 2nd day after the election.~~

2. Mark your ballot in secret as instructed on the ballot. You must mark your own ballot unless you are unable to do so because of blindness, disability, or inability to read or write.

3. Mark only the number of candidates or issue choices for a race as indicated on the ballot. If you are allowed to "Vote for One" candidate and you vote for more than one candidate, your vote in that race will not be counted.

4. Place your marked ballot in the enclosed secrecy envelope.

5. Insert the secrecy envelope into the enclosed mailing envelope which is addressed to the supervisor.

6. Seal the mailing envelope and completely fill out the Voter's Certificate on the back of the mailing envelope.

7. VERY IMPORTANT. In order for your vote-by-mail ballot to be counted, you must sign your name or print the last four digits of your social security number on the line above (Voter's Signature or Last Four Digits of Social Security Number). A vote-by-mail ballot will be considered illegal and not be counted if the signature or the last four digits of the social security number on the voter's certificate does not match the signature or social security number on record. The signature on



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file at the time the supervisor of elections in the county in which your precinct is located receives your vote-by-mail ballot is the signature that will be used to verify your signature on the voter's certificate. If you need to update your signature for this election, send your signature update on a voter registration application to your supervisor of elections ~~so that it is received before your vote-by-mail ballot is received.~~

8. VERY IMPORTANT. If you are an overseas voter, you must include the date you signed the Voter's Certificate or printed the last four digits of your social security number on the line above (Date) or your ballot may not be counted.

9. Mail, deliver, or have delivered the completed mailing envelope. Be sure there is sufficient postage if mailed. THE COMPLETED MAILING ENVELOPE CAN BE DELIVERED TO THE OFFICE OF THE SUPERVISOR OF ELECTIONS OF THE COUNTY IN WHICH YOUR PRECINCT IS LOCATED OR DROPPED OFF AT AN AUTHORIZED SECURE DROP BOX, AVAILABLE AT EACH EARLY VOTING LOCATION.

10. FELONY NOTICE. It is a felony under Florida law to accept any gift, payment, or gratuity in exchange for your vote for a candidate. It is also a felony under Florida law to vote in an election using a false identity or false address, or under any other circumstances making your ballot false or fraudulent.

Section 20. Subsection (1), paragraphs (a) and (c) of subsection (2), and paragraphs (a) through (d) of subsection (4) of section 101.68, Florida Statutes, are amended to read:

101.68 Canvassing of vote-by-mail ballot.—

(1) The supervisor of the county where the absent elector resides shall receive the voted ballot, at which time the supervisor shall compare the signature or partial social



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security number of the elector on the voter's certificate with the signature or partial social security number of the elector in the registration books or the precinct register to determine whether the elector is duly registered in the county and may record on the elector's registration certificate that the elector has voted. An elector who dies after casting a vote-by-mail ballot but on or before election day shall remain listed in the registration books until the results have been certified for the election in which the ballot was cast. The supervisor shall safely keep the ballot unopened in his or her office until the county canvassing board canvasses the vote. Except as provided in subsection (4), after a vote-by-mail ballot is received by the supervisor, the ballot is deemed to have been cast, and changes or additions may not be made to the voter's certificate.

(2) (a) The county canvassing board may begin the canvassing of vote-by-mail ballots upon the completion of the public testing of automatic tabulating equipment pursuant to s.

~~101.5612(2) at 7 a.m. on the 22nd day before the election, but must begin such canvassing by no not later than noon on the day following the election. In addition, for any county using electronic tabulating equipment, the processing of vote-by-mail ballots through such tabulating equipment may begin at 7 a.m. on the 22nd day before the election.~~ However, notwithstanding any such authorization to begin canvassing or otherwise processing vote-by-mail ballots early, no result shall be released until after the closing of the polls in that county on election day. Any supervisor, deputy supervisor, canvassing board member, election board member, or election employee who releases the results of a canvassing or processing of vote-by-mail ballots



prior to the closing of the polls in that county on election day commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c)1. The canvassing board must, if the supervisor has not already done so, compare the signature or partial social security number of the elector on the voter's certificate or on the vote-by-mail ballot cure affidavit as provided in subsection (4) with the signature or partial social security number of the elector in the registration books or the precinct register to see that the elector is duly registered in the county and to determine the legality of that vote-by-mail ballot. A vote-by-mail ballot may only be counted if:

a. The signature or partial social security number on the voter's certificate or the cure affidavit matches the elector's signature or partial social security number in the registration books or precinct register; however, in the case of a cure affidavit, the supporting identification listed in subsection (4) must also confirm the identity of the elector; or

b. The cure affidavit contains a signature or partial social security number that does not match the elector's signature or partial social security number in the registration books or precinct register, but the elector has submitted a current and valid Tier 1 identification pursuant to subsection (4) which confirms the identity of the elector.

For purposes of this subparagraph, any canvassing board finding that an elector's signatures or partial social security numbers do not match must be by majority vote and beyond a reasonable doubt.



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2. The ballot of an elector who casts a vote-by-mail ballot shall be counted even if the elector dies on or before election day, as long as, before the death of the voter, the ballot was postmarked by the United States Postal Service, date-stamped with a verifiable tracking number by a common carrier, or already in the possession of the supervisor.

3. A vote-by-mail ballot is not considered illegal if the signature or partial social security number of the elector does not cross the seal of the mailing envelope.

4. If any elector or candidate present believes that a vote-by-mail ballot is illegal due to a defect apparent on the voter's certificate or the cure affidavit, he or she may, at any time before the ballot is removed from the envelope, file with the canvassing board a protest against the canvass of that ballot, specifying the precinct, the ballot, and the reason he or she believes the ballot to be illegal. A challenge based upon a defect in the voter's certificate or cure affidavit may not be accepted after the ballot has been removed from the mailing envelope.

5. If the canvassing board determines that a ballot is illegal, a member of the board must, without opening the envelope, mark across the face of the envelope: "rejected as illegal." The cure affidavit, if applicable, the envelope, and the ballot therein shall be preserved in the manner that official ballots are preserved.

(4)(a) As soon as practicable, the supervisor shall, on behalf of the county canvassing board, attempt to notify an elector who has returned a vote-by-mail ballot that does not include the elector's signature or partial social security



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number or contains a signature or partial social security number that does not match the elector's signature or partial social security number in the registration books or precinct register by:

1. Notifying the elector of the signature or partial social security number deficiency by e-mail and directing the elector to the cure affidavit and instructions on the supervisor's website;

2. Notifying the elector of the signature or partial social security number deficiency by text message and directing the elector to the cure affidavit and instructions on the supervisor's website; or

3. Notifying the elector of the signature or partial social security number deficiency by telephone and directing the elector to the cure affidavit and instructions on the supervisor's website.

In addition to the notification required under subparagraph 1., subparagraph 2., or subparagraph 3., the supervisor must notify the elector of the signature or partial social security number deficiency by first-class mail and direct the elector to the cure affidavit and instructions on the supervisor's website. Beginning the day before the election, the supervisor is not required to provide notice of the signature deficiency by first-class mail, but shall continue to provide notice as required under subparagraph 1., subparagraph 2., or subparagraph 3.

(b) The supervisor shall allow a reasonable amount of time for such an elector to complete and submit an affidavit in order to cure the vote-by-mail ballot ~~until 5 p.m. on the 2nd day~~



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~~after the election.~~

(c) The elector must complete a cure affidavit in substantially the following form:

VOTE-BY-MAIL BALLOT CURE AFFIDAVIT

I, , am a qualified voter in this election and registered voter of County, Florida. I do solemnly swear or affirm that I requested and returned the vote-by-mail ballot and that I have not and will not vote more than one ballot in this election. I understand that if I commit or attempt any fraud in connection with voting, vote a fraudulent ballot, or vote more than once in an election, I may be convicted of a felony of the third degree and fined up to \$5,000 and imprisoned for up to 5 years. I understand that my failure to sign this affidavit means that my vote-by-mail ballot will be invalidated.

... (Voter's Signature or Last Four Digits of Social Security Number) ...

... (Address) ...

(d) Instructions must accompany the cure affidavit in substantially the following form:

READ THESE INSTRUCTIONS CAREFULLY BEFORE COMPLETING THE AFFIDAVIT. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY CAUSE YOUR BALLOT NOT TO COUNT.

1. In order to ensure that your vote-by-mail ballot will be



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counted, your affidavit should be completed and returned as soon as possible so that it can reach the supervisor of elections of the county in which your precinct is located in a reasonable amount of time ~~no later than 5 p.m. on the 2nd day after the election.~~

2. You must sign your name or print the last four digits of your social security number on the line above (Voter's Signature or Last Four Digits of Social Security Number).

3. You must make a copy of one of the following forms of identification:

a. Tier 1 identification.—Current and valid identification that includes your name and photograph: Florida driver license; Florida identification card issued by the Department of Highway Safety and Motor Vehicles; United States passport; debit or credit card; military identification; student identification; retirement center identification; neighborhood association identification; public assistance identification; veteran health identification card issued by the United States Department of Veterans Affairs; a Florida license to carry a concealed weapon or firearm; or an employee identification card issued by any branch, department, agency, or entity of the Federal Government, the state, a county, or a municipality; or

b. Tier 2 identification.—ONLY IF YOU DO NOT HAVE A TIER 1 FORM OF IDENTIFICATION, identification that shows your name and current residence address: current utility bill, bank statement, government check, paycheck, or government document (excluding voter information card).

4. Place the envelope bearing the affidavit into a mailing envelope addressed to the supervisor. Insert a copy of your



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identification in the mailing envelope. Mail (if time permits), deliver, or have delivered the completed affidavit along with the copy of your identification to your county supervisor of elections. Be sure there is sufficient postage if mailed and that the supervisor's address is correct. Remember, your information MUST reach your county supervisor of elections in a reasonable amount of time ~~no later than 5 p.m. on the 2nd day~~ after the election, or your ballot will not count.

5. Alternatively, you may fax or e-mail your completed affidavit and a copy of your identification to the supervisor of elections. If e-mailing, please provide these documents as attachments.

Section 21. Section 101.6952, Florida Statutes, is amended to read:

101.6952 Vote-by-mail ballots for absent ~~uniformed services and overseas~~ voters.—

(1) If an absent ~~uniformed services voter's or an overseas~~ voter's request for an official vote-by-mail ballot pursuant to s. 101.62 includes an e-mail address, the supervisor of elections shall:

(a) Record the voter's e-mail address in the vote-by-mail ballot record;

(b) Confirm by e-mail that the vote-by-mail ballot request was received and include in that e-mail the estimated date the vote-by-mail ballot will be sent to the voter; and

(c) Notify the voter by e-mail when the voted vote-by-mail ballot is received by the supervisor of elections.

(2) (a) An absent ~~uniformed services voter or an overseas~~ voter who makes timely application for but does not receive an



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official vote-by-mail ballot may use the federal write-in absentee ballot to vote in any federal, state, or local election.

(b)1. In an election for federal office, an elector may designate a candidate by writing the name of a candidate on the ballot. Except for a primary or special primary election, the elector may alternatively designate a candidate by writing the name of a political party on the ballot. A written designation of the political party shall be counted as a vote for the candidate of that party if there is such a party candidate in the race.

2. In a state or local election, an elector may vote in the section of the federal write-in absentee ballot designated for nonfederal races by writing on the ballot the title of each office and by writing on the ballot the name of the candidate for whom the elector is voting. Except for a primary, special primary, or nonpartisan election, the elector may alternatively designate a candidate by writing the name of a political party on the ballot. A written designation of the political party shall be counted as a vote for the candidate of that party if there is such a party candidate in the race. In addition, the elector may vote on any ballot measure presented in such election by identifying the ballot measure on which he or she desires to vote and specifying his or her vote on the measure. For purposes of this section, a vote cast in a judicial merit retention election shall be treated in the same manner as a ballot measure in which the only allowable responses are "Yes" or "No."

(c) In the case of a joint candidacy, such as for the



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offices of President/Vice President or Governor/Lieutenant Governor, a valid vote for one or both qualified candidates on the same ticket shall constitute a vote for the joint candidacy.

(d) For purposes of this subsection and except when the context clearly indicates otherwise, such as when a candidate in the election is affiliated with a political party whose name includes the word "Independent," "Independence," or a similar term, a voter designation of "No Party Affiliation" or "Independent," or any minor variation, misspelling, or abbreviation thereof, shall be considered a designation for the candidate, other than a write-in candidate, who qualified to run in the race with no party affiliation. If more than one candidate qualifies to run as a candidate with no party affiliation, the designation may not count for any candidate unless there is a valid, additional designation of the candidate's name.

(e) Any abbreviation, misspelling, or other minor variation in the form of the name of an office, the name of a candidate, the ballot measure, or the name of a political party must be disregarded in determining the validity of the ballot.

(3) (a) An absent ~~uniformed services voter or an overseas~~ voter who submits a federal write-in absentee ballot and later receives an official vote-by-mail ballot may submit the official vote-by-mail ballot. An elector who submits a federal write-in absentee ballot and later receives and submits an official vote-by-mail ballot should make every reasonable effort to inform the appropriate supervisor of elections that the elector has submitted more than one ballot.

(b) ~~A federal write-in absentee ballot may not be canvassed~~



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until ~~7 p.m. on the day of the election.~~ A federal write-in absentee ballot from an absent ~~overseas~~ voter in a presidential preference primary or general election may not be canvassed until the conclusion of the 10-day period specified in subsection (5). ~~Each federal write-in absentee ballot received by 7 p.m. on the day of the election shall be canvassed pursuant to ss. 101.5614(4) and 101.68, unless the elector's official vote-by-mail ballot is received by 7 p.m. on election day.~~ Each federal write-in absentee ballot from an absent ~~overseas~~ voter in a presidential preference primary or general election received by 10 days after the date of the election shall be canvassed pursuant to ss. 101.5614(4) and 101.68, unless the absent ~~overseas~~ voter's official vote-by-mail ballot is received by 10 days after the date of the election. If the elector's official vote-by-mail ballot is received ~~by 7 p.m. on election day, or, for an overseas voter in a presidential preference primary or general election,~~ no later than 10 days after the date of the election, the federal write-in absentee ballot is invalid and the official vote-by-mail ballot shall be canvassed. The time shall be regulated by the customary time in standard use in the county seat of the locality.

(4) For vote-by-mail ballots received from absent ~~uniformed services voters or overseas~~ voters, there is a presumption that the envelope was mailed on the date stated on the outside of the return envelope, regardless of the absence of a postmark on the mailed envelope or the existence of a postmark date that is later than the date of the election.

(5) A vote-by-mail ballot from an absent ~~overseas~~ voter in any presidential preference primary or general election which is



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postmarked or dated no later than the date of the election and is received by the supervisor of elections of the county in which the ~~overseas~~ voter is registered no later than 10 days after the date of the election shall be counted as long as the vote-by-mail ballot is otherwise proper.

Section 22. Section 101.697, Florida Statutes, is amended to read:

101.697 Electronic transmission of election materials.—

(1) The Department of State shall determine whether secure electronic means can be established for receiving ballots from overseas voters. If such security can be established, the department shall adopt rules to authorize a supervisor of elections to accept from an overseas voter a request for a vote-by-mail ballot or a voted vote-by-mail ballot by secure facsimile machine transmission or other secure electronic means. The rules must provide that in order to accept a voted ballot, the verification of the voter must be established, the security of the transmission must be established, and each ballot received must be recorded.

(2) The Department of State shall determine whether secure electronic means can be established for receiving ballots from voters for good cause, including during or immediately after an emergency as defined in s. 101.732. If such secure electronic means can be established, the department shall adopt rules to authorize a supervisor of elections to accept from a voter a voted ballot by secure facsimile machine transmission or other secure electronic means. The rules must provide that in order to accept a voted ballot, the verification of the voter must be established, the security of the transmission must be



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established, and each ballot received must be recorded. Such a ballot may not be accepted by a supervisor of elections except upon a determination of good cause by the department.

Section 23. Subsection (6) is added to section 101.71, Florida Statutes, to read:

101.71 Polling place.—

(6) A polling place may not be located within a gated community unless the legal residence of every elector in the precinct is within such gated community.

Section 24. Paragraph (e) of subsection (4) of section 102.031, Florida Statutes, is amended, and subsection (6) is added to that section, to read:

102.031 Maintenance of good order ~~at polls~~; authorities; persons allowed in polling rooms and early voting areas; unlawful solicitation of voters.—

(4)

~~(e) The owner, operator, or lessee of the property on which a polling place or an early voting site is located, or an agent or employee thereof, may not prohibit the solicitation of voters outside of the no-solicitation zone during polling hours.~~

(6) Bullhorns or other devices used to amplify sound are prohibited in close proximity to:

(a) A polling place during voting hours.

(b) An office of the supervisor during a recount.

Section 25. Subsection (2) of section 102.111, Florida Statutes, is amended to read:

102.111 Elections Canvassing Commission.—

(2) The Elections Canvassing Commission shall meet at 9 a.m. on the 9th day after a primary election to certify the



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returns for each federal, state, and multicounty office. The
commission shall meet ~~and~~ at 9 a.m. on the 14th day after a
general election to certify the returns of the election for each
~~federal, state, and multicounty office. The commission shall~~
meet at 9 a.m. on the 21st day after a general election to
certify the returns for each federal and state office. If a
member of a county canvassing board that was constituted
pursuant to s. 102.141 determines, within 5 days after the
certification by the Elections Canvassing Commission, that a
typographical error occurred in the official returns of the
county, the correction of which could result in a change in the
outcome of an election, the county canvassing board must certify
corrected returns to the Department of State within 24 hours,
and the Elections Canvassing Commission must correct and
recertify the election returns as soon as practicable.

Section 26. Subsection (2) of section 102.112, Florida
Statutes, is amended to read:

102.112 Deadline for submission of county returns to the
Department of State.—

(2) Returns must be filed by 5 p.m. on the 7th day
following a primary election, ~~and~~ by noon on the 12th day
following the general election for multicounty offices, and by
noon on the 19th day following the general election for federal
and statewide offices. However, the Department of State may
correct typographical errors, including the transposition of
numbers, in any returns submitted to the Department of State
pursuant to s. 102.111(2).

Section 27. Section 102.181, Florida Statutes, is created
to read:



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102.181 Action against supervisor of elections.-

(1) Any elector qualified to vote in or any candidate for office in an election may file an action against the supervisor of elections administering such election for noncompliance with any provision of this code.

(2) Any elector or candidate who files such an action is entitled to an immediate hearing.

(3) In any such action, any filing fees or costs shall be waived and attorney fees shall be awarded to the prevailing party or parties.

Section 28. This act shall take effect July 1, 2021.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to elections; amending s. 20.10, F.S.;
requiring the Secretary of State to be elected rather
than appointed; specifying when such election will
occur; amending s. 97.052, F.S.; conforming provisions
to changes made by the act; amending s. 97.053, F.S.;
providing that an applicant must designate a party
affiliation or select no party affiliation to be
registered to vote; requiring a supervisor of
elections to notify an applicant who fails to be
registered; requiring the voter registration
application to include certain information; providing
for the canvassing of provisional ballots if certain



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1085 information is provided within a reasonable amount of
1086 time following an election; repealing s. 97.055, F.S.,
1087 relating to the closure of registration books for an
1088 election; repealing s. 97.0555, F.S., relating to late
1089 registration to vote; creating s. 97.0556, F.S.;
1090 providing that a person who meets certain requirements
1091 may register to vote and cast a ballot on election day
1092 or at an early voting site; amending s. 97.057, F.S.;
1093 requiring the Department of Highway Safety and Motor
1094 Vehicles to provide the opportunity to preregister to
1095 vote to certain individuals; amending s. 97.0575,
1096 F.S.; revising penalties for third-party voter
1097 registration organizations collecting voter
1098 registration applications; amending s. 98.065, F.S.;
1099 providing additional requirements before a voter can
1100 be made inactive; amending s. 98.0981, F.S.; revising
1101 certain reports and data to conform with changes made
1102 by the act; amending s. 99.061, F.S.; authorizing a
1103 candidate to pay his or her qualifying fee with a
1104 cashier's check; amending s. 100.371, F.S.; providing
1105 a requirement for the delivery of certain petitions;
1106 specifying that a digital signature that complies with
1107 the Electronic Signature Act of 1996 satisfies the
1108 requirement that a petition form must contain an
1109 original signature; creating s. 100.51, F.S.;
1110 designating General Election Day as a paid holiday;
1111 providing that any elector may absent himself or
1112 herself from service or employment at a specific time
1113 on a General Election Day and may not be penalized or



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1114 have pay reduced for such absence; creating s.
1115 101.016, F.S.; requiring the Division of Elections to
1116 maintain a strategic elections equipment reserve of
1117 voting systems and other equipment for specified
1118 purposes; requiring such reserve to include specified
1119 equipment; authorizing the division to contract with
1120 specified entities rather than physically maintain
1121 such reserve; amending s. 101.048, F.S.; providing
1122 that a person may cast a provisional ballot in the
1123 county in which the voter claims to be registered;
1124 amending s. 101.151, F.S.; revising the order in which
1125 office titles and names of candidates are placed on
1126 the ballot; amending s. 101.5612, F.S.; requiring the
1127 supervisor of elections to annually file a plan for
1128 operations under certain conditions; amending s.
1129 101.62, F.S.; providing that a request for a vote-by-
1130 mail ballot is valid until the request is canceled;
1131 revising the deadline by which vote-by-mail ballots
1132 must be received by a supervisor of elections;
1133 revising the period during which a supervisor of
1134 elections may deliver certain ballots; providing for
1135 extension of deadlines under certain conditions;
1136 amending s. 101.64, F.S.; requiring the supervisor of
1137 elections to enclose a postage paid mailing envelope
1138 with each vote-by-mail ballot; providing that vote-by-
1139 mail ballot voter certificates may require a voter's
1140 signature or the last four digits of the voter's
1141 social security number; amending s. 101.65, F.S.;
1142 revising instructions that must be provided with a



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1143 vote-by-mail ballot; amending s. 101.68, F.S.;

1144 requiring the supervisor of elections to compare the

1145 signature or partial social security number with the

1146 signature or partial social security number in the

1147 registration books or precinct register when

1148 canvassing a vote-by-mail ballot; authorizing the

1149 canvassing of vote-by-mail ballots upon the completion

1150 of the public preelection testing of automatic

1151 tabulating equipment; revising the timeframe during

1152 which an elector may cure a vote-by-mail ballot;

1153 amending s. 101.6952, F.S.; authorizing an absent

1154 voter to submit a federal write-in absentee ballot or

1155 vote-by-mail ballot; revising requirements for the

1156 canvassing of specified ballots; providing that a

1157 certain presumption applies to vote-by-mail ballots

1158 received from absent voters; requiring a vote-by-mail

1159 ballot from an absent voter which is postmarked by a

1160 certain date to be counted; amending s. 101.697, F.S.;

1161 requiring the Department of State to adopt rules to

1162 authorize a supervisor of elections to accept a voted

1163 ballot by secure electronic means under certain

1164 circumstances; amending s. 101.71, F.S.; prohibiting a

1165 polling place from being located within a gated

1166 community unless certain conditions are met; amending

1167 s. 102.031, F.S.; removing a provision prohibiting the

1168 restriction of solicitation by certain parties;

1169 prohibiting the use of devices that amplify sound in

1170 certain locations; amending s. 102.111, F.S.; revising

1171 the dates by which the Elections Canvassing Commission



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1172 must certify certain election returns; amending s.
1173 102.112, F.S.; revising the deadlines for submission
1174 of county returns to the Department of State; creating
1175 s. 102.181, F.S.; authorizing certain persons to file
1176 actions against a supervisor of elections who fail to
1177 comply with the Florida Election Code; providing that
1178 such person is entitled to an immediate hearing;
1179 providing for the waiver of fees and costs and the
1180 award of attorney fees; providing an effective date.



143600

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Farmer) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 57 - 84.

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

And the directory clause is amended as follows:

Delete line 42

and insert:

Section 1. Paragraph (a) of subsection (1),

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



143600

12 And the title is amended as follows:
13 Delete lines 6 - 8
14 and insert:
15 general election; prohibiting the



237818

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Farmer) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 85 - 88.

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

And the directory clause is amended as follows:

Delete lines 44 - 45

and insert:

101.62, Florida Statutes, are amended to read:

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



237818

12 And the title is amended as follows:
13 Delete lines 8 - 12
14 and insert:
15 regarding the requesting elector; requiring
16 supervisors of elections to



955778

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Farmer) recommended the following:

Senate Amendment (with title amendment)

Delete lines 175 - 321
and insert:

Section 3. Paragraphs (a) and (c) of subsection (2) of
section 101.68, Florida Statutes, are amended to read:

101.68 Canvassing of vote-by-mail ballot.—

(2) (a) The county canvassing board may begin the canvassing
of vote-by-mail ballots upon the completion of the public
testing of automatic tabulating equipment pursuant to s.
101.5612(2) ~~at 7 a.m. on the 22nd day before the election, but~~



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12 must begin such canvassing by no ~~not~~ later than noon on the day
13 following the election. ~~In addition, for any county using~~
14 ~~electronic tabulating equipment, the processing of vote-by-mail~~
15 ~~ballots through such tabulating equipment may begin at 7 a.m. on~~
16 ~~the 22nd day before the election.~~ However, notwithstanding any
17 such authorization to begin canvassing or otherwise processing
18 vote-by-mail ballots early, no result shall be released until
19 after the closing of the polls in that county on election day.
20 Any supervisor, deputy supervisor, canvassing board member,
21 election board member, or election employee who releases the
22 results of a canvassing or processing of vote-by-mail ballots
23 prior to the closing of the polls in that county on election day
24 commits a felony of the third degree, punishable as provided in
25 s. 775.082, s. 775.083, or s. 775.084.

26 (c)1. The canvassing board must, if the supervisor has not
27 already done so, compare the signature of the elector on the
28 voter's certificate or on the vote-by-mail ballot cure affidavit
29 as provided in subsection (4) with the most recent signature of
30 the elector in the registration books or the precinct register
31 to see that the elector is duly registered in the county and to
32 determine the legality of that vote-by-mail ballot. A vote-by-
33 mail ballot may only be counted if:

34 a. The signature on the voter's certificate or the cure
35 affidavit matches the elector's signature in the registration
36 books or precinct register; however, in the case of a cure
37 affidavit, the supporting identification listed in subsection
38 (4) must also confirm the identity of the elector; or

39 b. The cure affidavit contains a signature that does not
40 match the elector's signature in the registration books or



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precinct register, but the elector has submitted a current and valid Tier 1 identification pursuant to subsection (4) which confirms the identity of the elector.

For purposes of this subparagraph, any canvassing board finding that an elector's signatures do not match must be by majority vote and beyond a reasonable doubt.

2. The ballot of an elector who casts a vote-by-mail ballot shall be counted even if the elector dies on or before election day, as long as, before the death of the voter, the ballot was postmarked by the United States Postal Service, date-stamped with a verifiable tracking number by a common carrier, or already in the possession of the supervisor.

3. A vote-by-mail ballot is not considered illegal if the signature of the elector does not cross the seal of the mailing envelope.

4. If any elector or candidate present believes that a vote-by-mail ballot is illegal due to a defect apparent on the voter's certificate or the cure affidavit, he or she may, at any time before the ballot is removed from the envelope, file with the canvassing board a protest against the canvass of that ballot, specifying the precinct, the ballot, and the reason he or she believes the ballot to be illegal. A challenge based upon a defect in the voter's certificate or cure affidavit may not be accepted after the ballot has been removed from the mailing envelope.

5. If the canvassing board determines that a ballot is illegal, a member of the board must, without opening the envelope, mark across the face of the envelope: "rejected as



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illegal." The cure affidavit, if applicable, the envelope, and the ballot therein shall be preserved in the manner that official ballots are preserved.

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

And the title is amended as follows:

Delete lines 20 - 30

and insert:

return and secrecy envelopes; amending s. 101.68,
F.S.; authorizing the canvassing of vote-by-mail
ballots upon the completion of the public preelection
testing of automatic tabulating equipment; requiring
the canvassing board to use the most recent signature
of an elector when verifying a signature on a vote-by-
mail ballot or a cure affidavit; amending s.



270846

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Farmer) recommended the following:

Senate Amendment (with title amendment)

Delete lines 322 - 335.

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

And the title is amended as follows:

Delete lines 30 - 36

and insert:

the return of vote-by-mail ballots; providing



581454

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Farmer) recommended the following:

Senate Amendment (with title amendment)

Delete lines 336 - 343.

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

And the title is amended as follows:

Delete line 37

and insert:

an

By the Committees on Governmental Oversight and Accountability;
and Ethics and Elections; and Senator Baxley

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1 A bill to be entitled
2 An act relating to election administration; amending
3 s. 101.62, F.S.; limiting the duration of requests for
4 vote-by-mail ballots to all elections through the end
5 of the calendar year of the next regularly scheduled
6 general election; requiring vote-by-mail ballot
7 requests to include additional identifying information
8 regarding the requesting elector; prohibiting the
9 supervisor from mailing, delivering, or otherwise
10 providing vote-by-mail ballots to an elector, or a
11 designee thereof, unless a request has been made for
12 such ballot; requiring supervisors of elections to
13 record whether a voter's certificate on a vote-by-mail
14 ballot has a mismatched signature; restricting who an
15 elector may designate to pick up a vote-by-mail ballot
16 to conform to changes made by the act; amending s.
17 101.64, F.S.; prohibiting the display of an absent
18 elector's party affiliation or other partisan
19 information on the outside of vote-by-mail ballots and
20 return and secrecy envelopes; amending s. 101.65,
21 F.S.; revising instructions to absent electors to
22 conform to changes made by the act; amending s.
23 101.68, F.S.; authorizing the canvassing of vote-by-
24 mail ballots upon the completion of the public
25 preelection testing of automatic tabulating equipment;
26 requiring the canvassing board to use the most recent
27 signature of an elector when verifying a signature on
28 a vote-by-mail ballot or a cure affidavit; amending s.
29 101.69, F.S.; prohibiting the use of drop boxes for

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

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30 the return of vote-by-mail ballots; amending s.
31 104.0616, F.S.; prohibiting any person from
32 distributing, ordering, requesting, collecting,
33 delivering, or otherwise physically possessing a vote-
34 by-mail ballot of another person, not including a
35 ballot belonging to an immediate family member;
36 providing an exception; providing a penalty; providing
37 for construction and applicability; providing an
38 effective date.

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

41
42 Section 1. Paragraphs (a) and (b) of subsection (1),
43 subsection (3), and paragraph (c) of subsection (4) of section
44 101.62, Florida Statutes, are amended, and paragraph (d) is
45 added to subsection (1) of that section, to read:

46 101.62 Request for vote-by-mail ballots.—

47 (1) (a) The supervisor shall accept a request for a vote-by-
48 mail ballot from an elector in person or in writing. One request
49 is ~~shall be~~ deemed sufficient to receive a vote-by-mail ballot
50 for all elections through the end of the calendar year of the
51 next second ensuing ~~next~~ regularly scheduled general election, unless
52 the elector or the elector's designee indicates at the time the
53 request is made the elections for which the elector desires to
54 receive a vote-by-mail ballot. Such request may be considered
55 canceled when any first-class mail sent by the supervisor to the
56 elector is returned as undeliverable.

57 (b) The supervisor may accept a written or telephonic
58 request for a vote-by-mail ballot to be mailed to an elector's

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address on file in the Florida Voter Registration System from the elector, or, if directly instructed by the elector, a member of the elector's immediate family, or the elector's legal guardian. If the ballot is requested to be mailed to an address other than the elector's address on file in the Florida Voter Registration System, the request must be made in writing and signed by the elector. However, an absent uniformed service voter or an overseas voter seeking a vote-by-mail ballot is not required to submit a signed, written request for a vote-by-mail ballot that is being mailed to an address other than the elector's address on file in the Florida Voter Registration System. For purposes of this section, the term "immediate family" has the same meaning as specified in paragraph (4)(c). The person making the request must disclose:

1. The name of the elector for whom the ballot is requested.
2. The elector's address.
3. The elector's date of birth.
4. The elector's Florida driver license number or Florida identification card number or the last four digits of the elector's social security number.
5. The requester's name.
- ~~6.5-~~ The requester's address.
- ~~7.6-~~ The requester's driver license number, if available.
- ~~8.7-~~ The requester's relationship to the elector.
- ~~9.8-~~ The requester's signature (written requests only).
- (d) A supervisor may not mail or otherwise deliver or provide a vote-by-mail ballot to an elector or an elector's designee unless a request for such ballot has been made that

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meets the requirements of this section.

(3)(a) For each request for a vote-by-mail ballot received, the supervisor shall record the date the request was made; ~~the~~ the date the vote-by-mail ballot was delivered to the voter or the voter's designee or the date the vote-by-mail ballot was delivered to the post office or other carrier; ~~the~~ the date the ballot was received by the supervisor; ~~the~~ the absence of the voter's signature on the voter's certificate, if applicable; ~~and such other information he or she may deem necessary. This information shall be provided in electronic format as provided by rule adopted by the division. The information shall be updated and made available no later than 8 a.m. of each day, including weekends, beginning 60 days before the primary until 15 days after the general election and shall be contemporaneously provided to the division.~~ This information shall be confidential and exempt from s. 119.07(1) and shall be made available to or reproduced only for the voter requesting the ballot, a canvassing board, an election official, a political party or official thereof, a candidate who has filed qualification papers and is opposed in an upcoming election, and registered political committees for political purposes only.

(b) For each returned vote-by-mail ballot, the supervisor shall record whether the voter's certificate contains a signature that does not match the elector's signature in the registration books or precinct register.

(c) The information specified in paragraphs (a) and (b) shall be provided in electronic format as prescribed by division rule. The information shall be updated and made available no later than 8 a.m. of each day, including weekends, beginning 60

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117 days before the primary election until 15 days after the general
 118 election and shall be contemporaneously provided to the
 119 division.

120 (4)

121 (c) The supervisor shall provide a vote-by-mail ballot to
 122 each elector by whom a request for that ballot has been made by
 123 one of the following means:

124 1. By nonforwardable, return-if-undeliverable mail to the
 125 elector's current mailing address on file with the supervisor or
 126 any other address the elector specifies in the request.

127 2. By forwardable mail, e-mail, or facsimile machine
 128 transmission to absent uniformed services voters and overseas
 129 voters. The absent uniformed services voter or overseas voter
 130 may designate in the vote-by-mail ballot request the preferred
 131 method of transmission. If the voter does not designate the
 132 method of transmission, the vote-by-mail ballot shall be mailed.

133 3. By personal delivery before 7 p.m. on election day to
 134 the elector, upon presentation of the identification required in
 135 s. 101.043.

136 4. By delivery to a designee on election day or up to 9
 137 days ~~before~~ prior to the day of an election. Any elector may
 138 designate in writing an immediate family member ~~a person~~ to pick
 139 up the ballot for the elector; ~~however, the person designated~~
 140 ~~may not pick up more than two vote-by-mail ballots per election,~~
 141 ~~other than the designee's own ballot, except that additional~~
 142 ~~ballots may be picked up for members of the designee's immediate~~
 143 ~~family.~~ For purposes of this section, "immediate family" means
 144 the elector's designee's spouse or the parent, child,
 145 grandparent, or sibling of the elector designee or of the

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146 designee's spouse. The designee shall provide to the supervisor
 147 the written authorization by the elector and a picture
 148 identification of the designee and must complete an affidavit.
 149 The designee shall state in the affidavit that the designee is
 150 authorized by the elector to pick up that ballot and ~~that shall~~
 151 ~~indicate if~~ the elector is a member of the designee's immediate
 152 family and indicate, if so, the relationship. The department
 153 shall prescribe the form of the affidavit. If the supervisor is
 154 satisfied that the designee is authorized to pick up the ballot
 155 and that the signature of the elector on the written
 156 authorization matches the signature of the elector on file, the
 157 supervisor shall give the ballot to that designee for delivery
 158 to the elector.

159 5. Except as provided in s. 101.655, the supervisor may not
 160 deliver a vote-by-mail ballot to an elector or an elector's
 161 immediate family member on the day of the election unless there
 162 is an emergency, to the extent that the elector will be unable
 163 to go to his or her assigned polling place. If a vote-by-mail
 164 ballot is delivered, the elector or his or her designee shall
 165 execute an affidavit affirming to the facts which allow for
 166 delivery of the vote-by-mail ballot. The department shall adopt
 167 a rule providing for the form of the affidavit.

168 Section 2. Subsection (6) is added to section 101.64,
 169 Florida Statutes, to read:

170 101.64 Delivery of vote-by-mail ballots; envelopes; form.—

171 (6) The outside of the ballot and the secrecy and mailing
 172 envelopes may not display the party affiliation of the absent
 173 elector who has been issued such ballot or display any other
 174 partisan information.

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175 Section 3. Section 101.65, Florida Statutes, is amended to
 176 read:
 177 101.65 Instructions to absent electors.—The supervisor
 178 shall enclose with each vote-by-mail ballot separate printed
 179 instructions in substantially the following form; however, where
 180 the instructions appear in capitalized text, the text of the
 181 printed instructions must be in bold font:

182
 183 READ THESE INSTRUCTIONS CAREFULLY
 184 BEFORE MARKING BALLOT.
 185

186 1. VERY IMPORTANT. In order to ensure that your vote-by-
 187 mail ballot will be counted, it should be completed and returned
 188 as soon as possible so that it can reach the supervisor of
 189 elections of the county in which your precinct is located no
 190 later than 7 p.m. on the day of the election. However, if you
 191 are an overseas voter casting a ballot in a presidential
 192 preference primary or general election, your vote-by-mail ballot
 193 must be postmarked or dated no later than the date of the
 194 election and received by the supervisor of elections of the
 195 county in which you are registered to vote no later than 10 days
 196 after the date of the election. Note that the later you return
 197 your ballot, the less time you will have to cure any signature
 198 deficiencies, which is authorized until 5 p.m. on the 2nd day
 199 after the election.

200 2. Mark your ballot in secret as instructed on the ballot.
 201 You must mark your own ballot unless you are unable to do so
 202 because of blindness, disability, or inability to read or write.

203 3. Mark only the number of candidates or issue choices for

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204 a race as indicated on the ballot. If you are allowed to "Vote
 205 for One" candidate and you vote for more than one candidate,
 206 your vote in that race will not be counted.

207 4. Place your marked ballot in the enclosed secrecy
 208 envelope.

209 5. Insert the secrecy envelope into the enclosed mailing
 210 envelope which is addressed to the supervisor.

211 6. Seal the mailing envelope and completely fill out the
 212 Voter's Certificate on the back of the mailing envelope.

213 7. VERY IMPORTANT. In order for your vote-by-mail ballot to
 214 be counted, you must sign your name on the line above (Voter's
 215 Signature). A vote-by-mail ballot will be considered illegal and
 216 not be counted if the signature on the voter's certificate does
 217 not match the signature on record. The signature on file at the
 218 time the supervisor of elections in the county in which your
 219 precinct is located receives your vote-by-mail ballot is the
 220 signature that will be used to verify your signature on the
 221 voter's certificate. If you need to update your signature for
 222 this election, send your signature update on a voter
 223 registration application to your supervisor of elections so that
 224 it is received before your vote-by-mail ballot is received.

225 8. VERY IMPORTANT. If you are an overseas voter, you must
 226 include the date you signed the Voter's Certificate on the line
 227 above (Date) or your ballot may not be counted.

228 9. Mail, deliver, or have delivered the completed mailing
 229 envelope. Be sure there is sufficient postage if mailed. THE
 230 COMPLETED MAILING ENVELOPE CAN BE DELIVERED TO THE OFFICE OF THE
 231 SUPERVISOR OF ELECTIONS OF THE COUNTY IN WHICH YOUR PRECINCT IS
 232 LOCATED OR ~~DROPPED OFF AT AN AUTHORIZED SECURE DROP BOX.~~

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233 ~~AVAILABLE AT EACH EARLY VOTING LOCATION.~~

234 10. FELONY NOTICE. It is a felony under Florida law to
235 accept any gift, payment, or gratuity in exchange for your vote
236 for a candidate. It is also a felony under Florida law to vote
237 in an election using a false identity or false address, or under
238 any other circumstances making your ballot false or fraudulent.

239 Section 4. Paragraphs (a) and (c) of subsection (2) of
240 section 101.68, Florida Statutes, are amended to read:

241 101.68 Canvassing of vote-by-mail ballot.—

242 (2)(a) The county canvassing board may begin the canvassing
243 of vote-by-mail ballots upon the completion of the public
244 testing of automatic tabulating equipment pursuant to s.
245 101.5612(2) at 7 a.m. on the 22nd day before the election, but
246 must begin such canvassing by no not later than noon on the day
247 following the election. In addition, for any county using
248 electronic tabulating equipment, the processing of vote-by-mail
249 ballots through such tabulating equipment may begin at 7 a.m. on
250 the 22nd day before the election. However, notwithstanding any
251 such authorization to begin canvassing or otherwise processing
252 vote-by-mail ballots early, no result shall be released until
253 after the closing of the polls in that county on election day.
254 Any supervisor, deputy supervisor, canvassing board member,
255 election board member, or election employee who releases the
256 results of a canvassing or processing of vote-by-mail ballots
257 prior to the closing of the polls in that county on election day
258 commits a felony of the third degree, punishable as provided in
259 s. 775.082, s. 775.083, or s. 775.084.

260 (c)1. The canvassing board must, if the supervisor has not
261 already done so, compare the signature of the elector on the

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262 voter's certificate or on the vote-by-mail ballot cure affidavit
263 as provided in subsection (4) with the most recent signature of
264 the elector in the registration books or the precinct register
265 to see that the elector is duly registered in the county and to
266 determine the legality of that vote-by-mail ballot. A vote-by-
267 mail ballot may only be counted if:

268 a. The signature on the voter's certificate or the cure
269 affidavit matches the elector's signature in the registration
270 books or precinct register; however, in the case of a cure
271 affidavit, the supporting identification listed in subsection
272 (4) must also confirm the identity of the elector; or

273 b. The cure affidavit contains a signature that does not
274 match the elector's signature in the registration books or
275 precinct register, but the elector has submitted a current and
276 valid Tier 1 identification pursuant to subsection (4) which
277 confirms the identity of the elector.

278
279 For purposes of this subparagraph, any canvassing board finding
280 that an elector's signatures do not match must be by majority
281 vote and beyond a reasonable doubt.

282 2. The ballot of an elector who casts a vote-by-mail ballot
283 shall be counted even if the elector dies on or before election
284 day, as long as, before the death of the voter, the ballot was
285 postmarked by the United States Postal Service, date-stamped
286 with a verifiable tracking number by a common carrier, or
287 already in the possession of the supervisor.

288 3. A vote-by-mail ballot is not considered illegal if the
289 signature of the elector does not cross the seal of the mailing
290 envelope.

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291 4. If any elector or candidate present believes that a
 292 vote-by-mail ballot is illegal due to a defect apparent on the
 293 voter's certificate or the cure affidavit, he or she may, at any
 294 time before the ballot is removed from the envelope, file with
 295 the canvassing board a protest against the canvass of that
 296 ballot, specifying the precinct, the ballot, and the reason he
 297 or she believes the ballot to be illegal. A challenge based upon
 298 a defect in the voter's certificate or cure affidavit may not be
 299 accepted after the ballot has been removed from the mailing
 300 envelope.

301 5. If the canvassing board determines that a ballot is
 302 illegal, a member of the board must, without opening the
 303 envelope, mark across the face of the envelope: "rejected as
 304 illegal." The cure affidavit, if applicable, the envelope, and
 305 the ballot therein shall be preserved in the manner that
 306 official ballots are preserved.

307 Section 5. Subsection (2) of section 101.69, Florida
 308 Statutes, is amended to read:

309 101.69 Voting in person; return of vote-by-mail ballot.—

310 (2) The supervisor may not ~~shall~~ allow an elector who has
 311 received a vote-by-mail ballot to physically return a voted
 312 vote-by-mail ballot to the supervisor by placing the envelope
 313 containing his or her marked ballot in a ~~secure~~ drop box. ~~Secure~~
 314 ~~drop boxes shall be placed at the main office of the supervisor,~~
 315 ~~at each branch office of the supervisor, and at each early~~
 316 ~~voting site. Secure drop boxes may also be placed at any other~~
 317 ~~site that would otherwise qualify as an early voting site under~~
 318 ~~s. 101.657(1); provided, however, that any such site must be~~
 319 ~~staffed during the county's early voting hours of operation by~~

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320 ~~an employee of the supervisor's office or a sworn law~~
 321 ~~enforcement officer.~~

322 Section 6. Subsection (2) of section 104.0616, Florida
 323 Statutes, is amended to read:

324 104.0616 Vote-by-mail ballots and voting; violations.—

325 (2) Any person who distributes, orders, requests, collects,
 326 delivers ~~provides or offers to provide, and any person who~~
 327 ~~accepts, a pecuniary or other benefit in exchange for~~
 328 ~~distributing, ordering, requesting, collecting, delivering, or~~
 329 ~~otherwise physically possesses a vote-by-mail ballot of another~~
 330 person, not including possessing more than two vote-by-mail
 331 ballots per election in addition to his or her own ballot or a
 332 ballot belonging to an immediate family member, except as
 333 provided in ss. 101.6105-101.694, commits a misdemeanor of the
 334 first degree, punishable as provided in s. 775.082, s. 775.083,
 335 or s. 775.084.

336 Section 7. Notwithstanding that an elector has submitted a
 337 vote-by-mail ballot request before the effective date of this
 338 act initially applicable through the end of the calendar year of
 339 the second ensuing regularly scheduled general election, any
 340 such elector must affirmatively resubmit a vote-by-mail ballot
 341 request following the effective date of this act in order to
 342 receive vote-by-mail ballots for the 2022 primary and general
 343 elections.

344 Section 8. This act shall take effect July 1, 2021.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 268

INTRODUCER: Regulated Industries Committee and Senator Perry

SUBJECT: Preemption of Local Occupational Licensing

DATE: April 2, 2021

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 268 expressly preempts the licensing of occupations to the state and supersedes any local government licensing of occupations, with the exception of local government licensing of occupations authorized by general law or occupational licenses imposed by a local government before January 1, 2021. However, the exception for local government licensing imposed by a local government expires July 1, 2023. Local government occupational licensing requirements in place by the deadline may not be increased or modified thereafter.

The bill specifically prohibits local governments from requiring a license for a person whose job scope does not substantially correspond to that of a contractor or journeyman type licensed by the Construction Industry Licensing Board, within the Department of Business and Professional Regulation. It specifically precludes local governments from requiring a license for: painting, flooring, cabinetry, interior remodeling, driveway or tennis court installation, handyman services, decorative stone, tile, marble, granite, or terrazzo installation, plastering, stuccoing, caulking, and canvas awning and ornamental iron installation.

Finally, the bill authorizes counties and municipalities to issue journeyman licenses in the plumbing, pipe fitting, mechanical, and HVAC trades, as well as the electrical and alarm system trades, which is the current practice by counties and municipalities. Local journeyman licensing is excepted from the preemption of local licensing to the state since it would be authorized under general law.

The bill has no impact on state government.

The bill is effective July 1, 2021.

II. Present Situation:

Local Government Authority

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

Unlike counties or municipalities, independent special districts do not possess home rule power. Therefore, the powers possessed by independent special districts are those expressly provided by, or which can be reasonably implied from, the special district's charter or general law.⁴ Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.⁵

Revenue Sources Authorized in the Florida Constitution⁶

The Florida Constitution limits the ability of local governments to raise revenue for their operations. The Florida Constitution provides:

No tax shall be levied except in pursuance of law. No state ad valorem taxes⁷ shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law.⁸

Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law

¹ FLA. CONST. art. VIII, s. 1(f).

² FLA. CONST. art. VIII, s. 1(g).

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

⁴ *See* s. 189.031(3)(b), F.S. *See also State ex rel. City of Gainesville v. St. Johns River Water Mgmt. Dist.*, 408 So.2d 1067, 1068 (Fla. 1st DCA 1982).

⁵ State Affairs Committee and Local, Federal & Veterans Affairs Subcommittee, The Florida House of Representatives, *The Local Government Formation Manual 2018 - 2020*, available at <https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2019&DocumentType=General%20Publications&FileName=2018-2020%20Local%20Government%20Formation%20Manual%20Final.pdf> (last visited Mar. 17, 2021).

⁶ *See* Office of Economic and Demographic Research, The Florida Legislature, *2020 Local Government Financial Handbook*, available at <http://edr.state.fl.us/Content/local-government/reports/lghfih20.pdf> (last visited Mar. 17, 2021).

⁷ Pursuant to s. 192.001(1), F.S., “ad valorem tax” means a tax based upon the assessed value of property.

⁸ FLA. CONST. art. VII, s. 1(a).

to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution.⁹

However, not all local government revenue sources are taxes requiring general law authorization. When a county or municipal revenue source is imposed by ordinance, the question is whether the charge is a valid assessment or fee. As long as the charge is not deemed a tax, the imposition of the assessment or fee by ordinance is within the constitutional and statutory home rule powers of county and municipal governments. If the charge is not a valid assessment or fee, it is deemed a revenue source requiring general law authorization.

Local Government Revenue Sources Based on Home Rule Authority¹⁰

Pursuant to home rule authority, counties and municipalities may impose proprietary fees, regulatory fees, and special assessments to pay the cost of providing a facility or service or regulating an activity. Because special districts do not possess home rule powers, they may impose only those taxes, assessments, or fees authorized by special or general law.¹¹

Preemption

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment is inconsistent with state law when (1) the Legislature has preempted a particular subject area or (2) the local enactment conflicts with a state statute. Where state preemption applies, it precludes a local government from exercising authority in that particular area.¹²

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.¹³ Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.¹⁴ In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.¹⁵

⁹ FLA. CONST. art. VII, s. 9(a).

¹⁰ See also The Florida Legislature, *2020 Local Government Financial Handbook* *supra* note 6.

¹¹ See ch. 189, F.S. See also Florida House of Representatives, *2018 - 2020 Local Government Formation Manual*, *supra* note 5, at 70.

¹² See James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemption and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009) available at <https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/> (last visited Mar. 17, 2021).

¹³ See *City of Hollywood v. Mulligan*, 934 So.2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So.3d 309 (Fla. 2008).

¹⁴ *Mulligan*, 934 So.2d at 1243.

¹⁵ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So.3d 880, 886 (Fla. 2010). Examples of activities “expressly preempted to the state” include: operator use of commercial mobile radio services and electronic communications devices in motor vehicles, s. 316.0075, F.S.; regulation of the use of cameras for enforcing provisions of the Florida Uniform Traffic Control Law, s. 316.0076, F.S.; and the adoption of standards and fines related to specified subject areas under the purview of the Department of Agriculture and Consumer Services, s. 570.07, F.S.

In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.¹⁶ In one case, the court stated that implied preemption “is actually a decision by the courts to create preemption in the absence of an explicit legislative directive.”¹⁷ Preemption of a local government enactment is implied only where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and strong public policy reasons exist for finding preemption.¹⁸ Implied preemption is found where the local legislation would present the danger of conflict with the state's pervasive regulatory scheme.¹⁹

Professions and Occupations

General law directs a number of state agencies and licensing boards to regulate certain professions and occupations. For example, the Department of Business and Professional Regulation (DBPR) currently regulates approximately 26 professions and occupations.²⁰

General law determines whether local governments are able to regulate occupations and businesses, and to what degree.²¹ If state law preempts regulation for an occupation, then, generally, local governments may not regulate that occupation.²² Florida law currently preempts local regulation with regard to the following:

- Assessing local fees associated with providing proof of licensure as a contractor, or providing, recording, or filing evidence of worker’s compensation insurance coverage by a contractor;²³
- Assessing local fees and rules regarding low-voltage alarm system projects;²⁴
- Smoking;²⁵
- Firearms and ammunition;²⁶
- Employment benefits;²⁷
- Polystyrene products;²⁸
- Public lodging establishments and public food service establishments;²⁹ and
- Disposable plastic bags.³⁰

¹⁶ See, e.g., *Nat’l Rifle Ass’n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

¹⁷ *Phantom of Clearwater, Inc.*, 894 So.2d at 1019.

¹⁸ *Id.*

¹⁹ *Sarasota Alliance for Fair Elections, Inc.*, 28 So.3d at 886.

²⁰ See s. 20.165, F.S., and *Annual Report, Fiscal Year 2019-2020, for the Division of Professions, Certified Public Accounting, Real Estate, and Regulation*, and the list of professions and occupations at 20, at http://www.myfloridalicense.com/DBPR/os/documents/DivisionAnnualReport_FY1920.pdf (last visited Mar. 17 2021).

²¹ See FLA. CONST art. VIII, s. 1(f), art. VIII, s. 2(b), and ss. 125.01(1) and 166.021(1), F.S.

²² See Wolf and Bolinder, *supra* note 12.

²³ Section 553.80(7)(a)5., F.S.

²⁴ Section 489.503(14), F.S.

²⁵ Section 386.209, F.S.

²⁶ Section 790.33(1), F.S.

²⁷ Section 218.077, F.S.

²⁸ Section 500.90, F.S.

²⁹ Section 509.032(7), F.S.

³⁰ Section 403.7033, F.S.

Conversely, Florida law also specifically grants local jurisdictions the right to regulate businesses, occupations, and professions in certain circumstances.³¹ Florida law authorizes local regulations relating to:

- Zoning and land use;³²
- The levy of “reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on such classes of businesses, professions, and occupations, the regulation of which has not been preempted by the state or a county pursuant to a county charter;”³³
- The levy of local business taxes;³⁴
- Building code inspection fees;³⁵
- Tattoo establishments;³⁶
- Massage practices;³⁷
- Child care facilities;³⁸
- Taxis and other vehicles for hire;³⁹
- Waste and sewage collection;⁴⁰ and
- Regulation of vaping.⁴¹

Construction Professional Licenses

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

Construction Contracting

Construction contractors are either certified or registered by the Construction Industry Licensing Board (CILB) housed within DBPR.⁴² The CILB consists of 18 members who are appointed by the Governor and confirmed by the Senate.⁴³ The CILB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.⁴⁴

“Certified contractors” are individuals who pass the state competency examination and obtain a certificate of competency issued by DBPR. Certified contractors are able to obtain a certificate of

³¹ See Wolf and Bolinder, *supra* note 12.

³² See part II, ch. 163, F.S.

³³ Section 166.221, F.S.

³⁴ Chapter 205, F.S.

³⁵ Section 166.222, F.S.

³⁶ Section 381.00791, F.S.

³⁷ Section 480.052, F.S.

³⁸ Section 402.306, F.S.

³⁹ Section 125.01(1)(n), F.S.

⁴⁰ Section 125.01(1)(k), F.S.

⁴¹ Section 386.209, F.S.

⁴² See ss. 489.105, 489.107, and 489.113, F.S.

⁴³ Section 489.107(1), F.S.

⁴⁴ Section 489.107, F.S.

competency for a specific license category and are permitted to practice in that category in any jurisdiction in the state.⁴⁵

“Certified specialty contractors” are contractors whose scope of work is limited to a particular phase of construction, such as drywall or demolition. Certified specialty contractor licenses are created by the CILB through rulemaking. Certified specialty contractors are permitted to practice in any jurisdiction in the state.⁴⁶

“Registered contractors” are individuals who have taken and passed a local competency examination and may practice the specific category of contracting for which he or she is approved, only in the local jurisdiction for which the license is issued.⁴⁷

The following table provides examples of CILB licenses for types of contractors.⁴⁸

Statutory Licenses	Specialty Licenses
• Air Conditioning- Classes A, B, and C • Building • General • Internal Pollutant Storage Tank Lining Applicator • Mechanical • Plumbing • Pollutant Storage Systems • Pool/Spa- Classes A, B, and C • Precision Tank Tester • Residential • Roofing • Sheet Metal • Solar • Underground Excavation	• Drywall • Demolition • Gas Line • Glass and Glazing • Industrial Facilities • Irrigation • Marine • Residential Pool/Spa Servicing • Solar Water Heating • Structure • Swimming Pool Decking • Swimming Pool Excavation • Swimming Pool Finishes • Swimming Pool Layout • Swimming Pool Piping • Swimming Pool Structural • Swimming Pool Trim • Tower

Current law provides that local jurisdictions may approve or deny applications for licensure as a registered contractor, review disciplinary cases, and conduct informal hearings relating to discipline of registered contractors licensed in their jurisdiction.⁴⁹ Local jurisdictions are not barred from issuing and requiring construction licenses that are outside the scope of practice for

⁴⁵ See ss. 489.105(6)-(8) and (11), F.S.

⁴⁶ See ss. 489.108, 489.113, 489.117, and 489.131, F.S.

⁴⁷ Section 489.117, F.S.

⁴⁸ See s. 489.105(a)-(q), F.S., and Fla. Admin. Code R. 61G4-15.015 through 61G4-15.040 (2021).

⁴⁹ Sections 489.117 and 489.131, F.S.

a certified contractor or certified specialty contractor, such as painting and fence erection licenses. Local governments may only collect licensing fees that cover the cost of regulation.⁵⁰ Locally registered contractors that are required to hold a contracting license to practice their profession in accordance with state law must register with DBPR after obtaining a local license. However, persons holding a local construction license whose job scope does not substantially correspond to the job scope of a certified contractor or a certified specialty contractor are not required to register with DBPR.⁵¹

Electrical and Alarm System Contracting

Electrical contractors, alarm system contractors, and electrical specialty contractors are certified or registered under the Electrical Contractors' Licensing Board (ECLB).⁵² Certified contractors may practice statewide and are licensed and regulated by ECLB. Registered contractors are licensed and regulated by a local jurisdiction and may only practice within that locality.⁵³

Electrical contractors are contractors who have the ability to work on electrical wiring, fixtures, appliances, apparatus, raceways, and conduits which generate, transmit, transform, or utilize electrical energy in any form. The scope of an electrical contractor's license includes alarm system work.⁵⁴

Alarm system contractors are contractors who are able to lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace, or service alarm systems. An "alarm system" is defined as "any electrical device, signaling device, or combination of electrical devices used to signal or detect a burglary, fire, robbery, or medical emergency."⁵⁵

Electrical certified specialty contractors are contractors whose scope of work is limited to a particular phase of electrical contracting, such as electrical signs. The ECLB creates electrical certified specialty contractor licenses through rulemaking.⁵⁶ Certified electrical specialty contractors may practice statewide. The ECLB has created the following certified specialty contractor licenses:

- Lighting Maintenance Specialty Contractor;
- Sign Specialty Electrical Contractor;
- Residential Electrical Contractor;
- Limited Energy Systems Specialty Contractor;
- Utility line electrical contractor; and
- Two-Way Radio Communications Enhancement Systems Contractor.⁵⁷

⁵⁰ See also The Florida Legislature, 2020 *Local Government Financial Handbook* *supra* note 6.

⁵¹ Sections 489.105 and 489.117(4), F.S.

⁵² See Sections 489.505(3) and 489.507, F.S.

⁵³ See s. 489.505(16), F.S.

⁵⁴ Sections 489.505(12) and 489.537(7), F.S.

⁵⁵ Sections 489.505(1) and (2), F.S.

⁵⁶ Sections 489.507(3) and 489.511(4), F.S.

⁵⁷ Sections 489.505(19) and 489.511(4), F.S.; See Fla. Admin. Code R. 61G6-7.001.

Contractor Licensing – Handyman Exemption

More than 20 categories of persons are exempt from the contractor licensing requirements of ch. 489, F.S., including work falling under the so-called handyman exemption, meaning it is of a “casual, minor, or inconsequential nature,” and the total contract price for all labor, materials, and all other items is less than \$2,500, subject to certain exceptions.⁵⁸

Journeyman Licenses

A journeyman is a skilled worker in a building trade or craft. There is no state requirement for licensure as a journeyman, but the construction and electrical contractor practice acts account for the fact that counties and municipalities issue journeyman licenses. A person with a journeyman license must always work under the supervision of a licensed contractor, but the state does not regulate or issue a license to a journeyman.⁵⁹

However, under ch. 489, F.S., a tradesman may be licensed as a journeyman in one local jurisdiction and work in multiple jurisdictions (license reciprocity) without having to take another examination or pay an additional licensing fee to qualify to work in the other jurisdictions (county or municipality). If eligible for license reciprocity, a journeyman with a valid, active journeyman license issued by a county or municipality in Florida need not take any additional examinations or pay additional license fees and may work in the:

- Plumbing/pipe fitting, mechanical, or HVAC trades;⁶⁰ or
- Electrical and alarm system trades.⁶¹

The statutory criteria for licensure reciprocity between local jurisdictions for journeymen include:⁶²

- Scoring at least 75 percent on an approved proctored examination for that construction trade;
- Completing a registered apprenticeship program and demonstrating four years of verifiable practical experience in the particular trade, or alternatively demonstrating six years of such experience in the particular trade;

⁵⁸ Other exemptions provided in s. 489.103, F.S., include: contractors in work on bridges, roads, streets, highways, or railroads, and other services defined by the board and the Florida Department of Transportation; employees of licensed contractors, if acting within the scope of the contractor’s license, with that licensee’s knowledge; certain employees of federal, state, or local governments or districts (excluding school and university boards), under limited circumstances; certain public utilities, on construction, maintenance, and development work by employees; property owners, when acting as their own contractor and providing “direct, onsite supervision” of all work not performed by licensed contractors on one-family or two-family residences, farm outbuildings, or commercial buildings at a cost not exceeding \$75,000; work undertaken on federal property or when federal law supersedes part I of ch. 489, F.S.; registered architects and engineers acting within their licensed practice, including those exempt from such licensing, but not acting as a contractor unless licensed under ch. 489, F.S.; work on one-, two-, or three-family residences constructed or rehabilitated by Habitat for Humanity, International, Inc., or a local affiliate, subject to certain requirements; certain disaster recovery mitigation or other organizations repairing or replacing a one-family, two-family or three-family residence impacted by a disaster, subject to certain requirements; and employees of an apartment community or apartment community management company who make minor repairs to existing electric water heaters, electric heating, ventilating, and air-conditioning systems, subject to certain requirements See s. 489.103, F.S., for additional exemptions.

⁵⁹ Sections 489.103, 489.1455, 489.503, and 489.5335, F.S.

⁶⁰ Section 489.1455, F.S.

⁶¹ Section 489.5335, F.S.

⁶² Sections 489.1455 and 489.5335, F.S.

- Completing coursework approved by the Florida Building Commission specific to the discipline within the required time frame; and
- Not having a license suspended or revoked within the last five years.

A local government may charge up to \$25 as a registration fee for reciprocity.⁶³

Residency Requirements for Contracting Licenses

Some local governments have adopted policies to promote the usage of local residents for contracting activities within their jurisdictions. For example, it is the policy of Miami-Dade County that, except where federal or state laws or regulations mandate to the contrary, all contractors and subcontractors of any tier performing on a county construction contract must satisfy the requirements of the Miami-Dade County Residents First Training and Employment Program.⁶⁴ These requirements include that the contractor will make its best reasonable efforts to promote employment opportunities for local residents and seek to achieve a project goal of having 51 percent of all construction labor hours performed by Miami-Dade County residents.⁶⁵

III. Effect of Proposed Changes:

Section 1 creates s. 163.211, F.S., to define the following terms:

- "Licensing" means any training, education, test, certification, registration, or license that is required for a person to perform an occupation along with any associated fee.
- "Local government" means a county, municipality, special district, or political subdivision of the state.
- "Occupation" means a paid job, profession, work, line of work, trade, employment, position, post, career, field, vocation, or craft.

This section of the bill expressly preempts occupational licensing to the state. This preemption supersedes any local government licensing requirement of occupations unless:

- The local licensing requirements for an occupation are enacted before January 1, 2021; or
- The licensing of occupations by local governments is authorized by general law.

However, after July 1, 2023, the exception for local government licensing of occupations imposed by a local government expires. After that date, local government licensing of occupations is preempted to the state.

In addition, this section of the bill prohibits local governments that license an occupation from imposing additional licensing requirements on that occupation and from modifying such licensing. Under the bill, any local licensing of an occupation that is not imposed before January 1, 2021 or otherwise authorized by general law does not apply and may not be enforced.

⁶³ See ss. 489.1455, F.S., and 489.5335, F.S.

⁶⁴ See Code of Miami Dade County Florida, Chapter 2, Article I, Section 2.11.17, available at https://library.municode.com/fl/miami-dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-11.17REFITREMPR (last visited Mar. 17, 2021).

⁶⁵ *Id.* at paragraph (5)(a)(ii) of Article I, Section 2.11.17.

Section 2 amends s. 489.117, F.S., relating to registration of specialty contractors to provide that persons whose job scope is outside the contractor trades or certified specialty trades need not register with the Construction Industry Licensing Board (CILB). A county or municipality may not require a license for a person whose job scope does not substantially correspond to a contractor category licensed by the CILB, or the plumbing, pipefitting, mechanical, or HVAC trades of a journeyman under s. 489.1455(1), F.S.

The bill specifically prohibits counties and municipalities from requiring a license for certain job scopes, including, but not limited to, painting, flooring, cabinetry, interior remodeling, driveway or tennis court installation, handyman services, decorative stone, tile, marble, granite, or terrazzo installation, plastering, stuccoing, caulking, and canvas awning and ornamental iron installation.

Sections 3 and 4 amend ss. 489.1455 and 489.5335, F.S., to authorize counties and municipalities to issue journeyman licenses in the plumbing, pipe fitting, mechanical, or HVAC trades, as well as the electrical and alarm system trades, which is the current practice by counties and municipalities. Therefore, local journeyman licensing is excepted from the preemption of local licensing to the state, as provided in the bill.

Section 5 provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(b) of the Florida Constitution provides that except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that cities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandate requirement does not apply to laws having an insignificant impact, which for Fiscal Year 2020-2021, is forecast at \$2.2 million.⁶⁶

Under this bill, municipalities and counties that collect licensing fees may realize a reduction in revenues as a result of the prohibition against altering existing licensing requirements, including fees. If the amount of revenue lost due to these effects is determined to exceed \$2.2 million in the aggregate, final passage of the bill would require approval by two-thirds of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

⁶⁶ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, Interim Report 2012-115: Insignificant Impact, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited March 10, 2021). Based on the Florida Demographic Estimating Conference's Nov. 13, 2020 population forecast for 2021 of 21,893,919. The conference packet is available at: <http://edr.state.fl.us/content/conferences/population/demographicsummary.pdf> (last visited March 10, 2021).

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:

Certain professionals will not be required to pay local licensing and/or examination fees due to the preemption of occupational licensure to the state. This may have a positive impact on the number of individuals practicing certain professions. The impact on construction costs and workers' wages is indeterminate.

C. Government Sector Impact:

The bill will have indeterminate impact on local government costs and revenues linked to licensing. Under the bill, local governments are not authorized to increase existing license fees after January 1, 2021, and the authority of local governments to license occupations and collect license fees expires on July 1, 2023.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that local occupational licensing that is not authorized under s. 163.211, F.S., created by the bill, or otherwise authorized by general law "does not apply and may not be enforced." See lines 50 to 53 of the bill. These authorizations do not address occupational licensing imposed by local governments that may be authorized by special act of the Legislature (previously or in the future), or licensing imposed by local ordinance for a purpose such as protection of water quality.

As an example, the Pinellas County Construction Licensing Board was originally established in 1975 by special act, which was last revised in 2018 by special act of the Legislature.⁶⁷ Similarly, in 2008 Lee County adopted an ordinance regulating landscape management practices, including registration of landscaping businesses and certain landscapers, and completion of certain training.⁶⁸ A stated purpose of this ordinance is to meet federal and state water quality standards and to minimize the detrimental impacts on the county's lakes, estuaries, wetlands, the Caloosahatchee River, and the Gulf of Mexico.⁶⁹ Similar requirements exist for drilling of elevator shafts and water wells,⁷⁰ to avoid cross contamination of local aquifers.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 489.117, 489.1455, and 489.5335.

This bill creates s. 163.211 of the Florida Statutes.

IX. Additional Information:

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

CS by Regulated Industries Committee on March 16, 2021:

The committee substitute:

- Excepts from preemption all local licensing ordinances imposed before **January 1, 2021**, rather than **July 1, 2021** as stated in the bill;
- Includes a prohibition against local licensing for the job scope of “handyman services;” and
- Includes a technical revision to refer to “canvas awning **and** ornamental iron installation” (rather than “canvas awning **or** ornamental iron installation.”)

- B. Amendments:

None.

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

⁶⁷ See ch. 2018-179, Laws of Florida. See the Pinellas County Construction Licensing Board (PCCLB), *Description of PCCLB Contractor Classifications*, available at <http://www.pcclb.com/pdf/contractor-class.pdf>, at p. 9, for the classifications adopted by PCCLB rule (last visited Mar. 17, 2021). The nonrefundable fees for contractors are \$250 for initial application; \$250 for contractors' examinations application; and \$250 for contractors' reciprocity applications. The nonrefundable fees for journeymen are \$75 for a journeyman examination application and \$75 for a journeyman reciprocity application (same as initial licensing fee required of all PCCLB-licensed contractors). See [Pinellas County, Florida, Pinellas County Construction Licensing Board - Applications for Examination / Reciprocity \(pcclb.com\)](https://www.leegov.com/bocc/ordinances/08-08.pdf) (last visited Mar. 17, 2021).

⁶⁸ See Lee County Ordinance No. 08-08, available at <https://www.leegov.com/bocc/ordinances/08-08.pdf> (last visited Mar. 17, 2021).

⁶⁹ *Id.* at 3 (Section Two).

⁷⁰ See Lee County Ordinance No. 16-06, available at <https://www.leegov.com/bocc/Ordinances/16-06.pdf> (last visited Mar. 17, 2021).



815936

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/06/2021	.	
	.	
	.	
	.	

The Committee on Rules (Farmer) recommended the following:

Senate Amendment (with title amendment)

Delete lines 37 - 74
and insert:

(2) PREEMPTION OF OCCUPATIONAL LICENSING TO THE STATE.—The
licensing of occupations is expressly preempted to the state and
this section supersedes any local government licensing
requirement of occupations with the exception of the following:

(a) Any local government that imposed licenses on
occupations before March 2, 2021.

(b) Any local government licensing of occupations



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authorized by special act or general law.

(3) EXISTING LICENSING LIMIT.—A local government that licenses occupations and retains such licensing as set forth in paragraph (2)(a) may not impose additional licensing requirements on that occupation or modify such licensing; however, this subsection does not apply to any requirement relating to the maintenance of liability insurance coverage or workers' compensation coverage, as applicable.

(4) LOCAL LICENSING NOT AUTHORIZED.—Local licensing of an occupation that is not authorized under this section or otherwise authorized by special act or general law does not apply and may not be enforced.

Section 2. Paragraph (a) of subsection (4) of section 489.117, Florida Statutes, is amended to read:

489.117 Registration; specialty contractors.—

(4) (a) A person ~~holding a local license~~ whose job scope does not substantially correspond to either the job scope of one of the contractor categories defined in s. 489.105(3)(a)-(o), or the job scope of one of the certified specialty contractor categories established by board rule, is not required to register with the board ~~to perform contracting activities within the scope of such specialty license.~~ Except as otherwise provided in s. 163.211(2), a local government, as defined in s. 163.211(1), may not require a person to obtain a license for a job scope which does not substantially correspond to the job scope of one of the contractor categories defined in s. 489.105(3)(a)-(o) and (q) or authorized in s. 489.1455(1). For purposes of this subsection and except as otherwise provided in s. 163.211(2), job scopes for which a local government may not



815936

require a license include, but are not limited to, painting;
flooring; cabinetry; interior remodeling; driveway or tennis
court installation; handyman services; decorative stone, tile,
marble, granite, or terrazzo installation; plastering;
stuccoing; caulking; and canvas awning and ornamental iron
installation.

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

And the title is amended as follows:

Delete lines 8 - 17

and insert:

met; providing applicability; specifying that certain
local licensing that does not meet specified criteria
does not apply and may not be enforced; amending s.
489.117, F.S.; specifying that certain specialty
contractors are not required to register with the
Construction Industry Licensing Board; prohibiting
local governments from requiring certain specialty
contractors to obtain a license under specified
circumstances; specifying job scopes for which a local
government may not require a license; providing
exceptions; amending ss. 489.1455 and 489.5335, F.S.;

By the Committee on Regulated Industries; and Senator Perry

580-02944-21

2021268c1

A bill to be entitled

An act relating to preemption of local occupational licensing; creating s. 163.211, F.S.; defining terms; preempting licensing of occupations to the state; providing exceptions; prohibiting local governments from imposing additional licensing requirements or modifying licensing unless specified conditions are met; specifying that certain local licensing that does not meet specified criteria does not apply and may not be enforced; amending s. 489.117, F.S.; specifying that certain specialty contractors are not required to register with the Construction Industry Licensing Board; prohibiting local governments from requiring certain specialty contractors to obtain a license under specified circumstances; specifying job scopes for which a local government may not require a license; amending ss. 489.1455 and 489.5335, F.S.; authorizing counties and municipalities to issue certain journeyman licenses; providing an effective date.

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

Section 1. Section 163.211, Florida Statutes, is created to read:

163.211 Licensing of occupations preempted to state.—

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

(a) "Licensing" means any training, education, test, certification, registration, or license that is required for a

580-02944-21

2021268c1

person to perform an occupation in addition to any associated fee.

(b) "Local government" means a county, municipality, special district, or political subdivision of the state.

(c) "Occupation" means a paid job, profession, work, line of work, trade, employment, position, post, career, field, vocation, or craft.

(2) PREEMPTION OF OCCUPATIONAL LICENSING TO THE STATE.—The licensing of occupations is expressly preempted to the state and this section supersedes any local government licensing requirement of occupations with the exception of the following:

(a) Any local government that imposed licenses on occupations before January 1, 2021. However, any such local government licensing of occupations expires on July 1, 2023.

(b) Any local government licensing of occupations authorized by general law.

(3) EXISTING LICENSING LIMIT.—A local government that licenses occupations and retains such licensing as set forth in paragraph (2) (a) may not impose additional licensing requirements on that occupation or modify such licensing.

(4) LOCAL LICENSING NOT AUTHORIZED.—Local licensing of an occupation that is not authorized under this section or otherwise authorized by general law does not apply and may not be enforced.

Section 2. Paragraph (a) of subsection (4) of section 489.117, Florida Statutes, is amended to read:

489.117 Registration; specialty contractors.—

(4) (a) A person ~~holding a local license~~ whose job scope does not substantially correspond to either the job scope of one

580-02944-21

2021268c1

of the contractor categories defined in s. 489.105(3)(a)-(o), or the job scope of one of the certified specialty contractor categories established by board rule, is not required to register with the board ~~to perform contracting activities within the scope of such specialty license~~. A local government, as defined in s. 163.211, may not require a person to obtain a license for a job scope which does not substantially correspond to the job scope of one of the contractor categories defined in s. 489.105(3)(a)-(o) and (q) or authorized in s. 489.1455(1). For purposes of this section, job scopes for which a local government may not require a license include, but are not limited to, painting; flooring; cabinetry; interior remodeling; driveway or tennis court installation; handyman services; decorative stone, tile, marble, granite, or terrazzo installation; plastering; stuccoing; caulking; and canvas awning and ornamental iron installation.

Section 3. Section 489.1455, Florida Statutes, is amended to read:

489.1455 Journeyman; reciprocity; standards.—

(1) Counties and municipalities are authorized to issue journeyman licenses in the plumbing, pipe fitting, mechanical, or HVAC trades.

(2)(1) An individual who holds a valid, active journeyman license in the plumbing, pipe fitting ~~plumbing/pipe fitting~~, mechanical, or HVAC trades issued by any county or municipality in this state may work as a journeyman in the trade in which he or she is licensed in any county or municipality of this state without taking an additional examination or paying an additional license fee, if he or she:

580-02944-21

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(a) Has scored at least 70 percent, or after October 1, 1997, at least 75 percent, on a proctored journeyman Block and Associates examination or other proctored examination approved by the board for the trade in which he or she is licensed;

(b) Has completed an apprenticeship program registered with a registration agency defined in 29 C.F.R. s. 29.2 and demonstrates 4 years' verifiable practical experience in the trade for which he or she is licensed, or demonstrates 6 years' verifiable practical experience in the trade for which he or she is licensed;

(c) Has satisfactorily completed specialized and advanced module coursework approved by the Florida Building Commission, as part of the building code training program established in s. 553.841, specific to the discipline or, pursuant to authorization by the certifying authority, provides proof of completion of such coursework within 6 months after such certification; and

(d) Has not had a license suspended or revoked within the last 5 years.

(3)(2) A local government may charge a registration fee for reciprocity, not to exceed \$25.

Section 4. Section 489.5335, Florida Statutes, is amended to read:

489.5335 Journeyman; reciprocity; standards.—

(1) Counties and municipalities are authorized to issue journeyman licenses in the electrical and alarm system trades.

(2)(1) An individual who holds a valid, active journeyman license in the electrical or alarm system trade issued by any county or municipality in this state may work as a journeyman in

580-02944-21

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117 the trade in which he or she is licensed in any other county or
118 municipality of this state without taking an additional
119 examination or paying an additional license fee, if he or she:

120 (a) Has scored at least 70 percent, or after October 1,
121 1997, at least 75 percent, on a proctored journeyman Block and
122 Associates examination or other proctored examination approved
123 by the board for the ~~electrical~~ trade in which he or she is
124 licensed;

125 (b) Has completed an apprenticeship program registered with
126 a registration agency defined in 29 C.F.R. s. 29.2 and
127 demonstrates 4 years' verifiable practical experience in the
128 ~~electrical~~ trade for which he or she is licensed, or
129 demonstrates 6 years' verifiable practical experience in the
130 ~~electrical~~ trade for which he or she is licensed;

131 (c) Has satisfactorily completed specialized and advanced
132 module coursework approved by the Florida Building Commission,
133 as part of the building code training program established in s.
134 553.841, specific to the discipline, or, pursuant to
135 authorization by the certifying authority, provides proof of
136 completion of such curriculum or coursework within 6 months
137 after such certification; and

138 (d) Has not had a license suspended or revoked within the
139 last 5 years.

140 ~~(3)(2)~~ A local government may charge a registration fee for
141 reciprocity, not to exceed \$25.

142 Section 5. This act shall take effect July 1, 2021.



The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 31, 2021

I respectfully request that **Senate Bill #268**, relating to Preemption of Local Occupational Licensing, be placed on the:

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

Statement of Intent:

Under current law, local municipalities have the option of attaching additional licensing requirements for occupational licenses. These can range from additional classes to extra fees, with practitioners forced to comply before they are allowed to legally operate in the area. This bill would allow an individual with a valid local license required by a municipality or county in Florida to work within the scope of a noncontractor local license throughout the state with no geographic limitation, and without obtaining an additional local license, taking an examination, or paying additional fees to do so.

A handwritten signature in black ink that reads "W. Keith Perry". The signature is written in a cursive style with a long horizontal line extending from the end.

Senator Keith Perry
Florida Senate, District 8

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

THE FLORIDA SENATE

APPEARANCE RECORD

4/6/21

Meeting Date

268

Bill Number (if applicable)

815936

Topic Amendment to SB 268 (Rules)

Amendment Barcode (if applicable)

Name Martha Edenfield

Job Title

Address 106 E. College #1200

Phone 850-999-4100

Street

Tallahassee

FL

32301

Email medenfield@deanmead.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Lee County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

04/06/2021

Meeting Date

CS/SB 268

Bill Number (if applicable)

857316

Amendment Barcode (if applicable)

Topic State Preempt of Local Occupational Licensing

Name Edward G. Labrador

Job Title Senior Legislative Counsel

Address 100 South Monroe Street

Street

Tallahassee

City

Florida

State

32301

Zip

Phone 954-826-1155

Email elabrador@fl-counties.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Association of Counties

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6/21

Meeting Date

SB 268

Bill Number (if applicable)

815936

Amendment Barcode (if applicable)

Topic PREEMPTION OF LOCAL OCCUPATIONAL LICENSING

Name MATT McDONALD

Job Title _____

Address 301 S. BRONOUGH ST., STE 500

Street

TALLAHASSEE

City

FL

State

32309

Zip

Phone _____

Email matt@psmfl.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA STORMWATER ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/6/2021

Meeting Date

SB 268

Bill Number (if applicable)

815936

Amendment Barcode (if applicable)

Topic

AMDT TO LOCAL LICENSE PREEMPTION

Name

CHRISTIAN CANARA

Job Title

Address

PO Box 122

Street

TALLAHASSEE

City

FL

State

32302

Zip

Phone

305 608 4300

Email

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☒

Against

(The Chair will read this information into the record.)

Representing

INSTITUTE FOR JUSTICE

↳ AMEN NEWT

Appearing at request of Chair:

☐

Yes

☐

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE
APPEARANCE RECORD

4-6-21

Meeting Date

268

Bill Number (if applicable)

815936

Amendment Barcode (if applicable)

Topic OCCUPATIONAL LICENSE PROTECTION

Name Jess M. McCarty

Job Title Executive Assistant County Attorney

Address 111 NW First Street, Suite 2810

Phone 305-979-7110

Street

Miami

City

FL

State

33128

Zip

Email jmm2@miamidade.gov

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Miami-Dade County

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/6/2021

Meeting Date

268

Bill Number (if applicable)

815936

Amendment Barcode (if applicable)

Topic Local Occupational Licensing Preemption

Name Devon West

Job Title Legislative Policy Advisor

Address 100 S. ~~Marion~~ St. Andrews Ave.

Street

Fort Lauderdale FL

City

State

33301

Zip

Phone 954.789.9293

Email devon@broward.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Broward County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

04/06/2021

Meeting Date

CS/SB 268

Bill Number (if applicable)

Topic State Preempt of Local Occupational Licensing

Amendment Barcode (if applicable)

Name Edward G. Labrador

Job Title Senior Legislative Counsel

Address 100 S.outh Monroe Street

Phone 954-826-1155

Street

Tallahassee

Florida

32301

Email elabrador@fl-counties.com

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Association of Counties

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6/21

Meeting Date

SB 268

Bill Number (if applicable)

Topic PREEMPTION OF LOCAL OCCUPATIONAL LICENSING

Amendment Barcode (if applicable)

Name MATTHEW McDONALD

Job Title _____

Address 301 S. BRONOUGH ST, STE 500
Street

Phone 850-528-3947

TALLAHASSEE FL 32309
City State Zip

Email matte.psm@fl.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA STORMWATER ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/6/21

Meeting Date

SB268

Bill Number (if applicable)

Topic LICENSING

Amendment Barcode (if applicable)

Name J.B. CLARK

Job Title LOBBYIST

Address 2071 CYNTHIA DRIVE
Street

Phone 850-556-8143

TIDEWATER FL 32303
City State Zip

Email J.BCLARK@BENTLEYFLORIDA.COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL. ELECTRICAL WORKERS ASSN.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6/2021

Meeting Date

SB 268

Bill Number (if applicable)

Topic

LOCAL LICENSE PREEMPTION

Amendment Barcode (if applicable)

Name

CHRISTIAN CAMARA

Job Title

Address

PO Box 122

Phone

305 608 4300

Street

GALLAGHERS FL 32302

Email

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

INSTITUTE FOR JUSTICE

Appearing at request of Chair:

☐

Yes

☐

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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

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)

6 April 2021
Meeting Date

268
Bill Number (if applicable)

Topic Local Licensing

Amendment Barcode (if applicable)

Name Diego Echeverri

Job Title Legislative Liaison

Address
Street

Phone

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Americans For Prosperity

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)

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THE FLORIDA SENATE
APPEARANCE RECORD

4/6/21RU9:30 A3

Meeting Date

268

Bill Number (if applicable)

Topic Preemption of Local Occupational Licensing

Amendment Barcode (if applicable)

Name David Cullen

Job Title _____

Address 1934 Shelby Ct

Phone 941-323-2404

Street

Tallahassee

FL

32308

Email cullenasea@gmail.com

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Sierra Club Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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4-6-21

Meeting Date

THE FLORIDA SENATE
APPEARANCE RECORD

268

Bill Number (if applicable)

Topic OCCUPATIONAL LICENSE PROGRAMS

Amendment Barcode (if applicable)

Name Jess M. McCarty

Job Title Executive Assistant County Attorney

Address 111 NW First Street, Suite 2810

Phone 305-979-7110

Street

Miami

FL

33128

Email jmm2@miamidade.gov

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Miami-Dade County

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6/2021

Meeting Date

268

Bill Number (if applicable)

Topic Local Occupational Licensing Preemption

Amendment Barcode (if applicable)

Name Devon West

Job Title Legislative Policy Advisor

Address Fort Lauderdale, FL

Phone 954.789.9293

Street

100 S Andrews Ave

City

State

Zip

Email dewest@broward.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Broward County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 342

INTRODUCER: Transportation Committee and Senator Diaz

SUBJECT: Vehicle and Vessel Registration

DATE: April 2, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Proctor	Vickers	TR	Fav/CS
2.	Gross	Babin	FT	Favorable
3.	Proctor	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 342 provides that a tax collector may exercise his or her authority to contract with a privately owned license plate agent, and may determine any additional service charges that will be collected by the license plate agent. Any additional service charges must be fully itemized and disclosed to a person paying the service charges.

The bill requires the license plate agent to enter into a contract with the tax collector regarding the disclosure of additional service charges.

The bill also requires tax collectors and their approved license plate agents to enter into a memorandum of understanding with the Department of Highway Safety and Motor Vehicles regarding use of the Florida Real Time Vehicle Information System.

The bill does not affect state or local revenues.

The bill has an effective date of July 1, 2021.

II. Present Situation:

Tax Collectors as Agents of the Department of Highway Safety and Motor Vehicles

Sixty-five counties currently have elected tax collectors who are constitutional officers.¹ Broward and Miami-Dade counties currently have appointed tax collectors under each county's charter government.²

Chapters 320, 322, and 328, F.S., provide that tax collectors are agents of the Department of Highway Safety and Motor Vehicles (DHSMV) for the limited purposes of providing motor vehicle and driver license services. Specifically, with regards to the issuance of registration certificates, license plates, and validation stickers (motor vehicle services), the tax collectors in the several counties of the state are “authorized agents of the department [DHSMV] ... subject to the requirements of the law.”^{3, 4, 5}

As a result of Florida Constitutional Amendment 10 (amending Section 3 of Article III, Sections 4 and 11 of Article IV, and Sections 1 and 6 of Article VIII of the Florida Constitution) that passed in 2018, Volusia, Broward and Miami-Dade County tax collector offices will be elected positions. The tax collector in Volusia County took office in 2021 and the Broward and Miami-Dade County tax collectors will take office in 2025. Currently, the motor vehicle services in these charter counties are predominately provided by private tag agency/license plate agent/license tag agencies/private license plate agencies⁶ (collectively referred to as “LPA”) that have an agreement with the county to charge an additional county service fee set by the county commission.⁷

¹ Volusia County formerly had an appointed tax collector. However, pursuant to s. 1(d), Art. VIII of the State Constitution and effective January 5, 2021, Volusia County has an elected tax collector.

² Pursuant to s. 1(d), Art. VIII of the State Constitution, Broward and Miami Dade counties will have elected tax collectors effective January 7, 2025.

³ Section 320.03(1), F.S.

⁴ “The tax collector, who acts as the agent of and under the direction and control of the department in the sale of motor vehicle license plates, is not acting as a county officer and the bond required to be posted protects only the department and not the county for other tax revenues received by the collector.” FL AGO 74-101 (Apr. 1, 1974).

⁵ *Dealer Tag Agency, Inc. v. First Hillsborough County Auto Tag Agency, Inc.*, 14 So. 3d 1238, 1240 (Fla. 2d DCA 2009). The trial court declared the contract void as a matter of law, because the tax collector established no bid protest procedures as required by Chapter 287, F.S. On appeal, the Second DCA held that the trial court erred, because the tax collector was not an executive branch of the state government bound by Chapters 287 or 120. Instead, the tax collector is a constitutional entity created by Article VIII, Section 1(d) of the Florida Constitution. The court held that “The fact that the Tax Collector is described as an “authorized agent” of the DHSMV for the provisions of section 320.03, F.S., does not make it a state agency for the provisions of chapter 287 and 120.” *Id.* at 1240.

⁶ Various combinations of these words are used interchangeably.

⁷ In determining the appropriateness of public funding for equipment used by LPAs, the Attorney General noted for purposes of section 320.03, F.S., that “license tag agencies are the agents of the respective county tax collectors....[and that n]o pecuniary benefit inures to such agents or subagents.” (emphasis added) FL AGO 082-81 (Oct. 11, 1982). The opinion goes on saying, “The license tag agencies in question are the agents of the county tax collector and as such subagents of the department....” *Id.*

Fees for Motor Vehicle Services

Several statutory provisions establish the fees to be charged for various motor vehicle services.⁸ Section 320.03(2), F.S., requires the tax collector to remit and account for all money that comes into his or her possession or control by reason of performing the various tag and titles services. Section 320.03(3), F.S., also requires the tax collector to “pay all sums officially received by the officer into the State Treasury no later than 5 working days after the close of the business day in which the officer received the funds.”

All fees for specific services are set by statute, without discretion to increase or lower the fee. For example, s. 320.03(5), F.S., provides that tax collectors are required to charge 50 cents on every license registration sold to cover the costs of the Florida Real Time Vehicle Information System (FRVIS). In addition, the statute requires the tax collector to charge \$1 for each license registration sold, transferred or replaced and requires a \$1.50 fee for each initial and renewal registration of private-use automobiles and certain trucks.^{9, 10} The tax collector retains \$2.50 for each application handled in connection with a license plate, mobile home sticker, and registration certificate.¹¹ The statute also provides that \$1 must be charged for license plate validation stickers, vessel decals and mobile home stickers issued from an automated vending facility or printer dispensing machine and allows the tax collector to impose an additional service charge of up to 50 cents for the transactions that occur in a tax collector’s branch office.^{12, 13}

However, in two specific situations, fees in excess of these specific amounts can be charged, but again, it is expressly permitted by statute. In s. 320.03(10)(d), F.S., an authorized electronic filing system agent may charge a fee to the customer for use of the electronic filing system, and in s. 320.04(2), F.S., LPAs appointed by the county manager of a charter county which has an appointed tax collector are exempted from the prohibition on charging fees for notary public services in connection with, or incidental to, the issuance of license plates or titles.

A well-known canon of statutory interpretation is “*expressio unius est exclusio alterius*,” which means the expression of one thing implies the exclusion of all others.¹⁴ Because the Legislature has indicated precisely when and how private parties can charge fees beyond the statutory fees set in some areas, it would follow that LPAs cannot charge fees beyond the statutorily mandated fees in any other areas. In other words, the Legislature has determined where a deviation from the statutory fee may occur for certain services provided on behalf of the DHSMV.

License Plate Agents and Fees

Since a tax collector is acting as an agent for the DHSMV in providing motor vehicle services, when the LPA contracts with the tax collector to provide such state services, it also is acting as

⁸ See ss. 319.32 and 320.08, F.S.

⁹ Section 320.03(6), F.S.

¹⁰ Section 320.03(9), F.S.

¹¹ Section 320.04(1)(a), F.S.

¹² Section 320.04(1)(b), F.S.

¹³ Section 320.04(1)(c), F.S.

¹⁴ See, generally, A. Scalia & B. Garner, Reading Law (2012).

an agent for the DHSMV.¹⁵ The DHSMV is bound by statute, and therefore lacks authority to allow a tax collector to charge fees in excess of what is provided by statute. In turn, the tax collector, in its role as an agent of the DHSMV, similarly lacks authority to authorize a LPA to charge fees in excess of the statute without express statutory authority.

No statute currently authorizes an additional service fee that may be charged by a LPA or other agent of the state providing a specific motor vehicle service. Several statutes contemplate the use of an LPA that would provide motor vehicle services, but none of these statutes provide any authority for the LPA to charge an additional amount in excess of the fees set by statute.

Sixteen counties have, or have until recently had, contracts with LPAs to operate fifty-seven offices to perform title and registration services for motor vehicles, mobile homes, and vessels, as follows:¹⁶

- | | | | |
|--------------------|-------------------|---------------------------|------------------|
| • Alachua – 1 | • Bay – 1 | • Broward – 7 | • Highlands – 1 |
| • Hillsborough – 1 | • Jefferson – 2 | • Lee – 1 (opens in 2021) | • Leon – 1 |
| • Manatee – 1 | • Miami-Dade – 25 | • Orange – 4 | • Palm Beach – 2 |
| • Pasco – 1 | • Pinellas – 3 | • Polk – 3 | • Volusia - 3 |

The LPAs in Broward and Miami-Dade counties charge (and formerly the LPAs in Volusia County charged) fees for motor vehicle, mobile home, and vessel title and registration services in addition to the statutory fees authorized in ch. 319, 320 and 328, F.S. The additional fees levied in Broward and Miami-Dade counties are levied pursuant to county ordinances and are retained by the LPAs.^{17, 18}

The LPAs in counties which have elected tax collectors currently only charge the fees for those services which are expressly authorized in state law. The LPAs in these counties may retain all or a portion of the statutorily authorized service fees tax collectors are allowed for motor vehicle, mobile home, and vessel title and registration services, as provided in the contracts between the LPA and each respective tax collector.

LPAs offering optional “concierge” motor vehicle, mobile home, and vessel title and registration services (including supplementary or complementary services not dealt with by statute) to vehicle or vessel dealerships and other motor vehicle related businesses charge additional fees for these services.

The chart below details the additional fees currently charged by the LPA’s in Broward and Miami-Dade counties and that formerly were charged by the LPAs in Volusia County prior to January 5, 2021.¹⁹

¹⁵ See FL AGO 082-81 (Oct. 11, 1982).

¹⁶ Volusia County’s LPA offices operated prior to the elected Volusia County tax collector taking office on January 5, 2021. Currently, these offices are winding down operations and were to close by February 4, 2021.

¹⁷ The additional fees formerly collected in Volusia County were collected pursuant to the contract between Volusia County and the LPAs that operated in Volusia County.

¹⁸ See, Art. XVII, s. 2-123, Code of Miami-Dade County; Ch. 20, Art. XII, s. 20-251, Code of Broward County.

¹⁹ Department of Highway Safety and Motor Vehicles, *2021 Legislative Bill Analysis for SB 342*, (January 13, 2021), p. 3 (on file with the Senate Committee on Finance and Tax).

Additional Fees Charged by LPA			
Transaction Type	Broward	Miami-Dade	Volusia
Registration Transaction	\$3.50	\$5.00	\$2.85
Biennial Renewal	\$7.00	\$10.00	\$2.85
Title (original or transfer)	\$15.00	\$18.00	\$12.00
Certificate of Destruction	\$16.00	\$18.00	\$10.00
Duplicate Title	\$6.75	\$8.00	\$2.85
VIN Verification or HIN	\$3.50	\$8.00	\$2.00
Duplicate or corrected registration	\$3.50	\$5.00	\$2.00
Verification of Ownership, lien, tag, decal (not part of title application)	\$3.50	\$4.00	\$0.50
Preparation of affidavits or forms and notarization	N/A	\$3.00	\$0.00
Copies of docs pertaining to MV & vessels	N/A	\$2.00	N/A
Fast title service - additional fees	\$20.00	\$10.00	N/A
Disabled Persons Parking Placards	\$2.00	\$3.00	\$0.50
Temp tag	\$4.00	\$5.00	\$2.00
Dealer Handling Fee (max per transaction - within county)	\$6.75	n/a	\$6.00
Dealer Handling Fee (max per transaction - for other county dealer)	\$25.00	n/a	\$10.00
Print Electronic Title	N/A	\$14.00	\$2.75
Notice of Lien (82139) no title	\$3.50	\$5.00	\$2.00
Assignment of Lien (82139)	\$4.00	\$5.00	\$2.00
Mail receipt - actual cost of postage	Actual Cost	N/A	Actual Cost
Personalize plate reservation	N/A	\$5.00	\$2.85
Personalized plate issuance	N/A	\$5.00	\$0.00
Personalized plate availability	N/A	\$4.00	\$0.00
Registration stop satisfaction	N/A	\$2.00	\$0.00
Registration stop payment	N/A	\$4.00	\$0.00
Email/fax/forms	N/A	\$2.00	\$0.00
OS lienholder letter	N/A	\$9.00	\$0.00
Mark Title Sold	N/A	\$5.00	\$2.85*
Surrender License Plate	N/A	\$5.00	\$2.85
Adding wrecker operator lien	N/A	\$8.00	\$2.85
Satisfying wrecker operator lien	N/A	\$7.00	\$2.85*
N/A - No charge for these specific transactions			
*Charged only if not part of a transaction			

Florida Real Time Vehicle Information System

The DHSMV maintains the FRVIS which facilitates the collection of taxes and fees for tags, titles, and registrations associated with motor vehicles and vessels.²⁰ Local tax collector and LPA offices throughout the state process tag, title, and registration transactions through FRVIS.²¹ Revenue from taxes and fees associated with tags, titles, and registrations for motor vehicles and vessels, together with other sources of the DHSMV's revenue, are distributed through FRVIS to

²⁰ Department of Highway Safety and Motor Vehicles, *Florida Real Time Vehicle Information System (FRVIS): Information Technology Operational Audit*, (April 2014), available at https://flauditor.gov/pages/pdf_files/2014-183.pdf (last visited March 12, 2021).

²¹ *Id.* at pages 1-2.

various state agencies, including the DHSMV, and non-state entities in accordance with governing Florida Statutes.²²

Access to FRVIS is governed by written agreement in the form of a memorandum of understanding (MOU) between the DHSMV and tax collectors throughout the state, and if a tax collector has an LPA, by an additional MOU between the DHSMV, the tax collector, and the LPA contracted with the tax collector.²³

FRVIS is composed of two processing environments. The first is a distributed environment that consists of the servers at local tax collector and tag agent offices that process tag, title, and registration transactions throughout the state. The second environment is the host portion that consists of the back-end processing that is conducted centrally at the DHSMV's primary data center.²⁴

In addition to residential street addresses, the DHSMV is authorized to collect and store (in FRVIS) e-mail addresses. E-mail addresses may be used, in lieu of the United States Postal Service, to provide certain renewal notices, including registration renewal notices, driver license renewal notices, and vessel registration renewal notices.^{25, 26, 27, 28, 29}

Related Equipment Requirements

Currently, any tax collector or LPA opening a new office or expanding existing offices initially purchases the equipment needed for title and registration issuance to operate that office. The DHSMV periodically refreshes outdated equipment and pays the cost of the new equipment (contingent upon appropriated funds) for both tax collector's and LPA's offices.³⁰

LPAs reimburse the DHSMV for reoccurring circuit costs (i.e., Internet access) for each location, unless the LPA office is colocated with a tax collector office and the circuit is shared.³¹

III. Effect of Proposed Changes:

The bill provides that a tax collector may elect to exercise his or her authority to contract with a LPA, and may determine any additional service charges that will be collected by the LPAs approved by the tax collector. Any additional service charges must be fully itemized and disclosed to a person paying the service charges to the LPA.

The bill requires the LPA to enter into a contract with the tax collector regarding the disclosure of additional service charges.

²² *Id.*, at page 2.

²³ *Supra* FN 19, p. 3

²⁴ *Id.*

²⁵ Section 319.40, F.S.

²⁶ Section 320.95, F.S.

²⁷ Section 322.08(10), F.S.

²⁸ Section 328.30, F.S.

²⁹ Section 328.80, F.S.

³⁰ *Supra* FN 19, p. 4.

³¹ *Id.*

The bill also requires tax collectors and their approved LPAs to enter into an MOU with the DHSMV regarding use of the FRVIS.

The bill has an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, limit their ability to raise revenue, or reduce the percentage of a state tax shared with them. Therefore, the mandates provisions of Article VII, s. 18 of the State Constitution do not apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Article VII, Section 19 of the Florida Constitution requires new or increased taxes or fees to be passed by a two-thirds vote of the membership of each house of the Legislature in a separate bill that contains no other subject..³² A “fee” is defined as “any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.”³³

While the above provisions do not apply to local government revenues, to the extent that the additional service charges that will be collected by the LPAs as approved by the tax collector (in this capacity operating as authorized agent of the state) are determined to be new state fees, the requirements of Article VII, s. 19 of the Florida Constitution may apply.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill does not affect state or local revenues.

³² FLA. CONST. art. VII, s. 19(a).

³³ FLA. CONST. art. VII, s. 19(d)(1).

B. Private Sector Impact:

Individuals who elect to use the services of a tax collector approved LPA may incur additional service charges.

To the extent that LPAs provide services which have been approved by the tax collector to charge additional service charges, the LPAs may receive additional revenue.

C. Government Sector Impact:

The DHSMV stated that if the bill results in more tax collectors using LPAs or more LPA offices being established to perform motor vehicle, mobile home, and vessel title and registration services, recurring costs for replacement equipment for tax collectors' and LPAs' offices may increase and, potentially, impair the ability of the Highway Safety Operating Trust Fund to cover the refresh rate for equipment in tax collector's offices as well as existing LPAs' offices, which is paid from the Highway Safety Operating Trust Fund.³⁴

The DHSMV stated the bill would be a significant impact on the DHSMV's operational resources and resources dedicated to the Motorist Modernization project. Programing would be required in FVRIS to print fees that LPA's would charge on receipts and reports.³⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not address "off-highway vehicle" titles. An "off-highway vehicle" is not included in the definition of "motor vehicle" in ch. 322, F.S. The definition of "off-highway vehicle" and the fees pertaining to titles for those vehicles are found in ch. 317, F.S. The DHSMV recommends provisions for "off-highway vehicle" be added to the bill.³⁶

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 319.32, 320.03, 320.04, and 328.72.

³⁴ *Supra* FN 19, p. 5-6.

³⁵ *Ibid*, p. 6.

³⁶ *Ibid*, p. 7.

IX. Additional Information:

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

CS by Transportation on March 3, 2021:

- Clarifies that it is discretionary for tax collectors to exercise their authority to contract with a license plate agent and determine additional service charges collected by privately owned license plate agents for motor vehicle titles.

- B. **Amendments:**

None.

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

By the Committee on Transportation; and Senator Diaz

596-02367-21

2021342c1

A bill to be entitled

An act relating to vehicle and vessel registration; amending s. 319.32, F.S.; authorizing tax collectors to determine service charges collected by privately owned license plate agents for motor vehicle titles; requiring that additional service charges be itemized and disclosed to the person paying them; requiring a license plate agent to enter into a contract with the tax collector for a certain purpose; amending s. 320.03, F.S.; requiring tax collectors and approved license plate agents to enter into a memorandum of understanding with the department for a certain purpose; amending s. 320.04, F.S.; authorizing the tax collector to determine service charges collected by privately owned license plate agents for motor vehicle registrations; requiring that additional service charges be itemized and disclosed to the person paying them; requiring a license plate agent to enter into a contract with the tax collector for a certain purpose; amending s. 328.72, F.S.; authorizing the tax collector to determine service charges collected by privately owned license plate agents for vessel registrations and titles; requiring that additional service charges be itemized and disclosed to the person paying them; requiring a license plate agent to enter into a contract with the tax collector for a certain purpose; providing an effective date.

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

Page 1 of 4

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

596-02367-21

2021342c1

Section 1. Paragraph (c) is added to subsection (2) of section 319.32, Florida Statutes, to read:

319.32 Fees; service charges; disposition.—

(2)

(c) If a tax collector elects to exercise his or her authority to contract with a license plate agent, the tax collector may determine additional service charges to be collected by the privately owned license plate agents approved by the tax collector. Additional service charges must be fully itemized and disclosed to the person paying the service charges to the license plate agent. The license plate agent shall enter into a contract with the tax collector regarding the disclosure of additional service charges.

Section 2. Subsection (5) of section 320.03, Florida Statutes, is amended to read:

320.03 Registration; duties of tax collectors; International Registration Plan.—

(5) In addition to the fees required under s. 320.08, a fee of 50 cents shall be charged on every license registration sold to cover the costs of the Florida Real Time Vehicle Information System. The fees collected shall be deposited into the Highway Safety Operating Trust Fund to be used exclusively to fund the system. The fee may only be used to fund the system equipment, software, personnel associated with the maintenance and programming of the system, and networks used in the offices of the county tax collectors as agents of the department and the ancillary technology necessary to integrate the system with other tax collection systems. The department shall administer

Page 2 of 4

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

596-02367-21

2021342c1

59 this program upon consultation with the Florida Tax Collectors,
 60 Inc., to ensure that each county tax collector's office is
 61 technologically equipped and functional for the operation of the
 62 Florida Real Time Vehicle Information System. Tax collectors and
 63 their approved license plate agents shall enter into a
 64 memorandum of understanding with the department regarding use of
 65 the Florida Real Time Vehicle Information System in accordance
 66 with paragraph (4) (b). Any designated revenue collected to
 67 support functions of the county tax collectors and not used in a
 68 given year must remain exclusively in the trust fund as a
 69 carryover to the following year.

70 Section 3. Present subsection (3) of section 320.04,
 71 Florida Statutes, is redesignated as subsection (4), and a new
 72 subsection (3) is added to that section, to read:

73 320.04 Registration service charge.—

74 (3) If a tax collector elects to exercise his or her
 75 authority to contract with a license plate agent, the tax
 76 collector may determine additional service charges to be
 77 collected by privately owned license plate agents approved by
 78 the tax collector. Additional service charges must be fully
 79 itemized and disclosed to the person paying the service charges
 80 to the license plate agent. The license plate agent shall enter
 81 into a contract with the tax collector regarding the disclosure
 82 of additional service charges.

83 Section 4. Subsection (7) of section 328.72, Florida
 84 Statutes, is amended to read:

85 328.72 Classification; registration; fees and charges;
 86 surcharge; disposition of fees; fines; marine turtle stickers.—

87 (7) SERVICE FEE.—

596-02367-21

2021342c1

88 (a) In addition to other registration fees, the vessel
 89 owner shall pay the tax collector a \$2.25 service fee for each
 90 registration issued, replaced, or renewed. Except as provided in
 91 subsection (15), all fees, other than the service charge,
 92 collected by a tax collector must be remitted to the department
 93 not later than 7 working days following the last day of the week
 94 in which the money was remitted. Vessels may travel in salt
 95 water or fresh water.

96 (b) If a tax collector elects to exercise his or her
 97 authority to contract with a license plate agent, the tax
 98 collector may determine additional service charges to be
 99 collected by privately owned license plate agents approved by
 100 the tax collector. Additional service charges must be fully
 101 itemized and disclosed to the person paying the service charges
 102 to the license plate agent. The license plate agent shall enter
 103 into a contract with the tax collector regarding the disclosure
 104 of additional service charges.

105 Section 5. This act shall take effect July 1, 2021.



SENATOR MANNY DIAZ, JR.
36th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy Chair
Appropriations Subcommittee on
Education Vice Chair
Appropriations
Appropriations Subcommittee on Health
and Human Services
Education
Commerce and Tourism
Rules

March 19, 2021

Honorable Senator Kathleen Passidomo
Chair
Committee on Rules

Honorable Chair Passidomo,

I respectfully request Senate Bill Number 342 Vehicle and Vessel Registration be placed on the next committee agenda.

Vehicle and Vessel Registration Authorizes tax collectors to determine service charges collected by privately owned license plate agents for motor vehicle titles; requiring that additional service charges be itemized and disclosed to the person paying them; requiring a license plate agent to enter into a contract with the tax collector for a certain purpose; requiring tax collectors and approved license plate agents to enter into a memorandum of understanding with the department for a certain purposes.

Sincerely appreciate your support.

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

Senator Manny Diaz, Jr.
Florida Senate, District 36

CC: John B. Phelps, Staff Director
Cynthia Futch, Committee Administrative Assistant

REPLY TO:

- ☐ 10001 Northwest 87th Avenue, Hialeah Gardens, Florida 33016 (305) 364-3073
- ☐ 306 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5036

Senate's Website: www.flsenate.gov

Wilton Simpson
President of the Senate

Aaron Bean
President Pro Tempore

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

Reset Form

THE FLORIDA SENATE
APPEARANCE RECORD

4/6/2021

Meeting Date

SB 342

Bill Number (if applicable)

Topic Vehicle and Vessel Registration

Amendment Barcode (if applicable)

Name Andrew Ketchel

Job Title Consultant

Address 124 W Jefferson Street

Phone 222-9075

Street

Tallahassee

FL

32312

City

State

Zip

Email Andrew@cccfla.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Dealer Services Network

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

SPECIAL MASTER ON CLAIM BILLS

Location

404H The Capitol

Mailing Address

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

DATE	COMM	ACTION
3/17/21	SM	Favorable
3/22/21	JU	Fav/CS
4/2/21	RC	Favorable

March 17, 2021

The Honorable Wilton Simpson
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 398** – Senator Rodriguez
HB 6503 – Representative Rodriguez
Relief of the Estate of Emilio Jesus Vizcaino-Aday

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF \$350,000. THIS AMOUNT IS THE REMAINING UNPAID BALANCE OF A SETTLEMENT REGARDING THE NEGLIGENCE OF A MIAMI-DADE POLICE OFFICER, WHICH RESULTED IN THE DEATH OF EMILIO JESUS VIZCAINO-ADAY.

FINDINGS OF FACT:

The Crash on March 6, 2018

At approximately 1:23 a.m., on the morning of March 6, 2018, Mr. Emilio Jesus Vizcaino-Aday, a forty-five year old man, was struck by a vehicle operated by Officer John Young Song, an on-duty Miami-Dade Police officer.

Prior to the crash Officer Song was following a car suspected of involvement in a recent home burglary where two vehicles were stolen. Officer Song was accompanied by his partner, Officer Cesar Echaverry. The officers traveled at a high speed in this pursuit, but did not activate the vehicle's emergency lights or siren, and did not initiate a traffic stop.

Officer Song approached the intersection where the crash occurred at a speed of 86 miles per hour according the Event

Data Recorder on board the vehicle. The posted speed limit is 40 miles per hour. Officer Song passed but did not yield to a stop sign, which was visible and unobstructed, and struck Mr. Vizcaino-Aday's vehicle on the driver's side in the intersection at 68 miles per hour. According to the accident reconstruction report, Mr. Vizcaino-Aday travelled at approximately 31 miles per hour, and did not have a stop sign on his route into the intersection.

Mr. Vizcaino-Aday was pronounced dead on the scene from blunt force trauma experienced in the crash.

Mr. Vizcaino is survived by his wife, Ailin Aday, and son, Neiser Josa Vizcaino Rojas.

Settlement

More than a year of litigation followed the crash. Miami-Dade County admits the facts above, and defended solely on a theory of Officer Song's actions exhibiting "wanton and willful disregard of human rights, safety, or property," as provided in section 768.28(9) of the Florida Statutes.¹

Claimant and Miami-Dade County entered a post-mediation settlement agreement for \$650,000. Claimant received \$300,000 from Miami-Dade County and seeks the remaining \$350,000.

Miami-Dade County supports the relief and reports that the funds will be dispersed from their self-funded Insurance Trust Fund, and will not affect the operations of the County.

CONCLUSIONS OF LAW:

Section 768.28, Florida Statutes (2018), waives sovereign immunity for tort liability for a claim or judgment by one person up to \$200,000 and up to \$300,000 per incident. Sums exceeding this amount are payable by the State and its agencies or subdivisions by further act of the Legislature.

A county is liable for a negligent act committed by an employee acting within the scope of employment.² Mr. Song was an on-duty Miami-Dade police officer operating his police cruiser within the scope of his employment, thereby making

¹ *Emilio Jesus Vizcaino-Aday v. Miami-Dade County*, Case No. 19-21301 CA 01 (Cir. Ct. Miami-Dade County, 2020), Miami Dade County's Answer to Plaintiff's Second Amended Complaint.

² Section 768.28, F.S.

Miami-Dade County liable for any negligent acts committed by him.

Regardless of any jury verdict or settlement, claim bills are reviewed *de novo*, and each element of negligence must be found within the evidence.

There are four elements to a negligence claim: (1) duty – where the defendant has a legal obligation to protect others against unreasonable risks; (2) breach – which occurs when the defendant has failed to conform to the required standard of conduct; (3) causation – where the defendant's conduct is foreseeably and substantially the cause of the resulting damages; and (4) damages – actual harm.³

Duty

Officer Song had a duty to operate his vehicle at all times with consideration for the safety of other drivers.⁴ A police officer owes a duty to exercise reasonable care to protect bystanders when their duties produce foreseeable risk. Following a suspected stolen vehicle at more than twice the posted speed limit undoubtedly created a zone of risk. Therefore, it was Officer Song's duty to take actions that would lessen the risk of foreseeable harm created by this zone of risk.

Furthermore, Officer Song is authorized as an emergency vehicle in pursuit of a suspected violator of the law to "proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation" and "exceed the maximum speed limits so long as the driver does not endanger life or property."⁵

Breach

As the evidence demonstrates, Officer Song violated statutes and breached the required duty of care. Officer Song proceeded past the stop sign without sufficient slowing, and exceeded the speed limit in a manner that did endanger life and property. Officer Song also failed to activate his lights and

³ Williams v. Davis, 974 So.2d 1052, at 1056-1057 (Fla. 2007).

⁴ See *City of Pinellas Park v. Brown*, 604 So.2d 1222, 1226 (Fla. 1992) (holding officers conducting a high-speed chase of a man who ran a red light had a duty to reasonably safeguard surrounding motorists); *Brown v. Miami-Dade Cnty.*, 837 So.2d 414, 417 (Fla. 3d DCA 2001) ("Florida courts have found that police officers do owe a duty to exercise reasonable care to protect innocent bystanders... when their law enforcement activities create a foreseeable zone of risk").

⁵ Section 316.072(5), F.S.

sirens to notify passersby of the foreseeable risk. These factors combined show that Officer Song clearly violated statutes and failed to uphold his required duty of care.

Causation

Officer Song's breaches of duty, including his failure to activate lights and sirens, failure to slow adequately before proceeding past the stop sign, and failure to safely exceed the maximum speed limits are the direct cause of the resulting damages. A collision was a foreseeable outcome from the risk produced by Officer Song's high speed pursuit and failure to obey the stop sign. But for Officer Song approaching the intersection at an unsafe speed without sirens or lights activated, the crash would not have happened in the same manner, if at all. The evidence therefore demonstrates that Officer Song was at fault for the crash that resulted in damages.

Damages

As an immediate result of the March 6, 2018, crash, Mr. Vizcaino-Aday died. The amount of damages sought in this bill, \$350,000, is reasonable given the outcome of the accident. Mr. Vizcaino-Aday is survived by his wife and adult son, and worked both a full-time and part-time job in order to help provide financially for both of them. The agreed amount settled upon represents the pain and suffering, as well as loss of consortium and financial support experienced by Mr. Vizcaino-Aday's wife and child.

ATTORNEY FEES:

The bill states that the total amount paid for attorney fees, lobbying costs, and similar expenses may not exceed 25 percent of the amount awarded.

RECOMMENDATIONS:

The undersigned recommends changing the references to "the Estate of Neiser Josa Vizcaino Rojas" on lines 30, 39, and 48 to correctly refer to "the Estate of Emilio Jesus Vizcaino-Aday."

For the reasons set forth above, the undersigned finds that the claimant has demonstrated the elements of negligence by the greater weight of the evidence and the amount sought is reasonable. The undersigned recommends the bill be reported FAVORABLY.

Respectfully submitted,

Jack O. Hackett, III
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary

The committee substitute clarifies that the recipient of the proceeds of the claim bill is the estate of Emilio Jesus Vizcaino-Aday, the person whose death was the basis of the claim bill.

By the Committee on Judiciary; and Senator Rodriguez

590-03197-21

2021398c1

A bill to be entitled

An act for the relief of the Estate of Emilio Jesus Vizcaino-Aday by Miami-Dade County; providing for an appropriation to compensate the Estate of Emilio Jesus Vizcaino-Aday for injuries and damages sustained by Emilio Jesus Vizcaino-Aday and his survivors as a result of the negligence of Miami-Dade County; providing a limitation on the payment of attorney fees; providing an effective date.

WHEREAS, on March 6, 2018, Emilio Jesus Vizcaino-Aday was lawfully traveling in his vehicle south on SW 147th Avenue toward the intersection at SW 260th Street in Miami-Dade County, wearing his seatbelt and traveling at or below the posted speed limit, and

WHEREAS, Mr. Vizcaino-Aday was struck by a Miami-Dade Police Department vehicle owned by Miami-Dade County, which was operated by one of its law enforcement officers, and

WHEREAS, the Estate of Emilio Jesus Vizcaino-Aday has alleged, through a lawsuit filed on July 18, 2019, that the negligence of Miami-Dade County, through its law enforcement officer, was the proximate cause of the death of Mr. Vizcaino-Aday, and

WHEREAS, Ailin Avalos, Mr. Vizcaino-Aday's widow, and Neiser Josa Vizcaino Rojas, Mr. Vizcaino-Aday's son, have suffered significant financial damages due to the loss of Mr. Vizcaino-Aday's net income accumulation in the past and future and have experienced extreme mental anguish and suffering as a result of the loss of their husband and father, and

Page 1 of 3

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

590-03197-21

2021398c1

WHEREAS, the Estate of Emilio Jesus Vizcaino-Aday and Miami-Dade County have reached a tentative compromise settlement pending county approval, the settlement being in the amount of \$650,000, and

WHEREAS, pursuant to the agreement between the parties, the settlement will be partially satisfied in the amount of \$300,000, and

WHEREAS, pursuant to the settlement, the claim shall be considered fully satisfied by payment of an additional \$350,000 by Miami-Dade County to the Estate of Emilio Jesus Vizcaino-Aday, as authorized by the Florida Legislature, NOW, THEREFORE,

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

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

Section 2. Miami-Dade County is authorized and directed to appropriate from funds not otherwise encumbered and to draw a warrant in the sum of \$350,000 payable to the Estate of Emilio Jesus Vizcaino-Aday as compensation for injuries and damages sustained.

Section 3. The amount paid by Miami-Dade County pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in the death of Emilio Jesus Vizcaino-Aday, including injuries and damages to the Estate of Emilio Jesus Vizcaino-Aday and his survivors. The total amount paid for attorney fees, lobbying costs, and similar

Page 2 of 3

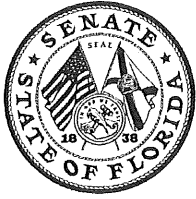
CODING: Words ~~stricken~~ are deletions; words underlined are additions.

590-03197-21

2021398c1

59 expenses relating to this claim may not exceed 25 percent of the
60 total amount awarded under this act. However, taxable costs that
61 may not include attorney fees and lobbying fees related to the
62 underlying civil action may be collected in addition to the
63 aforementioned attorney fees and lobbying costs.

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



The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 24, 2021

I respectfully request that **Senate Bill #398**, relating to Relief of the Estate of Emilio Jesus Vizcaino-Aday by Miami-Dade County, be placed on the:

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

The intent of this claim bill is to provide relief of the Estate of Emilio Jesus Vizcaino-Aday by Miami-Dade County to compensate for injuries and damages sustained by Emilio Jesus Vizcaino-Aday and his survivors as a result of the negligence of Miami-Dade County.

A handwritten signature in black ink, appearing to read "AmR", is written above a horizontal line.

Senator Ana Maria Rodriguez
Florida Senate, District 39

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 Rules

BILL: CS/SB 400

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Rodrigues

SUBJECT: Public Records

DATE: April 2, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Ponder	McVaney	GO	Fav/CS
2. Davis	Cibula	JU	Favorable
3. Ponder	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 400 amends s. 119.07, F.S., to prohibit an agency that receives a public record request from responding to the request by filing an action for declaratory relief against the requester to determine whether that record meets the definition of a public record or if it is confidential or exempt.

The fiscal impact of the bill on state and local governments and their contractors is indeterminate. However, to the extent an agency is no longer permitted to use the declaratory judgment action as a vehicle to determine the rights and obligations of the parties under Chapter 119, F.S., an agency may incur greater litigation costs associated with cases challenging an agency's denial of access to records.

The bill takes effect July 1, 2021.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business

¹ FLA. CONST., art. I, s. 24(a).

of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act states that

[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁴

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁵ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁶

Section 119.011(2), F.S., broadly defines agency to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

Making a Public Records Request

Section 119.07, F.S., sets out an orderly process for a citizen to request a public record:

1. The requestor contacts the agency in writing or orally to request to inspect or copy certain records.
2. The custodian or designee must acknowledge the request and respond to it in good faith.

² *Id.*

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

3. The agency may then provide the records subject to exemptions and confidentiality, or deny the request and state the basis for their denial.

In cases where the agency is uncertain whether the requested documents constitute a “public record” or are subject to a public records exemption, the agency may:

- File an opinion request to the Attorney General; or
- File an action for declaratory relief in their local court seeking a declaratory judgment on the complained of uncertainty.

When a request is denied, the requestor has the option to work with the agency in an effort to refine or alter its request so that the agency might disclose the information if the request is clarified, presented differently, or modified. The requestor may also:

- File a civil action to enforce the Public Records Act;
- File a complaint with their local state attorney; or
- If it is a qualifying dispute, seek voluntary mediation using the Attorney General’s public records mediation program pursuant to s. 16.60, F.S.

Civil and Criminal Penalties

If a person willfully and knowingly violates public records laws either by failing to release unprotected information or by releasing exempt or confidential information, that employee may be subject to criminal prosecution for a first degree misdemeanor, which carries a sentence of imprisonment up to 1 year and a fine of up to \$1000.⁹ Additionally, knowing and willful failure to protect the public records of victims of crimes or accidents under s. 119.105, F.S., constitutes a third degree felony, punishable by a sentence of imprisonment up to 5 years and a fine of up to \$5,000.¹⁰

Reasonable attorney’s fees will be assessed against an agency found to have violated public records law.¹¹

Florida Attorney General Advisory Legal Opinions

The Attorney General must respond to requests for opinions from the Governor, members of the Cabinet, the head of an executive branch department, or certain members of the Florida Legislature. They are authorized, but not required, to respond to requests for opinions from members of the Legislature, other state officers, and officers of a county, municipality, other unit of local government, or political subdivision.¹² Private companies contracting with governments may be subject to public records laws but may not request Attorney General Opinions (AGO).

In order to request an AGO, attorneys for the public entity requesting an opinion must produce a legal memorandum to supply with their request. In 2020, the Attorney General issued nine

⁹ Section 119.10(2)(a), F.S.

¹⁰ Section 119.10(2)(b), F.S.

¹¹ Section 286.011(4), F.S.

¹² Section 16.01(3), F.S.

formal opinions – none of which related to the resolution of a public records dispute or a request under the Public Records Act, generally.¹³

In 2019, the Attorney General issued two opinions directed to requests regarding the Public Records Act:

- AGO 2019-14, addressing whether the Education Practices Commission is a state agency under ch. 119, 120, and 286, F.S.; and
- AGO 2019-08, addressing whether ch. 119, F.S., precludes an agency from engaging a “vendor to conduct penetration testing of the agency’s electronic data storage systems for the purpose of detecting and remedying vulnerabilities” where such testing would potentially allow the vendor to access information that is exempt under s. 119.071(4)(d)2.a & d., F.S., and confidential under s. 119.071(4)(a)l., F.S., (pertaining to social security numbers).

Public Records Mediation Program within the Office of Attorney General

Section 16.60(2), F.S., establishes a public records mediation program (Mediation Program) within the Office of the Attorney General (OAG). This unfunded and voluntary program is designed to assist the public in avoiding litigation regarding disputes over public records access. The term “mediation” is defined to mean a process whereby a neutral third person, the mediator, acts to encourage and facilitate the resolution of a dispute between two or more parties.¹⁴ Section 16.60(1), F.S., is silent as to when mediation is appropriate or required. Section 16.60(3), F.S., requires the OAG to employ one or more mediators to mediate disputes involving access to public records. Currently, the mediation program employs one mediator.

The kinds of disputes that qualify for resolution under the s. 16.60, F.S., Mediation Program are extremely limited. An OAG mediator lacks authority to make a determination as to whether an agency has or has not violated the public records law. Additionally, an OAG mediator may not resolve a dispute involving whether an agency’s statement that it has no responsive records is or is not true. Thus, the Mediation Program’s process is foreclosed to parties that dispute a record’s status as a public record or as exempt/confidential. If these parties wish to avoid litigation - and time is not of the essence - they may seek an AGO. Otherwise, a civil action must be filed to resolve the dispute.

The OAG does not maintain a record of the number of mediations. However, the OAG estimates that the Mediation Program handles approximately 25 mediations a year which it considers to be informal dispute resolutions. The OAG considers a mediation to include only those instances in which there are communications from both sides with an OAG mediator and the mediator acts as a problem solver with both sides. Qualifying mediations generally fall into two categories:

- Where an OAG mediator works with a requestor to explain how to clarify their request such that the communication constitutes a request for records and does not merely pose a question; and

¹³ <http://www.myfloridalegal.com/ago.nsf/OP?open&RestricttoCategory=2020&Start=1&Count=30> (last visited Mar. 10, 2021). The Attorney General’s Office filed 14 formal opinions in 2019, 6 formal opinions in 2018, 8 in 2017, 18 in 2016, 14 in 2015, and 13 in 2014.

¹⁴ Section 16.60(1), F.S.

- Where disputes exist concerning the fees charged (as authorized by Chapter 119) by an agency to a requestor in disclosing the requested records.

Excluded from s. 16.60, F.S., mediations are those instances where an OAG mediator reaches out on behalf of the requestor and the matter is subsequently resolved without further action by the mediator. For example, the Mediation Program is frequently contacted by a requestor who has not received any response from an agency to the public records request. In these circumstances, the OAG mediator contacts counsel for the agency. Such contact, in the vast majority of cases, results in the agency notifying the mediator of its intent to contact the requestor and the mediator hears nothing further from either party.

Declaratory Judgments

A declaratory judgment is a binding decision issued by a court that establishes the rights of parties without providing for the enforcement of those rights.¹⁵ The Declaratory Judgment Act (the Act), Chapter 86, F.S., provides parties with a mechanism to adjudicate their rights without having to wait for a violation of those rights to occur, or the need to engage in conduct that might violate the rights of others.¹⁶ The Act exists “to settle and afford relief from insecurity and uncertainty with respect to rights, status, and other equitable or legal relations and is to be liberally administered and construed.”¹⁷ “A party is entitled to a declaration of rights where the ripening seeds of controversy make litigation in the immediate future appear unavoidable.”¹⁸

When an agency is uncertain whether a document is a record that must be disclosed to the public or is otherwise protected from disclosure, the agency may seek guidance from a court by filing a complaint against the requestor for declaratory judgment.¹⁹ For example, the South Florida Water Management District (District), approximately 13 days after receiving a public records request, filed for a declaratory judgment that the requested transcripts were exempt from disclosure.²⁰ The trial court rendered final judgment for the District. The Fourth District Court of Appeal upheld the trial court’s ruling to permanently withhold portions or all of certain transcripts, and remanded for an in-camera review of the claimed “mediation communication” redactions.²¹

In *Butler*, Michael Butler made a public records request to the City of Hallandale Beach (City), on or about February 20, 2009, for the “distribution list” of a personal e-mail sent by the City’s mayor.²² On March 25, 2009, the City informed Butler the requested information did not constitute a “public record” because the email was not sent in connection with the discharge of any municipal duty.²³ Butler responded on April 1, 2009, asserting his right to access the

¹⁵ BLACK’S LAW DICTIONARY (11th ed. 2019).

¹⁶ See *Murphy v. Bay Colony Property Owners Ass’n*, 12 So.3d 924 (Fla. 2d DCA 2009).

¹⁷ Section 86.101, F.S.

¹⁸ *S. Riverwalk Investments, LLC v. City of Ft. Lauderdale*, 934 So. 2d 620, 623 (Fla. 4th DCA 2006).

¹⁹ *Butler v. City of Hallandale Beach*, 68 So. 3d 278, 279 (Fla. 4th DCA 2011).

²⁰ *South Florida Water Management District v. Everglades Law Center, Inc.*, 2017-1098-CA (19th Jud. Dist. Cir. Ct.).

²¹ *Everglades Law Ctr., Inc. v. S. Florida Water Mgmt. Dist.*, 290 So. 3d 123 (Fla. 4th DCA 2019), *review denied sub nom. Melzer v. S. Florida Water Mgmt. Dist.*, SC19-1993, 2020 WL 1894672 (Fla. Apr. 16, 2020), and *review denied*, SC19-2135, 2020 WL 1894689 (Fla. Apr. 16, 2020).

²² *Butler*, 68 So. 3d at 279.

²³ Complaint for Declaratory Relief at 3, *City of Hallandale Beach v. Michael Butler*, 2009 WL 10461181 (Fla. Cir. Ct.).

requested information.²⁴ The City, to determine the rights and obligations of the parties under Chapter 119, filed a complaint for declaratory relief against Butler, on or about April 27, 2009. The City sought a declaration that the requested information was not a “public record” and need not be disclosed.²⁵ The trial court agreed with the City and the Fourth District Court of Appeal affirmed.²⁶

Section 86.081, F.S., provides that the court may award costs as are equitable. Generally, each party bears its own costs and attorney fees. However, if such a civil action against an agency is required to enforce the public records law, and the requestor gave 5 days’ notice before filing the civil action, the court is required to award the costs of enforcement, including reasonable attorney’s fees, against the agency, if the court finds that the agency “unlawfully refused” to release the records.²⁷ If a court determines that the requestor made the request or filed suit for an improper purpose (e.g., harassment), the court awards attorney fees to the agency.²⁸

Because attorney fees are granted to a prevailing requestor, it is sometimes prudent for an agency or local government to bring suit immediately for clarification of the public records dispute in order to reduce fees at stake. Additionally, an agency facing harassing or otherwise improper requests has the option to bring suit to seek a determination that it does not need to respond to such requests.

III. Effect of Proposed Changes:

Section 1 amends s. 119.07, F.S., to prohibit an agency from responding to a request to inspect or copy a record by filing an action for declaratory relief against the requester to determine whether the record is a public record as defined by s. 119. 011, F.S., or the status of the record as confidential or exempt from the provisions of s. 119.07(1), F.S. Thus, if an agency is uncertain as to whether the requested information is a public record, or is confidential or exempt, the agency must now: (1) release the records in question and risk being subject to the penalty provisions of s. 119.10, F.S.; (2) wait for the requestor to enforce the public records act by filing a civil action, and risk being subject to an award of attorney fees; or (3) initiate the process of requesting an AGO.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

²⁴ *Id.*

²⁵ *Butler*, 68 So. 3d at 279.

²⁶ *Id.* at 281.

²⁷ Section 119.12, F.S.

²⁸ Section 119.12(3), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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:

CS/SB 400 may have an indeterminate positive fiscal impact on the private sector because individuals and entities that request public records will not be required to pay legal costs and fees associated with a declaratory action by an agency. However, to the extent a dispute arises and continues between an agency and a requestor as to the agency's violation of ch. 119, F.S., the private sector will be required to pay legal costs and fees associated with bringing a civil action to enforce the public records laws.

C. Government Sector Impact:

It is possible that removing an agency's ability to request a declaratory judgment and avoid sanctions or further lawsuits may result in increased litigation and associated costs being incurred by the governmental entities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.07 of the Florida Statutes.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on January 27, 2021:

The CS clarifies that after receiving a request to inspect or copy a record, an agency may not bring a declaratory judgment action against the requestor to determine whether that record meets the definition of a public record.

- B. **Amendments:**

None.

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

585-01396-21

2021400c1

1 A bill to be entitled
2 An act relating to public records; amending s. 119.07,
3 F.S.; prohibiting an agency that receives a request to
4 inspect or copy a record from responding to such
5 request by filing an action for declaratory relief
6 against the requester; providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Subsection (9) is added to section 119.07,
11 Florida Statutes, to read:
12 119.07 Inspection and copying of records; photographing
13 public records; fees; exemptions.—
14 (9) After receiving a request to inspect or copy a record,
15 an agency may not respond to that request by filing an action
16 for declaratory relief against the requester to determine
17 whether the record is a public record as defined by s. 119.011,
18 or the status of the record as confidential or exempt from the
19 provisions of s. 119.07(1).
20 Section 2. This act shall take effect July 1, 2021.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Governmental Oversight and Accountability, *Chair*
Appropriations Subcommittee on Agriculture,
Environment, and General Government, *Vice Chair*
Appropriations Subcommittee on Health and
Human Services
Banking and Insurance
Finance and Tax
Judiciary
Regulated Industries

JOINT COMMITTEES:

Joint Select Committee on Collective Bargaining,
Alternating Chair
Joint Committee on Public Counsel Oversight

SENATOR RAY WESLEY RODRIGUES
27th District

March 15, 2021

The Honorable Kathleen Passidomo
Senate Rules, Chair
402 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

RE: CS/SB 400 – Public Records

Dear Madame Chair:

Please allow this letter to serve as my respectful request to place CS/SB 400, relating to public records, on the next committee agenda.

In recent years, we have seen governmental entities stray from the process of responding to public records requests through the process delineated by the Legislature in our Government-in-the-Sunshine statutes.

Instead, they have been filing actions for declaratory relief against individuals who file public records requests. Citizens should not be sued by their government; merely for exercising a right enshrined in the Florida Constitution.

You may recall that this bill passed the Rules Committee unanimously last year. Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

A handwritten signature in cursive script that reads "Ray Rodriguez".

Ray Rodriguez
Senate District 27

Cc: John Phelps, Staff Director
Cynthia Futch, Administrative Assistant

REPLY TO:

- ☐ 2000 Main Street, Suite 401, Fort Myers, Florida 33901 (239) 338-2570
- ☐ 305 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 430

INTRODUCER: Rules Committee; Commerce and Tourism Committee; and Senator Rodriguez

SUBJECT: Petroleum Fuel Measuring Devices

DATE: April 6, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>McMillan</u>	<u>McKay</u>	<u>CM</u>	Fav/CS
2. <u>Price</u>	<u>Vickers</u>	<u>TR</u>	Favorable
3. <u>McMillan</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 430 preempts regulation of petroleum fuel measuring devices to the State and the Department of Agriculture and Consumer Services (department), and provides that the department may only impose penalties for violations of petroleum fuel measuring device rules if an owner or operator of a petroleum fuel measuring device has failed to install a security device or measure.

The bill provides that the owner or manager of a retail petroleum fuel measuring device may not use the device after discovering an unapproved or altered security measure.

The bill amends s. 525.07(10), F.S., to require the following:

- Effective January 1, 2022, the owner or manager of a retail petroleum fuel measuring device who chooses to install a pressure-sensitive security tape must also include at least one other security measure;
- An owner or operator of a fuel measuring device must report to the department within 3 business days upon finding that a required security measure has been breached and has failed to restrict the unauthorized access of customer payment card information; and
- An owner or operator of a pump or a registered meter mechanic must report to the department any illegal skimming or filtering device found within 3 business days.

The bill takes effect July 1, 2021.

II. Present Situation:

The Department of Agriculture and Consumer Services

Generally

The Department of Agriculture and Consumer Services (department) has broad duties under s. 525.07, F.S., including safeguarding the public from deceptive business practices, supporting Florida's agricultural economy, and protecting the environment.¹ Nineteen divisions and offices within the department support its mission.² The Division of Consumer Services inspects all measuring devices used in selling or distributing fuel at retail gas pumps and ensures the use of security mechanisms on gas pumps that help to prevent the use of skimmers.³ This division also provides consumer education regarding a variety of scams and frauds that target Florida residents, including identity theft and credit card fraud.⁴

Petroleum Inspection and Enforcement

The department conducts routine inspections of petroleum distribution systems and analyzes samples of petroleum⁵ products.⁶ These inspections include regular testing of gasoline, alternative fuels,⁷ kerosene, diesel, fuel oil, antifreeze products, and brake fluid.⁸ Petroleum fuel must be labeled accurately,⁹ and any mislabeled product must be placed under a stop-sale order with the device or storage tanks of that product sealed until a release order is issued.¹⁰

The department is also required to inspect all measuring devices used in selling or distributing petroleum fuel at wholesale and retail.¹¹ The department may put a sticker on each petroleum measuring device that has been inspected by the department, and at that point, the device owner is responsible for its proper use and maintenance.¹² Each individual who owns or manages a

¹ Florida Department of Agriculture and Consumer Services, *About Us*, available at <https://www.freshfromflorida.com/About-Us/> (last visited April 6, 2021).

² Florida Department of Agriculture and Consumer Services, *Divisions & Offices*, available at <https://www.freshfromflorida.com/Divisions-Offices/> (last visited April 6, 2021).

³ See s. 525.07, F.S.; Florida Department of Agriculture and Consumer Services, *Petroleum Inspection*, available at <https://www.freshfromflorida.com/Business-Services/Petroleum-Inspection> (last visited April 6, 2021).

⁴ See, e.g., Florida Department of Agriculture and Consumer Services, *Scams and Fraud*, available at <https://www.freshfromflorida.com/Consumer-Resources/Scams-and-Fraud> (last visited April 6, 2021).

⁵ Petroleum fuels include gasoline, kerosene (except when used as aviation fuel), diesel fuel, benzene, other like products of petroleum under whatever name designated, or an alternative fuel used for illuminating, heating, cooking, or power purposes, sold, offered, or exposed for sale in Florida. See s. 525.01(b), F.S.

⁶ See ch. 525, F.S., Florida Department of Agriculture and Consumer Services, *Petroleum Inspection*, available at <https://www.freshfromflorida.com/Business-Services/Petroleum-Inspection> (last visited April 6, 2021).

⁷ Alternative fuels include methanol, denatured ethanol, E85, and biodiesel. See s. 525.01(c), F.S.

⁸ See ch. 525, F.S., Florida Department of Agriculture and Consumer Services, *Petroleum Inspection*, available at <https://www.freshfromflorida.com/Business-Services/Petroleum-Inspection> (last visited April 6, 2021).

⁹ Petroleum fuel is deemed to be mislabeled if the measuring device is labeled so as to misrepresent the product as to quality, content, or performance, or if the labeling on the measuring device is false or misleading. See s. 525.035(2), F.S.

¹⁰ See s. 525.035, F.S.

¹¹ Section 525.07(1)(a), F.S.

¹² Section 525.07(1)(b), F.S.

petroleum measuring device must ensure that the device is measuring properly based upon the tolerances¹³ defined by the department.¹⁴

Additionally, s. 525.07(10), F.S., requires each individual who owns or manages a petroleum measuring device to affix or install a security measure to restrict the unauthorized access of customer payment card information.¹⁵ Individuals must remedy any inadequate security measure within five days of receiving a written notice of noncompliance from the department.¹⁶ After the fifth day of noncompliance, further use of the retail petroleum measuring device may be prohibited by the department, and a repeat violation found on the same device is cause for the measuring device to immediately be taken out of service.¹⁷ The department may also seize any skimming device¹⁸ for use as evidence.¹⁹

For violations of ch. 525, F.S., the department has the authority to issue warning letters, impose administrative fines, or revoke or suspend any registration issued by the department.²⁰

Card Skimmers

A card skimmer is an electronic device that is illegally installed inside gas pumps to collect a consumer's credit or debit card information when a card is swiped through the reader.²¹ Criminals sell the consumer's information or use the information to make illegal purchases.²²

¹³ Tolerance refers to the total allowable error in excess or deficiency within a measurement. See s. 525.07(2), F.S.

¹⁴ Section 525.07(3), F.S.

¹⁵ The security measure must include (1) the placement of pressure-sensitive security tape over the panel opening that leads to the scanning device for the retail petroleum fuel measuring device in a manner that will restrict the unauthorized opening of the panel, (2) a device or system that will render the retail petroleum measuring device inoperable if there is an unauthorized opening of the panel, (3) a device or system that encrypts the customer payment card information in the scanning device, or (4) another security measure approved by the department. See s. 525.07(10), F.S.

¹⁶ See s. 525.07(10), F.S.

¹⁷ *Id.*

¹⁸ A skimming device means a self-contained device that is (1) designed to read and store in the device's internal memory information encoded on the computer chip, magnetic strip or stripe, or other storage mechanism of a payment card or from another device that directly reads the information from a payment card; and (2) is incapable of processing the payment card information for the purpose of obtaining, purchasing, or receiving goods, services, money, or anything else of value from a merchant. See s. 817.625(1)(b), F.S.

¹⁹ See s. 525.07(10)(e), F.S.

²⁰ Section 525.16, F.S., gives the department the authority to issue a warning letter, impose an administrative fine in the Class II category (a fine not to exceed \$5,000), or revoke or suspend any registration issued by the department. Additionally, s. 525.16, F.S., establishes that any person who violates ch. 525, F.S., commits a misdemeanor of the first degree, punishable by a term of imprisonment not exceeding one year and a \$1,000 fine). Under this section, the department may also submit cases for prosecution, and the department may bring an action in circuit court to enjoin the violation of any provision in ch. 525, F.S.

²¹ Florida Department of Agriculture and Consumer Services, *Card Skimmers*, available at <https://www.freshfromflorida.com/Consumer-Resources/Scams-and-Fraud/Card-Skimmers> (last visited April 6, 2021).

²² Federal Trade Commission, *Watch Out for Card Skimming at the Gas Pump* (Aug. 7, 2018), available at <https://www.consumer.ftc.gov/blog/2017/06/avoid-skimmers-pump> (last visited April 6, 2021).

The department has discovered and removed over 4,860 skimmers since 2015.²³ The use, possession, or sale of a skimmer is punishable as a third-degree felony under Florida law.²⁴

Local Regulations

Currently, local governments are not prohibited from enacting fuel pump security measures that are more restrictive than the rules established by the department. For instance, Lee County requires each fuel pump to be equipped with a visible lock, a system that would render the pump inoperable if it is accessed without a security code, or a device that encrypts customer payment card information.²⁵ Failure to affix an adequate security measure may result in fines of \$250 per gas pump for every day that the appropriate devices are not installed.²⁶ Collier County,²⁷ Charlotte County,²⁸ and the Village of Estero²⁹ also have local fuel pump ordinances.

Preemption

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if (1) the Legislature has preempted a particular subject area or (2) the local enactment conflicts with a state statute. Where state preemption applies, it precludes a local government from exercising authority in that particular area.³⁰

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.³¹ Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.³² In cases where the Legislature expressly or specifically preempts an area, Legislative intent is apparent.³³

In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.³⁴ Implied preemption is actually a decision by the courts to create preemption in the absence of an explicit legislative directive.³⁵ Preemption of a local government enactment is implied only where the legislative scheme is so pervasive as to

²³ Florida Department of Agriculture and Consumer Services, *FDACS Makes Three Arrests in Gas Pump Skimmer Investigation*, available at <https://www.fdacs.gov/News-Events/Press-Releases/2021-Press-Releases/FDACS-Makes-Three-Arrests-in-Gas-Pump-Skimmer-Investigation> (last visited April 6, 2021).

²⁴ Section 817.625(2)(a), F.S. A third-degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. Sections 775.082, 775.083, and 775.084 F.S.

²⁵ See Lee County, Florida Ordinance No. 19-09.

²⁶ *Id.*

²⁷ See Collier County, Florida Ordinance No. 18-55.

²⁸ See Charlotte County, Florida Ordinance No. 19-026.

²⁹ See Village of Estero, Ordinance No. 18-25.

³⁰ See James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009), available at <https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/> (last visited April 6, 2021).

³¹ See *City of Hollywood v. Mulligan*, 934 So.2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So.3d 309 (Fla. 2008).

³² *Mulligan*, 934 So.2d at 1243.

³³ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So.3d 880, 886 (Fla. 2010).

³⁴ See, e.g., *Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

³⁵ *Phantom of Clearwater, Inc.*, 894 So.2d at 1019.

evidence an intent to preempt the particular area, and strong public policy reasons exist for finding preemption.³⁶ Implied preemption is found where the local legislation would present the danger of conflict with the state's pervasive regulatory scheme.³⁷

III. Effect of Proposed Changes:

The bill removes the ability for local jurisdictions to create and enforce regulations regarding petroleum fuel measuring devices that are beyond the rules established by the department.

The bill amends s. 525.07(10)(a), F.S., to establish that effective January 1, 2022, the owner or manager of a retail petroleum fuel measuring device who chooses to install a pressure-sensitive security tape must also include at least one of the security measures listed in s. 525.07(10)(a). It also adds a physical locking mechanism to the list of permissible security measures.

The bill amends s. 525.07(10)(b), F.S., to clarify that an owner or manager of a retail petroleum fuel measuring device may not use the device after discovering an unapproved or altered security measure, and allows the department to take a device out of service until it is in compliance.

The bill amends s. 525.07(10)(c), F.S., to require an owner or operator of a fuel measuring device to report to the department within 3 business days upon finding that a required security measure has been breached and has failed to restrict the unauthorized access of customer payment card information.

The bill amends s. 525.07(10)(d), F.S., to require an owner or operator of a pump or a registered meter mechanic to report to the department any illegal skimming or filtering device found within 3 business days.

The bill provides that the department may only impose penalties for violations of petroleum fuel measuring device rules if an owner or operator of a petroleum fuel measuring device has failed to install a security device or measure pursuant to s. 525.07(10)(a), F.S.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

³⁶ *Id.*

³⁷ *Sarasota Alliance for Fair Elections, Inc.*, 28 So.3d at 886.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The department may only use s. 525.16, F.S., to enforce s. 525.07(10)(a), F.S., if an owner or operator of a petroleum fuel measuring device has failed to install a security device or measure. Additionally, owners and managers of petroleum fuel measuring devices may be able to install less expensive security measures to restrict the unauthorized access of customer payment card information if they are currently subject to more stringent requirements pursuant to a local ordinance.

C. Government Sector Impact:

The department may experience a reduction in assessed administrative penalties or fines.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 525.07 and 525.16 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Rules on April 6, 2021:

The committee substitute amends s. 525.07(10)(a), F.S., to establish that effective January 1, 2022, the owner or manager of a retail petroleum fuel measuring device who chooses to install a pressure-sensitive security tape must also include at least one of the security measures listed in s. 525.07(10)(a). It also adds a physical locking mechanism to the list of permissible security measures.

An owner or manager of a retail petroleum fuel measuring device may not use the device after discovering an unapproved or altered security measure, and the department is authorized to take a device out of service until it is in compliance. An owner or operator of a fuel measuring device must report to the department within 3 business days upon finding that a required security measure has been breached and has failed to restrict the unauthorized access of customer payment card information, and within 3 business days the owner or operator of a pump or a registered meter mechanic must report to the department any illegal skimming or filtering device found.

The committee substitute also clarifies that s. 525.16, F.S., may only be used to enforce s. 525.07(10)(a), F.S., if an owner or operator of a petroleum fuel measuring device has failed to install a security device or measure.

CS by Commerce and Tourism on March 2, 2021:

The committee substitute clarifies that the department does not have the authority to impose penalties under s. 525.16, F.S., for violations of petroleum fuel measuring device rules under s. 525.07(10), F.S., unless an owner or operator of a petroleum fuel measuring device has failed to install a security device or measure.

B. Amendments:

None.



258574

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/07/2021	.	
	.	
	.	
	.	

The Committee on Rules (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Delete lines 18 - 35

and insert:

Section 1. Subsection (10) of section 525.07, Florida
Statutes, is amended to read:

525.07 Powers and duties of department; inspections;
unlawful acts.—

(10) (a) Each person who owns or manages a retail petroleum
fuel measuring device shall have affixed to or installed onto
the measuring device a security measure to restrict the



258574

12 unauthorized access of customer payment card information. The
13 security measure must include one or more of the following:

14 1. The placement of pressure-sensitive security tape over
15 the panel opening that leads to the scanning device for the
16 retail petroleum fuel measuring device in a manner that will
17 restrict the unauthorized opening of the panel. Effective
18 January 1, 2022, a pressure-sensitive security tape may not be
19 the sole security measure used. After such date, the owner or
20 manager of a retail petroleum fuel measuring device who chooses
21 to install a pressure-sensitive security tape must also include
22 at least one of the security measures listed in subparagraphs
23 2.-5.

24 2. A device or system that will render the retail petroleum
25 fuel measuring device or the scanning device in the measuring
26 device inoperable if there is an unauthorized opening of the
27 panel.

28 3. A device or system that encrypts the customer payment
29 card information in the scanning device.

30 4. A physical locking mechanism, as defined by department
31 rule.

32 5. Another security measure approved by the department.

33 (b) The owner or manager of a retail petroleum fuel
34 measuring device without a security measure or with an
35 unapproved or altered or damaged security measure may not use
36 the retail petroleum fuel measuring device after discovering
37 such an issue, upon written notice from the department of such
38 noncompliance, shall have 5 calendar days to comply with this
39 subsection. After the fifth day of noncompliance, the department
40 may prohibit further use of the retail petroleum fuel measuring



258574

~~device~~ until a security measure is installed, replaced, or repaired. ~~A repeat violation found on the same retail petroleum fuel measuring device will be cause for~~ The department may to ~~immediately~~ take a ~~the~~ measuring device out of service until it is in compliance with this section.

(c) If the owner or operator of a fuel measuring device finds during inspection that a required security measure has been breached and has failed to restrict the unauthorized access of customer payment card information, the owner or operator must report the security breach to the department, on a form prescribed by the department, within 3 business days after the discovery.

(d) The owner or operator of a pump or a registered meter mechanic shall report to the department, on a form prescribed by the department, any illegal skimming or filtering device that he or she finds at a retail petroleum facility within 3 business days after finding the device.

(e) ~~(e)~~ For purposes of this subsection, the terms "scanning device" and "payment card" have the same meanings as ~~defined~~ in s. 817.625.

(f) ~~(d)~~ This subsection applies only to retail petroleum fuel measuring devices that have a scanning device.

(g) ~~(e)~~ The department may seize without warrant any skimming device, as defined in s. 817.625, for use as evidence.

(h) ~~(f)~~ The regulation of petroleum fuel measuring devices is preempted to the state and to the department, which shall enforce, and may adopt rules to administer, this subsection; however, s. 525.16 may not be used to enforce this subsection unless the person who owns or manages the petroleum fuel



258574

measuring device has failed to install a security device or
implement a security measure pursuant to this section.

Section 2. Subsection (6) is added to section 525.16,
Florida Statutes, to read:

525.16 Administrative fine; penalties; prosecution of cases
by state attorney.—

(6) This section may not be used to enforce s. 525.07(10)
or rules adopted pursuant to that subsection unless the person
who owns or manages the petroleum fuel measuring device has
failed to install a security device or implement a security
measure pursuant to s. 525.07(10)(a).

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

And the title is amended as follows:

Delete line 3
and insert:

amending s. 525.07, F.S.; prohibiting a pressure-
sensitive security tape from being the sole security
measure used on a retail petroleum fuel measuring
device after a specified date; authorizing additional
security measures; prohibiting the owners or operators
of such devices from using a device that fails to meet
certain standards and requiring them to report certain
issues discovered when inspecting such devices to the
Department of Agriculture and Consumer Services;
preempting the regulation of



862802

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/07/2021	.	
	.	
	.	
	.	

The Committee on Rules (Rodriguez) recommended the following:

Senate Amendment to Amendment (258574)

Delete line 68
and insert:
however, s. 525.16 may not be used to enforce paragraph (a)

By the Committee on Commerce and Tourism; and Senator Rodriguez

577-02338-21

2021430c1

A bill to be entitled

An act relating to petroleum fuel measuring devices; amending s. 525.07, F.S.; preempting the regulation of petroleum fuel measuring devices to the state and the Department of Agriculture and Consumer Services; prohibiting the department from enforcing certain provisions for violations of rules relating to petroleum fuel measuring devices unless an owner or operator fails to take certain security measures; amending s. 525.16, F.S.; exempting department petroleum fuel measuring device rules from enforcement under specified provisions unless an owner or operator fails to take certain security measures; providing an effective date.

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

Section 1. Paragraph (f) of subsection (10) of section 525.07, Florida Statutes, is amended to read:

525.07 Powers and duties of department; inspections; unlawful acts.—

(10)

(f) The regulation of petroleum fuel measuring devices is preempted to the state and to the department, which shall enforce, and may adopt rules to administer, this subsection; however, s. 525.16 may not be used to enforce this subsection unless the device owner or operator has failed to install a security device or measure.

Section 2. Subsection (6) is added to section 525.16,

Page 1 of 2

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

577-02338-21

2021430c1

Florida Statutes, to read:

525.16 Administrative fine; penalties; prosecution of cases by state attorney.—

(6) This section may not be used to enforce rules adopted pursuant to s. 525.07(10)(f) unless the device owner or operator has failed to install a security device or measure.

Section 3. This act shall take effect July 1, 2021.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 22, 2021

I respectfully request that **Senate Bill #430**, relating to Petroleum Fuel Measuring Devices, be placed on the:

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

The intent of this bill is to remove the Department of Agriculture's authority to fine small business owner victims for the criminal acts of vandalism. As well as preempting the regulation of petroleum fuel measuring devices to the state.

Sincerely,

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

Senator Ana Maria Rodriguez
Florida Senate, District 39

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/6/21

Meeting Date

CR/SB 430

Bill Number (if applicable)

Topic Petroleum Fuel Measuring Devices

Amendment Barcode (if applicable)

Name Edward Bowman

Job Title Executive Director

Address 1983 Centre Pointe Blvd Suite 200

Street

Phone 850-877-5178

Tallahassee

FL

32308

City

State

Zip

Email Ned@FMAA.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Petroleum Marketers Assoc

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6/21
Meeting Date

CS/SB 430
Bill Number (if applicable)

Topic Petroleum Fuel Measuring Devices

Amendment Barcode (if applicable)

Name Robert Finger

Job Title General Counsel

Address 1943 Centre Pointe Blvd #200
Street

Phone 450-224-7091

Tallahassee FL 32304
City State Zip

Email bob@quidleylaw.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Petroleum Marketers Assoc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

THE FLORIDA SENATE

APPEARANCE RECORD

April 6, 2021

Meeting Date

430

Bill Number (if applicable)

Topic Petroleum Fuel Measuring Devices

Amendment Barcode (if applicable)

Name Emily Duda Buckley

Job Title Legislative Affairs Director

Address 400 S. Monroe Street

Phone 850-617-7700

Street

Tallahassee

FL

32399

Email emily.buckley@fdacs.gov

City

State

Zip

Speaking: ☐ For ☐ Against ☒ Information

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

Representing FI Department of Agriculture and Consumer Services

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: HB 529

INTRODUCER: Representative Fine and others

SUBJECT: Moments of Silence in Public Schools

DATE: April 2, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Brick	Phelps	RC	Pre-meeting

I. Summary:

HB 529 requires a moment of silence to be set aside for students during each school day.

The bill revises current law that allows a district school board to set aside a brief period of time for silent prayer or meditation. Instead, the bill requires each teacher during first period to set aside 1 to 2 minutes for a moment of silence. A teacher may not make suggestions as to the nature of any reflection, and a student may not interfere with another student's participation.

The bill has no impact on state revenues or expenditures.

The bill takes effect July 1, 2021.

II. Present Situation:

District school boards may set aside up to two minutes for silent prayer or meditation at the start of each school day or each school week in the public schools in the district.¹

Fourteen states require a moment of silence or a period for contemplation or prayer during each school day.² An additional eighteen states authorize the school district, school, or classroom to observe a period of silence or prayer during each school day.³

¹ Section 1003.45, F.S., added in s. 1, ch. 80-336, L.O.F.

² Ala. Code s. 16-1-20; Ark. Code Ann. s. 6-10-115; Conn. Gen. Stat. s. 10-16a; Ga. Code Ann. s. 20-2-150; 105 Ill. Comp. Stat. 20/1; Ind. Code s. 20-30-5-4.5; Mass. Gen. Laws Ann. ch. 71, s. 1A; Nev. Rev. Stat. Ann. s. 388.075; N.H. Rev. Stat. s. 189:1-b; R.I. Gen. Laws s. 16-12-3.1; S.C. Code Ann. s. 59-1-443; Tenn. Code Ann. s. 49-6-1004; Tex. Code Ann. s. 25.082(d); Va. Code Ann. s. 22.1-203.

³ Ariz. Rev. Stat. Ann. s. 15-342(21); Del. Code Ann. tit. 14, s. 4101A; Section 1003.45, F.S.; Kan. Stat. Ann. s. 72-9929; Ky. Rev. Stat. Ann. s. 158.175; La. Rev. Stat. Ann. s. 17:2115; Me. Rev. Stat. Ann. tit. 20-a., s. 4805; Md. Code, Educ. s. 7-104; Mich. Comp. Laws Ann. s. 380.1565; Minn. Stat. Ann. s. 121A.10; Mont. Code Ann. s. 20-7-112; N.M. Stat. Ann. s. 22-27-3; N.Y. law s. 3029-a; N.C. Gen. Stat. s. 115C-47(29); N.D. Cent. Code s. 15.1-19-03.1; Ohio Rev. Code s. 3313.601; 24 Pa. Const. Stat. s. 15-1516.1; Utah Code Ann. s. 53G-7-207.

III. Effect of Proposed Changes:

HB 529 amends s. 1003.45, F.S., to require that a moment of silence be set aside for students during each school day. Currently, a district school board *may* provide a brief period of meditation or silent prayer not to exceed two minutes.

The bill directs the principal of each public school to require teachers in first-period classrooms in all grades to set aside 1 to 2 minutes daily⁴ for a moment of silence, during which students may not interfere with other students' participation.

The bill provides that a teacher:

- May not make suggestions as to the nature of any reflection that a student may engage in during the moment of silence.
- Must encourage parents to discuss the moment of silence with their children and to make suggestions as to the best use of this time.

The bill provides legislative findings for the value of a moment of daily reflection.

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:

None.

⁴ One to 2 minutes daily accumulates to 3 to 6 hours of instructional time over the course of the school year. Florida Department of Education, *Senate Bill 282 Agency Analysis* (December 18, 2020), p. 3-4.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1003.45, Florida Statutes.

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

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

None.

B. Amendments:

None.



844728

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/07/2021	.	
	.	
	.	
	.	

The Committee on Rules (Thurston) recommended the following:

Senate Amendment (with title amendment)

Delete lines 48 - 50
and insert:
parents or guardians to discuss with their children how to best
use the moment of silence.

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

And the title is amended as follows:

Delete lines 15 - 16
and insert:



844728

12 with their children how to best use the moment of
13 silence; providing an effective date.

HB 529

2021

1 A bill to be entitled
 2 An act relating to moments of silence in public
 3 schools; amending s. 1003.45, F.S.; providing
 4 legislative findings; requiring that public school
 5 principals require certain teachers to set aside time
 6 for a moment of silence at the beginning of each
 7 school day; specifying the duration of the required
 8 moment of silence; prohibiting teachers from making
 9 suggestions as to the nature of any reflection that a
 10 student may engage in during the moment of silence;
 11 deleting a provision authorizing district school
 12 boards to provide a brief period of silent prayer or
 13 meditation; requiring certain teachers to encourage
 14 parents or guardians to discuss the moment of silence
 15 with their children and to make suggestions as to the
 16 best use of this time; providing an effective date.
 17
 18 Be It Enacted by the Legislature of the State of Florida:
 19
 20 Section 1. Section 1003.45, Florida Statutes, is amended
 21 to read:
 22 1003.45 Permitting study of the Bible and religion;
 23 requiring a moment of silence ~~permitting brief meditation~~
 24 ~~period.~~
 25 (1) The district school board may install in the public

Page 1 of 3

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

hb0529-00

HB 529

2021

26 schools in the district a secular program of education
 27 including, but not limited to, an objective study of the Bible
 28 and of religion.
 29 (2) The Legislature finds that in today's hectic society
 30 too few persons are able to experience even a moment of quiet
 31 reflection before plunging headlong into the activities of daily
 32 life. Young persons are particularly affected by the absence of
 33 an opportunity for a moment of quiet reflection. The Legislature
 34 finds that our youth, and society as a whole, would be well
 35 served if students in the public schools were afforded a moment
 36 of silence at the beginning of each school day.
 37 (3) The principal of each public school shall require
 38 teachers in first-period classrooms in all grades to set aside
 39 at least 1 minute, but ~~district school board may provide that a~~
 40 ~~brief period,~~ not more than to exceed 2 minutes, daily, ~~for a~~
 41 ~~moment~~ the purpose of silence, during which students may not
 42 interfere with other students' participation. A teacher may not
 43 make suggestions as to the nature of any reflection that a
 44 student may engage in during the moment of silence ~~silent prayer~~
 45 ~~or meditation be set aside at the start of each school day or~~
 46 ~~each school week in the public schools in the district.~~
 47 (4) Each first-period classroom teacher shall encourage
 48 parents or guardians to discuss the moment of silence with their
 49 children and to make suggestions as to the best use of this
 50 time.

Page 2 of 3

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

hb0529-00

HB 529

2021

51

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-6-21

Meeting Date

HB 529/CS 282

Bill Number (if applicable)

Topic Moment of Silence

Amendment Barcode (if applicable)

Name Devon Graham

Job Title Assistant State Director (American Atheists)

Address _____

Street

Phone _____

City

State

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

(The Chair will read this information into the record.)

Representing American Atheists

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/6/21

Meeting Date

HB 529

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Heidi Daniels

Job Title

Address 3278 Lord Murphy Trl

Street

Phone 904 472 3283

327 Tell. FL 32309

City

State

Zip

Email sinjap@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FL Citizens Alliance

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-6-2021

Meeting Date

HB 529

Bill Number (if applicable)

Topic MOMENT OF SILENCE

Amendment Barcode (if applicable)

Name RABBI DIRECHMAN

Job Title _____

Address 232 Chapel Dr.

Phone 860-523-9294

Street

Tall

City

FL

State

32304

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing CHABAD

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)

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

Reset Form

THE FLORIDA SENATE

APPEARANCE RECORD

4/6/21

Meeting Date

529

Bill Number (if applicable)

Topic Moments of Silence in Public Schools

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title

Address 104 South Monroe Street

Phone 850-425-1344

Street

Tallahassee

FL

32301

City

State

Zip

Email TcgLobby@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU FL and NAACP Florida State Conference

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-6-21

Meeting Date

529

Bill Number (if applicable)

Topic

Moments of Silence

Amendment Barcode (if applicable)

Name

Barbara DeBene

Job Title

Address

425 E Burned St

Street

Gallahuee FL 32308

City

State

Zip

Phone

257-4280

Email

barbadebene1@gmail.com

Speaking:

☐

For

☐

Against

☐

Information

[Handwritten mark]

Waive Speaking:

☐

In Support

☒

Against

(The Chair will read this information into the record.)

Representing

FL NOW

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)

COMMITTEE: Rules
ITEM: HB 529
FINAL ACTION:
MEETING DATE: Tuesday, April 6, 2021
TIME: 9:30 a.m.—3:30 p.m.
PLACE: 412 Knott Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

COMMITTEE: Rules
ITEM: HB 529
FINAL ACTION:
MEETING DATE: Tuesday, April 6, 2021
TIME: 9:30 a.m.—3:30 p.m.
PLACE: 412 Knott Building

	4/06/2021 Vote on Bill Passage	4/06/2021 Motion to reconsider vote on bill passage-- left pending						
SENATORS	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Albritton	X							
Baxley	X							
Bean	X							
Book		X						
Bracy		X						
Brandes	X							
Diaz	X							
Farmer	X							
Gibson		X						
Gruters	X							
Hutson	X							
Mayfield	X							
Powell		X						
Stargel	X							
Thurston		X						
Garcia, VICE CHAIR	X							
Passidomo, CHAIR	X							
TOTALS	12	5						
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable
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WD=Withdrawn
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The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 582

INTRODUCER: Education Committee; Judiciary Committee; and Senator Rodrigues, and others

SUBJECT: Parental Rights

DATE: April 2, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Brick</u>	<u>Bouck</u>	<u>ED</u>	Fav/CS
3.	<u>Davis</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 582 establishes the “Parents’ Bill of Rights.” The bill provides that the state, its political subdivisions, any other governmental entity, or other institution may not infringe upon the fundamental rights of a parent to direct the upbringing, education, health care, and mental health of a minor child. If those entities infringe upon a parent’s fundamental right, they must demonstrate that the action is reasonable and necessary to achieve a compelling state interest, and the action must be narrowly tailored and not otherwise served by less restrictive means.

The bill enumerates a list of rights that a parent possesses in order to direct the education of his or her child and be informed about the child’s educational programs. The bill also requires the school district to promote parental involvement in the public school system by providing access to the child’s studies and instructional materials while also recognizing a parent’s right to withdraw the child from objectionable portions of the school’s curriculum.

The bill also requires a parent’s permission before a health care practitioner may provide services, prescribe medicine to the child, or perform a medical procedure, unless otherwise provided by law. The bill provides a misdemeanor penalty for a health care practitioner or similar person who violates the health care provisions and subjects these persons to disciplinary actions.

The bill takes effect July 1, 2021.

II. Present Situation:

Constitutional Rights of Parents

Parental Guarantees in the United States Constitution

The Fourteenth Amendment to the U.S. Constitution provides that no State shall:

[D]eprive any person of life, *liberty*, or property, without due process of law.

The U.S. Supreme Court has recognized that the Due Process Clause guarantees more than simply fair process. The Due Process Clause contains an additional component that provides a heightened level of protection against any government interference when certain fundamental rights and liberty interests are involved. In *Troxel v. Granville*,¹ a case to determine the scope of grandparent visitation rights when pitted against a parent's rights, the Court noted that the Fourteenth Amendment "liberty interest" at issue – the interest that parents had in the care, custody, and control over their children – was perhaps the oldest of any fundamental liberty interest that the Court had recognized.

The Court reflected back to a 1923 decision,² when it determined that the "liberty" interest protected by the Due Process Clause included the right of parents to "establish a home and bring up children" and "to control the education of their own."

The Court also noted as early as 1925³ that a child was not simply the creature of the State and that the people who nurture the child and direct the child's destiny have the right, and the high duty, to recognize and prepare the child for additional obligations. In 1944, the Court confirmed the right of parents to direct the upbringing of their children when it stated:

It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.⁴

Finally, in recounting the history of parental authority in 1979, the Court stated, "We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected."⁵

Parental Guarantees in the State Constitution

Similarly, the Florida Supreme Court has determined that the fundamental liberty interest in parenting one's child "is protected by both the Florida and federal constitutions. In Florida, it is specifically protected by our privacy provision."⁶ The Court also noted that the state

¹ *Troxel v. Granville*, 530 U.S. 57 (2000).

² *Troxel* quoting *Meyer v. Nebraska*, 262 U.S. 390, 399, 401 (1923).

³ *Troxel* quoting *Pierce v. Society of Sisters*, 268 U.S. 510, 534-535 (1925).

⁴ *Troxel* quoting *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944).

⁵ *Troxel* quoting *Parham v. J.R.* 442 U.S. 584, 602 (1979).

⁶ *Beagle v. Beagle*, 678 So. 2d 1271, 1275 (Fla. 1996).

constitutional privacy provision contained in article I, section 23 affords greater protection than that of the federal constitution.

The Court wrote in *Winfield v. Division of Pari-Mutuel Wagering*⁷ that the standard of review that must be used to evaluate whether a state has intruded into a citizen's private life is the "compelling state interest standard." Under that test, the burden of proof is on the state to justify its intrusion on privacy. The burden can be met by the state if it demonstrates that the regulation being challenged serves a compelling state interest and the regulation accomplishes its goal by using the least intrusive means.⁸

Statutory Rights of Parents of Students

Mandatory Attendance

All children who turn 6 years by February 1 of any school year and have not attained the age of 16 years are required to attend school regularly during the entire school term.⁹ Parents have the option to comply with school attendance laws by enrolling the student in a public school; a parochial, religious, or denominational school; a private school; a home education program; or a private tutoring program.¹⁰ The district school superintendent may authorize certificates of exemptions from school attendance requirements in certain situations.¹¹ A student who holds a valid certificate of exemption is exempt from attending school although the certificate expires at the end of the school year.¹²

School District Obligations

A parent of a K-12 public school student is afforded many statutory rights.¹³ Each school district is required to:

- Provide a parent with specific information about his or her child's educational progress, comprehensive information about opportunities for involvement in the child's education, and a framework for building and strengthening partnerships among parents and school district personnel.¹⁴
- Afford a parent the opportunity to enroll his or her child in instruction for exceptional students or challenge a district school board's determination of the child's eligibility for a gifted or special education program.¹⁵
- Establish a policy enabling a parent to object to and contest specific instructional materials.¹⁶
- Notify a parent and obtain his or her consent before a public school student may be referred to or offered contraceptive services at school facilities or travel in a privately owned motor vehicle to a school function.¹⁷

⁷ *Winfield v. Division of Pari-Mutual Wagering*, 477 So. 2d 544, 548 (Fla. 1985).

⁸ *Id.*

⁹ Section 1003.21(1)(a)1, F.S.

¹⁰ Section 1002.20(2)(b), F.S.

¹¹ Section 1003.21(3), F.S.

¹² *Id.*

¹³ Section 1002.20, F.S.

¹⁴ Section 1002.23, F.S.

¹⁵ Section 1003.57, F.S.

¹⁶ Section 1006.28(2)(a)2. and 3., F.S.

¹⁷ Sections 1002.20(3)(e) and (22)(c), F.S.

Parents' Rights to Exempt Their Child from Activities

No educational agency or institution may collect, obtain, or retain information on the political affiliation, voting history, religious affiliation, or biometric information of a student, parent, or sibling of the student.¹⁸ In addition, a parent has the right to exempt his or her child from:

- A health examination on religious grounds.¹⁹
- School immunization requirements on religious or certain health grounds.²⁰
- Performing surgery or dissection in a biological science class.²¹
- Receiving instruction on reproductive health or any disease, including HIV/AIDS.²²
- Reciting the pledge of allegiance.²³
- Reciting the Declaration of Independence.²⁴

Access to Records and Information

The rights of students and their parents with respect to education records created, maintained, or used by public educational institutions and agencies are protected under federal law.²⁵

Specifically, a parent of a K-12 student has the right to:²⁶

- Receive accurate and timely information regarding the student's academic progress and must be informed of ways a parent can help a student succeed in school.
- Access the student's education records, including the right to inspect and review those records.
- Challenge the content of education records in order to ensure that the records are not inaccurate, misleading, or otherwise a violation of privacy or other rights.
- Privacy with respect to the student's records and reports.
- Receive annual notice of the parent's rights with respect to education records.
- Receive report cards on a regular basis that clearly depict and grade the student's academic performance in each class or course, the student's conduct, and the student's attendance.²⁷
- Receive reports at regular intervals of the academic progress and other needed information regarding the student.
- Receive timely notification of any verified report of a substance abuse violation by the student.²⁸

¹⁸ Section 1002.222(1)(a), F.S.

¹⁹ Section 1002.20(3)(a), F.S.

²⁰ Section 1002.20(3)(b), F.S.

²¹ Section 1002.20(3)(c), F.S.

²² Section 1002.20(3)(d), F.S.

²³ Section 1002.20(12), F.S.

²⁴ Section 1003.421(4), F.S.

²⁵ Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g; and s. 1002.22, F.S. With limited exceptions, the FERPA prohibits the distribution of federal funds to an educational agency that has a policy or practice of disclosing the education records of a student without parental consent. Section 1002.221, F.S., incorporates FERPA into Florida law. FERPA only applies to records created for an educational purpose and maintained by an educational agency. The FERPA authorizes an education agency to disclose records without parental consent to juvenile justice and criminal justice agencies if the disclosure concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records are released. 34 C.F.R. s. 99.38.

²⁶ Sections 1002.20, 1002.22(2), and 1006.28, F.S.

²⁷ Section 1002.20(14), F.S.

²⁸ Section 1002.20(3)(g).

- Access information relating to the school district's policies for promotion or retention, including high school graduation requirements.²⁹
- Access information relating to student eligibility to participate in extra-curricular activities.³⁰
- Access information relating to the state public education system, standards, and requirements.³¹
- Access, review, object to, and challenge instructional and supplemental education materials.³²

Parental Consent for Health Care

Any medical decision made to address a student's needs is a matter between the student, the student's parent, and a competent health care professional chosen by the parent.³³ The right to consent to medical treatment for a child resides with a parent who has the legal responsibility to maintain and support the child.³⁴ District school boards may adopt policies to ensure an appropriate response in emergency situations and the provision of first aid and emergency medical care.³⁵ In addition, a volunteer team physician who, gratuitously and in good faith, agrees to render emergency care or treatment to any participant at an athletic event sponsored by a public or private elementary or secondary school event in connection with an emergency at the event is immune from damages arising as a result of care or treatment provided in good faith, with regard to human rights, safety, and property.³⁶

When parental consent cannot be obtained, a licensed physician or osteopathic physician may render emergency medical care or treatment to an injured minor or a minor who is suffering from an acute illness, disease or condition if delay would endanger the minor's health or physical well-being. This provision only applies when parental consent cannot be obtained because:

- The minor's condition has rendered him or her unable to identify his or her parents, guardian, or legal custodian and the information is not known to the person accompanying the minor to the hospital; or
- The parents, guardian, or legal custodian cannot be immediately located by telephone at their residence or business.

The hospital must notify the parent or legal guardian as soon as possible after the emergency medical care or treatment is rendered. The hospital records must contain the reason why the consent was not initially obtained and must contain a statement by the attending physician that the emergency care was necessary for the minor's health or physical well-being.³⁷

The statutes provide a list of people, in order of priority, who may consent to the medical care or treatment of a minor when, after a reasonable attempt, a person with the authority to give consent

²⁹ Section 1008.25, F.S.

³⁰ Section 1006.195(1), F.S.

³¹ Section 1002.23, F.S.

³² Sections 1002.20(19) and 1006.28, F.S.

³³ Section 1006.0625, F.S.

³⁴ *O'Keefe v. Orea*, 731 So. 2d 680, 686 (Fla. 1st DCA 1998).

³⁵ Section 1001.43, F.S.

³⁶ Section 768.135, F.S.

³⁷ Section 743.064, F.S.

cannot be contacted by a medical provider and notice to the contrary has not been given to the provider. In order of priority those people are:

- A health care surrogate.
- The stepparent.
- The grandparent of the minor.
- An adult brother or sister of the minor.
- An adult aunt or uncle of the minor.³⁸

The treating provider's records must contain documentation that a reasonable attempt was made to contact the person who has the authority to consent to the minor's care.³⁹

III. Effect of Proposed Changes:

Sections 1 and 2 – The Parents' Bill of Rights

The bill creates a new chapter in the Florida Statutes, chapter 1014, which is entitled "Parents' Bill of Rights" and contains sections 1014.01 – 1014.06, F.S.

Section 3 – Legislative Findings and Definition of "Parent"

Section 3 contains the legislative findings and a definition. In these provisions, the Legislature finds that:

- It is a fundamental right of parents to direct the upbringing, education, and care of their minor children;
- Important information relating to a minor child should not be withheld, either inadvertently or purposefully, from a parent, including information regarding the minor child's health, well-being, and education, while the child is in the custody of the school district; and
- It is necessary to establish a consistent mechanism for parents to be notified of information relating to the health and well-being of their minor children.

A parent is defined to be a person who has legal custody of a minor child as a natural or adoptive parent or a legal guardian.

Section 4 – Prohibiting Actions that Infringe on Parental Rights

The bill provides that the following entities may not infringe on the fundamental rights of a parent to direct the upbringing, education, health care, and mental health of a parent's minor child:

- The state;
- State political subdivisions;
- Any other governmental entity; or
- Any other institution.

³⁸ Section 743.0645, F.S. This section does not apply to a minor who has been committed to the Department of Children and Families or the Department of Juvenile Justice.

³⁹ *Id.*

If any of these entities infringes on a parent's fundamental right, it must demonstrate that the action is reasonable and necessary to achieve a compelling state interest and the action is narrowly tailored and is not otherwise served by a less restrictive means. This "compelling interest" standard is the highest standard of review and is discussed above in the Present Situation under "Parental Guarantees in the State Constitution."

Section 5 – Parental Rights

Rights Reserved to the Parent of a Minor Child

This section establishes that all parental rights are reserved to the parent of a minor child "without obstruction or interference" by any of the above-referenced governmental entities. Those rights include, but are not limited to the right of a parent to:

- Direct the education and care of the minor child.
- Direct the upbringing and the moral or religious training of the minor child.
- Apply to enroll the minor child in a public school or, as an alternative to public education, a private school, religious school, a home education program, or other available option as authorized by law.
- Access and review all school records relating to the minor child.
- Make health care decisions for the minor child, unless otherwise prohibited by law.
- Access and review all medical records of the minor child, unless prohibited by law or if the parent is the subject of an investigation of a crime committed against the minor child and a law enforcement agency or official requests that the information not be released.
- Consent in writing before a biometric scan of the minor child is made, shared, or stored.
- Consent in writing before any record of the minor child's blood or deoxyribonucleic acid (DNA) is created, stored, or shared, except as required by general law or authorized pursuant to a court order.
- Consent in writing before the state or any of its political subdivisions makes a video or voice recording of the minor child unless the recording is made during or as part of a court proceeding, or is made as part of a forensic interview in a criminal or Department of Children and Families investigation, or is to be used solely for the following purposes:
 - A safety demonstration, including the maintenance of order and discipline in the common areas of a school or on student transportation vehicles;
 - A purpose related to a legitimate academic or extracurricular activity;
 - A purpose related to regular classroom instruction;
 - Security or surveillance of buildings or grounds; or
 - A photo identification card.
- Be notified promptly if an employee of the state, any of its political subdivisions, any other governmental entity, or any other institution suspects that a criminal offense has been committed against his or her minor child, unless the incident has first been reported to a law enforcement agency or the Department of Children and Families and notifying the parent would impede the investigation.
- Consent in writing before his or her minor child's grades are released to a law enforcement officer of law enforcement agency by an agency or institution as defined in s. 1002.22, F.S., unless the release is authorized by s. 1002.221, F.S., and in accordance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g.

The bill clarifies that the rights expressed in this section do not:

- Authorize a parent of a minor child to engage in conduct that is unlawful or to abuse or neglect his or her minor child in violation of general law;
- Condone, authorize, approve, or apply to a parental action or decision that would end life;
- Prohibit a court of competent jurisdiction, law enforcement officer, or employee of a government agency that is responsible for child welfare from acting in his or her official capacity within the reasonable and prudent scope of his or her authority; or
- Prohibit a court of competent jurisdiction from issuing an order that is otherwise permitted by law.

Discipline

Any employee of any of the above-referenced entities who encourages or coerces, or attempts to encourage or coerce a minor child to withhold information from his or her parent may be subject to disciplinary action.

Inalienable Rights

The final subsection states that a parent of a minor child has inalienable rights that are more comprehensive than those enumerated in this section, unless those rights have been legally waived or terminated. The bill also provides that the chapter does not prescribe all of a parent's rights and unless required by law, a parent's rights may not be limited or denied. Additionally, the chapter may not be construed to apply to a parental action or decision that would end life.

Section 6 – School District Notifications on Parental Rights

The bill requires each school board, in consultation with parents, teachers, and administrators, to develop and then adopt a policy that promotes parental involvement in the public school system. The policy must include:

- A plan, pursuant to s. 1002.23, F.S., for parental participation to improve parent and teach cooperation in areas such as homework, school attendance, and discipline.
- A program, pursuant to s. 1002.20(19)(b), F.S., for a parent to learn about the minor child's course of study, including the source of any supplemental education materials.
- Procedures for a parent to object to instructional materials and other materials used in the classroom. The objections may be based on beliefs regarding morality, sex, or religion or the belief that the materials or activities are harmful. Instructional materials are defined in s. 1006.28(2), F.S.,⁴⁰ and may include other materials used in the classroom, but are not limited to, textbooks, workbooks and worksheets, handouts, software, applications, and any digital media available to students.
- Procedures, pursuant to s. 1002.20(3)(d), F.S. for a parent to withdraw the minor child from any portion of the school district's plan as required under s. 1003.42(2)(n), F.S., which relates to sex education or instruction in acquired immune deficiency syndrome education or

⁴⁰ "Instructional materials" means items having intellectual content that by design serve as a major tool for assisting in the instruction of a subject or course. These items may be available in bound, unbound, kit, or package form and may consist of hardbacked or softbacked textbooks, electronic content, consumables, learning laboratories, manipulatives, electronic media, and computer courseware or software. A publisher or manufacturer providing instructional materials as a single bundle shall also make the instructional materials available as separate and unbundled items, each priced individually. A publisher may also offer sections of state-adopted instructional materials in digital or electronic versions at reduced rates to districts, schools, and teachers. Section 1006.29(2), F.S.

any instruction regarding sexuality if the parent provides a written objection to the child's participation. The procedures must provide for a parent to be notified in advance of the course content so that he or she may withdraw the child from those portions of the course.

- Procedures, pursuant to s. 1006.195(1)(a), F.S., for a parent to learn about the nature and purpose of clubs and activities at the child's school, including those that are extracurricular or part of the school curriculum.
- Procedures for a parent to learn about parental rights and responsibilities under general law, including all of the following:
 - The right to opt the minor child out of any portion of the school district's comprehensive health education required by statute that relates to sex education instruction in acquired immune deficiency syndrome education or any instruction regarding sexuality.
 - A plan to disseminate information about school choice options, including open enrollment.
 - The right of a parent to exempt the minor child from immunizations.
 - The right of a parent to review statewide, standardized assessment results.
 - The right to enroll the minor child in gifted or special education programs.
 - The right of a parent to inspect school district instructional materials.
 - The right to of a parent to access information relating to the school district's policies for promotion or retention, including high school graduation requirements.
 - The right of a parent to receive a school report card and be informed of the child's attendance requirements.
 - The right of a parent to access information relating to the state public education system, state standards, report card requirements, attendance requirements, and instructional materials requirements.
 - The right of a parent to participate in parent-teacher association and organizations sanctioned by a district school board or the Department of Education.
 - The right of a parent to opt out of any district-level data collection relating to the minor child that is not required by law.

The information required in this section may be provided by the district school board electronically or posted on its website.

A parent may request, in writing, from the district school superintendent, the information required under this section. The superintendent must provide the information to the parent within 10 days. If the superintendent denies a parent's request for information or does not respond to the parent's request within 10 days, the parent may appeal the denial to the district school board. The parent's appeal must be placed on the agenda for the board's next public meeting. If it is too late for a parent's appeal to be placed on the agenda at the next meeting, it must be included on the agenda for the following meeting.

Section 7 – Parental Consent for Health Care Services

Unless the law provides otherwise a health care practitioner, as defined in s. 456.001, F.S., or someone employed by a health care practitioner, may not provide, solicit, or arrange to provide health care services or prescribe medicine to the minor child without first obtaining written consent from the parent.

A provider,⁴¹ as defined in s. 408.803, F.S., may not allow a medical procedure to be performed on a minor child in its facility without first obtaining written consent from the parent.

This section does not apply to:

- Services provided by a clinical laboratory unless the services are delivered through a direct encounter with the minor at the clinical laboratory facility.
- Care or treatment that is necessary to treat an acute medical condition or to care provided pursuant to s. 768.135, F.S., which relates to the provision of emergency care by a volunteer team physician at an athletic event.

Exception

The provisions of this section which addresses parental consent for health care services do not apply to abortion, which is governed by chapter 390.

Penalties

A health care practitioner or other person who violates this section is subject to disciplinary action pursuant to s. 408.813 or s. 456.072, F.S., sections 8 and 9 of the bill, and commits a first degree misdemeanor which is punishable by up to 1 year imprisonment and a fine not to exceed \$1,000.⁴²

Section 8 – Administrative Fines and Violations

The Agency for Health Care Administration may impose an administrative fine for a violation of the provisions regarding the parental consent for health care services. The violation is an unclassified violation and the fine may not exceed \$500 for each violation.

Section 9 – Grounds for Discipline

The Department of Health may take disciplinary action against someone who fails to comply with the parental consent requirements for health care services. The disciplinary actions range from refusing to certify a license or certify the license with restrictions, suspending or permanently revoking a license, restricting a license, imposing an administrative fine not to exceed \$10,000 for each offense, issuing a reprimand or letter of concern, placing the licensee on probation, taking corrective action, imposing an administrative fine for violations of patient rights, requiring the refund of fees billed and collected, and requiring that the practitioner to undergo remedial education.⁴³

Section 10 – Effective Date

The act takes effect July 1, 2021.

⁴¹ Section 408.803(11), F.S., defines a provider to mean any activity, service, agency, or facility regulated by the agency and listed in s. 408.802, F.S.

⁴² Sections 775.082(4)(a) and 775.083(1)(d), F.S.

⁴³ Section 456.072(2), F.S.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 408.813 and 456.072.

This bill creates the following sections of the Florida Statutes: 1014.01, 1014.02, 1014.03, 1014.04, 1014.05, and 1014.06.1014.01, 1014.06, 1014.02, 1014.03, 1014.04, 1014.05, 408.813, 456.072

IX. Additional Information:

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

CS/CS by Education Committee on March 23, 2021:

The committee substitute specifies that the prohibition against the provision of health care services to a minor child without parental consent does not apply to care that is provided in good faith by a volunteer team physician and is necessary to treat an acute medical condition pursuant to s. 768.135, F.S., which relates to the provision of emergency care by a volunteer team physician at an athletic event.

CS by Judiciary Committee on March 2, 2021:

An additional provision is added to the parental rights section of the bill. A parent must consent in writing before his or her minor child's grades may be released to a law enforcement officer or law enforcement agency unless that release is authorized in accordance with the provisions of the Family Educational Rights and Privacy Act.

- B. **Amendments:**

None.

By the Committees on Education; and Judiciary; and Senators
Rodrigues and Baxley

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1 A bill to be entitled
2 An act relating to parental rights; creating ch. 1014,
3 F.S.; creating s. 1014.01, F.S.; providing a short
4 title; creating s. 1014.02, F.S.; providing
5 legislative findings; defining the term "parent";
6 creating s. 1014.03, F.S.; prohibiting the state, its
7 political subdivisions, other governmental entities,
8 or other institutions from infringing on parental
9 rights unless specified conditions are met; creating
10 s. 1014.04, F.S.; prohibiting the state, its political
11 subdivisions, other governmental entities, or other
12 institutions from obstructing or interfering with
13 specified parental rights; providing construction;
14 authorizing discipline of state employees who
15 encourage or coerce, or attempt to encourage or
16 coerce, a minor child to withhold information from his
17 or her parent; providing construction; creating s.
18 1014.05, F.S.; requiring each district school board to
19 develop and adopt a policy to promote parental
20 involvement in the public school system; specifying
21 requirements for such policy; defining the term
22 "instructional materials"; authorizing a district
23 school board to provide such policy electronically or
24 on its website; authorizing a parent to request
25 certain information in writing from a district school
26 superintendent; requiring the district school
27 superintendent to provide requested information in a
28 specified timeframe; authorizing a parent to appeal a
29 district school superintendent's denial of, or failure

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

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30 to provide, requested information; requiring a
31 district school board to place such appeal on the
32 agenda for its next public meeting, or the subsequent
33 meeting if it is too late to place such appeal on the
34 next agenda; creating s. 1014.06, F.S.; prohibiting
35 health care practitioners and their employees from
36 providing health care services or prescribing
37 medicinal drugs to a minor child without a parent's
38 written consent; prohibiting a provider from allowing
39 a medical procedure to be performed on a minor child
40 in its facility without a parent's written consent;
41 providing exceptions; providing applicability;
42 providing for disciplinary action and criminal
43 penalties; amending s. 408.813, F.S.; authorizing the
44 Agency for Health Care Administration to impose an
45 administrative fine on providers that violate certain
46 parental consent requirements; amending s. 456.072,
47 F.S.; authorizing the Department of Health to take
48 disciplinary action against health care practitioners
49 who fail to comply with certain parental consent
50 requirements; providing an effective date.
51
52 Be It Enacted by the Legislature of the State of Florida:
53
54 Section 1. Chapter 1014, Florida Statutes, consisting of
55 ss. 1014.01-1014.06, is created and shall be entitled "Parents'
56 Bill of Rights."
57 Section 2. Section 1014.01, Florida Statutes, is created to
58 read:

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

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1014.01 Short title.—This section and ss. 1014.02-1014.06
may be cited as the "Parents' Bill of Rights."

Section 3. Section 1014.02, Florida Statutes, is created to
read:

1014.02 Legislative findings and definition.—

(1) The Legislature finds that it is a fundamental right of
parents to direct the upbringing, education, and care of their
minor children. The Legislature further finds that important
information relating to a minor child should not be withheld,
either inadvertently or purposefully, from his or her parent,
including information relating to the minor child's health,
well-being, and education, while the minor child is in the
custody of the school district. The Legislature further finds
that it is necessary to establish a consistent mechanism for
parents to be notified of information relating to the health and
well-being of their minor children.

(2) For purposes of this chapter, the term "parent" means a
person who has legal custody of a minor child as a natural or
adoptive parent or a legal guardian.

Section 4. Section 1014.03, Florida Statutes, is created to
read:

1014.03 Infringement of parental rights.—The state, any of
its political subdivisions, any other governmental entity, or
any other institution may not infringe on the fundamental right
of a parent to oversee the upbringing, education, health care,
and mental health of his or her minor child without
demonstrating that such action is reasonable and necessary to
achieve a compelling state interest and that such action is
narrowly tailored and is not otherwise served by a less

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restrictive means.

Section 5. Section 1014.04, Florida Statutes, is created to
read:

1014.04 Parental rights.—

(1) All parental rights are reserved to the parent of a
minor child in this state without obstruction or interference
from the state, any of its political subdivisions, any other
governmental entity, or any other institution, including, but
not limited to, all of the following rights of a parent of a
minor child in this state:

(a) The right to direct the education and care of his or
her minor child.

(b) The right to direct the upbringing and the moral or
religious training of his or her minor child.

(c) The right, pursuant to s. 1002.20(2)(b) and (6), to
apply to enroll his or her minor child in a public school or, as
an alternative to public education, a private school, including
a religious school, a home education program, or other available
options, as authorized by law.

(d) The right, pursuant to s. 1002.20(13), to access and
review all school records relating to his or her minor child.

(e) The right to make health care decisions for his or her
minor child, unless otherwise prohibited by law.

(f) The right to access and review all medical records of
his or her minor child, unless prohibited by law or if the
parent is the subject of an investigation of a crime committed
against the minor child and a law enforcement agency or official
requests that the information not be released.

(g) The right to consent in writing before a biometric scan

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of his or her minor child is made, shared, or stored.

(h) The right to consent in writing before any record of his or her minor child's blood or deoxyribonucleic acid (DNA) is created, stored, or shared, except as required by general law or authorized pursuant to a court order.

(i) The right to consent in writing before the state or any of its political subdivisions makes a video or voice recording of his or her minor child, unless such recording is made during or as part of a court proceeding or is made as part of a forensic interview in a criminal or Department of Children and Families investigation or is to be used solely for the following purposes:

1. A safety demonstration, including the maintenance of order and discipline in the common areas of a school or on student transportation vehicles;

2. A purpose related to a legitimate academic or extracurricular activity;

3. A purpose related to regular classroom instruction;

4. Security or surveillance of buildings or grounds; or

5. A photo identification card.

(j) The right to be notified promptly if an employee of the state, any of its political subdivisions, any other governmental entity, or any other institution suspects that a criminal offense has been committed against his or her minor child, unless the incident has first been reported to law enforcement or the Department of Children and Families and notifying the parent would impede the investigation.

(k) The right to consent in writing before his or her minor child's grades are released to a law enforcement officer or law

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enforcement agency by an agency or institution as defined in s. 1002.22 unless such release is authorized by s. 1002.221 and the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g.

(2) This section does not:

(a) Authorize a parent of a minor child in this state to engage in conduct that is unlawful or to abuse or neglect his or her minor child in violation of general law;

(b) Condone, authorize, approve, or apply to a parental action or decision that would end life;

(c) Prohibit a court of competent jurisdiction, law enforcement officer, or employee of a government agency that is responsible for child welfare from acting in his or her official capacity within the reasonable and prudent scope of his or her authority; or

(d) Prohibit a court of competent jurisdiction from issuing an order that is otherwise permitted by law.

(3) An employee of the state, any of its political subdivisions, or any other governmental entity who encourages or coerces, or attempts to encourage or coerce, a minor child to withhold information from his or her parent may be subject to disciplinary action.

(4) A parent of a minor child in this state has inalienable rights that are more comprehensive than those listed in this section, unless such rights have been legally waived or terminated. This chapter does not prescribe all rights to a parent of a minor child in this state. Unless required by law, the rights of a parent of a minor child in this state may not be limited or denied. This chapter may not be construed to apply to a parental action or decision that would end life.

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175 Section 6. Section 1014.05, Florida Statutes, is created to
176 read:

177 1014.05 School district notifications on parental rights.—

178 (1) Each district school board shall, in consultation with
179 parents, teachers, and administrators, develop and adopt a
180 policy to promote parental involvement in the public school
181 system. Such policy must include:

182 (a) A plan, pursuant to s. 1002.23, for parental
183 participation in schools to improve parent and teacher
184 cooperation in such areas as homework, school attendance, and
185 discipline.

186 (b) A program, pursuant to s. 1002.20(19)(b), for a parent
187 to learn about his or her minor child's course of study,
188 including the source of any supplemental education materials.

189 (c) Procedures, pursuant to s. 1006.28(2)(a)2., for a
190 parent to object to instructional materials and other materials
191 used in the classroom. Such objections may be based on beliefs
192 regarding morality, sex, or religion or on the belief that such
193 materials are harmful. For purposes of this section, the term
194 "instructional materials" has the same meaning as in s.
195 1006.29(2) and may include other materials used in the
196 classroom, including workbooks and worksheets, handouts,
197 software, applications, and any digital media made available to
198 students.

199 (d) Procedures, pursuant to s. 1002.20(3)(d), for a parent
200 to withdraw his or her minor child from any portion of the
201 school district's comprehensive health education required under
202 s. 1003.42(2)(n) which relates to sex education or instruction
203 in acquired immune deficiency syndrome education or any

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204 instruction regarding sexuality if the parent provides a written
205 objection to his or her minor child's participation. Such
206 procedures must provide for a parent to be notified in advance
207 of such course content so that he or she may withdraw his or her
208 minor child from those portions of the course.

209 (e) Procedures, pursuant to s. 1006.195(1)(a), for a parent
210 to learn about the nature and purpose of clubs and activities
211 offered at his or her minor child's school, including those that
212 are extracurricular or part of the school curriculum.

213 (f) Procedures for a parent to learn about parental rights
214 and responsibilities under general law, including all of the
215 following:

216 1. Pursuant to s. 1002.20(3)(d), the right to opt his or
217 her minor child out of any portion of the school district's
218 comprehensive health education required under s. 1003.42(2)(n)
219 which relates to sex education instruction in acquired immune
220 deficiency syndrome education or any instruction regarding
221 sexuality.

222 2. A plan to disseminate information about school choice
223 options, pursuant to s. 1002.20(6), including open enrollment.

224 3. In accordance with s. 1002.20(3)(b), the right of a
225 parent to exempt his or her minor child from immunizations.

226 4. In accordance with s. 1008.22, the right of a parent to
227 review statewide, standardized assessment results.

228 5. In accordance with s. 1003.57, the right of a parent to
229 enroll his or her minor child in gifted or special education
230 programs.

231 6. In accordance with s. 1006.28(2)(a)1., the right of a
232 parent to inspect school district instructional materials.

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233 7. In accordance with s. 1008.25, the right of a parent to
 234 access information relating to the school district's policies
 235 for promotion or retention, including high school graduation
 236 requirements.

237 8. In accordance with s. 1002.20(14), the right of a parent
 238 to receive a school report card and be informed of his or her
 239 minor child's attendance requirements.

240 9. In accordance with s. 1002.23, the right of a parent to
 241 access information relating to the state public education
 242 system, state standards, report card requirements, attendance
 243 requirements, and instructional materials requirements.

244 10. In accordance with s. 1002.23(4), the right of a parent
 245 to participate in parent-teacher associations and organizations
 246 that are sanctioned by a district school board or the Department
 247 of Education.

248 11. In accordance with s. 1002.222(1)(a), the right of a
 249 parent to opt out of any district-level data collection relating
 250 to his or her minor child not required by law.

251 (2) A district school board may provide the information
 252 required in this section electronically or post such information
 253 on its website.

254 (3) A parent may request, in writing, from the district
 255 school superintendent the information required under this
 256 section. The district school superintendent must provide such
 257 information to the parent within 10 days. If the district school
 258 superintendent denies a parent's request for information or does
 259 not respond to the parent's request within 10 days, the parent
 260 may appeal the denial to the district school board. The district
 261 school board must place a parent's appeal on the agenda for its

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262 next public meeting. If it is too late for a parent's appeal to
 263 appear on the next agenda, the appeal must be included on the
 264 agenda for the subsequent meeting.

265 Section 7. Section 1014.06, Florida Statutes, is created to
 266 read:

267 1014.06 Parental consent for health care services.—

268 (1) Except as otherwise provided by law, a health care
 269 practitioner as defined in s. 456.001 or an individual employed
 270 by such health care practitioner may not provide or solicit or
 271 arrange to provide health care services or prescribe medicinal
 272 drugs to a minor child without first obtaining written parental
 273 consent.

274 (2) Except as otherwise provided by law or a court order, a
 275 provider as defined in s. 408.803 may not allow a medical
 276 procedure to be performed on a minor child in its facility
 277 without first obtaining written parental consent.

278 (3) This section does not apply to an abortion, which is
 279 governed by chapter 390.

280 (4) This section does not apply to services provided by a
 281 clinical laboratory, unless the services are delivered through a
 282 direct encounter with the minor at the clinical laboratory
 283 facility. For purposes of this subsection, the term "clinical
 284 laboratory" has the same meaning as provided in s. 483.803.

285 (5) This section does not apply to care that is necessary
 286 to treat an acute medical condition or to care provided pursuant
 287 to s. 768.135.

288 (6) A health care practitioner or other person who violates
 289 this section is subject to disciplinary action pursuant to s.
 290 408.813 or s. 456.072, as applicable, and commits a misdemeanor

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of the first degree, punishable as provided in s. 775.082 or s.
775.083.

Section 8. Paragraph (f) is added to subsection (3) of
section 408.813, Florida Statutes, to read:

408.813 Administrative fines; violations.—As a penalty for
any violation of this part, authorizing statutes, or applicable
rules, the agency may impose an administrative fine.

(3) The agency may impose an administrative fine for a
violation that is not designated as a class I, class II, class
III, or class IV violation. Unless otherwise specified by law,
the amount of the fine may not exceed \$500 for each violation.
Unclassified violations include:

(f) Violating the parental consent requirements of s.
1014.06.

Section 9. Paragraph (rr) is added to subsection (1) of
section 456.072, Florida Statutes, to read:

456.072 Grounds for discipline; penalties; enforcement.—

(1) The following acts shall constitute grounds for which
the disciplinary actions specified in subsection (2) may be
taken:

(rr) Failure to comply with the parental consent
requirements of s. 1014.06.

Section 10. This act shall take effect July 1, 2021.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR RAY WESLEY RODRIGUES
27th District

COMMITTEES:

Governmental Oversight and Accountability, *Chair*
Appropriations Subcommittee on Agriculture,
Environment, and General Government, *Vice Chair*
Appropriations Subcommittee on Health and
Human Services
Banking and Insurance
Finance and Tax
Judiciary
Regulated Industries

JOINT COMMITTEES:

Joint Select Committee on Collective Bargaining,
Alternating Chair
Joint Committee on Public Counsel Oversight

March 30, 2021

The Honorable Kathleen Passidomo
Senate Rules, Chair
402 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

RE: CS/CS/SB 582 – Parental Rights

Dear Madame Chair:

Please allow this letter to serve as my respectful request to place CS/CS/SB 582, relating to Parental Rights, on the next committee agenda.

The bill brings together various parental rights currently found in statute to create the “Parents’ Bill of Rights.” It recognizes the fundamental right of parents to direct the upbringing, education, health care, and mental health of their minor children.

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

Sincerely,

A handwritten signature in cursive script that reads "Ray Rodrigues".

Ray Rodrigues
Senate District 27

Cc: John Phelps, Staff Director
Cynthia Futch, Administrative Assistant

REPLY TO:

- ☐ 2000 Main Street, Suite 401, Fort Myers, Florida 33901 (239) 338-2570
- ☐ 305 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

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Reset Form

04/06/21

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

582

Bill Number (if applicable)

Topic Parents' Bill of Rights

Amendment Barcode (if applicable)

Name Patti Sullivan

Job Title State Coordinator/Mom

Address 187 Mabry Street

Phone _____

Street

Sebastian

Florida

32958

City

State

Zip

Email psullivan@parentalrightsfl.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Parental Rights Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-6-21

Meeting Date

582

Bill Number (if applicable)

Topic Parents' Bill of Rights

Amendment Barcode (if applicable)

Name Vallie Osborne

Job Title _____

Address 1 Spencer Ct

Phone _____

Street

Ft. Walton Bch FL

32547

Email vozborne@yahoo.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Parental Rights Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

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Reset Form

04/06/21

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

SB 582

Bill Number (if applicable)

Topic Parent's Bill of Rights

Amendment Barcode (if applicable)

Name Abbagael Sullivan

Job Title Student

Address _____

Street

Phone _____

City

State

Zip

Email psullivan@parentalrightsfl.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Families

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-6-21

Meeting Date

56582

Bill Number (if applicable)

Topic Parental Rights

Amendment Barcode (if applicable)

Name Devon Graham

Job Title Assistant State Director (American Atheists)

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing American Atheists

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/6/21

Meeting Date

582

Bill Number (if applicable)

Topic

Parental Rights

Amendment Barcode (if applicable)

Name

Carrie Boyd

Job Title

Policy Director

Address

P.O. Box 10788

Phone

850-570-9560

Street

Tallahassee

FL

32303

Email

carrie.boyd@splcenter.org

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☒

Against

(The Chair will read this information into the record.)

Representing

SPLC Action Fund

Appearing at request of Chair:

☐

Yes

☐

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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S-001 (10/14/14)

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Reset Form

THE FLORIDA SENATE

APPEARANCE RECORD

April 6, 2021
Meeting Date

SB 582
Bill Number (if applicable)

Topic Parents Bill of Rights

Amendment Barcode (if applicable)

Name Dana Hammett

Job Title

Address 6533 Pisgan Church rd
Street

Phone 850-668-3144

Tallahassee FL 32309
City State Zip

Email danacr8ive@hotmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Parental Rights Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6/21

Meeting Date

SB 582

Bill Number (if applicable)

Topic PARENTAL RIGHTS

Amendment Barcode (if applicable)

Name TRISH NEELY

Job Title DIRECTOR

Address 2024 SHANGRI LA

Street

Phone 850 322 3317

TALLAH FL 32303

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing LEAGUE WOMEN VOTERS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

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Reset Form

THE FLORIDA SENATE
APPEARANCE RECORD

4/6/21
Meeting Date

SB582
Bill Number (if applicable)

Topic Parents Bill of Rights

Amendment Barcode (if applicable)

Name Anna Catherine Hammett

Job Title Student

Address Pisgah Church Road
Street

Phone (850)-668-3144

Tallahassee Florida 32309
City State Zip

Email Bookmaker1492@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Parental Rights Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/6/21
Meeting Date

582
Bill Number (if applicable)

Topic Parental Bill of Rights

Amendment Barcode (if applicable)

Name Ida V. Eskamani

Job Title

Address
Street

Phone

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Rising

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6/21

Meeting Date

SB 582

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Heidi Daniels

Job Title _____

Address 3278 Lord Murphy Trl

Street

Phone 904 472 3283

Tell. FL 32309

City

State

Zip

Email sinjap@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Citizens Alliance

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-16-21
Meeting Date

582
Bill Number (if applicable)

Topic Parental Rights
Name Barbara DeVane

Amendment Barcode (if applicable)

Job Title _____

Address 625 E Brenda St
Street
Jallahayee FL 32388
City State Zip

Phone 251-4280

Email barbaradevane10@yahoo.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FL NOW

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6

Meeting Date

582

Bill Number (if applicable)

Topic Parent Rights

Amendment Barcode (if applicable)

Name Karen Woodall

Job Title Director

Address 529 E. Call

Phone _____

Street

Tallahassee

Email _____

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Center for Fiscal & Econ Policy

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-6-21

Meeting Date

582

Bill Number (if applicable)

Topic Parental Bill of Rights

Amendment Barcode (if applicable)

Name Ken Kneppmann (Ka-need-man)

Job Title Associate

Address 201 W Park
Street

Phone 850-570-0552

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Conference Catholic Bishops

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
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 Rules

BILL: CS/SB 628

INTRODUCER: Rules Committee and Senator Rouson

SUBJECT: Urban Agriculture

DATE: April 6, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Argote</u>	<u>Becker</u>	<u>AG</u>	Favorable
2. <u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	Favorable
3. <u>Argote</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 628 exempts propelled equipment used on a farm or used to transport farm products for the purpose of urban agriculture from the requirement that that farm equipment be stored, maintained, or repaired within the boundaries of the owner's farm and be located at least 50 feet away from a public road. The bill does not exempt nonresidential farm buildings, fences, or signs located on lands used for urban agriculture from the Florida Building Code or local governmental regulations.

The bill defines "urban agriculture" and provides applicability.

The bill authorizes the Department of Agriculture and Consumer Services (Department) to approve five urban agricultural pilot project programs in municipalities throughout the state. The bill sets forth requirements by which the Department may approve such projects, outlines eligibility and application requirements, and provides project length periods. The bill requires that municipalities submit a report to the Department outlining outcome and impact of their pilot projects by a specified date. The Department is then required to submit a report on the outcomes and impacts of the pilot projects to the President of the Senate and the Speaker of the House of Representatives.

The bill expressly preserves local governmental authority to regulate urban agriculture under certain circumstances.

The bill takes effect July 1, 2021.

II. Present Situation:

Urban Agriculture

Over the past decade, food policy in the United States has responded to ongoing shifts in consumer preferences and producer trends that favor local and regional food systems while also supporting traditional farm enterprises.¹ This support for local and regional farming has helped to increase agricultural production in urban areas within and surrounding major U.S. cities.

Urban farming operations represent a diverse range of systems and practices. They encompass large-scale innovative systems and capital-intensive operations, vertical and rooftop farms, hydroponic greenhouses (e.g., soilless systems), and aquaponics facilities (e.g., growing fish and plants together in an integrated system).² Urban farming also includes a variety of operations such as vacant city lots, city parks, churchyards, schoolyards, backyards, and community gardens. Urban farming and gardening is often presented as a potential solution for improving health outcomes, increasing self-reliance, strengthening community, and achieving social goals.

Types of Urban Agriculture

The many forms of urban agriculture can be categorized as either commercial or community-based.³ Commercial urban farms typically frame their business model on creating economically viable businesses that provide employment, food, and education opportunities to serve local needs.⁴

The primary objective of community-based urban gardens is to create spaces for local residents to engage in individual and neighborhood development and empowerment while growing, sharing, or selling fresh fruits and vegetables with each other.⁵ Profitability is not necessarily the goal of community-based urban agriculture;⁶ instead, these efforts seek dedicated outside funding to realize urban agriculture's promises of increased healthy food access, food justice, education, job training, ecological literacy, and community empowerment and development.⁷

¹ Congressional Research Service, The Library of Congress, *2018 Farm Bill Primer: Support for Urban Agriculture* (2019), available at <https://fas.org/sgp/crs/misc/IF11210.pdf> (last visited April 6, 2021).

² *Id.*

³ Hodgson, K., Caton Campbell, M., & Bailkey, M, *Urban agriculture: Growing healthy, sustainable places*, (2011) Chicago, IL: American Planning Association Planning Advisory Service.

⁴ Rangarajan, A., & Riordan, M., *The Promise of Urban Agriculture: National Study of Commercial Farming in Urban Areas* (2019), United States Department of Agriculture/Agricultural Marketing Service and Cornell University Small Farms Program.

⁵ *Id.*

⁶ Hodgson, K., Caton Campbell, M., & Bailkey, M, *Urban agriculture: Growing healthy, sustainable places*, (2011) Chicago, IL: American Planning Association Planning Advisory Service.

⁷ Vitiello, D. and Wolf-Powers, L, *Growing food to grow cities: The potential of agriculture for economic and community development in the urban United States*, *Community Development Journal*, (2014), p. 508-523.

“Right to Farm” Laws; Generally

In the 1970s, states began to identify the potential conflicts between farmers and developers as urban sprawl crept into rural, agricultural areas. One of the initial concerns was that the relocation of city dwellers into agricultural areas would result in a rash of very expensive nuisance lawsuits once the new neighbors were confronted with the sensory nature of farm life, complete with an inescapable array of odors, loud noises, dust, and other side-effects.⁸

In an effort to protect farms and agricultural operations from the encroaching sprawl, states passed anti-nuisance laws that are referred to as “Right to Farm” laws. These laws, enacted in all 50 states, protect agricultural production against some nuisance lawsuits. The laws do not grant absolute immunity but generally provide protections for defendants based upon a “coming to the nuisance” defense theory. These laws provide a liability shield for pre-existing agricultural operations when changes are made to the use of nearby parcels, such that the plaintiffs are described as “coming to the nuisance.”⁹ The Florida Right to Farm Act was enacted in 1979.¹⁰

Nuisance

A nuisance is described as an activity, condition, or situation created by someone that significantly interferes with another person’s use or enjoyment of their property. A private nuisance affects a person’s private right that is not common to the public while a public nuisance is an interference that affects the general public, for example, a condition that is dangerous to health or community standards.¹¹

The Florida Right to Farm Act

The Florida Right to Farm Act protects farm operations from nuisance lawsuits if the operations comply with generally accepted agricultural and management practices.¹²

The Florida Right to Farm Act states that a farm operation cannot be classified as a public or private nuisance if the farm:

- Has been in operation for 1 year or more since its established date of operation;
- Was not a nuisance when it was established; and
- Conforms to generally accepted agricultural and management practices.¹³

However, the following four unsanitary conditions constitute evidence of a nuisance:

- The presence of untreated or improperly treated human waste, garbage, offal, dead animals, dangerous waste materials, or gases which are harmful to human or animal life;
- The presence of improperly built or improperly maintained septic tanks, water closets, or privies;

⁸ Alexia B. Borden and Thomas R. Head, III, *The “Right To Farm” In The Southeast – Does it Go Too Far?* (2007).

⁹ *Id.*

¹⁰ Chapter 79-61, ss. 1-2, Laws of Fla.

¹¹ BLACK’S LAW DICTIONARY (11th ed. 2019).

¹² Section 823.14, F.S.

¹³ Section 823.14(4)(a), F.S.

- The keeping of diseased animals which are dangerous to human health, unless the animals are kept in accordance with a current state or federal disease control program; or
- The presence of unsanitary places where animals are slaughtered, which may give rise to diseases which are harmful to human or animal life.¹⁴

Additionally, a farm operation cannot be classified as a public or private nuisance due to a change:

- In ownership;
- In the type of farm product that is produced;
- In conditions in or around the locality of the farm; or
- Made in compliance with Best Management Practices adopted by local, state, or federal agencies.¹⁵

The Florida Right to Farm Act, however, may not be construed to permit an existing farm operation to increase to a more excessive farm operation with regard to noise, odor, dust, or fumes where the existing operation is adjacent to an established homestead or business.^{16,17}

The Florida Building Code

Part IV of ch. 553, F.S., is known as the “Florida Building Codes Act” (Act). The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.¹⁸

The Florida Building Commission (Commission), housed within the Department of Business and Professional Regulation, implements the Building Code. The Commission reviews several International Codes published by the International Code Council, the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every 3 years.

III. Effect of Proposed Changes:

Section 1 amends s. 604.40, F.S., to exempt propelled equipment used on a farm or used to transport farm products for the purpose of urban agriculture from the requirement that farm equipment be stored, maintained, or repaired within the boundaries of the owner’s farm and kept at least 50 feet away from any public road without limitation.

¹⁴ *Id.*

¹⁵ Section 823.14(4)(b), F.S.

¹⁶ Section 823.14(5), F.S.

¹⁷ In an effort to eliminate duplication of regulatory authority over farm operations, local governments may not adopt an ordinance or similar policy to prohibit or limit an activity of a bona fide farm operation on land that is classified as agricultural land in accordance with statute, where the activity is regulated through implemented best management practices or certain interim measures. The full text of this prohibition is contained in s. 823.14(6), F.S.

¹⁸ See s. 553.72(1), F.S.

Section 2 amends s. 604.50, F.S., to provide that nonresidential farm buildings, fences, or signs located on lands used for urban agriculture are not exempt from the Florida Building Code or local governmental regulations.

Section 3 creates s. 604.73, F.S., to be known as the “Florida Urban Agriculture Act.”

The bill specifies the following legislative findings and intent related to urban agriculture:

- It is necessary to distinguish between farms on traditional rural farm land and those of urban agriculture due to the application of laws related to agricultural activities;
- It is acknowledged that the “coming to the nuisance” defense is reversed when residents bring agricultural uses to already-established, dense urbanized areas, and that municipalities should retain the right to reasonably regulate urban agriculture to protect existing urban land uses;
- It is recognized that urban agriculture has the ability to spur economic development by providing for fresh foods in city centers, community revitalization, and the adaptive reuse of vacant lands; and
- It is intended that local governments be authorized to create urban agriculture pilot projects to regulate urban agriculture under certain conditions in order to determine the effectiveness and impact of the pilot projects on farming operations in the selected dense urbanized land areas of the state.

The bill defines “urban agriculture.” The term applies to any new or existing noncommercial agricultural uses on land that is:

- Within a dense urban land area;
- Not classified as agricultural;
- Not zoned as agricultural as its principal use; and
- Designated by a municipality for inclusion in an urban agricultural pilot project that has been approved by the Department of Agriculture and Consumer Services (Department).

The term does not apply to vegetable gardens for personal consumption on residential properties.

The bill creates urban agricultural pilot projects, which grants the Department authority to approve five urban agricultural pilot project programs in municipalities throughout the state. The bill sets forth requirements by which the Department may approve such projects, outlines which municipalities are eligible for application and application requirements, and provides an initial project length period of 3 years to be renewed for additional 3-year periods if a mutual agreement is met. At the end of the first year, the Department may increase the number of pilot projects to 10.

Municipalities are required to submit a report to the Department outlining outcome and impact of their pilot projects by January 1 of each year that the pilot project is in place. The Department is then required to submit a report on the outcomes and impacts of the pilot programs to the President of the Senate and the Speaker of the House of Representatives. The Department is given rulemaking authority to administer and implement the pilot projects.

The bill provides that urban agriculture is subject to applicable municipal regulations if:

- The urban agriculture activities occur on land included by a municipality in a pilot project approved by the Department;
- The municipality duly enacts local regulations applicable to urban agriculture; and
- The regulation designates existing farm operations as legally nonconforming before the regulation's adoption.

Section 4 provides that this bill shall take 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:

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 sections 604.40 and 604.50 of the Florida Statutes.
This bill creates section 604.73 of the Florida Statutes.

IX. Additional Information:

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

CS by Rules on April 6, 2021:

Section 604.40, F.S., is amended to include farm equipment used to transport farm products, requiring that such equipment be stored, maintained, or repaired by the owner within the boundaries of the owner's farm and at least 50 feet away from any public road without limitation. Farm equipment under s. 604.40, F.S., used for urban agriculture would be exempt from this requirement.

The committee substitute revises the definition of the term “urban agriculture.”

The committee substitute creates the urban agricultural pilot programs, which grants the Department of Agriculture and Consumer Services (Department) the authority to approve five urban agricultural pilot project programs in municipalities throughout the state. The committee substitute sets forth requirements by which the Department may approve such programs, outlines which municipalities are eligible for application, provides application requirements if eligible, and provides program length periods. The Department is required to submit a report on the outcomes and impacts of the pilot programs to the President of the Senate and the Speaker of the House of Representatives by a specified date. The Department is given rulemaking authority to administer and implement the pilot programs.

Additionally, the committee substitute alters legislative intent to authorize local governments to create urban agriculture pilot projects and determine the effectiveness and impact of the pilot projects on farming operations in the selected dense urbanized land areas of the state.

- B. **Amendments:**

None.



372958

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/07/2021	.	
	.	
	.	
	.	

The Committee on Rules (Rouson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 25 - 90
and insert:
propelled equipment used on a farm or used to transport farm products may be stored, maintained, or repaired by the owner within the boundaries of the owner's farm and at least 50 feet away from any public road without limitation.

(2) This section does not apply to farm equipment that is used in urban agriculture, as defined in s. 604.73(3).

Section 2. Subsection (1) of section 604.50, Florida



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Statutes, is amended, and paragraph (e) is added to subsection (2) of that section, to read:

604.50 Nonresidential farm buildings; farm fences; farm signs.—

(1) Notwithstanding any provision of law to the contrary, any nonresidential farm building, farm fence, or farm sign that is located on lands used for bona fide agricultural purposes, not including those lands used for urban agriculture, is exempt from the Florida Building Code and any county or municipal code or fee, except for code provisions implementing local, state, or federal floodplain management regulations. A farm sign located on a public road may not be erected, used, operated, or maintained in a manner that violates any of the standards provided in s. 479.11(4), (5)(a), and (6)–(8).

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

(e) "Urban agriculture" has the same meaning as in s. 604.73(3).

Section 3. Section 604.73, Florida Statutes, is created to read:

604.73 Urban agriculture pilot projects; local regulation of urban agriculture.—

(1) SHORT TITLE.—This section shall be known and may be cited as the "Urban Agriculture Pilot Project Act."

(2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that, due to the application of laws relating to agricultural activities, it is necessary to distinguish between farms on traditional rural farm land and the emerging trends towards urban agriculture. The Legislature acknowledges that the "coming to the nuisance" defense is reversed when residents bring



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41 agricultural uses to already-established, dense urbanized areas,
42 and that municipalities should retain the right to reasonably
43 regulate urban agriculture to protect existing urban land uses.
44 The Legislature recognizes the ability of urban agriculture to
45 spur economic development by providing for fresh foods in city
46 centers, community revitalization, and the adaptive reuse of
47 vacant lands. It is the intent of the Legislature that local
48 governments be authorized to create urban agriculture pilot
49 projects to regulate urban agriculture under certain conditions
50 and to determine the effectiveness and impact of the pilot
51 projects on the farming operations in the selected dense
52 urbanized land areas of the state.

53 (3) DEFINITIONS.—As used in this section, the term:

54 (a) "Department" means the Department of Agriculture and
55 Consumer Services.

56 (b) "Urban agriculture" means any new or existing
57 noncommercial agricultural uses on land that is:

58 1. Within a dense urban land area, as described in s.
59 380.0651(3) (a) .

60 2. Not classified as agricultural pursuant to s. 193.461.

61 3. Not zoned as agricultural as its principal use.

62 4. Designated by a municipality for inclusion in an urban
63 agricultural pilot project that has been approved by the
64 department.

65
66 The term does not include vegetable gardens, as defined in s.
67 604.71(4), for personal consumption on residential properties.

68 (4) URBAN AGRICULTURAL PILOT PROJECTS.—

69 (a) The department may approve five urban agricultural



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pilot projects that meet the requirements of this section and requirements adopted by department rule. The rules adopted by the department must require, at a minimum, that a municipal applicant:

1. Has a population of 250,000 or more.

2. Submits to the department a proposal that includes a narrative description of the proposed pilot project, including the project location, farm products to be cultivated, community involvement, anticipated outcomes, nutrition and water use, fertilization management, and any other requirements specified by department rules.

(b) A pilot project shall be approved for an initial 3-year period and may be renewed for additional 3-year periods by mutual agreement between the department and municipality.

(c) At the end of the first 3-year period, the department may increase the number of pilot projects to ten.

(d) A municipality shall submit a report providing a narrative explanation of the outcomes and impact of the pilot project to the department by January 1 for each year of the pilot project. The department shall submit a report on the outcomes and impacts of the pilot projects to the President of the Senate and Speaker of the House of Representatives.

(5) LOCAL REGULATION.—Notwithstanding s. 604.50, s. 823.14, or any other law to the contrary, urban agriculture is subject to applicable municipal regulations if:

(a) The urban agriculture activities occur on land included by a municipality in a pilot project approved by the department pursuant to this section.

(b) The municipality duly enacts local regulations



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applicable to urban agriculture.

(c) Before the reenactment of the regulations under paragraph (b), the municipality designates existing farm operations, as defined in s. 823.14(3)(b), within its jurisdiction as legally nonconforming.

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

And the title is amended as follows:

Delete lines 3 - 15
and insert:

604.40, F.S.; authorizing farm equipment used to transport farm products to be stored, maintained, or repaired within specified boundaries; exempting farm equipment used in urban agriculture from provisions requiring farm equipment to be located within specified boundaries; amending s. 604.50, F.S.; providing that nonresidential farm buildings, fences, or signs located on lands used for urban agriculture are not exempt from the Florida Building Code or local governmental regulations; defining the term "urban agriculture"; creating s. 604.73, F.S.; providing a short title; providing legislative findings and intent; defining terms; authorizing the Department of Agriculture and Consumer Services to approve municipal urban agricultural pilot projects; providing application requirements; providing for the number, duration, and renewal of pilot projects; requiring municipalities to submit annual reports to the department; requiring the department to submit an



372958

128 annual report to the Legislature; providing that urban
129 agriculture is subject to specified municipal
130 regulation under certain

By Senator Rouson

19-00815-21

2021628__

A bill to be entitled

An act relating to urban agriculture; amending s. 604.40, F.S.; exempting farm equipment used in urban agriculture from certain provisions requiring farm equipment to be located a specified distance from a public road; amending s. 604.50, F.S.; providing that nonresidential farm buildings, fences, or signs located on lands used for urban agriculture are not exempt from the Florida Building Code or local governmental regulations; defining the term "urban agriculture"; creating s. 604.73, F.S.; providing a short title; providing legislative findings and intent; defining the term "urban agriculture"; expressly preserving local governmental authority to regulate urban agriculture under certain circumstances; providing an effective date.

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

Section 1. Section 604.40, Florida Statutes, is amended to read:

604.40 Farm equipment.—

(1) Notwithstanding any other law, ordinance, rule, or policy to the contrary, all power-drawn, power-driven, or self-propelled equipment used on a farm may be stored, maintained, or repaired by the owner within the boundaries of the owner's farm and at least 50 feet away from any public road without limitation.

(2) This section does not apply to farm equipment that is

19-00815-21

2021628__

used in urban agriculture, as defined in s. 604.73.

Section 2. Subsection (1) of section 604.50, Florida Statutes, is amended, and paragraph (e) is added to subsection (2) of that section, to read:

604.50 Nonresidential farm buildings; farm fences; farm signs.—

(1) Notwithstanding any provision of law to the contrary, any nonresidential farm building, farm fence, or farm sign that is located on lands used for bona fide agricultural purposes, not including those lands used for urban agriculture, is exempt from the Florida Building Code and any county or municipal code or fee, except for code provisions implementing local, state, or federal floodplain management regulations. A farm sign located on a public road may not be erected, used, operated, or maintained in a manner that violates any of the standards provided in s. 479.11(4), (5) (a), and (6)-(8).

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

(e) "Urban agriculture" has the same meaning as in s. 604.73.

Section 3. Section 604.73, Florida Statutes, is created to read:

604.73 Local regulation of urban agriculture.—

(1) SHORT TITLE.—This section shall be known and may be cited as the "Florida Urban Agriculture Act."

(2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that, due to the application of laws relating to agricultural activities, it is necessary to distinguish between farms on traditional rural farm land and the emerging trends towards urban agriculture. The Legislature acknowledges that the "coming

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 59 to the nuisance” defense is reversed when residents bring
 60 agricultural uses to already-established, dense urbanized areas,
 61 and that municipalities should retain the right to reasonably
 62 regulate urban agriculture to protect existing urban land uses.
 63 The Legislature recognizes the ability of urban agriculture to
 64 spur economic development by providing for fresh foods in city
 65 centers, community revitalization, and the adaptive reuse of
 66 vacant lands. It is the intent of the Legislature that local
 67 governments retain authority to regulate urban agriculture under
 68 certain conditions, which will further the growth of farmland
 69 and promote the establishment of new farms and agricultural uses
 70 within dense urbanized land areas of this state.

71 (3) DEFINITION.—As used in this section, the term “urban
 72 agriculture” means any new or existing food cultivation on a
 73 piece of land within a dense urban land area, as described in s.
 74 380.0651(3)(a), for recreational, residential, community,
 75 commercial, or not-for-profit gardening or farming purposes. The
 76 term applies to urban land that is not designated or zoned for
 77 agriculture as a principal use. The term does not include
 78 vegetable gardens, as defined in s. 604.71(4), for personal
 79 consumption on residential properties.

80 (4) LOCAL REGULATION.—Notwithstanding s. 823.14 or any
 81 other law to the contrary, urban agriculture is subject to the
 82 land use, building, and other regulations of a county,
 83 municipality, or other political subdivision of the state,
 84 regardless of the property’s agricultural classification
 85 pursuant to s. 193.461, where:

86 (a) There is a land use or zoning regulation duly enacted
 87 to allow for urban agriculture; and

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 88 (b) The regulation designates existing farm operations, as
 89 defined in s. 823.14(3)(b), as legally nonconforming before the
 90 regulation’s adoption.

91 Section 4. This act shall take effect July 1, 2021.



The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 19, 2021

I respectfully request that **Senate Bill #628**, relating to Urban Agriculture, be placed on the:

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

A handwritten signature in cursive script that reads "Darryl Ervin Rouson".

Senator Darryl Ervin Rouson
Florida Senate, District 19

THE FLORIDA SENATE

APPEARANCE RECORD

4/6/21

Meeting Date

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

SB 628

Bill Number (if applicable)

372958

Amendment Barcode (if applicable)

Topic Urban Agriculture

Name Jeffrey Sharkey

Job Title CEO Capitol Alliance Group

Address 106 E College Ave S. 1110

Street

Tallahassee

FL

32301

City

State

Zip

Phone (850) 224-1660

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing City of St. Petersburg

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 714

INTRODUCER: Rules Committee; Children, Families, and Elder Affairs Committee; and Senator Taddeo

SUBJECT: Resource Information for Individuals with Disabilities

DATE: April 6, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Delia</u>	<u>Cox</u>	<u>CF</u>	Fav/CS
2.	<u>Delia</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 714 directs the Agency for Persons with Disabilities (the APD) to provide individuals applying for Medicaid Home and Community-Based Services (HCBS) Waiver services, regardless of eligibility for such services, with the following information:

- A brief overview of vocational rehabilitation services offered through the Florida Division of Vocational Rehabilitation;
- A brief overview of the Florida ABLE program;
- A brief overview of supplemental social security and social security disability benefits;
- A statement indicating that an applicant's local public school district may provide specialized instructional services, including transition programs, for students with special education needs;
- A brief overview of programs and services funded through the Center for Students with Unique Abilities, including contact information for each state approved Florida Postsecondary Comprehensive Transition Program
- A brief overview of decision-making options for persons with developmental disabilities, guardianship programs, and alternatives to guardianship;
- A brief overview of referral tools made available through the APD; and
- A statement indicating that some waiver providers may serve private pay individuals.

The bill requires that the APD provide the information in writing to the applicant, their parent, legal guardian, or a family member annually. The bill also requires the APD to provide a written disclosure stating that each program and service has its own eligibility requirements and that the

APD does not guarantee eligibility or enrollment for the applicant in any program or service. The bill directs the APD to post the information and disclaimer statement on the agency's website.

The APD states that the bill will likely not create a fiscal impact to state government. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

II. Present Situation:

Agency for Persons with Disabilities

The APD is responsible for the provision of services to individuals with developmental disabilities¹ and for administering the Home and Community-Based Services (HCBS) Waiver.² Florida has procured waivers of federal Medicaid requirements for the purpose of providing home and community-based services to individuals at risk of institutionalization.³ The HCBS Waiver provides services to individuals with developmental disabilities that allow them to continue to live in their home or home-like setting and avoid institutionalization.⁴ Eligible individuals must meet institutional level of care requirements.⁵ The overarching goal for the APD is to prevent or reduce the severity of a developmental disability and implement community-based services that will help individuals with developmental disabilities achieve their greatest potential for independent and productive living in the least restrictive means.⁶

Regional Offices

In addition to central headquarters in Tallahassee, the APD operates a total of six regional offices and 14 field offices throughout the state, as detailed below:⁷

<u>Region</u>	<u>Counties</u>
Northwest	Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Okaloosa, Santa Rosa, Wakulla, Walton, and Washington; Fields 1 and 2.
Northeast	Alachua, Baker, Bradford, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist, Hamilton, Lafayette, Levy, Madison, Nassau, Putnam,

¹ Section 393.063(12), F.S., defines “developmental disability” to mean “a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.”

² See Section 20.197(3), F.S.

³ Rule 59G-13.080(1), F.A.C.

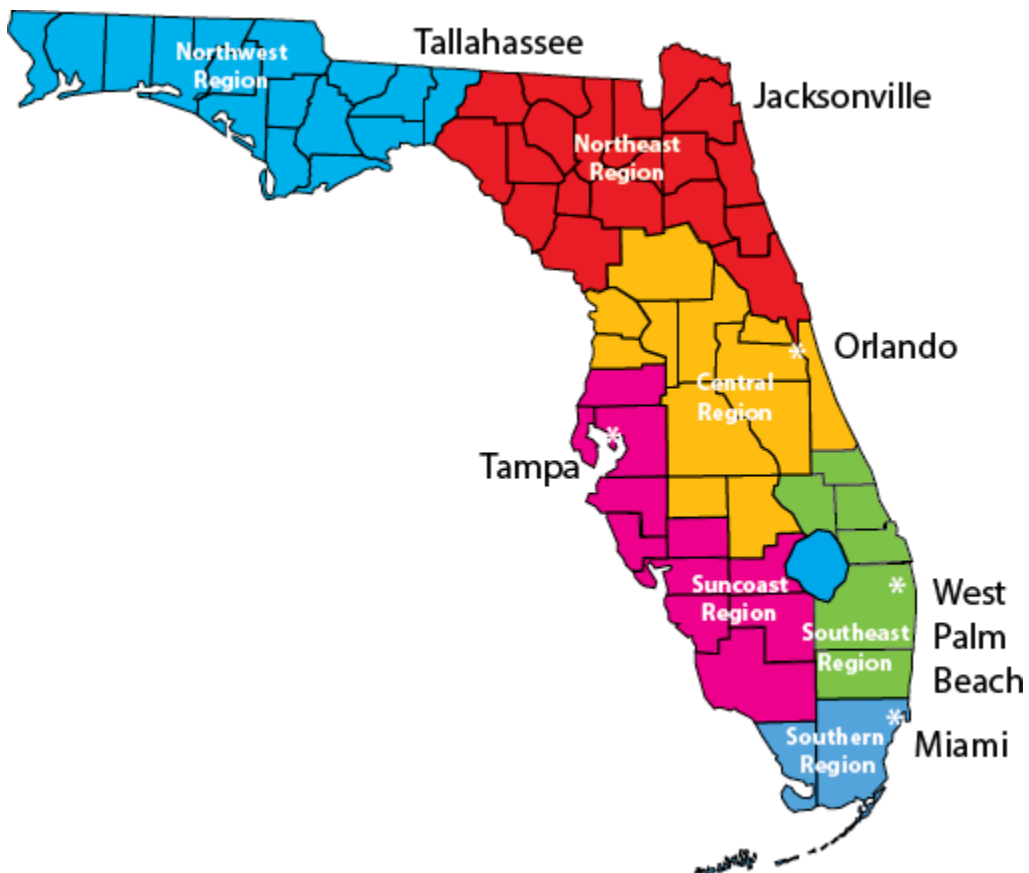
⁴ The Centers for Medicare and Medicaid Services, *Home and Community-Based Services 1915(c)*, available at <https://www.medicaid.gov/medicaid/home-community-based-services/home-community-based-services-authorities/home-community-based-services-1915c/index.html> (last visited April 6, 2021).

⁵ *Id.*; Rule 59G-13.080(1), F.A.C.

⁶ See s. 393.062, F.S.

⁷ The APD, *Regional Offices*, available at <https://apd.myflorida.com/region/> (last visited April 6, 2021).

	St. Johns, Suwannee, Taylor, Union, and Volusia; Fields 3, 4, and 12.
Central	Brevard, Citrus, Hardee, Hernando, Highlands, Lake, Marion, Orange, Osceola, Polk, Seminole, and Sumter; Fields 7, 13, and 14.
Suncoast	Charlotte, Collier, DeSoto, Glades, Hendry, Hillsborough, Lee, Manatee, Pasco, Pinellas, and Sarasota; Suncoast Field and Field 8.
Southeast	Broward, Indian River, Martin, Okeechobee, Palm Beach, and St. Lucie; Fields 9 and 10.
Southern	Miami-Dade and Monroe; Field 11.



iBudget Florida Program

The APD administers Florida's individual budget-based HCBS waiver, known as iBudget Florida, for individuals with specified developmental disabilities who meet Medicaid eligibility requirements. These individuals may choose to receive services in the community through iBudget Florida; alternatively, they may choose to live in an institutional setting known as an

Intermediate Care Facility for the Developmentally Disabled (ICF/DD)⁸ through traditional Medicaid administered by the Agency for Health Care Administration (AHCA).⁹

The APD initiated implementation of iBudget Florida on May 1, 2011¹⁰ with the final areas transitioned from the previous tiered waiver system on July 1, 2013.¹¹ The iBudget Florida program uses an algorithm, or formula, to set individuals' funding allocations for waiver services.¹² The APD administers iBudget Florida pursuant to s. 393.0662, F.S.

The APD serves just over 35,100 individuals through iBudget Florida,¹³ contracting with service providers to offer 27 supports and services to assist individuals to live in their community.¹⁴ Examples of waiver services enabling children and adults to live, learn, and work in their communities include residential habilitation, behavioral services, personal supports, adult day training, employment services, and occupational and physical therapy.¹⁵

Eligibility for iBudget Services

The application process for individuals wishing to receive services through the iBudget program are detailed in section 393.065, F.S. The APD must review applications for eligibility within 45 days for children under 6 years of age and within 60 days for all other applicants.¹⁶ Individuals who are determined to be eligible for the waiver program are either given a slot in the program or placed on a wait list. Currently, due to demand exceeding available funding, individuals with developmental disabilities who wish to receive HCBS services from the APD are placed on a wait list for services in priority categories of need, unless they are in crisis.¹⁷ As of February 2021, approximately 22,700 individuals were on the HCBS Waiver wait list.¹⁸

The needs of APD clients are classified into seven categories¹⁹ and are prioritized in the following decreasing order of priority:

- Category 1 – Clients deemed to be in crisis.
- Category 2 – Specified children from the child welfare system.²⁰
- Category 3 – Includes, but is not limited to, clients:
 - Whose caregiver has a documented condition that is expected to render the caregiver unable to provide care within the next 12 months and for whom a caregiver is required but no alternate caregiver is available;

⁸ Section 393.063(25), F.S., defines “intermediate care facility for the developmentally disabled” to mean “a residential facility licensed and certified under part VIII of chapter 400.”

⁹ Section 393.0662, F.S.

¹⁰ The APD, *Quarterly Report on Agency Services to Floridians with Developmental Disabilities and Their Costs: Second Quarter Fiscal Year 2020-21*, at p. 2, February 1, 2021 (on file with the Senate Children, Families, and Elder Affairs Committee) (hereinafter cited as, “The Quarterly Report”).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Section 393.065(1), F.S.

¹⁷ Section 393.065, F.S.; *See* Rule 65G-1.047, F.A.C. for crisis status criteria.

¹⁸ The Quarterly Report at p. 2.

¹⁹ Section 393.065(5), F.S.

²⁰ *See* s. 393.065(5)(b) for specific criteria.

- Who are at substantial risk of incarceration or court commitment without supports;
- Whose documented behaviors or physical needs place them or their caregiver at risk of serious harm and other supports are not currently available to alleviate the situation; or
- Who are identified as ready for discharge within the next year from a state mental health hospital or skilled nursing facility and who require a caregiver but for whom no caregiver is available.
- Category 4 – Includes, but not limited to, clients whose caregivers are 70 years of age or older and for whom a caregiver is required but no alternate caregiver is available;
- Category 5 – Includes, but not limited to, clients who are expected to graduate within the next 12 months from secondary school and need support to obtain or maintain competitive employment, or to pursue an accredited program of postsecondary education to which they have been accepted.
- Category 6 – Clients 21 years of age or older who do not meet the criteria for categories 1-5.
- Category 7 – Clients younger than 21 years of age who do not meet the criteria for categories 1-4.²¹

The APD and Applications for Services

The APD receives and processed roughly 1,000 applications for HCBS Waiver services and enrollment annually.²² The APD provides each applicant with a notice regarding their eligibility, along with information specific to each applicant and their geographic location.²³ If an applicant is deemed ineligible, the APD must notify the applicant of the right to appeal the decision in accordance with chapter 120, F.S. within 5 days,²⁴ and offer suggestions regarding other programs, agencies, or services for which the applicant may be eligible.²⁵

The APD maintains a web-based resource directory where individuals can search for resourced based on specific needs, preferences, and locations.²⁶ The APD also maintains the Florida Navigator, which is an online tool designed to empower and inform individuals with developmental disabilities, caregivers, and professionals about specific services available through state agencies and programs.²⁷

The APD does not currently maintain information pertaining to the eligibility criteria and application procedures for specific governmental and non-governmental organizations.²⁸ The APD also does not currently have a mechanism for tracking private sector or non-governmental organizations with sufficient capacity to accept private-pay individuals.²⁹

²¹ Section 393.065(5), F.S.

²² The APD, *Agency Analysis for SB 714*, p. 2, February 8, 2021 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as “The APD Analysis”).

²³ *Id.*

²⁴ Rule 65G-4.16(4), F.A.C.

²⁵ Rule 65G-4.16(5), F.A.C.

²⁶ The APD, *Resource Directory*, available at <https://resourcedirectory.apd.myflorida.com/> (last visited April 6, 2021).

²⁷ The APD, *Florida Navigator*, available at <https://navigator.apd.myflorida.com/> (last visited April 6, 2021).

²⁸ The APD Analysis at p. 3.

²⁹ *Id.*

The Florida Division of Vocational Rehabilitation

The Division of Vocational Rehabilitation (VR) within the Department of Education (DOE) administers the vocational rehabilitation program in Florida.³⁰ The VR provides services to help individuals with a disability find, advance in, or retain employment, and provides services to youth and students with a disability to aid in the transition from high school to a meaningful career path.³¹ In FY 2018-19, VR served 48,439 individuals, including 26,086 customers who were between the ages of 14 through 21.³²

An individual with a disability³³ is presumed eligible for vocational rehabilitation services if the person requires rehabilitation services to prepare for, enter, engage in, or retain gainful employment.³⁴ After determining eligibility, the VR must complete an assessment to determine rehabilitation needs and ensure that an individualized plan for employment (IPE)³⁵ is prepared.³⁶ The IPE must be designed to achieve the specific employment outcome of the individual and may include services such as vocational evaluation and planning, career counseling and guidance, job-site assessment and accommodations, job placement, job coaching, and on-the-job training.³⁷

The VR is only required to provide services to the extent they are funded by the Legislature.³⁸ All individuals eligible for services are placed in categories on a prioritized waiting list based on the significance of their disability, and the categories include:

- Category 1, comprised of individuals with the most significant disabilities;
- Category 2, comprised of individuals with a significant disability; and
- Category 3, comprised of individuals with a disability.³⁹

In the 2018-2019 fiscal year, the VR served 26,744 individuals in category 1, and, as of June 30, 2019, had a waiting list of 300 individuals in category 3.⁴⁰

³⁰ The Department of Education (The DOE), Division of Vocational Rehabilitation (VR), *2018-2019 Annual Report* (2019), p. 6, available at <http://www.rehabworks.org/rehab/AnnualReport19.pdf> (last visited April 6, 2021).

³¹ *Id.*

³² *Id.*

³³ Section 413.20(7), F.S., defines “disability” to mean “a physical or mental impairment that constitutes or results in a substantial impediment to employment.”

³⁴ Section 413.30(1), F.S.

³⁵ An individualized plan for employment includes a “comprehensive assessment of the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment, of an eligible individual to make a determination of the goals, objectives, nature, and scope of vocational rehabilitation services.” Section 413.20(3), F.S.

³⁶ See s. 413.30(4) and (5), F.S.

³⁷ The DOE, VR, *Frequently Asked Questions*, available at <http://www.rehabworks.org/faq.shtml> (last visited April 6, 2021).

³⁸ Section 413.731(1), F.S.

³⁹ The DOE, VR *2018-2019 Annual Report* (2019), p. 7, available at <http://www.rehabworks.org/rehab/AnnualReport19.pdf?id=1> (last visited April 6, 2021).

⁴⁰ *Id.* at p. 10.

Supplemental Security Income and Social Security Disability Income

Individuals with disabilities may qualify for certain federal assistance programs, including, in part, the Social Security Disability Insurance (SSDI)⁴¹ and Supplemental Security Income⁴² (SSI) are two such programs, administered by the federal Social Security Administration. Under these programs, disability is defined as the inability to engage in substantial gainful activity due to a medically determinable physical or mental impairment expected to result in death or last at least 12 months.⁴³

The SSDI program provides cash payments to individuals who have contributed to the Social Security system and meet certain minimum work requirements.⁴⁴ The amount of assistance under the SSDI program varies depending on age and average earnings.⁴⁵ SSI is a means-tested program for aged, blind, or disabled individuals who meet certain income and resource limitations.⁴⁶ There are no contribution or minimum work requirements.⁴⁷ The SSI program provides cash payments assuring a minimum income for aged, blind, or disabled individuals who have very limited income and assets.⁴⁸ Effective January 1, 2021, the maximum monthly SSI benefit rate is \$794 for an eligible individual and \$1,191 for an eligible individual with an eligible spouse.⁴⁹

ABLE Programs

Federal ABLE Act

Congress enacted the ABLE Act (Achieving a Better Life Experience Act) in 2014.⁵⁰ The ABLE Act permits a state to implement an ABLE Program and establish ABLE accounts for eligible individuals with disabilities⁵¹ to spend distributions on “qualified disability expenses.”⁵² The

⁴¹ 42 U.S.C. §§ 401-433.

⁴² 42 U.S.C. §§ 1381-1385.

⁴³ The Social Security Administration (The SSA), *Disability Evaluation Under Social Security*, available at <http://www.socialsecurity.gov/disability/professionals/bluebook/general-info.htm> (last visited April 6, 2021).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ The definition of disability for disabled children receiving SSI benefits is slightly different from the definition for adults. See The SSA, Social Security Income (SSI) Eligibility Requirements, available at <http://www.ssa.gov/ssi/text-eligibility-ussi.htm#disabled-child> (last visited April 6, 2021).

⁴⁸ *Id.*

⁴⁹ Generally, the maximum monthly payment changes yearly due to changes in the Consumer Price Index. The SSA, *SSI Federal Payment Amounts for 2021*, available at <http://www.socialsecurity.gov/OACT/COLA/SSI.html> (last visited April 6, 2021).

⁵⁰ Pub. L. No. 113-295, 128 Stat. 4056 (Dec. 19, 2014).

⁵¹ 26 U.S.C. § 529(e). An individual is an eligible individual for a taxable year if during such taxable year: (1) the individual is entitled to benefits based on blindness or disability under title II or XVI of the Social Security Act, and such blindness or disability occurred before the date on which the individual attained age 26; or (2) a disability certification with respect to such individual is filed with the Secretary of Education for such taxable year.

⁵² 26 U.S.C. § 529(e)(5). “Qualified disability expense” is defined as “any expense related to the eligible individual’s blindness or disability which are made for the benefit of an eligible individual who is the designated beneficiary, including the following expenses: education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses, which are approved by the Secretary under regulations and consistent with the purposes of this section.”

purposes of the ABLE Act are to encourage individuals and families to save money to support individuals with disabilities to maintain health, independence, and quality of life and to provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities to supplement benefits provided through other sources.⁵³

Florida ABLE Program

The Florida ABLE Program was created in 2015 to encourage and assist the saving of private funds in tax-exempt accounts in order to pay for the qualified expenses of eligible individuals with disabilities.⁵⁴ The Florida Prepaid College Board was required to establish a direct-support organization to be known as “Florida ABLE, Inc.,” (ABLE United) to establish and administer the Florida ABLE Program.⁵⁵

The mission of ABLE United is to encourage and assist the saving of private funds to help persons with disabilities cover costs that support their health, independence, and quality of life.⁵⁶ Among the individuals in the program, 44 percent have a developmental disability.⁵⁷ As of May 15, 2020, 4,724 individuals have an ABLE United account.⁵⁸ The average account balance is \$5,474.⁵⁹

Preemployment Transition Services

The Workforce Innovation and Opportunity Act of 2014 (WIOA)⁶⁰ aims to increase opportunities for individuals facing barriers to employment and focus on the connection between education and career preparation.⁶¹ The WIOA requires that state vocational rehabilitation agencies set aside at least 15 percent of their federal funds to provide preemployment transition services to eligible individuals with a disability who:

- Are between 14 and 21 years of age; and
- Have a current individual education plan (IEP); or
- Have or are eligible for an accommodation plan pursuant to s. 504 of the Rehabilitation Act of 1973.⁶²

Section 504 of the Rehabilitation Act of 1973⁶³ prohibits any program or activity that receives federal financial assistance from discriminating against an otherwise qualified individual solely by reason of his or her disability. State and local agencies that administer federally funded

⁵³ 26 U.S.C. § 529(b).

⁵⁴ Section 2, ch. 2015-56, L.O.F.

⁵⁵ Section 1009.986(3), F.S.

⁵⁶ ABLE United, *Direct Support Organization Disclosures* p. 1, (July 8, 2020), available at <http://flprepaidstage.wpengine.com/wp-content/uploads/2020-Florida-ABLE-Disclosure-Required-pursuant-to-Section-20.058-Florida-Statutes.pdf> (last visited April 6, 2021).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Pub. L. No. 113-128, 128 Stat. 1425 (July 22, 2014).

⁶¹ See U.S. Department of Labor, Employment & Training Administration, *WIOA Overview*, available at <https://www.doleta.gov/wioa/about/overview/> (last visited April 6, 2021).

⁶² Workforce Innovation Technical Assistance Center, *Preemployment Transition Services*, available at <http://www.wintac.org/topic-areas/pre-employment-transition-services> (last visited April 6, 2021).

⁶³ Pub. L. No. 93-112, s. 504, 83 Stat. 355, 361 (1973), as amended and codified in 29 U.S.C. § 794.

programs or activities may devise an accommodation plan for someone with a disability to allow the disabled person's participation in the program.⁶⁴

All students who are between the ages of three to 21 and have a disability have the right to a free, appropriate public education.⁶⁵ The IEP is the primary vehicle for communicating the school district's commitment to addressing the unique educational needs of a student with a disability.⁶⁶ An IEP team begins the process of identifying the need for transition services before a student with a disability attains the age of 14 years, in order to ensure quality planning for a successful transition of the student to postsecondary education and career opportunities. When the student attains the age of 16, the IEP must include an annually updated statement addressing the intent for the student to pursue a standard high school diploma and other appropriate measurable long-term postsecondary education and career goals.⁶⁷

The Florida Center for Students with Unique Abilities

In 2015, the Legislature created the Florida Center for Students with Unique Abilities (FCSUA) within the University of Central Florida as a means of, among other things, disseminating information to students with disabilities and their parents regarding available education programs, services, resources, and employment opportunities for such students.⁶⁸ The information provided by the FCSUA includes:

- Education programs, services, and resources that are available at eligible institutions.
- Supports, accommodations, technical assistance, or training provided by eligible institutions, and certain regional autism centers; and
- Mentoring, networking, and employment opportunities.⁶⁹

III. Effect of Proposed Changes:

The bill requires the APD to provide information on programs and services which may benefit a developmentally disabled individual. Under the bill, the APD must provide such information to any individual applying for HCBS Waiver services, their parent, their legal guardian, or another family member, regardless of whether the individual is eligible to receive HCBS Waiver services and is ultimately enrolled in iBudget Florida.

Specifically, the APD must provide each applicant, their parent, their legal guardian, or another family member with the following information in writing:

- A brief overview of the vocational rehabilitation services offered through the Division of Vocational Rehabilitation of the DOE, along with a hyperlink or website address that provides direct access to the application for such services;

⁶⁴ See *Alexander v. Choate*, 469 U.S. 287 (1985).

⁶⁵ Section 1003.5716, F.S.

⁶⁶ The DOE, *Developing Quality Individual Education Plans* (2015), p. 9, available at <http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf> (last visited March 1, 2021).

⁶⁷ Section 1003.5716(2), F.S.

⁶⁸ Section 5, ch. 2016-2, L.O.F.

⁶⁹ Section 1004.6495(5)(a), F.S.

- A brief overview of the Florida ABLE program, along with a hyperlink or website address that provides direct access to the application for establishing an ABLE account as defines in s. 1009.986(2), F.S.;
- A brief overview of supplemental social security income benefits and social security disability income benefits, along with a hyperlink or website address that provides direct access to the application for such benefits;
- A statement indicating that the applicant's local school district may provide specialized instructional services, including transition programs, for students with special education needs;
- A brief overview of programs and services funded through the Center for Students with Unique Abilities, including contact information for each state approved Florida Postsecondary Comprehensive Transition Program
- A brief overview of decision-making options for persons with developmental disabilities, guardianship programs, and alternatives to guardianship;
- A brief overview of referral tools made available through the APD; and
- A statement informing the applicant that some waiver providers may serve private pay individuals.

The bill also requires the APD to provide a written disclosure statement to the above-mentioned persons, which states:

“Each program and service has its own eligibility requirements. By providing the information specified in Section 393.065(10)(a), Florida Statutes, the agency does not guarantee an applicant's eligibility for or enrollment in any program or service.”

Finally, the bill requires the APD to post the information and disclaimer statement on its website and provide the information and disclaimer statement annually to each individual (or the individual's parent, family member, or guardian) on the iBudget waitlist.

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:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the Florida Constitution.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The APD anticipates that the bill will not have a fiscal impact on state government.⁷⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 393.065 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Rules on April 6, 2021:

The committee substitute:

- Requires the APD to post the information and disclaimer statement on its website and provide the information and disclaimer statement annually to each individual (or the individual's parent, family member, or guardian) on the iBudget waitlist.

CS by Children, Families, and Elder Affairs on March 9, 2021:

The Committee Substitute:

⁷⁰ The APD, Email from the APD Legislative Affairs Director J.P. Bell, March 10, 2021. (On file with the Senate Committee on Children, Families, and Elder Affairs).

- Requires the APD to provide to provide individuals applying for Medicaid Home and Community-Based Services (HCBS) Waiver services, regardless of eligibility for such services, with the following information:
 - A brief overview of vocational rehabilitation services offered through the Florida Division of Vocational Rehabilitation;
 - A brief overview of the Florida ABLE program;
 - A brief overview of supplemental social security and social security disability benefits;
 - A statement indicating that an applicant's local public school district may provide specialized instructional services, including transition programs, for students with special education needs;
 - A brief overview of programs and services funded through the Center for Students with Unique Abilities, including contact information for each state approved Florida Postsecondary Comprehensive Transition Program
 - A brief overview of decision-making options for persons with developmental disabilities, guardianship programs, and alternatives to guardianship;
 - A brief overview of referral tools made available through the APD; and
 - A statement indicating that some waiver providers may serve private pay individuals.
- Removes the requirement that the APD provide waiver applicants with the following information:
 - Eligibility criteria and application procedures for vocational rehabilitation services;
 - Eligibility criteria and application procedures for the Florida ABLE program;
 - Eligibility criteria and application procedures for receiving supplemental social security and social security disability benefits;
 - Contact information for the local school district for applicants age 22 or younger;
 - If the applicant is between 16 and 22 years old, eligibility criteria and application procedures for transition programs and services available in local schools, including access to job coaches providing transition services to students with disabilities who are enrolled in such programs;
 - If the applicant is age 22 or older, eligibility criteria and application procedures for:
 - Certain adult day training programs;
 - Certain training programs; and
 - Other specified programs that may be of assistance.
 - Eligibility criteria and application procedures for certain guardianship programs; and
 - A list of certain local independent living skills coaches, job coaches, and personal supports.

B. Amendments:

None.



299350

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/07/2021	.	
	.	
	.	
	.	

The Committee on Rules (Taddeo) recommended the following:

Senate Amendment (with title amendment)

Between lines 64 and 65
insert:

(c) The agency shall also publish the information required
in paragraph (a) and the disclosure statement in paragraph (b)
on its website, and shall provide that information and statement
annually to each applicant placed on the waiting list or the
parent, legal guardian, or family member of such applicant.

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

And the title is amended as follows:



299350

12 Delete line 8
13 and insert:
14 statement along with such information; requiring the
15 agency to publish such information and statement on
16 its website and provide such information and statement
17 to certain persons annually; providing an

By the Committee on Children, Families, and Elder Affairs; and
Senator Taddeo

586-02624A-21

2021714c1

A bill to be entitled

An act relating to resource information for individuals with disabilities; amending s. 393.065, F.S.; requiring the Agency for Persons with Disabilities to provide specified written information to persons applying for certain waiver services; requiring the agency to provide a certain disclosure statement along with such information; providing an effective date.

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

Section 1. Present subsection (10) of section 393.065, Florida Statutes, is redesignated as subsection (11), and a new subsection (10) is added to that section, to read:

393.065 Application and eligibility determination.—

(10)(a) The agency shall provide the following information to all applicants or their parents, legal guardians, or family members:

1. A brief overview of the vocational rehabilitation services offered through the Division of Vocational Rehabilitation of the Department of Education, including a hyperlink or website address that provides access to the application for such services;

2. A brief overview of the Florida ABLE program as established under s. 1009.986, including a hyperlink or website address that provides access to the application for establishing an ABLE account as defined in s. 1009.986(2);

3. A brief overview of the supplemental security income

586-02624A-21

2021714c1

benefits and social security disability income benefits available under Title XVI of the Social Security Act, as amended, including a hyperlink or website address that provides access to the application for such benefits;

4. A statement indicating that the applicant's local public school district may provide specialized instructional services, including transition programs, for students with special education needs;

5. A brief overview of programs and services funded through the Florida Center for Students with Unique Abilities, including contact information for each state-approved Florida Postsecondary Comprehensive Transition Program;

6. A brief overview of decisionmaking options for individuals with disabilities, guardianship under chapter 744, and alternatives to guardianship as defined in s. 744.334(1), which may include contact information for organizations that the agency believes would be helpful in assisting with such decisions;

7. A brief overview of the referral tools made available through the agency, including a hyperlink or website address that provides access to such tools; and

8. A statement indicating that some waiver providers may serve private-pay individuals.

(b) The agency must provide the information required in paragraph (a) in writing to an applicant or his or her parent, legal guardian, or family member along with a written disclosure statement in substantially the following form:

DISCLOSURE STATEMENT

586-02624A-21

2021714c1

59
60
61
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63
64
65

Each program and service has its own eligibility requirements.
By providing the information specified in Section
393.065(10)(a), Florida Statutes, the agency does not guarantee
an applicant's eligibility for or enrollment in any program or
service.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

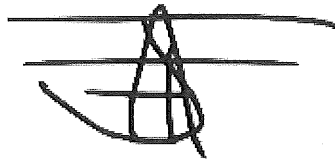
Ethics and Elections, Vice Chair
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Commerce and Tourism
Criminal Justice

SENATOR ANNETTE TADDEO
40th District

MEMORANDUM

To: Senator Kathleen Passidomo, Committee on Rules Chair
From: Senator Annette Taddeo
Subject: Committee Agenda Request
Date: March 9, 2021

Senate Bill 714, requires the Agency for Persons with Disabilities to create a road map for every person with a disability and family of a loved one with disability, whether Medwaiver-served or wait list eligible, so they know which resources they should explore in order to achieve the best outcome for their loved ones' lives. This bill previously passed unanimously on the Children, Family, and Elder Affairs committee. I respectfully request that Senate Bill 714 be placed on the next committee agenda.



Senator Annette Taddeo
Florida Senate, District 40

REPLY TO:

- ☐ 9100 South Dadeland Boulevard, Suite 1500, Miami, Florida 33156 (305) 596-3003
- ☐ 224 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: www.flsenate.gov

WILTON SIMPSON **AARON BEAN**
President of the Senate President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/5/2021
Meeting Date

SB 714
Bill Number (if applicable)

Topic Resources Information for Individuals with Disabilities Amendment Barcode (if applicable)

Name Khanh-Lien ("Con Ly") Banko

Job Title Treasurer

Address 1747 Orlando Central Parkway

Street

Orlando
City

FL
State

32809
Zip

Phone 407-855-7604

Email treasurer@floridapta.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 904

INTRODUCER: Senator Diaz

SUBJECT: Doorstep Refuse and Recycling Collection Containers

DATE: April 2, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	Favorable
2. <u>Rogers</u>	<u>Rogers</u>	<u>EN</u>	Favorable
3. <u>Hackett</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 904 saves from repeal the statutory provisions regulating doorstep refuse and recycling collection containers in apartment corridors. Retaining these provisions preserves statutory differences with Florida Fire Prevention Code regulations, specifically in terms of allowable container sizes and the ability of the local fire authorities to approve alternative containers and storage arrangements for doorstep refuse and recycling collection.

The bill takes effect July 1, 2021.

II. Present Situation:

Florida Fire Prevention Code

The State Fire Marshal, by rule,¹ adopts the Florida Fire Prevention Code (Florida Fire Code), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities, and the enforcement of such fire safety laws and rules. The State Fire Marshal adopts a new edition of the Florida Fire Code every three years.² The 7th edition of the Florida Fire Code took effect on December 31, 2020.³

The Florida Fire Code is the minimum fire prevention code deemed adopted by each municipality, county, and special district with firesafety responsibilities, and applies to every building and structure throughout the state with few exceptions.⁴ Municipalities, counties, and

¹ Chapter 69A-60, F.A.C.

² Section 633.202, F.S.

³ Florida Fire Prevention Code (7th ed.), effective Dec. 31, 2020 *available at* <https://www.myfloridacfo.com/division/sfm/bfp/floridafirepreventioncodepage.htm> (last visited March 17, 2021).

⁴ Section 633.208, F.S., and 69A-60.002(1), F.A.C.

special districts with firesafety responsibilities may supplement the Florida Fire Code with more stringent standards adopted in accordance with s. 633.208, F.S.⁵

Doorstep Refuse and Recycling – Statutory Provisions

Prior to 2018, the State Fire Marshal determined that apartments were prohibited from allowing residents to place waste containers outside their front doors regardless of the size of the container or if the waste was removed daily. The State Fire Marshal determined that the Florida Fire Code prohibited apartment residents from placing any type of waste container outside their door because of the obstruction to means of egress.⁶

In 2018, the Legislature enacted s. 633.202(20), F.S.,⁷ to provide that residents of apartment buildings may place combustible waste and refuse⁸ in exit access corridors in apartment buildings if the following conditions are met:

- Doorstep refuse and recycling collection containers do not exceed 13 gallons for apartment buildings with enclosed corridors and interior or exterior stairs;
- Doorstep refuse and recycling collection containers do not exceed 27 gallons for apartment buildings with open air corridors and exterior stairs or balconies with exterior exit stairs;
- Waste, which is in a doorstep refuse and recycling collection container, is not placed in an exit access corridor for a single period greater than five hours;
- Doorstep refuse and recycling collection containers are not in an exit access⁹ corridor for a single period greater than 12 hours for apartment buildings with enclosed corridors and interior or exterior stairs;
- Doorstep refuse and recycling collection containers do not reduce the exit access corridor's width below the width required by the Fire Code;
- Doorstep refuse and recycling collection containers are able to stand upright on their own and may not leak fluids when standing upright; and
- The apartment's management staff have written policies and procedures to ensure compliance with the above conditions. Management staff must enforce the policies and must provide a copy of the policies to the authority having jurisdiction upon request.¹⁰

⁵ Section 633.208(3), F.S., and 69A-60.002(2), F.A.C.

⁶ See *In the matter of: William Harrison, Fire Marshal Clermont Fire Department*, Case No.: 188696-16-DS (Fla. DFS) (June 21, 2016); *In the matter of: Steve Strong, Fire Marshal Clearwater Fire & Rescue*, Case No.: 196979-16-DS (Fla. DFS) (Dec. 23, 2016).

⁷ Chapter 2018-152, Laws of Fla.

⁸ The Fire Code defines combustible waste as any “combustible or loose waste material that is generated by an establishment or process and, if salvageable, is retained for scrap or reprocessing on the premises where generated or transported to a plant for processing,” and combustible refuse as “a combustible or loose rubbish, litter, or waste materials generated by an occupancy that are refused, rejected, or considered worthless and are disposed of by incineration on the premises where generated or periodically transported from the premises.” Sections 3.3.63 and 3.3.64, Florida Fire Prevention Code (7th Ed.).

⁹ Defined as “that portion of a means of egress that leads to an exit,” Florida Fire Prevention Code (7th ed.) s. 3.3.106.

¹⁰ Section 633.202(20), F.S.

Additionally, the local authority having jurisdiction¹¹ may approve alternative containers and storage arrangements that are demonstrated to provide the same level of safety.¹²

Apartment occupancies were allowed a phase-in period to comply with the provisions in s. 633.202(20), F.S., by December 31, 2020.¹³

Section 633.202(20), F.S., is set to expire on July 1, 2021.¹⁴

Doorstep Refuse and Recycling – Florida Fire Code Provisions

The 7th edition of the Florida Fire Code, effective December 31, 2020, contained amendments that substantially conform to the substance of s. 633.202(20), F.S., relating to doorstep refuse and recycling regulations. However, the new Florida Fire Code provisions differ from the statutory provisions in that a doorstep refuse and recycling container in a corridor may not exceed *15 gallons*¹⁵ and such containers may not be placed in an exit corridor for more than *15 hours*.¹⁶ Additionally, the Florida Fire Code does not contain provisions allowing local authorities to approve alternative containers and storage arrangements as Florida Statutes allow.

Further, the Florida Fire Code provides technical guidance for the maximum rate of heat release for refuse containers and lids, with stricter guidelines for those placed in areas not protected by fire sprinklers.¹⁷ The Florida Fire Code regulations govern to the extent they do not directly conflict with statutory provisions.¹⁸

III. Effect of Proposed Changes:

The bill amends s. 633.202(20), F.S., to remove the current July 1, 2021, expiration of provisions that allow doorstep refuse and recycling collection containers in apartment corridors under certain circumstances. This preserves statutory differences from the Florida Fire Code regulations, specifically the difference in allowed container size and allowing the local fire authorities to approve alternative containers and storage arrangements.

The bill takes effect July 1, 2021.

¹¹ The “authority having jurisdiction” is typically the designated head fire and rescue officer of the county, municipality, or special district with fire safety responsibilities over an area. The Fire Code defines this term as “an organization, office, or individual responsible for enforcing the requirements of a code or standard, or for approving equipment, materials, an installation, or a procedure,” Florida Fire Prevention Code (7th ed.) s. 3.2.2 (2020).

¹² Section 633.202(20)(c), F.S.

¹³ Section 633.202(20)(d), F.S.

¹⁴ Section 633.202(20)(e), F.S.

¹⁵ Florida Fire Prevention Code (7th ed.) s. 10.18.4.1(1) (2020).

¹⁶ Florida Fire Prevention Code (7th ed.) s. 10.18.4.1(3) (2020).

¹⁷ Florida Fire Prevention Code (7th ed.) s. 10.18.4.1.1 (2020).

¹⁸ The Florida Fire Code is adopted by the Department of Financial Services by rule (s. 633.202(1), F.S.); rulemaking authority is limited to interpreting the specific powers and duties conferred by the enabling statute (s. 120.536, F.S.). The Fire Marshal’s duty and rulemaking authority is granted specifically to enforce the laws and provisions of ch. 633, F.S. (s. 633.104, F.S.). Therefore, to the extent the Fire Code and ch. 633, F.S. directly conflict, the Fire Marshal’s duty is to enforce ch. 633, F.S.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 633.202 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Diaz

36-00752-21

2021904__

A bill to be entitled

An act relating to doorstep refuse and recycling collection containers; amending s. 633.202, F.S.; deleting an obsolete provision; removing the scheduled repeal of certain provisions regulating the use of containers in exit access corridors; providing an effective date.

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

Section 1. Paragraphs (d) and (e) of subsection (20) of section 633.202, Florida Statutes, are amended to read:

633.202 Florida Fire Prevention Code.—

(20)

~~(d) The authority having jurisdiction shall allow apartment occupancies a phase-in period until December 31, 2020, to comply with this subsection.~~

~~(e) This subsection is repealed on July 1, 2021.~~

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



SENATOR MANNY DIAZ, JR.
36th District

**THE FLORIDA
SENATE**

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy Chair
Appropriations Subcommittee on
Education Vice Chair
Appropriations
Appropriations Subcommittee on Health
and Human Services
Education
Commerce and Tourism
Rules

March 24, 2021

Honorable Senator Kathleen Passidomo
Chair
Committee on Rules

Honorable Chair Passidomo,

I respectfully request Senate Bill 904 Doorstep Refuse and Recycling Collection Containers be placed on the next committee agenda.

SB 904 saves from repeal the statutory provisions regulating doorstep refuse and recycling collection containers in apartment corridors. Retaining these provisions preserves statutory differences with Florida Fire Prevention Code regulations, specifically in terms of allowable container sizes and the ability of the local fire authorities to approve alternative containers and storage arrangements for doorstep refuse and recycling collection.

Sincerely appreciate your support.

Senator Manny Diaz, Jr.
Florida Senate, District 36

CC: John B. Phelps, Staff Director
Cynthia Futch, Committee Administrative Assistant

REPLY TO:

- ☐ 10001 Northwest 87th Avenue, Hialeah Gardens, Florida 33016 (305) 364-3073
- ☐ 306 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5036

Senate's Website: www.flsenate.gov

Wilton Simpson
President of the Senate

Aaron Bean
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6/21

Meeting Date

904

Bill Number (if applicable)

Topic DOOR STEP REFUSE

Amendment Barcode (if applicable)

Name JOHN PASQUALONE

Job Title EXECUTIVE DIRECTOR

Address PO BOX 325

Phone 772 349 1509

Street

HOPE SOUND FL 33475

City

State

Zip

Email INFO@FFMIA.ORG

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FL FIRE MARSHALS & INSPECTORS ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/6/21

Meeting Date

904

Bill Number (if applicable)

Topic Door step Refuse

Amendment Barcode (if applicable)

Name Jim Millican

Job Title fire marshal

Address 4310-55th Ave N

Phone 727-521-5750

Street

St Petersburg

City

FL

State

33714

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Fire Marshals Assoc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

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

THE FLORIDA SENATE

APPEARANCE RECORD

April 6, 2021

Meeting Date

SB - 904

Bill Number (if applicable)

Topic Doorstep Refuse

Amendment Barcode (if applicable)

Name Chief Ray Colburn

Job Title Executive Director

Address 5289 Palm Drive

Street

Phone 407-468-6622

Melbourne Beach

FL

32951

Email ray@ffca.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Fire Chiefs' Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/6

Meeting Date

SB 904

Bill Number (if applicable)

Topic Doorstep Refuse and Recycling Collection Containers Amendment Barcode (if applicable)

Name Julius Halas

Job Title Director of the Division of State Fire Marshal

Address 200 E Gaines St.

Street

Phone (850) 413-3601

Tallahassee

City

FL

State

32399

Zip

Email julius.halas@myfloridachamber.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Department of Financial Services

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6/21

Meeting Date

904

Bill Number (if applicable)

Topic Doorstop Refuse and Recycling

Amendment Barcode (if applicable)

Name Kelly Mallette

Job Title _____

Address 104 W. Jefferson Street

Phone (850) 224-3427

Street

Tallahassee

State

FL

Zip

Email kelly@rlbackpa.com

City

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Affinity Waste Solutions

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 932

INTRODUCER: Rules Committee; Children, Families, and Elder Affairs Committee; and Senator Wright

SUBJECT: Minor Time-sharing for Parent Convicted of or Had Adjudication Withheld for a Specified Offense

DATE: April 7, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Moody</u>	<u>Cox</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	<u>Favorable</u>
3.	<u>Moody</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 932 amends s. 61.13, F.S., expanding the application of the rebuttable presumption of detriment to the child to include when a parent has been convicted or had adjudication withheld for an offense enumerated in s. 943.0435(1)(h)1.a., F.S. (offense criteria relevant to sexual offender registration), and at the time of the offense:

- The parent was 18 years of age or older; and
- The victim was under 18 years of age or the parent believed the victim was under 18 years of age.

A rebuttable presumption against granting a parent time-sharing with his or her minor child is also created based on the same criteria. The bill provides that the presumption against granting time-sharing may be rebutted upon the court making written findings that the parent poses no significant risk of harm to the child and that time-sharing is in the child's best interest. If the presumption is rebutted, the bill also requires the court to consider all time-sharing factors provided for in s. 61.13(3), F.S.

To the extent that the bill results in additional litigation relating to the ability to have time-sharing rights, the bill may result in an increased workload on the state court system from additional or more lengthy hearings and an indeterminate fiscal impact on parents who must pay additional legal fees related to such hearings. See Section V. Fiscal Impact Section.

The bill is effective July 1, 2021.

II. Present Situation:

Parental Rights

The interest of parents in the care, custody, and control of their children is a recognized fundamental liberty protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. This fundamental liberty interest is rooted in the fundamental right of privacy from interference in making important decisions relating to marriage, family relationships, child rearing, and education.¹ The United States Supreme Court has explained the fundamental nature of this right is rooted in history and tradition:

The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.²

The Florida Supreme Court has recognized that under Art. I., s. 23 of the Florida Constitution, parents have a fundamental liberty interest in determining the care and upbringing of their children.³ These rights may not be intruded upon absent a compelling state interest.⁴ According to the Florida Supreme Court, when analyzing a statute that infringes on the fundamental right of privacy, the applicable standard of review requires that the statute survive the highest level of scrutiny:

The right of privacy is a fundamental right which we believe demands the compelling state interest standard. This test shifts the burden of proof to the state to justify an intrusion on privacy. The burden can be met by demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means.⁵

¹ *Carey v. Population Svcs. Int'l*, 431 U.S. 678, 684-685 (1977) (recognizing the right of privacy in personal decisions relating to marriage, family relationships, child rearing, and education). See *Wisconsin v. Yoder*, 406 U.S. 205, 232-33 (1972) (holding a state law requiring that children attend school past eighth grade violates the parents' constitutional right to direct the religious upbringing of their children); *Parham v. J.R.*, 442 U.S. 584, 602 (1979) (recognizing the presumption that parents act in their children's best interest); *Meyer v. Nebraska*, 262 U.S. 390, 400-01 (1923) (affirming that the Constitution protects the preferences of the parent in education over those of the state); *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510, 534-35 (1925) (recognizing the right of parents to direct the upbringing of and education of their children).

² *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).

³ *Beagle v. Beagle*, 678 So.2d 1271, 1272 (Fla. 1996) (holding a state law violated a parent's constitutional right to privacy by imposing grandparent visitation rights over objection of the parent without evidence of harm to the child or other compelling state interest).

⁴ *Id.* See, e.g., *Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc.*, 379 So.2d 633, 637 (Fla. 1980) and *Belair v. Drew*, 776 So.2d 1105, 1106 (Fla. 5th DCA 2001).

⁵ *Winfield v. Division of Pari-Mutuel Wagering, Dept. of Bus. Regulation*, 477 So.2d 544, 547 (Fla. 1985) (citations omitted).

Parental Time-Sharing

Parental time-sharing is the time, including overnights and holidays, which a minor child spends with each parent.⁶ A parent's right to time-sharing is not absolute, and the Legislature may enact a time-sharing policy when it affects the best interest of the child.⁷ As a result of the constitutional right to a meaningful parent-child relationship, there must be competent, substantial evidence in the record that demonstrates that any restrictions or limitations on time-sharing are in the best interests of the child before those restrictions will be sustained.⁸ Thus, where there is no evidence that the noncustodial parent is unfit, that extreme circumstances preclude visitation, or that visitation would adversely affect the welfare of the child, the trial court abuses its discretion in failing to provide visitation rights for that parent.⁹ Moreover, restriction of visitation is generally disfavored, unless the restriction is necessary to protect the welfare of the child.¹⁰

Section 61.13(2), F.S., provides judges wide discretion in determining matters relating to parenting and time-sharing of minor children in actions under ch. 61, F.S., in accordance with the best interests of the child, while balancing the rights of parents. The court is required to determine all matters relating to parenting and time-sharing of each minor child of the parties in accordance with the best interests of the child and in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).¹¹

In establishing time-sharing, the court must make a determination of the best interests of the child by evaluating all of the factors affecting the welfare and interests of the particular minor child and the circumstances of that family, including, but not limited to, the:

- Demonstrated capacity and disposition of each parent to facilitate and encourage a continuing parent-child relationship, honor the time-sharing schedule, and accommodate necessary changes.
- Anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be delegated to third parties.
- Demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child.
- Length of time the child has lived in a stable environment and the desirability of maintaining continuity.
- Geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to effectuate the parenting plan.

⁶ See s. 61.046(23), F.S. The schedule may be developed and agreed to by the parents of a minor child and approved by the court or established by the court if the parents cannot agree or if their agreed-upon schedule is not approved by the court.

⁷ See, e.g., *Mallick v. Mallick*, 2020 WL 6106287 (Fla. 2d DCA Oct. 16, 2020); *Bainbridge v. Pratt*, 168 So.3d 310 (Fla. 1st DCA 2011).

⁸ *Miller v. Miller*, 302 So.3d 457 (Fla. 5th DCA 2020).

⁹ *McArdle v. McArdle*, 753 So.2d 696 (Fla. 4th DCA 2000); *Johnston v. Boram*, 386 So.2d 1230 (Fla. 5th DCA 1980).

¹⁰ See *Munoz v. Munoz*, 210 So.3d 227 (Fla. 2d DCA 2017); *Davis v. Lopez-Davis*, 162 So.3d 19 (Fla. 4th DCA 2014).

¹¹ Section 61.13(2)(c), F.S. The UCCJEA was developed by the Legal Resource Center on Violence Against Women, the National Center on State Courts, and the National Council of Juvenile and Family Court Judges (NCJFCJ) to address jurisdictional and enforcement issues in child custody cases. The NCJFCJ, *Uniform Child Custody Jurisdiction and Enforcement Act: Guide for Court Personnel and Judges*, July 18, 2018, available at <https://www.ncjfcj.org/publications/uniform-child-custody-jurisdiction-and-enforcement-act-guide-for-court-personnel-and-judges/> (last visited April 7, 2021).

- Mental health, physical health, and moral fitness of the parents.
- Home, school, and community record of the child.
- Reasonable preference of the child.
- Demonstrated knowledge, capacity, and disposition of each parent to be informed of the circumstances of the minor child, including, the child's friends, teachers, and daily activities.
- Demonstrated capacity and disposition of each parent to:
 - Provide a consistent routine; and
 - Communicate with and keep the other parent informed of issues and activities regarding the minor child, and the willingness of each parent to adopt a unified front on all major issues when dealing with the child.
- Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, or that either parent has ever knowingly provided false information about such matters.
- Particular parenting tasks customarily performed by each parent, including the extent to which parenting responsibilities were undertaken by third parties.
- Demonstrated capacity and disposition of each parent to participate and be involved in the child's school and extracurricular activities.
- Demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.
- Capacity and disposition of each parent to protect the child from the ongoing litigation regarding child custody.
- Developmental stages and needs of the child and the demonstrated capacity and disposition of each parent to meet the child's developmental needs.¹²

Further, the court may order sole parental responsibility and make such arrangements for time-sharing as will best protect the child or abused spouse from further harm if the court determines that shared parental responsibility would be detrimental to the child.¹³ Current law provides for a rebuttable presumption¹⁴ that parental time-sharing would be detrimental to the child if there is evidence that:

- A parent has been convicted of a misdemeanor of the first degree or higher involving domestic violence, as defined in s. 741.28, F.S., and ch. 775, F.S.; or
- Meets the criteria of s. 39.806(1)(d), F.S., relating to grounds for termination of parental rights of incarcerated parents.¹⁵

If the presumption is not rebutted, shared parental responsibility, including time-sharing and decisions regarding the child, may not be granted to the convicted parent.¹⁶ In any event, the convicted parent is not relieved of any obligation to provide financial support.¹⁷ The court may

¹² Section 61.13(3)(a)-(t), F.S.

¹³ Section 61.13(2)(c)2., F.S.

¹⁴ Every rebuttable presumption is either a presumption: (a) affecting the burden of producing evidence and requiring the trier of fact to assume the existence of the presumed fact, unless credible sufficient evidence is introduced to the contrary in which case the trier of fact must determine whether the fact has been proven without regard to the presumption; or (b) affecting the burden of proof that imposes upon the party against whom it operates the burden of proof concerning the nonexistence of the presumed fact. Section 90.302, F.S.

¹⁵ Section 61.13(2)(c)2., F.S.

¹⁶ *Id.*

¹⁷ *Id.*

consider evidence of domestic violence or child abuse as evidence of detriment to the child even if the parent is not convicted of any such offenses or an injunction for protection against domestic violence has not been issued.¹⁸

Currently, Florida law does not expressly prohibit a sex offender from exercising time-sharing with his or her minor child unless there is a court order to the contrary.

Although current law requires the court to acknowledge in writing when it considers evidence of sexual violence in evaluating the best interests of the child,¹⁹ it is possible to be classified as a sexual offender without committing a violent sexual act.²⁰ Therefore, under current law, a sexual offender who has not committed a violent sexual act may still be entitled to time-sharing with a minor child.

Termination of Parental Rights

Section 39.806, F.S., authorizes the Department of Children and Families (DCF) to file a petition for termination of parental rights (TPR) against both parents when they fail to remedy the family problems that brought a child into the dependency system.²¹ Alternatively, the DCF may move to terminate only one of the parent's rights if it can prove certain grounds, such as incarceration, egregious conduct, chronic substance abuse, the conception of the child as a result of sexual battery, a conviction requiring the parent to register as a sexual predator, or an incarcerated parent who the court determined is a sexual predator in s. 775.084, F.S., or committed a sexual battery that constitutes a capital, life, or first degree felony in violation of s. 794.011, F.S.²²

Sexual Offenses

Sexual offenses enumerated under s. 943.0435(1)(h)1.a., F.S., include:

- Sexual misconduct with a person having a developmental disability (s. 393.135(2), F.S.);
- Sexual misconduct with a mental health patient by an employee (s. 394.4593(2), F.S.);
- Specified violations of kidnapping or falsely imprisoning a minor (s. 787.01 or s. 787.02, F.S.);²³
- Luring or enticing a child, by a person with a prior sexual conviction (s. 787.025(2), F.S.);
- Human trafficking for commercial sexual activity (s. 787.06(3)(b), (d), (f), or (g), F.S.);
- Sexual battery (s. 794.011, excluding s. 794.011(10), F.S.);
- Unlawful sexual activity with a minor (s. 794.05, F.S.);
- Lewd or lascivious battery, molestation, conduct, or exhibition (s. 800.04, F.S.);
- Video voyeurism, involving a minor victim (s. 810.145(8), F.S.);
- Lewd or lascivious offense on an elderly or disabled person (s. 825.1025, F.S.);
- Sexual performance by a child (s. 827.071, F.S.);

¹⁸ Section 61.13(2)(c)2., F.S.

¹⁹ Section 61.13(3)(m), F.S.

²⁰ For example, an offender might have been required to register as a sexual offender based on a felony conviction for video voyeurism. See s. 810.145, F.S.

²¹ Section 39.8055, F.S.

²² Section 39.806, F.S.

²³ However, the Florida Supreme Court has held there must be a sexual element to the kidnapping or false imprisonment when the victim is a minor. *State v. Robinson*, 873 So.2d 1205 (Fla. 2004).

- Providing obscene materials to a minor (s. 847.0133, F.S.);
- Computer pornography involving a minor (s. 847.0135(2), F.S.);
- Soliciting a minor over the Internet (s. 847.0135(3), F.S.);
- Traveling to meet a minor (s. 847.0135(4), F.S.);
- Lewd or lascivious exhibition over the Internet (s. 847.0135(5), F.S.);
- Transmitting child pornography by electronic device or equipment (s. 847.0137, F.S.);
- Transmitting material harmful to a minor by electronic device (s. 847.0138, F.S.);
- Selling or buying a minor to engage in sexually explicit conduct (s. 847.0145, F.S.);
- Racketeering involving a sexual offense (s. 895.03, F.S.);
- Sexual misconduct with a forensic client (s. 916.1075(2), F.S.); and
- Sexual misconduct by an employee with a juvenile offender (s. 985.701(1), F.S.).

Florida's Sexual Offender Registration Laws

Florida law requires registration of any person who has been convicted or adjudicated delinquent of a specified sex offense or offenses and who meets other statutory criteria that qualify the person for classification as a sexual offender.²⁴ The registration laws also require reregistration and provide for public and community notification of certain information about sexual offenders. The laws span several different chapters and numerous statutes²⁵ and are implemented through the combined efforts of the Florida Department of Law Enforcement (FDLE), all Florida sheriffs, the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), the Department of Highway Safety and Motor Vehicles, and the Department of Children and Families (DCF).

A person is classified as a sexual offender if the person:

- Has been convicted of a qualifying sex offense and has been released on or after October 1, 1997, from the sanction imposed for that offense;
- Establishes or maintains a Florida residence and is subject to registration or community or public notification in another state or jurisdiction or is in the custody or control of, or under the supervision of, another state or jurisdiction as a result of a conviction for a qualifying sex offense; or
- On or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the juvenile was 14 years of age or older.²⁶

Sexual offenders are required to report at registration and reregistration certain information, including but not limited to, physical characteristics, relevant sex offense history, and information on residence, vehicles/vessels owned, and travel. The FDLE, through its agency website, provides a searchable database that includes some of this information.²⁷ Further, local

²⁴ Sections 775.21 and 943.0435, F.S.

²⁵ Sections 775.21-775.25, 943.043-943.0437, 944.606, 944.607, and 985.481-985.4815, F.S.

²⁶ Sections 943.0435(1)(h) and 985.4815(1)(h), F.S. Sections 944.606(1)(f) and 944.607(1)(f), F.S., which address sexual offenders in the custody of or under the DOC's supervision, also define the term "sexual offender."

²⁷ The FDLE is the central repository for registration information. The department also maintains the state public registry and ensures Florida's compliance with federal laws. The Florida sheriffs handle in-person registration and reregistration. The FDLE maintains a database that allows members of the public to search for sexual offenders through a variety of search options, including name, neighborhood, and enrollment, employment, or volunteer status at an institute of higher education.

law enforcement agencies may also provide access to this information, such as providing a link to the state public registry webpage. Registration requirements may differ based on a special status, e.g., the sexual offender is in the DOC's control or custody, under the DOC's or the DJJ's supervision, or in a residential commitment program under the DJJ.

III. Effect of Proposed Changes:

The bill amends s. 61.13, F.S., to create a rebuttable presumption of detriment to the child and to establish a rebuttable presumption against a court from granting a parent time-sharing with his or her minor child if the parent has been convicted or had adjudication withheld for an offense enumerated in s. 943.0435(1)(h)1.a., F.S. (offense criteria relevant to sexual offender registration), and at the time of the offense:

- The parent was 18 years of age or older; and
- The victim was under 18 years of age or the registrant believed the victim to be under 18 years of age.

However, the court may grant time-sharing if it makes a specific finding in writing that the parent poses no significant risk of harm to the child and that time-sharing is in the best interest of the child. The bill also requires the court to consider all time-sharing factors provided under current law when developing a time-sharing schedule if the presumption is rebutted.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Art. VII, s. 18, of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The Florida Supreme Court has recognized that under Art. I, s. 23 of the Florida Constitution, parents have a fundamental liberty interest in determining the care and upbringing of their children.²⁸ However, a parent's right to time-sharing is not absolute, and the Legislature may enact a time-sharing policy when it affects the best interest of the child.²⁹

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

None.

B. Private Sector Impact:

The bill provides that the prohibition on granting time-sharing in specified instances to a parent does not apply if the court makes a specific finding in writing that the parent poses no significant risk of harm to the child and that time-sharing is in the best interest of the child. To the extent that this provision results in additional litigation related to the ability to be granted time-sharing rights, the bill may result in both parents involved in parenting plans and time-sharing agreements paying additional legal fees to litigate related to the time-sharing rights of the minor child or children.

C. Government Sector Impact:

The bill provides that the prohibition on granting time-sharing in specified instances to a parent does not apply if the court makes a specific finding in writing that the parent poses no significant risk of harm to the child and that time-sharing is in the best interest of the child. To the extent that this provision results in an increased workload to the courts from additional or more extensive hearings to make such determinations, the bill may result in an indeterminate fiscal impact on the state court system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 61.13 of the Florida Statutes.

²⁸ *Beagle v. Beagle*, 678 So.2d 1271, 1275 (Fla. 1996).

²⁹ *See, e.g., Mallick v. Mallick*, 2020 WL 6106287 (Fla. 2d DCA Oct. 16, 2020); *Bainbridge v. Pratt*, 168 So.3d 310 (Fla. 1st DCA 2011).

IX. Additional Information:

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

CS/CS by Rules on April 6, 2021:

The committee substitute:

- Amends the bill to establish a rebuttable presumption against, rather than prohibiting, parental time-sharing with a minor child if the parent is convicted of or had adjudication withheld for an offense enumerated in s. 943.0435(1)(h)1.a., F.S.; and
- Requires the court to consider all time-sharing factors under current law when developing a time-sharing schedule if the presumption is rebutted.

CS by Children, Families, and Elder Affairs on March 2, 2021:

The committee substitute amends the bill to prohibit time-sharing with a minor child if the parent is convicted of or had adjudication withheld for an offense enumerated in s. 943.0435(1)(h)1.a., F.S., rather than prohibiting time-sharing if a parent is required to register as a sexual offender under s. 943.0435, F.S., or a sexual predator under s. 775.21, F.S.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/07/2021	.	
	.	
	.	
	.	

The Committee on Rules (Wright) recommended the following:

Senate Amendment (with title amendment)

Delete lines 27 - 77
and insert:
responsibilities, and joys, of childrearing. Except as otherwise
provided in this paragraph, there is no presumption for or
against the father or mother of the child or for or against any
specific time-sharing schedule when creating or modifying the
parenting plan of the child.

2. The court shall order that the parental responsibility
for a minor child be shared by both parents unless the court



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finds that shared parental responsibility would be detrimental to the child. The following evidence creates a rebuttable presumption of detriment to the child: ~~that~~

a. A parent has been convicted of a misdemeanor of the first degree or higher involving domestic violence, as defined in s. 741.28 and chapter 775; ~~or~~

b. A parent meets the criteria of s. 39.806(1)(d); or

c. A parent has been convicted of or had adjudication withheld for an offense enumerated in s. 943.0435(1)(h)1.a., and at the time of the offense:

(I) The parent was 18 years of age or older.

(II) The victim was under 18 years of age or the parent believed the victim to be under 18 years of age ~~, creates a rebuttable presumption of detriment to the child.~~

If the presumption is not rebutted after the convicted parent is advised by the court that the presumption exists, shared parental responsibility, including time-sharing with the child, and decisions made regarding the child, may not be granted to the convicted parent. However, the convicted parent is not relieved of any obligation to provide financial support. If the court determines that shared parental responsibility would be detrimental to the child, it may order sole parental responsibility and make such arrangements for time-sharing as specified in the parenting plan as will best protect the child or abused spouse from further harm. Whether or not there is a conviction of any offense of domestic violence or child abuse or the existence of an injunction for protection against domestic violence, the court shall consider evidence of domestic violence



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or child abuse as evidence of detriment to the child.

~~3.a.~~ In ordering shared parental responsibility, the court may consider the expressed desires of the parents and may grant to one party the ultimate responsibility over specific aspects of the child's welfare or may divide those responsibilities between the parties based on the best interests of the child. Areas of responsibility may include education, health care, and any other responsibilities that the court finds unique to a particular family.

~~4.b.~~ The court shall order sole parental responsibility for a minor child to one parent, with or without time-sharing with the other parent if it is in the best interests of the minor child.

5. There is a rebuttable presumption against granting time-sharing with a minor child if a parent has been convicted of or had adjudication withheld for an offense enumerated in s. 943.0435(1)(h)1.a., and at the time of the offense:

a. The parent was 18 years of age or older.

b. The victim was under 18 years of age or the parent believed the victim to be under 18 years of age.

A parent may rebut the presumption upon a specific finding in writing by the court that the parent poses no significant risk of harm to the child and that time-sharing is in the best interests of the minor child. If the presumption is rebutted, the court shall consider all time-sharing factors in subsection (3) when developing a time-sharing schedule.

~~6.3.~~ Access to records and information pertaining to a



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

And the title is amended as follows:

Delete lines 2 - 7

and insert:

An act relating to parenting and time-sharing of a
minor child for a convicted parent; amending s. 61.13,
F.S.; creating a rebuttable presumption against shared
parental responsibility and time-sharing with a minor
child for certain parents who have been convicted of
or had adjudication withheld for a specified offense;
providing an effective date.

By the Committee on Children, Families, and Elder Affairs; and
Senator Wright

586-02349-21

2021932c1

A bill to be entitled

An act relating to minor time-sharing for parent
convicted of or had adjudication withheld for a
specified offense; amending s. 61.13, F.S.;
prohibiting a court from granting time-sharing with a
minor child to a parent under certain circumstances;
providing an exception; providing an effective date.

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

Section 1. Paragraph (c) of subsection (2) of section
61.13, Florida Statutes, is amended to read:

61.13 Support of children; parenting and time-sharing;
powers of court.—

(2)

(c) The court shall determine all matters relating to
parenting and time-sharing of each minor child of the parties in
accordance with the best interests of the child and in
accordance with the Uniform Child Custody Jurisdiction and
Enforcement Act, except that modification of a parenting plan
and time-sharing schedule requires a showing of a substantial,
material, and unanticipated change of circumstances.

1. It is the public policy of this state that each minor
child has frequent and continuing contact with both parents
after the parents separate or the marriage of the parties is
dissolved and to encourage parents to share the rights and
responsibilities, and joys, of childrearing. There is no
presumption for or against the father or mother of the child or
for or against any specific time-sharing schedule when creating

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or modifying the parenting plan of the child.

2. The court shall order that the parental responsibility
for a minor child be shared by both parents unless the court
finds that shared parental responsibility would be detrimental
to the child. Evidence that a parent has been convicted of a
misdemeanor of the first degree or higher involving domestic
violence, as defined in s. 741.28 and chapter 775, or meets the
criteria of s. 39.806(1)(d), creates a rebuttable presumption of
detriment to the child. If the presumption is not rebutted after
the convicted parent is advised by the court that the
presumption exists, shared parental responsibility, including
time-sharing with the child, and decisions made regarding the
child, may not be granted to the convicted parent. However, the
convicted parent is not relieved of any obligation to provide
financial support. If the court determines that shared parental
responsibility would be detrimental to the child, it may order
sole parental responsibility and make such arrangements for
time-sharing as specified in the parenting plan as will best
protect the child or abused spouse from further harm. Whether or
not there is a conviction of any offense of domestic violence or
child abuse or the existence of an injunction for protection
against domestic violence, the court shall consider evidence of
domestic violence or child abuse as evidence of detriment to the
child.

a. In ordering shared parental responsibility, the court
may consider the expressed desires of the parents and may grant
to one party the ultimate responsibility over specific aspects
of the child's welfare or may divide those responsibilities
between the parties based on the best interests of the child.

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Areas of responsibility may include education, health care, and any other responsibilities that the court finds unique to a particular family.

b. The court shall order sole parental responsibility for a minor child to one parent, with or without time-sharing with the other parent if it is in the best interests of the minor child.

3.a. The court may not grant a parent time-sharing with his or her minor child if the parent has been convicted of or had adjudication withheld for an offense enumerated in s. 943.0435(1)(h)1.a. and at the time of the offense:

(I) The parent was 18 years of age or older; and

(II) The victim was under 18 years of age or the parent believed the victim to be under 18 years of age.

b. Notwithstanding sub-subparagraph a., the court may grant time-sharing to the parent if the court makes a specific finding in writing that he or she poses no significant risk of harm to the child and that time-sharing is in the best interests of the child.

4.3- Access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records, may not be denied to either parent. Full rights under this subparagraph apply to either parent unless a court order specifically revokes these rights, including any restrictions on these rights as provided in a domestic violence injunction. A parent having rights under this subparagraph has the same rights upon request as to form, substance, and manner of access as are available to the other parent of a child, including, without limitation, the right to in-person communication with medical, dental, and education providers.

586-02349-21

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/5/2021
Meeting Date

SB 932
Bill Number (if applicable)

Topic Minor Time-sharing for Parent Connected

Amendment Barcode (if applicable)

Name Khanh-Lien ("Con Yen") Banks

Job Title Treasurer

Address 1747 Orlando Central Parkway
Street

Phone 407-855-7607

Orlando FL 32809
City State Zip

Email treasurer@floridapta.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 968

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Gainer

SUBJECT: Public Records/Economic Development Agency

DATE: April 2, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Reeve</u>	<u>McKay</u>	<u>CM</u>	Favorable
2. <u>Candelaria</u>	<u>McVaney</u>	<u>GO</u>	Fav/CS
3. <u>Reeve</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 968 exempts from public inspection and copying requirements certain identifying information held by an economic development agency, including the Department of Economic Opportunity, pursuant to the administration of a state- or federally-funded small business loan program.

The bill provides for the automatic repeal of the public records exemption on October 2, 2026, unless reenacted by the Legislature under the Open Government Sunset Review Act.

The bill is not expected to impact state and local revenues and expenditures.

The bill takes effect July 1, 2021.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three

¹ FLA. CONST. art. I, s. 24(a).

branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or

- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Economic Development Agencies

Section 288.075, F.S., defines an “economic development agency” as:

- The Department of Economic Opportunity (DEO);
- Any industrial development authority created in accordance with part III of chapter 159 of the Florida Statutes, or by special law;
- Space Florida;
- The public economic development agency of a county or municipality;
- Any research and development authority created in accordance of part v of chapter 159 of the Florida Statutes; or
- Any private agency, person, partnership, corporation, or business entity authorized by the state, a municipality, or a county to promote the general business or industrial interests of the state or that municipality or county (e.g. Enterprise Florida, Inc.²⁷).

Small Business Loan Programs

The DEO administers a number of state and federally funded small business loan programs, including:²⁸

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ See s. 288.901, F.S.

²⁸ Department of Economic Opportunity, *Small and Minority Business Programs*, available at <https://floridajobs.org/community-planning-and-development/Small-and-Minority-Business-Development-Resources/Small-and-Minority-Business-Programs> (last visited Mar. 30, 2021).

- Small Business Emergency Bridge Loan Program;
- Rebuild Florida Business Loan Fund;
- Rural Community Development Revolving Loan Program;
- Small Business Loan Program;
- Microfinance Guarantee Program; and
- Black Business Loan Program.

Existing Public Records Exemptions for Economic Development Agencies

Section 288.075, F.S., provides for a number of temporary public records exemptions for information held by an economic development agency, including:

- Information concerning a corporation's plans to relocate or expand any of its business activities in the state for 12 months after the date an economic development agency receives a request for confidentiality or until the information is otherwise disclosed;
- Proprietary confidential business information, until the information becomes publicly available or is no longer treated by the proprietor as confidential; and
- Specific sales, employee wage, and tax information the administration of an economic incentive program for qualified businesses for the duration of the incentive agreement or upon termination of the agreement.

Trade secrets, federal employer identification numbers, reemployment assistance account numbers, and Florida sales tax registration numbers are permanently exempt from public records.²⁹

An employee of an economic development agency who violates the provisions of s. 288.075, F.S., commits a second degree misdemeanor, punishable by a maximum penalty of 60 days in jail or a \$500 fine.³⁰

III. Effect of Proposed Changes:

Section 1 amends s. 288.075, F.S., to exempt certain information held by an economic development agency pursuant to its administration of a state or federally funded small business loan program from inspection by the public. Specifically, the bill exempts:

- Tax returns; and
- Credit history information, credit reports, and credit scores.

The bill does not prohibit the disclosure of such exempt information in an aggregated and anonymized format.

The public records exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

²⁹ Sections 288.075(3) and (5), F.S.

³⁰ Section 288.075(7), F.S.

Section 2 provides a public necessity statement. Economic development agencies may obtain certain financial information about borrowers that, if released, could be used by fraudulent contractors, predatory lenders, thieves, or individuals seeking to impose on the borrower. The statement specifies that the public records exemption is necessary to ensure borrowers are not harassed, intimidated, or potentially defrauded.

Section 3 provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill creates a new public records exemption for certain information held by an economic development agency pursuant to its administration of a state or federally funded small business loan program. Thus the bill requires a two-thirds vote for enactment.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill creates a new public records exemption. Thus, the bill contains a statement of public necessity.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. This bill creates a public records exemption for certain information held by an economic development agency pursuant to its administration of a state or federally funded small business loan program. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will be subject to the cost associated with the state making redactions in response to public records requests.

C. Government Sector Impact:

The DEO and other economic development agencies may experience additional workload and incur costs associated with the redaction of records in responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 288.075 of the Florida Statutes.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on March 31, 2021:

The CS removes the exemption on the home address, telephone number, and e-mail address of a person who submits an application for a loan on behalf of a business and the exemption on bank and financial statements. The CS changes the term “section” to “subsection” to fulfill the intent of the bill. The CS revises the public necessity statement to align it with the information exempted in the bill.

B. Amendments:

None.

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

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

585-03621-21

2021968c1

A bill to be entitled

An act relating to public records; amending s. 288.075, F.S.; providing an exemption from public records requirements for certain information held by an economic development agency; providing that such information may be released in an aggregated and anonymized format; providing for future legislative review and repeal of the exemption; 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 (7) of section 288.075, Florida Statutes, is redesignated as subsection (8), and a new subsection (7) is added to that section, to read:

288.075 Confidentiality of records.—

(7) LOAN PROGRAMS.—

(a) The following information held by an economic development agency pursuant to its administration of a state or federally funded small business loan program is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Tax returns.

2. Credit history information, credit reports, and credit scores.

(b) This subsection does not prohibit the disclosure of information held by an economic development agency pursuant to its administration of a small business loan program in an aggregated and anonymized format.

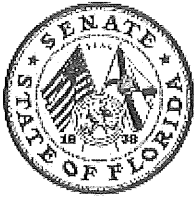
585-03621-21

2021968c1

(c) 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. The Legislature finds that it is a public necessity that the tax returns and credit history information, credit reports, and credit scores held by an economic development agency pursuant to its administration of any state or federally funded small business loan program be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. In order to assess the viability of loans, an economic development agency may obtain sensitive information of a borrower, including certain financial information. If released, the sensitive information could be used by fraudulent contractors, predatory lenders, thieves, or individuals seeking to impose on the borrower. Therefore, it is necessary that sensitive information held by an economic development agency pursuant to its administration of any state or federally funded small business loan program be protected to ensure that borrowers are not harassed, intimidated, or potentially defrauded. The Legislature finds the harm that may result from the release of such sensitive information outweighs the public benefit that may be derived from the disclosure of the information.

Section 3. This act shall take effect July 1, 2021.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Transportation,
Tourism, and Economic Development, *Chair*
Appropriations
Appropriations Subcommittee on Criminal
and Civil Justice
Criminal Justice
Ethics and Elections
Transportation

SENATOR GEORGE B. GAINER
2nd District

March 31, 2012

Re: SB 968

Dear Chair Passidomo,

I am respectfully requesting Senate Bill 968, related to Public Records/Economic Development Agency, be placed on the agenda for the next meeting of the Committee on Rules.

This bill would protect the personal information of applicants to the DEO small business loan program from fraudulent contractors, predatory lenders, or individuals seeking to take advantage of the borrower.

I appreciate your consideration of this bill. If there are any questions or concerns, please do not hesitate to call my office at (850) 487-5002.

Thank you,

A handwritten signature in cursive script that reads "George B. Gainer".

Senator George Gainer
District 2

Cc: John Phelps, Tom Yeatman, Cynthia Futch, Chad Boole, Sandra Mummert, Rebecca Kokkinos

REPLY TO:

- ☐ 840 West 11th Street, Panama City, Florida 32401 (850) 747-5454
- ☐ Northwest Florida State College, 100 East College Boulevard, Building 330, Rooms 105 and 112, Niceville, Florida 32578 (850) 747-5454
- ☐ 408 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5002

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

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

THE FLORIDA SENATE

APPEARANCE RECORD

04/05/2021

Meeting Date

SB 968

Bill Number (if applicable)

Topic SB 968 - Public Records/ Economic Development Agency

Amendment Barcode (if applicable)

Name Ethan Perry

Job Title Deputy Director of Legislative and Cabinet Affairs

Address 107 E. Madison Street, Caldwell Building

Phone (850) 245-7116

Street

Tallahassee

FL

32399

Email Ethan.Perry@deo.myflorida.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Department of Economic Opportunity

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 998

INTRODUCER: Senator Brodeur

SUBJECT: Contractor Advertising

DATE: April 2, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Kraemer	Imhof	RI	Favorable
2. Hackett	Ryon	CA	Favorable
3. Kraemer	Phelps	RC	Favorable

I. Summary:

SB 998 revises s. 489.521, F.S., relating to alarm system contractor license numbers on advertisements. Under the bill, if an alarm system contractor maintains an Internet website that displays a contractor's registration or certification number, and a contractor's advertisement directs consumers to the information on the contractor's Internet website, the contractor's license number does not need to be stated in advertisements placed by the contractor that appear in a printed publication, in a flyer, a billboard, or an Internet website, or in a broadcast advertisement.

The bill amends the fire alarm permit application procedure in s. 553.7921, F.S., to eliminate the requirement that a contractor filing a Uniform Fire Alarm Permit Application receive a fire alarm permit before repairing an existing, previously permitted alarm system. Under the bill, if the local enforcement agency requires a fire alarm permit for repair of an existing, previously permitted alarm system, a contractor may begin the repair work after filing the required Uniform Fire Alarm Permit Application, before receiving the fire alarm permit.

Under the bill, a fire alarm repaired by a contractor before receipt of the required fire alarm permit may not be considered compliant until the required permit has been issued and the local enforcement agency has approved the repair.

The bill has no impact on state government.

The effective date of the bill is July 1, 2021.

II. Present Situation:

Electrical and Alarm System Contracting

Part II of ch. 489, F.S., dealing with electrical and alarm system contracting, sets forth requirements for qualified persons to be licensed if they have sufficient technical expertise in the applicable trade, and have been tested on technical and business matters.¹ The Electrical Contractors' Licensing Board (ECLB) within the Department of Business and Professional Regulation (DBPR) is responsible for licensing and regulating electrical and alarm system contractors in Florida under part II of ch. 489, F.S.²

An electrical contractor is a person whose business includes the electrical trade field and who has the experience, knowledge, and skill to install, repair, alter, add to, or design, in compliance with law, electrical wiring, fixtures, and appliances, and any related part, which generates, transmits, or uses electrical energy, in compliance with applicable plans, specifications, codes, laws, and regulations.³ The term “electrical contractor” also includes any person, firm, or corporation that engages in the business of electrical contracting under an expressed or implied contract or that undertakes, offers to undertake, or submits a bid to engage in the business of alarm contracting.⁴

An alarm system contractor is a person whose business includes the execution of contracts requiring the ability, experience, science, knowledge, and skill to conduct all alarm services for compensation, for all types of alarm systems for all purposes.⁵ The term “alarm system contractor” also includes any person, firm, or corporation that engages in the business of alarm contracting under an expressed or implied contract, or that undertakes, offers to undertake, or submits a bid to engage in the business of alarm contracting.⁶ An alarm system contractor whose business includes all types of alarm systems for all purposes is designated as an “alarm system contractor I;” the practice area of an “alarm system contractor II” is identical except that it does not include fire alarm systems.⁷

The terms “registered alarm system contractor,” and “registered electrical contractor” mean those contractors who have registered with the DBPR and met competency requirements for their trade category in the particular jurisdiction for which the registration is issued. Registered contractors may contract only in the jurisdiction for which the registration is issued.⁸

The term “certification” means the act by a contractor obtaining or holding a geographically unlimited certificate of competency from the DBPR.⁹ When an alarm system contractor is certified, the contractor possesses a certificate of competency, with some limitations as to the

¹ See s. 489.501, F.S.

² Section 489.507, F.S.

³ See s. 489.505(12), F.S.

⁴ *Id.*

⁵ See s. 489.505(2), F.S.

⁶ *Id.*

⁷ *Id.*

⁸ See ss. 489.505(16), (21), and (22), F.S.

⁹ See ss. 489.505(4), (5), and (6), F.S.

scope of work that may be undertaken, without any mandatory licensure requirement.¹⁰ The term “certified electrical contractor” means an electrical contractor who possesses a certificate of competency.

To be certified a person must be 18 years of age, pass the certification examination, be of good moral character, and meet the eligibility requirements of s. 489.511(1)(b)3., F.S.¹¹

Unless an exemption applies, the term “contracting” means engaging in business as a contractor or performing electrical or alarm work for compensation and includes, but is not limited to, performance of the work that may be performed by electrical or alarm system contractors.¹² The attempted sale of contracting services and the negotiation or bid for a contract on these services also constitutes contracting. If the services offered require licensure or agent qualification, the offering, negotiation for a bid, or attempted sale of these services requires the corresponding licensure.¹³

The term “specialty contractor” means a contractor whose scope of practice is limited to a specific category of electrical or alarm system contracting, such as residential electrical contracting, maintenance of electrical fixtures, and fabrication, erection, installation, and maintenance of electrical advertising signs.¹⁴

Section 489.514, F.S., requires the ECLB to certify an electrical, electrical specialty, or alarm system contractor to engage in the specified trade category throughout the state, upon:

- Receipt of a completed application;
- Payment of the appropriate fee;¹⁵ and
- Evidence that he or she qualifies for the certification in a trade category based on:
 - Having a valid registered local license;
 - Passing an approved written examination;
 - Having a minimum of five years’ contracting experience in the applicable trade category (with an active license and excluding probationary periods);

¹⁰ See s. 489.505(7), F.S., which describes the limitations on the scope of a certificate of competency as those circuits originating in alarm control panels, equipment governed by the Articles 725, 760, 770, 800, and 810 of the National Electrical Code, Current Edition, and National Fire Protection Association Standard 72, Current Edition, as well as the installation, repair, fabrication, erection, alteration, addition, or design of electrical wiring, fixtures, appliances, thermostats, apparatus, raceways, and conduit, or any part thereof not to exceed 98 volts (RMS), when those items are for the purpose of transmitting data or proprietary video (satellite systems that are not part of a community antenna television or radio distribution system) or providing central vacuum capability or electric locks. RMS is an acronym for “root mean square,” a statistical term defined as the square root of mean square, or effective voltage. See <http://www.learningaboutelectronics.com/Articles/RMS-voltage-and-current-explained.php#:~:text=RMS%20Voltage%20and%20Current-%20Explained.%20RMS,%20or%20root,power%20dissipation,%20in%20circuit,%20as%20this%20AC%20voltage.> (last visited Mar. 11, 2021).

¹¹ Section 489.511(1)(b)3., F.S., provides experience requirements for certification.

¹² See s. 489.505(9), F.S.; see also, ss. 489.505(2) and (12), F.S., for the various services that may be performed, and ss. 489.503(1) through (24), F.S., for the persons and types of work that are exempted from the term “contracting.”

¹³ See s. 489.505(9), F.S.

¹⁴ See s. 489.505(19), F.S.

¹⁵ The ECLB has established a \$200 fee for applications for registered contractor certification. See s. 489.109, F.S., and Fla. Admin. Code R. ch. 61G6-8.

- Never having had a contractor's license revoked, and during the last five years, not having had a suspended license or been assessed a fine in excess of \$500; and
- Meeting all required insurance and financial responsibility requirements.¹⁶

Mandatory Disclosure of Contractor Registration or Certification Numbers

Under s. 489.521(7), F.S., each registered or certified contractor must state the appropriate registration or certification number on each building permit application and each issued and recorded building permit. All city and county building departments must require, as a condition for building permit issuance, that the contractor applying for the permit verify his or her registration or certification as an electrical or alarm system contractor in the state.¹⁷

A contractor's registration or certification number must also be stated in each offer of services, business proposal, or advertisement, regardless of medium, used by that contractor; however, the term "advertisement" does not include business stationery or promotional novelties such as balloons, pencils, trinkets, or articles of clothing.¹⁸

The ECLB must assess a fine of not less than \$100 or issue a citation to any contractor who fails to include that contractor's certification or registration number when submitting an advertisement for publication, broadcast, or printing.¹⁹ In addition, a person who claims in any advertisement to be a certified or registered contractor, but who does not hold a valid state certification or registration, commits a misdemeanor of the second degree.²⁰

The Florida Building Code

The Florida Building Code (building code) is the unified building code applicable to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, and facilities in the state.²¹ The building code must be applied, administered, and enforced uniformly and consistently throughout the state.²² The building code is adopted, updated, interpreted, and maintained by the Florida Building Commission (commission), which is housed within the DBPR, but is enforced by authorized state and local government agencies.²³ The commission adopts an updated building code every three years through review of codes published by the International Code Council and the National Fire Protection Association.²⁴

¹⁶ See s. 489.515(1)(b), F.S., which provides that an applicant must submit satisfactory evidence of workers' compensation insurance or an acceptable exemption issued by the DBPR, public liability and property damage insurance in amounts determined by the ECLB, and evidence of financial responsibility, credit, and business reputation of either the contractor or the business sought to be qualified for certification.

¹⁷ See s. 553.521(7)(a), F.S.

¹⁸ See s. 553.521(7)(b), F.S.

¹⁹ *Id.*

²⁰ As to a misdemeanor of the second degree, s. 775.082, F.S., provides such offense is punishable by a term of imprisonment not to exceed 60 days, and s. 775.083, F.S. provides such offense is punishable by a fine not to exceed \$500.

²¹ See s. 553.72, F.S. Part IV of ch. 553, F.S., is cited as the "Florida Building Codes Act." See s. 552.70, F.S. The Florida Building Code, 7th Edition, available at https://www.floridabuilding.org/bc/bc_default.aspx (last visited Mar 11, 2021).

²² See s. 553.72(1), F.S.

²³ See s. 553.72(3), F.S.

²⁴ See s. 553.73(7), F.S., which requires review of the International Building Code, the International Fuel Gas Code, the International Existing Building Code, the International Mechanical Code, the International Plumbing Code, and the

Violations of the building code are enforced by the appropriate enforcing agency or local government pursuant to s. 553.79, F.S., relating to required permits, and s. 553.80, F.S., relating to enforcement of the building code. Persons authorized under s. 553.80, F.S., may enforce the building code by seeking injunctive relief from any court to address noncompliance with the building code.²⁵

Fire Alarm Permit Applications to Local Enforcement Agencies

As required by s. 553.7921, F.S., a uniform fire alarm permit application with specified supporting documentation must be filed before installing or replacing a fire alarm, or repairing an existing alarm system, if the local enforcement authority requires a plan review before conducting these activities. The uniform fire alarm permit application must be accompanied by specified supporting documentation, must be signed by the owner or an authorized representative, and the contractor or the contractor's agent, and may be filed electronically or by facsimile.²⁶

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 489.521, F.S., relating to the inclusion of the registration or certification number for each registered or certified alarm system contractor on all offers of services, business proposal, or advertisement used by a contractor, regardless of medium.

Under the bill, if a contractor maintains an Internet website that displays the contractor's registration or certification number, and an advertisement placed by an alarm system contractor directs consumers to the information on the contractor's Internet website, the required registration or certification number does not need to be stated in:

- An advertisement appearing in a printed publication;
- An advertisement appearing on a flyer, a billboard, or an Internet website; or
- A broadcast advertisement placed by an alarm system contractor.

Section 2 of the bill amends the fire alarm permit application procedure in s. 553.7921, F.S., by eliminating a requirement that a contractor file a Uniform Fire Alarm Permit Application and receive the fire alarm permit before repairing an existing, previously permitted alarm system.

Under the bill, if the local enforcement agency requires a fire alarm permit for repair of an existing, previously permitted alarm system, a contractor may begin the repair work after filing the required Uniform Fire Alarm Permit Application, before receiving the fire alarm permit. The bill provides a fire alarm repaired by a contractor before receipt of the fire alarm permit may not be considered compliant until the required permit has been issued and the local enforcement agency has approved the repair.²⁷

International Residential Code, all of which are copyrighted and published by the International Code Council, and the National Electrical Code, which is copyrighted and published by the National Fire Protection Association.

²⁵ See s. 553.83, F.S.

²⁶ See s. 553.7921, F.S., which sets forth the Uniform Fire Alarm Permit Application.

²⁷ The DBPR notes this section of the bill is a local permit enforcement issue and does not impact Florida Building Code requirements or the Florida Building Commission. See Department of Business and Professional Regulation, *Agency Bill Analysis for SB 998* at 5 (Feb. 24, 2021) (on file with the Senate Committee on Regulated Industries).

Section 3 of the bill provides 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:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the DBPR, alarm system contractors working nationwide have found it onerous to list all of their state license numbers in their national print, radio, and TV advertising.²⁸

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²⁸ See Department of Business and Professional Regulation, *Agency Bill Analysis for SB 998* at 5 (Feb. 24, 2021) (on file with the Senate Committee on Regulated Industries).

VIII. Statutes Affected:

This bill substantially amends sections the following sections 489.521 and 553.7921, 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.

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

By Senator Brodeur

9-00858C-21

2021998__

A bill to be entitled

An act relating to contractor advertising; amending s. 489.521, F.S.; providing that alarm system contractors are not required to state their certification and registration numbers in or on certain advertisements if the contractor maintains an Internet website that displays such information and the advertisement directs consumers to the website; amending s. 553.7921, F.S.; authorizing a contractor to begin repairing certain fire alarm systems after filing an application for a required permit but before receiving the permit; prohibiting such repaired fire alarm systems from being considered compliant until certain requirements are met; providing an effective date.

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

Section 1. Subsection (7) of section 489.521, Florida Statutes, is amended to read:

489.521 Business organizations; qualifying agents.—

(7) ~~(a)~~ Each registered or certified contractor shall:

(a) Affix the number of his or her registration or certification to each application for a building permit and to each building permit issued and recorded. Each city or county building department shall require, as a precondition for the issuance of a building permit, that the contractor applying for the permit provide verification giving the number of his or her registration or certification under this part.

(b) State his or her ~~the~~ registration or certification

Page 1 of 3

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9-00858C-21

2021998__

~~number of a contractor shall be stated~~ in each offer of services, business proposal, or advertisement, regardless of medium, used by that contractor.

1. This paragraph does not apply to an advertisement appearing in a printed publication; an advertisement appearing on a flyer, a billboard, or an Internet website; or a broadcast advertisement placed by an alarm system contractor if the contractor maintains an Internet website that displays the contractor's registration or certification number and the advertisement directs consumers to the information on the contractor's Internet website.

2. As used in this paragraph ~~For the purposes of this part,~~ the term "advertisement" does not include business stationery or any promotional novelties such as balloons, pencils, trinkets, or articles of clothing.

3. The board shall assess a fine of not less than \$100 or issue a citation to any contractor who fails to include that contractor's certification or registration number when submitting an advertisement for publication, broadcast, or printing. In addition, any person who claims in any advertisement to be a certified or registered contractor, but who does not hold a valid state certification or registration, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. Subsection (1) of section 553.7921, Florida Statutes, is amended to read:

553.7921 Fire alarm permit application to local enforcement agency.—

(1) (a) A contractor must file a Uniform Fire Alarm Permit

Page 2 of 3

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

9-00858C-21

2021998__

59 Application as provided in subsection (2) with the local
60 enforcement agency and must receive the fire alarm permit
61 before:

62 ~~(a)~~ installing or replacing a fire alarm if the local
63 enforcement agency requires a plan review for the installation
64 or replacement.

65 (b) If the local enforcement agency requires a fire alarm
66 permit for repair of an existing alarm system that was
67 previously permitted by the local enforcement agency, a
68 contractor may begin the repair work after filing a Uniform Fire
69 Alarm Permit Application as provided in subsection (2). A fire
70 alarm repaired pursuant to this paragraph may not be considered
71 compliant until the required permit has been issued and the
72 local enforcement agency has approved the repair; or

73 ~~(b) Repairing an existing alarm system that was previously~~
74 ~~permitted by the local enforcement agency if the local~~
75 ~~enforcement agency requires a fire alarm permit for the repair.~~

76 Section 3. This act shall take effect July 1, 2021.



The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 24, 2021

I respectfully request that **Senate Bill 998**, relating to Contractor Advertising, be placed on the:

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

A handwritten signature in cursive script that reads "Jason Brodeur".

Senator Jason Brodeur
Florida Senate, District 9

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/6/2021

Meeting Date

SB 998

Bill Number (if applicable)

Topic

CONTRACTOR INC

Amendment Barcode (if applicable)

Name

CHRISTIAN CAMARAO

Job Title

Address

PO Box 122

Phone

305 608 4300

Street

TALAHASSEE FL 32302

Email

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

INSTITUTE FOR JUSTICE

Appearing at request of Chair:

☐

Yes

☐

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 1014

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Baxley

SUBJECT: Employee Organizations

DATE: April 2, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Candelaria</u>	<u>McVaney</u>	<u>GO</u>	Fav/CS
2. <u>Candelaria</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1014 requires employee organizations that have been certified as the bargaining agent for a unit of K-12 instructional personnel¹ to disclose in its application for registration renewal the number of employees who are eligible for representation and the number of employees who are represented by the employee organization as of December 31 of that renewal period. An employee organization whose dues-paying membership, as of December 31 of that renewal period, is less than 50 percent of the employees eligible for representation must petition for recertification with the Public Employees Relations Commission (Commission).

The bill requires K-12 instructional personnel to pay dues and uniform assessments directly to the employee organization and prohibits dues and uniform assessments from being deducted and collected by a district school board.

The bill requires K-12 instructional personnel to sign and submit a form to the employee organization acknowledging Florida is a right-to-work state before the employee organization can collect dues or uniform assessments. The bill specifies the language and font of the acknowledgement.

¹-Section 1012.01(6), F.S., defines “educational support employees” to mean K-12 employees whose job functions are neither administrative nor instructional, yet whose work supports the educational process.

The bill creates a process with which employee organizations representing instructional personnel employed by a Florida College System (FCS) or State University System (SUS) institution must comply with when submitting an application for renewal of registration.

The bill requires an employee organization representing instructional personnel employed by an FCS or an SUS institution to apply for recertification if it does not meet the 50 percent threshold for dues-paying membership within the bargaining unit. An FCS or SUS institution is authorized to challenge an employee organization's application for renewal of registration if it believes that the application is inaccurate.

The bill may increase the workload of, and the associated costs incurred by, the Commission.

The bill takes effect July 1, 2021.

II. Present Situation:

Collective Bargaining

Article 1, Section 6 of the State Constitution guarantees that “the right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged.” To implement this constitutional provision, the Legislature enacted ch. 447, F.S., which provides that the purpose of collective bargaining is to promote cooperative relationships between the government and its employees and to protect the public by assuring the orderly and uninterrupted operations and functions of government.² Through collective bargaining, public employees³ collectively negotiate with their public employer⁴ in the determination of the terms and conditions of their employment.⁵ The Public Employees Relations Commission (Commission) is responsible for assisting in resolving disputes between public employees and public employers.⁶

² Section 447.201, F.S.

³ Section 447.203(3), F.S., defines the term “public employee” to mean any person employed by a public employer except:

- (a) Persons appointed by the Governor or elected by the people, agency heads, and members of boards and commissions.
- (b) Persons holding positions by appointment or employment in the organized militia.
- (c) Individuals acting as negotiating representatives for employer authorities.
- (d) Persons who are designated by the commission as managerial or confidential employees pursuant to criteria contained herein.
- (e) Persons holding positions of employment with the Florida Legislature.
- (f) Persons who have been convicted of a crime and are inmates confined to institutions within the state.
- (g) Persons appointed to inspection positions in federal/state fruit and vegetable inspection service whose conditions of appointment are affected by the following:
 - 1. Federal license requirement.
 - 2. Federal autonomy regarding investigation and disciplining of appointees.
 - 3. Frequent transfers due to harvesting conditions.
- (h) Persons employed by the Public Employees Relations Commission.
- (i) Persons enrolled as undergraduate students in a state university who perform part-time work for the state university.

⁴ The term “public employer” means the state or any county, municipality, or special district or any subdivision or agency thereof that the commission determines has sufficient legal distinctiveness properly to carry out the functions of a public employer. Section 447.203(2), F.S.

⁵ Section 447.301(2), F.S.

⁶ Section 447.201(3), F.S.

An “employee organization” is any “labor organization, union, association, fraternal order, occupational or professional society, or group, however organized or constituted, which represents, or seeks to represent, any public employee or group of public employees concerning any matters relating to their employment relationship with a public employer.”⁷ When an employee organization is approved by the employees, recognized by the employer, and authorized to conduct collective bargaining, it is referred to as a certified bargaining agent, and becomes the exclusive representative of all employees in that unit.⁸

After an employee organization has been certified as the bargaining agent for a group of public employees, the bargaining agent and the chief executive officer of the appropriate public employer must bargain collectively in the determination of wages, hours, and terms and conditions of employment of the employees.⁹ Any collective bargaining agreement reached between the parties must be put in writing and signed by the chief executive officer and the bargaining agent.¹⁰ Such agreement is not binding on the employer until the agreement has been ratified by the employer and the employees in the bargaining unit.¹¹ Current law prohibits a collective bargaining agreement from providing for a term of existence of more than three years and requires the agreement to contain all of the terms and conditions of employment of the employees during such term.¹²

Registration of Employee Organization

An employee organization seeking to become a certified bargaining agent for public employees has to register with the Commission prior to requesting recognition by a public employer for purposes of collective bargaining and before submitting a petition to the Commission requesting certification as an exclusive bargaining agent.¹³ The application for registration with the commission must include:

- The name and address of the organization and of any parents organization or organization with which it is affiliated;
- The names and addresses of the principal officers and all representatives of the organization;
- The amount of the initiation fee and of the monthly dues which members must pay;
- The current annual financial statement of the organization;
- The name of its business agent, if any; if different from the business agent, the name of its local agent for service of process; and the addresses where such person or persons can be reached;
- A pledge, in a form prescribed by the commission, that the employee organization will conform to the laws of the state and that it will accept members without regard to age, race, sex, religion, or national origin;
- A copy of the current constitution and bylaws of the employee organization; and
- A copy of the current constitution and bylaws of the state and national groups with which the employee organization is affiliated or associated. In lieu of this provision, and upon adoption

⁷ Section 447.203(11), F.S.

⁸ Sections 447.203(12), 447.307(1), F.S.

⁹ Section 447.309(1), F.S.

¹⁰ *Id.*

¹¹ *Id.*

¹² Section 447.309(5), F.S.

¹³ Section 447.305(1), F.S.

of a rule by the commission, a state or national affiliate or parent organization of any registering labor organization may annually submit a copy of its current constitution and bylaws.¹⁴

A registration granted to an employee organization is valid for one year from the date of assurance. A registration must be renewed annually by filing an application for renewal under oath with the commission. An application for renewal must reflect any changes in the information provided to the commission in conjunction with the employee organization's preceding application for registration or previous renewal.¹⁵ Each application for renewal of registration is required to include a current annual financial report containing detailed information outlined in s. 447.305(2)(a-e), F.S.

Certification of Employee Organization

Any employee organization which is selected by a majority of public employees in a designated unit as their representative for collective bargaining purposes can request recognition by the public employer. In return the employer, if satisfied as to the majority status of the employee organization, recognizes the employee organization as the collective bargaining representative of employees in the designated unit. Following recognition by the employer, the employee organization must immediately petition the commission for certification.¹⁶ The Commission will review only the appropriateness of the unit proposed by the employee organization. Appropriateness is defined as the history of employee relations within the organization of the public employer concerning organization and negotiation and the interest of the employees and the employer.¹⁷ If the unit is appropriate, the commission will immediately certify the employee organization as the exclusive representative of all employees in the unit. If the unit is inappropriate, the commission may dismiss the petition.

If the public employer refuses to recognize the employee organization, the employee organization may file a petition with the Commission for certification as the bargaining agent. The petition has to be accompanied by dated statements signed by at least 30 percent of the employees in the designated unit. The commission will investigate the petition to determine its sufficiency, and provide for an appropriate hearing upon notice, and may order an election by secret ballot. Any registered employee organization desiring placement on the ballot in any election to be conducted may be permitted by the commission to intervene. If an employee organization is selected by the majority of the employees, the commission will then certify the employee organization as the exclusive collective representative.¹⁸

An employee organization which has been certified as the bargaining agent has the right to have its dues and assessments deducted and collected by the employer from the salaries of those employees who authorize the deduction of said dues and assessments.¹⁹

¹⁴ Section 447.305(1)(a-h), F.S.

¹⁵ Section 447.305(2)F.S.

¹⁶ Section 447.307(1)(a), F.S.

¹⁷ Section 447.307(4)(f)(5), F.S.

¹⁸ Section 447.307(3)(a-d), F.S.

¹⁹ Section 447.303, F.S.

Right-to-Work

The State Constitution forbids an employer from denying citizens the right to work based on membership or non-membership in any employee organization.²⁰ As such, public employees have the right to form, join, participate in, and be represented by an employee organization of their own choosing, or to refrain from forming, joining, participating in, or being represented by an employee organization.²¹

Instructional Personnel

Instructional personnel is defined as any K-12 staff member whose functions includes the provision of direct instructional services to students. This includes K-12 personnel whose functions provide direct support in the learning process of students.²² Included in the classification of instructional personnel are:

- Classroom teachers;²³
- Student personnel services;²⁴
- Librarians/media specialist;²⁵
- Other instructional staff such as specialists and trainers;²⁶ and
- Educational paraprofessionals.²⁷

The Florida College System

The Legislature established the Florida College System (FCS).²⁸ The programs and services offered by FCS institutions in providing associate and baccalaureate degrees must be delivered in a cost-effective manner that demonstrates substantial savings to the student and to state over the cost of providing the degree at a state university. Each institution within the FCS must be governed by a local board of trustees that is responsible for implementing state policy, budgeting, and education standards. An FCS institution may not use the designation “university.”²⁹

The FCS is comprised of the following 28 locally-governed institutions:

- Eastern Florida State College;
- Broward College;
- College of Central Florida;
- Chipola College;
- Daytona State College;
- Florida SouthWestern State College;

²⁰ Fla. Const. art. 1, s. 6.

²¹ Section 447.301(1) and (2), F.S.

²² Section 1012.01(2), F.S.

²³ Section 1012.01(2)(a), F.S.

²⁴ Section 1012.01(2)(b), F.S.

²⁵ Section 1012.01(2)(c), F.S.

²⁶ Section 1012.01(2)(d), F.S.

²⁷ Section 1012.01(2)(e), F.S.

²⁸ Section 1001.60, F.S.

²⁹ *Id.*

- Florida State College at Jacksonville;
- The College of the Florida Keys;
- Gulf Coast State College;
- Hillsborough Community College;
- Indian River State College;
- Florida Gateway College;
- Lake-Sumter State College;
- Miami Dade College;
- North Florida College;
- Northwest Florida State College;
- Palm Beach State College;
- Pasco-Hernando State College;
- Pensacola State College;
- Polk State College;
- St. Johns River State College;
- St. Petersburg College;
- Santa Fe College;
- Seminole State College of Florida;
- South Florida State College;
- Tallahassee Community College; and
- Valencia College.³⁰

The State University System

Article IX, section 7, of the Florida Constitution grants the Board of Governors (BOG) the authority to regulate the State University System (SUS). The BOG is responsible for managing the SUS, defining the distinctive mission of each constituent university and its articulation with free public schools and community colleges, ensuring the well-planned coordination and operation of the system, and avoiding wasteful duplication of facilities or programs.³¹ The mission of the SUS is to achieve excellence through teaching students, advancing research and providing public service for the benefit of Florida's citizens, their communities, and economies.³² Each institution is governed by a board of trustees comprised of 13 members.

The SUS is comprised of the following 14 state universities:

- The University of Florida;
- The Florida State University;
- The Florida Agricultural and Mechanical University;
- The University of South Florida;
- The Florida Atlantic University;
- The University of West Florida;
- The University of Central Florida;
- The University of North Florida;

³⁰ Section 1000.21(3)(a-bb), F.S., lists the 28 locally-governed institutions which comprise the FCS.

³¹ Section 1001.705(2), F.S.

³² Article IX, S. 7, FLA. CONST.

- The Florida International University;
- The Florida Gulf Coast University;
- New College of Florida; and
- The Florida Polytechnic University.³³

III. Effect of Proposed Changes:

Section 1 amends s. 1012.2315, F.S., to require an employee organization that is certified to represent K-12 instructional personnel to disclose in its annual application for registration renewal the number of employees who are eligible for representation and the number of employees who are represented by the employee organization to use data as of December 31 of that renewal period.

As noted above, current law requires an application for renewal to include the number of employees in the bargaining unit eligible for representation and the number of employees represented by the employee organization, specifying the number of members who pay dues and the number of members who do not pay dues. The bill specifies that these numbers are to be calculated, *as of December 31 of that renewal period*. As noted above, current law requires an employee organization whose dues paying membership is less than 50 percent of the employees eligible for representation in the designated unit to petition the Commission for recertification. The bill clarifies that the dues paying membership is to be calculated *as of December 31 of that renewal period*.

The Commission is authorized to conduct an investigation to confirm the validity of any information provided on the application for renewal of registration.

If the Commission has reason to believe a registered employee organization has reported inaccurate figures in its application, it can require the employee organization to submit its membership roll in order to verify the accuracy of the reported figures. If the employee organization fails to submit its membership roll within 30 days of receiving a written request from the Commission, the employee organization's certification will be revoked. Additionally, the bill provides for revocation of an employee organization's certification if the employee organization does not submit, or intentionally misstates the required information. The bill grants rulemaking authority to the Commission to implement the renewal provisions.

This section prohibits an employee organization that has been certified as the bargaining agent for K-12 instructional personnel from having its dues and uniform assessment deducted and collected by a district school board from the salaries of instructional personnel. Instead, K-12 instructional personnel must pay their dues and uniform assessment directly to the employee organization that been certified as their bargaining agent.

Beginning August 1, 2021, and each August 1 thereafter, before the employee organization can collect dues or uniform assessments from any K-12 instructional personnel for the upcoming year, the employee must sign and submit a form to the employee organization acknowledging

³³ Section 1000.21, F.S.

Florida is a right-to-work state. The form must contain the following acknowledgement in bold letters and in at least 14-point type:

I acknowledge and understand that Florida is a right-to-work state and that union membership is not required as a condition of employment. I understand that union membership and payment of union dues and assessments is voluntary and that I may not be discriminated against in any manner if I refuse to join or financially support a union.

The Commission is granted authority to adopt rules to carry out the provisions of the bill.

Sections 2 and 3 create ss. 1012.8552 and 1012.916, F.S., respectively, to require an employee organization that has been certified as the bargaining agent for a unit of instructional personnel employed by an FCS or SUS institution to include for each such certified bargaining unit the following information and documentation in its application for renewal of registration:

- The number of employees in the bargaining unit who are eligible for representation by the employee organization;
- The number of employees who are represented by the employee organization, specifying the number of members who pay dues and the number of members who do not pay dues;
- Documentation provided by the institution verifying the information provided; and
- Documentation provided by the institution verifying that it was provided a copy of the employee organization's application for renewal of registration.

An application for renewal of registration is incomplete and is ineligible for consideration by the Commission if it does not include all of the information and documentation required for submission. The Commission must notify the employee organization if the application is incomplete. Any incomplete application must be dismissed if the required information and documentation are not provided within 10 days after the employee organization receives such notice.

This section requires employee organizations whose due-paying membership is less than 50 percent of the employees eligible for representation in the bargaining unit to petition for recertification as the exclusive representative of all employees in the bargaining unit within one month after the date on which the employee organization applies for renewal of registration. If an employee organization does not comply, the employee organization's certification is revoked.

The bill authorizes an FCS or SUS institution to challenge an employee organization's application for renewal of registration if the institution believes that the application is inaccurate. The Commission, or one of its designated agents, will review the application to determine its accuracy and compliance. If the Commission finds that the application is inaccurate or does not comply with the requirements, the Commission must revoke the registration and certification of the employee organization.

Section 4 provides the bill take effect July 1, 2021.

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

Not applicable. This bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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:

An employee organization representing K-12 instructional personnel, FCS instructional personnel, or SUS instructional personnel may incur additional costs associated with having to petition for recertification if it fails to meet the 50 percent dues-paying threshold provided in the bill.

To the extent to which the new requirements depress union membership or salary deductions for union dues or increase costs associated with the creation and use of membership authorization and dues deduction forms, public sector unions may experience a negative fiscal impact.

C. Government Sector Impact:

The Commission may experience additional workload and costs associated with an increase in the number of recertification petitions filed by employee organizations who do not meet the 50 percent threshold provided in the bill.³⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1012.2315 of the Florida Statutes.

This bill creates sections 1012.8552 and 1012.916 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Governmental Oversight and Accountability on March 17, 2021:**

The CS:

- For employee organizations representing K-12 instructional personnel:
 - Imposes a date certain – as of December 31 of that renewal period - for calculating required information relating to the number of employees for an application for renewal of registration;
 - Authorizes the Commission to conduct an investigation to confirm the validity of information submitted on the application for renewal;
 - Authorizes the Commission to revoke the certification of the employee organization if (1) it does not submit or intentionally misstates required information; or (2) does not submit its membership roll within 30 days of receiving a written request from the Commission;
 - Grants rulemaking authority to the Commission;
 - Prohibits the employee organization from having its dues and uniform assessments deducted and collected by a district school board from the salaries and requires such instructional personnel to pay their dues and uniforms assessments directly to the employee organization; and
 - Requires K-12 instructional personnel to sign and submit an acknowledgment form to the employee organization acknowledging Florida is a right-to-work state before dues and uniform assessments may be deducted.

³⁴ Public Employees Relation Commission, Agency Analysis for SB 1014, (February 25, 2021)(on file with the Governmental Oversight and Accountability Committee). However, this analysis addressed the costs associated with the original filed bill, not the Committee Substitute.

- For employee organizations representing instructional personnel employed by an FCS or SUS institution:
 - Provides for information required for on an employee organization's application for renewal of registration;
 - Prohibits the Commission from accepting or considering an application that is considered incomplete;
 - Requires an employee organization with less than 50 percent dues-paying membership to petition the Commission for recertification as the exclusive representative of all employees;
 - Authorizes the FCS and SUS institutions to challenge an employee organization's application for renewal if the institution believes such application is inaccurate; and
 - Authorizes the Commission to revoke the registration and certification of the employee organization if the Commission finds the application to be inaccurate or in noncompliance.

B. Amendments:

None.

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

585-02994-21

20211014c1

1 A bill to be entitled
2 An act relating to employee organizations; amending s.
3 1012.2315, F.S.; revising the information that
4 employee organizations that have been certified as the
5 bargaining agent for a unit of instructional personnel
6 must report in applications for renewal of
7 registration; requiring certain employee organizations
8 to petition the Public Employees Relations Commission
9 for recertification; authorizing the commission to
10 conduct an investigation to confirm the validity of
11 certain information; authorizing the commission to
12 require an employee organization to submit certain
13 information as part of such investigation; providing
14 for the revocation of an employee organization's
15 certification if it fails to meet certain
16 requirements; requiring the commission to adopt rules;
17 prohibiting an employee organization from having its
18 dues and uniform assessments deducted and collected by
19 a district school board; requiring certain
20 instructional personnel to sign and submit a specified
21 form to the employee organization by a certain date
22 and annually thereafter before the employee
23 organization may collect dues or uniform assessments
24 for the upcoming school year; creating s. 1012.8552,
25 F.S.; requiring an employee organization certified as
26 the bargaining agent for a unit of Florida College
27 System institution instructional personnel to include
28 specified information and documentation in an
29 application for registration renewal; providing that

Page 1 of 8

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585-02994-21

20211014c1

30 certain applications are incomplete; providing
31 procedures for incomplete applications; requiring
32 certain employee organizations to petition the
33 commission for recertification; authorizing a Florida
34 College System institution to challenge an employee
35 organization's application; requiring the commission
36 to review a challenged application and revoke an
37 employee organization's registration and certification
38 in certain circumstances; creating s. 1012.916, F.S.;
39 requiring an employee organization certified as the
40 bargaining agent for a unit of State University System
41 institution instructional personnel to include
42 specified information and documentation in an
43 application for registration renewal; providing that
44 certain applications are incomplete; providing
45 procedures for incomplete applications; requiring
46 certain employee organizations to petition the
47 commission for recertification; authorizing a State
48 University System institution to challenge an employee
49 organization's application; requiring the commission
50 to review a challenged application and revoke an
51 employee organization's registration and certification
52 in certain circumstances; providing an effective date.

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

55
56 Section 1. Paragraph (c) of subsection (4) of section
57 1012.2315, Florida Statutes, is amended, and paragraphs (d) and
58 (e) are added to that subsection, to read:

Page 2 of 8

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585-02994-21

20211014c1

1012.2315 Assignment of teachers.—

(4) COLLECTIVE BARGAINING.—

(c)1. In addition to the provisions under s. 447.305(2), an employee organization that has been certified as the bargaining agent for a unit of instructional personnel as defined in s. 1012.01(2) must include for each such certified bargaining unit the following information in its application for renewal of registration:

a. The number of employees in the bargaining unit who are eligible for representation by the employee organization as of December 31 of that renewal period.

b. The number of employees who are represented by the employee organization as of December 31 of that renewal period, specifying the number of members who pay dues and the number of members who do not pay dues.

2. Notwithstanding the provisions of chapter 447 relating to collective bargaining, an employee organization whose dues-paying ~~dues-paying~~ membership as of December 31 of that renewal period is less than 50 percent of the employees eligible for representation in the unit, as identified in subparagraph 1., must petition the Public Employees Relations Commission pursuant to s. 447.307(2) and (3) for recertification as the exclusive representative of all employees in the unit within 1 month after the date on which the organization applies for renewal of registration pursuant to s. 447.305(2). The certification of an employee organization that does not comply with this paragraph is revoked.

3. The commission may conduct an investigation to confirm the validity of any information submitted pursuant to this

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paragraph.

a. If the commission has reason to believe a registered employee organization has reported inaccurate figures pursuant to this paragraph, it can require the employee organization to submit its membership roll in order to verify the accuracy of the reported figures. If the employee organization fails to submit its membership roll within 30 days of receiving a written request from the commission, the employee organization's certification will be revoked.

b. If a registered employee organization does not submit or intentionally misstates the information required in this paragraph for a certified bargaining unit it represents, the employee organization's certification for that unit will be revoked.

4. The commission shall adopt rules to carry out this paragraph.

(d) Notwithstanding the provisions of s. 447.303 relating to dues deduction and collection, an employee organization that has been certified as the bargaining agent for instructional personnel may not have its dues and uniform assessments deducted and collected by a district school board from the salaries of instructional personnel. Instructional personnel who are represented by an employee organization must pay their dues and uniform assessments directly to the employee organization that has been certified as their bargaining agent.

(e) Beginning August 1, 2021, and each August 1 thereafter, before the employee organization can collect dues or uniform assessments from any instructional personnel for the upcoming school year, the employee must sign and submit a form to the

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employee organization acknowledging Florida is a right-to-work state. The form must contain the following acknowledgement in bold letters and in at least 14-point type:

I acknowledge and understand that Florida is a right-to-work state and that union membership is not required as a condition of employment. I understand that union membership and payment of union dues and uniform assessments is voluntary and that I may not be discriminated against in any manner if I refuse to join or financially support a union.

Section 2. Section 1012.8552, Florida Statutes, is created to read:

1012.8552 Collective bargaining.-

(1) In addition to s. 447.305(2), an employee organization that has been certified as the bargaining agent for a unit of instructional personnel employed by a Florida College System institution must include for each such certified bargaining unit the following information and documentation in its application for renewal of registration:

(a) The number of employees in the bargaining unit who are eligible for representation by the employee organization on the date the application is filed.

(b) The number of employees who are represented by the employee organization, specifying the number of members who pay dues and the number of members who do not pay dues.

(c) Documentation provided by the institution verifying the information provided in paragraphs (a) and (b).

(d) Documentation provided by the institution verifying that it was provided a copy of the employee organization's

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application for renewal of registration.

(2) An application for renewal of registration is incomplete and is not eligible for consideration by the Public Employees Relations Commission if it does not include all of the information and documentation required in subsection (1). The commission shall notify the employee organization if the application is incomplete. Any incomplete application must be dismissed if the required information and documentation are not provided within 10 days after the employee organization receives such notice.

(3) Notwithstanding the provisions of chapter 447 relating to collective bargaining, an employee organization whose dues-paying membership is less than 50 percent of the employees eligible for representation in the bargaining unit must petition the commission pursuant to s. 447.307(2) and (3) for recertification as the exclusive representative of all employees in the bargaining unit within 1 month after the date on which the employee organization applies for renewal of registration pursuant to s. 447.305(2). The certification of an employee organization that does not comply with this section is revoked.

(4) A Florida College System institution may challenge an employee organization's application for renewal of registration if the institution believes that the application is inaccurate. The commission or one of its designated agents shall review the application to determine its accuracy and compliance with this section. If the commission finds that the application is inaccurate or does not comply with this section, the commission shall revoke the registration and certification of the employee organization.

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175 Section 3. Section 1012.916, Florida Statutes, is created
 176 to read:
 177 1012.916 Collective bargaining.-
 178 (1) In addition to s. 447.305(2), an employee organization
 179 that has been certified as the bargaining agent for a unit of
 180 instructional personnel employed by a State University System
 181 institution must include for each such certified bargaining unit
 182 the following information and documentation in its application
 183 for renewal of registration:
 184 (a) The number of employees in the bargaining unit who are
 185 eligible for representation by the employee organization on the
 186 date the application is filed.
 187 (b) The number of employees who are represented by the
 188 employee organization, specifying the number of members who pay
 189 dues and the number of members who do not pay dues.
 190 (c) Documentation provided by the institution verifying the
 191 information provided in paragraphs (a) and (b).
 192 (d) Documentation provided by the institution verifying
 193 that it was provided a copy of the employee organization's
 194 application for renewal of registration.
 195 (2) An application for renewal of registration is
 196 incomplete and is not eligible for consideration by the Public
 197 Employees Relations Commission if it does not include all of the
 198 information and documentation required in subsection (1). The
 199 commission shall notify the employee organization if the
 200 application is incomplete. Any incomplete application must be
 201 dismissed if the required information and documentation are not
 202 provided within 10 days after the employee organization receives
 203 such notice.

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204 (3) Notwithstanding the provisions of chapter 447 relating
 205 to collective bargaining, an employee organization whose dues-
 206 paying membership is less than 50 percent of the employees
 207 eligible for representation in the bargaining unit must petition
 208 the commission pursuant to s. 447.307(2) and (3) for
 209 recertification as the exclusive representative of all employees
 210 in the bargaining unit within 1 month after the date on which
 211 the employee organization applies for renewal of registration
 212 pursuant to s. 447.305(2). The certification of an employee
 213 organization that does not comply with this section is revoked.
 214 (4) A State University System institution may challenge an
 215 employee organization's application for renewal of registration
 216 if the institution believes that the application is inaccurate.
 217 The commission or one of its designated agents shall review the
 218 application to determine its accuracy and compliance with this
 219 section. If the commission finds that the application is
 220 inaccurate or does not comply with this section, the commission
 221 shall revoke the registration and certification of the employee
 222 organization.
 223 Section 4. This act shall take effect July 1, 2021.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Ethics and Elections, *Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Community Affairs
Criminal Justice
Health Policy
Judiciary
Rules

JOINT COMMITTEE:

Joint Legislative Auditing Committee,
Alternating Chair

SENATOR DENNIS BAXLEY

12th District

March 29, 2021

The Honorable Chair Kathleen Passidomo
400 Senate Office Building
Tallahassee, FL 32399

Dear Chair Passidomo,

I would like to request CS/SB 1014 Employee Organizations be heard in the next Rules Committee Meeting.

This bill requires employee organizations that have been certified as the bargaining agent for a unit of K-12 instructional personnel, to disclose in its application for registration renewal the number of employees who are eligible for representation and the number of employees who are represented by the employee organization as of December 31 of that renewal period. An employee organization whose dues-paying membership, as of December 31 of that renewal period, is less than 50 percent of the employees eligible for representation must petition for recertification with the Public Employees Relations Commission (PERC).

The bill requires K-12 instructional personnel to pay dues and uniform assessments directly to the employee organization and prohibits dues and uniform assessments from being deducted and collected by a district school board.

The bill also requires an employee organization representing instructional personnel employed by a CS or an SUS institution to apply for recertification if it does not meet the 50 percent threshold for dues-paying membership within the bargaining unit.

I appreciate your favorable consideration.

Onward & Upward,



Senator Dennis Baxley
Senate District 12

REPLY TO:

- ☐ 206 South Hwy 27/441, Lady Lake, Florida 32159 (352) 750-3133
- ☐ 315 SE 25th Avenue, Ocala, Florida 34471 (352) 789-6720
- ☐ 322 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5012

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 1048

INTRODUCER: Judiciary Committee and Senators Bean and Baxley

SUBJECT: Public Records/Conviction Integrity Unit Reinvestigation Information

DATE: April 2, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Cellon</u>	<u>Jones</u>	<u>CJ</u>	Favorable
2. <u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3. <u>Cellon</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1048 creates a public records exemption for conviction integrity unit reinvestigation information. Conviction integrity unit reinvestigation information is defined in the bill as information or materials generated during a new investigation by a conviction integrity unit following the unit's formal written acceptance of an applicant's case. The bill contains specific exceptions to the term "conviction integrity unit reinvestigation information." The bill defines the term "conviction integrity unit" as a unit within a state attorney's office established for the purpose of reviewing plausible claims of actual innocence.

The conviction integrity unit reinvestigation information is made exempt from public inspection and copying for 2 years during an active, ongoing, and good faith investigation of a claim of actual innocence in a case that previously resulted in the conviction of the accused person and until the claim is no longer capable of further investigation. This exemption appears to be no more broad than necessary to accomplish the public interest of safeguarding, preserving, and protecting information relating to a claim of actual innocence by a person who may have been convicted of a crime that he or she did not commit.

The bill provides the public necessity statement for the public records exemption. The bill makes legislative findings in support of the public necessity for the exemption.

The bill requires a two-thirds vote of the members present and voting for final passage. It will stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill takes effect July 1, 2021.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2020-2022).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." Custodians of records designated as "exempt" are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Agency Investigations

Section 119.071(2), F.S., contains general exemptions from the public records law for agency investigations. For purposes of ch. 119, F.S., the term “agency” means:

any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.²⁷

Conviction Integrity Review Units

Conviction Integrity Review (CIR) units are divisions of prosecutorial offices that work to prevent, identify, and correct false convictions. There were 59 CIR units in the United States in 2019, four times the number of just 5 years earlier. Fifty-five CIR exonerations took place in 2019.²⁸

Currently, four state attorney's offices in Florida have established CIR units within their offices. These offices are located in the:

- Fourth Circuit, covering Duval, Clay, and Nassau Counties;
- Ninth Circuit, covering Orange and Osceola Counties;
- Thirteenth Circuit, covering Hillsborough County; and
- Seventeenth Circuit, covering Broward County.²⁹

The first state attorney's office to establish a CIR unit was the Fourth Circuit in early 2018. All four of the CIR units have essentially the same procedures in place that begin with criteria a person must meet to warrant more than an initial screening. For example, the CIR units require that a person present a plausible claim of innocence, and some of the units report they rely upon an independent review panel of legal experts to work with the units to review and evaluate the cases under investigation.³⁰ Prior to 2018, Florida had 64 exonerations, including eight defendants who had been sentenced to death.³¹

The work of the Fourth Circuit's CIR unit resulted in the 2019 exoneration of two men, Clifford Williams and Nathan Myers, who were sentenced to life in prison for the 1976 Jacksonville murder of Jeanette Williams.³² The CIR unit's investigation confirmed multiple alibi witnesses for the whereabouts of the two men at the time of the murder, and further confirmed that another man, Nathaniel Lawson, admitted to committing the murder. The CIR unit's investigation was able to independently confirm Lawson's presence at the scene at the time of the shooting.³³ Prior

²⁷ Section 119.011(2), F.S.

²⁸ The National Registry of Exonerations, *Exonerations in 2019*, March 31, 2020, p. 2, available at http://www.law.umich.edu/special/exoneration/Documents/Exonerations_in_2019.pdf, (last visited March 7, 2021).

²⁹ Office of the State Attorney for the Fourth Judicial Circuit, *Conviction Integrity Review*, available at <https://www.sao4th.com/about/programs-and-initiatives/conviction-integrity-review/>; Office of the State Attorney for the Ninth Judicial Circuit, *Conviction Integrity Policy*, available at <https://www.sao9.net/conviction-integrity.html>; Office of the State Attorney for the Thirteenth Circuit, *Conviction Review Unit*, available at <https://www.sao13th.com/conviction-review-unit-cru/>; Office of the State Attorney for the Seventeenth Circuit, *Conviction Review Unit*, available at <https://browardsaocom/conviction-review-unit/> (all sites last visited March 7, 2021).

³⁰ *Id.*

³¹ The National Registry of Exonerations, *Exonerations in 2019*, March 31, 2020, p. 9, available at http://www.law.umich.edu/special/exoneration/Documents/Exonerations_in_2019.pdf, (last visited March 7, 2021).

³² State Attorney's Office of the Fourth Judicial Circuit of Florida, *Conviction Integrity Investigation, State of Florida v. Hubert Nathan Meyers, State of Florida v. Clifford Williams, Jr.*, March 28, 2019, p. 44, available at https://secureservercdn.net/198.71.233.254/9c2.a8b.myftpupload.com/wp-content/uploads/2019/03/CIR_Investigative_Report_FINAL_3.28.19_R.pdf (last visited March 7, 2021).

³³ *Id.* at 4.

to Mr. Williams' and Mr. Myers' convictions and sentences being vacated by the Fourth Circuit Court on March 28, 2019, they had served 42 years and 11 months in prison.³⁴

Currently, the information gathered by CIR units is not considered exempt from the public records law.

III. Effect of Proposed Changes:

The bill creates a public records exemption for conviction integrity unit reinvestigation information in s. 119.071(2)(q), F.S.

Conviction integrity unit is defined in the bill as a unit within a state attorney's office established for the purpose of reviewing plausible claims of actual innocence.

The term "conviction integrity unit reinvestigation information" is defined in the bill as information or materials generated during a new investigation by a conviction integrity unit following the unit's formal written acceptance of an applicant's case. The term specifically does not include:

- Information, materials, or records generated by a state attorney's office during an investigation done for the purpose of responding to motions made pursuant to Rule 3.800, Rule 3.850, or Rule 3.853, Florida Rules of Criminal Procedure, or any other collateral proceeding;
- Petitions by applicants to the conviction integrity unit; or
- Criminal investigative information generated before the commencement of a conviction integrity unit investigation which is not otherwise exempt from this section.

The bill makes conviction integrity unit reinvestigation information exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution for 2 years during an active, ongoing, and good faith investigation of a claim of actual innocence in a case that previously resulted in the conviction of the accused person and until the claim is no longer capable of further investigation. This exemption appears to be no more broad than necessary to accomplish the public interest of safeguarding, preserving, and protecting information relating to a claim of actual innocence by a person who may have been convicted of a crime that he or she did not commit.

The bill provides a public necessity statement for the creation of the public records exemption stating:

The Legislature finds that it is a public necessity that conviction integrity unit reinvestigation information be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for 2 years during an active, ongoing, and good faith investigation of a claim of actual innocence in a case that previously resulted in the conviction of the accused person and until the claim is no longer capable of further investigation. Public release of conviction integrity unit reinvestigation information could result in the disclosure of sensitive information,

³⁴ The Florida Senate, *Senate Bill 28 Special Master's Final Report*, January 23, 2020, p. 1-2, available at <https://www.flsenate.gov/Session/Bill/2020/28/Analyses/2020s00028.ap.PDF> (last visited March 7, 2021).

such as the identity or location of an alternate suspect, a witness, or other evidence needed to exonerate a wrongfully convicted person, which could compromise the investigation of a wrongfully convicted person's case. The Legislature further finds that it is necessary to protect this information in order to encourage witnesses, who might otherwise be reluctant to come forward, to be forthcoming with evidence of a crime. It is in the interest of pursuing justice for persons who may have been wrongfully convicted that all conviction integrity unit reinvestigation information be protected until investigation of the claim of actual innocence is no longer capable of further investigation. The Legislature finds that the harm that may result from the release of such information outweighs any public benefit that may be derived from its disclosure, and that it is in the interest of the public to safeguard, preserve, and protect information relating to a claim of actual innocence by a person who may have been convicted of a crime that he or she did not commit.

The bill requires a two-thirds vote of the members present and voting for final passage. It will stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds, nor does it reduce the authority of counties or municipalities to raise revenue.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill creates an exemption for conviction integrity unit reinvestigation information, as defined in the bill, in s. 119.071(2)(q), F.S., thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, section 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of

the law. The purpose of the law is to protect conviction integrity unit reinvestigation information relating to a claim of actual innocence by a convicted person that may be developed or generated during the investigation of the claim. The bill exempts the information for 2 years and until investigation of the claim of actual innocence is no longer capable of reasonable investigation. The exemption does not appear to be broader than necessary to accomplish the purpose of the exemption.

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:

The “2 year” timeframe that limits how long information may be exempted from public records could create confusion when read with the clause “and until the claim is no longer capable of further investigation.”

For clarity, the Legislature may wish to revise the sentence setting forth the duration of the exemption to state that the information is exempt during an “active, ongoing, and good faith investigation of a claim of actual innocence in a case that previously resulted in the conviction of the accused person and until the claim is no longer capable of further investigation, or for 2 years whichever is shorter.”

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071, Florida Statutes.

IX. Additional Information:

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

CS by Judiciary on March 9, 2021:

The amount of time that reinvestigation information is exempt from public record is changed to 2 years from “a reasonable period of time.”

- B. **Amendments:**

None.

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

By the Committee on Judiciary; and Senators Bean and Baxley

590-02599-21

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A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; defining the terms "conviction integrity unit" and "conviction integrity unit reinvestigation information"; providing a public records exemption for certain conviction integrity unit reinvestigation information; providing for the future review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (q) is added to subsection (2) of section 119.071, Florida Statutes, to read:

119.071 General exemptions from inspection or copying of public records.—

(2) AGENCY INVESTIGATIONS.—

(q)1. As used in this paragraph, the term:

a. "Conviction integrity unit" means a unit within a state attorney's office established for the purpose of reviewing plausible claims of actual innocence.

b. "Conviction integrity unit reinvestigation information" means information or materials generated during a new investigation by a conviction integrity unit following the unit's formal written acceptance of an applicant's case. The term does not include:

(I) Information, materials, or records generated by a state attorney's office during an investigation done for the purpose

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of responding to motions made pursuant to Rule 3.800, Rule 3.850, or Rule 3.853, Florida Rules of Criminal Procedure, or any other collateral proceeding.

(II) Petitions by applicants to the conviction integrity unit.

(III) Criminal investigative information generated before the commencement of a conviction integrity unit investigation which is not otherwise exempt from this section.

2. Conviction integrity unit reinvestigation information is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for 2 years during an active, ongoing, and good faith investigation of a claim of actual innocence in a case that previously resulted in the conviction of the accused person and until the claim is no longer capable of further investigation. This paragraph 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. The Legislature finds that it is a public necessity that conviction integrity unit reinvestigation information be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for 2 years during an active, ongoing, and good faith investigation of a claim of actual innocence in a case that previously resulted in the conviction of the accused person and until the claim is no longer capable of further investigation. Public release of conviction integrity unit reinvestigation information could result in the disclosure of sensitive information, such as the identity or location of an alternate suspect, a witness, or

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59 other evidence needed to exonerate a wrongfully convicted
60 person, which could compromise the investigation of a wrongfully
61 convicted person's case. The Legislature further finds that it
62 is necessary to protect this information in order to encourage
63 witnesses, who might otherwise be reluctant to come forward, to
64 be forthcoming with evidence of a crime. It is in the interest
65 of pursuing justice for persons who may have been wrongfully
66 convicted that all conviction integrity unit reinvestigation
67 information be protected until investigation of the claim of
68 actual innocence is no longer capable of further investigation.
69 The Legislature finds that the harm that may result from the
70 release of such information outweighs any public benefit that
71 may be derived from its disclosure, and that it is in the
72 interest of the public to safeguard, preserve, and protect
73 information relating to a claim of actual innocence by a person
74 who may have been convicted of a crime that he or she did not
75 commit.

76 Section 3. This act shall take effect July 1, 2021.



The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 9, 2021

I respectfully request that **Senate Bill #1048**, relating to Public Records/Conviction Integrity Unit Reinvestigation Information, be placed on the:

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

Currently, Florida law doesn't protect the privacy of these re-investigations conducted by our State Attorneys' Offices. Thus, there is a risk of witnesses and victims being unduly influenced due to non-exemption from the Sunshine public record provisions. This could lead to attempts to attain useful suspect information becoming compromised and the ability to collect new evidence impacted. This bill solves the problem by creating a public records exemption with a sunset clause for the reinvestigations.

A handwritten signature in cursive script that reads "Aaron Bean".

Senator Aaron Bean
Florida Senate, District 4

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 Rules

BILL: SB 1136

INTRODUCER: Senator Rodrigues

SUBJECT: Board of Directors of Florida ABLE, Inc.

DATE: April 2, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Delia</u>	<u>Cox</u>	<u>CF</u>	Favorable
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	<u>Delia</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 1136 revises the member composition of the board of directors of the Florida Achieving a Better Life Experience (ABLE) program. The bill authorizes the Florida Prepaid College Board to appoint up to three individuals (rather than one) who possess knowledge, skill, and experience in the area of accounting, risk management, or investment management.

The bill also removes the limit on the number of terms board members appointed by the Governor and presiding officers of the Legislature may serve.

The bill is not expected to have a fiscal impact. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

II. Present Situation:

ABLE Programs

Federal ABLE Act

Congress enacted the ABLE Act (Achieving a Better Life Experience Act) in 2014.¹ The ABLE Act permits a state to implement an ABLE Program and establish ABLE accounts for eligible individuals with disabilities² to spend distributions on “qualified disability expenses.”³ The

¹ Pub. L. No. 113-295, 128 Stat. 4056 (Dec. 19, 2014).

² 26 U.S.C. § 529(e). An individual is an eligible individual for a taxable year if during such taxable year: (1) the individual is entitled to benefits based on blindness or disability under title II or XVI of the Social Security Act, and such blindness or disability occurred before the date on which the individual attained age 26; or (2) a disability certification with respect to such individual is filed with the Secretary of Education for such taxable year.

³ 26 U.S.C. § 529(e)(5). “Qualified disability expense” is defined as “any expense related to the eligible individual’s blindness or disability which are made for the benefit of an eligible individual who is the designated beneficiary, including the

purposes of the ABLE Act are to encourage individuals and families to save money to support individuals with disabilities to maintain health, independence, and quality of life and to provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities to supplement benefits provided through other sources.⁴

Florida ABLE Program

The Florida ABLE Program was created in 2015 to encourage and assist the saving of private funds in tax-exempt accounts in order to pay for the qualified expenses of eligible individuals with disabilities.⁵ The Florida Prepaid College Board (Florida Prepaid) was required to establish a direct-support organization to be known as “Florida ABLE, Inc.,” (ABLE United) to establish and administer the Florida ABLE Program.⁶

The mission of ABLE United is to encourage and assist the saving of private funds to help persons with disabilities cover costs that support their health, independence, and quality of life.⁷ Among the individuals in the program, 44 percent have a developmental disability.⁸ As of May 15, 2020, 4,724 individuals have an ABLE United account.⁹ The average account balance is \$5,474.¹⁰

Florida ABLE Program - Board of Directors

Current law requires the board of directors of the Florida ABLE program to consist of:

- The chair of Florida Prepaid, who must serve as the chair of the board;
- One individual who possesses knowledge, skill, and experience in the areas of accounting, risk management, or investment management, appointed by Florida Prepaid. A current member of Florida Prepaid, other than the chair, may be appointed as this director.
- One individual who possesses knowledge, skill, and experience in the areas of accounting, risk management, or investment management, appointed by the Governor.
- Two individuals who are advocates of persons with disabilities, one of whom is appointed by the President of the Senate and one of whom is appointed by the Speaker of the House of Representatives. At least one of these individuals must be an advocate of persons with developmental disabilities, as that term is defined in s. 393.063, F.S.¹¹

following expenses: education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses, which are approved by the Secretary under regulations and consistent with the purposes of this section.”

⁴ 26 U.S.C. § 529(b).

⁵ Section 2, ch. 2015-56, L.O.F.

⁶ Section 1009.986(3), F.S.

⁷ ABLE United, *Direct Support Organization Disclosures* p. 1, (July 8, 2020), available at <http://flprepaidstage.wpengine.com/wp-content/uploads/2020-Florida-ABLE-Disclosure-Required-pursuant-to-Section-20.058-Florida-Statutes.pdf> (last visited March 5, 2021).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Section 1009.986(3)(d)1., F.S.

Currently, the each director appointed by the Governor or the presiding officers of the Legislature appointed for a 3-year term and may be reappointed for one consecutive term.¹²

III. Effect of Proposed Changes:

The bill modifies the makeup of the Florida ABLE program's board of directors. Specifically, the bill authorizes Florida Prepaid to appoint up to three individuals, rather than the current one, who possesses knowledge, skill, and experience in the areas of accounting, risk management, or investment management.

The bill also eliminates the current term limits for the directors appointed by the Governor and the presiding officers of the Legislature. Under the bill, there is no limit on the number of terms for which these members may serve.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹² Section 1009.986(3)(d)2.b., F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1009.986 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Rodrigues

27-01197-21

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A bill to be entitled

An act relating to the board of directors of Florida ABLE, Inc.; amending s. 1009.986, F.S.; revising the composition of the membership of the Florida ABLE, Inc., board of directors; removing a limit on the number of terms that certain reappointed members may serve; providing an effective date.

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

Section 1. Paragraph (d) of subsection (3) of section 1009.986, Florida Statutes, is amended to read:

1009.986 Florida ABLE program.—

(3) DIRECT-SUPPORT ORGANIZATION; FLORIDA ABLE, INC.—

(d)1. The board of directors of Florida ABLE, Inc., shall consist of:

a. The chair of the Florida Prepaid College Board, who shall serve as the chair of the board of directors of Florida ABLE, Inc.

b. Up to three individuals ~~One individual~~ who possess ~~possesses~~ knowledge, skill, and experience in the areas of accounting, risk management, or investment management, one of whom may be a current member of the Florida Prepaid College Board, who shall be appointed by the Florida Prepaid College Board. ~~A current member of the Florida Prepaid College Board, other than the chair, may be appointed.~~

c. One individual who possesses knowledge, skill, and experience in the areas of accounting, risk management, or investment management, who shall be appointed by the Governor.

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d. Two individuals who are advocates of persons with disabilities, one of whom shall be appointed by the President of the Senate and one of whom shall be appointed by the Speaker of the House of Representatives. At least one of the individuals appointed under this sub-subparagraph must be an advocate of persons with developmental disabilities, as that term is defined in s. 393.063.

2.a. The term of the appointees ~~appointee~~ under sub-subparagraph 1.b. shall be up to 3 years as determined by the Florida Prepaid College Board. Such appointees ~~appointee~~ may be reappointed.

b. The term of the appointees under sub-subparagraphs 1.c. and d. shall be 3 years. Such appointees may be reappointed ~~for up to one consecutive term.~~

3. Unless authorized by the board of directors of Florida ABLE, Inc., an individual director has no authority to control or direct the operations of Florida ABLE, Inc., or the actions of its officers and employees.

4. The board of directors of Florida ABLE, Inc.:

a. Shall meet at least quarterly and at other times upon the call of the chair.

b. May use any method of telecommunications to conduct, or establish a quorum at, its meetings or the meetings of a subcommittee or other subdivision if the public is given proper notice of the telecommunications meeting and provided reasonable access to observe and, if appropriate, to participate.

5. A majority of the total current membership of the board of directors of Florida ABLE, Inc., constitutes a quorum of the board.

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59 6. Members of the board of directors of Florida ABLE, Inc.,
60 and the board's subcommittees or other subdivisions shall serve
61 without compensation; however, the members may be reimbursed for
62 reasonable, necessary, and actual travel expenses pursuant to s.
63 112.061.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Governmental Oversight and Accountability, *Chair*
Appropriations Subcommittee on Agriculture,
Environment, and General Government, *Vice Chair*
Appropriations Subcommittee on Health and
Human Services
Banking and Insurance
Finance and Tax
Judiciary
Regulated Industries

JOINT COMMITTEES:

Joint Select Committee on Collective Bargaining,
Alternating Chair
Joint Committee on Public Counsel Oversight

SENATOR RAY WESLEY RODRIGUES

27th District

March 30, 2021

The Honorable Kathleen Passidomo
Senate Rules, Chair
402 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 1136 – Board of Directors of Florida ABLE, Inc.

Dear Madame Chair:

Please allow this letter to serve as my respectful request to place SB 1136, relating Board of Directors of Florida ABLE, Inc., on the next committee agenda.

SB 1136 revises the composition of the board of directors for the Florida ABLE Program. The board of directors must comprise of 3 individuals who possess specific knowledge, skills, and has experience in accounting, risk management, or investment management. One member may be a current member of the Florida Prepaid College Board. The bill also removes the term limitation for which certain board members may be appointed.

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

Sincerely,

A handwritten signature in cursive script that reads "Ray Rodrigues".

Ray Rodrigues
Senate District 27

Cc: John Phelps, Staff Director
Cynthia Futch, Administrative Assistant

REPLY TO:

- ☐ 2000 Main Street, Suite 401, Fort Myers, Florida 33901 (239) 338-2570
- ☐ 305 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 1140

INTRODUCER: Rules Committee and Senators Rodrigues and Garcia

SUBJECT: Unlawful Use of DNA

DATE: April 7, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Looke	Brown	HP	Favorable
2. McMillan	McKay	CM	Favorable
3. Looke	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1140 establishes the “Protecting DNA Privacy Act.” The bill establishes four new crimes related to the unlawful use of deoxyribose nucleic acid (DNA). The bill provides that:

- It is a first degree misdemeanor for a person to willfully, and without express consent, collect or retain another person’s DNA sample with the intent to perform DNA analysis.
- It is a third degree felony for a person to willfully, and without express consent, submit another person’s DNA sample for DNA analysis or to conduct or procure the conducting of another person’s DNA analysis.
- It is a third degree felony for a person to willfully, and without express consent, disclose another person’s DNA analysis results to a third party except that a person who discloses another person’s DNA analysis that were previously voluntarily disclosed by the person whose DNA was analyzed, or such person’s legal guardian or authorized representative, does not commit the crime.
- It is a second degree felony for a person to willfully, and without express consent, sell or otherwise transfer another person’s DNA sample or the results of another person’s DNA analysis to a third party, regardless of whether the DNA sample was originally collected, retained, or analyzed with express consent.

The bill specifies that each instance of the above crimes constitutes a separate violation which entails a separate penalty. The bill amends s. 760.40, F.S., which is the current law governing DNA privacy, to define the terms “express consent,” “exclusive property,” and “DNA sample”

and to conform to the changes made by the bill. The definitions established in s. 760.40, F.S., also apply to the newly created s. 817.5655, F.S.

The bill provides exceptions to the crimes established in the bill for:

- Criminal investigations and prosecutions;
- Complying with a subpoena, summons, or other lawful court order;
- Complying with federal law;
- The medical diagnosis and treatment of a patient under certain circumstances;
- The newborn screening program established in s. 383.14, F.S.;
- Determining paternity under ss. 409.256 or 742.12(1), F.S.; and
- Performing any activity authorized in s. 943.325, F.S., pertaining to the criminal DNA database.

The Legislature's Office of Economic and Demographic Research (EDR) estimates that the bill will have a "positive insignificant" prison bed impact (an increase in 10 or fewer prison beds). See Section V. Fiscal Impact Statement.

The bill provides an effective date of October 1, 2021.

II. Present Situation:

DNA

DNA, or deoxyribose nucleic acid, is the hereditary material in humans and almost all other organisms. Nearly every cell in a person's body has the same DNA, unique to that person. Most DNA is located in the cell nucleus (where it is called nuclear DNA), but a small amount of DNA can also be found in the mitochondria (where it is called mitochondrial DNA or mtDNA). Mitochondria are structures within cells that convert the energy from food into a form that cells can use.

The information in DNA is stored as a code made up of four chemical bases: adenine (A), guanine (G), cytosine (C), and thymine (T). Human DNA consists of about three billion bases, and more than 99 percent of those bases are the same in all people. The order, or sequence, of these bases determines the information available for building and maintaining an organism, similar to the way in which letters of the alphabet appear in a certain order to form words and sentences.

DNA bases pair-up with each other, A with T and C with G, to form units called base pairs. Each base is also attached to a sugar molecule and a phosphate molecule. Together, a base, sugar, and phosphate are called a nucleotide. Nucleotides are arranged in two long strands that form a spiral called a double helix. The structure of the double helix is somewhat like a ladder, with the base pairs forming the ladder's rungs and the sugar and phosphate molecules forming the vertical sidepieces of the ladder.

An important property of DNA is that it can replicate, or make copies of itself. Each strand of DNA in the double helix can serve as a pattern for duplicating the sequence of bases. This is

critical when cells divide because each new cell needs to have an exact copy of the DNA present in the old cell.¹

Genetics and Genomics

Genetics is a term that refers to the study of genes and their roles in inheritance. In other words, it is the way that certain traits or conditions are passed down from one generation to another. Genetics involves the scientific study of genes and their effects. Genes (units of heredity) carry the instructions for making proteins, which direct the activities of cells and functions of the body. Examples of genetic or inherited disorders include cystic fibrosis, Huntington's disease, and phenylketonuria.

Genomics is a more recent term that describes the study of all of a person's genes (the genome), including interactions of those genes with each other and with the person's environment. Genomics includes the scientific study of complex diseases such as heart disease, asthma, diabetes, and cancer because these diseases are typically caused by a combination of genetic and environmental factors rather than by individual genes. Genomics is offering new possibilities for therapies and treatments for some complex diseases, as well as new diagnostic methods.²

Genetic Testing

Genetic testing is a type of medical test that identifies changes in chromosomes, genes, or proteins. The results of a genetic test can confirm or rule out a suspected genetic condition, as well as help determine the chance of developing or passing on a genetic disorder. More than 1,000 genetic tests are currently in use, and more are being developed. The following methods can be used for genetic testing:

- Molecular genetic tests (or gene tests) study single genes or short lengths of DNA to identify variations or mutations that lead to a genetic disorder;
- Chromosomal genetic tests analyze whole chromosomes or long lengths of DNA to see if there are large genetic changes, such as an extra copy of a chromosome, that cause a genetic condition; and
- Biochemical genetic tests study the amount or activity level of proteins; abnormalities in either can indicate changes to the DNA that result in a genetic disorder.³

Direct-to-Consumer Genetic Testing

In recent years, direct-to-consumer (DTC) genetic testing options have become widely available online and in stores. A DTC genetic test kit allows a person to spit into a tube or swab the inside of his or her mouth to obtain DNA, mail the sample off, and receive an analysis. According to an October 2020 Consumer Reports survey, about one in five Americans has taken a DTC genetic

¹ MedlinePlus, *What is DNA?*, available at <https://medlineplus.gov/genetics/understanding/basics/dna/>, (last visited March 19, 2021).

² *Genetics vs. Genomics Fact Sheet*, National Human Genome Research Institute, available at <https://www.genome.gov/about-genomics/fact-sheets/Genetics-vs-Genomics>, (last visited March 19, 2021).

³ *What is Genetic Testing?*, MedlinePlus, available at <https://medlineplus.gov/genetics/understanding/testing/genetic-testing/>, (last visited Mar. 5, 2021).

test.⁴ Some of the most common brands, such as 23andMe and Ancestry, offer a variety of information, including matching a person with unknown relatives, determining what country a person's ancestors are from, revealing a person's risk of having certain illnesses, and even suggesting what diet is best.⁵ However, in addition to potentially useful insights, the tests can reveal information a person may prefer not to know, and once a person's genetic data is shared, it can potentially be sold or used to discriminate against him or her.⁶ The U.S. Food and Drug Administration (FDA) reviews some DTC genetic tests, but in general, the FDA does not review tests intended for non-medical, general wellness, or low risk medical purposes or to help a person explore his or her ancestry.⁷

Surreptitious Genetic Testing

Surreptitious genetic testing is testing without the knowledge of the person being tested, and creates a potential threat to the privacy of that person's genomic information.⁸ Some companies offering DNA testing allow consumers to obtain genetic analyses of various biological samples without requiring the consent of the individual or individuals being tested.⁹ A variety of tests can be done using these DNA samples, including health-related testing and parentage determination.¹⁰

There is no federal law prohibiting surreptitious testing. Currently about half of the states in the U.S. have laws or regulations governing genomic privacy and illegitimate uses of genomic data.¹¹ However, there is great variation in these laws. While some states prohibit the unauthorized acquisition or analysis of genetic information, others prohibit only unauthorized disclosure.¹² They also differ regarding the enforcement of these laws.¹³

Florida's DNA Privacy Law

Except for purposes of criminal prosecution, for purposes of determining paternity,¹⁴ and for purposes of acquiring specimens,¹⁵ s. 760.40, F.S., requires DNA analysis¹⁶ to be performed only

⁴ Catherine Roberts, *Read This Before You Buy a Genetic Testing Kit*, Consumer Reports, (Feb. 2, 2021) <https://www.consumerreports.org/genetic-testing/genetic-testing-kit-read-this-before-you-buy/> (last visited March 19, 2021).

⁵ *Id.*

⁶ *Id.*

⁷ FDA, *Direct-to-Consumer Test*, (Dec. 12, 2019) <https://www.fda.gov/medical-devices/vitro-diagnostics/direct-consumer-tests#list> (last visited March 19, 2021).

⁸ See American Medical Association Journal of Ethics, *Shedding Privacy Along with our Genetic Material: What Constitutes Adequate Legal Protection Against Surreptitious Genetic Testing?* (March of 2016), available at <https://journalofethics.ama-assn.org/sites/journalofethics.ama-assn.org/files/2018-05/pfor2-1603.pdf> (last visited March 19, 2021).

⁹ Privacy in Genomics, National Human Genome Research Institute, available at <https://www.genome.gov/about-genomics/policy-issues/Privacy>, (last visited March 19, 2021).

¹⁰ *Id.*

¹¹ For details on state laws regulating DNA usage available at <https://www.genome.gov/about-genomics/policy-issues/Genome-Statute-Legislation-Database>, (last visited March 19, 2021).

¹² Privacy in Genomics, National Human Genome Research Institute, available at <https://www.genome.gov/about-genomics/policy-issues/Privacy>, (last visited March 19, 2021).

¹³ *Id.*

¹⁴ See ss. 409.256, F.S., and 742.12(1), F.S.

¹⁵ See s. 943.325, F.S.

¹⁶ Defined as “the medical and biological examination and analysis of a person to identify the presence and composition of genes in that person's body. The term includes DNA typing and genetic testing.”

with informed consent. Results of a DNA analysis, whether held by a public or private entity, are the exclusive property of the person tested, are confidential, and may not be disclosed without the consent of the person tested.¹⁷ The information is also exempt from public records laws if held by a public entity.¹⁸ A violation of the above requirements is a misdemeanor of the third degree.¹⁹ Section 760.40, F.S., also requires that a person who performs DNA analysis or receives records, results, or findings of a DNA analysis must provide the person tested with notice²⁰ that the analysis was performed or that the information was received.²¹

III. Effect of Proposed Changes:

CS/SB 1140 establishes the Protecting DNA Privacy Act. The bill creates s. 817.5655, F.S., to prohibit certain unlawful uses of DNA. The bill amends s. 760.40, F.S., to make conforming changes and define the following terms:

- “Exclusive property” to mean the right of the person whose DNA has been extracted or analyzed to exercise control over his or her DNA sample and any results of his or her DNA analysis with regard to the collection, use, retention, maintenance, disclosure, or destruction of such sample or analysis results.;
- “Express consent” to mean authorization by the person whose DNA is to be extracted or analyzed, or such person’s legal guardian or authorized representative, evidenced by an affirmative action demonstrating an intentional decision, after the person receives a clear and prominent disclosure regarding the manner of collection, use, retention, maintenance, or disclosure of a DNA sample or results of a DNA analysis for a specified purpose; and
- “DNA sample” to mean any human biological specimen from which DNA can be extracted, or the DNA extracted from such specimen.

The bill also applies these definitions to the newly created s. 817.5655, F.S.

The bill establishes four new crimes as follows:

- It is a first degree misdemeanor for a person to willfully, and without express consent, collect or retain another person’s DNA sample with the intent to perform DNA analysis.
- It is a third degree felony for a person to willfully, and without express consent, submit another person’s DNA sample for DNA analysis or to conduct or procure the conducting of another person’s DNA analysis.
- It is a third degree felony for a person to willfully, and without express consent, disclose another person’s DNA analysis results to a third party except that a person who discloses another person’s DNA analysis that were previously voluntarily disclosed by the person whose DNA was analyzed, or such person’s legal guardian or authorized representative, does not commit the crime.

¹⁷ See s. 760.40, F.S.

¹⁸ *Id.*

¹⁹ *Id.* Punishable as provided in ss. 775.082 or 775.083, F.S.

²⁰ The bill provides that the notice must state that upon the request of the person tested, the information will be made available to his or her physician, state whether the information was used in any decision to grant or deny any insurance, employment, mortgage, loan, credit, or educational opportunity. Also, if the information was used in any decision that resulted in a denial, the analysis must be repeated to verify the accuracy of the first analysis, and if the first analysis is found to be inaccurate, the denial must be reviewed.

²¹ See s. 760.40, F.S.

- It is a second degree felony for a person to willfully, and without express consent, sell or otherwise transfer another person's DNA sample or the results of another person's DNA analysis to a third party, regardless of whether the DNA sample was originally collected, retained, or analyzed with express consent.

The bill specifies that each instance of collection, retention, submission, analysis, or disclosure constitutes a separate violation for which a separate penalty is authorized.

The bill provides exceptions to the crimes established in the bill for:

- Criminal investigations and prosecutions;
- Complying with a subpoena, summons, or other lawful court order;
- Complying with federal law;
- The medical diagnosis and treatment of a patient when:
 - Express consent for clinical laboratory analysis of the DNA sample was obtained by the health care practitioner who collected the DNA sample; or
 - Performed by a clinical laboratory certified by the Centers for Medicare and Medicaid Services.
- The newborn screening program established in s. 383.14, F.S.;
- Determining paternity under ss. 409.256 or 742.12(1), F.S.; and
- Performing any activity authorized in s. 943.325, F.S., pertaining to the criminal DNA database.

The bill provides an effective date of October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill creates new criminal offenses relating to the unlawful use of DNA. Criminal laws are exempt from the requirements of Art. VII, s. 18(d) of the Florida Constitution, relating to unfunded mandates.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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:

None.

C. Government Sector Impact:

The Legislature's Office of Economic and Demographic Research (EDR) estimates that the bill will have a "positive insignificant" prison bed impact (an increase in 10 or fewer prison beds).²²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends section 760.40 of the Florida Statutes.

The bill creates section 817.5655 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 Rules on April 6, 2021:

The CS:

- Labels the act as the "Protecting DNA Privacy Act."
- Moves definitions into s. 760.40, F.S., applies those definitions to s. 817.5655, F.S., and modifies the definitions as follows:
 - Replaces the definition of "authorization" with a new definition for "express consent;"
 - Eliminates the definition for "DNA analysis;" and
 - Adds a definition for "exclusive property."

²² See Office of Economic & Demographic Research, *Complete 2021 Conference Results*, available at <http://edr.state.fl.us/content/conferences/criminaljusticeimpact/index.cfm> (last visited March 19, 2021).

- Provides an exception for the criminal prohibition against disclosing a person's DNA results to a third party for when the results were previously voluntarily disclosed by the person.
- Provides that it is a second degree felony to sell or otherwise transfer another person's DNA sample or analysis results to a third party without express consent.
- Provides additional exceptions to the criminal prohibitions for complying with court orders or federal law; the medical diagnosis and treatment of a patient under certain circumstances; and the newborn screening program.

B. Amendments:

None.



110124

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/07/2021	.	
	.	
	.	
	.	

The Committee on Rules (Rodrigues) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. This act may be cited as the "Protecting DNA
Privacy Act."

Section 2. Subsections (1) and (2) of section 760.40,
Florida Statutes, are amended to read:

760.40 Genetic testing; definitions; express informed
consent required; confidentiality; ~~penalties~~; notice of use of
results.-



110124

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

(a) "DNA analysis" means the medical and biological examination and analysis of a person's DNA ~~person~~ to identify the presence and composition of genes in that person's body. The term includes DNA typing and genetic testing.

(b) "DNA sample" means any human biological specimen from which DNA can be extracted or the DNA extracted from such specimen.

(c) "Exclusive property" means the right of the person whose DNA has been extracted or analyzed to exercise control over his or her DNA sample and any results of his or her DNA analysis with regard to the collection, use, retention, maintenance, disclosure, or destruction of such sample or analysis results.

(d) "Express consent" means authorization by the person whose DNA is to be extracted or analyzed, or such person's legal guardian or authorized representative, evidenced by an affirmative action demonstrating an intentional decision, after the person receives a clear and prominent disclosure regarding the manner of collection, use, retention, maintenance, or disclosure of a DNA sample or results of a DNA analysis for a specified purpose.

(2) ~~(a)~~ Except as provided in s. 817.5655, a person or entity may only perform ~~for purposes of criminal prosecution, except for purposes of determining paternity as provided in s. 409.256 or s. 742.12(1), and except for purposes of acquiring specimens as provided in s. 943.325,~~ DNA analysis may be performed only with express ~~the informed consent~~ of the person ~~to be tested,~~ and The results of such DNA analysis, whether held



110124

by a public or private entity, are the exclusive property of the person tested, are confidential, and may not be disclosed without express the consent of the person tested. Such information held by a public entity is exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

~~(b) A person who violates paragraph (a) is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.~~

Section 3. Section 817.5655, Florida Statutes, is created to read:

817.5655 Unlawful use of DNA; penalties; exceptions.—

(1) As used in this section, the terms "DNA analysis," "DNA sample," and "express consent" have the same meanings as in s. 760.40(1)(a), (b), and (d), respectively.

(2) It is unlawful for a person to willfully, and without express consent, collect or retain another person's DNA sample with the intent to perform DNA analysis. A person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) It is unlawful for a person to willfully, and without express consent, submit another person's DNA sample for DNA analysis or conduct or procure the conducting of another person's DNA analysis. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083 or s. 775.084.

(4) It is unlawful for a person to willfully, and without express consent, disclose another person's DNA analysis results to a third party. A person who violates this subsection commits



110124

a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or 775.084. A person who discloses another person's DNA analysis results that were previously voluntarily disclosed by the person whose DNA was analyzed, or such person's legal guardian or authorized representative, does not violate this subsection.

(5) It is unlawful for a person to willfully, and without express consent, sell or otherwise transfer another person's DNA sample or the results of another person's DNA analysis to a third party, regardless of whether the DNA sample was originally collected, retained, or analyzed with express consent. A person who violates this subsection commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) Each instance of collection or retention, submission or analysis, or disclosure in violation of this section constitutes a separate violation for which a separate penalty is authorized.

(7) This section does not apply to a DNA sample, a DNA analysis, or the results of a DNA analysis used for the purposes of:

- (a) Criminal investigation or prosecution;
- (b) Complying with a subpoena, summons, or other lawful court order;
- (c) Complying with federal law;
- (d) Medical diagnosis and treatment of a patient when:
 - 1. Express consent for clinical laboratory analysis of the DNA sample was obtained by the health care practitioner who collected the DNA sample; or
 - 2. Performed by a clinical laboratory certified by the



110124

Centers for Medicare and Medicaid Services;

(e) The newborn screening program established in s. 383.14;

(f) Determining paternity under s. 409.256 or s. 742.12(1);

or

(g) Performing any activity authorized under s. 943.325.

Section 4. This act shall take effect October 1, 2021.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to unlawful use of DNA; providing a
short title; amending s. 760.40, F.S.; providing
definitions; prohibiting DNA analysis and disclosure
of DNA analysis results without express consent;
providing applicability; removing criminal penalties;
creating s. 817.5655, F.S.; prohibiting the collection
or retention of a DNA sample of another person without
express consent for specified purposes; prohibiting
specified DNA analysis and disclosure of DNA analysis
results without express consent; providing an
exception; providing criminal penalties; providing
exceptions; providing an effective date.



263794

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/07/2021	.	
	.	
	.	
	.	

The Committee on Rules (Rodrigues) recommended the following:

Senate Amendment

Delete lines 69 - 75
and insert:

(6) This section does not apply to:

(a) A DNA sample, a DNA analysis, or the results of a DNA
analysis used for the purposes of:

1. Criminal investigation or prosecution;

2. Determining paternity under s. 409.256 or s. 742.12(1);

or

3. Performing any activity authorized under s. 943.325.



263794

12 (b) Information de-identified in accordance with 45 C.F.R.
13 part 164 and derived from individually identifiable health
14 information as described in the Health Insurance Portability and
15 Accountability Act of 1996, or identifiable personal
16 information, consistent with the Federal Policy for the
17 Protection of Human Subjects or the human subject protection
18 requirements of the United States Food and Drug Administration.

By Senator Rodrigues

27-01195A-21

20211140__

A bill to be entitled

An act relating to unlawful use of DNA; amending s. 760.40, F.S.; prohibiting DNA analysis and disclosure of DNA analysis results without authorization; removing criminal penalties; creating s. 817.5655, F.S.; defining terms; prohibiting the collection or retention of a DNA sample of another person without authorization for specified purposes; prohibiting specified DNA analysis and disclosure of DNA analysis results without authorization; providing criminal penalties; providing exceptions; providing an effective date.

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

Section 1. Subsection (2) of section 760.40, Florida Statutes, is amended to read:

760.40 Genetic testing; authorization informed consent; confidentiality; penalties; notice of use of results.—

(2) ~~(a) Except for purposes of criminal prosecution, except for purposes of determining paternity as provided in s. 409.256 or s. 742.12(1), and except for purposes of acquiring specimens as provided in s. 943.325, DNA analysis may be performed only with authorization, as defined in s. 817.5655 the informed consent of the person to be tested, and the results of such DNA analysis, whether held by a public or private entity, are the exclusive property of the person tested, are confidential, and may not be disclosed without authorization the consent of the person tested. Such information held by a public entity is~~

Page 1 of 3

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

27-01195A-21

20211140__

exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

~~(b) A person who violates paragraph (a) is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.~~

Section 2. Section 817.5655, Florida Statutes, is created to read:

817.5655 Unlawful use of DNA; penalties; exceptions.—

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

(a) "Authorization" means the informed and written consent of the person whose DNA is to be extracted or analyzed, or the informed and written consent of the person's legal guardian or authorized representative.

(b) "DNA analysis" means the medical and biological examination and analysis of a person to identify the presence and composition of genes in that person's body. The term includes DNA typing and genetic testing.

(c) "DNA sample" means any human biological specimen from which DNA can be extracted, or the DNA extracted from such specimen.

(2) It is unlawful for a person to willfully, and without authorization, collect or retain another person's DNA sample with the intent to perform DNA analysis. A person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) It is unlawful for a person to willfully, and without authorization, submit another person's DNA sample for DNA analysis or to conduct or procure the conducting of another person's DNA analysis. A person who violates this subsection

Page 2 of 3

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

27-01195A-21

20211140__

59 commits a felony of the third degree, punishable as provided in
60 s. 775.082, s. 775.083 or s. 775.084.

61 (4) It is unlawful for a person to willfully, and without
62 authorization, disclose another person's DNA analysis results to
63 a third party. A person who violates this subsection commits a
64 felony of the third degree, punishable as provided in s.
65 775.082, s. 775.083 or s. 775.084.

66 (5) Each instance of collection or retention, submission or
67 analysis or disclosure in violation of this section constitutes
68 a separate violation for which a separate penalty is authorized.

69 (6) This section does not apply to a DNA sample, a DNA
70 analysis, or the results of a DNA analysis used for the purposes
71 of:

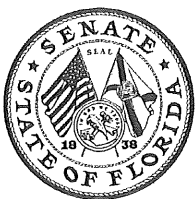
72 (a) Criminal investigation or prosecution;

73 (b) Determining paternity under s. 409.256 or s. 742.12(1);

74 or

75 (c) Performing any activity authorized under s. 943.325.

76 Section 3. This act shall take effect October 1, 2021.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR RAY WESLEY RODRIGUES

27th District

COMMITTEES:

Governmental Oversight and Accountability, *Chair*
Appropriations Subcommittee on Agriculture,
Environment, and General Government, *Vice Chair*
Appropriations Subcommittee on Health and
Human Services
Banking and Insurance
Finance and Tax
Judiciary
Regulated Industries

JOINT COMMITTEES:

Joint Select Committee on Collective Bargaining,
Alternating Chair
Joint Committee on Public Counsel Oversight

March 30, 2021

The Honorable Kathleen Passidomo
Senate Rules, Chair
402 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 1140 – Unlawful Use of DNA

Dear Madame Chair:

Please allow this letter to serve as my respectful request to place SB 1140, relating to the Unlawful Use of DNA, on the next committee agenda.

SB 1140 is the first step to deter individuals and others who might steal DNA to gain access to private information, then use it against an individual. This bill puts into law that the results of the DNA analysis are to remain confidential and cannot be disclosed without the authorization of an individual. SB 1140 also creates criminal penalties for each instance of unlawful collection or retention, submission or analysis, or disclosure.

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

Sincerely,

A handwritten signature in cursive script that reads "Ray Rodrigues".

Ray Rodrigues
Senate District 27

Cc: John Phelps, Staff Director
Cynthia Futch, Administrative Assistant

REPLY TO:

- ☐ 2000 Main Street, Suite 401, Fort Myers, Florida 33901 (239) 338-2570
- ☐ 305 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 1176

INTRODUCER: Senator Stewart

SUBJECT: Barber Services

DATE: April 2, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Oxamendi	Imhof	RI	Favorable
2. Reeve	McKay	CM	Favorable
3. Oxamendi	Phelps	RC	Favorable

I. Summary:

SB 1176 permits a barber to shampoo, cut, or arrange hair in a location other than a registered barbershop without arranging the barber service through a registered barbershop. Current law requires arrangements for the performance of barber services in a location other than a registered barbershop to be made through a registered barbershop.

The bill takes effect July 1, 2021.

II. Present Situation:

Barbering in Florida

Barbers and barbershops in Florida are regulated by ch. 476, F.S., known as the Barbers' Act (act), and licensed by the Barber's Board (board) under the Department of Business and Professional Regulation (DBPR).

The act defines barbering as any of the following practices when done for payment by the public: shaving, cutting, trimming, coloring, shampooing, arranging, dressing, curling, or waving the hair or beard, or applying oils, creams, lotions, or other preparations to the face, scalp, or neck, either by hand or by mechanical appliances.¹

¹ Section 476.034(2), F.S. The term does not include those services when done for the treatment of disease or physical or mental ailments.

Licensing

An applicant for licensure as a barber must pass an examination. To be eligible to take the examination, an applicant must:²

- Be at least 16 years of age;
- Pay the application fee;³ and
- Hold an active valid license to practice barbering in another state for at least 1 year and not qualify for licensure by endorsement,⁴ or have received a minimum of 900 hours of specified training at a certain barbering school or program.

The board is authorized to establish by rule a procedure for a barber school or program to certify that an applicant is qualified to take the examination after completing a minimum of 600 actual school hours. If such an applicant passes the examination, the required 900 training hours is deemed satisfied; failing the examination requires the applicant to complete the full 900 hours.⁵

Alternatively, a person may apply for and receive a “restricted license,” which authorizes the licensee to practice only in areas in which they have demonstrated competency pursuant to the rules of the board. An applicant for a restricted license must:⁶

- Complete a restricted barber course at a barbering school or program; or
- Hold, or have held within the last 5 years, an active barber license in another state; or
- Have held a Florida barber license declared null and void for failure to renew the license.⁷

Applicants must not have been disciplined relating to the practice of barbering in the past 5 years and must pass a written examination on the laws and rules governing the practice of barbering in Florida, as established by the board.⁸

Barbers must complete an education course by the board on HIV and AIDS as part of licensure or biennial license renewal.⁹

Performance of Barber Services

A barbershop, defined as “any place of business wherein the practice of barbering is carried on,”¹⁰ must be licensed by the DBPR in order to operate. Barbershops are inspected periodically by the DBPR in accordance with sanitary standards set forth by the board.¹¹

Generally, barber services may only be performed by licensed barbers in registered barbershops.¹² However, the board may establish rules allowing a licensed barber to perform

² Section 476.114(2), F.S.

³ See Fla. Admin. Code R. 61G3-20.002.

⁴ See s. 476.144(5), F.S.

⁵ *Supra* note 2.

⁶ Section 476.144(6), F.S.

⁷ Section 476.154, F.S., requires each barber that continues in active practice to renew their license biennially.

⁸ *Supra* note 6.

⁹ Section 455.2228, F.S.

¹⁰ Section 476.034(3), F.S.

¹¹ Section 476.184, F.S.

¹² Section 476.188(1), F.S.

barber services in a location other than a registered barbershop, such as a nursing home, hospital, or residence, when a client or resident of such a facility is unable to go to a registered barbershop due to ill health.¹³

Arrangements for the performance of such barber services in a location other than a registered barbershop must be made through a registered barbershop.¹⁴ The registered barbershop must record the name of the client and the address at which the services are to be performed in the appointment book of the barbershop, which must remain at the barbershop and made available to any investigator or inspector of the DBPR.¹⁵

Licensed barbers may perform barber services for a manufacturer trade show demonstration, for an education seminar, or in connection with the motion picture, fashion photography, theatrical, or television industries at a location other than a registered barbershop without arranging the services through a registered barbershop.¹⁶

Cosmetology in Florida

Generally, cosmetology services must be performed by a cosmetologist or a specialist in a licensed cosmetology salon. However, cosmetologists and specialists are permitted to perform hair shampooing, hair cutting, hair arranging, nail polish removal, nail filing, nail buffing, and nail cleansing in a location other than a licensed salon.¹⁷

A cosmetologist or specialist was previously prohibited from performing cosmetology services outside a salon except in limited circumstances and was required to make arrangements through a salon for services provided outside the salon, similar to the current requirements for barbers. In 2020, the law was changed to allow cosmetologists and specialists to perform a limited number of cosmetology services outside of a salon and to do so without making such arrangements through a salon.¹⁸

III. Effect of Proposed Changes:

The bill amends s. 476.188, F.S., to permit a barber to shampoo, cut, or arrange hair in a location other than a registered barber shop without arranging the barber service through a registered barbershop.

The bill takes effect July 1, 2021.

¹³ If such services are performed on employees or persons who do not reside in the facility, or any other nonqualified persons, the location must be a licensed barbershop. See Fla. Admin. Code R. 61G3-19.010(2).

¹⁴ Section 476.188(2), F.S.

¹⁵ Fla. Admin. Code R. 61G3-19.010(1).

¹⁶ Section 476.188(3), F.S.

¹⁷ Section 477.0263, F.S.

¹⁸ Chapter 2020-160, s. 37, Laws of Fla.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 476.188 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Stewart

13-00976-21

20211176__

A bill to be entitled

An act relating to barber services; amending s.
476.188, F.S.; authorizing a barber to shampoo, cut,
or arrange hair in a location other than a registered
barbershop without specified arrangements; providing
an effective date.

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

Section 1. Subsection (2) of section 476.188, Florida
Statutes, is amended to read:

476.188 Barber services to be performed in registered
barbershop; exception.—

(2) Pursuant to rules established by the board, barber
services may be performed by a licensed barber in a location
other than a registered barbershop, including, but not limited
to, a nursing home, hospital, or residence, when a client for
reasons of ill health is unable to go to a registered
barbershop. Arrangements for the performance of barber services
in a location other than a registered barbershop shall be made
only through a registered barbershop. However, a barber may
shampoo, cut, or arrange hair in a location other than a
registered barbershop without such arrangements.

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



The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 30, 2021

I respectfully request that **Senate Bill #1176**, relating to Barber Services, be placed on the:

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

The bill gives licensed barbers the ability to perform limited services outside of a brick-and-mortar barbershop. The COVID-19 pandemic has changed how consumers access many services, including personal care services, and has highlighted the need to update regulations.

A handwritten signature in cursive script that reads "Linda Stewart".

Senator Linda Stewart
Florida Senate, District 13

THE FLORIDA SENATE
APPEARANCE RECORD

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

6 April 2021

Meeting Date

1176

Bill Number (if applicable)

Topic Barber Services

Amendment Barcode (if applicable)

Name Diego Echeverri

Job Title Legislative Liaison

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Americans For Prosperity

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6/2021

Meeting Date

SB 1176

Bill Number (if applicable)

Topic BARBER SERVICES

Amendment Barcode (if applicable)

Name CHRISTIAN CAMARA

Job Title _____

Address PO Box 122

Phone 305 608 4300

Street

TALLAHASSEE FL 32302

Email _____

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing INSTITUTE FOR JUSTICE

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 1212

INTRODUCER: Senators Rodriguez and Hutson

SUBJECT: Construction Contracting Exemptions

DATE: April 2, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Kraemer	Imhof	RI	Favorable
2. Hackett	Ryon	CA	Favorable
3. Kraemer	Phelps	RC	Favorable

I. Summary:

SB 1212 exempts members of the Miccosukee Tribe of Indians of Florida (Miccosukee Tribe) and members of the Seminole Tribe of Florida (Seminole Tribe) from the contractor licensing requirements in ch. 489, F.S., when constructing a chickee. A chickee is an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other nonwood features.

The bill has no impact on state government.

The bill is effective July 1, 2021.

II. Present Situation:

Regulation of Construction Activities; Exemptions

The Legislature regulates the construction industry “in the interest of the public health, safety, and welfare,”¹ and has enacted ch. 489, F.S., to address requirements for construction contracting, electrical and alarm system contracting, and septic tank contracting.²

More than 20 categories of persons are exempt from the contractor licensing requirements of ch. 489, F.S., including but not limited to:

- Contractors in work on bridges, roads, streets, highways, or railroads, and other services defined by the board and the Florida Department of Transportation;
- Employees of licensed contractors, if acting within the scope of the contractor’s license, with that licensee’s knowledge;

¹ See s. 489.101, F.S.

² See parts I, II, and III, respectively, of ch. 489, F.S.

- Certain employees of federal, state, or local governments or districts (excluding school and university boards), under limited circumstances;
- Certain public utilities, on construction, maintenance, and development work by employees;
- Property owners, when acting as their own contractor and providing “direct, onsite supervision” of all work not performed by licensed contractors on one-family or two-family residences, farm outbuildings, or commercial buildings at a cost not exceeding \$75,000;
- Work undertaken on federal property or when federal law supersedes part I of ch. 489, F.S.;
- Work falling under the so-called handyman exemption, meaning it is of a “casual, minor, or inconsequential nature,” and the total contract price for all labor, materials, and all other items is less than \$2,500, subject to certain exceptions;
- Registered architects and engineers acting within their licensed practice, including those exempt from such licensing, but not acting as a contractor unless licensed under ch. 489, F.S.;
- Work on one-, two-, or three-family residences constructed or rehabilitated by Habitat for Humanity, International, Inc., or a local affiliate, subject to certain requirements;
- Certain disaster recovery mitigation or other organizations repairing or replacing a one-family, two-family or three-family residence impacted by a disaster, subject to certain requirements; and
- Employees of an apartment community or apartment community management company who make minor repairs to existing electric water heaters, electric heating, ventilating, and air-conditioning systems, subject to certain requirements.³

Construction Contracting

The Construction Industry Licensing Board (CILB) within the DBPR is responsible for licensing and regulating the construction industry in this state under part I of ch. 489, F.S.⁴ The CILB is divided into two divisions with separate jurisdictions:

- Division I comprises the general contractor, building contractor, and residential contractor members of the CILB. Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors.
- Division II comprises the roofing contractor, sheet metal contractor, air-conditioning contractor, mechanical contractor, pool contractor, plumbing contractor, and underground utility and excavation contractor members of the CILB. Division II has jurisdiction over the regulation of roofing contractors, sheet metal contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, and pollutant storage systems contractors.⁵

The Electrical Contractors’ Licensing Board (ECLB) within the DBPR is responsible for licensing and regulating electrical and alarm system contractors in Florida under part II of ch. 489, F.S.⁶

³ See s. 489.103, F.S., for additional exemptions.

⁴ See s. 489.107, F.S.

⁵ Section 489.105(3), F.S.

⁶ Section 489.507, F.S.

Master septic tank contractors and septic tank contractors are regulated by the Department of Health under part III of ch. 489, F.S.⁷

Construction contractors regulated under part I of ch. 489, F.S., and electrical and alarm contractors regulated under part II of ch. 489, F.S., must satisfactorily complete a licensure examination before being licensed.⁸ The CILB and ECLB may deny a license application for any person who it finds guilty of any of the grounds for discipline set forth in s. 455.227(1), F.S., or set forth in the profession's practice act.⁹

A "specialty contractor" is a contractor whose scope of practice is limited to:

- A particular construction category adopted by board rule; and
- A subset of the trade categories for contractors listed in s. 489.105(3)(a) through (p), F.S., such as roofing, air-conditioning, plumbing, etc.¹⁰

For example, specialty swimming pool contractors have limited scopes of work for the construction of pools, spas, hot tubs, and decorative or interactive water displays.¹¹ Jurisdiction is dependent on the scope of work and whether Division I or Division II has jurisdiction over such work in accordance with the applicable administrative rule.¹²

Certification and Registration of Contractors

Under current law, a "certified contractor" has met competency requirements for a particular trade category and holds a geographically unlimited certificate of competency from the DBPR which allows the contractor to contract in any jurisdiction in the state without being required to fulfill the competency requirements of other jurisdictions.¹³

The term "registered contractor" means a contractor who has registered with the DBPR as part of meeting competency requirements for a trade category in a particular jurisdiction, which limits the contractor to contracting only in the jurisdiction for which the registration is issued.¹⁴

Fee for Certification and Registration

As provided in s. 489.109, F.S., an applicant for certification as a contractor is required to pay an initial application fee not to exceed \$150, and, if an examination cost is included in the application fee, the combined amount may not exceed \$350. For an applicant for registration as a contractor, the initial application fee may not exceed \$100, and the initial registration fee and the

⁷ See ss. 489.551-489.558, F.S.

⁸ See ss. 489.113 and 489.516, F.S., respectively.

⁹ Section 455.227(2), F.S.

¹⁰ Section 489.105(3)(q), F.S.

¹¹ See Fla. Admin. Code R. 61G4-15.032 and 61G4-15.040 (2021).

¹² See Fla. Admin. Code R. 61G4-15.032 (2021).

¹³ Sections 489.105(8) and 489.113(1), F.S.

¹⁴ Sections 489.105(10) and 489.117(1)(b), F.S.

renewal fee may not exceed \$200.¹⁵ The initial application fee and the renewal fee is \$50 for an application to certify or register a business.¹⁶

Fees must be adequate to ensure the continued operation of the CILB, and must be based on DBPR's estimates of revenue required to implement part I of ch. 489, F.S., and statutory provisions regulating the construction industry.¹⁷

All certificate holders and registrants must pay a fee of \$4 to the DBPR at the time of application or renewal, to fund projects relating to the building construction industry or continuing education programs offered to building construction industry workers in Florida, to be selected by the Florida Building Commission.¹⁸

Subcontractors

In most circumstances, a contractor must subcontract all electrical, mechanical, plumbing, roofing, sheet metal, swimming pool, and air-conditioning work unless the contractor holds a state certificate or registration in the appropriate trade category.¹⁹

A subcontractor who does not have a state certificate or registration may work under the supervision of a licensed or certified contractor, if:

- The work of the subcontractor falls within the scope of the contractor's license; and
- The subcontractor is not engaged in construction work that would require specified contractor licensing (i.e., licensure as an electrical contractor,²⁰ a septic tank contractor,²¹ a sheet metal contractor, roofing contractor, Class A, B, or C air-conditioning contractor, mechanical contractor, commercial pool/spa contractor, residential pool/spa contractor, swimming pool servicing contractor, plumbing contractor, underground utility and excavation contractor, or solar contractor.²²

Licensure Exemption in s. 489.117(4)(d), F.S.

Section 489.117(4)(d), F.S., commonly referred to as the "Jim Walter" exemption, was enacted in 1993²³ and allows unlicensed persons to perform contracting services for the construction, remodeling, repair, or improvement of single-family residences and townhouses²⁴ without obtaining a local license. The person must be under the supervision of a certified or registered general, building, or residential contractor, and the work may not be work that requires licensure in the areas of roofing, sheet metal, air-conditioning, mechanical, pool/spa, plumbing, solar, or

¹⁵ Section 489.109, F.S. Any applicant who seeks certification as a contractor under part I of ch. 489, F.S., by taking a practical examination must pay as an examination fee the actual cost incurred by the DBPR in developing, preparing, administering, scoring, score reporting, and evaluating the examination, if the examination is conducted by the DBPR.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Section 489.109(3), F.S.

¹⁹ Section 489.113(3), F.S. Various exceptions for general, building, residential, and solar contractors are set forth in s. 489.113(3)(a) through (g), F.S.

²⁰ See Part II, of ch. 489, F.S., relating to Electrical and Alarm System Contracting.

²¹ See Part III of ch. 489, F.S., relating to Septic Tank Contracting.

²² Section 489.113(2), F.S.

²³ See ch. 93-154, s. 3, and ch. 93-166, s. 12, Laws of Fla. These provisions have been subsequently amended.

²⁴ The term "townhouses" was added to the exemption in 2003. See ch. 2003-257, s. 5, Laws of Fla.

underground utility and excavation.²⁵ The supervising contractor need not have a direct contract with the unlicensed person performing the contracting services.

Florida's Fifth District Court of Appeals has addressed the applicability of this exemption to a local building contractor licensing requirement in a St. Johns County ordinance.²⁶ In this case, the court found that under s. 489.117(4)(d), F.S., the county's ordinance requiring all non-certified contractors to obtain a local license conflicted with state law.²⁷

Another example of this exemption's applicability is contained in a 2001 Attorney General Opinion. In this opinion, Florida's Attorney General, Robert A. Butterworth, explained that a county may not enact an ordinance that requires local certification of drywall installers. Mr. Butterworth reasoned that, under the exemption in s. 489.117(4)(d), F.S., "the county may not require certification of persons performing drywall installation on single-family residences when such persons are working under the supervision of a certified or registered general, building, or residential contractor."²⁸ Drywall installation fits the local licensing exemption because one does not have to obtain registration or certification under s. 489.105(3)(d)-(o), F.S., to perform this aspect of construction.

The Florida Building Code

The Florida Building Code (building code) is the unified building code applicable to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, and facilities in the state.²⁹ The building code must be applied, administered, and enforced uniformly and consistently throughout the state.³⁰ The building code is adopted, updated, interpreted, and maintained by the commission, and is enforced by authorized state and local government agencies.³¹ The Florida Building Commission (commission), housed within the DBPR, adopts an updated building code every three years through review of codes published by the International Code Council and the National Fire Protection Association.³²

The Seminole Tribe of Florida

The Seminole Tribe became a federally recognized Native American tribe in 1957.³³ There are six Seminole Tribe reservations in the state, located in Big Cypress, Brighton, Ft. Pierce, Hollywood, Immokalee, and Tampa. As explained on the tribal website:

²⁵ Section 489.117(4)(d), F.S.

²⁶ See *Florida Home Builders Ass'n v. St. Johns County*, 914 So.2d 1035 (Fla. 5th DCA 2005).

²⁷ *Id.* at 1037

²⁸ See Op. Att'y. Gen. Fla. 2001-25 (2001), available at

<http://www.myfloridalegal.com/ago.nsf/opinions/4c31d4cae5f162bf85256a1e00532dac> (last visited Feb. 23, 2021).

²⁹ See s. 553.72, F.S. Part IV of ch. 553, F.S., is cited as the "Florida Building Codes Act." See s. 552.70, F.S. The Florida Building Code, 7th Edition, available at https://www.floridabuilding.org/bc/bc_default.aspx (last visited Feb. 23, 2021).

³⁰ See s. 553.72(1), F.S.

³¹ See s. 553.72(3), F.S.

³² S. 553.73(7), F.S., which requires review of the International Building Code, the International Fuel Gas Code, the International Existing Building Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are copyrighted and published by the International Code Council, and the National Electrical Code, which is copyrighted and published by the National Fire Protection Association.

³³ See Timeline, available at <https://www.seminoletribe.com/stof/history/timeline> (last visited Feb. 23, 2021).

“Chickee” is the word Seminoles use for “house.” The first Seminoles to live in North Florida are known to have constructed log cabin-type homes, some two stories tall, with sleeping quarters upstairs. The chickee style of architecture - palmetto thatch over a cypress log frame - was born during the early 1800s when Seminole Indians, pursued by U.S. troops, needed fast, disposable shelter while on the run. Though indigenous peoples in other parts of North and South America have developed similar dwellings, it is generally agreed that the Seminole Indian technique and product are far superior.

So popular, efficient and functional is the chickee that such Seminole architecture can be seen all over South Florida. The chickee structure should last about ten years and needs to be re-thatched every five years. Several Seminole Tribal members make a living building custom chickees for both commercial and private interests.

In order to apply for membership in the Seminole Tribe, a person must meet these requirements:³⁴

- Have a minimum of one-quarter Florida Seminole blood; i.e., one grandparent must have been a full-blooded Florida Seminole;
- Be able to prove in writing a direct relationship with a Florida Seminole who was listed on the 1957 Tribal Roll (the Base Roll of the Seminole Tribe); and
- Be sponsored for enrollment by a current Seminole Tribe member.

The Miccosukee Tribe of Indians of Florida

The Miccosukee Tribe was originally part of the Creek Nation.³⁵ Its members migrated to Florida before it became a state.³⁶ The Miccosukee Tribe became a federally recognized Native American tribe in 1962.³⁷

Members of the Miccosukee Tribe, in which the mother’s clan is paramount, must have at least one-half Miccosukee ancestry through their mother, who may not be enrolled in any other tribe.³⁸

Young Miccosukee Tribe members are taught to build chickees by experienced elders, and a list of expert builders is maintained by the Miccosukee Business Council, which consists of five elected members of the Miccosukee Tribe.³⁹ The council monitors the qualifications of those listed; when the tribal administration wants a chickee to be constructed, or when members of the public contact the Miccosukee Tribe about building a chickee, references are made to those on the list.⁴⁰

³⁴ Seminole Tribe of Florida, *Frequently Asked Questions*, <https://www.semtribe.com/stof/helpful-linksmain/helpful-links> (last visited on Feb. 23, 2021).

³⁵ See <https://tribe.miccosukee.com/> (last visited Feb. 23, 2021).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Email from J. Bennett, In-House General Counsel for Miccosukee Tribe of Indians of Florida, to staff (Feb. 23, 2021) (on file with the Senate Committee on Regulated Industries).

⁴⁰ *Id.*

Definition and Exemption in Building Code for Certain Chickees

Under the building code, the term “chickee” means “an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other nonwood features.”⁴¹ Chickees constructed by the Seminole Tribe or the Miccosukee Tribe are exempt from the requirements of the building code.⁴² While the commission has determined that such chickees may have nonwood items underneath them, such as aluminum or plastic chairs and tables, countertops, or food and beverages, adding elements such as sinks, electrical outlets, or other nonwood items to a chickee means the chickee is not compliant with the building code and is no longer an exempt structure.⁴³

Construction of chickees, which are not now used for housing, is now possible in a matter of hours, not days, because of new technology and equipment.⁴⁴ Nails, chainsaws and four wheelers are now used to haul heavy logs, replacing the old method of using manpower or awaiting flooding from a thunderstorm in a location where logs had been cut down, so the logs could be moved more easily.⁴⁵

Construction Contracting Issues related to Chickees

There is no exemption from the contractor licensing requirements in current law for construction of chickees by members of the Seminole Tribe or the Miccosukee Tribe. In 2013, the CILB issued its Final Order concluding members of the Miccosukee Tribe and the Seminole Tribe must be properly licensed as contractors for building chickees outside the boundaries of a reservation.⁴⁶

Various local governments require chickee builders to be licensed contractors or employees of a licensed contractors, and require permits and that the structures comply with zoning and environmental regulations, local ordinances and regulations, and Department of Health drainage requirements.⁴⁷ Some local governments require tribal members seeking to build a chickee to be

⁴¹ Section 553.73(10)(i), F.S.

⁴² *Id.*

⁴³ See Declaratory Statement in the Matter of Plaza Beach Motel, Inc., Case No. 2018-012 (Fla. Building Comm’n) (filed Apr. 20, 2018), at pp. 3-4, available at https://www.doah.state.fl.us/flaid/dpr/2018/dpr_0_04242018_020723.pdf (last visited Feb. 23, 2021) and Declaratory Statement in the Matter of Broward County Board of Rules and Appeals, Case No. 2013-031 (Fla. Building Comm’n) (filed Dec. 17, 2013), at pp. 2-3, available at https://www.doah.state.fl.us/flaid/dpr/2013/dpr_0_12302013_040040.pdf (last visited Feb. 23, 2021).

⁴⁴ See Ernie Tiger, *Chickees Provided Early Housing*, available at <https://www.seminoletribe.com/stof/culture/chickee> (last visited Feb. 23, 2021).

⁴⁵ *Id.*

⁴⁶ See Final Order in re: Petition for Declaratory Statement of City of Port St. Lucie Building Dep’t, Case No. 2013-08017, (Fla. DBPR DS 2013-091) (filed Dec. 26, 2013), available at https://www.doah.state.fl.us/flaid/dpr/2013/dpr_0_01072014_023857.pdf (last visited Feb. 23, 2021).

⁴⁷ See Bulletin #2017-001, issued by Sarasota County Building Official (Feb. 7, 2017), available at <https://www.scgov.net/Home/ShowDocument?id=33926> last visited Feb. 23, 2021); Chickee Structures Notice, issued by Charlotte County (Apr. 17, 2020), available at <https://www.charlottecountyfl.gov/departments/community-development/notices/chickee-structures.stml> (last visited Feb. 23, 2021); Article by Sara Matthis, *City Addresses Rash of Unpermitted Tiki Huts*, Keys Weekly, available at <https://keysweekly.com/42/city-addresses-rash-of-unpermitted-tiki-huts/> (last visited Feb. 23, 2021); Miami-Dade County, File Contractor Complaints, Chickee Construction Only Allowed by Licensed Contractors, available at <https://www.miamidade.gov/building/contractor-complaints.asp> (last visited

a licensed contractor or a direct employee of a licensed Division I contractor applying for the building permit.⁴⁸

III. Effect of Proposed Changes:

The bill exempts members of the Miccosukee Tribe of Indians of Florida and members of the Seminole Tribe of Florida from the contractor licensing requirements in ch. 489, F.S., when constructing a chickee that meets the definition in s. 553.73(1)(i), F.S., which states:

[T]he term “chickee” means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other nonwood features.

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:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

Feb. 23, 2021); and Miami-Dade County, Permit Exemptions, available at <https://www.miamidade.gov/permits/exemptions.asp> (last visited Feb. 23, 2021).

⁴⁸ See e.g., Bulletin #2017-001, issued by Sarasota County Building Official (Feb. 7, 2017) available at <https://www.scgov.net/Home/ShowDocument?id=33926> (last visited Feb. 23, 2021).

B. Private Sector Impact:

Members of the Miccosukee Tribe or the Seminole Tribe will be exempt from compliance with contractor licensing requirements set forth in Florida law, when constructing chickees that meet the definition in the building code.

C. Government Sector Impact:

Fees collected by local governments for registration of contractors in their jurisdictions may be impacted by the exemption created under the bill for members of the Miccosukee Tribe or the Seminole Tribe, when constructing chickees that meet the definition in the building code.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 489.103 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

By Senator Rodriguez

39-01675-21

20211212__

A bill to be entitled

An act relating to construction contracting exemptions; amending s. 489.103, F.S.; exempting a member of the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida from certain construction contracting regulations when constructing specified structures; providing an effective date.

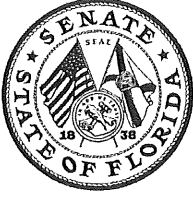
Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (24) is added to section 489.103, Florida Statutes, to read:

489.103 Exemptions.—This part does not apply to:

(24) A member of the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida when constructing chickees as defined in s. 553.73(10)(i).

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



The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 24, 2021

I respectfully request that **Senate Bill #1212**, relating to Construction Contracting Exemptions, be placed on the:

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

The intent of this bill is to exempt a member of the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida from certain construction contracting regulations when constructing specified structures (Chickees), etc...

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

Senator Ana Maria Rodriguez
Florida Senate, District 39

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 Rules

BILL: SB 1634

INTRODUCER: Senators Brodeur and Ausley

SUBJECT: Public Records/Aquaculture/Department of Agriculture and Consumer Services

DATE: April 2, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Becker</u>	<u>Becker</u>	<u>AG</u>	Favorable
2. <u>Candelaria</u>	<u>McVane</u>	<u>GO</u>	Favorable
3. <u>Becker</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 1634 makes confidential and exempt from public inspection and copying requirements certain aquaculture records held by the Department of Agriculture and Consumer Service. The confidential and exempt records include shellfish receiving and production records generated by shellfish processing facilities, audit records and supporting documentation required for submerged land leases, and aquaculture production records and receipts generated by aquaculture facilities. A record may be disclosed to another governmental entity in the performance of its duties and responsibilities. This exemption applies to aquaculture records held before, on, or after July 1, 2021.

This exemption is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution.

Because the bill creates a new public records exemption and expands other public records exemptions, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill takes effect July 1, 2021.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 89 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption. The Act requires the Legislature to consider the following specific questions in such a review:²⁴

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Aquaculture Records Held by the Department of Agriculture and Consumer Services

The Department of Agriculture and Consumer Services (department) is Florida's lead aquaculture agency. The department coordinates and assists in the development of aquaculture and regulates aquafarms to protect and conserve Florida's natural resources. There are an estimated 1,500 species or varieties of fish, plants, mollusks, crustaceans, and reptiles grown in the state.²⁷

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S.

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ See <https://www.fdacs.gov/Divisions-Offices/Aquaculture> (Last visited March 10, 2021).

Currently, aquaculture producers are required to provide the department with receiving logs, production volume records, inventories, and receipts and invoices related to their aquaculture facilities to ensure compliance with the terms and conditions of sovereign submerged land lease agreements and aquaculture best management practices. These records include information, such as quantity and price of seed stock purchased and harvest times which, if released, could be detrimental to their businesses. Information regarding products, harvest times, and locations make aquaculture businesses susceptible to theft, particularly with respect to sovereign submerged land leases in remote locations. Because these required records are public, potential aquaculture producers may make the decision not to operate in this state. This makes the department's regulating and monitoring responsibilities more difficult and hinders its efforts to continue developing Florida's aquaculture industry.

The department has indicated that there is a significant precedent for the exemption of private sales and production information for agriculture and fisheries products. The aquaculture information which is proposed to become exempt under this bill was, in fact, exempt under s. 397.362(6), F.S., until 1998 when the Florida Game and Freshwater Fish Commission was reorganized, including its aquaculture regulatory authority. After the formation of the Florida Fish and Wildlife Conservation Commission (FWC), authority for the regulation of marine life was redistributed between the department, the FWC, and the Department of Environmental Protection. The public records exemption was transferred along with other statutory authority to the FWC but was not specifically added for the records held by the department.²⁸

III. Effect of Proposed Changes:

Section 1 creates s. 597.0042, F.S., to make certain aquaculture records required by the department confidential and exempt from public inspection and copying requirements. The confidential and exempt records include shellfish receiving and production records generated by shellfish processing facilities, audit records and supporting documentation required for submerged land leases, and aquaculture production records and receipts generated by aquaculture facilities. This exemption applies to aquaculture records held before, on, or after July 1, 2021.

This section is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal by the Legislature.

Section 2 provides legislative intent that it is a public necessity that certain production records related to aquaculture and shellfish facilities held by the department are exempt from Florida's public records laws. Without this exemption, the department may be hindered from obtaining valuable and accurate information. With this exemption, the department can protect the aquaculture industry and its facilities while maintaining compliance with federal partners and documenting the compliance of aquaculture producers with statutory requirements.

Section 3 provides that the bill takes effect July 1, 2021.

²⁸ See Department of Agriculture and Consumer Services, Bill Analysis for SB 1634 (March 4, 2021) (on file with the Senate Committee on Agriculture).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for the private sales and production information for aquaculture businesses, thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption. The bill asserts that, in the absence of the exemption, the department may be hindered from obtaining valuable and accurate information due to the nature of the industry and its inability to maintain confidentiality of information that is required by Florida law. With this exemption, the department can protect this industry and its facilities while maintaining compliance with federal partners and documenting the compliance of aquaculture producers with statutory requirements.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect private aquaculture business information, to make facilities theft more difficult, and to enable the department to more efficiently monitor the industry. This bill exempts the following from the public records requirements:

- Shellfish receiving and production records generated by shellfish processing facilities;
- Audit records and supporting documentation required for submerged land leases; and
- Aquaculture production records and receipts generated by certified aquaculture facilities.

The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will be subject to the cost associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

The department will incur minor costs relating to the redaction of exempt records.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 597.0042 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Brodeur

9-01429A-21

20211634__

A bill to be entitled

An act relating to public records; creating s. 597.0042, F.S.; providing a public records exemption for certain aquaculture records held by the Department of Agriculture and Consumer Services; providing that the records may be disclosed to other governmental entities under certain circumstances; providing for retroactive application of the exemption; providing for future legislative review and repeal under the Open Government Sunset Review Act; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 597.0042, Florida Statutes, is created to read:

597.0042 Public records exemptions; aquaculture records.—

(1) The following records held by the department are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Shellfish receiving and production records generated by shellfish processing facilities licensed pursuant to s. 597.020.

(b) Audit records and supporting documentation required for submerged land leases issued in accordance with chapter 253 or former chapter 370.

(c) Aquaculture production records and receipts generated by aquaculture facilities certified pursuant to s. 597.004.

(2) A record made confidential and exempt under subsection

Page 1 of 2

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(1) may be disclosed to another governmental entity in the performance of its duties and responsibilities and may be disclosed pursuant to s. 474.2165.

(3) The exemption from public records requirements under subsection (1) applies to aquaculture records held before, on, or after July 1, 2021.

(4) This section 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. The Legislature finds that it is a public necessity that certain production records related to aquaculture and shellfish facilities held by the Department of Agriculture and Consumer Services be made confidential and exempt from disclosure under s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. In the absence of the exemption, the department may be hindered from obtaining valuable and accurate information due to the nature of the industry and its inability to maintain confidentiality of information that is required by Florida law. With this exemption, the department can protect this industry and its facilities while maintaining compliance with federal partners and documenting the compliance of aquaculture producers with statutory requirements.

Section 3. This act shall take effect July 1, 2021.

Page 2 of 2

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The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 31, 2021

I respectfully request that **Senate Bill 1634**, relating to **Public Records/Aquaculture/Department of Agriculture and Consumer Services**, be placed on the:

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

A handwritten signature in black ink that reads "Jason Brodeur". The signature is fluid and cursive, with a long horizontal stroke at the end.

Senator Jason Brodeur
Florida Senate, District 9

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

Duplicate

CS

THE FLORIDA SENATE
APPEARANCE RECORD

April 6, 2021

Meeting Date

1634

Bill Number (if applicable)

Topic Public Records/Aquaculture/Department of Agriculture and Consumer Services

Amendment Barcode (if applicable)

Name Emily Duda Buckley

Job Title Legislative Affairs Director

Address 400 S. Monroe Street

Phone 850-617-7700

Street

Tallahassee

FL

32399

Email emily.buckley@fdacs.gov

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FI Department of Agriculture and Consumer Services

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 1734

INTRODUCER: Rules Committee, Commerce and Tourism Committee, and Senator Bradley

SUBJECT: Consumer Data Privacy

DATE: April 7, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	Fav/CS
2. <u>Harmsen</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1734 creates the Florida Privacy Protection Act (Act) to grant Florida's consumers the ability to share their personal information as they wish, in a way that is safe and that they understand and control.

The Act generally applies to businesses that collect Florida consumers' personal information, and that either earn 50 percent of their revenue from the sale or sharing of personal information; or that buy, sell, or share the personal information of 100,000 or more consumers in a year.

The Act grants consumers the right to:

- Opt-out of the sale of their personal information;
- Know what personal information a business has collected about them;
- Delete their personal information;
- Correct their personal information;
- More stringently control the sale of their minor child's personal information.

Businesses subject to the Act must give consumers notice of their privacy rights, that their personal information may be sold and collected, and that the consumer may opt-out of the sale of his or her personal information. A consumer's opt-out would prevent the sale of his or her data to third-party data brokers, data profiling procedures, and targeted advertisements based on the consumer's activity at more than one website. Additionally, the Act requires covered businesses to implement data security measures to ensure the continued privacy of the personal information they hold.

The Florida Department of Legal Affairs has enforcement authority pursuant to the bill.

The bill takes effect on July 1, 2022.

II. Present Situation:

Americans are concerned about how much of their data is being collected, and many feel that their information is less secure than it used to be.¹ Further, 84 percent of Americans say they feel very little or no control over the data that is collected about them by both the government and private companies.² Despite this concern—very few read provided privacy policies in full, if at all.³

Consumer internet connectivity has increased in recent years, allowing consumer data to be collected not only from a personal computer, but also a smartwatch, phone, smart speaker, and even a home appliance.⁴ It is expected that the value of such connected devices and “the ecosystem in which they operate” will exceed four trillion dollars per year by 2025.⁵

Consumer data is most commonly tracked through the placement of ‘cookies’—files that a website places in the user’s device—or more sophisticated “fingerprinting” techniques.⁶ These technologies allow websites to, e.g., store a password that a consumer previously entered, but also allow websites to follow the consumer’s use patterns at other websites and to tailor their activities and advertisements to the consumer as a result of information it gleans.⁷ Certain commercial businesses collect this information and create a consumer profile that describes possible interests or characteristics, and ultimately target ads for their products at the consumer.⁸

¹ Brooke Auxier and Lee Rainie, PEW RESEARCH CENTER, *Key Takeaways on Americans’ Views About Privacy, Surveillance and Data-Sharing* (Nov. 15, 2019), <https://www.pewresearch.org/fact-tank/2019/11/15/key-takeaways-on-americans-views-about-privacy-surveillance-and-data-sharing/> (last visited Apr. 7, 2021). See also, Brooke Auxier, Lee Rainie, Monica Anderson, Andrew Perrin, Madhu Kumar, and Erica Turner, PEW RESEARCH CENTER, *Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over their Personal Information* at 2 (Nov. 15, 2019), available at https://www.pewresearch.org/internet/wp-content/uploads/sites/9/2019/11/Pew-Research-Center_PI_2019.11.15_Privacy_FINAL.pdf (last visited Apr. 7, 2021).

² Auxier, et. al, *Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over their Personal Information* at 7.

³ *Id.* at 5.

⁴ See, e.g., Oracle, *What is IoT [Internet of Things]?*, <https://www.oracle.com/internet-of-things/what-is-iot/> (last visited Apr. 7, 2021). Stephen Mulligan, Wilson Freeman, Chris Linebaugh, Congressional Research Service, *Data Protection Law: An Overview* at 1 (Mar. 25, 2019), <https://crsreports.congress.gov/product/pdf/R/R45631> (last visited Apr. 7, 2021).

⁵ Commissioner Rebecca K. Slaughter, Federal Trade Commission, *Raising the Standard: Bringing Security and Transparency to the Internet of Things?* (July 26, 2018), https://www.ftc.gov/system/files/documents/public_statements/1395854/slaughter_-_raising_the_standard_-_bringing_security_and_transparency_to_the_internet_of_things_7-26.pdf (last visited Apr. 7, 2021).

⁶ NPR.ORG, *Online Trackers Follow our Digital Shadow by ‘Fingerprinting’ Browsers, Devices* (Sep. 26, 2016), <https://www.npr.org/sections/alltechconsidered/2016/09/26/495502526/online-trackers-follow-our-digital-shadow-by-fingerprinting-browsers-devices> (last visited Apr. 7, 2021).

⁷ Wharton School of Business, University of Pennsylvania, *Your Data is Shared and Sold... What’s Being Done About It?* (Oct. 28, 2019), <https://knowledge.wharton.upenn.edu/article/data-shared-sold-whats-done/> (last visited Apr. 7, 2021).

⁸ Max Freedman, BUSINESS NEWS DAILY, *How Businesses are Collecting Data (and What They’re Doing With It)* (Jun. 17, 2020), <https://www.businessnewsdaily.com/10625-businesses-collecting-data.html> (last visited Apr. 7, 2021).

Other companies—data brokers—collect and sell or share consumer data as their main business operation.⁹

Policy regarding consumer data has two prongs: privacy and security. Data privacy concerns how companies collect, use, and disseminate personal information; data security concerns how companies protect the personal information they hold from unauthorized access or use and respond to such breaches.¹⁰ Federal and state governments have addressed data privacy and security to a certain extent, largely by targeting specific industries (e.g., healthcare and financial institutions) or types of data (such as children’s personal information).¹¹ States have recently begun to legislate more comprehensively to protect data privacy.¹²

Florida Information Protection Act (FIPA)¹³

FIPA is a data security measure that requires governmental entities, specific business entities, and any third-party agent that holds or processes personal information on behalf of these entities to take reasonable measures to protect a consumer’s personal information. Additionally, FIPA requires covered business entities¹⁴ that are subject to data breaches to attempt to remediate the breach by notification to affected consumers in Florida, and in cases where more than 500 individual’s information was breached—by additional notification to the Department of Legal Affairs (DLA).¹⁵ If the breach affected more than 1,000 individuals in Florida, the entity must also notify credit reporting agencies, with certain exceptions.¹⁶

FIPA defines “personal information” as:

- online account information, such as security questions and answers, email addresses, and passwords; and
- an individual’s first name or first initial and last name, in combination with any one or more of the following information regarding him or her:
 - A social security number;
 - A driver license or similar identity verification number issued on a government document;

⁹ Lois Beckett, PROPUBLICA, *Everything We Know About What Data Brokers Know About You* (June 13, 2014), <https://www.propublica.org/article/everything-we-know-about-what-data-brokers-know-about-you> (last visited Apr. 7, 2021).

¹⁰ See, e.g., Andrew Burt and Dan Geer, *Data Protection for the Disoriented, From Policy to Practice* 9 (2018), available at <https://www.lawfareblog.com/flat-light-data-protection-disoriented-policy-practice> (last visited Apr. 7, 2021).

¹¹ Stephen Mulligan, Wilson Freeman, Chris Linebaugh, Congressional Research Service, *Data Protection Law: An Overview* at 7-8 (Mar. 25, 2019), <https://crsreports.congress.gov/product/pdf/R/R45631> (last visited Apr. 7, 2021).

¹² NCSL, *2020 Consumer Data Privacy Legislation* (Jan. 17, 2020), <https://www.ncsl.org/research/telecommunications-and-information-technology/2020-consumer-data-privacy-legislation637290470.aspx> (last visited Apr. 7, 2021).

¹³ Section 501.171, F.S.; Chapter 2014-189, Laws of Fla. (FIPA expanded and updated Florida’s data breach disclosure laws contained in s. 817.5681, F.S. (2013), which was adopted in 2005 and repealed in 2014).

¹⁴ A “covered entity” is a sole proprietorship, partnership, corporation, trust, estate, cooperative, association, or other commercial entity that acquires, maintains, stores, or uses personal information. Section 501.171(1)(b), F.S.

¹⁵ Florida Office of the Attorney General, *How to Protect Yourself: Data Security*, <http://myfloridalegal.com/pages.nsf/Main/53D4216591361BCD85257F77004BE16C> (last visited Apr. 7, 2021). Section 501.171(3)-(4), F.S.

¹⁶ Section 501.171(3)-(6), F.S.

- A financial account number or credit or debit card number, in combination with any required security code, access code, or password that is necessary to permit access to an individual's financial account; or
- Medical history information or health insurance identification numbers.¹⁷

Personal information does not include information:

- About an individual that a federal, state, or local governmental entity has made publicly available; or
- That is encrypted, secured, or modified to remove elements that personally identify an individual or that otherwise renders the information unusable.¹⁸

FIPA does not provide a private cause of action, but authorizes the DLA to file charges against covered entities under Florida's Unfair and Deceptive Trade Practices Act (FDUTPA).¹⁹

In addition to the remedies provided for under FDUTPA, a covered entity that fails to notify DLA, or an individual whose personal information was accessed, of the data breach is liable for a civil penalty of \$1,000 per day for the first 30 days of any violation; \$50,000 for each subsequent 30-day period of violation; and up to \$500,000 for any violation that continues more than 180 days. These civil penalties apply per breach, not per individual affected by the breach.

Federal Privacy Regulations

Gramm-Leach Bliley Act (GLBA)²⁰

The GLBA governs financial institutions' use and protection of nonpublic personal information (NPI).²¹ A financial institution is any institution that engages in financial activities, such as banks, real estate appraisers and title companies, consumer-financing companies, insurance underwriters and agents, wire transfer agencies, check cashing stores, and mortgage brokers.²²

A financial institution cannot share (1) NPI with non-affiliated third parties unless they notify the consumer of their intent to do so and provide a chance to opt-out; and (2) a consumer's account or credit card numbers with third parties for direct marketing. The financial institution must also send an annual notice to the consumer that clearly and conspicuously describes the institution's privacy policies and practices.²³

¹⁷ Section 501.171(1)(g)1., F.S.; OAG *supra* note 15.

¹⁸ Section 501.171(1)(g)2., F.S.

¹⁹ Section 501.171(9), (10), F.S.; OAG *supra* note 15.

²⁰ 15 U.S.C. §§ 6801-6809. *See generally*, Stephen Mulligan, Wilson Freeman, Chris Linebaugh, Congressional Research Service, *Data Protection Law: An Overview* pp. 8-10 (Mar. 25, 2019), <https://crsreports.congress.gov/product/pdf/R/R45631> (last visited Apr. 7, 2021).

²¹ The GLBA defines "nonpublic personal information" as "personally identifiable information" that is not publicly available and is either provided by the consumer to a financial institution, resulting from any transaction with the consumer or any service performed for the consumer, or otherwise obtained by the financial institution. 15 U.S.C. § 6809(9).

²² Federal Trade Commission, *Financial Institutions and Customer Information: Complying with the Safeguards Rule: Who Must Comply?*, <https://www.ftc.gov/tips-advice/business-center/guidance/financial-institutions-customer-information-complying> (last visited Apr. 7, 2021).

²³ The notice must specifically include the categories of NPI the financial institution collects and discloses, the types of third parties with which it shares NPI, and how it protects consumers' NPI.

The financial institution must also ensure the security and confidentiality of a customer's (which requires an ongoing relationship with the financial institution) NPI by establishing concrete security policies, by, e.g., designating an information security program coordinator and implementing a risk assessment process.²⁴

The Consumer Financial Protection Bureau, Federal Trade Commission, and federal banking agencies share civil enforcement authority of the GLBA. Certain civil remedies and criminal liabilities are available for violations of the data security and protection provisions of the GLBA, but there is no private cause of action.

Health Insurance Portability and Accountability Act (HIPPA)²⁵ and its Related Rules

HIPPA requires federal agencies to create national standards to protect sensitive patient health information from disclosure without the patient's consent or knowledge. HIPPA's two pertinent implementing rules are the Privacy Rule and the Security Rule.²⁶

The Privacy Rule addresses the use and disclosure of individual's protected health information (PHI) by covered entities.^{27, 28} PHI is information, including demographic data, that can be used to identify the individual, and that relates to the individual's:

- Past, present, or future physical or mental health or physical condition;
- Health care; or
- Payment for past, present, or future health care.

A common example of PHI is a patient's name, address, birth date, or social security number. However, PHI does not include de-identified health information or employment-related records.

The Privacy Rule protects PHI that is held or transmitted by a covered entity or its business associate by preventing covered entities from disclosing PHI without the patient's consent or knowledge unless it is being used or shared for treatment, payment, or healthcare operations or for another exempt purpose.

These covered entities must prominently post an electronic notice and give notice upon a specific request to patients regarding the manners in which they use and disclose PHI. A covered entity must also provide an accounting of disclosures it has made of a patient's PHI upon his or her request as well as a copy of his or her PHI.

The Security Rule applies to the subset of identifiable health information that a covered entity creates, receives, maintains, or transmits in electronic form called "electronic protected health

²⁴ See, 16 C.F.R. § 314.4

²⁵ 42 U.S.C. § 1320.

²⁶ See generally, Stephen Mulligan, Wilson Freeman, Chris Linebaugh, Congressional Research Service, *Data Protection Law: An Overview* pp. 10-12 (Mar. 25, 2019), <https://crsreports.congress.gov/product/pdf/R/R45631> (last visited Apr. 7, 2021).

²⁷ 45 C.F.R. §160 and 164. See also, Department of Health and Human Services, *Summary of the HIPPA Privacy Rule*, (Jul. 26, 2013) <https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html> (last visited Apr. 7, 2021).

²⁸ A covered entity is a health plan, health care clearinghouse, health care provider who transmits health information in electronic form, and these entities' business associates.

information” (e-PHI).²⁹ The Security Rule does not apply to PHI that is transmitted orally or in writing. A covered entity must comply with the Security Rule by:

- Ensuring the confidentiality, integrity, and availability of all e-PHI;
- Detecting and safeguarding against anticipated threats to the security of the information;
- Protecting against anticipated impermissible uses or disclosures; and
- Certifying compliance by their workforce.

The Department of Health and Human Services may institute a civil enforcement under HIPPA and may seek civil penalties. The Department of Justice may institute criminal proceedings against a violator who knowingly obtained or disclosed PHI. There is no private cause of action under HIPPA.

Federal Policy for the Protection of Human Subjects (“Common Rule”)

The Common Rule is promulgated by the U.S. Food and Drug Administration (FDA) and governs the ethical conduct of research involving human subjects.³⁰ Twenty federal agencies and departments are party to this rule. The Common Rule mandates that researchers protect the privacy of subjects and maintain confidentiality of human subject data, among other requirements.³¹

The FDA is a member of the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use, which brings together the regulatory authorities and the pharmaceutical industry to develop guidelines for pharmaceutical trials.³²

Fair Credit Reporting Act (FCRA)³³

The FCRA promotes the accuracy, fairness, and privacy of information that consumer reporting agencies and their related entities collect.³⁴ The FCRA governs the acts of credit reporting agencies (CRAs), entities that furnish information to CRAs (furnishers), and individuals who use credit reports issued by CRAs. Specifically, CRAs and their furnishers must adopt methods to ensure the information they collect and report is accurate.

Individuals can review the information a CRA has collected on them to ensure that it is accurate, and may dispute its accuracy—which triggers a CRA’s and furnisher’s duty to reinvestigate the information. Individuals may also request to review the information a CRA has in his or her file, the sources of the information, and the identity of those to whom the information was disclosed.

²⁹ 45 C.F.R. §164.302-318.

³⁰ 21 C.F.R. §§ 50, 60.

³¹ See generally, Health and Human Services, *Federal Policy for the Protection of Human Subjects* (‘Common Rule’) (Mar. 18, 2016), <https://www.hhs.gov/ohrp/regulations-and-policy/regulations/common-rule/index.html> (last visited Apr. 7, 2021).

³² International Council for Harmonisation, <https://www.ich.org/> (last visited Apr. 6, 2021).

³³ 15 U.S.C. §1681.

³⁴ Consumer Finance Bureau, *A Summary of Your Rights Under the Fair Credit Reporting Act* (Sept. 18, 2018), 12 CFR 1022, available at <https://www.consumer.ftc.gov/articles/pdf-0096-fair-credit-reporting-act.pdf> (last visited Apr. 7, 2021). See also, Federal Trade Commission, *Fair Credit Reporting Act*, <https://www.ftc.gov/enforcement/statutes/fair-credit-reporting-act> (last visited Apr. 7, 2021).

A CRA cannot provide information in a consumer report to anyone who does not have a specified purpose in the FCRA.³⁵

The FTC and Consumer Finance Protection Bureau share civil enforcement authority of the FCRA. A person who willfully obtains consumer information from a CRA under false pretenses is subject to criminal prosecution. An individual may also pursue a private right of action if he or she was injured by willful or negligent actions.³⁶

Children's Online Privacy Protection Act (COPPA)³⁷

COPPA and its related rules regulate websites' collection and use of children's information. The operator of a website or online service that is directed to children, or that has actual knowledge that it collects children's personal information (covered entities), must comply with requirements regarding data collection and use, privacy policy notifications, and data security.

COPPA defines personal information as individually identifiable information about an individual that is collected online, including:

- A first and last name;
- A home or other physical address, e-mail address, telephone number, or any other identifier that the FCC determines could permit one to contact someone physically or online, such as a screen name;
- A social security number;
- A persistent identifier that can be used to recognize a user over time and across different websites;
- A photograph, video, or audio file that contains a child's image or voice;
- A geolocation information that is sufficient to identify the user's location; or
- Information concerning the child or parents that the operator collects from the child and combines with any other identifier described above.

A covered entity may not collect a child's (individual under the age of 13) personal information without the prior, verifiable consent of his or her parent.³⁸

COPPA further requires covered entities to:³⁹

- Give parents direct notice of their privacy policies, including a description of their data collection and sharing practices;
- Post a clear link to their privacy policies on their home page and at each area of their website where they collect personal information from children;

³⁵ Permissible purposes include employment, insurance underwriting that involves the consumer, evaluating the consumer's eligibility for licensure or other governmental benefit that considers the applicants financial responsibility or status, or a legitimate business need. 15 U.S.C. § 1681b(a).

³⁶ An individual may record actual damages, attorney's fees, litigation costs, and in the case of willful violations—statutory damages ranging from \$100 to \$1,000 and punitive costs as the court deems appropriate. 15 U.S.C. § 1681n(a).

³⁷ 16 C.F.R. pt. 312.

³⁸ 15 U.S.C. §§ 6502(a)-(b).

³⁹ See, Federal Trade Commission, *General Questions About the COPPA Rule: What is the Children's Online Privacy Protection Rule?*, <https://www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions-0> (last visited Apr. 7, 2021).

- Institute procedures to protect the personal information that they hold;
- Ensure that any third party with which they share collected personal information implements the same protection procedures; and
- Delete children's personal information after the purpose for its retention has been fulfilled.

Violations of COPPA are deemed an unfair or deceptive act or practice and are therefore prosecuted by the FTC. COPPA also authorizes state attorneys general to enforce violations that affect residents of their states. There is no criminal prosecution or private right of action provided for under COPPA.⁴⁰

Driver's Privacy Protection Act (DPPA)⁴¹

The DPPA prohibits state Departments of Motor Vehicle (DMVs) from releasing an individual's personal information obtained by the DMV in connection with a motor vehicle record, subject to certain exceptions, such as a legitimate government need. Additionally, the DPPA requires DMVs to obtain an individual's consent to enable the sale or release of personal motor vehicle record to a third-party marketer.

Violations of the DPPA are subject to criminal fine. Additionally, a private individual affected by the improper disclosure or use of his or her personal information may bring a private civil action against the violator.⁴²

Family Educational Rights and Privacy Act (FERPA)⁴³

FERPA protects the privacy of student's education records. The law applies to any school that receives applicable funds from the U.S. Department of Education. FERPA grants parents certain rights respecting their child's education records, and this privacy right transfers to the student when he or she reaches age 18 or attends a post-secondary school.

Schools may disclose, without consent, directory information, such as a student's name, address, telephone number, birthday, place of birth, honors and awards, and dates of attendance. However, schools must disclose and allow parents and students to opt out of the disclosure of their directory information.

Schools must give an annual notice about rights granted by FERPA to affected parties.⁴⁴

⁴⁰ Federal Trade Commission, *General Questions About the COPPA Rule: COPPA Enforcement*, <https://www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions-0> (last visited Apr. 7, 2021).

⁴¹ 18 U.S.C. §2721.

⁴² 18 U.S.C. § 2724. *See generally*, Electronic Privacy Information Center, *The Drivers Privacy Protection Act (DPPA) and the Privacy of Your State Motor Vehicle Record*, <https://epic.org/privacy/drivers/> (last visited Apr. 7, 2021).

⁴³ 20 U.S.C. §1232(g); 34 C.F.R. § 99.

⁴⁴ U.S. Department of Education, *Family Educational Rights and Privacy Act (FERPA)*, (Dec. 15, 2020) <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html> (last visited Apr. 7, 2021).

Federal Trade Commission Act (FTC Act)

The FTC protects consumer data privacy by acting under Section 5 of the FTC Act, which bars unfair and deceptive acts and practices that affect commerce.⁴⁵ Specifically, the FTC prosecutes companies that act unfairly or deceptively when they gather, use, or disclose personal information in a manner that contradicts their posted privacy policy or other statements, or fail to implement reasonable data security safeguards.⁴⁶

For example, the FTC prosecuted both Sears and Upromise for drafting misleading privacy policies that did not fully disclose the extent to which a consumer's online browsing would be tracked.⁴⁷

The FTC generally cannot seek civil penalties for violations of the FTC Act, but may assess civil monetary penalties for repeated offenses.⁴⁸ There is no private right of action granted under the FTC Act.

General Data Protection Regulation (GDPR)—European Union

The GDPR protects individual personal data and restricts entities' use of personal data, especially those that exercise overall control over the purpose and means of processing personal data (controllers) or that process data on behalf of, or at the instruction of controllers (processors).⁴⁹ A controller or processor is required to comply with the GDPR if it has activity in the European Union—even a minimal one, and regardless of where the data processing occurs.⁵⁰

Personal data is defined as any information that relates to an identified or identifiable person, and can include names, identification numbers, location data, cookies, and any other information through which an individual can be directly or indirectly identified.⁵¹ A processor and controller must receive express consent from an individual before they can collect or process his or her

⁴⁵ 15 U.S.C. § 1681. Federal Trade Commission, Privacy and Security Enforcement, <https://www.ftc.gov/news-events/media-resources/protecting-consumer-privacy/privacy-security-enforcement> (last visited Apr. 7, 2021).

⁴⁶ Stephen Mulligan, Wilson Freeman, Chris Linebaugh, CONGRESSIONAL RESEARCH SERVICE, *Data Protection Law: An Overview* p. 30-35 (Mar. 25, 2019), <https://crsreports.congress.gov/product/pdf/R/R45631> (last visited Apr. 7, 2021).

⁴⁷ See, e.g., Federal Trade Commission, Membership Reward Service Upromise Penalized for Violating FTC Order (Mar. 17, 2017) Stephen Mulligan, Wilson Freeman, Chris Linebaugh, Congressional Research Service, *Data Protection Law: An Overview* p. 42 (Mar. 25, 2019), <https://crsreports.congress.gov/product/pdf/R/R45631> (last visited Apr. 7, 2021); and Complaint In the Matter of Sears Holdings Mgmt Co., No. C-4264 (F.T.C. Aug. 31, 2009).

⁴⁸ Federal Trade Commission, FTC's Use of Its Authorities to Protect Consumer Privacy and Security at 4 (2020), available at <https://www.ftc.gov/system/files/documents/reports/reports-response-senate-appropriations-committee-report-116-111-ftcs-use-its-authorities-resources/p065404reportprivacydatasecurity.pdf> (last visited Apr. 7, 2021).

⁴⁹ See generally, Stephen Mulligan, Wilson Freeman, Chris Linebaugh, CONGRESSIONAL RESEARCH SERVICE, *Data Protection Law: An Overview* p. 42 (Mar. 25, 2019), <https://crsreports.congress.gov/product/pdf/R/R45631> (last visited Apr. 7, 2021).

⁵⁰ GDPR, art. 3.

⁵¹ GDPR, art. 4(1). See, U.K. Information Commissioner's Office, *Guide to General Data Protection Regulation: What is Personal Data?*, <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/key-definitions/what-is-personal-data/> (last visited Apr. 7, 2021).

personal data. The language must give a clear choice that is not based on an overbroad or overly complex question.⁵²

The GDPR requires entities subject to the GDPR to provide individuals with a report of their data that is processed, where it is processed, why it is being processed.⁵³ This report must be provided to the individual within one month of his or her request.⁵⁴ If an individual makes a request that an entity correct or delete his or her personal data held by an entity, the entity must do so.

State Data Privacy Regulations

Illinois Biometric Information Privacy Act

In 2008, Illinois became the first state to specifically regulate biometric data with the passage of the Biometric Information Privacy Act (BIPA). BIPA puts in place safeguards and procedures that relate to the retention, collection, disclosure, and destruction of biometric information and specifically protects the biometric information of those in Illinois.

BIPA defines biometric data as a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry.

Under BIPA, a private entity:⁵⁵

- That possesses biometric data must have a written policy that establishes a retention schedule and guidelines for permanent destruction of such data;
- Cannot collect, capture, purchase, receive through trade, or otherwise obtain biometric data unless it receives an informed release from the subject.;
- Cannot profit from a person's biometric data;
- Cannot disseminate a person's biometric data unless the subject consents or provides authorization, or the entity is required by law or a valid warrant or subpoena; and
- Must store, transmit, and protect biometric data with a reasonable standard of care and in a manner as or more protective as other confidential and sensitive information.

BIPA provides a private cause of action, with relief including liquidated damages, ranging from \$1,000 to \$5,000 or actual damages (whichever is greater), attorney's fees and costs, and other relief deemed appropriate by a court.⁵⁶

The Illinois Supreme Court found that an individual need not allege an actual injury or adverse effect, beyond violation of their rights under BIPA, to qualify as an aggrieved party. Therefore, anyone whose biometric data is affected by a violation of BIPA may seek liquidated damages or

⁵² U.K. Information Commissioner's Office, *Guide to General Data Protection Regulation: Consent*, <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/consent/> (last visited Apr. 7, 2021).

⁵³ Mark Kaelin, TECHREPUBLIC, *GDPR: A Cheat Sheet* (May 23, 2019), <https://www.techrepublic.com/article/the-eu-general-data-protection-regulation-gdpr-the-smart-persons-guide/> (last visited Apr. 7, 2021).

⁵⁴ GDPR, arts. 12(3), 15.

⁵⁵ 740 Ill. Comp. Stat. 14/10, 14/15 (2008).

⁵⁶ 740 Ill. Comp. Stat. 14/20 (2008).

injunctive relief under BIPA.⁵⁷ Court documents also tend to support the notion that an individual in Illinois has a valid cause of action if their biometric data is taken without consent by a private entity, including out-of-state entities, but it is subject to a finding of fact.⁵⁸

California Consumer Privacy Act (CCPA) and California Privacy Rights Act (CPRA)

The CCPA defines personal information as that which identifies, relates to, describes, or is capable of being associated with or could reasonably be linked, directly or indirectly, with a particular consumer or household.⁵⁹ The CCPA grants consumers greater control over their personal information by, among other provisions, creating the following consumer rights, to:

- Know about the personal information that a business collects, specifically about the consumer, and how it is used and shared;
- Delete collected personal information with some exceptions;
- Opt-out of the *sale* of personal information; and
- Be treated equally by covered businesses, whether or not an individual has exercised a right granted by the CCPA.

Additionally, the CCPA requires business to give consumers certain notices that explain their privacy practices and provide certain mechanisms to allow consumers to opt-out or exercise other rights regarding their personal information.

The CCPA applies to for-profit businesses that do business in California and that meet any of the following requirements:

- Have a gross annual revenue of over \$25 million;
- Buy, receive, or sell the personal information of 50,000 or more California residents, households, or devices; or
- Derive 50 percent or more of their annual revenue from selling California residents' personal information.

The CPRA, which was approved by voters in a 2020 statewide ballot measure and takes effect on January 1, 2023, amends and expands upon the CCPA.

The CPRA broadens consumers' rights by allowing them to:

- Prevent businesses from *sharing* their personal information (CCPA prevents businesses from selling it);
- Correct their inaccurate personal information; and
- Limit a business' use of their sensitive personal information, which includes information such as a consumer's geolocation, race, ethnicity, religion, genetic data, private communications, sexual orientation, and specific health information;

The CPRA redefines businesses subject to the law to include those that buy, sell, or share the personal information of 100,000 or more consumers or households; this reduces its applicability

⁵⁷ *Rosenbach v. Six Flags Entertainment Corporation*, 2019 IL 123186.

⁵⁸ *Rivera v. Google, Inc.*, 238 F.Supp.3d 1088 (N.D. Ill. 2017); *In re Facebook Biometric Information Privacy Litigation*, 185 F.Supp.3d 1155 (N.D. Cal. (2016).; *Norberg v. Shutterfly, Inc.*, 152 F.Supp.3d 1103 (N.D. Ill. 2015).

⁵⁹ Cal. Civ. Code § 1798.140(O)(1).

to small and mid-size businesses. However, CPRA also now applies to businesses that not only sell personal information, but also ones that share it; it is unclear to what extent this will enlarge the businesses captured by the regulation. Additionally, the CPRA now prohibits sharing of data between different entities that make up a joint venture.

The CPRA creates a privacy regulator with implementation and enforcement authority relating to the CCPA and CPRA. The CPRA also increases penalties by allowing civil penalties for the theft of consumer login information and increasing the maximum penalties for violations that concern consumers under the age of 16.

The CPRA also provides that a business that collects personal information cannot retain a consumer's personal information or sensitive personal information for longer than is reasonably necessary.⁶⁰

CCPA and the Federal Airline Deregulation Act

The federal Airline Deregulation Act expressly preempts state laws that relate to a price, route, or service of an air carrier.⁶¹ California brought an action against Delta Airlines for a violation of the CCPA because the airline failed to disclose a privacy policy on its mobile application despite the fact that it collected personally identifiable information about its consumers. This action failed, however, on the basis that the CCPA was preempted by the Airline Deregulation Act.⁶²

Virginia Consumer Data Protection Act

The Virginia Consumer Data Protection Act (Virginia Act) takes effect on January 1, 2023. The Virginia act grants consumers the right to access, correct, delete, obtain a copy of, and opt out of the processing of their personal data for the purposes of targeted advertising.⁶³ The Virginia Act defines “consumer” only as a natural person who is a resident of Virginia and acts only in an individual or household context.⁶⁴

Businesses are subject to the Virginia Act if they operate in Virginia and either (1) control or process personal data of 100,000 or more consumers or (2) derive over 50 percent of their gross revenue from the sale of personal data and control or process personal data of at least 25,000 consumers.⁶⁵

The Virginia Act exempts specific entities that are otherwise regulated by specific federal law, including those regulated by the GLBA and HIPAA. The Virginia Act also exempts Virginia

⁶⁰ Mario Meeks, JDSUPRA, *The CPRA's Storage Limitation Requirement is Coming—Practical Tips for Shoring Up Your Record Retention Practices to Comply* (Feb. 18, 2021), <https://www.jdsupra.com/legalnews/the-cpra-s-storage-limitation-9898179/> (last visited Apr. 7, 2021).

⁶¹ 49 U.S.C.A. § 41713.

⁶² *Harris v. Delta Air Lines, Inc.*, 247 Cal. App. 4th 884, 202 Cal. Rptr. 3d 395 (2016). See also, Heather Zachary and Allison Trzop, *Online Consumer Privacy: Airlines Under Scrutiny*, (Jul. 29, 2014) <https://www.wilmerhale.com/en/insights/publications/online-consumer-privacy-airlines-under-scrutiny> (last visited Apr. 7, 2021).

⁶³ Va. Code Ann. § 59.1-573 (2020).

⁶⁴ Va. Code Ann. § 59.1-571 (2020).

⁶⁵ Va. Code Ann. § 59.1-572 A (2020).

public entities, nonprofit organizations, and higher education institutions.⁶⁶ In a similar vein, the Virginia Act exempts specific personal information, where the collection and use thereof is otherwise regulated by FCRA, FERPA, and COPPA.⁶⁷

The Virginia Attorney General has exclusive enforcement authority of the Virginia Act.⁶⁸

	VCDPA	CCPA, as amended by the CPRA	GDPR
Right to opt-out of sale	✓	✓	✗
Opt-in or opt-out for processing of sensitive information	Opt-in	Opt-out	Opt-in
Statutory cure period for violations	✓	✓	✗
Right to appeal denials of requests	✓	✗	✗
Express obligations regarding de-identified data	✓	✗	✗
Requirement to perform data protection impact assessments	✓	✓	✓
Private right of action	✗	✓	✓
Governmental enforcement entities	Attorney General	CPRA, Attorney General	DPA's
Penalties	Up to \$7,500 per violation	Up to \$2,500 per violation and up to \$7,500 per intentional violation or violation involving minors	Up to €10 million, or 2% of worldwide annual revenue from the preceding financial year, whichever amount is higher, in the case of less severe violations. Up to €20 million, or 4% of worldwide annual revenue from the preceding financial year, whichever amount is higher, in the case of more serious violations.
Operative date	January 1, 2023	January 1, 2023	May 25, 2018

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III. Effect of Proposed Changes:

CS/CS/SB 1734 creates the Florida Privacy Protection Act (Act) to grant Florida's consumers the ability to share their personal information as they wish, in a way that is safe and that they understand and can control. The bill grants specific rights to consumers, and regulates businesses that collect, sell, or share personal information about consumers.

For purposes of the bill, a consumer is a person who is in Florida for a purpose that is not temporary or transitory. The term specifically excludes nonresidents. A person can be an individual, business, or other organization or group of persons who act in concert.

⁶⁶ Va. Code Ann. § 59.1-572 B (2020).

⁶⁷ Va. Code Ann. § 59.1-572 C (2020).

⁶⁸ See generally, Kurt Hunt and Matthew Diaz, JDSUPRA, *Virginia Becomes 2nd State to Adopt a Comprehensive Consumer Data Privacy Law* (Mar. 8, 2021), <https://www.natlawreview.com/article/virginia-becomes-2nd-state-to-adopt-comprehensive-consumer-data-privacy-law> (last visited Apr. 7, 2021).

⁶⁹ Briana Falcon and Devika Kornbacher, JDSUPRA, *Virginia is for Lovers...of Data Privacy* (Feb. 15, 2021), <https://www.jdsupra.com/legalnews/virginia-is-for-lovers-of-data-privacy-3879845/> (last visited Apr. 7, 2021).

Personal Information

The bill defines personal information as information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household, such as a consumer's:

- First and last name;
- Home or other physical address that includes the name of a street and city or town;
- E-mail address or phone number;
- Social security number;
- Identifier, such as an alias, unique personal identifier, online identifier, Internet protocol (IP) address, account name, driver license number, passport number, or similar identifier;
- Biometric information,⁷⁰ such as DNA or fingerprints or any other biometric information that a business collects about the consumer without his or her knowledge;
- Internet or other electronic network activity information, including but not limited to, browsing and search history, and information regarding a consumer's interaction with a website, application, or advertisement;
- Audio, electronic, visual, thermal, olfactory, geolocation, or similar information;
- Professional or employment-related information;
- Education information, defined as only information that is not publicly available;
- Information that may serve as a probabilistic identifier⁷¹ concerning him or her which is collected from the consumer through a website, online service, or some other means by the business and is maintained by the business in combination with an identifier that, when used with the information, identifies the consumer;
- Characteristics of protected classifications under state or federal law;
- Commercial information, including records of personal property, purchased or considered products or services, or other purchasing and shopping habits; and
- Geolocation data.

The bill further defines personal information as any inferences drawn from the above information regarding the consumer that can be compiled to create a consumer profile that reflects his or her preferences, characteristics, psychological trends, predispositions, behavior, attitudes, intelligence, abilities, and aptitudes. This list is not exhaustive of information that may constitute personal information.

However, the bill specifies that the definition of personal information *does not* include:

- Information obtained from public records, including information that is lawfully made available from federal, state, or local governmental records;

⁷⁰ The bill defines "biometric information" as "an individual's physiological, biological, or behavioral characteristics, including an individual's deoxyribonucleic acid (DNA), which can be used, singly or in combination with each other or with other identifying data, to establish individual identity. The term includes, but is not limited to, imagery of the iris, retina, fingerprint, face, hand, or palm; vein patterns; voice recordings from which an identifier template, such as a faceprint, a minutiae template, or a voice print, can be extracted; keystroke patterns or rhythms; gait patterns or rhythms; and sleep, health, or exercise data that contain identifying information."

⁷¹ The bill defines a "probabilistic identifier" as the identification of a consumer or a device to a degree of certainty ... based on categories of personal information included in or similar to a person's personal information.

- Information that was made available to the general public by either the consumer or widely distributed media and that the collecting business has a reasonable basis to believe is lawfully available;
- Information that is truthful and that is a matter of public concern; and
- De-identified consumer information or aggregate consumer information that relates to a group or category of consumers from which individual consumer identities have been removed.

Information is de-identified if it:

- Cannot reasonably identify, relate to, describe, or be associated with or linked to a particular consumer or device;
- Contains data that the business has taken reasonable measures to ensure cannot be reidentified;
- Contains data that the business publicly commits to maintain and use in a de-identified fashion and that it will not attempt to reidentify; and
- Contains data that the business contractually prohibits downstream recipients from attempting to reidentify.

Aggregate consumer information, like de-identified information, has had individual consumer identities removed from it and cannot be linked to any consumer or household—but it relates to a group or category of consumers as a whole, rather than to a particular consumer.

Consumer Rights Based on the Sale of Personal Information

Generally, the bill allows a consumer whose personal information is collected and sold by a business to opt-out of that sale. A business sells a consumer's personal information when it sells, rents, releases, discloses, disseminates, makes available, transfers, or otherwise communicates personal information to a third party. The bill excludes from the definition of "sell:"

- A business-to-business disclosure for a business purpose;
- A business' disclosure of personal information to a third party who processes the personal information on behalf of the disclosing business; or
- A business' disclosure of personal information to another business or third party for the provision of a good or service requested by the consumer.

Therefore, a consumer's rights generally vest when his or her personal information is both collected and somehow provided to another entity, unless done so for a business purpose or to finalize the transaction requested by the consumer.

The rights afforded to consumers and obligations imposed may not adversely affect the rights and freedoms of other consumers.

Minor's Right to Opt-In to the Sale of Personal Information

The bill prohibits a business from selling a consumer's information if he or she is younger than 13 years old, unless the business received a parent or guardian's consent. If a business received a verified consent in accordance with the the federal Children's Online Privacy Protection Act

rule, it is deemed to have obtained consent under the Act, though this does not appear to be the exclusive method by which a business can receive a parent or guardian's consent.

Similarly, a business may not sell the personal information of an individual who is between the ages of 13 and 16 unless he or she affirmatively opts-in. This "opt-in" right does not prevent businesses from *collecting* the individual personal information of consumers under the age of 16.

A business is deemed to have actual knowledge of its consumers' ages if it willfully disregards such information, and therefore is subject to penalty under the bill if it fails to institute some method to determine its consumers' ages. However, what specifically constitutes "willful disregard" of this information will likely need to be determined by a trier of fact.

The bill also requires a business that will process a child's sensitive data to comply with the federal COPPA Rule to do so.

Right to Opt Out of the Sale of Personal Information

The bill creates a "right to opt out of the sale," which allows a consumer who is 16 years old, or older to instruct a business that sells personal information not to sell his or her personal information. Additionally, a business is prohibited from processing a consumer's sensitive data unless it has the consumer's consent to do so.

A business that sells a consumer's information must post a notice to consumers that (1) their information may be sold, and (2) they have the right to opt out of such a sale. It is unclear how this notice must be given. Additionally, these businesses that sell consumer personal information must post a clear and conspicuous link with the specific title "Do Not Sell My Personal Information" on their homepages to enable the consumer or an authorized actor to opt out of the sale of the consumer's personal information. Alternately, a covered business may maintain a separate and additional home page that is dedicated to providing Florida consumers with the required privacy information, if it takes reasonable steps to direct Florida consumers to that specialized webpage. It is unclear whether a business can meet the more general notice of sale of a consumer's personal information requirement by posting the specific "Do Not Sell My Personal Information" link, or whether the two notice requirements are separate.

The business may not require a consumer to create an account, or to use the verified request process to submit his or her opt-out request. A consumer's opt-out request may also be made by an authorized third-party or through a user-enabled global privacy control, e.g., a browser plug-in or privacy setting. A business must stop selling the consumer's personal information as soon as reasonably possible, but within no more than 2 days after it receives an opt-out request.

There are multiple provisions in the bill that dictate the duration of a consumer's opt-out request. One provision dictates that the consumer's opt-out binds the business until the consumer subsequently provides express authorization for the sale of his or her personal information. Another states that once a consumer opts out, the business must comply without requiring any additional consumer action if it can identify the consumer through a login protocol or similar process, or if the business is made aware of the consumer's continued opt-out preference by a user-enabled global privacy control, such as a browser plug-in or privacy setting. Yet another

allows a business to prompt the consumer to re-authorize his or her opt-out 12 months after the business' initial receipt of the consumer preference.

Targeted Advertisements and Profiling

The right to opt-out includes a right to opt-out of the processing of one's data for the purposes of profiling and targeted advertising.

Profiling is defined as the automated processing that a business performs on a consumer's personal data that will evaluate or predict things about the consumer's economic situation, health, personal preferences, interests, reliability, behavior, location, or movements.

Targeted advertising is distinct from profiling in result—that it ultimately leads to the display of an advertisement to the consumer based on the profiling of his or her personal data obtained from a broad array of the consumer's activities, including activity on other business' websites or applications. As defined by the bill, targeted advertising does not include nonpersonalized advertising that is based only on the consumer's personal information derived from the consumer's current interaction with the business—excluding the consumer's precise geolocation.

A consumer may trigger this specific portion of the right to opt-out at any time, but it is unclear whether he or she must also execute the broader opt-out right to enable the targeted advertisement and profiling opt-out.

A business can offer additional benefits to consumers who participate in targeted advertisements or profiling processes. For example, a business can offer a consumer who participates in targeted advertisements, loyalty programs or related enticements free goods or services, and goods or services at a different price, rate, level, quality, or selection than that offered to consumers who opt out. However, the discount or promotional item must be reasonably related to the value the consumer's data provides to the business and must not be unjust, unreasonable, coercive, or usurious.

Right to Know, Edit, or Delete Specific Collected Public Information

The bill grants consumers several additional rights that revolve around the need to first know what a covered business actually holds about the consumer. These rights are the right to know the details of one's personal information held by a business, the right to correct that personal information, and the right to have it deleted. A consumer must submit a verified request to exercise these rights. While the right to opt-out of the sale of one's personal information applies only where a business collects and sells the consumer's personal information, these rights apply to businesses that have various interactions with consumer personal information.

Verified Requests

A consumer must make a verified request to exercise his or her rights to know, delete, or correct their collected personal information. An opt-out or opt-in request is not required to be made by verified request.

A "verified request" is defined as a request that is submitted to a business by one of the following:

- A consumer;
- A consumer on behalf of his or her minor child; or
- A natural person or a person registered with the Secretary of State who is authorized by the consumer to act on his or her behalf.

The business must be able to reasonably verify that the request is authentic.

Businesses must establish a designated request address to which consumers may submit their verified requests; the address may be either an e-mail address, toll-free phone number, or website. It appears that consumers may submit their verified requests to businesses in other manners, as a verified request is not defined as one submitted to a business' designated request address.

The covered business is required to respond to the consumer's verified request to access, correct, or delete personal information within 30 days of its submission. The business may take an additional 30 days (total of 60 days) to respond if it makes a good faith determination that it is reasonably necessary to do so. Any business that extends its response beyond the initial 30-day timeframe must notify the requesting consumer of the extension.

If the business deems the consumer request manifestly unfounded or excessive—especially where the consumer's request is overly repetitive, the business may either refuse to comply or charge a reasonable fee for the services requested. The fee must take into account administrative cost of the work required to respond. If a business refuses to respond, it must notify the consumer of the underlying reason. It is the business' burden to demonstrate that the consumer's verified request was unfounded or burdensome.

Right to an Accounting of One's Personal Information Held by a Covered Business

A consumer has the right to request an accounting of certain information from a covered business.⁷² This information includes:

- The categories sources from which the business collected the consumer's personal information;
- The specific items of personal information the business collected about the consumer;
- The categories third parties to whom the business sold the personal information.

The corresponding business obligation requires that the business provide "any personal information about the consumer which it has collected, directly or indirectly...". Another portion of the bill requires the business to comply with a consumer's request to "access" personal information. A separate section of the bill obligates businesses that control the collection of a consumer's personal information that will be used for any purpose other than a business purpose to inform consumers of the purposes for which it collects or uses personal information, as

⁷² It is unclear to what businesses consumers have the right to submit this request. The right is created in a subsection that obligates "businesses required to comply with this section." However, there is no general statement of required compliance within the section. Other subsections within the section apply to businesses that sell consumer information, so this right may also only apply to businesses that sell a consumer's information.

applicable to each category of personal information it collects or uses. These specific businesses must also inform its consumers whether it will sell their personal information.

It is therefore unclear whether a business must give consumer all the information that he or she has the right to request.

A service provider is not required to personally comply with a verified request. It is obligated to provide any personal information it obtained as a result of its performance under a contract with a business to said business in order to help the business respond to a verified request for information.

Because the law cannot be applied retroactively, a business is required to disclose only the information it collected about a consumer on or after July 1, 2022.

Right to Delete Personal Information

A consumer may submit a verified request that a covered business that sells his or her information delete it. After the business receives such a request, it must delete the information, and instruct any third party that bought or received the consumer's personal information to delete the information. Additionally, any service provider that received the consumer's personal information must also delete it pursuant to notification of a verified request from the contracting business that disclosed the personal information.

A business and service provider are not required to delete a consumer's personal information pursuant to his or her request where it is necessary to maintain to:

- Complete the transaction, provide the good or service, or perform a contract, for which the personal information was collected;
- Fulfill the terms of a written warranty or product recall that is conducted in accordance with federal law;
- Ensure the security and integrity of the business, the personal information it holds, or the safety of a natural person;
- Debug and identify repair errors;
- Exercise free speech or another right provided for by law;
- Engage in public or peer-reviewed scientific, historical, or statistical research that is performed in accordance with applicable ethical standards and privacy laws—only when the deletion of the consumer's personal information would render such research impossible or seriously impaired and where the consumer previously provided informed consent; and
- Comply with a legal obligation.

Where a business has already de-identified the personal information, it cannot be required to reidentify it to accommodate a request to delete personal information.

Right to Correct Inaccurate Personal Information

A consumer may submit a verified request that a covered business correct incorrect personal information it holds about him or her. A business and any service provider must correct the incorrect information.

Business Requirements

Covered Businesses

The bill defines a business subject to the Act (covered business) as a sole proprietorship, partnership, limited liability company, corporation, association, or any other legal entity that:

- Is organized or operated for the profit or financial benefit of its shareholders or owners;
- Does business in Florida;
- Collects personal information about consumers, or is the entity on behalf of which such information is collected;
- Determines the purpose and means of processing personal information about consumers, alone or jointly with others; and
- Satisfies either of the following thresholds:
 - Annually buys, sells, or shares, the personal information of 100,000 or more consumers, households, or devices; or
 - Derives 50 percent or more of its global annual revenues from selling or sharing personal information about consumers.

The bill further includes within the definition of a covered business (1) the franchisees or franchisors⁷³ of a business that meets the above qualifications, and (2) all of the entities involved in a joint venture or partnership, if the business has at least a 40 percent interest therein. To prevent the improper sharing of personal information between businesses, the bill prohibits each business within the joint venture or partnership from sharing a consumer's personal information with its partner business using the common entity (joint venture or partnership) as a pass through. The businesses are permitted to share a consumer's personal information with the joint venture or partnership, however.

The bill specifically excludes from the definition of a joint venture any third party that operates, hosts, or manages a website or an online service on behalf of a business or processes information on behalf of a business.

Service Providers

A service provider is a person in an express contractual relationship with a business for which it processes personal information that it receives from the business. The contract between the parties must prohibit the service provider from:

- Selling the information;
- Retaining, using or disclosing the personal information it receives from the business for any reason other than that specified in the contract;
- Combining personal information it receives from or on behalf of the business with any other business, or that it collects on its own; and

⁷³ A franchisee or franchisor is "an entity that controls or is controlled by a business and that shares common branding with the business." Control, for purposes in the bill, means the ownership of, or power to vote, more than 50 percent of the outstanding shares of any class of voting security of a business or the control in any manner over the election of a majority of the directors or individuals who exercise similar functions, or the power to exercise a controlling influence over the management of a company.

- Retaining, using, or disclosing personal information outside of the direct business relationship created by the contract.

A business that collects consumer personal information may disclose it to a service provider without notice to, or consent from, the consumer. However, this disclosure must be made for a business purpose, pursuant to a contract that obligates the service provider to provide the same level of privacy required of the business.

If a service provider discloses personal information in violation of such a contract, the business generally cannot be found liable. Conversely, a service provider is not liable for duties and obligations assigned to a business under the Act.

Third Parties

A third party is any person who is neither a business that collects person information from a consumer during an intentional interaction with him or her, nor the business' service provider.

A business may sell collected personal information to a third party, but the business must notify the third party of a consumer's request to delete information that was collected about him or her.

General Business Obligations

Generally, a business may use consumer personal information for a business purpose, which is the business' or service providers' operational purposes. The term "business purpose" may also encompass any reason for which a business gives proper consumer notice (however, service providers are not granted this leeway). The bill provides a non-exhaustive list of permitted business purposes, which includes:

- Auditing related to determining the effectiveness of an advertisement;
- Ensuring the security and integrity of a network or information system, confidentiality of personal information, and physical safety of natural persons;
- Debugging to identify and repair errors that impair functionality;
- Short-term, transient use such as for nonpersonalized advertising –if it does not involve disclosure of personal information or profiling of the consumer;
- Performing services on behalf of the business such as fulfilling orders, processing payments, providing financing, and providing customer service;
- Providing advertising and marketing services that exclude targeted advertising, with specific limits on the combination of personal information;
- Undertaking internal research for technological development and demonstration; and
- Undertaking activities to verify or maintain the quality or safety of a service or device, and to provide upgrades for any such service or device.

Any business' collection, use, retention, or sharing of personal information must be reasonably necessary to achieve, and proportionate to the benefit of achieving, the business purpose for which the information was collected or processed.

Notice of Collection of Personal Information

Covered businesses must make the following information reasonably accessible to those consumers from whom they collect personal information through their website or online service:

- The categories of personal information that they collect through their websites or online services, and the categories of third parties with whom they share this information;
- The process, if applicable, through which a consumer may review and request changes to the personal information collected about him or her through the website or online service;
- Whether the business allows a third party to collect the consumer's personal information mined from their online activities over time and across different websites or online services when the consumer uses the business' website or online service; and
- The notice's effective date and how the business will notify a consumer of material changes to the notice.

This notice must be "reasonably accessible." It does not appear that this requires a business to post the notice online.

A similar notice is required for a business that controls the collection of consumer personal information that will be used for a non-business purpose. This additional notice must inform consumers of each category of personal information the business collects or uses, why it collects or uses that information, and whether it may be sold. The business cannot collect or use personal information outside of the scope of this notice without first updating the notice to reflect the new category and purpose. If, however, the business collects information about, but not directly from, the consumer, then it may provide this notice on its homepage or online privacy policy.

Notice of Retention of Personal Information

Covered businesses are not required to retain consumer personal information, but if they do, they must do so only for as long as is reasonably necessary to effectuate the purpose for which they collected it. However, a covered business can retain de-identified or aggregate consumer information for any amount of time.

A business that collects a consumer's information for a non-business purpose must inform the consumer from whom it collects that it will retain his or her information. This notification must include the length of time the business expects to retain the information; if the business does not know the duration—it must provide the criteria it will use to determine it.

Employee Education

The bill requires covered business to educate their employees who handle consumer inquiries about the business' privacy practices and compliance about the bill's requirements and how to counsel consumers to exercise their rights granted under the bill.

Data Security

A business that collects a consumer's personal information must implement reasonable security procedures and practices to protect the information from unauthorized or illegal access, destruction, use, modification, or disclosure. This will apply to a large portion of businesses

subject to the bill, as even those that keep collected personal information entirely within their business will be required to implement security protections to comply with this provision.

Exclusions

Section 6 of the bill provides specific exclusions or exemptions from the bill.

The bill does not govern the sale, use, retention, or disclosure of de-identified personal information or aggregate consumer information from which individual consumer identities have been removed. Additionally, it permits the sale of personal information if every aspect of that conduct takes place outside of Florida; the consumer's information must have been collected while he or she was not in Florida, and no part of the resulting sale may have occurred in Florida.

The bill expressly allows covered business to do the following:

- Comply with federal, state, or local laws;
- Comply with civil, criminal, or regulatory inquiry or an investigation, a subpoena, or a federal, state, or local summons;
- Cooperate with law enforcement agencies concerning conduct or activity that the business, service provider, or third party reasonably and in good faith believes may violate federal, state, or local law; and
- Exercise or defend legal claims.

The bill provides express exemptions for the following types of information:

- Personal information collected or disclosed by a business in the scope of its role as an employer or similar relationship regarding its employees, agents, independent contractors, owners, directors, officers, applicants, interns, or volunteers;
- Personal information collected by a business, service provider, or third party that is used to administer benefits for another individual;
- Health information and patient identifying information collected by a covered entity , program, or its businesses associate as governed by HIPPA and its associated rules;
- Information that has been de-identified in accordance with HIPPA and its associated rules;
- Information collected as part of a clinical trial or research that is subject to the Federal Policy for the Protection of Human Subjects or other specific industry guidelines;
- Personal information that is sold to or by a consumer reporting agency, for use in or to generate a consumer report and limited by the Fair Credit Reporting Act;
- Personal information collected, processed, sold, or disclosed pursuant to GLBA and its implementing regulations;
- Personal information collected, processed, sold, or disclosed pursuant to the Farm Credit Act and its implementing regulations;
- Personal information collected, processed, sold, or disclosed pursuant to DPPP;
- Education information covered by FERPA;
- Personal information that is collected, processed, sold, or disclosed relating to the price, route, or service by entities that are subject to the federal Airline Deregulation Act, and only to the extent that this Act is preempted by s. 41713 of the federal Airline Deregulation Act; and

- Vehicle Information or ownership information that is retained by or shared between a new motor vehicle dealer and the vehicle's manufacture, if done so to effectuate a warrantied vehicle repair or recall.

Enforcement

Section 7 grants the Department of Legal Affairs (DLA) authority to enforce the Act. The DLA may, at its discretion, bring a civil action against a violator of the Act. The court may:

- Assess a civil penalty of between \$2,500 per unintentional violation and \$7,500 per intentional violation (which may be tripled if the violation involves a consumer who is 16 years old or younger);
- Grant injunctive relief;
- Award reasonable enforcement costs, including a reasonable attorney fee; and
- Grant any other relief a court deems proper.

However, prior to bringing such an action, the DLA (1) must notify a business in writing of the alleged violation, and (2) may grant the violator a 30-day period to cure the violation. This right to cure is not guaranteed, based on mitigating or aggravating factors. Only if the business fails to cure the violation within 30 days may the DLA bring a civil action in court.

The bill grants the DLA rulemaking authority to enforce the Act.

Effective Date

Section 8 of the bill provides that the Act will take effect on July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Any public records or open meetings issues are addressed in SB 7064 (2021 Regular Session).

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

This will likely have wide-ranging impact on how Florida consumers interact with websites and internet-connected devices.

Businesses will have to adjust their operations to implement the bill's notice and privacy requirements. Many of the businesses subject to the bill's requirements may have already implemented similar privacy practices based on legislation in California, Illinois, and the E.U.

C. Government Sector Impact:

The DLA will likely see an increase in prosecutions and other regulatory activity relating to the Act.

VI. Technical Deficiencies:

It is unclear how a business that controls the collection of a consumer's personal information must provide specific notices to the consumer.

The bill has discordant guidance regarding the duration of a consumer's opt-out request. These conflicting provisions are discussed in the opt-out section of the Effect of Proposed Changes.

It is unclear whether the DLA is required to provide a business that is alleged to have violated the Act with a 30-day right to cure before it can institute a civil action against the business. The bill appears to allow the DLA to use its discretion when determining whether to allow a right to cure, based on aggravating circumstances such as the number of violations, substantial likelihood of public injury, or the safety of persons and property. However, elsewhere, the bill does not permit the DLA to institute a civil action against the business for an alleged violation until the business has failed to cure its violation for 30 days or longer. This ultimately requires the DLA to provide a 30-day right to cure in all instances.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 501.177, 501.172, 501.173, 501.174, 501.175, 501.176, 501.1745

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Rules on April 6, 2021:**

- Amends the definition of businesses subject to the Act by deleting the revenue threshold and increasing the number of a consumer's, household's, or device's personal information that a business must buy, sell, or share from 50,000 to 100,000 per year;
- Re-defines the term "sale" to exclude the disclosure of personal information between businesses for a business purpose and to further exclude loaning or sharing of personal information;
- Clarifies the notice requirements for businesses that collect information about, but not directly from, consumers;
- Obligates a business that receives a consumer request to delete personal information to notify any third party that bought or sold the information of the request;
- Clarifies the methods by which a business can obtain a parent or guardian's express consent for the sale of their minor child's personal information;
- Prohibits the processing of a consumer's sensitive data without consent, or for children—without meeting the requirements of the federal COPPA Rule;
- Limits the information that a consumer has a right to request a reporting of from a business to the *categories* of sources from which the business collects and the *categories* of third parties to which it sells the consumer's personal information. The consumer may still require a full accounting of each piece of personal information that the business collected about him or her;
- Adds exclusions from the Act based on a business' compliance with specific federal privacy provisions;
- Clarifies that an employer that collects personal information in its role as an employer or for the purpose of administering benefits for another individual is excluded from the Act;
- Deletes the private cause of action;
- Requires the DLA to provide an opportunity for a business in violation of the Act to cure its violation;
- Limits civil penalties obtained for a violation of the Act to \$2,500 per unintentional, and \$7,500 per intentional violation (unless the violation involves a person aged 16 or younger, in which case the penalty can be tripled); and
- Delays the effective date from January 1, 2022 to July 1, 2022.

CS by Commerce and Tourism on March 22, 2021:

- Re-defines the term "consumer" so that an individual is no longer required to seek or acquire a good or service from a business to accrue the rights granted by the bill;
- Clarifies that information a consumer shares with the public, or truthful information that concerns a public matter, is not personal information regulated by the bill;

- Broadens the definition of a “business purpose” to include any reason for which a business gives proper notice to its consumers, thereby creating a more a flexible business purpose;
- Instills a corresponding business duty to provide an accounting of personal information it collects about an individual consumer upon his or her request;
- Clarifies that a business is required to provide requesting consumers an accounting of the personal information the business collected on or after July 1, 2022.
- Implements a requirement that covered businesses inform consumers of the duration they intend to retain personal information, and require that the retention be for no longer than reasonably necessary to accomplish the business purpose for which it was collected;
- Requires a covered business to comply with a consumer’s opt-out request within 2 days, versus 15;
- Requires a covered business to implement data security measures to protect consumer personal information;
- Excludes specific information from the act, including information subject to enumerated federal privacy regulations, information collected or disclosed by an employer about its employees in the regular scope of its duties, and information held or shared by a car dealer and manufacturer for car repairs, recalls, and maintenance; and
- Delays the effective date to January 1, 2022.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/07/2021	.	
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The Committee on Rules (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 501.172, Florida Statutes, is created to
read:

501.172 Short title.—This act may be cited as the “Florida
Privacy Protection Act.”

Section 2. Section 501.173, Florida Statutes, is created to
read:

501.173 Purpose.—This act shall be construed liberally in



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recognition that privacy is an important right, and consumers in this state should have the ability to share their personal information as they wish, in a way that is safe and that they understand and control.

Section 3. Section 501.174, Florida Statutes, is created to read:

501.174 Definitions.—As used in ss. 501.172-501.177, unless the context otherwise requires, the term:

(1) "Advertising and marketing" means a communication by a business or a person acting on behalf of the business through any medium intended to induce a consumer to obtain goods, services, or employment.

(2) "Aggregate consumer information" means information that relates to a group or category of consumers, from which individual consumer identities have been removed, which is not linked or reasonably linkable to any consumer or household, including through a device. The term does not include one or more individual consumer records that have been de-identified.

(3) "Biometric information" means an individual's physiological, biological, or behavioral characteristics, including an individual's deoxyribonucleic acid (DNA), which can be used, singly or in combination with each other or with other identifying data, to establish individual identity. The term includes, but is not limited to, imagery of the iris, retina, fingerprint, face, hand, or palm; vein patterns; voice recordings from which an identifier template, such as a faceprint, a minutiae template, or a voice print, can be extracted; keystroke patterns or rhythms; gait patterns or rhythms; and sleep, health, or exercise data that contain



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identifying information.

(4) "Business" means:

(a) A sole proprietorship, a partnership, a limited liability company, a corporation, or an association or any other legal entity that meets the following requirements:

1. Is organized or operated for the profit or financial benefit of its shareholders or owners;

2. Does business in this state;

3. Collects personal information about consumers, or is the entity on behalf of which such information is collected;

4. Determines the purposes and means of processing personal information about consumers, alone or jointly with others; and

5. Satisfies either of the following thresholds:

a. Annually buys, sells, or shares the personal information of 100,000 or more consumers, households, or devices.

b. Derives 50 percent or more of its global annual revenues from selling or sharing personal information about consumers.

(b) An entity that controls or is controlled by a business and that shares common branding with the business. As used in this paragraph, the term:

1. "Common branding" means a shared name, service mark, or trademark that the average consumer would understand to mean that two or more entities are commonly owned.

2. "Control" means:

a. Ownership of, or the power to vote, more than 50 percent of the outstanding shares of any class of voting security of a business;

b. Control in any manner over the election of a majority of the directors, or of individuals exercising similar functions;



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or

c. The power to exercise a controlling influence over the management of a company.

(c) A joint venture or partnership composed of businesses in which each business has at least a 40 percent interest. For the purposes of this act, the joint venture or partnership, and each business that comprises the joint venture or partnership, must be considered a separate, single business, except that personal information in the possession of each business and disclosed to the joint venture or partnership may not be shared with the other business. A joint venture does not include a third party that operates, hosts, or manages a website or an online service on behalf of a business or processes information on behalf of a business.

(5) "Business purpose" means the use of personal information for the business' operational or other notice-given purposes or for the service provider's operational purposes, provided that the use of the personal information is reasonably necessary to achieve, and proportionate to the benefit of achieving, the purpose for which the personal information was collected or processed or for another purpose that is compatible with the context in which the personal information was collected. The term includes all of the following:

(a) Auditing related to counting ad impressions of unique visitors and verifying positioning and the quality of ad impressions, and auditing compliance with this specification and other standards.

(b) Helping to ensure security and integrity to the extent that the use of the consumer's personal information is



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99 reasonably necessary for these purposes and proportionate to the
100 benefit of its use for these purposes.

101 (c) Debugging to identify and repair errors that impair
102 existing intended functionality.

103 (d) Short-term, transient use, including, but not limited
104 to, nonpersonalized advertising shown as part of a consumer's
105 current interaction with the business, provided that the
106 consumer's personal information is not disclosed to a third
107 party and is not used to build a profile of the consumer or to
108 otherwise alter the consumer's experience outside his or her
109 current interaction with the business.

110 (e) Performing services on behalf of the business,
111 including maintaining or servicing accounts, providing customer
112 service, processing or fulfilling orders and transactions,
113 verifying customer information, processing payments, or
114 providing financing, analytic services, storage, or similar
115 services on behalf of the business.

116 (f) Providing advertising and marketing services, not
117 including targeted advertising, to the consumer provided that,
118 for the purpose of advertising and marketing, a service provider
119 may not combine the personal information of consumers who opt
120 out which the service provider receives from, or on behalf of,
121 the business with personal information that the service provider
122 receives from, or on behalf of, another person or persons or
123 collects from its own interaction with consumers.

124 (g) Undertaking internal research for technological
125 development and demonstration.

126 (h) Undertaking activities to verify or maintain the
127 quality or safety of a service or device that is owned,



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manufactured, manufactured for, or controlled by the business,
and to improve, upgrade, or enhance the service or device that
is owned, manufactured, manufactured for, or controlled by the
business.

(6) "Categories" or "category" means the items of personal
identifying information specified as being included as personal
information under subsection (18).

(7) "Collects," "collected," or "collection" means buying,
renting, gathering, obtaining, receiving, or accessing by any
means any personal information pertaining to a consumer. The
term includes receiving information from the consumer, either
actively or passively, or by observing the consumer's behavior.

(8) "Commercial purposes" means to advance a person's
commercial or economic interests, such as by inducing another
person to buy, rent, lease, join, subscribe to, provide, or
exchange products, goods, property, information, or services or
enabling or effecting, directly or indirectly, a commercial
transaction. The term does not include engaging in speech that
state or federal courts have recognized as noncommercial speech,
including political speech and journalism.

(9) "Consumer" means a natural person, however identified,
including identification by a unique identifier, who is in this
state for other than a temporary or transitory purpose. The term
does not include any other natural person who is a nonresident.

(10) "De-identified" means information:

(a) That cannot reasonably identify, relate to, describe,
be associated with, or be linked directly or indirectly to a
particular consumer or device;

(b) Containing data that the business has taken reasonable



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measures to ensure could not be reidentified;

(c) Containing data that the business publicly commits to maintain and use in a de-identified fashion and that it does not attempt to reidentify; and

(d) Containing data that the business contractually prohibits downstream recipients from attempting to reidentify.

(11) "Designated request address" means an electronic mail address, a toll-free telephone number, or a website established by a business through which a consumer may submit a verified request to the business.

(12) "Device" means a physical object capable of directly or indirectly connecting to the Internet.

(13) "Home page" means the introductory page of an Internet website and any Internet web page where personal information is collected. In the case of an online service, such as a mobile application, the term means the application's platform page or download page; a link within the application, such as from the application configuration, "about," "information," or settings page; and any other location that allows consumers to review the notices required by this act, at any time, including, but not limited to, before downloading the application.

(14) "Household" means a person or group of persons living together or sharing living quarters who are or are not related.

(15) "Intentional interaction" or "intentionally interacting" means the consumer intends to interact with or disclose personal information to a person through one or more deliberate interactions, including visiting the person's website or purchasing a good or service from the person. The term does not include hovering over, muting, pausing, or closing a given



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piece of content.

(16) "Nonpersonalized advertising" means advertising and marketing that is based solely on a consumer's personal information derived from the consumer's current interaction with the business, with the exception of the consumer's precise geolocation.

(17) "Person" means an individual, a proprietorship, a firm, a partnership, a joint venture, a syndicate, a business trust, a company, a corporation, a limited liability company, an association, a committee, and any other organization or group of persons acting in concert.

(18) "Personal information" means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household.

(a) The term includes, but is not limited to, all of the following items of personal identifying information about a consumer collected and maintained by a person or business:

1. A first and last name.

2. A home or other physical address that includes the name of a street and the name of a city or town.

3. An electronic mail address.

4. A telephone number.

5. A social security number.

6. An identifier such as an alias, a unique personal identifier, an online identifier, an Internet protocol address, an account name, a driver license number, a passport number, or other similar identifiers.

7. Biometric information, such as DNA or fingerprints or



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any other biometric information collected by a business about a consumer without the consumer's knowledge.

8. Internet or other electronic network activity information, including, but not limited to, browsing history, search history, and information regarding a consumer's interaction with a website, an application, or an advertisement.

9. Audio, electronic, visual, thermal, olfactory, geolocation, or similar information.

10. Professional or employment-related information.

11. Education information, defined as only information that is not publicly available.

12. Inferences drawn from any information specified in this paragraph which can create a profile about a consumer reflecting the consumer's preferences, characteristics, psychological trends, predispositions, behavior, attitudes, intelligence, abilities, and aptitudes.

13. Any other information that may serve as a probabilistic identifier concerning a consumer which is collected from the consumer through a website, an online service, or some other means by the business and maintained by the business in combination with an identifier in a form that, when used together with the information, identifies the consumer.

14. Characteristics of protected classifications under state or federal law.

15. Commercial information, including records of personal property; products or services purchased, obtained, or considered; or other purchasing or consuming histories or tendencies.

16. Geolocation data.



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(b) The term does not include:

1. Information about a consumer obtained from public records, including information that is lawfully made available from federal, state, or local governmental records; information that a business has a reasonable basis to believe is lawfully made available to the general public by the consumer or from widely distributed media; or lawfully obtained, truthful information that is a matter of public concern.

2. Consumer information that is de-identified or aggregate consumer information that relates to a group or category of consumers from which individual consumer identities have been removed.

(19) "Probabilistic identifier" means the identification of a consumer or a device to a degree of certainty more probable than not, based on any categories of personal information included in or similar to the items of personal identifying information specified in subsection (18).

(20) "Processing" means any operation or set of operations performed on personal information or on sets of personal information, whether or not by automated means.

(21) "Profiling" means any form of automated processing performed on personal data to evaluate, analyze, or predict personal aspects related to an identified or identifiable natural person's economic situation, health, personal preferences, interests, reliability, behavior, location, or movements.

(22) (a) "Sale" or "sell" means the sale, rental, release, disclosure, dissemination, making available, loaning, sharing, transferring, or other communication, orally, in writing, or by



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electronic or other means, of a consumer's personal information
by a business to a third party for monetary or other tangible or
intangible consideration or for any commercial purpose.

(b) The term does not include any of the following:

1. The disclosure, for a business purpose, of personal
information by a business to a service provider who processes
the personal information on behalf of the business.

2. The disclosure, for the purposes of providing a product
or service requested by the consumer, of personal information by
a business to another business resulting from the consumer's
intentional interaction.

(23) "Security and integrity" means the ability of a:

(a) Network or information system to detect security
incidents that compromise the availability, authenticity,
integrity, and confidentiality of stored or transmitted personal
information.

(b) Business to detect security incidents; to resist
malicious, deceptive, fraudulent, or illegal actions; and to
help prosecute those responsible for such actions.

(c) Business to ensure the physical safety of natural
persons.

(24) "Service provider" means a person who processes
personal information on behalf of a business to whom the
business discloses a consumer's personal information for a
business purpose pursuant to a written or electronic contract if
the contract prohibits the person from:

(a) Selling the information;

(b) Retaining, using, or disclosing the personal
information for any purpose other than the business purposes



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specified in the contract, including a prohibition on retaining,
using, or disclosing the personal information for a commercial
purpose other than the business purposes specified in the
contract with the business;

(c) Combining the personal information that the service
provider receives from or on behalf of the business with
personal information that the service provider receives from or
on behalf of another person or persons or collects from its own
interaction with consumers, provided that the service provider
may combine personal information to perform a business purpose;
and

(d) Retaining, using, or disclosing the information outside
of the direct business relationship between the service provider
and the business.

(25) "Targeted advertising" means displaying an
advertisement to a consumer when the advertisement is selected
based on personal data obtained from a consumer's activities
over time and across businesses, websites, or online
applications other than the business, website, or online
application with which the consumer is intentionally
interacting, to predict such consumer's preferences or
interests. The term does not include nonpersonalized
advertising.

(26) "Third party" means a person who is not any of the
following:

(a) The business with which the consumer intentionally
interacts which collects personal information from the consumer
as part of the consumer's current interaction with the business.

(b) A service provider to the business.



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(27) "Unique identifier" or "unique personal identifier"
means a persistent identifier that can be used to recognize a
consumer, a family, or a device linked to a consumer or family
over time and across different services, including, but not
limited to, a device identifier; an Internet protocol address;
cookies, beacons, pixel tags, mobile ad identifiers, or similar
technology; a customer number, unique pseudonym, or user alias;
telephone numbers; or other forms of persistent or probabilistic
identifiers that can be used to identify a particular consumer
or device that is linked to a consumer or family. For purposes
of this subsection, the term "family" means a custodial parent
or guardian and any minor children of which the parent or
guardian has custody.

(28) "Verified request" means a request submitted by a
consumer, by a consumer on behalf of the consumer's minor child,
or by a natural person or a person registered with the Secretary
of State, who is authorized by the consumer to act on the
consumer's behalf, to a business for which the business can
reasonably verify the authenticity of the request.

Section 4. Section 501.1745, Florida Statutes, is created
to read:

501.1745 General duties of businesses that collect personal
information.—

(1) (a) A business that controls the collection of a
consumer's personal information that will be used for any
purpose other than a business purpose, at or before the point of
collection, shall inform consumers of all of the following:

1. The purposes for which each category of personal
information is collected or used and whether that information is



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sold. A business may not collect additional categories of personal information, or use collected personal information for additional purposes that are incompatible with the disclosed purpose for which the personal information was collected, without providing the consumer with notice consistent with this section.

2. The length of time the business intends to retain each category of personal information or, if that is not possible, the criteria used to determine such period, provided that a business may not retain a consumer's personal information for each disclosed purpose for which the personal information was collected for longer than is reasonably necessary for that disclosed purpose.

(b) A business that collects personal information about, but not directly from, consumers may provide the required information on its Internet home page or in its online privacy policy.

(2) A business' collection, use, retention, and sharing of a consumer's personal information must be reasonably necessary to achieve, and proportionate to the benefit of achieving, the purposes for which the personal information was collected or processed, and such information may not be further processed in a manner that is incompatible with those purposes.

(3) A business that collects a consumer's personal information shall implement reasonable security procedures and practices appropriate to the nature of the personal information to protect the personal information from unauthorized or illegal access, destruction, use, modification, or disclosure.

(4) A business that collects a consumer's personal



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information and discloses it to a service provider for a business purpose shall enter into an agreement with such service provider which obligates the service provider to comply with applicable obligations under this act and to provide the same level of privacy protection as is required by this act. If a service provider engages any other person to assist it in processing personal information for a business purpose on behalf of the business, or if any other person engaged by the service provider engages another person to assist in processing personal information for that business purpose, the provider or person must notify the business of that engagement, and the engagement must be pursuant to a written contract that includes the prohibitions described in s. 501.174(23) and a certification made by the person receiving the personal information that he or she understands the restrictions under this act and will comply with them.

(5) A business may not process sensitive data concerning a consumer without obtaining the consumer's consent or, in the case of the processing of sensitive data concerning a known child, without processing such data in accordance with the federal Children's Online Privacy Protection Act, 15 U.S.C. s. 6501 et. seq.

Section 5. Section 501.175, Florida Statutes, is created to read:

501.175 Use of personal information; third parties; other rights.—

(1)(a) A consumer has the right, at any time, to direct a business that sells personal information about the consumer not to sell the consumer's personal information. This right may be



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referred to as the right to opt out of the sale.

(b) As part of the right to opt out of the sale of his or her personal information, a consumer has the right, at any time, to opt out of the processing of the consumer's personal data for purposes of targeted advertising or profiling. However, this paragraph may not be construed to prohibit the business that collected the consumer's personal information from:

1. Offering a different price, rate, level, quality, or selection of goods or services to a consumer, including offering goods or services for no fee, if the consumer has opted out of targeted advertising or the sale of his or her personal information; or

2. Offering a loyalty, reward, premium feature, discount, or club card program.

(c) A business that charges or offers a different price, rate, level, quality, or selection of goods or services to a consumer who has opted out of targeted advertising or the sale of his or her personal information, or that offers goods or services for no fee, shall ensure that such charge or offer is:

1. Reasonably related to the value provided to the business by the consumer's data; and

2. Not unjust, unreasonable, coercive, or usurious.

(2) A business that sells consumers' personal information shall provide notice to consumers that the information may be sold and that consumers have the right to opt out of the sale of their personal information.

(3) A business that sells consumer information and that has received direction from a consumer not to sell the consumer's personal information or, in the case of a minor consumer's



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personal information, has not received consent to sell the minor consumer's personal information, is prohibited from selling the consumer's personal information after the business receives the consumer's direction, unless the consumer subsequently provides express authorization for the sale of the consumer's personal information. A business that is able to authenticate the consumer, for example, by the consumer logging in, or that uses some other unique identifier for the consumer, must comply with any privacy preferences the consumer previously directed. The business may not require the consumer to declare privacy preferences every time the consumer visits the business' website or uses the business' online services.

(4) (a) Notwithstanding subsection (1), a business may not sell the personal information of consumers if the business has actual knowledge that the consumer is younger than 16 years of age, unless:

1. The consumer, in the case of consumers between 13 and 16 years of age, has affirmatively authorized the sale of the consumer's personal information; or

2. The consumer's parent or guardian, in the case of consumers who are younger than 13 years of age, has affirmatively authorized the sale of the consumer's personal information.

(b) This right may be referred to as the right to opt in.

(c) A business that willfully disregards the consumer's age is deemed to have actual knowledge of the consumer's age.

(d) A business that complies with the verifiable parental consent requirements of the Children's Online Privacy Protection Act, 15 U.S.C. s. 6501 et seq., shall be deemed compliant with



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any obligation to obtain parental consent.

(5) A business that is required to comply with this section shall, in a form that is reasonably accessible to consumers, do all of the following:

(a) Provide a clear and conspicuous link on the business' Internet home page, titled "Do Not Sell My Personal Information," to a web page that enables a consumer or a person authorized by the consumer to opt out of the sale of the consumer's personal information. A business may not require a consumer to create an account in order to direct the business not to sell the consumer's information.

(b) Ensure that all individuals responsible for handling consumer inquiries about the business' privacy practices or the business' compliance with this section are informed of all requirements of this section and how to direct consumers to exercise their rights.

(c) For consumers who exercise their right to opt out of the sale of their personal information, refrain from selling personal information the business collected about the consumer as soon as reasonably possible but no longer than 2 business days after receiving the request to opt out.

(d) For consumers who have opted out of the sale of their personal information, respect the consumer's decision to opt out for at least 12 months before requesting that the consumer authorize the sale of the consumer's personal information.

(e) Use any personal information collected from the consumer in connection with the submission of the consumer's opt-out request solely for the purposes of complying with the opt-out request.



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(f) Ensure that consumers have the right to submit a verified request for certain information from a business, including the categories of sources from which the consumer's personal information was collected, the specific items of personal information it has collected about the consumer, and the categories of any third parties to whom the personal information was sold.

(6) Consumers have the right to submit a verified request that personal information that has been collected from the consumer be deleted. A business shall notify a third party to delete any consumer information bought or sold.

(7) A business, or a service provider acting pursuant to its contract with the business or another service provider, is not required to comply with a consumer's verified request to delete the consumer's personal information if it is necessary for the business or service provider to maintain the consumer's personal information in order to do any of the following:

(a) Complete the transaction for which the personal information was collected, fulfill the terms of a written warranty or product recall conducted in accordance with federal law, provide a good or service requested by the consumer, or otherwise perform a contract between the business and the consumer.

(b) Help to ensure security and integrity to the extent that the use of the consumer's personal information is reasonably necessary and proportionate for those purposes.

(c) Debug to identify and repair errors that impair existing intended functionality.

(d) Exercise free speech, ensure the right of another



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consumer to exercise that consumer's right of free speech, or
exercise another right provided for by law.

(e) Engage in public or peer-reviewed scientific,
historical, or statistical research that conforms or adheres to
all other applicable ethics and privacy laws, when the business'
deletion of the information is likely to render impossible or
seriously impair the ability to complete such research, if the
consumer has provided informed consent.

(f) Comply with a legal obligation.

(8) Consumers have the right to submit a verified request
for correction of their personal information held by a business
if that information is inaccurate.

(9) This section may not be construed to require a business
to comply by doing any of the following:

(a) Including any required links and text on the home page
that the business makes available to the public generally, if:

1. The business maintains a separate and additional home
page that is dedicated to consumers in this state and includes
the required links and text; and

2. The business takes reasonable steps to ensure that
consumers in this state are directed to the home page for
consumers in this state and not the home page made available to
the public generally.

(b) Reidentifying or otherwise linking information that is
not maintained in a manner that would be considered personal
information; retaining any personal information about a consumer
if, in the ordinary course of business, that information would
not be retained; maintaining information in identifiable,
linkable, or associable form; or collecting, obtaining,



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retaining, or accessing any data or technology in order to be capable of linking or associating a verifiable consumer request with personal information.

(10) A consumer may authorize another person to opt out of the sale of the consumer's personal information. A business shall comply with an opt-out request received from a person authorized by the consumer to act on the consumer's behalf, including a request received through a user-enabled global privacy control, such as a browser plug-in or privacy setting, device setting, or other mechanism, which communicates or signals the consumer's choice to opt out, and may not require a consumer to make a verified request to opt out of the sale of his or her information.

(11) Each business shall establish a designated request address through which a consumer may submit a request to exercise his or her rights under this act.

(12) (a) A business that receives a verified request:

1. For a consumer's personal information shall disclose to the consumer any personal information about the consumer which it has collected since July 1, 2022, directly or indirectly, including through or by a service provider.

2. To correct a consumer's inaccurate personal information shall correct the inaccurate personal information.

3. To delete a consumer's personal information shall delete such personal information.

(b) A service provider is not required to personally comply with a verified request received directly from a consumer or a consumer's authorized agent to the extent that the service provider has collected personal information about the consumer



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in its role as a service provider. A service provider shall provide assistance to a business with which it has a contractual relationship with respect to the business' response to a verifiable consumer request, including, but not limited to, by providing to the business the consumer's personal information in the service provider's possession which the service provider obtained as a result of providing services to the business.

(c) At the direction of the business, a service provider shall correct inaccurate personal information or delete personal information, or enable the business to do the same, and shall direct any service providers who may have accessed such personal information from or through the service provider to correct or delete the consumer's personal information, as applicable.

(d) A business shall comply with a verified request submitted by a consumer to access, correct, or delete personal information within 30 days after the date the request is submitted. A business may extend such period by up to 30 days if the business, in good faith, determines that such an extension is reasonably necessary. A business that extends the period shall notify the consumer of the necessity of an extension.

(13) A business shall comply with a consumer's previous expressed decision to opt out of the sale of his or her personal information without requiring the consumer to take any additional action if:

(a) The business is able to identify the consumer through a login protocol or any other process the business uses to identify consumers and the consumer has previously exercised his or her right to opt out of the sale of his or her personal information; or



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(b) The business is aware of the consumer's desire to opt out of the sale of his or her personal information through the use of a user-enabled global privacy control, such as a browser, browser instruction, plug-in or privacy setting, device setting, application, service, or other mechanism, which communicates or signals the consumer's choice to opt out.

(14) A business shall make available, in a manner reasonably accessible to consumers whose personal information the business collects through its website or online service, a notice that does all of the following:

(a) Identifies the categories of personal information that the business collects through its website or online service about consumers who use or visit the website or online service and the categories of third parties with whom the business may share such personal information.

(b) Provides a description of the process, if applicable, for a consumer who uses or visits the website or online service to review and request changes to any of his or her personal information that is collected through the website or online service.

(c) Describes the process by which the business notifies consumers who use or visit the website or online service of material changes to the notice.

(d) Discloses whether a third party may collect personal information about a consumer's online activities over time and across different websites or online services when the consumer uses the business' website or online service.

(e) States the effective date of the notice.

(15) If a request from a consumer is manifestly unfounded



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or excessive, in particular because of the request's repetitive character, a business may either charge a reasonable fee, taking into account the administrative costs of providing the information or communication or taking the action requested, or refuse to act on the request and notify the consumer of the reason for refusing the request. The business bears the burden of demonstrating that any verified consumer request is manifestly unfounded or excessive.

(16) A business that discloses personal information to a service provider is not liable under this act if the service provider receiving the personal information uses it in violation of the restrictions set forth in the act, provided that, at the time of disclosing the personal information, the business does not have actual knowledge, or reason to believe, that the service provider intends to commit such a violation. A service provider is likewise not liable under this act for the obligations of a business for which it provides services as set forth in this act.

(17) The rights afforded to consumers and the obligations imposed on a business in this act may not adversely affect the rights and freedoms of other consumers. Notwithstanding subsection (7), a verified request for specific items of personal information, to delete a consumer's personal information, or to correct inaccurate personal information does not extend to personal information about the consumer which belongs to, or which the business maintains on behalf of, another natural person.

Section 6. Section 501.176, Florida Statutes, is created to read:



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501.176 Scope; exclusions.—

(1) The obligations imposed on a business by this act do not restrict a business' ability to do any of the following:

(a) Comply with federal, state, or local laws.

(b) Comply with a civil, criminal, or regulatory inquiry or an investigation, a subpoena, or a summons by federal, state, or local authorities.

(c) Cooperate with law enforcement agencies concerning conduct or activity that the business, service provider, or third party reasonably and in good faith believes may violate federal, state, or local law.

(d) Exercise or defend legal claims.

(e) Collect, use, retain, sell, or disclose consumer information that is de-identified or in the aggregate consumer information that relates to a group or category of consumers from which individual consumer identities have been removed.

(f) Collect or sell a consumer's personal information if every aspect of that commercial conduct takes place wholly outside of this state. For purposes of this act, commercial conduct takes place wholly outside of this state if the business collected that information while the consumer was outside of this state, no part of the sale of the consumer's personal information occurred in this state, and no personal information collected while the consumer was in this state is sold. This paragraph does not permit a business to store, including on a device, personal information about a consumer when the consumer is in this state and then to collect that personal information when the consumer and stored personal information are outside of this state.



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(2) This act does not apply to any of the following:

(a) A business that collects or discloses the personal information of its employees, owners, directors, officers, job applicants, interns, or volunteers, so long as the business is collecting or disclosing such information only to the extent reasonable and necessary within the scope of the role the business has in relation to each class of listed individuals.

(b) A business that enters into a contract with an independent contractor and collects or discloses personal information about the contractor reasonably necessary to either enter into or to fulfill the contract when the contracted services would not defeat the purposes of this act.

(c) Protected health information for purposes of the federal Health Insurance Portability and Accountability Act of 1996 and related regulations, and patient identifying information for purposes of 42 C.F.R. part 2, established pursuant to 42 U.S.C. s. 290dd-2.

(d) A covered entity or business associate governed by the privacy, security, and breach notification rules issued by the United States Department of Health and Human Services in 45 C.F.R. parts 160 and 164, or a program or a qualified service program defined in 42 C.F.R. part 2, to the extent the covered entity, business associate, or program maintains personal information in the same manner as medical information or protected health information as described in paragraph (c).

(e) Identifiable private information collected for purposes of research as defined in 45 C.F.R. s. 164.501 conducted in accordance with the Federal Policy for the Protection of Human Subjects for purposes of 45 C.F.R. part 46, the good clinical



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practice guidelines issued by the International Council for
Harmonisation of Technical Requirements for Pharmaceuticals for
Human Use, or the Protection for Human Subjects for purposes of
21 C.F.R. parts 50 and 56; or personal information used or
shared in research conducted in accordance with one or more of
these standards.

(f) Information and documents created for purposes of the
federal Health Care Quality Improvement Act of 1986 and related
regulations, or patient safety work product for purposes of 42
C.F.R. part 3, established pursuant to 42 U.S.C. s. 299b-21
through 299b-26.

(g) Information that is de-identified in accordance with 45
C.F.R. part 164 and that is derived from individually
identifiable health information, as described in the Health
Insurance Portability and Accountability Act of 1996, or
identifiable personal information, consistent with the Federal
Policy for the Protection of Human Subjects or the human subject
protection requirements of the United States Food and Drug
Administration or the good clinical practice guidelines issued
by the International Council for Harmonisation.

(h) Information collected as part of a clinical trial
subject to the Federal Policy for the Protection of Human
Subjects pursuant to good clinical practice guidelines issued by
the International Council for Harmonisation of Technical
Requirements for Pharmaceuticals for Human Use or pursuant to
human subject protection requirements of the United States Food
and Drug Administration.

(i) The sale of personal information to or from a consumer
reporting agency if that information is to be reported in or



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used to generate a consumer report as defined by 15 U.S.C. s. 1681(a), and if the use of that information is limited by the federal Fair Credit Reporting Act, 15 U.S.C. s. 1681 et seq.

(j) Personal information collected, processed, sold, or disclosed pursuant to the federal Gramm-Leach-Bliley Act, 15 U.S.C. s. 6801 et seq. and implementing regulations.

(k) Personal information collected, processed, sold, or disclosed pursuant to the Farm Credit Act of 1971, as amended in 12 U.S.C. s. 2001-2279cc and implementing regulations.

(l) Personal information collected, processed, sold, or disclosed pursuant to the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. s. 2721 et seq.

(m) Education information covered by the federal Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g and 34 C.F.R. part 99.

(n) Personal information collected, processed, sold, or disclosed in relation to price, route, or service as those terms are used in the federal Airline Deregulation Act, 49 U.S.C. s. 40101 et seq., by entities subject to the federal Airline Deregulation Act, to the extent the provisions of this act are preempted by s. 41713 of the federal Airline Deregulation Act.

(o) Vehicle information or ownership information retained or shared between a new motor vehicle dealer and the vehicle's manufacturer if the vehicle or ownership information is shared for the purpose of effectuating, or in anticipation of effectuating, a vehicle repair covered by a vehicle warranty or a recall conducted pursuant to 49 U.S.C. s. 30118-30120, provided that the new motor vehicle dealer or vehicle manufacturer with which that vehicle information or ownership



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information is shared does not sell, share, or use that
information for any other purpose. As used in this paragraph,
the term "vehicle information" means the vehicle information
number, make, model, year, and odometer reading, and the term
"ownership information" means the name or names of the
registered owner or owners and the contact information for the
owner or owners.

Section 7. Section 501.177, Florida Statutes, is created to
read:

501.177 Enforcement; attorney general; rules.—

(1) The Department of Legal Affairs may adopt rules to
implement this section. If the department has reason to believe
that any business, service provider, or other person or entity
is in violation of this act and that proceedings would be in the
public interest, the department may institute an appropriate
legal proceeding against such party.

(2) After the department has notified a business in writing
of an alleged violation, the department may grant the business a
30-day period to cure the alleged violation. The department may
consider the number of violations, the substantial likelihood of
injury to the public, or the safety of persons or property when
determining whether to grant 30 days to cure an alleged
violation. If the business cures the alleged violation to the
satisfaction of the department and provides proof of such cure
to the department, the department may issue a letter of guidance
to the business which indicates that the business will not be
offered a 30-day cure period for any future violations. If the
business fails to cure the violation within 30 days, the
department may bring an action against the business for the



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alleged violation.

(3) The trial court, upon a showing that any business, service provider, or other person or entity is in violation of this act, may take any of the following actions:

(a) Issue a temporary or permanent injunction.

(b) Impose a civil penalty of not more than \$2,500 for each unintentional violation or \$7,500 for each intentional violation. Such fines may be tripled if the violation involves a consumer who is 16 years of age or younger.

(c) Award reasonable costs of enforcement, including reasonable attorney fees and costs.

(d) Grant such other relief as the court may deem appropriate.

Section 8. This act shall take effect July 1, 2022.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to consumer data privacy; creating s.
501.172, F.S.; providing a short title; creating s.
501.173, F.S.; providing a purpose; creating s.
501.174, F.S.; defining terms; creating s. 501.1745,
F.S.; requiring certain businesses that collect
consumer personal information to provide certain
information to the consumer; requiring such
collection, use, retention, and sharing of such
information to meet certain requirements; requiring



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such businesses to implement reasonable security procedures and practices; requiring such businesses to enter into an agreement with service providers under certain circumstances; prohibiting a business from processing certain sensitive consumer data under certain circumstances; creating s. 501.175, F.S.; providing that consumers have the right to direct certain businesses not to sell their personal information; providing construction; requiring such businesses to notify consumers of such right; requiring businesses to comply with such a request under certain circumstances; prohibiting businesses from selling the personal information of consumers younger than a specified age without express authorization from the consumer or the consumer's parent or guardian under certain circumstances; providing that a business that willfully disregards a consumer's age is deemed to have actual knowledge of the consumer's age; requiring certain businesses to provide a specified link on their home page for consumers to opt out; providing requirements for businesses to comply with a consumer's opt-out request; providing that consumers have the right to submit a verified request for businesses to delete or correct personal information the businesses have collected about the consumers; providing construction; providing that consumers may authorize other persons to opt out of the sale of the consumer's personal information on the consumer's behalf; requiring



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businesses to establish designated addresses through which consumers may submit verified requests; specifying requirements for consumers' verified requests and businesses' responses; requiring businesses to comply with previous consumer requests without requiring additional information from the consumer, under certain circumstances; requiring businesses to provide certain notices to consumers; authorizing businesses to charge consumers a reasonable fee for manifestly unfounded or excessive requests, or to refuse to complete a request under certain circumstances; providing that business and service providers are not liable for certain actions; providing that a consumer's rights and the obligations of a business may not adversely affect the rights and freedoms of other consumers; creating s. 501.176, F.S.; providing applicability; providing exceptions; creating s. 501.177, F.S.; authorizing the Department of Legal Affairs to adopt rules and to bring appropriate legal proceedings for violations under certain circumstances; providing that businesses must have a specified timeframe to cure any violations; providing civil remedies; providing civil penalties for unintentional and intentional violations; providing enhanced penalties for certain violations; providing an effective date.



960668

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/07/2021	.	
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	.	
	.	

The Committee on Rules (Gruters) recommended the following:

Senate Amendment to Amendment (655390)

Delete lines 424 - 439

and insert:

collected the consumer's personal information from offering a
different price, rate, level, quality, or selection of goods or
services to a consumer, including offering goods or services for
no fee, if the consumer has opted out of targeted advertising or
the sale of his or her personal information.

(c) This act may not be construed to require a business to
provide a product or service that requires the personal data of



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12 a consumer which the business does not collect or maintain, or
13 to prohibit a business from offering a different price, rate,
14 level, quality, or selection of goods or services to a consumer,
15 including offering goods or services for no fee, if the offer is
16 related to a consumer's voluntary participation in a loyalty,
17 reward, premium features, discounts, or club card program.



968992

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/07/2021	.	
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	.	
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The Committee on Rules (Gruters) recommended the following:

Senate Amendment to Amendment (655390)

Between lines 714 and 715
insert:

(b) A business, service provider, or third party that
collects the personal information of an individual:

1. Who applies to, is or was previously employed by, or
acts as an agent of the business, service provider, or third
party, to the extent that the personal information is collected
and used in a manner related to or arising from the individual's
employment status; or



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12 2. To administer benefits for another individual and the
13 personal information is used to administer those benefits.



286888

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/07/2021	.	
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The Committee on Rules (Bradley) recommended the following:

Senate Amendment to Amendment (655390)

Delete lines 270 - 283
and insert:

(22) "Sell" means to sell, rent, release, disclose, disseminate, make available, transfer, or otherwise communicate orally, in writing, or by electronic or other means a consumer's personal information by a business to another business or a third party for monetary or other valuable consideration. The term does not include:

(a) The disclosure by a business, for a business purpose,



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of a consumer's personal information to another business or
third-party entity that processes the information for the
business; or

(b) The disclosure by a business, for the purpose of
providing a product or service requested or approved by a
consumer, of the consumer's personal information to another
business or third-party entity.

By the Committee on Commerce and Tourism; and Senator Bradley

577-03169-21

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1 A bill to be entitled
 2 An act relating to consumer data privacy; creating s.
 3 501.172, F.S.; providing a short title; creating s.
 4 501.173, F.S.; providing a purpose; creating s.
 5 501.174, F.S.; defining terms; creating s. 501.1745,
 6 F.S.; requiring certain businesses that collect
 7 consumer personal information to provide certain
 8 information to the consumer; requiring such
 9 collection, use, retention, and sharing of such
 10 information to meet certain requirements; requiring
 11 such businesses to implement reasonable security
 12 procedures and practices; requiring such businesses to
 13 enter into an agreement with third parties under
 14 certain circumstances; creating s. 501.175, F.S.;
 15 providing that consumers have the right to direct
 16 certain businesses not to sell their personal
 17 information; providing construction; requiring such
 18 businesses to notify consumers of such right;
 19 requiring businesses to comply with such a request
 20 under certain circumstances; prohibiting businesses
 21 from selling the personal information of consumers
 22 younger than a specified age without express
 23 authorization from the consumer or the consumer's
 24 parent or guardian under certain circumstances;
 25 providing that a business that willfully disregards a
 26 consumer's age is deemed to have actual knowledge of
 27 the consumer's age; requiring certain businesses to
 28 provide a specified link on their home page for
 29 consumers to opt out; providing requirements for

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

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30 businesses to comply with a consumer's opt-out
 31 request; providing that consumers have the right to
 32 submit a verified request for businesses to delete or
 33 correct personal information the businesses have
 34 collected about the consumers; providing construction;
 35 providing that consumers may authorize other persons
 36 to opt out of the sale of the consumer's personal
 37 information on the consumer's behalf; requiring
 38 businesses to establish designated addresses through
 39 which consumers may submit verified requests;
 40 specifying requirements for consumers' verified
 41 requests and businesses' responses; requiring
 42 businesses to comply with previous consumer requests
 43 without requiring additional information from the
 44 consumer, under certain circumstances; requiring
 45 businesses to provide certain notices to consumers;
 46 creating s. 501.176, F.S.; providing applicability;
 47 authorizing businesses to charge consumers a
 48 reasonable fee for manifestly unfounded or excessive
 49 requests, or to refuse to complete a request under
 50 certain circumstances; providing for business
 51 liability under certain circumstances; providing
 52 construction; providing that a consumer's rights and
 53 the obligations of a business may not adversely affect
 54 the rights and freedoms of other consumers; creating
 55 s. 501.177, F.S.; authorizing consumers to initiate
 56 civil actions for violations; providing civil
 57 remedies; requiring the Department of Legal Affairs to
 58 adopt rules and to initiate legal proceedings against

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

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a business under certain circumstances; providing
civil penalties; providing an effective date.

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

Section 1. Section 501.172, Florida Statutes, is created to
read:

501.172 Short title.—This act may be cited as the "Florida
Privacy Protection Act."

Section 2. Section 501.173, Florida Statutes, is created to
read:

501.173 Purpose.—This act shall be construed liberally in
recognition that privacy is an important right, and consumers in
this state should have the ability to share their personal
information as they wish, in a way that is safe and that they
understand and control.

Section 3. Section 501.174, Florida Statutes, is created to
read:

501.174 Definitions.—As used in ss. 501.172-501.177, unless
the context otherwise requires, the term:

(1) "Advertising and marketing" means a communication by a
business or a person acting on behalf of the business through
any medium intended to induce a consumer to obtain goods,
services, or employment.

(2) "Aggregate consumer information" means information that
relates to a group or category of consumers, from which
individual consumer identities have been removed, which is not
linked or reasonably linkable to any consumer or household,
including through a device. The term does not include one or

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more individual consumer records that have been de-identified.

(3) "Biometric information" means an individual's
physiological, biological, or behavioral characteristics,
including an individual's deoxyribonucleic acid (DNA), which can
be used, singly or in combination with each other or with other
identifying data, to establish individual identity. The term
includes, but is not limited to, imagery of the iris, retina,
fingerprint, face, hand, or palm; vein patterns; voice
recordings from which an identifier template, such as a
faceprint, a minutiae template, or a voice print, can be
extracted; keystroke patterns or rhythms; gait patterns or
rhythms; and sleep, health, or exercise data that contain
identifying information.

(4) "Business" means:

(a) A sole proprietorship, a partnership, a limited
liability company, a corporation, or an association or any other
legal entity that meets the following requirements:

1. Is organized or operated for the profit or financial
benefit of its shareholders or owners;

2. Does business in this state;

3. Collects personal information about consumers, or is the
entity on behalf of which such information is collected;

4. Determines the purposes and means of processing personal
information about consumers, alone or jointly with others; and

5. Satisfies at least one of the following thresholds:

a. Has global annual gross revenues in excess of \$25
million, as adjusted in January of every odd-numbered year to
reflect any increase in the Consumer Price Index.

b. Annually buys, sells, or shares the personal information

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of 50,000 or more consumers, households, or devices.

c. Derives 50 percent or more of its global annual revenues from selling or sharing personal information about consumers.

(b) An entity that controls or is controlled by a business and that shares common branding with the business. As used in this paragraph, the term:

1. "Common branding" means a shared name, service mark, or trademark that the average consumer would understand to mean that two or more entities are commonly owned.

2. "Control" means:

a. Ownership of, or the power to vote, more than 50 percent of the outstanding shares of any class of voting security of a business;

b. Control in any manner over the election of a majority of the directors, or of individuals exercising similar functions; or

c. The power to exercise a controlling influence over the management of a company.

(c) A joint venture or partnership composed of businesses in which each business has at least a 40 percent interest. For the purposes of this act, the joint venture or partnership, and each business that comprises the joint venture or partnership, must be considered a separate, single business, except that personal information in the possession of each business and disclosed to the joint venture or partnership may not be shared with the other business. A joint venture does not include a third party that operates, hosts, or manages a website or an online service on behalf of a business or processes information on behalf of a business.

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(5) "Business purpose" means the use of personal information for the business' operational or other notice-given purposes or for the service provider's operational purposes, provided that the use of the personal information is reasonably necessary to achieve, and proportionate to the benefit of achieving, the purpose for which the personal information was collected or processed or for another purpose that is compatible with the context in which the personal information was collected. The term includes all of the following:

(a) Auditing related to counting ad impressions of unique visitors and verifying positioning and the quality of ad impressions, and auditing compliance with this specification and other standards.

(b) Helping to ensure security and integrity to the extent that the use of the consumer's personal information is reasonably necessary for these purposes and proportionate to the benefit of its use for these purposes.

(c) Debugging to identify and repair errors that impair existing intended functionality.

(d) Short-term, transient use, including, but not limited to, nonpersonalized advertising shown as part of a consumer's current interaction with the business, provided that the consumer's personal information is not disclosed to a third party and is not used to build a profile of the consumer or to otherwise alter the consumer's experience outside his or her current interaction with the business.

(e) Performing services on behalf of the business, including maintaining or servicing accounts, providing customer service, processing or fulfilling orders and transactions,

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175 verifying customer information, processing payments, or
 176 providing financing, analytic services, storage, or similar
 177 services on behalf of the business.

178 (f) Providing advertising and marketing services, not
 179 including targeted advertising, to the consumer provided that,
 180 for the purpose of advertising and marketing, a service provider
 181 may not combine the personal information of consumers who opt
 182 out which the service provider receives from, or on behalf of,
 183 the business with personal information that the service provider
 184 receives from, or on behalf of, another person or persons or
 185 collects from its own interaction with consumers.

186 (g) Undertaking internal research for technological
 187 development and demonstration.

188 (h) Undertaking activities to verify or maintain the
 189 quality or safety of a service or device that is owned,
 190 manufactured, manufactured for, or controlled by the business,
 191 and to improve, upgrade, or enhance the service or device that
 192 is owned, manufactured, manufactured for, or controlled by the
 193 business.

194 (6) "Categories" or "category" means the items of personal
 195 identifying information specified as being included as personal
 196 information under subsection (18).

197 (7) "Collects," "collected," or "collection" means buying,
 198 renting, gathering, obtaining, receiving, or accessing by any
 199 means any personal information pertaining to a consumer. The
 200 term includes receiving information from the consumer, either
 201 actively or passively, or by observing the consumer's behavior.

202 (8) "Commercial purposes" means to advance a person's
 203 commercial or economic interests, such as by inducing another

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204 person to buy, rent, lease, join, subscribe to, provide, or
 205 exchange products, goods, property, information, or services or
 206 enabling or effecting, directly or indirectly, a commercial
 207 transaction. The term does not include engaging in speech that
 208 state or federal courts have recognized as noncommercial speech,
 209 including political speech and journalism.

210 (9) "Consumer" means a natural person, however identified,
 211 including identification by a unique identifier, who is in this
 212 state for other than a temporary or transitory purpose. The term
 213 does not include any other natural person who is a nonresident.

214 (10) "De-identified" means information:

215 (a) That cannot reasonably identify, relate to, describe,
 216 be associated with, or be linked directly or indirectly to a
 217 particular consumer or device;

218 (b) Containing data that the business has taken reasonable
 219 measures to ensure could not be reidentified;

220 (c) Containing data that the business publicly commits to
 221 maintain and use in a de-identified fashion and that it does not
 222 attempt to reidentify; and

223 (d) Containing data that the business contractually
 224 prohibits downstream recipients from attempting to reidentify.

225 (11) "Designated request address" means an electronic mail
 226 address, a toll-free telephone number, or a website established
 227 by a business through which a consumer may submit a verified
 228 request to the business.

229 (12) "Device" means a physical object capable of directly
 230 or indirectly connecting to the Internet.

231 (13) "Home page" means the introductory page of an Internet
 232 website and any Internet web page where personal information is

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collected. In the case of an online service, such as a mobile application, the term means the application's platform page or download page; a link within the application, such as from the application configuration, "about," "information," or settings page; and any other location that allows consumers to review the notices required by this act, at any time, including, but not limited to, before downloading the application.

(14) "Household" means a person or group of persons living together or sharing living quarters who are or are not related.

(15) "Intentional interaction" or "intentionally interacting" means the consumer intends to interact with or disclose personal information to a person through one or more deliberate interactions, including visiting the person's website or purchasing a good or service from the person. The term does not include hovering over, muting, pausing, or closing a given piece of content.

(16) "Nonpersonalized advertising" means advertising and marketing that is based solely on a consumer's personal information derived from the consumer's current interaction with the business, with the exception of the consumer's precise geolocation.

(17) "Person" means an individual, a proprietorship, a firm, a partnership, a joint venture, a syndicate, a business trust, a company, a corporation, a limited liability company, an association, a committee, and any other organization or group of persons acting in concert.

(18) "Personal information" means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly

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or indirectly, with a particular consumer or household.

(a) The term includes, but is not limited to, all of the following items of personal identifying information about a consumer collected and maintained by a person or business:

1. A first and last name.

2. A home or other physical address that includes the name of a street and the name of a city or town.

3. An electronic mail address.

4. A telephone number.

5. A social security number.

6. An identifier such as an alias, a unique personal identifier, an online identifier, an Internet protocol address, an account name, a driver license number, a passport number, or other similar identifiers.

7. Biometric information, such as DNA or fingerprints or any other biometric information collected by a business about a consumer without the consumer's knowledge.

8. Internet or other electronic network activity information, including, but not limited to, browsing history, search history, and information regarding a consumer's interaction with a website, an application, or an advertisement.

9. Audio, electronic, visual, thermal, olfactory, geolocation, or similar information.

10. Professional or employment-related information.

11. Education information, defined as only information that is not publicly available.

12. Inferences drawn from any information specified in this paragraph which can create a profile about a consumer reflecting the consumer's preferences, characteristics, psychological

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291 trends, predispositions, behavior, attitudes, intelligence,
 292 abilities, and aptitudes.

293 13. Any other information that may serve as a probabilistic
 294 identifier concerning a consumer which is collected from the
 295 consumer through a website, an online service, or some other
 296 means by the business and maintained by the business in
 297 combination with an identifier in a form that, when used
 298 together with the information, identifies the consumer.

299 14. Characteristics of protected classifications under
 300 state or federal law.

301 15. Commercial information, including records of personal
 302 property; products or services purchased, obtained, or
 303 considered; or other purchasing or consuming histories or
 304 tendencies.

305 16. Geolocation data.

306 (b) The term does not include:

307 1. Information about a consumer obtained from public
 308 records, including information that is lawfully made available
 309 from federal, state, or local governmental records; information
 310 that a business has a reasonable basis to believe is lawfully
 311 made available to the general public by the consumer or from
 312 widely distributed media; or lawfully obtained, truthful
 313 information that is a matter of public concern.

314 2. Consumer information that is de-identified or aggregate
 315 consumer information that relates to a group or category of
 316 consumers from which individual consumer identities have been
 317 removed.

318 (19) "Probabilistic identifier" means the identification of
 319 a consumer or a device to a degree of certainty more probable

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320 than not, based on any categories of personal information
 321 included in or similar to the items of personal identifying
 322 information specified in subsection (18).

323 (20) "Processing" means any operation or set of operations
 324 performed on personal information or on sets of personal
 325 information, whether or not by automated means.

326 (21) "Profiling" means any form of automated processing
 327 performed on personal data to evaluate, analyze, or predict
 328 personal aspects related to an identified or identifiable
 329 natural person's economic situation, health, personal
 330 preferences, interests, reliability, behavior, location, or
 331 movements.

332 (22) (a) "Sale" or "sell" means the sale, rental, release,
 333 disclosure, dissemination, making available, loaning, sharing,
 334 transferring, or other communication, orally, in writing, or by
 335 electronic or other means, of a consumer's personal information
 336 by a business to a third party for monetary or other tangible or
 337 intangible consideration or for any commercial purpose.

338 (b) The term does not include any of the following:

339 1. The disclosure, for a business purpose, of personal
 340 information by a business to a service provider who processes
 341 the personal information on behalf of the business.

342 2. The disclosure, for the purposes of providing a product
 343 or service requested by the consumer, of personal information by
 344 a business to another business resulting from the consumer's
 345 intentional interaction.

346 (23) "Security and integrity" means the ability of a:

347 (a) Network or information system to detect security
 348 incidents that compromise the availability, authenticity,

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integrity, and confidentiality of stored or transmitted personal information.

(b) Business to detect security incidents; to resist malicious, deceptive, fraudulent, or illegal actions; and to help prosecute those responsible for such actions.

(c) Business to ensure the physical safety of natural persons.

(24) "Service provider" means a person who processes personal information on behalf of a business to whom the business discloses a consumer's personal information for a business purpose pursuant to a written or electronic contract if the contract prohibits the person from:

(a) Selling the information;

(b) Retaining, using, or disclosing the personal information for any purpose other than the business purposes specified in the contract, including a prohibition on retaining, using, or disclosing the personal information for a commercial purpose other than the business purposes specified in the contract with the business;

(c) Combining the personal information that the service provider receives from or on behalf of the business with personal information that the service provider receives from or on behalf of another person or persons or collects from its own interaction with consumers, provided that the service provider may combine personal information to perform a business purpose; and

(d) Retaining, using, or disclosing the information outside of the direct business relationship between the service provider and the business.

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(25) "Targeted advertising" means displaying an advertisement to a consumer when the advertisement is selected based on personal data obtained from a consumer's activities over time and across businesses, websites, or online applications other than the business, website, or online application with which the consumer is intentionally interacting, to predict such consumer's preferences or interests. The term does not include nonpersonalized advertising.

(26) "Third party" means a person who is not any of the following:

(a) The business with which the consumer intentionally interacts which collects personal information from the consumer as part of the consumer's current interaction with the business.

(b) A service provider to the business.

(27) "Unique identifier" or "unique personal identifier" means a persistent identifier that can be used to recognize a consumer, a family, or a device linked to a consumer or family over time and across different services, including, but not limited to, a device identifier; an Internet protocol address; cookies, beacons, pixel tags, mobile ad identifiers, or similar technology; a customer number, unique pseudonym, or user alias; telephone numbers; or other forms of persistent or probabilistic identifiers that can be used to identify a particular consumer or device that is linked to a consumer or family. For purposes of this subsection, the term "family" means a custodial parent or guardian and any minor children of which the parent or guardian has custody.

(28) "Verified request" means a request submitted by a

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consumer, by a consumer on behalf of the consumer's minor child, or by a natural person or a person registered with the Secretary of State, who is authorized by the consumer to act on the consumer's behalf, to a business for which the business can reasonably verify the authenticity of the request.

Section 4. Section 501.1745, Florida Statutes, is created to read:

501.1745 General duties of businesses that collect personal information.-

(1) A business that controls the collection of a consumer's personal information that will be used for any purpose other than a business purpose, at or before the point of collection, shall inform consumers of all of the following:

(a) The purposes for which each category of personal information is collected or used and whether that information is sold. A business may not collect additional categories of personal information, or use collected personal information for additional purposes that are incompatible with the disclosed purpose for which the personal information was collected, without providing the consumer with notice consistent with this section.

(b) The length of time the business intends to retain each category of personal information or, if that is not possible, the criteria used to determine such period, provided that a business may not retain a consumer's personal information for each disclosed purpose for which the personal information was collected for longer than is reasonably necessary for that disclosed purpose.

(2) A business' collection, use, retention, and sharing of

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a consumer's personal information must be reasonably necessary to achieve, and proportionate to the benefit of achieving, the purposes for which the personal information was collected or processed, and such information may not be further processed in a manner that is incompatible with those purposes.

(3) A business that collects a consumer's personal information shall implement reasonable security procedures and practices appropriate to the nature of the personal information to protect the personal information from unauthorized or illegal access, destruction, use, modification, or disclosure.

(4) A business that collects a consumer's personal information and sells that personal information to a third party or discloses it to a service provider for a business purpose shall enter into an agreement with such third party or service provider which obligates the third party or service provider to comply with applicable obligations under this act and obligates those persons to provide the same level of privacy protection as is required by this act. If a service provider engages any other person to assist it in processing personal information for a business purpose on behalf of the business, or if any other person engaged by the service provider engages another person to assist in processing personal information for that business purpose, the provider or person must notify the business of that engagement, and the engagement must be pursuant to a written contract that includes the prohibitions described in s. 501.174(23) and a certification made by the person receiving the personal information that he or she understands the restrictions under this act and will comply with them.

Section 5. Section 501.175, Florida Statutes, is created to

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read:

501.175 Use of personal information; third parties; other rights.-

(1) (a) A consumer has the right, at any time, to direct a business that sells personal information about the consumer not to sell the consumer's personal information. This right may be referred to as the right to opt out of the sale.

(b) As part of the right to opt out of the sale of his or her personal information, a consumer has the right, at any time, to opt out of the processing of the consumer's personal data for purposes of targeted advertising or profiling. However, this paragraph may not be construed to prohibit the business that collected the consumer's personal information from:

1. Offering a different price, rate, level, quality, or selection of goods or services to a consumer, including offering goods or services for no fee, if the consumer has opted out of targeted advertising or the sale of his or her personal information; or

2. Offering a loyalty, reward, premium feature, discount, or club card program.

(c) A business that charges or offers a different price, rate, level, quality, or selection of goods or services to a consumer who has opted out of targeted advertising or the sale of his or her personal information, or that offers goods or services for no fee, shall ensure that such charge or offer is:

1. Reasonably related to the value provided to the business by the consumer's data; and

2. Not unjust, unreasonable, coercive, or usurious.

(2) A business that sells consumers' personal information

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shall provide notice to consumers that the information may be sold and that consumers have the right to opt out of the sale of their personal information.

(3) A business that sells consumer information and that has received direction from a consumer not to sell the consumer's personal information or, in the case of a minor consumer's personal information, has not received consent to sell the minor consumer's personal information, is prohibited from selling the consumer's personal information after the business receives the consumer's direction, unless the consumer subsequently provides express authorization for the sale of the consumer's personal information. A business that is able to authenticate the consumer, for example, by the consumer logging in, or that uses some other unique identifier for the consumer, must comply with any privacy preferences the consumer previously directed. The business may not require the consumer to declare privacy preferences every time the consumer visits the business' website or uses the business' online services.

(4) (a) Notwithstanding subsection (1), a business may not sell the personal information of consumers if the business has actual knowledge that the consumer is younger than 16 years of age, unless:

1. The consumer, in the case of consumers between 13 and 16 years of age, has affirmatively authorized the sale of the consumer's personal information; or

2. The consumer's parent or guardian, in the case of consumers who are younger than 13 years of age, has affirmatively authorized the sale of the consumer's personal information.

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523 (b) This right may be referred to as the right to opt in.
 524 (c) A business that willfully disregards the consumer's age
 525 is deemed to have actual knowledge of the consumer's age.
 526 (5) A business that is required to comply with this section
 527 shall, in a form that is reasonably accessible to consumers, do
 528 all of the following:
 529 (a) Provide a clear and conspicuous link on the business'
 530 Internet home page, titled "Do Not Sell My Personal
 531 Information," to a web page that enables a consumer or a person
 532 authorized by the consumer to opt out of the sale of the
 533 consumer's personal information. A business may not require a
 534 consumer to create an account in order to direct the business
 535 not to sell the consumer's information.
 536 (b) Ensure that all individuals responsible for handling
 537 consumer inquiries about the business' privacy practices or the
 538 business' compliance with this section are informed of all
 539 requirements of this section and how to direct consumers to
 540 exercise their rights.
 541 (c) For consumers who exercise their right to opt out of
 542 the sale of their personal information, refrain from selling
 543 personal information the business collected about the consumer
 544 as soon as reasonably possible but no longer than 2 business
 545 days after receiving the request to opt out.
 546 (d) For consumers who have opted out of the sale of their
 547 personal information, respect the consumer's decision to opt out
 548 for at least 12 months before requesting that the consumer
 549 authorize the sale of the consumer's personal information.
 550 (e) Use any personal information collected from the
 551 consumer in connection with the submission of the consumer's

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552 opt-out request solely for the purposes of complying with the
 553 opt-out request.
 554 (f) Ensure that consumers have the right to submit a
 555 verified request for certain information from a business,
 556 including the sources from which the consumer's personal
 557 information was collected, the specific items of personal
 558 information it has collected about the consumer, and any third
 559 parties to whom the personal information was sold.
 560 (6) Consumers have the right to submit a verified request
 561 for the deletion of their personal information that the business
 562 has collected.
 563 (7) A business, or a service provider acting pursuant to
 564 its contract with the business or another service provider, is
 565 not required to comply with a consumer's verified request to
 566 delete the consumer's personal information if it is necessary
 567 for the business or service provider to maintain the consumer's
 568 personal information in order to do any of the following:
 569 (a) Complete the transaction for which the personal
 570 information was collected, fulfill the terms of a written
 571 warranty or product recall conducted in accordance with federal
 572 law, provide a good or service requested by the consumer, or
 573 otherwise perform a contract between the business and the
 574 consumer.
 575 (b) Help to ensure security and integrity to the extent
 576 that the use of the consumer's personal information is
 577 reasonably necessary and proportionate for those purposes.
 578 (c) Debug to identify and repair errors that impair
 579 existing intended functionality.
 580 (d) Exercise free speech, ensure the right of another

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581 consumer to exercise that consumer's right of free speech, or
 582 exercise another right provided for by law.

583 (e) Engage in public or peer-reviewed scientific,
 584 historical, or statistical research that conforms or adheres to
 585 all other applicable ethics and privacy laws, when the business'
 586 deletion of the information is likely to render impossible or
 587 seriously impair the ability to complete such research, if the
 588 consumer has provided informed consent.

589 (f) Comply with a legal obligation.

590 (8) Consumers have the right to submit a verified request
 591 for correction of their personal information held by a business
 592 if that information is inaccurate.

593 (9) This section may not be construed to require a business
 594 to comply by including the required links and text on the home
 595 page that the business makes available to the public generally,
 596 if:

597 (a) The business maintains a separate and additional home
 598 page that is dedicated to consumers in this state and includes
 599 the required links and text; and

600 (b) The business takes reasonable steps to ensure that
 601 consumers in this state are directed to the home page for
 602 consumers in this state and not the home page made available to
 603 the public generally.

604 (10) A consumer may authorize another person to opt out of
 605 the sale of the consumer's personal information. A business
 606 shall comply with an opt-out request received from a person
 607 authorized by the consumer to act on the consumer's behalf,
 608 including a request received through a user-enabled global
 609 privacy control, such as a browser plug-in or privacy setting,

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610 device setting, or other mechanism, which communicates or
 611 signals the consumer's choice to opt out, and may not require a
 612 consumer to make a verified request to opt out of the sale of
 613 his or her information.

614 (11) Each business shall establish a designated request
 615 address through which a consumer may submit a request to
 616 exercise his or her rights under this act.

617 (12) (a) A business that receives a verified request:

618 1. For a consumer's personal information, shall disclose to
 619 the consumer any personal information about the consumer which
 620 it has collected since July 1, 2022, directly or indirectly,
 621 including through or by a service provider.

622 2. To correct a consumer's inaccurate personal information,
 623 shall correct the inaccurate personal information.

624 3. To delete a consumer's personal information, shall
 625 delete such personal information.

626 (b) A service provider is not required to personally comply
 627 with a verified request received directly from a consumer or a
 628 consumer's authorized agent to the extent that the service
 629 provider has collected personal information about the consumer
 630 in its role as a service provider. A service provider shall
 631 provide assistance to a business with which it has a contractual
 632 relationship with respect to the business' response to a
 633 verifiable consumer request, including, but not limited to, by
 634 providing to the business the consumer's personal information in
 635 the service provider's possession which the service provider
 636 obtained as a result of providing services to the business.

637 (c) At the direction of the business, a service provider
 638 shall correct inaccurate personal information, or delete

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639 personal information, or enable the business to do the same, and
 640 shall notify any service providers who may have accessed such
 641 personal information from or through the service provider, to
 642 correct or delete the consumer's personal information, as
 643 applicable.

644 (d) A business shall comply with a verified request
 645 submitted by a consumer to access, correct, or delete personal
 646 information within 30 days after the date the request is
 647 submitted. A business may extend such period by up to 30 days if
 648 the business, in good faith, determines that such an extension
 649 is reasonably necessary. A business that extends the period
 650 shall notify the consumer of the necessity of an extension.

651 (13) A business shall comply with a consumer's previous
 652 expressed decision to opt out of the sale of his or her personal
 653 information without requiring the consumer to take any
 654 additional action if:

655 (a) The business is able to identify the consumer through a
 656 login protocol or any other process the business uses to
 657 identify consumers and the consumer has previously exercised his
 658 or her right to opt out of the sale of his or her personal
 659 information; or

660 (b) The business is aware of the consumer's desire to opt
 661 out of the sale of his or her personal information through the
 662 use of a user-enabled global privacy control, such as a browser,
 663 browser instruction, plug-in or privacy setting, device setting,
 664 application, service, or other mechanism, which communicates or
 665 signals the consumer's choice to opt out.

666 (14) A business shall make available, in a manner
 667 reasonably accessible to consumers whose personal information

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668 the business collects through its website or online service, a
 669 notice that does all of the following:

670 (a) Identifies the categories of personal information that
 671 the business collects through its website or online service
 672 about consumers who use or visit the website or online service
 673 and the categories of third parties with whom the business may
 674 share such personal information.

675 (b) Provides a description of the process, if applicable,
 676 for a consumer who uses or visits the website or online service
 677 to review and request changes to any of his or her personal
 678 information that is collected through the website or online
 679 service.

680 (c) Describes the process by which the business notifies
 681 consumers who use or visit the website or online service of
 682 material changes to the notice.

683 (d) Discloses whether a third party may collect personal
 684 information about a consumer's online activities over time and
 685 across different websites or online services when the consumer
 686 uses the business' website or online service.

687 (e) States the effective date of the notice.

688 Section 6. Section 501.176, Florida Statutes, is created to
 689 read:

690 501.176 Exclusions.—

691 (1) The obligations imposed on a business by this act do
 692 not restrict a business' ability to do any of the following:

693 (a) Comply with federal, state, or local laws.

694 (b) Comply with a civil, criminal, or regulatory inquiry or
 695 an investigation, a subpoena, or a summons by federal, state, or
 696 local authorities.

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697 (c) Cooperate with law enforcement agencies concerning
 698 conduct or activity that the business, service provider, or
 699 third party reasonably and in good faith believes may violate
 700 federal, state, or local law.

701 (d) Exercise or defend legal claims.

702 (e) Collect, use, retain, sell, or disclose consumer
 703 information that is de-identified or in the aggregate consumer
 704 information that relates to a group or category of consumers
 705 from which individual consumer identities have been removed.

706 (f) Collect or sell a consumer's personal information if
 707 every aspect of that commercial conduct takes place wholly
 708 outside of this state. For purposes of this act, commercial
 709 conduct takes place wholly outside of this state if the business
 710 collected that information while the consumer was outside of
 711 this state, no part of the sale of the consumer's personal
 712 information occurred in this state, and no personal information
 713 collected while the consumer was in this state is sold. This
 714 paragraph does not permit a business to store, including on a
 715 device, personal information about a consumer when the consumer
 716 is in this state and then to collect that personal information
 717 when the consumer and stored personal information are outside of
 718 this state.

719 (2) This act does not apply to any of the following:

720 (a) A business that collects or discloses the personal
 721 information of the business' employees, applicants, interns, or
 722 volunteers so long as the business is collecting or disclosing
 723 such information within the scope of its role as an employer.

724 (b) Health information that is collected by a covered
 725 entity or business associate governed by the privacy, security,

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726 and breach notification rules issued by the United States
 727 Department of Health and Human Services in 45 C.F.R. parts 160
 728 and 164.

729 (c) A covered entity governed by the privacy, security, and
 730 breach notification rules issued by the United States Department
 731 of Health and Human Services in 45 C.F.R. parts 160 and 164, to
 732 the extent the provider or covered entity maintains patient
 733 information in the same manner as medical information or
 734 protected health information as described in paragraph (b).

735 (d) Information collected as part of a clinical trial
 736 subject to the Federal Policy for the Protection of Human
 737 Subjects pursuant to good clinical practice guidelines issued by
 738 the International Council for Harmonisation of Technical
 739 Requirements for Pharmaceuticals for Human Use or pursuant to
 740 human subject protection requirements of the United States Food
 741 and Drug Administration.

742 (e) The sale of personal information to or from a consumer
 743 reporting agency if that information is to be reported in or
 744 used to generate a consumer report as defined by 15 U.S.C. s.
 745 1681(a), and if the use of that information is limited by the
 746 federal Fair Credit Reporting Act, 15 U.S.C. s. 1681 et seq.

747 (f) Personal information collected, processed, sold, or
 748 disclosed pursuant to the federal Gramm-Leach-Bliley Act, 12
 749 U.S.C. s. 24(a) et seq. and implementing regulations.

750 (g) Personal information collected, processed, sold, or
 751 disclosed pursuant to the federal Driver's Privacy Protection
 752 Act of 1994, 18 U.S.C. s. 2721 et seq.;

753 (h) Education information covered by the federal Family
 754 Educational Rights and Privacy Act, 20 U.S.C. s. 1232g and 34

577-03169-21

20211734c1

C.F.R. part 99.

(i) Personal information collected, processed, sold, or disclosed in relation to price, route, or service as those terms are used in the federal Airline Deregulation Act, 49 U.S.C. s. 40101 et seq., by entities subject to the federal Airline Deregulation Act, to the extent the provisions of this act are preempted by s. 41713 of the federal Airline Deregulation Act.

(j) Vehicle information or ownership information retained or shared between a new motor vehicle dealer and the vehicle's manufacturer if the vehicle or ownership information is shared for the purpose of effectuating, or in anticipation of effectuating, a vehicle repair covered by a vehicle warranty or a recall conducted pursuant to 49 U.S.C. s. 30118-30120, provided that the new motor vehicle dealer or vehicle manufacturer with which that vehicle information or ownership information is shared does not sell, share, or use that information for any other purpose. As used in this paragraph, the term "vehicle information" means the vehicle information number, make, model, year, and odometer reading, and the term "ownership information" means the name or names of the registered owner or owners and the contact information for the owner or owners.

(3) If a request from a consumer is manifestly unfounded or excessive, in particular because of the request's repetitive character, a business may either charge a reasonable fee, taking into account the administrative costs of providing the information or communication or taking the action requested, or refuse to act on the request and notify the consumer of the reason for refusing the request. The business bears the burden

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of demonstrating that any verified consumer request is manifestly unfounded or excessive.

(4) A business that discloses personal information to a service provider is not liable under this act if the service provider receiving the personal information uses it in violation of the restrictions set forth in the act, provided that, at the time of disclosing the personal information, the business does not have actual knowledge, or reason to believe, that the service provider intends to commit such a violation. A service provider is likewise not liable under this act for the obligations of a business for which it provides services as set forth in this act.

(5) This act may not be construed to require a business to reidentify or otherwise link information that is not maintained in a manner that would be considered personal information; retain any personal information about a consumer if, in the ordinary course of business, that information would not be retained; maintain information in identifiable, linkable, or associable form; or collect, obtain, retain, or access any data or technology in order to be capable of linking or associating a verifiable consumer request with personal information.

(6) The rights afforded to consumers and the obligations imposed on a business in this act may not adversely affect the rights and freedoms of other consumers. Notwithstanding s. 501.175(7), a verified request for specific items of personal information, to delete a consumer's personal information, or to correct inaccurate personal information does not extend to personal information about the consumer which belongs to, or which the business maintains on behalf of, another natural

577-03169-21

20211734c1

813 person.

814 Section 7. Section 501.177, Florida Statutes, is created to
815 read:

816 501.177 Civil actions; private right of action; attorney
817 general; rules.—

818 (1) If any business violates any provision of this act, the
819 consumer may initiate a civil action for any of the following:

820 (a) Recovery of damages of at least \$100 and not more than
821 \$750 per consumer per incident or actual damages, whichever is
822 greater.

823 (b) Injunctive or declaratory relief.

824 (c) Reasonable costs of enforcement, including a reasonable
825 attorney fee and costs.

826 (d) Any other relief deemed appropriate by the court.

827 (2) In assessing the amount of statutory damages, the court
828 shall consider any one or more of the relevant circumstances
829 presented by any of the parties to the case, including, but not
830 limited to, the nature and seriousness of the misconduct, the
831 number of violations, the persistence of the misconduct, the
832 length of time over which the misconduct occurred, the
833 willfulness of the defendant's misconduct, and the defendant's
834 assets, liabilities, and net worth.

835 (3) (a) The Department of Legal Affairs shall adopt rules to
836 enforce this act. If the department has reason to believe that a
837 business, directly or indirectly, has violated or is violating
838 this section, the department may institute an appropriate legal
839 proceeding against the business.

840 (b) The trial court, upon a showing that any business,
841 directly or indirectly, has violated or is violating this act,

577-03169-21

20211734c1

842 may take any of the following actions:

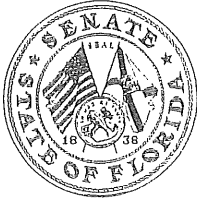
843 1. Issue a temporary or permanent injunction.

844 2. Impose a civil penalty not to exceed \$5,000 for each
845 violation. If the violation involves a consumer who was 16 years
846 of age or younger at the time of the violation, the court may
847 triple the civil penalty.

848 3. Award reasonable costs of enforcement, including a
849 reasonable attorney fee and costs.

850 4. Grant such other relief as the court may deem
851 appropriate.

852 Section 8. This act shall take effect January 1, 2022.



SENATOR JENNIFER BRADLEY
5th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Community Affairs, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Education
Ethics and Elections
Judiciary

SELECT COMMITTEE:

Select Committee on Pandemic
Preparedness and Response

JOINT COMMITTEES:

Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

March 24, 2021

Senator Kathleen Passidomo, Chair
Senate Committee on Rules
400 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Dear Chair Passidomo:

I respectfully request that CS/SB 1734 be placed on the agenda of Committee on Rules at your earliest convenience. The bill creates the "Florida Privacy Protection Act" which seeks to increase the privacy rights of Floridians as it pertains to personal data collected and sold by businesses. The bill requires certain businesses to inform consumers that their personal information is being collected and sold to afford the consumer an opportunity to opt out of the sale of their information. It also creates a private cause of action and grants the Department of Legal Affairs the authority to enforce the Act.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer".

Jennifer Bradley

cc: John Phelps, Staff Director
Cynthia Futch, Administrative Assistant

REPLY TO:

□ 1279 Kingsley Avenue, Kingsley Center, Suite 117, Orange Park, Florida 32073 (904) 278-2085
□ 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6/21

Meeting Date

SB 1734

Bill Number (if applicable)

Topic Consumer Data Privacy

Amendment Barcode (if applicable)

Name Kenneth Pratt

Job Title Senior VP of Governmental Affairs

Address 1001 Thomasville Rd Ste. 201
Street

Phone 850-509-8020

Tallahassee FL 32302
City State Zip

Email kpratt@floridabankers.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Bankers Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-6-21

Meeting Date

1734

Bill Number (if applicable)

655390

Amendment Barcode (if applicable)

Topic Date Privacy - Bradley Amendment

Name Bill Herrle

Job Title Exec. Director

Address 110 E Jefferson St -

Street

Tallahassee FL 32301

City

State

Zip

Phone 850 651 0416

Email bill.herrle@ntib.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing National Federation of Independent Business

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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This information was not read
into the record by the Chair

S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

04/06/21

Meeting Date

1734

Bill Number (if applicable)

Topic Consumer Data Privacy

Amendment Barcode (if applicable)

Name Caitlin Murray

Job Title Regional Vice President - Southeast

Address 3601 Vincennes Road

Phone 850.491.8424

Street

Indianapolis, IN 46268

Email cmurray@namic.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing National Association of Mutual Insurance Companies

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Apr. 6, 2021
Meeting Date

1734
Bill Number (if applicable)

Topic Data Privacy

Amendment Barcode (if applicable)

Name Grace Louett

Job Title VP Government Affairs

Address 227 S. Adams St.
Street

Phone _____

Tallahassee FL 32301
City State Zip

Email Grace@RF.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 6, 2014
Meeting Date

1734
Bill Number (if applicable)

Topic Consumer Data Privacy

Amendment Barcode (if applicable)

Name Anthony DiMarco

Job Title VIP of Govt. Affairs

Address 301001 Thomasville Rd

Phone 228-2265

Street

City

State

Zip

Email adimarco@floridabankers.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Bankers Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

4/6/21

Meeting Date

1734

Bill Number (if applicable)

Topic Consumer Data Privacy

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

City

State

Zip

Email bbevis@aif.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

4/6/21

Meeting Date

1734

Bill Number (if applicable)

968 992

Amendment Barcode (if applicable)

Topic Consumer Data Privacy

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N Adams St

Street

Tallahassee

City

FL

State

32301

Zip

Phone 224-7173

Email bbevis@aif.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

4/6/21

Meeting Date

1734

Bill Number (if applicable)

286888

Amendment Barcode (if applicable)

Topic Consumer Data Privacy

Name Carolyn Johnson

Job Title Policy Director

Address 136 S Bronough Street

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-521-1200

Email cjohnson@flchamber.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

04.06.21

Meeting Date

1734

Bill Number (if applicable)

655390

Topic Consumer Data Privacy

Amendment Barcode (if applicable)

Name Alfred J. Saikali

Job Title

Address 201 S. Biscayne Blvd. Suite 3200

Phone 305-358-5171

Street

Miami

FL

33131

Email asaikali@shb.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Apr. 6, 2021
Meeting Date

1734
Bill Number (if applicable)

Topic Data Privacy

655390
Amendment Barcode (if applicable)

Name Grace Lovett

Loyalty Programs
by Gruters.

Job Title VP Government Affairs

Address 227 S. Adams St.
Street

Phone 850

Tallahassee FL 32301
City State Zip

Email Grace@frf.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6/21

Meeting Date

CS/1B 1734

Bill Number (if applicable)

655390

Amendment Barcode (if applicable)

Topic Privacy Protection Act

Name Robert FINGER

Job Title GENERAL Counsel

Address 1983 Centre Pointe Blvd Suite 200
Street

Phone 850-224-7091

Tallahassee

City

FL

State

32304

Zip

Email sub @ guidaylaw.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Petroleum Marketers Assoc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

4/6/21

Meeting Date

1734

Bill Number (if applicable)

655390

Topic Consumer Data Privacy

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Policy Director

Address 136 S Bronough Street

Phone 850-521-1200

Street

Tallahassee

FL

32301

Email cjohnson@flchamber.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

04.06.21

Meeting Date

1734

Bill Number (if applicable)

655390

Amendment Barcode (if applicable)

Topic Consumer Data Privacy

Name William Large

Job Title President

Address 210 South Monroe Street

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-222-0170

Email William@fljustice.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6/21

Meeting Date

SB1734

Bill Number (if applicable)

* 655390

Amendment Barcode (if applicable)

Topic CONSUMER DATA PRIVACY - PRA

Name JEFFREY SHARKEY

Job Title PRESIDENT CAPTOR ALLIANCE GROUP

Address 100 E COLLEGE AVE # 110

Street

TEL

City

FL

State

32301

Zip

Phone 888 224 1660

Email JEFFREYSHARKEY@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing QUICKEN LOANS / ROCKET MORTGAGE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

4/6/21

Meeting Date

1734

Bill Number (if applicable)

655390

Amendment Barcode (if applicable)

Topic Consumer Data Privacy

Name George Feijoo

Job Title Consultant

Address 108 S Monroe St.

Street

Tallahassee

City

FL

State

32301

Zip

Phone 3057207099

Email grfeijoo@flapartners.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing US Chamber Institute for Legal Reform

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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71 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6/21
Meeting Date

CS/SB 1734
Bill Number (if applicable)

Topic Privacy Protection Act

655340
Amendment Barcode (if applicable)

Name Edward Bowman

Job Title Executive Director

Address 1983 Centre Pointe Blvd Suite 200 Phone 408-877-5128
Street

Tallahassee FL 32308 Email Ned@fma.org
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Petroleum Marketers Assoc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

04.06.21

Meeting Date

1734

Bill Number (if applicable)

Topic Consumer Data Privacy

Amendment Barcode (if applicable)

Name Alfred J. Saikali

Job Title

Address 201 S. Biscayne Blvd. Suite 3200

Phone 305-358-5171

Street

Miami

FL

33131

City

State

Zip

Email asaikali@shb.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 1788

INTRODUCER: Governmental Oversight and Accountability Committee; Community Affairs Committee and Senator Boyd

SUBJECT: Construction Permits

DATE: April 2, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>Hackett</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1788 makes various amendments to the Florida Building Codes Act and related statutes.

The bill requires local governments to review additional information for an application for a development permit or development order within a certain time-period.

The bill requires local enforcement agencies to:

- Post each building permit application, including a list of any required attachments, such as drawings or plans, on their websites;
- Allow applicants to submit completed building permit applications electronically including any required payments and attachments, such as plans;
- Post the current status of every received building permit application on their website; and
- Post their procedures for reviewing, processing, and approving building permit applications on their websites.

The bill requires government entities which enforce the Florida Building Code Act that fail to meet current established deadlines for reviewing single-family residential building permit applications to reduce the fees and surcharges for such permits for every business day that the deadline is not met, except under certain circumstances.

The bill requires government entities that deny a building permit application for a single-family residential dwelling to allow the applicant 10 business days to correct the application. The bill prohibits government entities from requiring a copy of a contractor's contract with owners, subcontractors, or suppliers in order to obtain a building permit for projects on commercial property. This does not apply to projects for improvements owned or leased by a government entity.

The bill takes effect October 1, 2021.

II. Present Situation:

The Community Planning Act

Adopted in 1985, the Local Government Comprehensive Planning and Land Development Regulation Act,¹ also known as Florida's Growth Management Act, was significantly revised in 2011, becoming the Community Planning Act.² The Community Planning Act governs how local governments create and adopt their local comprehensive plans.

Local comprehensive plans must include principles, guidelines, standards, and strategies for the orderly and balanced future land development of the area and reflect community commitments to implement the plan. The Community Planning Act intends that local governments manage growth through comprehensive land use plans that facilitate adequate and efficient provision of transportation, water, sewage, schools, parks, recreational facilities, housing, and other requirements and services.³ A housing element is required as part of every comprehensive plan in the state. Among other things, the housing element must address "the creation or preservation of affordable housing to minimize the need for additional local services and avoid the concentration of affordable housing units only in specific areas of the jurisdiction."⁴

Municipalities established after the effective date of the Community Planning Act must adopt a comprehensive plan within three years after the date of incorporation.⁵ The county comprehensive plan controls until a municipal comprehensive plan is adopted.⁶

The comprehensive plan is implemented via land development regulations. Each county and municipality must adopt and enforce land development regulations, such as zoning or other housing-related ordinances, which are consistent with and implement their adopted comprehensive plan.⁷

Issuing Development Orders and Permits

Under the Community Planning Act, a development permit is any official action of a local government that has the effect of permitting the development of land including, but not limited

¹ See ch. 85-55, s. 1, Laws of Fla.

² See ch. 2011-139, s. 17, Laws of Fla.

³ Section 163.3161(4), F.S.

⁴ Section 163.3177(6)(f)1.g., F.S.

⁵ Section 163.3167(3), F.S.

⁶ *Id.*

⁷ Section 163.3202, F.S.

to, building permits, zoning permits, subdivision approval, rezoning, certifications, special exceptions, and variances.⁸ A development order is issued by a local government and grants, denies, or grants with conditions an application for a development permit.⁹

When reviewing an application for a development permit or development order, not including building permit applications, a county or municipality may not request additional information from the applicant more than three times, unless the applicant waives the limitation in writing.¹⁰

Before a third request for information, the applicant must be offered a meeting to attempt to resolve outstanding issues.¹¹ If the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the applicant can request the county or municipality proceed to process the application for approval or denial.¹² If denied, the county or municipality is required to give written notice to the applicant and must provide reference to the applicable legal authority for the denial of the permit.¹³

Prior to 2019, no specified timeframes were provided in statute for reviewing an application for a development permit, development order, or additional information requested by a county or municipality.¹⁴

In 2019, the Legislature imposed requirements and time limits for a county or municipality to review an application for a development permit or development order, not including building permit applications, and provided procedures for addressing deficiencies in an application.¹⁵

Within 30 days of receiving an application for a development permit or development order, a county or municipality must review the application and issue a letter to the applicant indicating that the application is complete or specify the deficiencies within 30 days after receiving the application.¹⁶ If the county or municipality identifies deficiencies, the applicant has 30 days to submit the required additional information.¹⁷

Once an application is deemed complete, a county or municipality must approve, approve with conditions, or deny the application within 120 days or 180 days for applications that require final action through a quasi-judicial hearing or a public hearing.¹⁸

Current law specifies how long an applicant has to submit additional information to a local government. However, current law does not specify how long a local government has to review the additional information and determine if the application is complete or still deficient.

⁸ Section 163.3164(16), F.S.

⁹ See ss. 125.022, 163.3164(15), and 166.033, F.S.

¹⁰ Sections 125.022(1) and 166.033(1), F.S.

¹¹ *Id.*

¹² *Id.*

¹³ Sections 125.022(2) and 166.033(2), F.S.

¹⁴ Sections 125.022(1) and 166.033(1), F.S. (2018).

¹⁵ See House Analysis of 2019 House Bill 7103 (Jul. 1, 2019).

¹⁶ Sections 125.022(1) and (2), and 166.033 (1) and (2), F.S.

¹⁷ *Id.*

¹⁸ *Id.*

The Florida Building Code

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met. Local governments could choose from four separate model codes. The state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.¹⁹

In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that first edition replaced all local codes on March 1, 2002.²⁰ The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.²¹

Part IV of ch. 553, F.S., is known as the "Florida Building Codes Act" (Act). The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.²²

The Florida Building Commission (Commission) was statutorily created to implement the Building Code. The Commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code. The Commission reviews several International Codes published by the International Code Council,²³ the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.²⁴

Enforcement of the Florida Building Code

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare.²⁵ Every local government must enforce the Building Code and issue building permits.²⁶

¹⁹ The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited March 30, 2021).

²⁰ *Id.*; DBPR, *Building Code Information System*, <https://floridabuilding.org/c/default.aspx#> (last visited March 30, 2021).

²¹ Florida Building Commission Homepage, <https://floridabuilding.org/c/default.aspx> (last visited March 30, 2021).

²² See s. 553.72(1), F.S.

²³ The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." International Code Council, *About the ICC*, <https://www.iccsafe.org/about/who-we-are/> (last visited March 30, 2021).

²⁴ Sections 553.73, and 553.74, F.S.

²⁵ Section 553.72, F.S.

²⁶ Sections 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

State universities, Florida College System institutions, and public school districts enforce the Building Code for their building projects, including conducting plan review and inspections. State universities, Florida College System institutions, and public school districts must use or contract with licensed building officials, inspectors, and plan examiners, and may elect to use a local government's building department to review plans and perform inspections.²⁷

Current law also provides that state agencies may enforce the Building Code if current law specifically authorizes them to do so, unless they have delegated responsibility to another public entity.²⁸ Current law provides that:²⁹

- The Department of Corrections, the Department of Juvenile Justice, and the Department of Management Services (DMS) enforces the construction regulations relating to correctional facilities under their jurisdiction;
- The DMS enforces the construction regulations for the Governor's Mansion and its grounds, the Capitol, and the Capitol complex;
- The DBPR enforces the construction regulations relating to elevator equipment under their jurisdiction;
- The Turnpike Enterprise, which is part of the Department of Transportation, enforces the construction regulations for toll collection facilities under its jurisdiction;
- The Department of Children and Families (DCF) in conjunction with the Agency for Health Care Administration (AHCA) enforces construction regulations relating to secure mental health treatment facilities under the DCF's jurisdiction; and
- The AHCA also reviews plans and surveys construction of hospitals, nursing homes, ambulatory surgical centers, and Intermediate Care Facilities for the developmentally disabled.

It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a building permit from the local government or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.³⁰ A building permit is not valid until the fees for the permit have been paid.³¹

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.³² A building official is a local government employee or a person contracted by a government entity who supervises building code activities, including plans review, enforcement, and inspection.³³ Any construction work that requires a building permit also requires plans and inspections by the building official to ensure the work complies with the Building Code.³⁴

²⁷ Section 553.80(6), F.S.

²⁸ Sections 255.31(1), and 553.80(1), F.S.

²⁹ *Id.*

³⁰ See ss. 125.56(4)(a), and 553.79(1), F.S.

³¹ Section 109.1 of the Seventh edition of the Florida Building Code (Building).

³² Section 468.603(2), F.S.; Section 202 of the Seventh edition of the Florida Building Code (Building).

³³ Section 468.603(2), F.S.; S. 202 of the Seventh edition of the Florida Building Code (Building).

³⁴ Sections 107, 110.1, and 110.3 of the Seventh edition of the Florida Building Code (Building).

Each government entity may provide a schedule of reasonable fees in order to defer the costs of inspection and enforcement of the Building Code. The basis for a local government's fee structure must relate to the level of service provided by the local government. Fees charged must be consistently applied. Each local government must post its permit and inspection fee schedule and a utilization report³⁵ on its website.³⁶

A local government's permit and inspection fees must be used solely for carrying out that local government's responsibilities in enforcing the Building Code. This includes:³⁷

- The direct costs and reasonable indirect costs associated with review of building plans, building inspections, reinspections, and building permit processing;
- Building Code enforcement;
- Fire inspections associated with new construction; and
- Training costs associated with the enforcement of the Building Code and enforcement action pertaining to unlicensed contractor activity to the extent not funded by other user fees.

DBPR Surcharges

Current law requires all local governments to assess and collect a 1 percent surcharge on any building permit issued by their enforcement agency for the purpose of enforcing the Building Code. The local jurisdictions collect the assessment and remit the surcharge fees to the DBPR to fund the activities of the Florida Building Commission, the DBPR's Building Code Compliance and Mitigation Program, and the Florida Fire Prevention Code informal interpretations.³⁸

Current law also requires all local governments to assess and collect a separate 1.5 percent surcharge on any building permit issued by their enforcement agency for the purpose of enforcing the Building Code.

The local governments collect the assessment and remit the surcharge fees to the DBPR, where it is divided equally to fund the activities of the Building Code Administrators and Inspectors Board (BCAIB) and the Florida Homeowners' Construction Recovery Fund.³⁹

Local government building departments are permitted to retain 10 percent of the amount of the surcharges they collect to fund participation by their agencies in the national and state building code adoption processes and to provide education related to enforcement of the Florida Building Code.⁴⁰

³⁵ The utilization report must include the local government's direct and indirect costs for enforcing the Building. Section 553.80(7), F.S.

³⁶ Sections 125.56(2) and (4), 166.222, and 553.80(7), F.S.

³⁷ Section 553.80(7), F.S.

³⁸ Section 553.721, F.S.

³⁹ Section 468.631, F.S.; The Florida Homeowners' Construction Recovery Fund is used to compensate homeowners who have suffered a covered financial loss at the hands of state-licensed general, building and residential contractors. Claims are filed with the DBPR, who reviews for completeness and statutory eligibility. The DBPR then presents the claim to the Construction Industry Licensing Board for review. Section 489.1401(2), F.S.

⁴⁰ Sections 468.631, and 553.721, F.S.

Building Permit Delays

Any delays in obtaining a building permit can delay the completion of a construction. Delays in the completion of a construction project may:⁴¹

- Lead to increased costs for construction projects, which may be passed onto occupants of a completed project;
- Discourage construction, which can reduce the total supply of buildings in a community and may lead to higher rents in the community;
- Reduce property tax revenue to a local government and other taxing jurisdictions resulting from the delayed start and completion of a construction project; and
- Result in delayed occupancy of a project, including single-family residences and multi-family residences.

Streamlining the process to obtain a building permit can accelerate the completion of construction projects. The goal of streamlining is to remove overlap and duplication and create more efficient administrative procedures while not reducing a building department's ability to enforce the applicable construction codes. Streamlining the building permit process may:⁴²

- Increase local government revenues by accelerating completion of a project and thus accelerating property tax collection;
- Create local construction jobs and other indirect jobs supported by local construction jobs, such as jobs at a material supplier, which may increase local tax revenue by creating local construction jobs and other indirect jobs; and
- Encourage economic development by having an efficient permit system.

List of Required Items for Applications and Electronic Submission of Applications – Current Situation

A local enforcement agency is an agency of local government, a local school board, a community college board of trustees, or a university board of trustees in the State University System with jurisdiction to make inspections of buildings and to enforce the Building Code.⁴³

Current law requires local enforcement agencies to post each type of building permit on their website.⁴⁴ Current law also requires local enforcement agencies to allow applicants to submit applications electronically, except owners who are acting as contractor under the owner-builder exemption.⁴⁵ Accepted methods of electronic submission include, but are not limited to:⁴⁶

- E-mail submission of applications in PDF format;

⁴¹ City of Austin Development Services Department, *A Program for Expedited Permitting*, http://austintexas.gov/sites/default/files/files/8-9-2016_Report_on_Expedited_Permitting_Program.pdf (last visited March 30, 2021); PricewaterhouseCoopers, *The Economic Impact of Accelerating Permit Processes on Local Development and Government Revenues*, (Dec. 7, 2005).

⁴² *Id.*; Institute for Market Transformation, *Streamlining Compliance Processes*, (Winter 2012) <https://www.imt.org/wp-content/uploads/2018/02/CaseStudy5.pdf> (last visited March 30, 2021).

⁴³ Section 553.71(5), F.S.

⁴⁴ Sections 125.56(4)(b), and 553.79(1)(b), F.S.

⁴⁵ Current law requires property owners who are acting as a contractor under the owner-builder exemption to personally appear at a local enforcement agency to sign the building permit. Sections 489.103(7), and 489.503(7), F.S.

⁴⁶ Sections 125.56(4)(b), and 553.79(1)(b), F.S.

- Submission of applications through an electronic fill-in form available on the building department's website; or
- Through a third-party submission management software.

However, it is not clear if current law requires local enforcement agencies to:

- Post a list or identify other items required as part of the application for each type of building permit on their websites;
- Allow applicants to electronically submit items required as part of a building permit application including payments, attachments, or drawings; or
- Post the status of building permit applications on their websites.

Some local governments list the items required as part of an application, allow applicants to electronically submit items required as part of an application, and post the status of building permit applications on their websites, while others do not.⁴⁷

Some in the building and development community suggest that posting a list containing all the required information for each type of building permit and the status of every received application saves time by reducing phone calls and emails to building department staff. It may also reduce the number of applications that are denied due to misunderstanding about what materials and information must be provided.⁴⁸

Allowing applicants to submit applications electronically, including all required items, may save time and money for builders and developers by shortening the turn-around time for processing most building permits, and by preventing them from having to travel to and from a building department during business hours to drop off the required items.⁴⁹

It is also suggested that such regulatory changes help building departments by reducing the cost of printing documents, eliminating archiving costs, easing the burden of managing paper documents, and consolidates the plan review process by having documents stored on a network server that is available to multiple departments and employees.⁵⁰

Building departments note that the cost to post the list of required items and the status of received building permit applications, and the cost to transition from paper documents to

⁴⁷ City of Miramar, *Building, Permits & Inspections*, <https://www.miramarfl.gov/150/Building-Permits-Inspections> (last visited March 30, 2021); City of Orlando, *Permits & Inspections*, <https://www.orlando.gov/Building-Development/Permits-Inspections> (last visited March 30, 2021); Union County, *Building Department*, <https://unioncounty-fl.gov/building-department/> (last visited March 30, 2021); City of Crestview, *Building Permits & Inspections*, <http://www.cityofcrestview.org/161/Building-Permits-Inspections> (last visited March 30, 2021).

⁴⁸ Ryan Meres, *Seven Keys to Alleviating Permitting Pain*, *Builder* (Jul. 23, 2015) https://www.builderonline.com/building/regulation-policy/seven-keys-to-alleviating-permitting-pain_o (last visited March 30, 2021); E-Gov Link, *How to Streamline your Local Government Permitting Process*, (Aug. 28, 2019) <https://www2.egovlink.com/how-to-streamline-your-local-government-permitting-process/> (last visited March 30, 2021).

⁴⁹ Building Officials Association of Florida, Florida Engineering Society, AIA Florida, *Building Department Guide to Creating and Processing Electronic Construction Documents*, http://www.aiafla.org/upload_documents/BuildingDepartmentGuidetoCreatingandProcessingElectronicDocuments.pdf (last visited March 30, 2021); See The Florida Channel, *1/27/ 2021 House Regulatory Reform Subcommittee*, <https://thefloridachannel.org/videos/1-27-21-house-regulatory-reform-subcommittee/> (last visited March 30, 2021).

⁵⁰ *Id.*

electronic documents is expensive and it is not easy or quick.⁵¹ Additionally, a building department may have to devote limited resources to updating the list of required items and the status of received building permit applications.⁵²

Time-Period to Review Building Permit Applications

Current law requires local governments to review certain building permit applications within a specific time-period of receiving the applications. Current law has established time-periods for local governments to review applications for the following building permits:⁵³

- Accessory structure;
- Alarm permit;
- Nonresidential buildings less than 25,000 square feet;
- Electric;
- Irrigation permit;
- Landscaping;
- Mechanical;
- Plumbing;
- Residential units other than a single family unit;
- Multifamily residential not exceeding 50 units;
- Roofing;
- Signs;
- Site-plan approvals and subdivision plats not requiring public hearings or public notice;
- Lot grading and site alteration associated with the permit application set forth in this subsection;
- Master building permits; and
- Single-family residential buildings.

When a local government receives an application for one of the above building permits, except master building permits and single-family residential buildings, it must:⁵⁴

- Inform the applicant within 10 days of receiving the application, what information, if any, is needed to complete the application;
 - If the local government fails to provide written notice to the applicant within the 10-day window, the application is deemed to be properly completed.
- Notify the applicant within 45 days of the application being deemed complete if additional information is necessary to determine the sufficiency of the application; and
 - If additional information is needed the local government must specify what additional information is necessary.
 - The applicant may submit the additional information to the local government or request that the local government act on the application without the additional information.

⁵¹ *Id.*; The Community Development Director for the City of Auburndale testified that the cost for them to purchase the software necessary for the switch to electronic documents cost \$90,000. See The Florida Channel, *supra* note 49.

⁵² The Massachusetts Association of Regional Planning Agencies, *A Best Practices for Streamlined Local Permitting*, (Nov. 30, 2007), http://www.pvpc.org/sites/default/files/BEST%20PRACTICES%20GUIDE_0.pdf (last visited Feb. 24, 2021).

⁵³ Section 553.792(2), F.S.

⁵⁴ Section 553.792(1), F.S.

- Approve, approve with conditions, or deny the application within 120 days following receipt of the completed application.
 - This period is tolled during the time an applicant is responding to a request for additional information and may be extended by mutual consent of the parties.

These time-periods do not apply when a law, agency rule, or local ordinance specify different timeframes for review of local building permit applications, for permits for wireless communication facilities, or when both parties agree to an extension.⁵⁵

If a local government receives a complete master building permit application, it must approve or deny the application within 120 days of receiving the completed application, unless the applicant agrees to a longer period.⁵⁶

If any government entity with authority to enforce the Building Code receives an application for a building permit for single-family residential dwelling, it must issue the permit within 30 business days of receiving the application, unless the application fails to satisfy the Building Code or the enforcing agency's laws or ordinances, or unusual circumstances require a longer time-period for processing the application.⁵⁷

Current law provides time-periods for when government entities must review certain building permit applications. However, current law does not provide any penalty if a government entity fails to comply with the deadlines established by current law.

Required Information in Building Permit Application

To obtain a permit, an applicant must complete an application for the proposed work on a form furnished by the government entity. The form must include the following information:⁵⁸

- The name and address of the owner of the property;
- The name and address of the contractor;
- A description sufficient to identify the property to be improved, including the property's address and legal description;
- The name and address of the bonding company, if any;
- The name and address of the architect/engineer, if any;
- The name and address of the mortgage company, if any; and
- The number or identifying symbol assigned to the building permit by the issuing authority.

In addition to the information that must be in the application, a government entity may require that any additional information be included in the application.⁵⁹

⁵⁵ *Id.*

⁵⁶ Section 553.794(5)(c), F.S. A master building permit is intended for builders who expect to construct identical single- or two- family dwellings or townhomes. Once a builder obtains a master building permit, he or she is not required to obtain a new permit for single- or two-family dwellings or townhome as long as the dwelling or townhome is built to the specifications in the master building permit. *See* s. 553.794, F.S.

⁵⁷ Section 553.79(14), F.S.

⁵⁸ Sections 713.135(5), and (6), F.S.

⁵⁹ *Id.*

According to testimony offered during the meeting of the Florida House of Representatives Regulatory Reform Subcommittee, many local governments use the cost of construction as a factor⁶⁰ for determining the amount of a fee for a building permit.⁶¹ Some local governments are requiring contractors to include their contracts with private owners in order to obtain building permits so that the local government can determine the contract's construction cost and construction value.⁶² Although these contracts may contain private proprietary information, when local governments request them they may become public documents.⁶³

III. Effect of Proposed Changes:

Issuing Development Orders and Permits (Sections 1 and 3)

Sections 1 and 2 amend ss. 125.022 and 166.033, F.S., respectively, to require that if a county or municipality makes a request for additional information from the applicant and the applicant provides the information within 30 days of receiving the request, the county or the municipality must:

- Review the additional information and issue a letter to the applicant indicating that the application is complete or specify the remaining deficiencies within 30 days of receiving the information, if the request is the county or municipality's first request.
- Review the additional information and issue a letter to the applicant indicating that the application is complete or specify the remaining deficiencies within 10 days of receiving the additional information, if the request is the county or municipality's second request.
- Deem the application complete within ten days of receiving the additional information or proceed to process the application for approval or denial unless the applicant waived the county or municipality's time limitations in writing, if the request is the county or municipality's third request.

List of Items Required for Applications and Electronic Submission of Applications (Sections 2 and 4)

Sections 2 and 4 amend ss. 125.56 and 553.79, F.S., respectively, requires local enforcement agencies to:

⁶⁰ The International Code Council has created two equations to help jurisdictions determine their permit fee schedules. Two factors of the factors in the equations are the valuation of the construction cost of the project, and the value of all the construction in the jurisdiction in the previous year. See International Code Council, *Building Valuation Data – February 2020*, <https://www.iccsafe.org/wp-content/uploads/BVD-BSJ-FEB20.pdf> (last visited March 30, 2021).

⁶¹ City of Miami, *City of Miami Building Permit Fee Schedule*, <https://www.miamigov.com/Services/Building-Permitting/City-of-Miami-Building-Permit-Fee-Schedule> (last visited March 30, 2021); St. Lucie County, *Building Permit Fees*, <https://www.stlucieco.gov/Home/ShowDocument?id=1330> (last visited March 30, 2021); City of Seminole, *City of Seminole Permit Fee Schedule*, https://www.myseminole.com/Building/Docs/Permit_Fees.pdf (last visited March 30, 2021).

⁶² See The Florida Channel, *1/27/ 2021 House Regulatory Reform Subcommittee*, <https://thefloridachannel.org/videos/1-27-21-house-regulatory-reform-subcommittee/> (last visited March 30, 2021).

⁶³ Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record made or received in connection with official business of any public body, including counties, municipalities, and districts. Current law does not contain an exemption from Florida's public records laws for proprietary business information included in a building permit application. See generally, ch. 119, F.S.

- Post each type of building permit application on their website, including a list of all required attachments, drawings, and any other requirements that are required for each type of application;
- Post the status of received building permit applications online, and update the status; and
 - A local enforcement agency does not have to post the status of a received building permit application if it has issued a permit for the application.
- Allow building permit applicants to electronically submit applications, including all attachments, payments, drawings, and any other requirements that are required as part of the application.
 - Applications, including attachments, payments, drawings, and any other requirements or parts that are required as part of the application, may also be submitted in person at the discretion of the building official.

These sections also requires that a county or local enforcement agency post its procedures for processing, reviewing, and approving submitted building permit applications on its website.

Time-Period to Review Building Permit Applications (Sections 4, 5 and 6)

Section 4 and **5** amend ss. 553.79 and 553.792, F.S., respectively, to require that, if a government entity with authority to enforce the Building Code fails to approve an application for a single-family residential dwelling building permit within 30 business days of receiving the application, the government entity must reduce the building permit fee by 10 percent of the original permit fee for each business day that the enforcing agency fails to meet the deadline.

A government entity does not have to reduce the fee for a single-family residential dwelling building permit if it provides written notice to the applicant, by email or USPS mail within 30 business days of receiving the application. The written notice must state:

- How the application fails to satisfy the Building Code or the government entity's laws or ordinances;
- That the applicant has 10 business days after receiving the notice to submit revisions to correct the permit application; and
- Failure to correct the application within 10 business days will result in a denial of the application.

An applicant has 10 business days to address the reasons specified in the government entity's notice. If the applicant submits revisions to the government entity within 10 business days of receiving the notice, the government entity must approve or deny the permit within 10 business days of receiving the applicant's revisions.

If a local enforcing agency fails to approve or deny the permit within 10 business days of receiving the applicant's revisions, it must:

- Reduce the permit fee by 20 percent of the original permit fee for the first business day that it fails to meet the deadline; and
- An additional 10 percent of the original permit fee for each business day that it fails to meet the deadline, for up to 5 business days.

A government entity does not have to reduce the permit fee if the applicant agrees to a longer period in writing.

Section 6 amends s. 553.794, F.S., to require that, if a local building department fails to meet building permit decision timelines, or fails to approve a master building permit application within 120 business days of receiving the application, the local building department must reduce the building permit fee by 10 percent of the original permit fee for each business day that the enforcing agency fails to meet the deadline, unless the applicant agrees to a longer time period.

If any permit and inspection fees are refunded because of the above, the DBPR surcharges for funding the Building Commission, the BCAIB, and the Florida Homeowners' Recovery Fund must be recalculated based on the amount of the permit and inspection fees after the refund.

Required Information in Building Permit Application (Section 7)

Section 7 amends s. 713.135, F.S., to prohibit a government entity from requiring a contract between an owner and a contractor or a contract between a contractor and a subcontractor or material supplier as a condition to apply for or obtain a building permit for construction work on a commercial property.

However, this does not apply to any construction projects for improvements that are owned or leased by a government entity.

The bill takes effect October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18(a) of the Florida Constitution provides:

No county or municipality shall be bound by any general law requiring such county or municipality to spend funds...unless the legislature has determined that such law fulfills an important state interest and unless: the law requiring such expenditure is approved by two-thirds vote of the membership of each house of the legislature;

The bill may implicate this constitutional restriction, to the extent that local governments are required to expend funds (i) to accommodate the additional requirements pertaining to electronic processing and posting of building permit information; and (ii) to refund a percentage of the building permit fee under specified conditions. As currently drafted, this bill does not include a legislative finding that the bill fulfills an important state interest.

However, Article VII, s. 18(d) of the State Constitution provides that the mandate requirements do not apply to laws having an insignificant impact,⁶⁴ which for Fiscal Year 2020-2021 is forecast at \$2.2 million.⁶⁵ The fiscal impact of this bill is indeterminate. If the total cost of this legislation is less than \$2.2 million, then the mandate requirements do not apply. If costs imposed by the bill are determined to exceed \$2.2 million in the aggregate, the bill may be binding on cities and counties if the bill contains a finding of important state interest and meets one of the exceptions specified in State Constitution (e.g., enactment by vote of two-thirds of the membership of each house).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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:

The bill may have a positive impact by decreasing the time it takes to obtain a building permit, possibly decreasing the time and cost to complete projects.

C. Government Sector Impact:

Local governments may need to expend funds to accommodate the additional requirements pertaining to electronic processing and posting of building permit information. The amount of permit fees to be refunded by local governments for failing to timely review a permit application is indeterminate, but likely insignificant.

⁶⁴ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, Interim Report 2012-115: Insignificant Impact, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited March 10, 2021).

⁶⁵ Based on the Florida Demographic Estimating Conference's Nov. 13, 2020 population forecast for 2021 of 21,893,919. The conference packet is available at: <http://edr.state.fl.us/content/conferences/population/demographicsummary.pdf> (last visited March 10, 2021).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 125.022, 125.56, 166.033, 553.79, 553.792, 553.794, and 713.135.

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

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

CS/CS by Governmental Oversight and Accountability on March 31, 2021:

The committee substitute provides that the an enforcement agency's written notice stating why a permit application fails must also state that the applicant has 10 business days after receiving the notice to submit revisions to correct the permit application and that failure to correct the application within 10 business days will result in a denial of the application.

CS by Community Affairs on March 10, 2021:

The committee substitute:

- Provides that when a local government makes an initial request for additional information and receives a response within 30 days, the local government must, within 30 days, review the additional information and issue a letter indicating that all required information has been submitted or specify areas that are deficient.
- Provides that if any permit and inspection fees are refunded under the provisions of the bill, the associated DBPR surcharges must be recalculated based on the amount of the permit and inspection fees after the refund.

B. Amendments:

None.

By the Committees on Governmental Oversight and Accountability;
and Community Affairs; and Senator Boyd

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1 A bill to be entitled
2 An act relating to construction permits; amending s.
3 125.022, F.S.; revising the requirements for when a
4 county may request certain information; amending s.
5 125.56, F.S.; requiring a county that issues building
6 permits to post certain building permit information on
7 its website; authorizing all components of a completed
8 application to be submitted electronically or in
9 person; amending s. 166.033, F.S.; revising the
10 requirements for when a municipality may request
11 certain information; amending s. 553.79, F.S.;
12 requiring a local enforcement agency to post certain
13 building permit information on its website;
14 authorizing all components of a completed application
15 to be submitted electronically or in person; requiring
16 a local enforcement agency to reduce a building permit
17 fee by a specified percentage for failing to meet
18 certain deadlines; providing an exception; requiring
19 the reduction of a building permit fee to be based on
20 the original amount of such fee; requiring certain
21 surcharges to be recalculated under certain
22 conditions; amending ss. 553.792 and 553.794, F.S.;
23 requiring a local government or a local building
24 department, respectively, to reduce a building permit
25 fee or master building permit fee, as applicable, by a
26 specified percentage for failing to meet certain
27 deadlines; providing exceptions; requiring certain
28 surcharges to be recalculated under certain
29 conditions; making technical changes; amending s.

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

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30 713.135, F.S.; prohibiting authorities from requiring
31 applicants to provide certain contracts as a condition
32 of receiving a building permit; providing
33 applicability; providing an effective date.
34
35 Be It Enacted by the Legislature of the State of Florida:
36
37 Section 1. Subsection (2) of section 125.022, Florida
38 Statutes, is amended to read:
39 125.022 Development permits and orders.—
40 (2) (a) When reviewing an application for a development
41 permit or development order that is certified by a professional
42 listed in s. 403.0877, a county may not request additional
43 information from the applicant more than three times, unless the
44 applicant waives the limitation in writing.
45 (b) If a county makes a request for additional information
46 and the applicant submits the required additional information
47 within 30 days after receiving the request, the county must
48 review the application for completeness and issue a letter
49 indicating that all required information has been submitted or
50 specify with particularity any areas that are deficient within
51 30 days after receiving the additional information.
52 (c) If a county makes a second request for additional
53 information and the applicant submits the required additional
54 information within 30 days after receiving the request, the
55 county must review the application for completeness and issue a
56 letter indicating that all required information has been
57 submitted or specify with particularity any areas that are
58 deficient within 10 days after receiving the additional

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59 information.

60 (d) Before a third request for additional information, the
 61 applicant must be offered a meeting to attempt to resolve
 62 outstanding issues. If a county makes a third request for
 63 additional information and the applicant submits the required
 64 additional information within 30 days after receiving the
 65 request, the county must deem the application complete within 10
 66 days after receiving the additional information or proceed to
 67 process the application for approval or denial unless the
 68 applicant waived the county's limitation in writing as described
 69 in paragraph (a).

70 (e) Except as provided in subsection (5), if the applicant
 71 believes the request for additional information is not
 72 authorized by ordinance, rule, statute, or other legal
 73 authority, the county, at the applicant's request, shall proceed
 74 to process the application for approval or denial.

75 Section 2. Paragraph (b) of subsection (4) of section
 76 125.56, Florida Statutes, is amended, and paragraph (f) is added
 77 to that subsection, to read:

78 125.56 Enforcement and amendment of the Florida Building
 79 Code and the Florida Fire Prevention Code; inspection fees;
 80 inspectors; etc.—

81 (4)

82 (b) A county that issues building permits shall post each
 83 type of building permit application, including a list of all
 84 required attachments, drawings, or other requirements for each
 85 type of application, on its website. A county must post and
 86 update the status of every received application on its website
 87 until the issuance of the building permit. Completed

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88 applications, including payments, attachments, drawings, or
 89 other requirements or parts of the completed permit application,
 90 must be able to be submitted electronically to the county
 91 building department. Accepted methods of electronic submission
 92 include, but are not limited to, e-mail submission of
 93 applications in Portable Document Format or submission of
 94 applications through an electronic fill-in form available on the
 95 building department's website or through a third-party
 96 submission management software. Completed applications,
 97 including payments, attachments, ~~ex~~ drawings, or other
 98 requirements or parts required as part of the completed permit
 99 application, may also be submitted in person in a nonelectronic
 100 format, at the discretion of the building official.

101 (f) A county that issues building permits must post its
 102 procedures for processing, reviewing, and approving submitted
 103 building permit applications on its website.

104 Section 3. Subsection (2) of section 166.033, Florida
 105 Statutes, is amended to read:

106 166.033 Development permits and orders.—

107 (2) (a) When reviewing an application for a development
 108 permit or development order that is certified by a professional
 109 listed in s. 403.0877, a municipality may not request additional
 110 information from the applicant more than three times, unless the
 111 applicant waives the limitation in writing.

112 (b) If a municipality makes a request for additional
 113 information and the applicant submits the required additional
 114 information within 30 days after receiving the request, the
 115 municipality must review the application for completeness and
 116 issue a letter indicating that all required information has been

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117 submitted or specify with particularity any areas that are
 118 deficient within 30 days after receiving the additional
 119 information.

120 (c) If a municipality makes a second request for additional
 121 information and the applicant submits the required additional
 122 information within 30 days after receiving the request, the
 123 municipality must review the application for completeness and
 124 issue a letter indicating that all required information has been
 125 submitted or specify with particularity any areas that are
 126 deficient within 10 days after receiving the additional
 127 information.

128 (d) Before a third request for additional information, the
 129 applicant must be offered a meeting to attempt to resolve
 130 outstanding issues. If a municipality makes a third request for
 131 additional information and the applicant submits the required
 132 additional information within 30 days after receiving the
 133 request, the municipality must deem the application complete
 134 within 10 days after receiving the additional information or
 135 proceed to process the application for approval or denial unless
 136 the applicant waived the municipality's limitation in writing as
 137 described in paragraph (a).

138 (e) Except as provided in subsection (5), if the applicant
 139 believes the request for additional information is not
 140 authorized by ordinance, rule, statute, or other legal
 141 authority, the municipality, at the applicant's request, shall
 142 proceed to process the application for approval or denial.

143 Section 4. Paragraph (b) of subsection (1) and subsection
 144 (14) of section 553.79, Florida Statutes, are amended, and
 145 paragraph (d) is added to subsection (1) of that section, to

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146 read:

147 553.79 Permits; applications; issuance; inspections.—

148 (1)

149 (b) A local enforcement agency shall post each type of
 150 building permit application, including a list of all required
 151 attachments, drawings, or other requirements for each type of
 152 application, on its website. A local enforcement agency must
 153 post and update the status of every received application on its
 154 website until the issuance of the building permit. Completed
 155 applications, including payments, attachments, drawings, or
 156 other requirements or parts of the completed permit application,
 157 must be able to be submitted electronically to the appropriate
 158 building department. Accepted methods of electronic submission
 159 include, but are not limited to, e-mail submission of
 160 applications in Portable Document Format or submission of
 161 applications through an electronic fill-in form available on the
 162 building department's website or through a third-party
 163 submission management software. Completed applications,
 164 including payments, attachments, ~~or~~ drawings, or other
 165 requirements or parts ~~required as part~~ of the completed permit
 166 application, may also be submitted in person in a nonelectronic
 167 format, at the discretion of the building official.

168 (d) A local enforcement agency must post its procedures for
 169 processing, reviewing, and approving submitted building permit
 170 applications on its website.

171 (14) A building permit for a single-family residential
 172 dwelling must be issued within 30 business working days after
 173 receiving the permit ~~of application therefor~~ unless ~~unusual~~
 174 ~~circumstances require a longer time for processing the~~

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175 ~~application or unless~~ the permit application fails to satisfy
 176 the Florida Building Code or the enforcing agency's laws or
 177 ordinances.

178 (a) If a local enforcement agency fails to issue a building
 179 permit for a single-family residential dwelling within 30
 180 business days after receiving the permit application, it must
 181 reduce the building permit fee by 10 percent for each business
 182 day that it fails to meet the deadline. Each 10 percent
 183 reduction shall be based on the original amount of the building
 184 permit fee.

185 (b) A local enforcement agency does not have to reduce the
 186 building permit fee if it provides written notice to the
 187 applicant, by e-mail or United States Postal Service, within 30
 188 business days after receiving the permit application which
 189 specifically states the reasons the permit application fails to
 190 satisfy the Florida Building Code or the enforcing agency's laws
 191 or ordinances. The written notice must also state that the
 192 applicant has 10 business days after receiving the written
 193 notice to submit revisions to correct the application and that
 194 failure to correct the application within 10 business days will
 195 result in denial of the application.

196 (c) The applicant has 10 business days after receiving the
 197 written notice to address the reasons specified by the local
 198 enforcement agency and submit revisions to correct the permit
 199 application. If the applicant submits revisions within 10
 200 business days after receiving the written notice, the local
 201 enforcement agency has 10 business days after receiving such
 202 revisions to approve or deny the building permit unless the
 203 applicant agrees to a longer period in writing. If the local

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204 enforcement agency fails to issue or deny the building permit
 205 within 10 business days after receiving the revisions, it must
 206 reduce the building permit fee by 20 percent for the first
 207 business day that it fails to meet the deadline unless the
 208 applicant agrees to a longer period in writing. For each
 209 additional business day, but not to exceed 5 business days, that
 210 the local enforcement agency fails to meet the deadline, the
 211 building permit fee must be reduced by an additional 10 percent.
 212 Each reduction shall be based on the original amount of the
 213 building permit fee.

214 (d) If any building permit fees are refunded under this
 215 subsection, the surcharges provided in s. 468.631 or s. 553.721
 216 must be recalculated based on the amount of the building permit
 217 fees after the refund.

218 Section 5. Section 553.792, Florida Statutes, is amended to
 219 read:

220 553.792 Building permit application to local government.—

221 (1) (a) Within 10 days of an applicant submitting an
 222 application to the local government, the local government shall
 223 advise the applicant what information, if any, is needed to deem
 224 the application properly completed in compliance with the filing
 225 requirements published by the local government. If the local
 226 government does not provide written notice that the applicant
 227 has not submitted the properly completed application, the
 228 application shall be automatically deemed properly completed and
 229 accepted. Within 45 days after receiving a completed
 230 application, a local government must notify an applicant if
 231 additional information is required for the local government to
 232 determine the sufficiency of the application, and shall specify

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the additional information that is required. The applicant must submit the additional information to the local government or request that the local government act without the additional information. While the applicant responds to the request for additional information, the 120-day period described in this subsection is tolled. Both parties may agree to a reasonable request for an extension of time, particularly in the event of a force majeure ~~majeur~~ or other extraordinary circumstance. The local government must approve, approve with conditions, or deny the application within 120 days following receipt of a completed application.

(b) If a local government fails to meet a deadline provided in paragraph (a), it must reduce the building permit fee by 10 percent for each business day that it fails to meet the deadline. Each 10 percent reduction shall be based on the original amount of the building permit fee, unless the parties agree to an extension of time.

(2) (a) The procedures set forth in subsection (1) apply to the following building permit applications: accessory structure; alarm permit; nonresidential buildings less than 25,000 square feet; electric; irrigation permit; landscaping; mechanical; plumbing; residential units other than a single family unit; multifamily residential not exceeding 50 units; roofing; signs; site-plan approvals and subdivision plats not requiring public hearings or public notice; and lot grading and site alteration associated with the permit application set forth in this subsection. The procedures set forth in subsection (1) do not apply to permits for any wireless communications facilities or when a law, agency rule, or local ordinance specify different

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timeframes for review of local building permit applications.

(b) If a local government has different timeframes than the timeframes set forth in subsection (1) for reviewing building permit applications described in paragraph (a), the local government must meet the deadlines established by local ordinance. If a local government does not meet an established deadline to approve, approve with conditions, or deny an application, it must reduce the building permit fee by 10 percent for each business day that it fails to meet the deadline. Each 10 percent reduction shall be based on the original amount of the building permit fee, unless the parties agree to an extension of time. This paragraph does not apply to permits for any wireless communications facilities.

(3) If any building permit fees are refunded under this section, the surcharges provided in s. 468.631 or s. 553.721 must be recalculated based on the amount of the building permit fees after the refund.

Section 6. Paragraph (c) of subsection (5) of section 553.794, Florida Statutes, is amended to read:

553.794 Local government residential master building permit program.—

(5) MASTER BUILDING PERMIT APPLICATION APPROVAL PROCESS.—

(c) The local building department must approve or deny a master building permit application within 120 days after the local building department receives a completed application, unless the applicant agrees to a longer period. If a local building department fails to approve or deny a master building permit application within 120 days after receiving the completed permit application, it must reduce the master building permit

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291 fee by 10 percent for each business day that it fails to meet
292 the deadline, unless the applicant agrees to a longer time
293 period. Each 10 percent reduction shall be based on the original
294 amount of the master building permit fee. If any master building
295 permit fees are refunded, the surcharges provided in s. 468.631
296 or s. 553.721 must be recalculated based on the amount of the
297 master building permit fees after the refund.

298 Section 7. Present subsections (6) and (7) of section
299 713.135, Florida Statutes, are redesignated as subsections (7)
300 and (8), respectively, and a new subsection (6) is added to that
301 section, to read:

302 713.135 Notice of commencement and applicability of lien.—

303 (6) An authority that issues building permits may not
304 require an applicant to provide a direct contract or a contract
305 between a contractor and any other lienor as a condition of the
306 application for, or processing or issuance of, a building permit
307 for the construction of improvements or for the alteration or
308 repair of improvements on or to commercial property. This
309 subsection does not apply to the construction of improvements or
310 the alteration or repair of improvements owned or leased by the
311 Federal Government; the state or any county, city, or political
312 subdivision thereof; or other public authority.

313 Section 8. This act shall take effect October 1, 2021.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-6-21

Meeting Date

1788

Bill Number (if applicable)

Topic CONSTRUCTION PERMITS

Amendment Barcode (if applicable)

Name DANE BENNETT

Job Title DIRECTOR OF GOV. AFFAIRS

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TALLAHASSEE

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA HOME BUILDERS ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 1802

INTRODUCER: Criminal Justice Committee and Senator Pizzo

SUBJECT: Interception of Wire, Oral, or Electronic Communications Made in Violation of Protective Orders

DATE: April 2, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Cellon</u>	<u>Jones</u>	<u>CJ</u>	Fav/CS
3.	<u>Bond</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1802 provides that it is lawful for a person who is protected by an injunction for repeat violence, sexual violence, dating violence, domestic violence, stalking, or any other court-imposed prohibition of conduct toward the person, to intercept and record a wire, oral, or electronic communication received in violation of the injunction or order. Therefore, the bill creates an exception to the general prohibition against interceptions of wire, oral, or electronic communications without the consent of all parties.

The bill allows a person to provide such a recording only to law enforcement or a court for the limited purpose of proving a violation of an injunction or court order.

The bill will have a positive insignificant fiscal impact on the Department of Corrections. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

II. Present Situation:

Wiretapping

In Florida, intentionally intercepting¹ an oral communication,² commonly known as wiretapping, is generally a third degree felony,³ with limited exceptions. For example, it is not a crime for a person to intercept an oral communication if:

- All parties to the communication consent to the interception;⁴ or
- The person is a law enforcement officer or a person acting under the direction of a law enforcement officer and:
 - He or she is a party to the communication;
 - One of the parties to the communication has given prior consent to such interception and the purpose of such interception is to obtain evidence of a criminal act;⁵
- The person is a child under 18 years of age and:
 - He or she is a party to the communication; and
 - Has reasonable grounds to believe the recording will capture a statement by another party to the communication that the other party intends to commit, is committing, or has committed an unlawful sexual act or act of physical force or violence against the child.⁶

An oral communication that is intercepted illegally cannot be used as evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority or political subdivision of the state.⁷ When a communication has been unlawfully intercepted, an aggrieved party may move to suppress the contents of the interception or any evidence derived from it.⁸

However, not all wiretapping is subject to exclusion. Florida only protects oral communications by a person exhibiting an expectation of privacy under circumstances reasonably justifying the person's expectation of privacy.⁹

¹ "Intercept" means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device. Section 934.02, F.S.

² "Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation and does not mean any public oral communication uttered at a public meeting or any electronic communication. Section 934.02, F.S.

³ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

⁴ Section 934.03(2)(d), F.S.

⁵ Section 934.03(2)(c), F.S.

⁶ Section 934.03(2)(k), F.S. This particular exception to the prohibition on recording another's communication was passed by the Legislature in 2015 after the Florida Supreme Court ruled in 2014 that surreptitious recordings by a sixteen year old girl who was "essentially conducting her own investigation, hoping to prompt [her stepfather] into making incriminating statements...as evidence of [sexual] abuse" were inadmissible at trial. The Court explained that the recordings did not fall under any exception in s. 934.03(2), F.S., but the Court noted, "[i]t may well be that a compelling case can be made for an exception...[b]ut the adoption of such an exception is a matter for the Legislature." *McDade v. State*, 154 So.3d 292 (Fla. 2014).

⁷ Section 934.06, F.S.

⁸ Sections 934.06 and 934.09(10)(a), F.S.

⁹ *State v. Inciarrano*, 473 So.2d 1272, 1275 (Fla. 1985).

Protective Injunctions

A court may prohibit a person from contacting another person by granting a petition for an injunction or entering a no contact order in a criminal case. Protective injunctions are available under Florida law for victims of the following:

- Domestic violence;¹⁰
- Repeat violence;¹¹
- Sexual violence;¹²
- Dating violence;¹³ and
- Stalking.¹⁴

As soon as possible after the petition is filed, a court must set a hearing to determine:

- Whether the petitioner is a victim of domestic violence or has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence;¹⁵
- Whether an immediate and present danger of repeat, sexual, or dating violence exists;¹⁶ or
- Whether stalking exists.¹⁷

The court may grant an ex parte temporary injunction for 15 days.¹⁸ A court must then set a hearing with notice to the respondent, and after the hearing with notice, may grant protective injunctive relief as it deems proper, including a permanent injunction.¹⁹

Protective injunctions may prohibit:

- The respondent from committing any additional acts of violence, stalking, or cyberstalking;²⁰
- The respondent from going to, or being within 500 feet of, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;²¹ or
- The respondent from knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied.²²

Additionally, a court may order the respondent to vacate the dwelling that the parties share,²³ to participate in treatment, intervention, or counseling services to be paid for by the respondent,²⁴ and order any other such relief as the court deems necessary to protect a victim.²⁵

¹⁰ Section 741.30, F.S.

¹¹ Section 784.046, F.S.

¹² *Id.*

¹³ *Id.*

¹⁴ For the purposes of protective injunctions, stalking includes cyberstalking. Section 784.0485, F.S.

¹⁵ Section 741.30(6)(a), F.S.

¹⁶ Section 784.046(6)(a), F.S.

¹⁷ Section 784.0485(5)(a), F.S.

¹⁸ Sections 741.30(5)(a), (c), 784.046(6)(a), (c), and 784.0485(5)(a) and (c), F.S.

¹⁹ Sections 741.30(6)(a), 784.046, and 784.0485, F.S.

²⁰ Sections 741.30(6)(a)1., 784.046(7)(a), and 784.0485(6)(a)1., F.S.

²¹ Sections 741.31(4)(a)2., 784.047(1)(b), and 784.0487(4)(a)1., F.S.

²² Sections 741.31(4)(a)6., 784.047(1)(f), and 784.0487(4)(a)5., F.S.

²³ Sections 741.31(4)(a)1., and 784.047(1)(a), F.S.

²⁴ Sections 741.30(6)(a)2., and 784.047(1)(a)

²⁵ Sections 741.30(6)(a)8., 784.046(7)(b), and 784.0485(6)(a)4., F.S.

Violation of a protective injunction is generally a first degree misdemeanor, however, a person with two or more prior convictions for violating an injunction who subsequently commits another violation against the same victim, commits a third degree felony.²⁶

No Contact Order

When a court has jurisdiction over a defendant in criminal court, the court may order no contact with the victim in the case as a condition of pretrial release or as part of a defendant's sentence. Unlike the process of the victim seeking an injunction, a no contact order does not require that the victim ask the court to enter the order. A defendant's violation of a no contact order may result in revocation of bond, contempt of court charges, violation of probation, or, in the case of domestic violence, additional criminal charges.²⁷ A no contact order only remains in effect, as long as the pretrial release condition or postsentencing period of supervision applies to the defendant. Once the case is closed and the defendant is no longer subject to any terms and conditions of his or her sentence, the no contact order no longer has effect.

III. Effect of Proposed Changes:

The bill creates a new exception in s. 934.03, F.S., to the general prohibition in that statute against interception of wire, oral, or electronic communications. The bill provides that it is lawful for a person who is protected under an active temporary or final injunction for repeat violence, sexual violence, or dating violence under s. 784.046, F.S.; stalking under s. 784.0485, F.S.; domestic violence under s. 741.30, F.S.; or any other court-imposed prohibition of conduct toward the person to intercept and record a wire, oral, or electronic communication received in violation of such injunction or court order.

The bill allows a person to provide such a recording only to law enforcement or a court for the limited purpose of proving a violation of an injunction or court order.

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.

²⁶ Sections 741.31, 784.047, and 784.0487, F.S. A first degree misdemeanor is punishable by up to a year in the county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

²⁷ Section 741.31, F.S.

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:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference considered SB 1802 and the identical²⁸ House bill, HB 583, on March 8, 2021. The Conference determined that the bill will have a positive insignificant fiscal impact on the prison bed population of the Department of Corrections. This means that there will be an increase of 10 or fewer prison beds.²⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 934.03 of the Florida Statutes.

²⁸ Since March 8, 2021, the Senate bill (CS/SB 1802) and House bill (HB 583) are no longer identical. The Senate bill has added victims of stalking who have an active temporary or final injunction to the list of persons who may lawfully intercept and record a wire, oral, or electronic communication received in violation of such injunction or court order. However, this is not likely to change the prison bed impact.

²⁹ Economic and Demographic Research, Criminal Justice Impact Conference (March 8, 2021), available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/HB583.pdf> (last visited March 15, 2021).

IX. Additional Information:

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

CS by Criminal Justice on March 23, 2021:

The committee substitute adds victims of stalking who have an active temporary or final injunction to the list of persons who may lawfully intercept and record a wire, oral, or electronic communication received in violation of such injunction or court order.

- B. **Amendments:**

None.

By the Committee on Criminal Justice; and Senator Pizzo

591-03253-21

20211802c1

1 A bill to be entitled
 2 An act relating to interception of wire, oral, or
 3 electronic communications made in violation of
 4 protective orders; amending s. 934.03, F.S.; providing
 5 an exception to prohibitions on interception and
 6 recording of communications when the communication is
 7 received in violation of a specified injunction or
 8 order; limiting the use of the intercepted
 9 communication to evidencing a violation of the
 10 specified injunction or order; providing an effective
 11 date.
 12
 13 Be It Enacted by the Legislature of the State of Florida:
 14
 15 Section 1. Paragraph (1) is added to subsection (2) of
 16 section 934.03, Florida Statutes, to read:
 17 934.03 Interception and disclosure of wire, oral, or
 18 electronic communications prohibited.—
 19 (2)
 20 (1) It is lawful under this section and ss. 934.04-934.09
 21 for a person who is protected under an active temporary or final
 22 injunction for repeat violence, sexual violence, or dating
 23 violence under s. 784.046; stalking under s. 784.0485; domestic
 24 violence under s. 741.30; or any other court-imposed prohibition
 25 of conduct toward the person to intercept and record a wire,
 26 oral, or electronic communication received in violation of such
 27 injunction or court order. A recording authorized under this
 28 paragraph may be provided to a law enforcement agency or a court
 29 for the purpose of evidencing a violation of an injunction or

Page 1 of 2

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

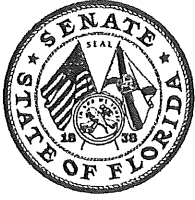
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30 court order and may not be otherwise disseminated or shared.
 31 Section 2. This act shall take effect July 1, 2021.

Page 2 of 2

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The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

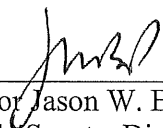
Subject: Committee Agenda Request

Date: March 24, 2021

I respectfully request that **CS/SB 1802**, relating to Interception of Wire, Oral, or Electronic Communications Made in Violation of Protective Orders, be placed on the:

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

CS/SB 1802 provides that it is lawful for a person who is protected by an injunction for repeat violence, sexual violence, dating violence, domestic violence, stalking, or any other court-imposed prohibition of conduct toward the person, to intercept and record a wire, oral, or electronic communication received in violation of the injunction or order. It creates an exception to the general prohibition against interceptions of wire, oral, or electronic communications without the consent of all parties. The bill allows a person to provide such a recording only to law enforcement or a court for the limited purpose of proving a violation of an injunction or court order.



Senator Jason W. B. Pizzo
Florida Senate, District 38

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 Rules

BILL: CS/CS/SB 1826

INTRODUCER: Rules Committee; Criminal Justice Committee; and Senator Diaz

SUBJECT: Human Trafficking

DATE: April 7, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Moody</u>	<u>Cox</u>	<u>CF</u>	Favorable
2. <u>Stokes</u>	<u>Jones</u>	<u>CJ</u>	Fav/CS
3. <u>Moody</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1826 creates s. 90.5034, F.S., establishing a privilege for communication between human trafficking victims and human trafficking advocates or trained volunteers. The bill provides that communication between a human trafficking victim advocate or trained volunteer and a human trafficking victim is “confidential,” if it is not intended to be disclosed to third persons, except to specified persons. A human trafficking victim has a privilege to refuse to disclose, and prevent any other person from disclosing such confidential communication or record made in the course of advising, counseling, or providing services to the victim. Additionally, the bill defines the terms “anti-human trafficking organization,” “human trafficking victim advocate,” “trained volunteer,” and “human trafficking victim,” and provides training requirements for human trafficking victim advocates and trained volunteers.

The bill amends s. 787.06, F.S., to expand the definition of “human trafficking,” to include the “purchasing, patronizing, [or] procuring” another person for the purpose of exploitation of that person. Additionally, the definition of “obtain,” is amended to mean “in relation to labor, commercial sexual activity, or services, to receive, take possession of, or take custody of another person or secure performance thereof.” The bill expands the scope of specified human trafficking offenses relating to children under 18 years of age to include an adult believed to be under 18 years of age. The bill provides that the Legislature encourages each state attorney to adopt a prosecution policy for human trafficking offenses, and requires the state attorney to determine whether to file, nonfile, or divert criminal charges even when there is no cooperation from a victim or over the objection of the victim, if necessary.

The bill also expands the list of offenses in which a court must impose special conditions on probationers or community controllees who are placed under supervision or on community control or sex offender probation for committing a specified human trafficking offense on or after a certain date.

For purposes of incorporating the amendments made in the bill, ss. 39.01305, 464.013, 775.21, 943.0435, 943.0583, and 944.606, F.S., are reenacted.

To the extent that the amended definition of human trafficking in the bill results in persons being convicted and sentenced to prison at the initial sentencing hearing or as a result of a violation of probation or community control, the bill may result in a positive indeterminate prison bed impact (i.e. an unquantifiable increase of prison beds). See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

II. Present Situation:

Human Trafficking

Human trafficking is a form of modern-day slavery.¹ Human trafficking victims are young children, teenagers, and adults who may be citizens that are trafficked domestically within the borders of the United States or smuggled across international borders worldwide.² Many human trafficking victims are induced with false promises of financial or emotional security, but are forced or coerced into commercial sex, domestic servitude, or other types of forced labor.³ Any minor who is younger than 18 years old and who is induced to perform a commercial sex act is a human trafficking victim even if there is no forced fraud or coercion.⁴ Increasingly, criminal organizations, such as gangs, are enticing local school children into commercial sexual exploitation or trafficking.⁵ The average ages of youth who are trafficked are 11-13 years old.⁶

Congress passed the Victims of Trafficking and Violence Protection Act (Act) of 2000 to combat human trafficking by establishing several methods of prosecuting traffickers, preventing trafficking, and protecting victims.⁷ The Act contains severe penalties and mandates restitution for victims of human trafficking.⁸

¹ Section 787.06(1)(a), F.S.

² *Id.*

³ The Department of Education (the DOE), *Healthy Schools – Human Trafficking*, available at <http://www.fldoe.org/schools/healthy-schools/human-trafficking.stml> (last visited April 7, 2021) (hereinafter cited as “DOE Human Trafficking”).

⁴ *Id.*

⁵ *Id.*

⁶ The DOE, Presentation to the State Board of Education, *Child Trafficking Prevention Education*, p. 3, September 20, 2019, available at <http://www.fldoe.org/core/fileparse.php/5575/urlt/ChildTraffickingPres.pdf> (last visited April 7, 2021) (hereinafter cited as “DOE Trafficking Prevention”).

⁷ Pub. L. No. 106-386 (2000).

⁸ *Id.*

The U.S. Department of Justice reports that every two minutes a child is trafficked for the purpose of sexual exploitation in the United States.⁹ Approximately 24.9 million people are human trafficking victims in the world.¹⁰ There are approximately 2.5 million victims of human trafficking in the United States.¹¹ The U.S. National Human Trafficking Hotline (NHTH) has received 276,654 reports of human trafficking between 2007 and 2019.¹²

The number of human trafficking cases listed in reports may not accurately reflect the number of actual cases of human trafficking because many traffickers are prosecuted for other crimes.¹³ Additionally, prosecutors often have difficulty proving the relationship at issue is one of human trafficking or a victim may be unwilling to testify against his or her trafficker in court.¹⁴

Human Trafficking in Florida

Florida law defines “human trafficking” as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining,¹⁵ or obtaining¹⁶ another person for the purpose of exploitation of that person.¹⁷ In Florida, any person who knowingly, or in reckless disregard of the facts, engages in human trafficking, or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking for labor or services, or commercial sexual activity, commits a crime.¹⁸ Florida law sets out several circumstances which give rise to specified penalties including, in part:

- Labor¹⁹ or services²⁰ of any child under the age of 18 commits a first degree felony;²¹
- Labor or services of any child under the age of 18 who is an unauthorized alien²² commits a first degree felony;²³

⁹ DOE Human Trafficking.

¹⁰ National Human Trafficking Hotline, *What is Human Trafficking?*, available at <https://humantraffickinghotline.org/what-human-trafficking> (last visited April 7, 2021).

¹¹ DOE Human Trafficking.

¹² NHTH, *Hotline Statistics*, available at <https://humantraffickinghotline.org/states> (last visited April 7, 2021).

¹³ Nada Hassanein, *Preying on the vulnerable: Human trafficking prevalent yet elusive in the Big Bend*, Tallahassee Democrat, June 27, 2018, available at <https://www.tallahassee.com/story/news/2019/01/27/preying-vulnerable-human-trafficking-alive-and-well-big-bend/2648630002/> (last visited April 7, 2021).

¹⁴ *Id.*

¹⁵ Section 787.06(2)(f), F.S., provides “maintain” means, in relation to labor or services, to secure or make possible continued performance thereof, regardless of any initial agreement on the part of the victim to perform such type service. Section 787.06(2)(h), F.S., defines “services” as any act committed at the behest of, under the supervision of, or for the benefit of another, including forced marriage, servitude, or the removal of organs.

¹⁶ Section 787.06(2)(g), F.S., provides “obtain” means, in relation to labor or services, to secure performance thereof.

¹⁷ Section 787.06(2)(d), F.S.

¹⁸ Section 787.06(3), F.S.

¹⁹ Section 787.06(2)(e), F.S., provides “labor” means work of economic or financial value.

²⁰ Section 787.06(2)(h), F.S., provides “services” means any act committed at the behest of, under the supervision of, or for the benefit of another. The term includes, but is not limited to, forced marriage, servitude, or the removal of organs.

²¹ Section 787.06(3)(a)1., F.S. A first degree felony is punishable by a state prison term not exceeding 30 years, a fine not exceeding \$10,000, or both. Sections 775.082 and 775.083, F.S.

²² Section 787.06(2)(j), F.S., defines “unauthorized alien” as an alien who is not authorized under federal law to be employed in the United States, as provided in 8 U.S.C. s. 1324a(h)(3).

²³ Section 787.06(3)(c)1., F.S.

- Labor or services who does so by the transfer or transport of any child under the age of 18 from outside of Florida to within Florida commits a first degree felony;²⁴
- Commercial sexual activity²⁵ who does so by the transfer or transport of any child under the age of 18 from outside of Florida to within Florida commits a first degree felony;²⁶ or
- Commercial sexual activity²⁷ in which any child under the age of 18, or in which any person who is mentally defective²⁸ or mentally incapacitated²⁹ is involved commits a life felony.³⁰

The above-mentioned first degree felonies are reclassified as a life felony if a person causes great bodily harm, permanent disability, or permanent disfigurement to another person during the commission of the offense.³¹ Ignorance of the human trafficking victim's age, the victim's misrepresentation of his or her age, or a bona fide belief of the victim's age cannot be raised as a defense by a defendant.³²

Florida is ranked the third highest state of reported human trafficking cases in the United States.³³ In 2018, Florida received 767 reports of human trafficking cases of which 149 were minors.³⁴ In November 2018, an investigation in Polk County lead to the arrest of 103 people for charges including prostitution and human trafficking.³⁵ Similarly, in January 2019, a two month-long investigation lead to the arrest of a 36-year-old male in Tallahassee on prostitution and sex trafficking charges involving a 14-year old girl. At the time of his arrest, the male was already facing charges for sex trafficking a child in 2014.³⁶

²⁴ Section 787.06(3)(e)1., F.S.

²⁵ Section 787.06(2)(b), F.S., defines "commercial sexual activity" as any violation of ch. 796, F.S., or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography. Section 787.06(2)(i), F.S., defines "sexual explicit performance" as an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy the sexual desires or appeal to the prurient interest.

²⁶ Section 787.06(3)(f)1., F.S., provides that an offense committed under these circumstances is punishable by a term of imprisonment not exceeding life or as provided in ss. 775.082, 775.083, or 775.084, F.S.

²⁷ Section 787.06(2)(b), F.S., defines "commercial sexual activity" as any violation of ch. 796, F.S., or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography. Section 787.06(2)(i), F.S., defines "sexual explicit performance" as an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy the sexual desires or appeal to the prurient interest.

²⁸ Section 794.011(1)(b), F.S., defines "mentally defective" as a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.

²⁹ Section 794.011(1)(c), F.S., defines "mental incapacitated" as temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.

³⁰ A life felony is punishable by a term of life imprisonment, \$15,000 fine, or both as provided in ss. 775.082(3)(a)6., 775.083, or 775.084, F.S.

³¹ Section 787.06(8)(b), F.S.

³² Section 787.06(9), F.S.

³³ DOE Trafficking Prevention at p. 3.

³⁴ DOE Trafficking Prevention.

³⁵ Daniel Dahm and Brianna Volz, *Orlando-area doctor among 103 arrested in Polk County sex sting*, sheriff says, ClickOrlando.com, December 3, 2018, available at <https://www.clickorlando.com/news/103-arrested-in-polk-county-sex-sting> (last visited April 7, 2021).

³⁶ WTXL, *Human trafficking suspect accused of sex-trafficking child in Tallahassee*, January 26, 2019, available at http://www.wtxl.com/news/human-trafficking-suspect-accused-of-sex-trafficking-child-in-tallahassee/article_9748879c-21a4-11e9-b768-5bb68f906ecc.html (last visited April 7, 2021).

Probation or Community Control

Any state court having original jurisdiction of criminal actions has the discretion to sentence a defendant who has been found guilty or entered a plea of guilty or nolo contendere to probation³⁷ or community control³⁸ in certain circumstances.³⁹ There are a few types of probation or community control (supervision) that the court may impose if specified conditions are met, such as drug offender probation,⁴⁰ sexual offender probation, or sexual offender community control.⁴¹

Current law provides for standard terms that a court may impose as a condition of probation or community control which include, in part, that the offender must:

- Report to the probation officer as directed;
- Permit the probation officer to visit him or her at his or her home or elsewhere;
- Work faithfully to obtain suitable employment, if possible;
- Remain within a specified place; and
- Live without violating any law.⁴²

Special Conditions of Supervision

Current law also requires a court to impose additional conditions of supervision on a person who is convicted of an offense provided for in ch. 794, F.S.,⁴³ and ss. 800.04,⁴⁴ 827.071,⁴⁵ 847.0135(5),⁴⁶ and 847.0145, F.S.,⁴⁷ which was committed on or after October 1, 1995, including, in part:

- A mandatory 8-hour curfew, such as 10 p.m. to 6 a.m.;
- If the victim was under the age of 18 years old, a prohibition on contact or living within 1,000 feet of a school and other places where children regularly congregate as specified in the section;
- A prohibition on any contact with the victim if specified conditions are met;
- Active participation in and successful completion of a sexual offender treatment program with certain specifications;

³⁷ Section 948.001(8), F.S., defines “probation” as a form of community supervision requiring specified contacts with probation officers and other terms and conditions as provided in s. 948.03, F.S.

³⁸ Section 948.001(3), F.S., defines “community control” as a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or noninstitutional residential placement and specific sanctions are imposed and enforced.

³⁹ Section 948.01(1), F.S.

⁴⁰ Section 948.001(4), F.S., defines “drug offender probation” as a form of intensive supervision that emphasizes treatment of drug offenders in accordance with individualized treatment plans administered by officers with restricted caseloads.

⁴¹ Section 948.001(13), F.S., defines “sexual offender probation” or “sexual offender community control” as a form of intensive supervision, with or without electronic monitoring, which emphasizes treatment and supervision of a sex offender in accordance with an individualized treatment plan administered by an officer who has a restricted caseload and specialized training.

⁴² See s. 948.03, F.S.

⁴³ Offenses relating to sexual battery.

⁴⁴ Lewd or lascivious offenses.

⁴⁵ Offenses related to sexual performance by a child.

⁴⁶ Offenses related to computer pornography, prohibited computer usage, and traveling to meet a minor.

⁴⁷ Offenses related to selling or buying minors.

- Submit a specimen of blood or other approved biological specimen to be registered with the DNA data bank;
- Make restitution to the victim as ordered by the court for certain services; and
- Submit to a warrantless search by the community control or probation officer of the probationer's or community controllee's person, residence, or vehicle.⁴⁸

Current law also requires a court to impose additional conditions of supervision on a person who is placed on community control or sex offender probation for a violation of the one of the above listed offenses committed on or after October 1, 1997, including, in part:

- Participation at least annually in polygraph examinations for specified purposes and with specified conditions;
- Maintenance of a driving log and prohibition against driving a motor vehicle alone without prior approval;
- Prohibition against obtaining or using a post office box without prior approval;
- Submission to an HIV test with specified conditions; and
- Electronic monitoring when deemed necessary and ordered by the court.⁴⁹

Violations of Supervision

If an offender violates the terms of his or her probation or community control, the supervision can be revoked in accordance with s. 948.06, F.S.⁵⁰ A violation of probation (VOP) or a violation of community control (VOCC) can be the result of a new violation of law or a technical violation of the conditions imposed. A law enforcement officer may arrest a probationer or offender on community control when there is reasonable grounds to believe that he or she violated the terms or conditions of supervision in a material respect.⁵¹ Also, the committing trial court judge may issue an arrest warrant or a notice to appear in specified circumstances.⁵² If the alleged offender is arrested and brought before the court, it may commit the alleged offender or release the person with or without bail.⁵³

Upon a finding through a VOP or VOCC hearing, a court may revoke, modify, or continue the supervision. If the court chooses to revoke the supervision, it may impose any sentence originally permissible before placing the offender on supervision.⁵⁴ A probationer or offender on community control may be eligible for an alternative sentencing program at the discretion of the probation officer in lieu of the officer filing an affidavit of violation with the court if the probationer or offender of community control has committed a technical violation⁵⁵ of the court-ordered supervision.⁵⁶

⁴⁸ Section 948.30(1), F.S.

⁴⁹ Section 948.30(2), F.S.

⁵⁰ Section 948.10(3), F.S.

⁵¹ Section 948.06(1)(a), F.S.

⁵² Section 948.06(1)(b), F.S.

⁵³ Section 948.06(1)(e)2.a., F.S.

⁵⁴ Section 948.06(2)(b), F.S.

⁵⁵ Section 948.06(1)(c), F.S. defines "technical violation" as an alleged violation of supervision that is not a new felony offense, misdemeanor offense, or criminal traffic offense.

⁵⁶ *Id.*

Privileged Communications in the Evidence Code

The Florida Evidence Code (Code) specifies what types of evidence and testimony are admissible in court.⁵⁷ The Code makes certain communications privileged, meaning their disclosure generally cannot be compelled, even in legal proceedings.⁵⁸ Privileged communication is an interaction between two parties in which the law recognizes a private, protected relationship.⁵⁹ Some examples of generally privileged communications include communications between a sexual assault counselor and victim,⁶⁰ domestic violence advocate and victim,⁶¹ a lawyer and client,⁶² and a husband and wife.⁶³

Typically, such communication only loses its privileged status if the person who made the original disclosure of such information waives the privilege, thus permitting the communication to be subject to general rules of evidence. A person is deemed to have waived the privilege if he or she voluntarily discloses the communication, makes it when he or she does not have a reasonable expectation of privacy, or consents to the disclosure of, any significant part of the communication.⁶⁴

Sexual Assault Counselor and Victim

A victim⁶⁵ has a privilege to refuse to disclose, and to prevent anyone else from disclosing, a confidential communication made by the victim to a sexual assault counselor⁶⁶ or trained volunteer⁶⁷ or any record made in the course of advising, counseling, or assisting the victim.⁶⁸ This includes any advice given by the sexual assault counselor or trained volunteer to the victim during the course of their relationship.⁶⁹ Communication is “confidential” if it is not intended to be disclosed to third persons other than:

⁵⁷ Chapter 90, F.S.

⁵⁸ See ss. 90.5035, 90.5036, and 90.502, F.S.; U.S. Legal, *Privileged Communications Law and Legal Definition*, available at <https://definitions.uslegal.com/p/privileged-communications/> (last visited April 7, 2021).

⁵⁹ Will Kenton, Investopedia, *Privileged Communication*, February 21, 2018, available at <https://www.investopedia.com/terms/p/privileged-communication.asp> (last visited April 7, 2021).

⁶⁰ Section 90.5035, F.S.

⁶¹ Section 90.5036, F.S.

⁶² Section 90.502, F.S.

⁶³ Section 90.504, F.S.; Florida law provides for privileged communication amongst several other groups of individuals, including journalists under s. 90.5015, F.S., lawyer and client under s. 90.502, F.S., fiduciary lawyer and client under s. 90.5021, F.S., psychotherapist and patient under s. 90.503, F.S., husband and wife under s. 90.504, F.S., clergy under s. 90.505, F.S., accountant and client under s. 90.5055, F.S., and trade secrets under s. 90.506, F.S.

⁶⁴ Section 90.507, F.S.

⁶⁵ Section 90.5035(1)(d), F.S., defines “victim” as a person who consults a sexual assault counselor or a trained volunteer for the purpose of securing advice, counseling, or assistance concerning a mental, physical, or emotional condition caused by a sexual assault or sexual battery, an alleged sexual assault or sexual battery, or an attempted sexual assault or sexual battery.

⁶⁶ Section 90.5035(1)(b), F.S., defines “sexual assault counselor” as any employee of a rape crisis center whose primary purpose is the rendering of advice, counseling, or assistance to victims of sexual assault or sexual battery. Section 90.5035(1)(a), F.S., defines “rape crisis center” as any public or private agency that offers assistance to victims of sexual assault or sexual battery and their families.

⁶⁷ Section 90.5035(1)(c), F.S., defines “trained volunteer” as a person who volunteers at a rape crises center, has completed 30 hours of training in assisting victims of sexual violence and related topics provided by the rape crisis center, is supervised by members of the staff of the rape crisis center, and is included on a list of volunteers that is maintained by the rape crisis center.

⁶⁸ Section 90.5035(2), F.S.

⁶⁹ *Id.*

- Persons present to further the interest of the victim in the consultation, examination, or interview;
- Persons necessary for the transmission of the communication; or
- Persons to whom disclosure is reasonably necessary to accomplish the purposes for which the sexual assault counselor or the trained volunteer is consulted.⁷⁰

Communication and records which are confidential as provided for under this section may only be disclosed with prior written consent of the victim.⁷¹ The privilege may be claimed by:

- The victim or the victim's attorney on his or her behalf;
- A guardian or conservator of the victim;
- The personal representative of a deceased victim;
- The sexual assault counselor or trained volunteer, but only on behalf of the victim.⁷²

A sexual assault counselor's or trained volunteer's authority to claim the privilege is presumed unless there is evidence to the contrary.⁷³

Domestic Violence Advocate and Victim

Similar to communication with a sexual abuse counselor, a victim⁷⁴ may refuse to disclose, and prevent anyone else from disclosing, a confidential communication made by the victim to a domestic violence advocate⁷⁵ or any record made in the course of advising, counseling, or assisting the victim.⁷⁶ This privilege applies only if the advocate is registered under s. 39.905, F.S., at the time the communication is made, and includes any advice given by the domestic violence advocate to the victim during the course of their relationship.⁷⁷ Communication is "confidential" if it relates to the incident of domestic violence for which assistance is sought and if it is not intended to be disclosed to third persons other than:

- Persons present to further the interest of the victim in the consultation, assessment, or interview; or
- Persons to whom disclosure is reasonably necessary to accomplish the purpose for which the domestic violence advocate is consulted.⁷⁸

The privilege may be claimed by:

- The victim or the victim's attorney on behalf of the victim;
- A guardian or conservator of the victim;
- The personal representative of a deceased victim;

⁷⁰ Section 90.5035(1)(e), F.S.

⁷¹ Section 90.5035(2), F.S.

⁷² Section 90.5035(3), F.S.

⁷³ Section 90.5035(3)(d), F.S.

⁷⁴ Section 90.5036(1)(c), F.S., defines "victim" as a person who consults a domestic violence advocate for the purpose of securing advice, counseling, or assistance concerning a mental, physical, or emotional condition caused by an act of domestic violence, an alleged act of domestic violence, or an attempted act of domestic violence.

⁷⁵ Section 90.5036(1)(b), F.S., defines "domestic violence advocate" as any employee or volunteer who has 30 hours of training in assisting victims of domestic violence whose primary purpose is the rendering of advice, counseling, or assistance to victims of domestic violence.

⁷⁶ Section 90.5036(2), F.S.

⁷⁷ *Id.*

⁷⁸ Section 90.5036(1)(d), F.S.

- The domestic violence advocate, but only on behalf of the victim.⁷⁹

A domestic violence advocate's authority to claim the privilege is presumed unless there is evidence to the contrary.⁸⁰

III. Effect of Proposed Changes:

Privilege

The bill creates s. 90.5034, F.S., establishing a privilege for communication between human trafficking victims and human trafficking victim advocates or trained volunteers. The bill provides that communication between a human trafficking victim advocate or trained volunteer and a human trafficking victim is "confidential," if it is not intended to be disclosed to third persons, except to:

- Persons present to further the interest of the human trafficking victim in the consultation, examination, or interview;
- Persons necessary for the transmission of the communication; or
- Persons to whom disclosure is reasonably necessary to accomplish the purposes for which the sexual assault counselor or the trained volunteer is consulted.

A human trafficking victim may refuse to disclose, and prevent any other person from disclosing, a confidential communication made by the human trafficking victim to a human trafficking victim advocate or trained volunteer or any record made in the course of advising, counseling, or providing services to the victim. This includes any advice given by the human trafficking victim advocate or trained volunteer to the human trafficking victim during the course of their relationship.

Communication and records which are confidential as provided for under this new section may only be disclosed with prior written consent of the human trafficking victim. The privilege may be claimed by:

- The human trafficking victim or the victim's attorney on his or her behalf;
- A guardian or conservator of the human trafficking victim;
- The personal representative of a deceased human trafficking victim;
- The human trafficking victim advocate or trained volunteer, but only on behalf of the human trafficking victim.⁸¹

A human trafficking victim advocate's or trained volunteer's authority to claim the privilege is presumed unless there is evidence to the contrary.

The bill provides that a human trafficking victim advocate or a trained volunteer must complete:

- Twenty-four hours of human trafficking training delivered by the Office of the Attorney General, the Bureau of Criminal Justice Programs and Victim Services, and the Florida Crime Prevention Training Institute; and

⁷⁹ Section 90.5036(3), F.S.

⁸⁰ Section 90.5036(3)(d), F.S.

⁸¹ Section 90.5035(3), F.S.

- An 8-hour Human Trafficking Update course within 3 years after the date of his or her initial designation in order to maintain his or her designation.

Additionally, the bill defines the following terms:

- “Anti-human trafficking organization,” is any public or private agency that offers assistance to victims of human trafficking as defined in s. 787.06, F.S.
- “Human trafficking victim advocate,” is any employee of an anti-trafficking organization whose primary purpose is the provision of advice, counseling, or services to victims of human trafficking and who complies with the training requirements.
- “Trained volunteer,” is a person who volunteers with an anti-trafficking organization and who complies with the training requirements provision of the bill.
- “Human trafficking victim,” is a person who consults a human trafficking victim advocate or a trained volunteer for the purpose of securing advice, counseling, or services concerning any need arising from an experience relating to being a victim of human trafficking.

Human Trafficking

The bill amends s. 787.06, F.S., to expand the definition of “human trafficking,” to include the “purchasing, patronizing, [or] procuring” another person for the purpose of exploitation of that person. Additionally, the definition of “obtain,” is amended to mean “in relation to labor, commercial sexual activity, or services, to receive, take possession of, or take custody of another person or secure performance thereof.” The bill also expands all of the first degree felony or life felony offenses of human trafficking described above committed against a child under the age of 18 to include an adult believed to be under 18 years of age.

The bill provides that the Legislature encourages each state attorney to adopt a pro-prosecution policy for human trafficking offenses, and requires the state attorney to determine whether filing, nonfiling, or diversion of criminal charges are appropriate after consulting or making a good faith attempt to consult the victim even when there is no cooperation from a victim or over his or her objection.

Sections 39.01305(3), 464.013(3)(c), 775.21(4)(a), 943.0435(1)(h), 943.0583(1)(a), and 944.606(1)(f), F.S., are reenacted due to the amended definition of human trafficking.

Special Conditions of Supervision

The bill expands the list of offenses in which the court is required to impose special conditions of probation, community control, or sexual offender probation as provided for under s. 948.30, F.S., to include human trafficking offenses that are committed on or after July 1, 2021, which relate to commercial sexual activity under s. 787.06(3)(b), (d), (f), or (g), F.S.

The bill is effective July 1, 2021.

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

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference with the Office of Economic and Demographic Research has not yet met and determined the impact of the bill. However, the bill expands certain definitions related to the offense of human trafficking. Additionally, the bill expands the number of persons that will be required to comply with the additional conditions of supervision required under s. 948.30, F.S., to include persons convicted of specified human trafficking offenses listed above. To the extent that the amended scope of the human trafficking offense in the bill results in persons being convicted and sentenced to prison at the initial sentencing hearing or as a result of a VOP or VOCC, the bill may result in a positive indeterminate prison bed impact (i.e. an unquantifiable increase of prison beds).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 787.06 and 948.30 of the Florida Statutes.

This bill creates section 90.5034 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 39.01305, 464.013, 775.21, 943.0435, 943.0583, and 944.606.

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

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

CS/CS by Rules on April 6, 2021:

The committee substitute:

- Incorporates a finding that the Legislature encourages each state attorney to adopt a pro-prosecution policy for acts of human trafficking;
- Requires the state attorney to make a determination of filing, nonfiling, or diversion of criminal charges even in circumstances when the decision to file is over the victim's objection;
- Adds specified human trafficking offenses relating to commercial sexual activity committed on or after July 1, 2021 to the list of offenses that require a court to impose special conditions of supervision on certain probationers or community controllees; and
- Makes technical amendments to the language establishing the human trafficking victim advocate privilege.

CS by Criminal Justice on March 23, 2021:

The committee substitute is a clarifying amendment that replaces the phrase "or another person believed by the person to be a child," with "or an adult believed by the person to be a child."

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/07/2021	.	
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	.	

The Committee on Rules (Diaz) recommended the following:

Senate Amendment (with title amendment)

Delete lines 34 - 154
and insert:

(a) "Anti-human trafficking organization" means a registered public or private agency that offers assistance to victims of the offense of human trafficking, as defined in s. 787.06(2).

(b) "Human trafficking victim" means a person who consults a human trafficking victim advocate or a trained volunteer for the purpose of securing advice, counseling, or services



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concerning a need arising from an experience of human trafficking exploitation.

(c) "Human trafficking victim advocate" means an employee of an anti-human trafficking organization whose primary purpose is to provide advice, counseling, or services to human trafficking victims and who complies with the training requirements under subsection (5).

(d) "Trained volunteer" means a person who volunteers with an anti-human trafficking organization and who complies with the training requirements under subsection (5).

(2) A communication between a human trafficking victim advocate or trained volunteer and a human trafficking victim is confidential if it is not intended to be disclosed to third persons other than:

(a) Those persons present to further the interest of the human trafficking victim in the consultation, examination, or interview.

(b) Those persons necessary for the transmission of the communication.

(c) Those persons to whom disclosure is reasonably necessary to accomplish the purposes for which the human trafficking victim advocate or trained volunteer is consulted.

(3) A human trafficking victim has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made by the human trafficking victim to a human trafficking victim advocate or trained volunteer or a record made in the course of advising, counseling, or providing services to the human trafficking victim. Such confidential communication or record may be disclosed only with the prior



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written consent of the human trafficking victim. This privilege includes any advice given by the human trafficking victim advocate or trained volunteer to the human trafficking victim in the course of that relationship.

(4) The privilege may be claimed by:

(a) The human trafficking victim or the human trafficking victim's attorney on his or her behalf.

(b) The guardian or conservator of the human trafficking victim.

(c) The personal representative of a deceased human trafficking victim.

(d) The human trafficking victim advocate or trained volunteer, but only on behalf of the human trafficking victim. The authority of a human trafficking victim advocate or trained volunteer to claim the privilege is presumed in the absence of evidence to the contrary.

(5) A human trafficking victim advocate or a trained volunteer shall:

(a) Complete 24 hours of human trafficking training delivered by the Office of the Attorney General, the Bureau of Criminal Justice Programs and Victim Services, and the Florida Crime Prevention Training Institute.

(b) Within 3 years after completing the training required under paragraph (a), complete an 8-hour human trafficking update course.

Section 2. Paragraphs (d) and (g) of subsection (2) and paragraphs (a), (c), (e), (f), and (g) of subsection (3) of section 787.06, Florida Statutes, are amended, and a new subsection (12) is added, to read:



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787.06 Human trafficking.—

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

(d) "Human trafficking" means transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, purchasing, patronizing, procuring, or obtaining another person for the purpose of exploitation of that person.

(g) "Obtain" means, in relation to labor, commercial sexual activity, or services, to receive, take possession of, or take custody of another person or secure performance thereof.

(3) Any person who knowingly, or in reckless disregard of the facts, engages in human trafficking, or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking:

(a)1. For labor or services of any child younger than 18 years of ~~under the age~~ or an adult believed by the person to be a child younger than ~~of 18 years of age~~ commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. Using coercion for labor or services of an adult commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c)1. For labor or services of any child younger than 18 years of ~~under the age~~ or an adult believed by the person to be a child younger than ~~of 18 years of age~~ who is an unauthorized alien commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. Using coercion for labor or services of an adult who is an unauthorized alien commits a felony of the first degree,



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punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(e)1. For labor or services who does so by the transfer or transport of any child younger than 18 years of ~~under the age or~~ an adult believed by the person to be a child younger than ~~of 18~~ years of age from outside this state to within this ~~the~~ state commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. Using coercion for labor or services who does so by the transfer or transport of an adult from outside this state to within this ~~the~~ state commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(f)1. For commercial sexual activity who does so by the transfer or transport of any child younger than 18 years of ~~under the age or~~ an adult believed by the person to be a child ~~younger than~~ of 18 years of age from outside this state to within this ~~the~~ state commits a felony of the first degree, punishable by imprisonment for a term of years not exceeding life, or as provided in s. 775.082, s. 775.083, or s. 775.084.

2. Using coercion for commercial sexual activity who does so by the transfer or transport of an adult from outside this state to within this ~~the~~ state commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(g) For commercial sexual activity in which any child younger than 18 years of ~~under the age or~~ an adult believed by ~~the person to be a child younger than~~ of 18 years of age, or in which any person who is mentally defective or mentally incapacitated as those terms are defined in s. 794.011(1), is involved commits a life felony, punishable as provided in s.



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775.082(3)(a)6., s. 775.083, or s. 775.084.

For each instance of human trafficking of any individual under this subsection, a separate crime is committed and a separate punishment is authorized.

(12) The Legislature encourages each state attorney to adopt a pro-prosecution policy for human trafficking offenses, as provided in this section. After consulting the victim, or making a good faith attempt to consult the victim, the state attorney shall determine the filing, nonfiling, or diversion of criminal charges even in circumstances when there is no cooperation from a victim or over the objection of the victim, if necessary.

Section 3. Subsections (1) and (2) of section 948.30, Florida Statutes, are amended to read:

948.30 Additional terms and conditions of probation or community control for certain sex offenses.—Conditions imposed pursuant to this section do not require oral pronouncement at the time of sentencing and shall be considered standard conditions of probation or community control for offenders specified in this section.

(1) Effective for probationers or community controllees whose crime was committed on or after October 1, 1995, and who are placed under supervision for a violation of chapter 794, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, or whose crime was committed on or after July 1, 2021, and who are placed under supervision for a violation of s. 787.06(3)(b), (d), (f), or (g), the court must impose the following conditions in addition to all other standard and special conditions imposed:



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157 (a) A mandatory curfew from 10 p.m. to 6 a.m. The court may
158 designate another 8-hour period if the offender's employment
159 precludes the above specified time, and the alternative is
160 recommended by the Department of Corrections. If the court
161 determines that imposing a curfew would endanger the victim, the
162 court may consider alternative sanctions.

163 (b) If the victim was under the age of 18, a prohibition on
164 living within 1,000 feet of a school, child care facility, park,
165 playground, or other place where children regularly congregate,
166 as prescribed by the court. The 1,000-foot distance shall be
167 measured in a straight line from the offender's place of
168 residence to the nearest boundary line of the school, child care
169 facility, park, playground, or other place where children
170 congregate. The distance may not be measured by a pedestrian
171 route or automobile route. A probationer or community controllee
172 who is subject to this paragraph may not be forced to relocate
173 and does not violate his or her probation or community control
174 if he or she is living in a residence that meets the
175 requirements of this paragraph and a school, child care
176 facility, park, playground, or other place where children
177 regularly congregate is subsequently established within 1,000
178 feet of his or her residence.

179 (c) Active participation in and successful completion of a
180 sex offender treatment program with qualified practitioners
181 specifically trained to treat sex offenders, at the
182 probationer's or community controllee's own expense. If a
183 qualified practitioner is not available within a 50-mile radius
184 of the probationer's or community controllee's residence, the
185 offender shall participate in other appropriate therapy.



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(d) A prohibition on any contact with the victim, directly or indirectly, including through a third person, unless approved by the victim, a qualified practitioner in the sexual offender treatment program, and the sentencing court.

(e) If the victim was under the age of 18, a prohibition on contact with a child under the age of 18 except as provided in this paragraph. The court may approve supervised contact with a child under the age of 18 if the approval is based upon a recommendation for contact issued by a qualified practitioner who is basing the recommendation on a risk assessment. Further, the sex offender must be currently enrolled in or have successfully completed a sex offender therapy program. The court may not grant supervised contact with a child if the contact is not recommended by a qualified practitioner and may deny supervised contact with a child at any time. When considering whether to approve supervised contact with a child, the court must review and consider the following:

1. A risk assessment completed by a qualified practitioner. The qualified practitioner must prepare a written report that must include the findings of the assessment and address each of the following components:

- a. The sex offender's current legal status;
- b. The sex offender's history of adult charges with apparent sexual motivation;
- c. The sex offender's history of adult charges without apparent sexual motivation;
- d. The sex offender's history of juvenile charges, whenever available;
- e. The sex offender's offender treatment history, including



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consultations with the sex offender's treating, or most recent treating, therapist;

f. The sex offender's current mental status;

g. The sex offender's mental health and substance abuse treatment history as provided by the Department of Corrections;

h. The sex offender's personal, social, educational, and work history;

i. The results of current psychological testing of the sex offender if determined necessary by the qualified practitioner;

j. A description of the proposed contact, including the location, frequency, duration, and supervisory arrangement;

k. The child's preference and relative comfort level with the proposed contact, when age appropriate;

l. The parent's or legal guardian's preference regarding the proposed contact; and

m. The qualified practitioner's opinion, along with the basis for that opinion, as to whether the proposed contact would likely pose significant risk of emotional or physical harm to the child.

The written report of the assessment must be given to the court;

2. A recommendation made as a part of the risk assessment report as to whether supervised contact with the child should be approved;

3. A written consent signed by the child's parent or legal guardian, if the parent or legal guardian is not the sex offender, agreeing to the sex offender having supervised contact with the child after receiving full disclosure of the sex offender's present legal status, past criminal history, and the



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results of the risk assessment. The court may not approve contact with the child if the parent or legal guardian refuses to give written consent for supervised contact;

4. A safety plan prepared by the qualified practitioner, who provides treatment to the offender, in collaboration with the sex offender, the child's parent or legal guardian, if the parent or legal guardian is not the sex offender, and the child, when age appropriate, which details the acceptable conditions of contact between the sex offender and the child. The safety plan must be reviewed and approved by the court; and

5. Evidence that the child's parent or legal guardian understands the need for and agrees to the safety plan and has agreed to provide, or to designate another adult to provide, constant supervision any time the child is in contact with the offender.

The court may not appoint a person to conduct a risk assessment and may not accept a risk assessment from a person who has not demonstrated to the court that he or she has met the requirements of a qualified practitioner as defined in this section.

(f) If the victim was under age 18, a prohibition on working for pay or as a volunteer at any place where children regularly congregate, including, but not limited to, schools, child care facilities, parks, playgrounds, pet stores, libraries, zoos, theme parks, and malls.

(g) Unless otherwise indicated in the treatment plan provided by a qualified practitioner in the sexual offender treatment program, a prohibition on viewing, accessing, owning,



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or possessing any obscene, pornographic, or sexually stimulating visual or auditory material, including telephone, electronic media, computer programs, or computer services that are relevant to the offender's deviant behavior pattern.

(h) Effective for probationers and community controllees whose crime is committed on or after July 1, 2005, a prohibition on accessing the Internet or other computer services until a qualified practitioner in the offender's sex offender treatment program, after a risk assessment is completed, approves and implements a safety plan for the offender's accessing or using the Internet or other computer services.

(i) A requirement that the probationer or community controllee must submit a specimen of blood or other approved biological specimen to the Department of Law Enforcement to be registered with the DNA data bank.

(j) A requirement that the probationer or community controllee make restitution to the victim, as ordered by the court under s. 775.089, for all necessary medical and related professional services relating to physical, psychiatric, and psychological care.

(k) Submission to a warrantless search by the community control or probation officer of the probationer's or community controllee's person, residence, or vehicle.

(2) Effective for a probationer or community controllee whose crime was committed on or after October 1, 1997, and who is placed on community control or sex offender probation for a violation of chapter 794, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, or whose crime was committed on or after July 1, 2021, and who is placed on community control or sex offender



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probation for a violation of s. 787.06(3)(b), (d), (f), or (g),
in addition to any other provision of this section, the court
must impose the following conditions of probation or community
control:

(a) As part of a treatment program, participation at least
annually in polygraph examinations to obtain information
necessary for risk management and treatment and to reduce the
sex offender's denial mechanisms. A polygraph examination must
be conducted by a polygrapher who is a member of a national or
state polygraph association and who is certified as a
postconviction sex offender polygrapher, where available, and
shall be paid for by the probationer or community controllee.
The results of the polygraph examination shall be provided to
the probationer's or community controllee's probation officer
and qualified practitioner and shall not be used as evidence in
court to prove that a violation of community supervision has
occurred.

(b) Maintenance of a driving log and a prohibition against
driving a motor vehicle alone without the prior approval of the
supervising officer.

(c) A prohibition against obtaining or using a post office
box without the prior approval of the supervising officer.

(d) If there was sexual contact, a submission to, at the
probationer's or community controllee's expense, an HIV test
with the results to be released to the victim or the victim's
parent or guardian.

(e) Electronic monitoring when deemed necessary by the
community control or probation officer and his or her
supervisor, and ordered by the court at the recommendation of



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the Department of Corrections.

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

And the title is amended as follows:

Delete line 14

and insert:

years of age; providing criminal penalties;
encouraging each state attorney to adopt a pro-
prosecution policy for acts of human trafficking;
amending s. 948.30, F.S.; requiring a court to impose
specified conditions, on probationers or community
controllees who are placed under supervision for
committing a specified human trafficking offense on or
after a certain date; requiring a court to impose
specified conditions on probationers or community
controllees who are placed on community control or sex
offender probation for committing a specified human
trafficking offense on or after a certain date;
reenacting

By the Committee on Criminal Justice; and Senator Diaz

591-03238-21

20211826c1

A bill to be entitled

An act relating to human trafficking; creating s. 90.5034, F.S.; defining terms; providing the circumstances under which certain communications are confidential; creating a human trafficking victim advocate-victim privilege; specifying who may claim such privilege; providing training requirements for human trafficking victim advocates and trained volunteers; amending s. 787.06, F.S.; revising the definitions of the terms "human trafficking" and "obtain"; prohibiting a person from engaging in specified criminal acts relating to human trafficking with an adult believed to be a child younger than 18 years of age; providing criminal penalties; reenacting ss. 39.01305(3), 464.013(3)(c), 775.21(4)(a), 943.0435(1)(h), 943.0583(1)(a), and 944.606(1)(f), F.S., relating to appointment of an attorney for a dependent child with certain special needs, renewal of license or certificate, the Florida Sexual Predators Act, sexual offenders required to register with the department and penalties, human trafficking victim expunction, and sexual offenders and notification upon release, respectively, to incorporate the amendment made to s. 787.06, F.S., in references thereto; providing an effective date.

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

Section 1. Section 90.5034, Florida Statutes, is created to

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

591-03238-21

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read:

90.5034 Human trafficking victim advocate-victim privilege.

(1) For purposes of this section:

(a) An "anti-trafficking organization" is any public or private agency that offers assistance to victims of human trafficking as defined in s. 787.06.

(b) A "human trafficking victim advocate" is any employee of an anti-trafficking organization whose primary purpose is the provision of advice, counseling, or services to victims of human trafficking and who complies with the training requirements under subsection (4).

(c) A "trained volunteer" is a person who volunteers with an anti-trafficking organization and who complies with the training requirements under subsection (4).

(d) A "victim" is a person who consults a human trafficking victim advocate or a trained volunteer for the purpose of securing advice, counseling, or services concerning any need arising from an experience relating to being a victim of human trafficking.

(e) A communication between a human trafficking victim advocate or trained volunteer and a victim is "confidential" if it is not intended to be disclosed to third persons other than:

1. Those persons present to further the interest of the victim in the consultation, examination, or interview.

2. Those persons necessary for the transmission of the communication.

3. Those persons to whom disclosure is reasonably necessary to accomplish the purposes for which the human trafficking

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

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victim advocate or trained volunteer is consulted.

(2) A victim has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made by the victim to a human trafficking victim advocate or trained volunteer or any record made in the course of advising, counseling, or providing services to the victim. Such confidential communication or record may be disclosed only with the prior written consent of the victim. This privilege includes any advice given by the human trafficking victim advocate or trained volunteer in the course of that relationship.

(3) The privilege under subsection (2) may be claimed by:

(a) The victim or the victim's attorney on his or her behalf.

(b) A guardian or conservator of the victim.

(c) The personal representative of a deceased victim.

(d) The human trafficking victim advocate or trained volunteer, but only if claiming such privilege on behalf of the victim. The authority of a human trafficking victim advocate or trained volunteer to claim the privilege is presumed in the absence of evidence to the contrary.

(4) A human trafficking victim advocate or a trained volunteer shall:

(a) Complete 24 hours of human trafficking training delivered by the Office of the Attorney General, the Bureau of Criminal Justice Programs and Victim Services, and the Florida Crime Prevention Training Institute; and

(b) To maintain his or her designation, complete an 8-hour Human Trafficking Update course within 3 years after the date of

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his or her original designation.

Section 2. Paragraphs (d) and (g) of subsection (2) and paragraphs (a), (c), (e), (f), and (g) of subsection (3) of section 787.06, Florida Statutes, are amended to read:

787.06 Human trafficking.—

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

(d) "Human trafficking" means transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, purchasing, patronizing, procuring, or obtaining another person for the purpose of exploitation of that person.

(g) "Obtain" means, in relation to labor, commercial sexual activity, or services, to receive, take possession of, or take custody of another person or secure performance thereof.

(3) Any person who knowingly, or in reckless disregard of the facts, engages in human trafficking, or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking:

(a)1. For labor or services of any child younger than 18 years of ~~under the~~ age or an adult believed by the person to be a child younger than 18 years of age commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. Using coercion for labor or services of an adult commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c)1. For labor or services of any child younger than 18 years of ~~under the~~ age or an adult believed by the person to be a child younger than 18 years of age who is an unauthorized

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alien commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. Using coercion for labor or services of an adult who is an unauthorized alien commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(e)1. For labor or services who does so by the transfer or transport of any child younger than 18 years of ~~under the age or~~ an adult believed by the person to be a child younger than ~~of 18~~ years of age from outside this state to within this ~~the~~ state commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. Using coercion for labor or services who does so by the transfer or transport of an adult from outside this state to within this ~~the~~ state commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(f)1. For commercial sexual activity who does so by the transfer or transport of any child younger than 18 years of ~~under the age or~~ an adult believed by the person to be a child ~~younger than~~ of 18 years of age from outside this state to within this ~~the~~ state commits a felony of the first degree, punishable by imprisonment for a term of years not exceeding life, or as provided in s. 775.082, s. 775.083, or s. 775.084.

2. Using coercion for commercial sexual activity who does so by the transfer or transport of an adult from outside this state to within this ~~the~~ state commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(g) For commercial sexual activity in which any child younger than 18 years of ~~under the age or~~ an adult believed by

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the person to be a child younger than ~~of 18 years of age~~, or in which any person who is mentally defective or mentally incapacitated as those terms are defined in s. 794.011(1), is involved commits a life felony, punishable as provided in s. 775.082(3)(a)6., s. 775.083, or s. 775.084.

For each instance of human trafficking of any individual under this subsection, a separate crime is committed and a separate punishment is authorized.

Section 3. For the purpose of incorporating the amendment made by this act to section 787.06, Florida Statutes, in a reference thereto, subsection (3) of section 39.01305, Florida Statutes, is reenacted to read:

39.01305 Appointment of an attorney for a dependent child with certain special needs.—

(3) An attorney shall be appointed for a dependent child who:

(a) Resides in a skilled nursing facility or is being considered for placement in a skilled nursing home;

(b) Is prescribed a psychotropic medication but declines assent to the psychotropic medication;

(c) Has a diagnosis of a developmental disability as defined in s. 393.063;

(d) Is being placed in a residential treatment center or being considered for placement in a residential treatment center; or

(e) Is a victim of human trafficking as defined in s. 787.06(2)(d).

Section 4. For the purpose of incorporating the amendment

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made by this act to section 787.06, Florida Statutes, in a reference thereto, paragraph (c) of subsection (3) of section 464.013, Florida Statutes, is reenacted to read:

464.013 Renewal of license or certificate.—

(3) The board shall by rule prescribe up to 30 hours of continuing education biennially as a condition for renewal of a license or certificate.

(c) Notwithstanding the exemption in paragraph (a), as part of the maximum biennial continuing education hours required under this subsection, the board shall require each person licensed or certified under this chapter to complete a 2-hour continuing education course on human trafficking, as defined in s. 787.06(2). The continuing education course must consist of data and information on the types of human trafficking, such as labor and sex, and the extent of human trafficking; factors that place a person at greater risk of being a victim of human trafficking; public and private social services available for rescue, food, clothing, and shelter referrals; hotlines for reporting human trafficking which are maintained by the National Human Trafficking Resource Center and the United States Department of Homeland Security; validated assessment tools for identifying a human trafficking victim and general indicators that a person may be a victim of human trafficking; procedures for sharing information related to human trafficking with a patient; and referral options for legal and social services. All licensees must complete this course for every biennial licensure renewal on or after January 1, 2019.

Section 5. For the purpose of incorporating the amendment made by this act to section 787.06, Florida Statutes, in a

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reference thereto, paragraph (a) of subsection (4) of section 775.21, Florida Statutes, is reenacted to read:

775.21 The Florida Sexual Predators Act.—

(4) SEXUAL PREDATOR CRITERIA.—

(a) For a current offense committed on or after October 1, 1993, upon conviction, an offender shall be designated as a "sexual predator" under subsection (5), and subject to registration under subsection (6) and community and public notification under subsection (7) if:

1. The felony is:

a. A capital, life, or first degree felony violation, or any attempt thereof, of s. 787.01 or s. 787.02, where the victim is a minor, or s. 794.011, s. 800.04, or s. 847.0145, or a violation of a similar law of another jurisdiction; or

b. Any felony violation, or any attempt thereof, of s. 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2) (c), where the victim is a minor; s. 787.06(3) (b), (d), (f), or (g); former s. 787.06(3) (h); s. 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8) (b); s. 825.1025; s. 827.071; s. 847.0135, excluding s. 847.0135(6); s. 847.0145; s. 895.03, if the court makes a written finding that the racketeering activity involved at least one sexual offense listed in this subparagraph or at least one offense listed in this subparagraph with sexual intent or motive; s. 916.1075(2); or s. 985.701(1); or a violation of a similar law of another jurisdiction, and the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation of s.

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233 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.
 234 787.025(2)(c), where the victim is a minor; s. 787.06(3)(b),
 235 (d), (f), or (g); former s. 787.06(3)(h); s. 794.011, excluding
 236 s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035;
 237 s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,
 238 excluding s. 847.0135(6); s. 847.0145; s. 895.03, if the court
 239 makes a written finding that the racketeering activity involved
 240 at least one sexual offense listed in this sub-subparagraph or
 241 at least one offense listed in this sub-subparagraph with sexual
 242 intent or motive; s. 916.1075(2); or s. 985.701(1); or a
 243 violation of a similar law of another jurisdiction;

244 2. The offender has not received a pardon for any felony or
 245 similar law of another jurisdiction that is necessary for the
 246 operation of this paragraph; and

247 3. A conviction of a felony or similar law of another
 248 jurisdiction necessary to the operation of this paragraph has
 249 not been set aside in any postconviction proceeding.

250 Section 6. For the purpose of incorporating the amendment
 251 made by this act to section 787.06, Florida Statutes, in
 252 references thereto, paragraph (h) of subsection (1) of section
 253 943.0435, Florida Statutes, is reenacted to read:

254 943.0435 Sexual offenders required to register with the
 255 department; penalty.—

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

257 (h)1. "Sexual offender" means a person who meets the
 258 criteria in sub-subparagraph a., sub-subparagraph b., sub-
 259 subparagraph c., or sub-subparagraph d., as follows:

260 a. (I) Has been convicted of committing, or attempting,
 261 soliciting, or conspiring to commit, any of the criminal

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262 offenses proscribed in the following statutes in this state or
 263 similar offenses in another jurisdiction: s. 393.135(2); s.
 264 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where
 265 the victim is a minor; s. 787.06(3)(b), (d), (f), or (g); former
 266 s. 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s.
 267 794.05; former s. 796.03; former s. 796.035; s. 800.04; s.
 268 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,
 269 excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145;
 270 s. 895.03, if the court makes a written finding that the
 271 racketeering activity involved at least one sexual offense
 272 listed in this sub-sub-subparagraph or at least one offense
 273 listed in this sub-sub-subparagraph with sexual intent or
 274 motive; s. 916.1075(2); or s. 985.701(1); or any similar offense
 275 committed in this state which has been redesignated from a
 276 former statute number to one of those listed in this sub-sub-
 277 subparagraph; and

278 (II) Has been released on or after October 1, 1997, from
 279 the sanction imposed for any conviction of an offense described
 280 in sub-sub-subparagraph (I). For purposes of sub-sub-
 281 subparagraph (I), a sanction imposed in this state or in any
 282 other jurisdiction includes, but is not limited to, a fine,
 283 probation, community control, parole, conditional release,
 284 control release, or incarceration in a state prison, federal
 285 prison, private correctional facility, or local detention
 286 facility;

287 b. Establishes or maintains a residence in this state and
 288 who has not been designated as a sexual predator by a court of
 289 this state but who has been designated as a sexual predator, as
 290 a sexually violent predator, or by another sexual offender

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designated in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person were a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sexual offender;

c. Establishes or maintains a residence in this state who is in the custody or control of, or under the supervision of, any other state or jurisdiction as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes or similar offense in another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor; s. 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s. 895.03, if the court makes a written finding that the racketeering activity involved at least one sexual offense listed in this sub-subparagraph or at least one offense listed in this sub-subparagraph with sexual intent or motive; s. 916.1075(2); or s. 985.701(1); or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this sub-subparagraph; or

d. On or after July 1, 2007, has been adjudicated delinquent for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in

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another jurisdiction when the juvenile was 14 years of age or older at the time of the offense:

(I) Section 794.011, excluding s. 794.011(10);

(II) Section 800.04(4)(a)2. where the victim is under 12 years of age or where the court finds sexual activity by the use of force or coercion;

(III) Section 800.04(5)(c)1. where the court finds molestation involving unclothed genitals;

(IV) Section 800.04(5)(d) where the court finds the use of force or coercion and unclothed genitals; or

(V) Any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this sub-subparagraph.

2. For all qualifying offenses listed in sub-subparagraph 1.d., the court shall make a written finding of the age of the offender at the time of the offense.

For each violation of a qualifying offense listed in this subsection, except for a violation of s. 794.011, the court shall make a written finding of the age of the victim at the time of the offense. For a violation of s. 800.04(4), the court shall also make a written finding indicating whether the offense involved sexual activity and indicating whether the offense involved force or coercion. For a violation of s. 800.04(5), the court shall also make a written finding that the offense did or did not involve unclothed genitals or genital area and that the offense did or did not involve the use of force or coercion.

Section 7. For the purpose of incorporating the amendment made by this act to section 787.06, Florida Statutes, in a

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349 reference thereto, paragraph (a) of subsection (1) of section
 350 943.0583, Florida Statutes, is reenacted to read:
 351 943.0583 Human trafficking victim expunction.—
 352 (1) As used in this section, the term:
 353 (a) "Human trafficking" has the same meaning as provided in
 354 s. 787.06.
 355 Section 8. For the purpose of incorporating the amendment
 356 made by this act to section 787.06, Florida Statutes, in a
 357 reference thereto, paragraph (f) of subsection (1) of section
 358 944.606, Florida Statutes, is reenacted to read:
 359 944.606 Sexual offenders; notification upon release.—
 360 (1) As used in this section, the term:
 361 (f) "Sexual offender" means a person who has been convicted
 362 of committing, or attempting, soliciting, or conspiring to
 363 commit, any of the criminal offenses proscribed in the following
 364 statutes in this state or similar offenses in another
 365 jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s.
 366 787.02, or s. 787.025(2)(c), where the victim is a minor; s.
 367 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s.
 368 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;
 369 former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s.
 370 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.
 371 847.0137; s. 847.0138; s. 847.0145; s. 895.03, if the court
 372 makes a written finding that the racketeering activity involved
 373 at least one sexual offense listed in this paragraph or at least
 374 one offense listed in this paragraph with sexual intent or
 375 motive; s. 916.1075(2); or s. 985.701(1); or any similar offense
 376 committed in this state which has been redesignated from a
 377 former statute number to one of those listed in this subsection,

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

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378 when the department has received verified information regarding
 379 such conviction; an offender's computerized criminal history
 380 record is not, in and of itself, verified information.
 381 Section 9. This act shall take effect July 1, 2021.

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



SENATOR MANNY DIAZ, JR.
36th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy Chair
Appropriations Subcommittee on
Education Vice Chair
Appropriations
Appropriations Subcommittee on Health
and Human Services
Education
Commerce and Tourism
Rules

March 27, 2021

Honorable Senator Kathleen Passidomo
Chair
Committee on Rules

Honorable Chair Passidomo,

I respectfully request Senate Bill Number 1826 Human Trafficking be placed on the next committee agenda.

CS/SB 1826 creates s. 90.5034, F.S., establishing a privilege for communication between victims and human trafficking advocates or trained volunteers. The bill provides that communication between a human trafficking victim advocate or trained volunteer and a victim is "confidential," if it is not intended to be disclosed to third persons, except to specified persons. A victim has a privilege to refuse to disclose, and prevent any other person from disclosing such confidential communication or record made in the course of advising, counseling, or providing services to the victim. Additionally, the bill defines the terms "anti-trafficking organization," "human trafficking victim advocate," "trained volunteer," and "victim," and provides training requirements for human trafficking victim advocates and trained volunteers. Sincerely appreciate your support.

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

Senator Manny Diaz, Jr.
Florida Senate, District 36

CC: John B. Phelps, Staff Director
Cynthia Futch, Committee Administrative Assistant

REPLY TO:

- ☐ 10001 Northwest 87th Avenue, Hialeah Gardens, Florida 33016 (305) 364-3073
- ☐ 306 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5036

Senate's Website: www.flsenate.gov

Wilton Simpson
President of the Senate

Aaron Bean
President Pro Tempore

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

THE FLORIDA SENATE

APPEARANCE RECORD

4/6/2021

Meeting Date

1826

Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Daniel Olson

Job Title Director of Government Relations

Address 400 S. Monroe St

Street

Tallahassee

City

FL

State

32399

Zip

Phone

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Office of the Attorney General

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/5/2021
Meeting Date

SB 1826
Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Khanh-Lien ("Con Lynn") Banko

Job Title Treasurer

Address 1747 Orlando Central Parkway
Street

Phone 407-855-7604

Orlando FL 32809
City State Zip

Email treasurer@flnidapta.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 1868

INTRODUCER: Judiciary Committee; Criminal Justice Committee; and Senator Bean

SUBJECT: Privileged Communications Made to Crime Stoppers Organizations

DATE: April 2, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stokes	Jones	CJ	Fav/CS
2. Bond	Cibula	JU	Fav/CS
3. Stokes	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1868 strengthens criminal prohibitions against the misuse or misappropriation of information reported to a crime stoppers organization. Additionally, the bill extends civil and criminal liability protections to persons, including employees, board members, and volunteers of a crime stoppers organization, who use information reported to a crime stoppers organization in the performance of their duties and functions.

Specifically, the bill amends the current third degree felony related to disclosure of privileged communications or protected information of a crime stoppers organization. The offense is expanded to add that a person who attempts to obtain or who obtains privileged communications or protected information commits the offense. The offense is limited by adding that the commission of the offense must be “knowingly and willfully” done. The bill adds that the offense does not apply to a crime stoppers employee, board member, or volunteer acting in the course and scope of the person’s duties or functions. The bill provides that privileged information or communication may only be used to direct a law enforcement investigation.

The bill also provides immunity from civil liability for a person who in the course and scope of his or her duties or functions, receives, forwards, or acts on a privileged communication, unless the act or omission was intentional or grossly negligent.

This bill is effective October 1, 2021.

II. Present Situation:

Crime Stoppers

Crime Stoppers programs are non-profit organizations led by citizens against crime, founded on the concept that someone other than the criminal has information that can help solve a crime. These programs offer anonymity to anyone who can provide information about crimes and subsequently pay rewards when such information leads to an arrest.¹

The idea of providing a reward to someone having information about a crime originated in Albuquerque, New Mexico, when a detective was tasked with solving a homicide with no leads. He thought to make a video re-enactment of the murder and guarantee anonymity for anyone who was willing to call with information about the crime. After receiving calls following the re-enactment, one of which allowed police to solve a different crime, the detective persuaded the Albuquerque Police Department to permit citizens to establish the first Crime Stoppers program. Today, there are over 1,200 crime stopper organizations throughout the world.²

Crime Stoppers in Florida

There are 27 crime stopper programs in Florida that operate collectively under the name Florida Association of Crime Stoppers, Inc. (FACS).³ In order to expand the model of these programs by providing more stable funding, the Crime Stoppers Trust Fund (Fund) was created for the purpose of grant administration.⁴ The Department of Legal Affairs (DLA) administers the Fund and is tasked with establishing criteria for local governments to apply for funding.⁵

In 2019, the Legislature created s. 16.557, F.S., to protect the identity of a person who engages in a privileged communication with a crime stoppers organization.⁶ Section 16.557, F.S., provides that a person who discloses a privileged communication or protected information or any information concerning a privileged communication or protected information commits a third degree felony.⁷ The offense is unranked on the Offense Severity Ranking Chart.⁸ The offense does not apply to:

- The person who provides the privileged communication or protected information;
- A law enforcement officer or an employee of a law enforcement agency or the DLA when he or she is acting within the scope of his or her employment; or
- Criminal discovery.⁹

¹ Crime Stoppers USA, *Profile*, available at <https://www.crimestoppersusa.org/profile/> (last visited March 15, 2021).

² Florida Association of Crime Stoppers, *Where it all started*, available at <https://dev.facsflorida.org/where-it-all-started/> (last visited March 15, 2021).

³ Florida Association of Crime Stoppers, *Our History*, available at <https://dev.facsflorida.org/who-we-are/our-history/> (last visited March 15, 2021).

⁴ Chapter 1991-205, s. 13, Laws of Fla.

⁵ Section 16.555, F.S.

⁶ Chapter 2019-167, s. 2, Laws of Fla.

⁷ A third degree felony is punishable by up to five years imprisonment, a \$5,000 fine, or enhanced penalties as a habitual felony offender. Sections 775.082, 775.083, and 775.084, F.S.

⁸ Section 921.0022, F.S. An unranked third degree felony defaults to be a Level 1 offense. Section 921.0023(1), F.S.

⁹ Section 16.557(2), F.S.

Section 16.557, F.S., provides the following definitions:

- “Crime stoppers organization,” means a private not-for-profit organization that collects and expends donations for rewards to persons who report to the organization information concerning criminal activity, and forwards that information to appropriate law enforcement agencies.¹⁰
- “Privileged communication,” means the act of providing information to a crime stoppers organization for the purpose of reporting alleged criminal activity.¹¹
- “Protected information,” includes the identity of a person who engages in privileged communication with a crime stoppers organization and any records, recordings, oral or written statements, papers, documents, or other tangible items provided to or collected by a crime stoppers organization, a law enforcement crime stoppers coordinator or his or her staff, or a law enforcement agency in connection with such privileged communication.¹²

Crime Stoppers Trust Fund

The amount of funding available for a crime stoppers organization or a county is based upon all money deposited pursuant to s. 938.06, F.S., available unused funds, the DLA’s spending authority, and money collected pursuant to financial consequences.¹³

Section 938.06, F.S., provides that, in addition to other fines that may be imposed, a court must assess a \$20 fee for any person convicted of any criminal offense. The proceeds, less \$3 per assessment, must be deposited into the Fund.¹⁴ Such proceeds are placed in a separate account in the Fund and are designated according to the judicial circuit in which they were collected.¹⁵ A county may apply to the DLA for a grant from the funds collected in the judicial circuit in which the county is located. However, such grants are awarded only to counties that are served by an organization that is an official member of the FACS and in good standing.¹⁶

Money awarded from a grant to a county may only be used to support the FACS and its crime fighting programs.¹⁷ Only one crime stoppers program per county is eligible to receive funding. To be eligible to receive funds, a program must:

- Be a 501(c)(3) non-profit organization.
- Have endorsement from the county commission in the county they serve.
- Be a member in good standing of the FACS.¹⁸

Eligible programs must complete and submit a performance-based grant proposal outlining its annual operational plan, along with a budget based upon the certified funds previously authorized by the Florida Office of the Attorney General.¹⁹ A county that is awarded a grant may

¹⁰ Section 16.557(1)(a), F.S.

¹¹ Section 16.557(1)(b), F.S.

¹² Section 16.557(1)(c), F.S.

¹³ Fla. Admin. Code. R. 2A-9.003(2).

¹⁴ Section 938.06(1) and (2), F.S.

¹⁵ Section 16.555(4)(b), F.S.

¹⁶ Section 15.555(5)(b), F.S.

¹⁷ *Id.*

¹⁸ Florida Association of Crime Stoppers, *Funding*, available at <https://dev.facsflorida.org/who-we-are/62-2/> (last visited March 15, 2021).

¹⁹ *Id.*

use such funds to purchase items to assist in educating the public and increasing public awareness of FACS,²⁰ fund student crime watch programs,²¹ or used to reimburse programs for the payment of rewards.²² In order to obtain reimbursement from the Fund, the reward paid must have been for:

- An arrest.
- The recovery of stolen property.
- The recovery of illegal narcotics.
- The recovery of the body of a homicide victim.
- The recovery of a human trafficking victim or missing person connected to criminal activity.
- The recovery of an illegal firearm or an illegal weapon on a K-12 school campus.
- The prevention of a terrorist act.
- The solving and closing of a criminal case involving a homicide or other violent felony offense that remains unsolved for 1 year or more after being reported to a law enforcement agency and that has no viable and unexplored investigatory leads.²³

Crime Stoppers Privileged Communication in Other States

Other states have implemented laws that both protect the identity of a person who provides a tip to a crime stoppers organization and provide that the communication of the tip and any documents created as a result of the tip are privileged. Some of those states include: Arkansas,²⁴ Colorado,²⁵ Connecticut,²⁶ Kentucky,²⁷ Louisiana,²⁸ Michigan,²⁹ Mississippi,³⁰ New Mexico,³¹ Oklahoma,³² and Texas.³³

Additionally, some states have created criminal penalties for the prohibited disclosure of such protected information. These states include: Arkansas,³⁴ Colorado,³⁵ Kentucky,³⁶ Mississippi,³⁷

²⁰ Section 16.555(5)(c), F.S.

²¹ Section 16.555(5)(d), F.S.

²² Section 16.555(5)(e), F.S.

²³ Section 16.555(5)(e)1.-8., F.S.

²⁴ Section 16-90-1005, A.C.A.

²⁵ Section 16-15.7-104, C.R.S.A.

²⁶ Section 29-1d., C.G.S.A.

²⁷ Section 431.580, K.R.S.

²⁸ Section 15:477.1, L.A.R.S.

²⁹ Section 600.2157b, M.C.L.A.

³⁰ Section 45-39-7, M.C.A.

³¹ Section 29-12A-4, N.M.S.A.

³² Section 2510.1, O.S.A.

³³ Sections 414.008 and 414.009, V.T.C.A.

³⁴ Section 16-90-1006, A.C.A.

³⁵ Section 16-15.7-104, C.R.S.A.

³⁶ Section 431.585, K.R.S.

³⁷ Section 45-39-9, M.C.A.

New Mexico,³⁸ and Texas.³⁹ The criminal penalty is generally a misdemeanor,⁴⁰ rather than a felony.⁴¹

Privileged Communications in the Evidence Code

The Florida Evidence Code (Code) specifies what types of evidence and testimony are admissible in court.⁴² The Code makes certain communications privileged, meaning their disclosure generally cannot be compelled, even in legal proceedings.⁴³ Privileged communication is used to describe an interaction between two parties in which the law recognizes a private, protected relationship.⁴⁴ Some examples of generally privileged communications include communications between a lawyer and client;⁴⁵ a husband and wife;⁴⁶ and a psychotherapist and a patient.⁴⁷

Typically, such communication only loses its privileged status if the person who made the original disclosure of such information waives the privilege, thus permitting the communication to be subject to general rules of evidence. A person is deemed to have waived the privilege if he or she voluntarily discloses or makes the communication when he or she does not have a reasonable expectation of privacy, or consents to the disclosure of any significant part of the communication.⁴⁸

Tort Law - In General

A tort is a civil legal action to recover damages for a loss, injury, or death due to the conduct of another. Some have characterized a tort as a civil wrong, other than a claim for breach of contract, in which a remedy is provided through damages.⁴⁹ When a plaintiff files a tort claim, he or she alleges that the defendant's "negligence" caused the injury. According to the Florida Standard Jury Instructions, negligence means "doing something that a reasonably careful person would not do" in a similar situation or "failing to do something that a reasonably careful person would do" in a similar situation.⁵⁰

³⁸ Section 29-12A-5, N.M.S.A.

³⁹ Section 414.009, V.T.C.A.

⁴⁰ A misdemeanor is punishable by one year or less in jail, while a felony is punishable by more than a year in state prison. Section 775.082, F.S.

⁴¹ Of the states listed, the exception to the offense being classified as a misdemeanor is in Texas where the offense is a felony if the person divulged the information for the purposes of obtaining a monetary benefit. See s. 414.009, V.T.C.A.

⁴² Chapter 90, F.S.

⁴³ US Legal, *Privileged Communications Law and Legal Definition*, available at <https://definitions.uslegal.com/p/privileged-communications/> (last visited March 15, 2021).

⁴⁴ Will Kenton, Investopedia, *Privileged Communication*, (December 1, 2020), available at <https://www.investopedia.com/terms/p/privileged-communication.asp> (last visited March 15, 2021).

⁴⁵ Section 90.502, F.S.

⁴⁶ Section 90.504, F.S.

⁴⁷ Section 90.503, F.S.

⁴⁸ Section 90.507, F.S.

⁴⁹ BLACK'S LAW DICTIONARY (11th ed. 2019).

⁵⁰ Fla. Std. Jury Instr. Civil 401.3, *Negligence*.

When a plaintiff seeks to recover damages for a personal injury and alleges that the injury was caused by the defendant's negligence, the plaintiff bears the legal burden of proving that the defendant's alleged action was a breach of the duty that the defendant owed to the plaintiff.⁵¹

Four Elements of a Negligence Claim

To establish liability, the plaintiff must prove four elements:

- Duty – That the defendant owed a duty, or obligation, of care to the plaintiff;
- Breach – That the defendant breached that duty by not conforming to the standard required;
- Causation – That the breach of the duty was the legal cause of the plaintiff's injury; and
- Damages – That the plaintiff suffered actual harm or loss.

Standards of Care and Degrees of Negligence

Courts have developed general definitions for the degrees of negligence:

Slight Negligence

Slight negligence is generally defined to mean the failure to exercise a great amount of care.⁵²

Ordinary Negligence

Ordinary negligence, which is also referred to as simple negligence, is the standard of care applied to the vast majority of negligence cases. It is characterized as the conduct that a reasonable and prudent person would know could possibly cause injury to a person or property.⁵³

Gross Negligence and Intentional Misconduct

Gross negligence means the failure of a person to exercise slight care. Florida courts have defined gross negligence as the type of conduct that a “reasonably prudent person knows will probably and most likely result in injury to another” person.⁵⁴ In order for a plaintiff to succeed on a claim involving gross negligence, he or she must prove:

- Circumstances, which, when taken together, create a clear and present danger;
- Awareness that the danger exists; and
- A conscious, voluntary act or omission to act, that will likely result in an injury.⁵⁵

Intentional misconduct means that the defendant had actual knowledge of the wrongfulness of the conduct, that there was a high probability of injury or damage to the claimant and, despite that knowledge, the defendant intentionally pursued that course of conduct, resulting in injury or damage.⁵⁶

⁵¹ Florida is a comparative negligence jurisdiction as provided in s. 768.81(2), F.S. In lay terms, if a plaintiff and defendant are both at fault, a plaintiff may still recover damages, but those damages are reduced proportionately by the degree that the plaintiff's negligence caused the injury.

⁵² Sawaya, Thomas, 6 Fla. Prac., *Personal Injury & Practice With Wrongful Death Actions* § 1:2 – *Degrees of Negligence* (2020-2021 ed.).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* Culpable negligence is a fourth degree of negligence but is not discussed in this analysis.

⁵⁶ Fla. Std. Jury Instr. 503.1, *Punitive Damages - Bifurcated Procedure*.

III. Effect of Proposed Changes:

The bill amends s. 16.557, F.S., to provide that a person who knowingly and willfully attempts to obtain, obtains, or discloses privileged communications or protected information of a crime stoppers organization commits a third degree felony. Section 16.557, F.S., currently provides that only the person who discloses such information commits a third degree felony.

Currently, the offense of disclosure of such information does not apply to certain people. This bill adds that the offense does not apply to an employee, board member, or volunteer of a crime stoppers organization while acting in the course and scope of the person's duties or functions.

The bill provides that information obtained from an anonymous source contained in a crime stoppers organization records:

- May not be considered for probable cause to issue an arrest warrant or search warrant.
- Is not admissible or subject to discovery in civil or criminal court.
- May only be used to direct a law enforcement investigation.

The bill also provides that a person who, in the course and scope of his or her duties or functions, receives, forwards, or acts on a privileged communication, is immune from civil liability damages resulting from an act or omission in the performance of such duties or functions unless the act or omission was intentional or grossly negligent.

The bill is effective October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 1 of the bill, in part, amends an existing felony offense. Those changes may result in indeterminate local fund expenditures for costs relating to criminal prosecution and confinement if a jail sentence is imposed. However, these provisions relate to the defense, prosecution, or punishment of criminal offenses, and criminal law and are thus exempt from the requirements of article VII, section 18(d) of the Florida Constitution, relating to unfunded mandates.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed CS/CS/SB 1868. The bill changes a felony offense related to privileged communications or protected information of a crime stoppers organization. To the extent that this provision may result in additional offenders being convicted for this felony offense, the bill may result in a positive indeterminate prison bed impact (i.e. an unquantifiable increase in prison beds).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 16.557 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Judiciary on March 29, 2021:

The committee substitute removes requirements that a crime stoppers organization respond to criminal discovery, and adds that confidential information held by a crime stoppers organization is not admissible in court and may only be used to steer a law enforcement investigation.

CS by Criminal Justice on March 23, 2021:

The committee substitute:

- Provides that a person who knowingly and willfully attempts to obtain, obtains, or discloses a privileged communication, or protected information, or any information concerning a privileged communication or protected information commits a third degree felony.
- Provides that a person who is acting in the course and scope of his or her employment and receives, forwards, or acts on such communication is immune from civil liability unless the act or omission was intentional or grossly negligent.
- Removes language that provided that evidence of such communication may not be relied upon, or considered in determining whether probable cause exists to issue a warrant, or that evidence of such communication is admissible or subject to discovery in any court.

B. Amendments:

None.

By the Committees on Judiciary; and Criminal Justice; and
Senator Bean

590-03549-21

20211868c2

A bill to be entitled

An act relating to privileged communications made to crime stoppers organizations; amending s. 16.557, F.S.; prohibiting a person from knowingly and willfully attempting to obtain, obtaining, or disclosing a privileged communication or protected information; providing a penalty; providing an exemption from criminal liability for employees, board members, or volunteers of a crime stoppers organization in certain circumstances; providing immunity from civil liability for certain actions by specified persons concerning privileged communications; limiting the uses of privileged communications or evidence of such communications; providing an effective date.

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

Section 1. Section 16.557, Florida Statutes, is amended to read:

16.557 Crime stoppers organizations; disclosure of privileged communications or protected information; civil immunity; use.—

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

(a) "Crime stoppers organization" means a private not-for-profit organization that collects and expends donations for rewards to persons who report to the organization information concerning criminal activity, and forwards that information to appropriate law enforcement agencies.

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

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(b) "Privileged communication" means the act of providing information to a crime stoppers organization for the purpose of reporting alleged criminal activity.

(c) "Protected information" includes the identity of a person who engages in privileged communication with a crime stoppers organization and any records, recordings, oral or written statements, papers, documents, or other tangible items provided to or collected by a crime stoppers organization, a law enforcement crime stoppers coordinator or his or her staff, or a law enforcement agency in connection with such privileged communication.

(2) (a) Except ~~pursuant to criminal discovery~~ or as provided in paragraph (b), a person who knowingly and willfully attempts to obtain, obtains, or discloses a privileged communication or protected information, or any information concerning a privileged communication or protected information, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) This subsection does not apply to:

1. The person who provides the privileged communication or protected information; ~~or~~

2. An employee, a board member, or a volunteer of a crime stoppers organization while acting in the course and scope of the person's duties or functions; or

3.2- A law enforcement officer or an employee of a law enforcement agency or the Department of Legal Affairs when he or she is acting within the scope of his or her official duties.

(3) A person in the course and scope of his or her duties or functions who receives, forwards, or acts on a privileged

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

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59 communication is immune from civil liability for damages
60 resulting from an act or omission in the performance of his or
61 her duties or functions unless the act or omission was
62 intentional or grossly negligent.

63 (4) (a) Evidence of a privileged communication, and
64 information contained within a privileged communication, from an
65 anonymous source to a crime stoppers organization may not be:

66 1. Relied upon or considered in determining whether
67 probable cause exists to issue either an arrest or a search
68 warrant.

69 2. Admissible or subject to discovery in any court
70 proceeding.

71 (b) A privileged communication may only be used to assist a
72 law enforcement agency in directing an investigation of alleged
73 criminal activity.

74 ~~(c) This subsection does not limit the right of any~~
75 ~~criminal defendant to criminal discovery.~~

76 Section 2. This act shall take effect October 1, 2021.



The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 24, 2021

I respectfully request that **Senate Bill #1868**, relating to Privileged Communications Made to Crime Stoppers Organizations, be placed on the:

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

Problem being solved: Current laws overlook people who handle tips outside of law enforcement and the Attorney General's office. They do not currently enjoy the same legal protections. This bill tries to address the issue and help protect a valuable partner to law enforcement.

A handwritten signature in cursive script that reads "Aaron Bean".

Senator Aaron Bean
Florida Senate, District 4

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 Rules

BILL: CS/CS/SB 1890

INTRODUCER: Rules Committee; Ethics and Elections Committee; and Senator Rodrigues

SUBJECT: Campaign Financing

DATE: April 6, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Biehl</u>	<u>Roberts</u>	<u>EE</u>	Fav/CS
2.	<u>Biehl</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1890 adds political committees sponsoring or in opposition to constitutional amendments proposed by initiative to the list of entities subject to a \$3,000 contribution limit from a person or political committee. The contribution limit will no longer apply to such a political committee once the Secretary of State has issued a certificate of ballot position and a designating number for the proposed constitutional amendment.

The bill preempts local governments from enacting or adopting:

- Contribution limits that differ from existing limits specified in statute;
- Any limitation or restriction involving contributions to a political committee or an electioneering communications organization; or
- Any limitation or restriction on expenditures for an electioneering communication or an independent expenditure.

The bill also revises the authorized methods for disposing of surplus campaign funds to:

- Prohibit a candidate from donating such funds to a charitable organization by which he or she is employed; and
- Eliminate restrictions on which candidates may donate to which government funds to allow all candidates for state and local office to deposit surplus funds in the general revenue fund of a political subdivision, the state General Revenue Fund, or the Election Campaign Financing Trust Fund.

The bill takes effect July 1, 2021.

II. Present Situation:

Political Committees

Florida law defines “political committee” to mean:

- A combination of two or more individuals, or a person other than an individual, that, in an aggregate amount in excess of \$500 during a single calendar year:
 - Accepts contributions for the purpose of making contributions to any candidate,¹ political committee, affiliated party committee, or political party;
 - Accepts contributions for the purpose of expressly advocating the election or defeat of a candidate or the passage or defeat of an issue;
 - Makes expenditures that expressly advocate the election or defeat of a candidate or the passage or defeat of an issue; or
 - Makes contributions to a common fund, other than a joint checking account between spouses, from which contributions are made to any candidate, political committee, affiliated party committee, or political party.
- The sponsor of a proposed constitutional amendment by initiative who intends to seek the signatures of registered electors.²

Each political committee must file a statement of organization within 10 days after its organization.³ A political committee which is organized to support or oppose statewide, legislative, or multicounty candidates or issues to be voted upon on a statewide or multicounty basis must file its statement of organization with the Department of State’s Division of Elections.⁴

Each political committee must, through a designated campaign treasurer, file regular reports of all contributions received, and all expenditures made, by or on behalf of the political committee.⁵ Generally, such reports must include a list of specified information, including, but not limited to, the full name, address, and occupation, if any, of each person who made one or more contributions to or for such committee within the reporting period, together with the amount and date of such contributions.⁶

¹ Section 106.011(3), F.S., defines “candidate” to mean a person to whom any of the following applies: 1) a person who seeks to qualify for nomination or election by means of the petitioning process; 2) a person who seeks to qualify for election as a write-in candidate; 3) a person who receives contributions or makes expenditures, or consents for any other person to receive contributions or make expenditures, with a view to bring about his or her nomination or election to, or retention in, public office; 4) a person who appoints a treasurer and designates a primary depository; or 5) a person who files qualification papers and subscribes to a candidate’s oath as required by law. The definition excludes any candidate for a political party executive committee.

² Section 106.011(16)(a), F.S. The following entities are not considered political committees: 1) national political parties, the state and county executive committees of political parties, and affiliated party committees; 2) corporations or other business entities formed for purposes other than to support or oppose issues or candidates, if their political activities are limited to contributions to candidates, political parties, affiliated party committees, or political committees or expenditures in support of or opposition to an issue from corporate or business funds and if no contributions are received by such corporations or business entities; or 3) electioneering communications organizations (s. 106.011(16)(b), F.S.).

³ Section 106.03(1)(a), F.S.

⁴ Section 106.03(3)(a), F.S.

⁵ Section 106.07(1), F.S.

⁶ Section 106.07(4)(a), F.S.

Proposed Constitutional Amendments, Generally

Amendments to the Florida Constitution can be proposed by five distinct methods: 1) joint legislative resolution, 2) the Constitutional Revision Commission, 3) citizens' initiative, 4) a constitutional convention, or 5) the Taxation and Budget Reform Commission.⁷ Depending on the method, all proposed amendments or revisions to the Florida Constitution must be submitted to the electors at the next general election held more than 90 days after the joint resolution or report of revision commission, constitutional convention or taxation and budget reform commission proposing it is filed with the custodian of state records, or for citizen initiatives, if all the required signatures were submitted prior to February 1 of the year in which the general election will be held.⁸

The Florida Constitution mandates that all proposed amendments or revisions⁹ be adopted by at least a 60 percent affirmative vote of those electors voting on the measure.

Citizens' Initiatives

The Florida Constitution provides citizens the right to propose constitutional amendments through an initiative petition process.¹⁰ The process includes the following signature requirements:

- The total number of signatures must be equal to at least eight percent of the number of voters in the last presidential election.
- The signatures must come from voters in at least one-half of the congressional districts of the state.¹¹

The steps in the citizens' initiative petition process are as follows:

- The individual or group wishing to propose an amendment must register as a political committee with the Department of State's Division of Elections (Division).¹²
- The sponsoring political committee must submit its initiative petition form to the Division for approval of its format.¹³
- After the Division approves the format of a petition form, the Division assigns a serial number to the initiative petition.¹⁴
- After assignment of a serial number, the sponsoring political committee may begin circulating petitions for signature by registered Florida voters.¹⁵

⁷ See FLA. CONST. art XI, ss. 1-4 and 6.

⁸ See FLA. CONST. art XI, s. 5.

⁹ When the Florida Constitution uses the word 'amendment' it is in reference to a section of the constitution, while the word 'revision' relates to one or more articles or the whole constitution. See FLA. CONST. art. XI, s. 1.

¹⁰ FLA. CONST. art. XI, s. 3.

¹¹ FLA. CONST. art. XI, s. 3.

¹² Section 100.371(2), F.S.

¹³ Rule 1S-2.009 (Constitutional Amendment by Initiative Petition), F.A.C.

¹⁴ *Id.*

¹⁵ See *id.* and s. 100.371(2), F.S.

- Each signed initiative petition form must be submitted by the sponsoring political committee to the supervisor of elections' office in the county of residence of the signee for signature verification.¹⁶
- When the sponsoring political committee has obtained specified thresholds for verified signatures,¹⁷ the Secretary of State (Secretary) sends the petition to the Attorney General,¹⁸ who must within 30 days of receipt petition the Florida Supreme Court (Court) for an advisory opinion as to whether the text of the proposed amendment complies with state constitutional requirements¹⁹, whether the proposed amendment is facially invalid under the United States Constitution, and whether the proposed ballot title and substance comply with statutory requirements^{20, 21}. The Secretary concurrently sends a copy of the petition to the Financial Impact Estimating Conference, which completes and submits to the Court a financial impact statement for the proposed amendment.²²
- By February 1 of the year of the general election, the Secretary determines whether the required number and distribution of signatures has been met.²³ If so, the Secretary issues a certificate of ballot position to the sponsoring political committee.²⁴ No later than the next day, the Division director assigns the designated number for the proposed amendment.²⁵

Political Contribution Limits

No person²⁶ or political committee (except for political parties or affiliated party committees²⁷) may contribute in excess of:

- \$3,000 to a candidate for statewide office or for retention as a Supreme Court Justice; or
- \$1,000 to a candidate for retention as a judge of a district court of appeal, a candidate for legislative office, a candidate for countywide office or in any election conducted on less than a countywide basis, or a candidate for county judge or circuit judge.²⁸

¹⁶ Section 100.371(11)(a), F.S. Each signature must be verified by the relevant supervisor of elections. The sponsoring political committee must pay the actual cost of verification to the supervisor of elections.

¹⁷ The verified signatures on petitions must be equal to at least 25% of the number of signatures required statewide and in at least one-half of Florida's congressional districts.

¹⁸ Section 15.21, F.S.

¹⁹ FLA. CONST. art. XI, s. 3, in part limits citizens' initiatives (except those limiting the power of government to raise revenue) to a single subject.

²⁰ Section 101.161, F.S., provides format and content requirements for ballot titles and summaries. The ballot summary must be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. The ballot title must consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of. However, those requirements do not apply to amendments or revisions proposed by joint resolution of the Legislature. All proposals are subject to requirements pertaining to a financial impact statement that must be included in the ballot summary.

²¹ Section 16.061(1), F.S.

²² Section 100.371(13), F.S.

²³ Section 100.371(1), F.S.

²⁴ Section 100.371(12), F.S.

²⁵ Rule 1S-2.0011 (Constitutional Amendment Ballot Position), F.A.C.

²⁶ A "person" is an individual or a corporation, association, firm, partnership, joint venture, joint stock company, club, organization, estate, trust, business trust, syndicate, or other combination of individuals having collective capacity (s. 106.011(14), F.S.). The term includes a political party, affiliated party committee, or political committee.

²⁷ The leader of each political party conference of the House of Representatives and the Senate may establish a separate, affiliated party committee to support the election of candidates of the leader's political party (s. 103.092(2), F.S.). Affiliated party committees are subject to the same provisions of ch. 106, F.S., as are political parties.

²⁸ Section 106.08(1)(a), F.S.

Florida law does not currently limit contributions to a political committee.

Disposition of Surplus Funds by Candidates

Florida law specifies authorized methods for disposition of surplus funds by candidates.²⁹ Generally,³⁰ each candidate who withdraws his or her candidacy, becomes an unopposed candidate, or is eliminated as a candidate or elected to office must, within 90 days:

- Dispose of the funds on deposit in his or her campaign account; and
- File a report reflecting the disposition of all remaining funds.³¹

A candidate may dispose of such funds that have not been spent or obligated by any of the following means, or any combination thereof:

- Return them pro rata to each contributor;
- Donate them to a charitable organization or organizations that meet the qualifications of s. 501(c)(3) of the Internal Revenue Code;³²
- Give not more than \$25,000 of the funds to the affiliated party committee or political party of which the candidate is a member; or
- In the case of a candidate for state office, give the funds to the state, to be deposited in either the Election Campaign Financing Trust Fund³³ or the General Revenue Trust Fund, as designated by the candidate, or in the case of a candidate for an office of a political subdivision, to such political subdivision, to be deposited in the general fund thereof.³⁴

III. Effect of Proposed Changes:

The bill adds political committees sponsoring constitutional amendments proposed by initiative to the list of entities subject to a \$3,000 contribution limit from a person or political committee. The contribution limit will no longer apply to such a political committee once the Secretary of State has issued a certificate of ballot position and a designating number for the proposed constitutional amendment.

The bill preempts local governments from enacting or adopting:

- Contribution limits that differ from the existing statutory limits for statewide and local candidates;
- Any limitation or restriction involving contributions to a political committee or an electioneering communications organization; or
- Any limitation or restriction on expenditures for an electioneering communication or an independent expenditure.

²⁹ Section 106.141, F.S.

³⁰ Section 106.141(6), F.S., provides an option to retain specified funds for a candidate elected to state office or a candidate who will be elected to state office by virtue of his or her being unopposed after candidate qualifying ends.

³¹ Section 106.141(1), F.S.

³² Section 501(c)(3) of the Internal Revenue Code provides tax exemptions for organizations that serve certain charitable purposes and meet other specified requirements.

³³ On November 4, 1996, the trust fund expired by operation of Art. III, s. 19(f)(2), FLA. CONST. (see note in s. 106.32, F.S.). All balances and income from the defunct fund were deposited into the state General Revenue Fund pursuant to Art. III, s. 19(f)(4), FLA. CONST.

³⁴ Section 106.141(4)(a), F.S.

The bill specifically provides that any existing or future limitation or restriction enacted or adopted by a local government that is in conflict with the new preemption is void.

The bill also revises the authorized methods for disposing of surplus campaign funds to:

- Prohibit a candidate from donating such funds to a charitable organization by which he or she is employed; and
- Eliminate restrictions on which candidates may donate to which government funds to allow all candidates for state and local office to deposit surplus funds in the general revenue fund of a political subdivision, the state General Revenue Fund, or the Election Campaign Financing Trust Fund.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. Bills that affect state or local elections are exempt from Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The United States Supreme Court has issued numerous opinions defining First Amendment freedom of speech limits on election laws, including some specifically related to ballot-initiative petitions.

The Court has concluded that the circulation of such petitions represents core political speech and merits the highest level of protection.³⁵ However, the Court also has recognized that regulation of elections is necessary to ensure fairness and order.³⁶ States allowing ballot initiatives have considerable leeway to protect the integrity and reliability of the initiative process, as they have with respect to election processes generally.³⁷ So,

³⁵ *Meyer v. Grant*, 486 U.S. 414 (1988).

³⁶ *Storer v. Brown*, 415 U.S. 724 (1974); see *Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997); *Anderson v. Celebrezze*, 460 U.S. 780 (1983).

³⁷ *Biddulph v. Mortham*, 89 F.3d 1491 (11th Cir. 1996).

restrictions on an initiative process will be upheld against a First Amendment challenge if such restrictions “protect the integrity and reliability of the initiative process” and do not “unjustifiably inhibit the circulation of ballot-initiative petitions.”³⁸

In First Amendment challenges to laws governing initiative petitions, the Court has analyzed whether the restrictions in question significantly inhibit communication with voters about proposed political change and, if so, whether they are warranted by the state interests alleged to justify those restrictions.³⁹ A key factor considered by the Court in this context is whether the effect of the law will limit the number of persons who carry the initiative proponents’ message, and, consequently, reduce the size of the audience initiative proponents can reach.⁴⁰ In striking down a ban on paid petition circulators, the Court held that the challenged restriction reduced the chances that initiative proponents would gather signatures sufficient in number to qualify for the ballot, and thus limited proponents’ ability to make the matter the focus of statewide discussion; the restriction imposed a burden on political expression that the state failed to justify.⁴¹

Additional examples of initiative petition restrictions struck down by the Court include:

- A requirement that petition circulators be registered voters.⁴²
- A requirement that petition circulators wear a name badge.⁴³
- A requirement that initiative sponsors disclose specified information about all petition circulators.⁴⁴
- A \$250 limit on contributions to committees formed to support or oppose ballot measure referenda.⁴⁵

Examples of initiative petition restrictions upheld by the courts include:

- A minimum age requirement for petition circulators.⁴⁶
- A six-month limit on the time period in which petitions can be circulated.⁴⁷
- A requirement that a circulator attach to each petition section an affidavit containing the circulator’s identifying information and a statement that he or she has read and understands the laws governing the circulation of petitions.⁴⁸
- Single subject and unambiguous title requirements.⁴⁹

³⁸ *Buckley v. American Constitutional Law Found., Inc.*, 525 U.S. 182 (1999).

³⁹ *Meyer*, 486 U.S. 414; *Buckley*, 525 U.S. 182 at 192.

⁴⁰ *Meyer*, 486 U.S. 414 at 422-423.

⁴¹ *Meyer*, 486 U.S. 414 at 423-425.

⁴² *Buckley*, 525 U.S. 182 at 197.

⁴³ *Buckley*, 525 U.S. 182 at 200.

⁴⁴ *Buckley*, 525 U.S. 182 at 204.

⁴⁵ *Citizens Against Rent Control/Coalition for Fair Housing v. City of Berkeley, California*, 102 U.S. 434 (1981). In this case, the Court determined that the restraint imposed by the ordinance on rights of association and in turn on individual and collective rights of expression contravened both the right of association and the speech guarantees of the First Amendment.

⁴⁶ *American Constitutional Law Found., Inc., v. Meyer*, 120 F.3d 1092 (10th Cir. 1997).

⁴⁷ *Id.* at 1099.

⁴⁸ *American Constitutional Law Found., Inc.*, 120 F.3d 1092 at 1100.

⁴⁹ *Biddulph*, 89 F.3d 1491.

- A requirement that the names of contributors and the amounts contributed be disclosed.⁵⁰

This bill creates a limit on contributions to political committees sponsoring ballot initiatives during the time period in which the sponsoring committees are circulating petitions and attempting to gather a number of signatures sufficient to gain access to the ballot.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may allow increased donations to candidates to the extent that they are currently subject to local limits that are more restrictive than those provided in statute.

C. Government Sector Impact:

The bill may result in an indeterminate fiscal impact to state and local government revenues to the extent that the elimination of the restriction on which candidates may donate to which government funds results in a change in donation patterns.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 106.08 and 106.141, Florida Statutes.

IX. Additional Information:

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

CS/CS by Rules on April 6, 2021:

The committee substitute:

⁵⁰ *American Constitutional Law Found., Inc.*, 120 F.3d 1092 at 1104-1105. Specifically, the court held that disclosure of the names of initiative sponsors, and of the amounts they had spent gathering support for their initiatives, responded to a substantial state interest in maintaining a check on domination of the initiative process by affluent special interest groups.

- Expands the categories of political committees newly subject to the contribution limit to also include political committees that are in opposition to a constitutional amendment proposed by initiative.
- Adds to the bill provisions preempting local governments from enacting or adopting limits on specified election-related contributions and expenditures.

CS by Ethics and Elections on March 30, 2021:

The committee substitute:

- Relocates the addition of political committees sponsoring constitutional amendments proposed by initiative to the section governing contribution limits for statewide candidates, thereby making the applicable contribution limit \$3,000 instead of \$1,000 as in the original bill.
- Adds to the bill provisions revising authorized methods of disposal of surplus campaign funds.

B. Amendments:

None.



704498

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/07/2021	.	
	.	
	.	
	.	

The Committee on Rules (Farmer) recommended the following:

Senate Amendment (with title amendment)

Delete lines 17 - 26
and insert:

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

106.011 Definitions.—As used in this chapter, the following
terms have the following meanings unless the context clearly
indicates otherwise:

(5) "Contribution" means:

(b) A transfer of funds ~~between political committees,~~



704498

between electioneering communications organizations⁷ or between
a political committee and an electioneering communications
organization ~~any combination of these groups.~~

Notwithstanding the foregoing meanings of "contribution," the
term may not be construed to include services, including, but
not limited to, legal and accounting services, provided without
compensation by individuals volunteering a portion or all of
their time on behalf of a candidate or political committee or
editorial endorsements.

Section 2. Paragraph (a) of subsection (4) of section
106.07, Florida Statutes, is amended to read:

106.07 Reports; certification and filing.—

(4) (a) Except for daily reports, to which only the
contributions provisions below apply, and except as provided in
paragraph (b), each report required by this section must
contain:

1. The full name, address, and occupation, if any, of each
person who has made one or more contributions to or for such
committee or candidate within the reporting period, together
with the amount and date of such contributions. For
corporations, the report must provide as clear a description as
practicable of the principal type of business conducted by the
corporation. However, if the contribution is \$100 or less or is
from a relative, as defined in s. 112.312, provided that the
relationship is reported, the occupation of the contributor or
the principal type of business need not be listed.

2. The name and address of each political committee from
which ~~the reporting committee or~~ the candidate received, or to



704498

41 which the ~~reporting committee or~~ candidate made, any transfer of
42 funds, together with the amounts and dates of all transfers.

43 3. Each loan for campaign purposes to or from any person or
44 political committee within the reporting period, together with
45 the full names, addresses, and occupations, and principal places
46 of business, if any, of the lender and endorsers, if any, and
47 the date and amount of such loans.

48 4. A statement of each contribution, rebate, refund, or
49 other receipt not otherwise listed under subparagraphs 1.
50 through 3.

51 5. The total sums of all loans, in-kind contributions, and
52 other receipts by or for such committee or candidate during the
53 reporting period. The reporting forms shall be designed to
54 elicit separate totals for in-kind contributions, loans, and
55 other receipts.

56 6. The full name and address of each person to whom
57 expenditures have been made by or on behalf of the committee or
58 candidate within the reporting period; the amount, date, and
59 purpose of each such expenditure; and the name and address of,
60 and office sought by, each candidate on whose behalf such
61 expenditure was made. However, expenditures made from the petty
62 cash fund provided by s. 106.12 need not be reported
63 individually.

64 7. The full name and address of each person to whom an
65 expenditure for personal services, salary, or reimbursement for
66 authorized expenses as provided in s. 106.021(3) has been made
67 and which is not otherwise reported, including the amount, date,
68 and purpose of such expenditure. However, expenditures made from
69 the petty cash fund provided for in s. 106.12 need not be



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70 reported individually. Receipts for reimbursement for authorized
71 expenditures shall be retained by the treasurer along with the
72 records for the campaign account.

73 8. The total amount withdrawn and the total amount spent
74 for petty cash purposes pursuant to this chapter during the
75 reporting period.

76 9. The total sum of expenditures made by such committee or
77 candidate during the reporting period.

78 10. The amount and nature of debts and obligations owed by
79 or to the committee or candidate, which relate to the conduct of
80 any political campaign.

81 11. Transaction information for each credit card purchase.
82 Receipts for each credit card purchase shall be retained by the
83 treasurer with the records for the campaign account.

84 12. The amount and nature of any separate interest-bearing
85 accounts or certificates of deposit and identification of the
86 financial institution in which such accounts or certificates of
87 deposit are located.

88 13. The primary purposes of an expenditure made indirectly
89 through a campaign treasurer pursuant to s. 106.021(3) for goods
90 and services such as communications media placement or
91 procurement services, campaign signs, insurance, and other
92 expenditures that include multiple components as part of the
93 expenditure. The primary purpose of an expenditure shall be that
94 purpose, including integral and directly related components,
95 that comprises 80 percent of such expenditure.

96 Section 3. Section 106.079, Florida Statutes, is created to
97 read:

98 106.079 Transfer of political committee funds.—A political



704498

committee may not transfer funds or make contributions to
another political committee.

Section 4. Paragraph (a) of subsection (1) of section
106.08, Florida Statutes, is amended to read:

106.08 Contributions; limitations on.—

(1)(a) Except for political parties or affiliated party
committees, no person or political committee may, in any
election, make contributions in excess of the following amounts:

1. To a candidate for statewide office or for retention as
a justice of the Supreme Court or to a political committee that
is the sponsor of a constitutional amendment proposed by
initiative, \$3,000. However, a political committee may not make
a contribution to any such political committee as provided in s.
106.079. The limitation on contributions for

===== T I T L E A M E N D M E N T =====
And the title is amended as follows:

Between lines 2 and 3
insert:

106.011, F.S.; redefining the term "contribution" to
conform to changes made by the act; amending s.
106.07, F.S.; revising reporting requirements
regarding transfers made by political committees, to
conform; creating s. 106.079, F.S.; prohibiting a
political committee from transferring funds or making
contributions to another political committee; amending
s.



257762

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/07/2021	.	
	.	
	.	
	.	

The Committee on Rules (Brandes) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 37 and 38
insert:

(11) (a) A county, a municipality, or any other local
governmental entity is expressly preempted from enacting or
adopting:

1. Contribution limits that differ from the limitations
established in subsection (1);

2. Any limitation or restriction involving contributions to
a political committee or an electioneering communications



257762

organization; or

3. Any limitation or restriction on expenditures for an
electioneering communication or an independent expenditure.

(b) Any existing or future limitation or restriction
enacted or adopted by a county, a municipality, or any other
local governmental entity which is in conflict with this
subsection is void.

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

And the directory clause is amended as follows:

Delete line 18

and insert:

106.08, Florida Statutes, is amended, and subsection (11) is
added to that section, to read:

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

And the title is amended as follows:

Delete line 7

and insert:

longer applies; preempting counties, municipalities,
and other local governmental entities from enacting or
adopting any limitation or restriction involving
certain contributions and expenditures, or
establishing contribution limits different than those
established in the Florida Election Code; providing
applicability; amending s. 106.141, F.S.; prohibiting



238640

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/07/2021	.	
	.	
	.	
	.	

The Committee on Rules (Thurston) recommended the following:

Senate Amendment

Delete line 25
and insert:
is the sponsor of or in opposition to a constitutional
amendment proposed by

By the Committee on Ethics and Elections; and Senator Rodrigues

582-03591-21

20211890c1

A bill to be entitled

An act relating to campaign financing; amending s. 106.08, F.S.; providing a limitation on contributions made to political committees sponsoring a constitutional amendment proposed by initiative; specifying conditions upon which the limitation no longer applies; amending s. 106.141, F.S.; prohibiting a candidate from donating surplus funds to a charitable organization that employs the candidate; providing that any candidate required to dispose surplus funds may give certain surplus funds to the state or a political subdivision, to be disbursed in a specified manner; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 106.08, Florida Statutes, is amended to read:

106.08 Contributions; limitations on.—

(1) (a) Except for political parties or affiliated party committees, no person or political committee may, in any election, make contributions in excess of the following amounts:

1. To a candidate for statewide office or for retention as a justice of the Supreme Court or to a political committee that is the sponsor of a constitutional amendment proposed by initiative, \$3,000. However, the limitation on contributions for such a political committee no longer applies once the Secretary of State has issued a certificate of ballot position and a designating number for the proposed amendment that the political

582-03591-21

20211890c1

committee is sponsoring. Candidates for the offices of Governor and Lieutenant Governor on the same ticket are considered a single candidate for the purpose of this section.

2. To a candidate for retention as a judge of a district court of appeal; a candidate for legislative office; a candidate for multicounty office; a candidate for countywide office or in any election conducted on less than a countywide basis; or a candidate for county court judge or circuit judge, \$1,000.

Section 2. Paragraph (a) of subsection (4) of section 106.141, Florida Statutes, is amended to read:

106.141 Disposition of surplus funds by candidates.—

(4) (a) Except as provided in paragraph (b), any candidate required to dispose of funds pursuant to this section shall, at the option of the candidate, dispose of such funds by any of the following means, or any combination thereof:

1. Return pro rata to each contributor the funds that have not been spent or obligated.

2. Donate the funds that have not been spent or obligated to a charitable organization or organizations that meet the qualifications of s. 501(c)(3) of the Internal Revenue Code, except that the candidate may not be employed by the charitable organization to which he or she donates the funds.

3. Give not more than \$25,000 of the funds that have not been spent or obligated to the affiliated party committee or political party of which such candidate is a member.

4. Give the funds that have not been spent or obligated:

a. ~~In the case of a candidate for state office,~~ To the state, to be deposited in either the Election Campaign Financing Trust Fund or the General Revenue Fund, as designated by the

582-03591-21

20211890c1

59 candidate; or

60 b. ~~In the case of a candidate for an office of a political~~
61 ~~subdivision,~~ To a ~~such~~ political subdivision, to be deposited in
62 the general fund thereof.

63 Section 3. This act shall take effect July 1, 2021.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1890
Bill Number (if applicable)

Meeting Date _____

Topic Congressman Finances

Amendment Barcode (if applicable) _____

Name Marcus R. McCay

Job Title Pastor

Address 596 W. Church St

Phone _____

Street

Orlando
City

FL
State

32208
Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida State Network of African America Church Alliances
Network
Chgo

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

4/6/2021
Meeting Date

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

SB 1890
Bill Number (if applicable)

Topic Campaign Finance

Amendment Barcode (if applicable)

Name Robert McKinnon

Job Title _____

Address 25 N. Market St.

Phone 848.364.4403

Street Jacksonville State FL Zip 32205

Email j.mckinnon@faithinpubliclife.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Faith In Public Life

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)

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

THE FLORIDA SENATE

APPEARANCE RECORD

4/6/2021

Meeting Date

1890

Bill Number (if applicable)

Topic Campaign Financing

Amendment Barcode (if applicable)

Name Jonathan Webber

Job Title Deputy Director

Address 1700 N. Monroe St. #11-286

Phone 954-593-4449

Street

Tallahassee

FL

32303

Email jwebber@fcvoters.org

City

State

Zip

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

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

4/6/21

Meeting Date

1890

Bill Number (if applicable)

Topic Ballot Initiative Campaign Financing
Name Ida V. Eskaman

Amendment Barcode (if applicable)

Job Title _____

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Rising & Florida Immigrant Coalition

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6/21

Meeting Date

SB 1890

Bill Number (if applicable)

Topic CAMPAIGN FINANCING

Amendment Barcode (if applicable)

Name TRISH NEELY

Job Title DIRECTOR

Address 2024 SHANGRI LA LANE
Street

Phone 850 322 3317

TALLY FL 32303
City State Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing LEAGUE WOMEN VOTERS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

4/6/2021

Meeting Date

1890

Bill Number (if applicable)

Topic Campaign Financing

Amendment Barcode (if applicable)

Name Christopher Emmanuel

Job Title Policy Director

Address 136 S Bronough St

Street

Tallahassee

City

Florida

State

32301

Zip

Phone _____

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

Reset Form

4/6/2021

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

1890

Bill Number (if applicable)

Topic Campaign Finance

Name Pamela Burch Fort

Amendment Barcode (if applicable)

Job Title

Address 104 South Monroe Street

Phone 850-425-1344

Street

Tallahassee

FL

32301

City

State

Zip

Email TcgLobby@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU FL and NAACP Florida State Conference

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6/21
Meeting Date

1890
Bill Number (if applicable)

Topic Campaign Financing

Amendment Barcode (if applicable)

Name Carrie Boyd

Job Title Policy Director

Address P.O. Box 10788

Phone 850-570-9560

Street Tallahassee FL

City

State

Zip

Email carrie.boyd@splcenter.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SPLC Action Fund

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 1924

INTRODUCER: Community Affairs Committee and Senator Diaz

SUBJECT: Emergency Management Powers of Political Subdivisions

DATE: April 2, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	Fav/CS
2. <u>Stallard</u>	<u>Caldwell</u>	<u>MS</u>	Favorable
3. <u>Paglialonga</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1924 provides that if a county, city, or other subdivision of the state deprives a person of property, a statutory or constitutional right, or a fundamental liberty to address a purported emergency, the deprivation is subject to a highest level of judicial scrutiny. Under current law, this level of “strict scrutiny” is reserved for measures that deprive a person of a fundamental right or liberty.

Under the bill, as under strict scrutiny, a county or city must prove that its exercise of police power is “narrowly tailored,” serves a “compelling governmental interest,” and accomplishes the intended goal through the use of the “least intrusive means.”

The bill also provides that the Governor, or Legislature by concurrent resolution, may invalidate a political subdivision's emergency ordinance, rule, or other measure if the Governor or Legislature determines that the measure “unnecessarily restricts a constitutional right, fundamental liberty, or statutory right.”

Lastly, the bill provides that an emergency order issued by a political subdivision will automatically expire 10 days after its issuance unless extended by a majority vote of the political subdivision's governing body.

The bill takes effect July 1, 2021.

II. Present Situation:

Summary

Current law does not expressly provide the Governor or Legislature with the authority to invalidate an ordinance or other measure of a political subdivision which unnecessarily restricts a constitutional right, fundamental liberty, or statutory right. However, current law does provide that any emergency order or rule of a political subdivision is invalid if it is inconsistent with any order or rule of an executive agency, provided the Governor or the Division of Emergency Management has delegated emergency authority to the agency.¹

Moreover, under case law interpreting the United States Constitution, governmental action—such as an emergency order or a rule—that infringes a “fundamental” constitutional right or liberty is subject to “strict scrutiny,” the most demanding level of judicial scrutiny.² If an order or rule fails to survive strict scrutiny, it is unconstitutional, and thus invalid.³

State Emergency Management Act

Overview and Legislative Intent

The State Emergency Management Act is set forth in ch. 252, F.S. In the Act, the Legislature finds and declares that Florida is vulnerable to a wide range of emergencies, including natural, manmade, and technological disasters.⁴ These emergencies and disasters threaten people, property, and the economy.⁵

Accordingly, Legislature passed the Act with the intent to reduce the state’s vulnerability to these circumstances and to prepare to respond to them.⁶ The legislative intent also includes promoting the state’s emergency readiness through enhanced coordination, long-term planning, and adequate funding.⁷

The Act describes the respective emergency powers of the three branches of state government, as well as the powers of counties, cities, and other subdivisions of the state. The Act grants the executive branch with primary authority for emergency management.⁸

The Governor has the authority to declare an emergency and enter emergency orders, which have the force and effect of law.⁹ The Division of Emergency Management in the Executive Office of the Governor is charged with maintaining the state comprehensive emergency management plan and otherwise leading the state’s emergency management apparatus.¹⁰ Nonetheless, the Act also

¹ Section 252.46(1), F.S.

² See *Zablocki v. Redhail*, 434 US 374, 383 (1978).

³ See generally, *Id.*

⁴ Section 252.311(1), F.S.

⁵ *Id.*

⁶ Section 252.311(2), F.S.

⁷ *Id.*

⁸ See ss. 252.35 and 252.36, F.S.

⁹ Section 252.36, F.S.

¹⁰ Section 252.35, F.S.

grants local governments with the authority to enter emergency orders and rules that are consistent with those of the executive branch.¹¹

The Governor's Duties and Authority Regarding Emergencies

If the Governor finds that an emergency has occurred or is imminent, he or she must declare a state of emergency.¹² The state of emergency continues until the Governor terminates it, or until more than 60 days pass, whichever occurs sooner.¹³ However, the Legislature may end a state of emergency by passing a concurrent resolution.¹⁴

The Florida Statutes acknowledge that the Governor “is responsible for meeting the dangers presented to this state and its people by emergencies.”¹⁵ Accordingly, in the event of an emergency that is beyond local control, the Governor is authorized to assume “direct operational control” over all or any part of the emergency management functions.¹⁶ Moreover, he or she may issue executive orders, proclamations, and rules, all of which have the “force and effect of law.”¹⁷

The Division of Emergency Management

In the State Emergency Management Act, the Legislature created the Division of Emergency Management within the Executive Office of the Governor.¹⁸ The division is responsible for “maintaining a comprehensive statewide program of emergency management.”¹⁹ The division is also “responsible for coordination with efforts of the Federal Government, with other departments and agencies of state government, with county and municipal governments and school boards, and with private agencies that have a role in emergency management.”²⁰

Additionally, the division is responsible for “carrying out” the State Emergency Management Act.²¹ This includes various enumerated duties, the first of which is the creation of the state comprehensive emergency management plan.²²

As for its contents, the plan must:

- Address the need for coordinated and expeditious deployment of the National Guard and other state resources.
- Establish a system of communications and warning to be used during natural disasters and other emergencies.

¹¹ Section 252.46, F.S.

¹² Section 252.36(2), F.S.

¹³ *Id.*

¹⁴ Section 252.36(2), F.S.

¹⁵ Section 252.36(1), F.S.

¹⁶ *Id.*

¹⁷ Section 252.36(1)(b), F.S.

¹⁸ See ss. 252.32(1) and 252.34(3), F.S.

¹⁹ Section 252.35(1), F.S.

²⁰ *Id.*

²¹ Section 252.35(2), F.S.

²² See *Id.*

- Establish guidelines and schedules for annual exercises that evaluate the ability of the state and its political subdivisions to respond to disasters and support local emergency management agencies.
- Assign lead and support responsibilities to state agencies and personnel.²³

Additionally, the plan must include:

- An evacuation component that includes regional and interregional coordination of evacuation activities.
- A shelter component that includes regional and interregional planning provisions and promotes coordination of sheltering between the public, private, and nonprofit sectors.
- A post-disaster relief component.²⁴

In addition to the creation of the state comprehensive emergency management plan, the division must fulfill more than 20 duties listed in Act, including:

- Cooperate with the President, the heads of the Armed Forces, the various federal emergency management agencies, and the officers and agencies of other states in matters pertaining to emergency management in the state and the nation and incidents thereof.
- Institute statewide public awareness programs, including an intensive public educational campaign on emergency preparedness issues.
- Delegate, as necessary and appropriate, authority vested in it under the State Emergency Management Act and provide for the subdelegation of this authority.
- Report to the President of the Senate, the Speaker of the House of Representatives, and the Governor, no later than February 1 of every odd-numbered year, the status of the emergency management capabilities of the state and its political subdivisions.
- Maintain, in coordination with local emergency management agency of the state, a registry of persons with special needs located within the jurisdiction of the local agency.²⁵

Cities' and Counties' Emergency Management Authority

The State Emergency Management Act expressly grants cities, counties, and other subdivisions of the state with certain emergency management powers.²⁶

A city or county is “authorized and empowered to make, amend, and rescind such orders and rules as are necessary for emergency management purposes and to supplement the carrying out of” the State Emergency Management Act.²⁷ However, the rules and orders may not be “inconsistent with any orders or rules adopted by the division or by any state agency exercising a power delegated to it by the Governor or the division.”²⁸ The rules and orders have the “full force and effect of law” if they are adopted as rules pursuant to the Administrative Procedure

²³ *Id.*

²⁴ *Id.*

²⁵ Section 252.35(2)(b)-(y), F.S.

²⁶ See ss. 252.38 and 252.46, F.S.

²⁷ Section 252.46(1), F.S.

²⁸ *Id.*

Act.²⁹ Nonetheless, political subdivisions' authority is subject to the authority of the state, and the subdivisions' actions must be consistent with statewide plans, laws, orders, and rules.³⁰

Accordingly, each county is “within the jurisdiction of, and shall be served by,” the Division of Emergency Management.³¹ And each county must establish an emergency management agency and plan or be part of an interjurisdictional emergency management agreement that is recognized by the Governor.³² Moreover, each county must appoint an emergency management director and inform the division of the appointment.³³ In addition to performing emergency management duties within its county, each county emergency management agency must conduct activities outside its county as required under the Act and in accordance with state and county emergency management plans and mutual-aid agreements.

Municipalities are authorized and encouraged, but not required, to create municipal emergency management programs.³⁴ If a municipality chooses to establish an emergency management program, it must comply with all laws, rules, and requirements applicable to county emergency management agencies.³⁵

Finally, the Act grants cities and counties a list of emergency management powers, including the power and authority to appropriate and expend funds, establish operating centers, declare a local emergency, and request aid consistent with the emergency.³⁶

Judicial Review of Governmental Action – Levels of Scrutiny

Any governmental action, including the entry of orders and the promulgation of rules, is subject to the courts' review of the action's constitutionality.³⁷ If a court finds that a law, rule, or order infringes a person's constitutional rights, the court must then subject it to one of three levels of scrutiny, depending upon the nature of the infringement.³⁸ These levels are strict scrutiny, intermediate scrutiny, and rational basis review. If the action fails to pass the applicable level of scrutiny, it is unconstitutional, and thus invalid.³⁹

Governmental action that infringes a “fundamental right” is subject to “strict scrutiny,” which is the most demanding level of scrutiny.⁴⁰ To survive strict scrutiny, a rule or an order must further a “compelling governmental interest.”⁴¹ Additionally, the rule or order must be “narrowly tailored” to advance the interest.⁴² Moreover, the rule or order must be the “least restrictive

²⁹ Section 252.46(2), F.S. The Administrative Procedure Act is ch. 120, F.S.

³⁰ *See Id.*

³¹ Section 252.38(1)(a), F.S.

³² *Id.*

³³ Section 252.38(1)(b), F.S.

³⁴ Section 252.38(2), F.S.

³⁵ *Id.*

³⁶ Section 252.38(3), F.S.

³⁷ *See Blum v. Yaretsky*, 457 U.S. 991, 1002 (1982).

³⁸ *See generally, Birchansky v. Clabaugh*, 955 F.3d 751, 756 (2020).

³⁹ *Id.*

⁴⁰ *See Zablocki v. Redhail*, 434 US 374, 383 (1978).

⁴¹ *Regents of Univ. of California v. Bakke*, 438 U.S. 265, 357 (1978).

⁴² *Westerheide v. State*, 831 So. 2d 93, 110 (Fla. 2002).

means” of furthering the compelling governmental interest.⁴³ Examples of fundamental rights include the right to marry,⁴⁴ the right to free speech, the freedom of worship and assembly, and the right to life, liberty, and private property.⁴⁵ Strict scrutiny also applies to laws that discriminate on the basis of a highly protected characteristic, such as race.⁴⁶

Intermediate scrutiny has been applied to laws or other governmental actions that discriminate on the basis of sex or sexual orientation.⁴⁷ To pass intermediate scrutiny, a law, order, or rule must serve an important governmental objective and be substantially related to the objective.⁴⁸

The lowest level of review, and thus the easiest for the government to pass, is rational basis review.⁴⁹ This level applies to laws, orders, or rules that are allegedly irrational or arbitrary, or that discriminate on less-protected bases, such as age or disability.⁵⁰ To survive a rational basis review, the governmental action at issue must be rationally related to a legitimate state interest.⁵¹

United States Supreme Court Cases Regarding COVID-19 Restrictions

The United States Supreme Court has heard at least two cases regarding the constitutionality of COVID-19 restrictions.⁵² In neither case did the court depart from the normally applicable level of scrutiny, notwithstanding the “emergency” surrounding the governmental action.⁵³

Challenges to Local COVID-19 Restrictions in Florida

Walton County Beach Closure

On March 19, 2020, the Walton County Board of County Commissioners adopted Ordinance 2020-08, which states, “[a]ll beaches within Walton County, Florida, are temporarily CLOSED to the public... It shall be unlawful for members of the public to access the beaches within Walton County.” The ordinance recitals cite Governor DeSantis’ Executive Order 20-68⁵⁴ as the authority for the emergency measure and ss. 252.38 and 125.66(3), F.S.

A group of property owners who own oceanfront (beach) property in Walton County affected by Ordinance 2020-08 filed suit challenging the ordinance’s legality.⁵⁵ These parties claimed that

⁴³ *Regents of Univ. of California v. Bakke*, 438 U.S. 265, 357 (1978).

⁴⁴ *Loving v. Virginia*, 388 U.S. 1, 12 (1967).

⁴⁵ *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 638 (1943).

⁴⁶ *Regents of Univ. of California v. Bakke*, 438 U.S. 265, 357 (1978).

⁴⁷ *See Craig v. Boren*, 429 U.S. 190 (1976).

⁴⁸ *See Heller v. District of Columbia*, 670 F.3d 1244, 1258 (D.C. Cir. 2011).

⁴⁹ *See generally, Silvio Membreno and Fla. Ass’n of Vendors, Inc. v. City of Hialeah*, 188 So. 3d 13, 19 (Fla. 2016).

⁵⁰ *Id.*

⁵¹ *Id.* at 19-20.

⁵² *See e.g., South Bay United Pentecostal Church v. Newsom*, 140 S.Ct. 1613 (2020); *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020).

⁵³ *Id.*

⁵⁴ EO 20-68 (March 17, 2020) Section 2 states “[p]ursuant to section 252.36(5)(k), Florida Statutes, I direct parties accessing public beaches in the State of Florida to follow the CDC guidance by limiting their gatherings to no more than ten persons, distance themselves from other parties by 6 feet, and support beach closures at the discretion of local authorities.”

⁵⁵ *Dodero v. Walton County*, N.D. Fla. 2020, Case No.: 3:20cv5358-RV/HTC.

Walton County's ordinance constituted a Fifth Amendment Takings,⁵⁶ was preempted by the Governor, violated Florida's constitutional Right to Privacy, violated constitutional due process rights, and lacked statutory authority.

After the plaintiffs filed a motion for an injunction against Walton County and a preliminary hearing, the Federal Judge issued an order denying plaintiffs' requests for relief. The judge did not find the county's action to violate the Fourth Amendment or Florida's privacy rights and found the ordinance to be consistent with, and authorized by, the Governor's Executive Order No. 20-68.

Alachua County Restrictions on Businesses and Mask Mandate

On May 2, 2020, the Alachua County Board of County Commissioners issued Emergency Order 2020-21, which among other measures, imposed mandatory face coverings in certain situations and locations where social distancing was not possible and imposed additional business occupancy restrictions.⁵⁷

A local business owner challenged the county's order claiming that the order lacked authority under the county code and the State Emergency Management Act, constituted a Fifth Amendment Takings, violated Florida's constitutional Right to Privacy, and violated the Equal Protection Clause.⁵⁸ In denying the plaintiff's motion for an injunction against the county, the judge claims several rationales. First, the judge states, "[t]he protection of the safety and welfare of the public is inherent in the role of local government." The judge continues this line of reasoning by explaining:

"Alachua County is responsible for reducing the spread of COVID-19 among its citizens and also for ensuring its citizens have access to medical care if they become infected. An individual Alachua County citizen's right to be let alone is no more precious than the corresponding right of his fellow citizens not to become infected by that person and potentially hospitalized."⁵⁹

Leon County Mask Mandate

On June 23, 2020, Leon County's board of commissioners held a special meeting and unanimously adopted face-covering requirements through Emergency Ordinance 20-15. The Emergency Ordinance requires individuals in an indoor business establishment to wear a face covering. The Emergency Ordinance was challenged as being unconstitutional.⁶⁰ On July 27, 2020, Circuit Court Judge John C. Cooper upheld the ordinance as constitutional. In his ruling, Judge Cooper states that:

⁵⁶ The Fifth Amendment of the United States Constitution includes a provision known as the Takings clause, which states that "private property [shall not] be taken for public use, without just compensation."

⁵⁷ EO 20-112 (April 29, 2020) states "[i]n-store retail sales establishments may open storefronts if they operate at no more than 25 percent of their building occupancy and abide by the safety guidelines issued by the CDC and OSHA." Section 7 of Alachua County's order states, "[e]ssential services and activities, and retail establishments shall limit occupancy, to one per five hundred square feet of covered space. In no case does this allow more than Executive Order 20-112."

⁵⁸ *Green v. Alachua County*, Case No. 2020-CA-001249, Fla. 8th Cir. Ct.

⁵⁹ *Id.*

⁶⁰ *Power v. Leon County*, Case No. 2020-CA-001200, Fla. 2nd Cir. Ct., available at: <https://www.fl-counties.com/sites/default/files/2020-07/7.27.20%20Final%20Order.pdf> (last visited Mar. 12, 2021).

"It has long been recognized that when, as here, there is an emergency, the police power gives governmental authorities power to act for the public welfare that they might not otherwise have. This line of cases extends back to the 1905 United States Supreme Court case of *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11(1905)[.]"

Judge Cooper quoted a recent case from the United States Fifth Circuit Court of Appeals:

"Importantly, it is 'no part of the function of a court to decide which measures are likely to be the most effective for the protection of the public against disease.' *In re Abbott*, 954 F. 3d 772, 778 (5th Cir. 2020) (quoting *Jacobson*, 197 U.S. at 29). When as here, a court is faced with a society threatening epidemic, 'a state may implement emergency measures that curtail constitutional rights so long as the measures have at least real or substantial relation to the public health crisis and are not beyond all question, a plain, palpable invasion of rights secured by the fundamental law.' *Id.* at 784 (quoting *Jacobson*, 197 U.S. at 31)."⁶¹

Miami-Dade County Curfew

Miami-Dade County's third amendment to Emergency Order 27-20 included a late-night curfew provision commencing on October 12, 2020. The curfew provided that "no person shall make use of any street or sidewalk for any purpose, except police, fire rescue, first responder, medical, health care, media, and utility repair service personnel." The curfew also made additional exceptions for individuals traveling to and from "essential establishments" for work, persons walking dogs within 250 feet of a residence, and individuals "[t]raveling to and from any sporting event sponsored by the NCAA, Major League Baseball, or the National Football League, or any other national professional sports league or organization." In the order's recitals, Miami-Dade cited subsections (e) and (o) of section 8B-7(2) of the Code of Miami-Dade County as authority to issue the order.⁶²

On November 4, 2020, Florida's Third District Court of Appeal reversed a trial court injunction Miami-Dade County's enforcing a late-night curfew meant to address the transmission of COVID-19.⁶³ In this case, the court found that Governor DeSantis' executive order⁶⁴ forbidding local governments from enacting COVID-19 emergency measures that "prevent[ed] an individual from working or from operating a business" did not expressly preempt the imposition of a curfew by the county.

⁶¹ *Id.* at 8.

⁶² Section 8B-7(2)(e) and (o) of the Code of Miami-Dade County state, "(2) Once a Local State of Emergency has been declared, the Manager is authorized by the Mayor and the Board to order any or all of the following actions: (e) Curfew: In the period before, or during and immediately after an event, an order imposing a general curfew applicable to Miami-Dade County as a whole, or to geographical area(s) of Miami-Dade County and during hours the Manager deems necessary, and from time to time, to modify the hours the curfew will be in effect and what area(s) it applies to; (o) Such other orders as are immediately necessary for the protection of life and property; provided, however that any such orders shall, at the earliest practicable time, be presented to the Board for ratification or confirmation in accordance with this chapter."

⁶³ *Miami-Dade County v. Miami Gardens Square One, Inc.*, --- So.3d ---, 2020 WL 6472542 (Fla. 3rd DCA 2020).

⁶⁴ EO 20-244 (Sep. 25, 2020).

In reaching this decision, the court found that the State Emergency Management Act did not expressly preempt emergency powers to the state. The imposition of a curfew was within the home rule powers of Miami-Dade County. The court noted the provision in the State Emergency Management Act, which states, "[s]afeguarding the life and property of its citizens is an innate responsibility of the governing body of each political subdivision of the state."⁶⁵

Broward County Curfew

On October 16, 2020, Broward County issued Emergency Order 20-28, which allowed businesses to re-open subject to certain health protocols related to COVID-19. Sections 1 and 2 of Emergency Order 20-28, however, prohibited the sale or consumption of food or alcohol between the hours of midnight and 5:00 a.m. In response, a collective of restaurants and entertainment establishments licensed to serve food and libations in Broward County filed a lawsuit challenging the curfew.⁶⁶

On December 21, 2020, the Southern District of Florida U.S. District Court granted the Plaintiffs' motion for a temporary restraining order and preliminary injunction. It enjoined Broward County from enforcing the midnight to 5:00 a.m. curfew on the sale or consumption of food or alcohol. The court reasoned that the curfew restrictions did not "quantify the economic impact of each limitation or requirement on those restaurants" and "explain why each limitation or requirement is necessary for public health[,]" as required by Governor DeSantis' Executive Order 20-244. When discussing this issue, the court states:

And, the restrictions on the sale, service, or consumption of food, is not related, in this record, to the increasing likelihood of contracting COVID-19. The record is certainly absent any analysis that "quantif[ies] the economic impact of each limitation or requirement on those restaurants" and "explain[s] why each limitation or requirement is necessary for public health" as applied to food service. Fla. Exec. Order 20-244, §§ 3(A)(i), (ii) (Sept. 25, 2020). Thus, on this record, the temporal restrictions on food and alcohol service are rather arbitrary.

III. Effect of Proposed Changes:

The bill provides that if a county, city, or other subdivision of the state deprives a person of property, a statutory or constitutional right, or a fundamental liberty to address a purported emergency, the deprivation is subject to a highest level of judicial scrutiny. Under current law, this level of "strict scrutiny" is reserved for measures that deprive a person of a fundamental right or liberty.

Under the bill, as under strict scrutiny, a county or city must prove that its exercise of police power is "narrowly tailored," serves a "compelling governmental interest," and accomplishes the intended goal through the use of the "least intrusive means."

The bill also provides that the Governor, or Legislature by concurrent resolution, may invalidate a political subdivision's emergency ordinance, rule, or other measure if the Governor or

⁶⁵ *Id.* at 5.

⁶⁶ *828 Management, LLC v. Broward county*, 2020 WL 7635169 (S.D. Fla. Dec. 21, 2020).

Legislature determines that the measure “unnecessarily restricts a constitutional right, fundamental liberty, or statutory right.”

Lastly, the bill provides that an emergency order issued by a political subdivision will automatically expire 10 days after its issuance unless extended by a majority vote of the political subdivision's governing body.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill authorizes the Governor or the Legislature to invalidate an emergency measure, such as an ordinance, if it “unnecessarily” restricts a constitutional right, fundamental liberty, or statutory right. The Legislature may wish to explain more clearly what unnecessarily restricting a right or liberty means. Under the bill, one might wonder, for instance: If an ordinance would reduce COVID-19 infections by 10 percent but would deprive residents of their constitutional right to freely exercise their religion, would this *unnecessarily* restrict this right? What if the ordinance would reduce the spread of COVID-19 by 50 percent?

This provision of the bill also raises the question of how the Legislature or the Governor would make the determination that a local emergency measure unnecessarily restricts a constitutional right, fundamental right, or statutory right.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 252.38 and 252.46 of the Florida Statutes.

IX. Additional Information:

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

CS by Community Affairs on March 16, 2021:

The committee substitute:

- Provides a more precise iteration of the strict scrutiny standard of judicial review;
- Provides that the Governor, or Legislature by concurrent resolution, may at any time invalidate an emergency action by a political subdivision if it unnecessarily restricts a constitutional right, fundamental liberty, or statutory right; and
- Provides that an order issued by a political subdivision under s. 252.46, F.S., will automatically expire after 10 days unless extended by a majority vote of the political subdivision's governing body and that upon the expiration of an order, a political subdivision may not issue a substantially similar order to respond to the same emergency.

- B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Diaz) recommended the following:

Senate Amendment (with title amendment)

Delete lines 192 - 201

and insert:

Section 2. Subsections (4) and (5) are added to section
252.46, Florida Statutes, to read:

252.46 Orders and rules.—

(4) An order issued by a political subdivision
automatically expires 10 days after its issuance; however, such
an order may be extended before its expiration by a majority
vote of the governing body of the political subdivision if



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deemed necessary. Upon the expiration of an order, a political subdivision may not issue a substantially similar order to respond to the same emergency. In the event the governing body of the political subdivision is unable to convene before the expiration of the emergency order due to the impacts of a hurricane or other weather-related natural disaster, the 10-day period is tolled until the governing body is able to convene. However, an emergency order issued under this section may not be in effect for more than 30 days unless the governing body approves an extension of the order.

(5) An order issued by a political subdivision pursuant to this section which imposes a curfew restricting the travel or movement of persons during designated times must nonetheless allow persons to travel during the curfew to their places of employment to report for work and to return to their residences after their work has concluded.

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

And the title is amended as follows:

Between lines 15 and 16
insert:

for the tolling of the automatic expiration of an order if certain conditions exist; requiring that orders issued by a political subdivision which impose a curfew restricting travel or movement allow persons to travel during the curfew to and from their places of employment; providing



647152

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Diaz) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 201 and 202
insert:

(5) An order issued by a political subdivision pursuant to this section which imposes a curfew restricting the travel or movement of persons during designated times must nonetheless allow persons to travel during the curfew to their places of employment to report for work and to return to their residences after their work has concluded.



647152

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D I R E C T O R Y C L A U S E A M E N D M E N T
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And the directory clause is amended as follows:

Delete line 192

and insert:

Section 2. Subsections (4) and (5) are added to section
252.46,

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

And the title is amended as follows:

Delete line 15

and insert:

substantially similar to the expired order; requiring
that orders issued by a political subdivision which
impose a curfew restricting travel or movement allow
persons to travel during the curfew to and from their
places of employment; providing



682262

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Farmer) recommended the following:

Senate Amendment (with title amendment)

Delete lines 25 - 33
and insert:
political subdivision of the state. Notwithstanding any other law, an emergency order issued by a political subdivision must be narrowly tailored to serve a compelling public health or safety purpose and must contain specific findings supporting the existence of such a purpose. Any such emergency order must be limited in duration, applicability, and scope in order to reduce any infringement on individual liberty to the greatest extent



682262

possible.

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

And the title is amended as follows:

Delete lines 4 - 6

and insert:

specifying limitations on emergency orders issued by
political subdivisions; authorizing

By the Committee on Community Affairs; and Senator Diaz

578-02921-21

20211924c1

A bill to be entitled

An act relating to emergency management powers of political subdivisions; amending s. 252.38, F.S.; specifying that a political subdivision has the burden of proving the proper exercise of its police power in the issuance of certain emergency orders; authorizing the Governor or the Legislature to invalidate emergency measures issued by a political subdivision under specified conditions; amending s. 252.46, F.S.; providing for the automatic expiration of emergency orders issued by a political subdivision; authorizing the extension of such orders if certain conditions are met; prohibiting a political subdivision from issuing a subsequent order for the same emergency that is substantially similar to the expired order; providing an effective date.

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

Section 1. Section 252.38, Florida Statutes, is amended to read:

252.38 Emergency management powers of political subdivisions.—Safeguarding the life and property of its citizens is an innate responsibility of the governing body of each political subdivision of the state. However, political subdivisions are given police powers to preserve, not impair, private rights. Therefore, a political subdivision that deprives any person of a constitutional right, fundamental liberty, statutory right, or property to address a purported emergency

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

578-02921-21

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bears the burden of proving that the exercise of police power is narrowly tailored, serves a compelling governmental interest, and accomplishes the intended goal through the use of the least intrusive means.

(1) COUNTIES.—

(a) In order to provide effective and orderly governmental control and coordination of emergency operations in emergencies within the scope of ss. 252.31-252.90, each county within this state shall be within the jurisdiction of, and served by, the division. Except as otherwise provided in ss. 252.31-252.90, each local emergency management agency shall have jurisdiction over and serve an entire county. Unless part of an interjurisdictional emergency management agreement entered into pursuant to paragraph (3)(b) which is recognized by the Governor by executive order or rule, each county must establish and maintain such an emergency management agency and shall develop a county emergency management plan and program that is coordinated and consistent with the state comprehensive emergency management plan and program. Counties that are part of an interjurisdictional emergency management agreement entered into pursuant to paragraph (3)(b) which is recognized by the Governor by executive order or rule shall cooperatively develop an emergency management plan and program that is coordinated and consistent with the state comprehensive emergency management plan and program.

(b) Each county emergency management agency created and established pursuant to ss. 252.31-252.90 shall have a director. The director must meet the minimum training and education qualifications established in a job description approved by the

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

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county. The director shall be appointed by the board of county commissioners or the chief administrative officer of the county, as described in chapter 125 or the county charter, if applicable, to serve at the pleasure of the appointing authority, in conformance with applicable resolutions, ordinances, and laws. A county constitutional officer, or an employee of a county constitutional officer, may be appointed as director following prior notification to the division. Each board of county commissioners shall promptly inform the division of the appointment of the director and other personnel. Each director has direct responsibility for the organization, administration, and operation of the county emergency management agency. The director shall coordinate emergency management activities, services, and programs within the county and shall serve as liaison to the division and other local emergency management agencies and organizations.

(c) Each county emergency management agency shall perform emergency management functions within the territorial limits of the county within which it is organized and, in addition, shall conduct such activities outside its territorial limits as are required pursuant to ss. 252.31-252.90 and in accordance with state and county emergency management plans and mutual aid agreements. Counties shall serve as liaison for and coordinator of municipalities' requests for state and federal assistance during postdisaster emergency operations.

(d) During a declared state or local emergency and upon the request of the director of a local emergency management agency, the district school board or school boards in the affected area shall participate in emergency management by providing

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facilities and necessary personnel to staff such facilities. Each school board providing transportation assistance in an emergency evacuation shall coordinate the use of its vehicles and personnel with the local emergency management agency.

(e) County emergency management agencies may charge and collect fees for the review of emergency management plans on behalf of external agencies and institutions. Fees must be reasonable and may not exceed the cost of providing a review of emergency management plans in accordance with fee schedules established by the division.

(2) MUNICIPALITIES.—Legally constituted municipalities are authorized and encouraged to create municipal emergency management programs. Municipal emergency management programs shall coordinate their activities with those of the county emergency management agency. Municipalities without emergency management programs shall be served by their respective county agencies. If a municipality elects to establish an emergency management program, it must comply with all laws, rules, and requirements applicable to county emergency management agencies. Each municipal emergency management plan must be consistent with and subject to the applicable county emergency management plan. In addition, each municipality must coordinate requests for state or federal emergency response assistance with its county. This requirement does not apply to requests for reimbursement under federal public disaster assistance programs.

(3) EMERGENCY MANAGEMENT POWERS; POLITICAL SUBDIVISIONS.—

(a) In carrying out the provisions of ss. 252.31-252.90, each political subdivision shall have the power and authority:

1. To appropriate and expend funds; make contracts; obtain

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and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to the victims of any emergency; and direct and coordinate the development of emergency management plans and programs in accordance with the policies and plans set by the federal and state emergency management agencies.

2. To appoint, employ, remove, or provide, with or without compensation, coordinators, rescue teams, fire and police personnel, and other emergency management workers.

3. To establish, as necessary, a primary and one or more secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.

4. To assign and make available for duty the offices and agencies of the political subdivision, including the employees, property, or equipment thereof relating to firefighting, engineering, rescue, health, medical and related services, police, transportation, construction, and similar items or services for emergency operation purposes, as the primary emergency management forces of the political subdivision for employment within or outside the political limits of the subdivision.

5. To request state assistance or invoke emergency-related mutual-aid assistance by declaring a state of local emergency in the event of an emergency affecting only one political subdivision. The duration of each state of emergency declared locally is limited to 7 days; it may be extended, as necessary, in 7-day increments. Further, the political subdivision has the power and authority to waive the procedures and formalities

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otherwise required of the political subdivision by law pertaining to:

a. Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community.

b. Entering into contracts.

c. Incurring obligations.

d. Employment of permanent and temporary workers.

e. Utilization of volunteer workers.

f. Rental of equipment.

g. Acquisition and distribution, with or without compensation, of supplies, materials, and facilities.

h. Appropriation and expenditure of public funds.

(b) Upon the request of two or more adjoining counties, or if the Governor finds that two or more adjoining counties would be better served by an interjurisdictional arrangement than by maintaining separate emergency management agencies and services, the Governor may delineate by executive order or rule an interjurisdictional area adequate to plan for, prevent, mitigate, or respond to emergencies in such area and may direct steps to be taken as necessary, including the creation of an interjurisdictional relationship, a joint emergency plan, a provision for mutual aid, or an area organization for emergency planning and services. A finding of the Governor pursuant to this paragraph shall be based on one or more factors related to the difficulty of maintaining an efficient and effective emergency prevention, mitigation, preparedness, response, and recovery system on a unijurisdictional basis, such as:

1. Small or sparse population.

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175 2. Limitations on public financial resources severe enough
176 to make maintenance of a separate emergency management agency
177 and services unreasonably burdensome.

178 3. Unusual vulnerability to emergencies as evidenced by a
179 past history of emergencies, topographical features, drainage
180 characteristics, emergency potential, and presence of emergency-
181 prone facilities or operations.

182 4. The interrelated character of the counties in a
183 multicounty area.

184 5. Other relevant conditions or circumstances.

185 (4) INVALIDATION OF CERTAIN EMERGENCY MEASURES.—The
186 Governor, or the Legislature by concurrent resolution, may at
187 any time invalidate an order, an ordinance, a proclamation, a
188 rule, or any other measure issued by a political subdivision to
189 address a purported emergency if the Governor or the Legislature
190 determines that such order unnecessarily restricts a
191 constitutional right, fundamental liberty, or statutory right.

192 Section 2. Subsection (4) is added to section 252.46,
193 Florida Statutes, to read:

194 252.46 Orders and rules.—

195 (4) An order issued by a political subdivision shall
196 automatically expire 10 days after its issuance; however, such
197 an order may be extended before its expiration by a majority
198 vote of the governing body of the political subdivision if
199 deemed necessary. Upon the expiration of an order, a political
200 subdivision may not issue a substantially similar order to
201 respond to the same emergency.

202 Section 3. This act shall take effect July 1, 2021.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 2006

INTRODUCER: Rules Committee; Appropriations Committee; and Senator Burgess

SUBJECT: Emergency Management

DATE: April 7, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stallard	Caldwell	MS	Favorable
2. McAuliffe	Sadberry	AP	Fav/CS
3. Stallard	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 2006 amends the State Emergency Management Act to better address the threat posed by a pandemic or other public health emergency.

The bill:

- Specifies that the State Emergency Management Act applies to pandemics and other public health emergencies.
- Requires the Department of Health to create a state public health emergency management plan, and requires the Division of Emergency Management (division) to incorporate that plan into the comprehensive emergency management plan.
- Requires the division to acquire and maintain an inventory of state-owned personal protective equipment.
- Amends several of the division's statutory duties to specify that those duties pertain to public health emergencies. For example, the bill requires the division's biennial report to the Legislature and the Governor to include the state's capability to respond to a public health emergency.
- Requires a state contract with a provider of care for a person with special needs to include the contractor's procedure for providing essential services during a public health emergency.
- Requires the division's statewide emergency shelter plan to address sheltering Floridians during a pandemic that necessitates physical distancing.
- Requires medical examiners to certify deaths and to assist the State Health Officer in identifying and reporting deaths when requested.

- Provides additional oversight and transparency regarding exercises of the executive branch’s emergency powers, including:
 - Limiting emergency orders, proclamations, and rules to 60-day durations that can be renewed as long as the emergency conditions persist.
 - Requiring the Governor, if he or she closes schools or businesses, to state specific reasons why the schools or businesses need to close and reassess the closure regularly.
 - Requiring the Governor and state agencies to file emergency declarations or orders with the Division of Administrative Hearings.
 - Authorizing the Legislature to pass a concurrent resolution to terminate orders and directives issued under a state of emergency, instead of only the state of emergency itself.
 - Limiting suspension of regulatory statutes to 60-day durations that can be renewed for 60-day periods as long as the emergency conditions persist.
 - Requiring a state agency to submit to the Legislature a detailed spending plan, when possible, before accepting federal grants or private donations.
 - Requires the Auditor General to conduct financial and compliance audits of emergency state contracts and expenditures.

Regarding county or municipal measures that address a purported emergency, the bill:

- Requires the governmental entity imposing an ordinance or other measure that deprives a person of a right, a liberty, or property, to prove that the measure is “narrowly tailored” and serves a “compelling governmental interest” through the “least intrusive means”;
- Authorizes the Governor or Legislature to invalidate a city or county measure that “unnecessarily restricts a constitutional right, fundamental liberty, or statutory right”; and
- Provides that a city or county emergency order will automatically expire 10 days after its issuance unless extended by a majority vote of the political subdivision's governing body.

Related to expenditures for declared states of emergency, the bill:

- Requires funding for the resources to respond to a disaster to first come from funds specifically appropriated to state and local agencies for disaster relief or response.
- Authorizes the Governor to request the Legislative Budget Commission to approve a request to appropriate additional funds to the Emergency Preparedness and Response Fund.

These portions of the bill are effective upon the passage of SB 1982 or similar legislation being enacted to create the Emergency Preparedness and Response Fund.

The bill provides that all executive orders issued by the Governor before 60 days before the effective date of the bill expire as of the effective date of the bill. The orders can be renewed for 60-day periods. The bill also requires the Department of Business and Professional Regulation to make recommendations to the Legislature by September 30, 2021, related to issues that should be codified into law.

The bill is not expected to have a significant negative fiscal impact on state agencies.

The bill takes effect July 1, 2021.

II. Present Situation:

COVID-19

The COVID-19 pandemic has drastically affected the state of Florida since the outbreak began affecting the United States in early 2020. The toll on individuals, businesses, and the economy has been catastrophic. According to the Department of Health, over 2 million positive COVID-19 cases have been diagnosed in the state, over 84,000 residents have been hospitalized, and over 33,000 Florida residents have died of the virus.¹

Governor DeSantis issued Executive Order No. 20-52 on March 9, 2020, declaring a state of emergency and issuing guidelines to halt, mitigate, or reduce the spread of the outbreak. The order has been extended six times, most recently by Executive Order No. 21-45, issued on February 26, 2021.² Acting under the authority of the order declaring the state of emergency, in Fiscal Year 2020-2021, there have been over \$1 billion in budget amendments to respond to the COVID-19 crisis.³

State Emergency Management Act

The State Emergency Management Act, ch. 252, F.S., was enacted to be the legal framework for this state's emergency management activities, recognizing the state's vulnerability to a wide range of emergencies, including natural, manmade, and technological disasters.⁴ In order to reduce the state's vulnerability to these circumstances and to prepare to respond to them, the act promotes the state's emergency readiness through enhanced coordination, long-term planning, and adequate funding.⁵

The act creates the Division of Emergency Management (division) within the Executive Office of the Governor and grants the division with powers and duties necessary to mitigate the vulnerability of life, property, and economic prosperity due to natural and manmade disasters.⁶ The responsibilities of the division include:

- Carrying out the State Emergency Management Act;
- Maintaining a comprehensive statewide program of emergency management; and
- Coordinating with efforts of the federal government with other departments and agencies of state government, with county and municipal governments and school boards, and with private agencies that have a role in emergency management.⁷

¹ Florida Department of Health, Division of Disease Control and Health Protection, *Florida COVID-19 Dashboard*, available at <https://experience.arcgis.com/experience/96dd742462124fa0b38ddedb9b25e429> (last visited Mar. 27, 2021).

² A state of emergency declared under the State Emergency Management Act may not last for more than 60 days unless it is renewed by the Governor. Section 252.36(2), F.S.

³ See Office of Economic and Demographic Research, Revenue Estimating Conference, *General Revenue Fund Financial Outlook Statement*, (adopted December 21, 2020) available at http://edr.state.fl.us/Content/revenues/outlook-statements/general-revenue/201221_GRoutl.pdf (last visited Mar. 27, 2021).

⁴ Section 252.311(1), F.S.

⁵ Section 252.311(2), F.S.

⁶ Sections 252.32(1)(a) and 252.34(3), F.S.

⁷ Section 252.35(1) and (2), F.S.

The act also delineates the Governor's authority to declare a state of emergency, issue executive orders, and otherwise lead the state during emergencies. This authority is subject in some aspects to the Legislature's authority. For example, the Legislature may pass a concurrent resolution to end a state of emergency declared by the Governor.

The remainder of the Present Situation is set forth in the Effect of Proposed Changes section to provide immediate context for the changes made by the bill.

III. Effect of Proposed Changes:

State Emergency Management Act

Present Situation

While the State Emergency Management Act addresses appropriate response, recovery, and mitigation activities related to Florida's vulnerability to a wide range of emergencies, including natural, manmade, and technological disasters, the act itself does not specifically address public health emergencies, such as COVID-19. However, the Florida Supreme Court concluded in *Abramson v. Desantis* that the COVID-19 pandemic is a "natural emergency" within the meaning of the State Emergency Management Act.⁸

Effect of Proposed Changes

Several sections of the bill amend current law to reflect the intent for the state's emergency management plans to address Florida's vulnerability to public health emergencies and to emergencies of an extended nature.

Section 2 of the bill amends s. 252.311, F.S., to provide the act's legislative intent includes:

- Preparing for and efficiently responding to public health emergencies.
- Minimizing the negative effects of a pandemic or other extended state of emergencies. These negative effects include school and business closures, which can negatively impact families and the economy.
- Transparency of all aspects of emergency preparedness, response, and recovery.

Section 3 of the bill amends s. 252.34(8), F.S., to define "public health emergency" and personal protective equipment:

- "Public health emergency" means as any occurrence, or threat thereof, whether natural or manmade, which results or may result in substantial injury or harm to the public health from infectious disease, chemical agents, nuclear agents, biological toxins, or situations involving mass casualties or natural disasters, declared as a public health emergency by the State Health Officer.
- "Personal protective equipment" means protective clothing or equipment designed to protect an individual person from injury or the spread of infection.

⁸ *Abramson v. Desantis*, No. SC 20-646, 2020 WL 3464376 (Fla. June 25, 2020).

Public Health Emergencies

Present Situation

The State Health Officer⁹ is exclusively responsible for declaring a “public health emergency,” which includes natural or manmade occurrences that result or may result in substantial injury or harm to the public health from infectious disease, chemical agents, nuclear agents, biological toxins, or situations involving mass casualties or natural disasters.¹⁰ Before declaring a public health emergency, the State Health Officer must, to the extent possible, consult with the Governor and notify the Chief of Domestic Security.¹¹ A public health emergency may not continue longer than 60 days unless the Governor concurs in the renewal of the declaration.¹²

The declaration empowers the State Health Officer to take actions necessary to protect the public health, including, but not limited to:

- Directing manufacturers of prescription drugs or over-the-counter drugs to give priority shipping of specified drugs to certain pharmacies and hospitals;
- Directing pharmacies to compound bulk prescription drugs;
- Temporarily reactivating inactive licenses of certain healthcare professionals; and
- Ordering an individual to be examined, tested, vaccinated, treated, isolated, or quarantined.¹³

The Department of Health (DOH) has the duty and authority to declare, enforce, modify, and abolish the isolation and quarantine of persons, animals, and premises as circumstances indicate for controlling communicable diseases or providing protection from unsafe conditions that pose a threat to public health (except for specified diseases). Any order issued by DOH must be immediately enforceable by a law enforcement officer under s. 381.0012, F.S.¹⁴

Effect of Proposed Changes

Section 17 of the bill amends s. 381.00315, F.S., to require the DOH to prepare and maintain a state public health emergency management plan to serve as a comprehensive guide to public health emergency response in the state. The DOH must develop the plan in collaboration with the division, other executive agencies with functions relevant to public health emergencies, district medical examiners, and national and state public health experts.

The plan must:

- Integrate and coordinate with the public health emergency plans and programs of the federal government.
- Address each element of public health emergency planning and incorporate public health and epidemiology best practices to ensure the state is prepared for every foreseeable public health emergency.

⁹ The head of the Department of Health is the Surgeon General and the State Health Officer. Section 20.43(2), F.S.

¹⁰ Section 381.00315, F.S.

¹¹ The Chief of Domestic Security is the executive director of the Department of Law Enforcement or his or her designee. Section 943.0311(1), F.S.

¹² Section 381.00315(1)(c), F.S.

¹³ Section 381.00315(1)(c)1., F.S.

¹⁴ Section 381.00315(4), F.S.

- Include an assessment of state and local public health infrastructure, including information systems, physical plant, commodities and human resources.
- Include an analysis of the infrastructure necessary to achieve the level of readiness proposed by the plan for short- and long-term public health emergencies.

The public health emergency management plan must be incorporated into the state comprehensive emergency management plan. The initial plan must be submitted to the division by July 1, 2022. The DOH must review the plan and update it, as necessary, after the termination of each declared public health emergency or every five years, whichever is sooner.

State Comprehensive Emergency Management Plan

Present Situation

At the top of the division's statutory list of duties is the creation of a state comprehensive emergency management plan.¹⁵ The plan must be integrated into and coordinated with the plans and programs of the federal government. The plan is submitted to the Senate President, the Speaker of the House of Representatives, and the Governor by February 1 of every even-numbered year.¹⁶

The plan must:

- Address the need for coordinated and expeditious deployment of the National Guard and other state resources.
- Establish a system of communications and warnings for the public and emergency management agencies to be used during natural disasters and other emergencies.
- Establish guidelines and schedules for annual exercises that evaluate the ability of the state and its political subdivisions to respond to disasters and support local emergency management agencies.
- Assign lead and support responsibilities to state agencies and personnel.¹⁷

Additionally, the plan must include components for evacuation, sheltering, and post-disaster relief.¹⁸

Effect of Proposed Changes

Section 4 of the bill amends s. 252.35, F.S., requiring the division to include in the plan the public health emergency management plan developed by the DOH. Related to the requirement for a communications and warning system, the bill specifies that the system includes warning of developing public health emergency situations.

¹⁵ Section 252.35(2)(a), F.S.

¹⁶ Section 252.35(2), F.S.

¹⁷ *Id.*

¹⁸ *Id.*

Other Division Duties under the State Emergency Management Act

Present Situation

In addition to the creation of the state comprehensive emergency management plan, the division has numerous duties and responsibilities, including:

- Cooperating with the President, the heads of the Armed Forces, the various federal emergency management agencies, and the officers and agencies of other states in matters pertaining to emergency management;
- Instituting statewide public awareness programs, including an intensive public educational campaign on emergency preparedness issues;
- Delegating, as necessary and appropriate, authority provided in the State Emergency Management Act and providing for the subdelegation of this authority;
- Reporting to the President of the Senate, the Speaker of the House of Representatives, and the Governor, no later than February 1 of every odd-numbered year, the status of the emergency management capabilities of the state and its political subdivisions;
- Maintaining, in coordination with local emergency management agencies, a registry of persons with special needs located within the jurisdiction of the local agency; and
- Maintaining a list of public shelters and reporting a statewide emergency shelter plan biennially.¹⁹

Further, s. 242.359, F.S., requires the division to ensure that emergency supplies are available to meet the needs of residents during a declared emergency and to establish a statewide system to facilitate the distribution of essentials in commerce. The section defines essentials of commerce as “goods that are consumed or used as a direct result of a declared emergency, or that are consumed or used to preserve, protect, or sustain life, health, safety, or economic well-being.”

Effect of Proposed Changes

Section 4 of the bill amends s. 252.35, F.S., to also require the division to:

- Cooperate with federal or state health agencies in matters pertaining to emergency management;
- Include information on public health emergencies in its statewide public awareness and educational campaigns;
- Limit any delegation of authority during a public health emergency to no more than 60 days, which may be renewed as necessary; and
- Include the Chief Justice of the Florida Supreme Court when submitting the biennial report on the state’s emergency preparedness and include in the report the state’s emergency management capabilities related to public health emergencies, as determined in collaboration with the DOH.

Section 5 of the bill amends s. 252.355, F.S., to require the division to maintain information on options that provide for physical distancing during a public health emergency, as determined by the State Health Officer, for sheltering persons with special needs.

¹⁹ Sections 252.35(2)(b)-(y), 252.355, and 252.385(2), F.S.

Related to personal protective equipment, **section 4** requires the division to acquire and maintain a supply of personal protective equipment owned by the state for use by state agencies and to assist local governments and the private sector, when determined by the State Coordinating Officer,²⁰ to meet safety needs during a declared emergency. The division must regularly inventory the supply and project the need for additional equipment. To maintain the supply and replace expired items, subject to appropriation, the division must have a standardized schedule in place. The division must provide an annual inventory report by December 31 to the President of the Senate, Speaker of the House of Representatives, the Governor, and the Chief Justice of the Supreme Court. **Section 7** of the bill amends s. 252.359, F.S., to provide that “essentials of commerce” include personal protective equipment used during a public health emergency.

Section 13 of the bill amends s. 252.385, F.S., to require the emergency shelter plan to project the hurricane shelter needs of the state for each of the next five years, including needs for shelters to accommodate physical distancing during a concurrent public health crisis. The emergency shelter plan must include information on the general shelter needs of the state, in addition to current requirements to report on special needs shelters and the availability of shelters that accept pets.

Emergency Planning Provisions in State Contracts

Present Situation

State agencies that contract with providers for the care of persons with disabilities or limitations that make the persons dependent upon the care of others must include emergency and disaster planning provisions in the contracts.²¹ The provisions must include:

- The designation of an emergency coordinating officer.
- A procedure to contact, prior to or immediately following an emergency or disaster, all persons, on a priority basis, who need assistance and sheltering during evacuations because of physical, mental, or sensory disabilities and whose care is provided for under the contract.
- A procedure to help persons who would need assistance and sheltering during evacuations because of physical, mental, or sensory disabilities register with the local emergency management agency.
- A procedure to dispatch the emergency coordinating officer or other staff members to special needs shelters to assist clients with special needs, if necessary.
- A procedure for providing the essential services the organization currently provides to special needs clients in preparation for, during, and following a disaster.²²

²⁰ Pursuant to 44 CFR 206.41 (1990) and s. 252.36(1)(a), F.S., the Governor serves as the head of the state emergency response team and is responsible for appointing the State Coordinating Officer to oversee emergency response activities. Generally, this is the director of the division. For example, see Office of the Governor, Executive Order No. 20-52 (Emergency Management - COVID-19 Public Health Emergency) (March 9, 2020), available at https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-52.pdf (last visited April 5, 2021).

²¹ Section 252.356, F.S.

²² *Id.*

Effect of Proposed Changes

Section 6 of the bill amends s. 252.356, F.S., to provide that state agencies contracting with providers that care for persons with disabilities must ensure those contracts provide for essential services during a public health emergency.

Emergency Powers of the Governor

Present Situation

The Governor is responsible for meeting the dangers presented to this state and its people by emergencies.²³ In the event of an emergency or threat of one, the Governor may declare a state of emergency by executive order or proclamation. The order or proclamation must be filed with the Department of State and in the commission offices of the affected counties.

The state of emergency continues until the Governor finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist, but the order may not continue for longer than 60 days. The Governor may extend the order as necessary. However, the Legislature may end a state of emergency by passing a concurrent resolution.²⁴

Section 252.36(1), F.S., provides that the Governor “is responsible for meeting the dangers presented to this state and its people by emergencies.” Accordingly, in the event of an emergency that is beyond local control, the Governor is authorized to assume “direct operational control” over all or any part of the emergency management functions.²⁵ Moreover, he or she may issue executive orders, proclamations, and rules, all of which have the force and effect of law.

Through this emergency power, the Governor can suspend the provisions of any regulatory statute if compliance would prevent, hinder, or delay necessary action to deal with the emergency. Further, as designated by the Governor or in emergency management plans, state agencies, local governments, and others can make, amend, and rescind orders and rules as necessary for emergency management purposes. However, these orders and rules cannot conflict with orders of the Governor, the division, or other state agencies delegated emergency powers by the Governor. These orders or rules must be filed in the relevant agency or political subdivision office of the clerk or recorder, as applicable.²⁶ Currently, emergency orders by state agencies are published in the Florida Administrative Register, under the notice type of “miscellaneous.”

Financing

When a state of emergency is declared by the Governor, predetermined emergency management plans become effective. One piece of the emergency plans is to provide resources necessary to protect and mitigate the effects of a disaster, including the use or distribution of supplies, equipment, and materials.²⁷

²³ Section 252.36(1)(a), F.S.

²⁴ Section 252.36(2), F.S.

²⁵ *Id.*

²⁶ Sections 252.36(5)(a) and 252.46, F.S.

²⁷ Section 252.36(3), F.S.

Funding for the resources generally come from funds regularly appropriated to state and local agencies.²⁸ The policy of the state is that funds to meet emergencies must always be available.²⁹

If these funds are insufficient, the governor may make funds available by transferring and expending moneys appropriated for other purposes, or by transferring and expending moneys out of any unappropriated surplus funds, or from the Budget Stabilization Fund.³⁰

Following the expiration or termination of the state of emergency, the Governor may transfer moneys with a budget amendment, subject to approval by the Legislative Budget Commission, to satisfy the budget authority granted for such emergency.³¹

The Governor's authority to apply for, administer, and expend any grants, gifts, or payments in aid of emergency prevention, mitigation, preparedness, response, or recovery is not limited by these financing provisions.³² The state, affected local governments, and other eligible entities are allowed to receive grants from the federal government, as well as gifts, donations, or other forms of financial assistance from individuals or corporations.³³ For example, these entities may apply to the Federal Emergency Management Agency for grants for reimbursement or additional funds through the division.

Effect of Proposed Changes

Section 8 of the bill amends s. 252.36, F.S., increasing the transparency and legislative oversight of the executive branch's emergency powers. The bill requires emergency orders or proclamations to be filed with the President of the Senate and Speaker of the House of Representative.

The bill limits any emergency order, proclamation, or rule of the Governor to a duration of no more than 60 days. The order, proclamation, or rule can be renewed as necessary if emergency conditions persist, but each order must specify the provisions that are being renewed. This is consistent with current the 60-day limit for the duration of a declared state of emergency.

The bill also requires that all emergency declarations and orders issued by the Governor or any agency before, during, or after the declared emergency be filed with the Division of Administrative Hearings within 5 days after issuance. Failure to meet the deadline voids the declaration. The Division of Administrative Hearings is required to index the declarations and orders, make them available in a searchable format within 3 days of filing, and clearly identify the orders that are in effect at any given time. The division must have a conspicuous link to the Division of Administrative Hearing's website. This provision of the bill applies retroactively to all executive emergency declarations and orders in effect on July 1, 2021.

²⁸ Section 252.37(2), F.S.

²⁹ Section 252.37(1), F.S.

³⁰ *Id.*

³¹ Section 252.37(2), F.S. Provisions related to budget amendments are in ch. 216, F.S.

³² Section 252.37(3), F.S.

³³ Section 252.37(4), F.S.

Related to the Legislature's power to terminate a state of emergency by concurrent resolution, the bill clarifies that the power includes any specific order issued under the state of emergency.

The bill provides a presumption that K-12 public schools and businesses should remain open during an extended public health emergency, as long as public health and safety can be maintained by specific public health mitigation strategies recommended by federal or state health agencies. If the Governor orders schools or businesses to close or operate in a restricted manner he or she must state specific reasons for the action and reassess the situation regularly.

Currently, the Governor can transfer the direction, personnel, or functions of state agencies for the purpose of performing or facilitating emergency services. The bill requires the Governor to report monthly to the presiding officers of the Legislature whenever he or she exercises these powers. The monthly reports are required to be cumulative.

Section 9 of the bill creates s. 252.3611, F.S., to require each order, proclamation, or rule issued by the Governor, the division, or any agency to specify the statute or rule being amended or waived and the expiration date of the action.

The bill creates reporting requirements related to contracts executed for response to the emergency and related expenditures. For contracts executed during the first 90 days of an emergency the Governor or appropriate agency must submit contracts to the Legislature within 120 days of the declared emergency. When the duration of an emergency exceeds 90 days:

- The Governor or appropriate agency must submit all contracts expending emergency related funds to the Legislature within 72 hours of executing the contract; and
- The Governor or appropriate agency must submit monthly reports to the Legislature of all expenditures, revenues received, and funds transferred during the previous month to support the emergency response.

When the duration of an emergency exceeds one year the Auditor General must conduct a financial audit of all associated expenditures and a compliance audit of all contracts entered into during the emergency. The audit must be updated annually until the emergency has ended. Following the expiration or termination of a state emergency, the Auditor General must conduct a financial audit of all associated expenditures and a compliance audit of all contracts during the entire emergency.

Related to orders or rules that a political subdivision must file with the office of the clerk or recorder, as applicable, **section 15** of the bill amends s. 252.46, F.S., to provide that failure to file the order or rule within 3 days of its issuance voids the order or rule. The bill also requires the political subdivisions must make such orders available on a dedicated webpage, which the division must also include on its website. The political subdivision's website must clearly identify the orders that are in effect at any given time.

Section 19 of the bill provides that all executive orders issued by the Governor before May 1, 2021, expire on July 1, 2021. The executive orders may be reissued for 60-day periods if the emergency conditions persist. The reissuance of order must specify the provisions that are being reissued.

Financing

Section 11 of the bill amends s. 252.37, F.S., to require funding for the resources to respond to a disaster to first come from funds specifically appropriated to state and local agencies for disaster relief or response. If these funds are insufficient, the governor may make funds available by transferring and expending moneys appropriated to the Emergency Preparedness and Response Fund. Under the bill, the Governor is not authorized to transfer or expend funds appropriated for other purposes, out of any unappropriated surplus funds, or from the Budget Stabilization Fund. The Governor is authorized to request the Legislative Budget Commission to approve a request to appropriate additional funds to the Emergency Preparedness and Response Fund. **Section 1** of the bill amends s. 11.90, F.S., to authorize the Legislative Budget Commission to convene to transfer surplus funds to the Emergency Preparedness and Response Fund. These portions of the bill are effective upon the passage of SB 1982 or similar legislation being enacted to create the Emergency Preparedness and Response Fund.

The bill does not amend current law allowing the Governor to transfer funds with Legislative Budget Commission approval following the expiration or termination of the state of emergency. The transfers and expenditures must be directly related to the disaster or emergency. This portion of the bill is also effective upon the passage of SB 1982 or similar legislation being enacted to create the Emergency Preparedness and Response Fund.

The bill repeals authority for the Governor to administer or expend grants, gifts, or payments in aid of emergency prevention, mitigation, preparedness, response, or recovery. The Governor may apply for such funds, and then pursuant to law would have to submit budget amendments pursuant to s. 216.177, F.S., for authority to administer and expend the funds.

Under the bill, if a state agency, county, or municipality wishes to accept federal grants or private donations, it must submit a detailed spending plan for the money to the presiding officers of the Legislature and the chairs of the legislative appropriation committees. When this pre-submission of the agency's plan is not possible, a state agency or political subdivision must nonetheless submit the plan no later than 30 days after the initiation of any expenditures and for each additional 30 days of the emergency as funds continue to be disbursed.

Emergency Coordination Officers

Present Situation

The head of each of the following state agencies must select a point-person for emergency management issues – called an emergency management officer – and an alternate from within the agency:

- Each executive department.³⁴
- Each water management district.
- The Public Service Commission.
- The Fish and Wildlife Conservation Commission.

³⁴ Examples include the Department of Corrections, Department of Health, and Department of Management Services. See s. 20.03(2), F.S.

- The Department of Military Affairs.³⁵

Each emergency coordination officer must coordinate with the division on emergency preparedness issues, maintain a list of personnel to assist during disasters, and coordinate appropriate training for agency personnel.³⁶

Additionally, an agency's emergency coordination officer must ensure that each state agency and facility, such as a prison or office building, has a disaster preparedness plan. The plan must be coordinated with the applicable local emergency management agency and approved by the division. The plan is a comprehensive set of procedures that will ensure continuity of essential state functions under all circumstances. It must identify a baseline of preparedness for a full range of potential emergencies so that the agency can perform essential functions during any emergency or other situation that disrupts normal operations.³⁷

The plan is required to include minimum elements, such as identification of essential programs and personnel, procedures to notify personnel, delegations of authority, and identification of alternative facilities and related infrastructure.³⁸ The Division of Emergency Management is required to set guidelines for developing and implementing the plans.

Effect of Proposed Changes

Section 10 of the bill amends s. 252.365, F.S., specifying that the agency disaster preparedness plan's procedures for continuity of services must include the situation of action under a pandemic or other public health emergency. The bill requires the identified baseline of preparedness to consider and include preparedness for "rapid and large-scale increases in the public's need to access government services through technology or other means during an emergency."

The section further provides the plan must include elements regarding the availability of and distribution plans for personal protective equipment. Finally, the plan must be updated December 31 each year to include provisions related to pandemics and other public health emergencies consistent with the public health emergency management plan. Additionally, agencies must update their plans to be consistent with the public health emergency management plan.

Emergency Mitigation

Present Situation

Section 252.44, F.S., requires the Governor to consider steps that can be taken to mitigate the harmful consequences from emergencies. The Governor is authorized to direct state agencies with various responsibilities, such as water management, fire prevention, public works, and construction standards to study mitigation opportunities. The Governor may make

³⁵ Section 252.365(1), F.S.

³⁶ Section 252.365(2), F.S.

³⁷ Section 252.365(3), F.S.

³⁸ Section 252.365(3)(b), F.S.

recommendations to the Legislature, local governments, and other public and private entities on strategies to mitigate the harmful consequences of disasters.

Effect of Proposed Changes

Section 14 of the bill amends s. 252.44, F.S., to also authorize the Governor to direct state agencies charged with protecting and maintaining public health to study mitigation opportunities.

Medical Examiners

Present Situation

Florida medical examiners are local district officers appointed by the Governor to one of 25 medical examiner districts under ch. 406, F.S.³⁹ Medical examiners are governed by the Medical Examiners Commission, which is administratively housed within the Florida Department of Law Enforcement.

Current law requires district medical examiners to determine the cause of death in certain circumstances and to make any investigations, examinations, and autopsies necessary to make that determination. This includes determining the cause of death for a person who dies “by disease constituting a threat to public health.”⁴⁰

For much of 2020, Florida medical examiners determined the cause and certified the deaths of thousands of people who died of COVID-19, because COVID-19 is a disease constituting a threat to public health. However, in August 2020, the commission determined that district medical examiners were not obligated to certify COVID-19 death cases and authorized individual medical examiners to determine whether they would do so unless directly requested by the DOH.⁴¹ This decision was based on the overwhelming workload associated with the pandemic,⁴² difficulty obtaining timely and useful records from hospitals,⁴³ and insufficient emergency supports for a statewide long-term effort.⁴⁴ Some medical examiners chose not to certify deaths for COVID-19 cases after August, while others continued the practice.

Effect of Proposed Changes

Section 17 of the bill amends s. 381.00315, F.S., to require that upon a declaration of a public health emergency, the State Health Officer must establish, by order, the method and procedure for identifying and reporting cases of and deaths involving the infectious disease or occurrence identified as the basis for the declared public health emergency. The method and procedure must be consistent with the standards developed by the federal government, if any, or, if no federal standards exist, consistent with public health best practices. During the emergency, the DOH is responsible for the collection and official reporting and publication of cases and deaths. The bill

³⁹ Section 406.06, F.S.

⁴⁰ Section 406.11, F.S.

⁴¹ Medical Examiners Commission, MEC Meeting Minutes, Aug. 14, 2020, at 13, available at <https://www.fdle.state.fl.us/MEC/Meeting-Minutes/Documents/August-2020-MEC-Meeting-Minutes-Nelson-Approved.aspx> (last viewed March 31, 2021).

⁴² *Id.* at 9-11, 13.

⁴³ *Id.* at 9.

⁴⁴ *Id.* at 7-9.

also provides that the State Health Officer may, by emergency rule, ensure the necessary assistance of licensed health care providers and may request the district medical examiners to assist in performing this function.

Section 18 of the bill amends s. 406.11, F.S., to clarify that medical examiners are obligated to determine the cause of death and *certify the death* under certain circumstances and to require a medical examiner to assist the State Health Officer in identifying and reporting deaths when requested.

Emergency Measures of Cities, Counties, or other Political Subdivisions

Present Situation

The Florida Statutes do not expressly provide the Governor or Legislature with the authority to invalidate an ordinance or other measure of a political subdivision which unnecessarily restricts a constitutional right, fundamental liberty, or statutory right. However, current law does provide that any emergency order or rule of a political subdivision is invalid if it is inconsistent with any order or rule of an executive agency, provided the Governor or the Division of Emergency Management has delegated emergency authority to the agency.⁴⁵

Moreover, under case law interpreting the United States Constitution, governmental action—such as an emergency order or a rule—that infringes a “fundamental” constitutional right or liberty is subject to “strict scrutiny,” the most demanding level of judicial scrutiny.⁴⁶ If an order or rule fails to survive strict scrutiny, it is unconstitutional, and thus invalid.⁴⁷

Effect of Proposed Changes

Section 12 of the bill amends s. 252.38, F.S., to:

- Require the governmental entity imposing an ordinance or other measure that deprives a person of a right, a liberty, or property, to prove that the measure is “narrowly tailored” and serves a “compelling governmental interest” through the “least intrusive means”;
- Authorize the Governor or Legislature to invalidate a city or county measure that “unnecessarily restricts a constitutional right, fundamental liberty, or statutory right”; and
- Provide that a city or county emergency order will automatically expire 10 days after its issuance unless extended by a majority vote of the political subdivision's governing body.

Miscellaneous

Section 20 of the bill requires the Department of Business and Professional Regulation to review all executive orders issued during the COVID-19 pandemic and make written recommendations to the Legislature by September 30, 2021 regarding any issues that should be codified in law.

Section 16 amends s. 377.703, F.S., to conform to changes made by the bill.

The bill takes effect July 1, 2021, except as otherwise expressly provided.

⁴⁵ Section 252.46(1), F.S.

⁴⁶ See *Zablocki v. Redhail*, 434 US 374, 383 (1978).

⁴⁷ See generally, *Id.*

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

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Art. VII, s. 18 of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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:

The bill could have a positive fiscal impact in the context of a public health emergency as the bill creates a presumption that businesses and schools should remain open.

C. Government Sector Impact:

It appears that many of the new duties or requirements created by the bill are similar to activities already in practice as the state responds to the current COVID-related emergency.

The Division of Emergency Management has not provided a fiscal impact statement for this bill. The bill changes the duties of the division, but does not impose significant costs. The division must coordinate with the Department of Health, the Agency for Health Care Administration, and other agencies in the development of additional provisions in the state comprehensive emergency management plan related to public health emergencies. The division is also required to maintain an inventory and report on state-owned personal protective equipment; the requirement to maintain a supply of equipment is subject to appropriation.

The bill requires the Department of Health to create a state public health emergency management plan to serve as the comprehensive guide to public health response in the state. The impact is not expected to be significant.

Division of Administrative Hearings currently records filed emergency orders and rules; the provisions of the bill are not expected to have a significant fiscal impact on the division.⁴⁸

The bill allows the Governor to expend funds to respond to a declared state of emergency from the Emergency Preparedness Response Fund and to request the Legislative Budget Commission to allow for increased appropriations into the fund.

VI. Technical Deficiencies:

The bill authorizes the Governor or the Legislature to invalidate an emergency measure, such as an ordinance, if it “unnecessarily” restricts a constitutional right, fundamental liberty, or statutory right. The Legislature may wish to explain more clearly what unnecessarily restricting a right or liberty means. Under the bill, one might wonder, for instance: If an ordinance would reduce COVID-19 infections by 10 percent but would deprive residents of their constitutional right to freely exercise their religion, would this *unnecessarily* restrict this right? What if the ordinance would reduce the spread of COVID-19 by 50 percent?

This provision of the bill also raises the question of how the Legislature or the Governor would make the determination that a local emergency measure unnecessarily restricts a right.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 11.90, 252.311, 252.34, 252.35, 252.355, 252.356, 252.359, 252.36, 252.365, 252.37, 252.38, 252.385, 252.44, 252.46, 377.703, 381.00315, and 406.11.

The bill creates section 252.3611 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Rules on April 6, 2021:

The committee substitute:

⁴⁸ Division of Administrative Hearings, *Senate Agency Bill Analysis Request – SB 2006*, Mar. 9, 2021, stating that the “bill would have neither policy implications nor fiscal impacts” on the division.

- Allows the use of personal protective equipment held by the division to be used to assist local governments and the private sector, *when determined to be necessary by the State Coordinating Officer*;
- Removes the 7-day notice requirement for the Governor to expend funds from the Emergency Preparedness and Response Fund;
- Removes the requirement for each county or municipality to submit to the Legislature a detailed spending plan for money or other items received through a grant, donation, or other means prior to expending the funds for emergency preparedness or response;
- Requires the division to submit quarterly reports to the Legislature of public assistance requests; and
- Addresses the problem of county or city ordinances or other measures that may violate people's rights by:
 - Requiring the governmental entity imposing a measure that deprives people of their rights, liberties, or property to prove that the measure is "narrowly tailored" and serves a "compelling governmental interest" through the "least intrusive means";
 - Authorizing the Governor or Legislature to invalidate a city or county measure that "unnecessarily restricts a constitutional right, fundamental liberty, or statutory right"; and
 - Providing that a city or county emergency order will automatically expire 10 days after its issuance unless extended by a majority vote of the political subdivision's governing body.

CS by Appropriations on April 1, 2021:

The committee substitute:

- Authorizes the Legislative Budget Commission to transfer unappropriated surplus funds to the Emergency Preparedness Response Trust Fund;
- Requires the Governor to use the Emergency Preparedness Response Fund when preparing for or responding to a state of emergency;
- Creates definitions for "personal protective equipment" and "public health emergency;"
- Requires the Governor to report on certain financial and contractual information for emergency orders that last more than 90 days and for the Auditor General to audit expenditures for emergency orders that last greater than 1 year and also after the emergency expires;
- Adds a requirement for the Department of Health to develop a public health emergency plan and makes related changes to incorporate the plan in the state comprehensive emergency management plan;
- Allows for delegation of authority by the division and for executive orders for declared states of emergency for 60-day periods, instead of 30-day periods as allowed in the bill;
- Specifies that when assessing the situation for schools and businesses to remain open during a public health emergency, any specific state or federal recommended public health mitigation strategies should be considered;
- Requires the division to have a link to the Division of Administrative Hearings website where emergency orders are indexed, as required by the bill;

- Requires state agencies to submit any emergency orders to Division of Administrative Hearings within 5 days of issuance;
- Requires local emergency orders to be posted online within 3 days of issuance;
- Provides that failure by the political subdivision to file an emergency order or rule with the office of the clerk or recorder voids that order or rule;
- Requires the division to include in the emergency shelter plan an estimate of the hurricane shelter needs of the state for the next 5 years;
- Provides that the division's inventory of PPE, including the replacement of expired items, is subject to appropriation;
- Removes provisions that limit suspension of regulatory statutes to 30-day periods and for reporting on the use of state agency personnel or functions for emergency purposes; and
- Requires the Department of Business and Professional Regulation to review all executive orders it issued during the declared emergency for COVID and make recommendations by September 30, 2021, to the Legislature regarding issues that should be codified into law.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/07/2021	.	
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The Committee on Rules (Burgess) recommended the following:

Senate Amendment

Delete line 426
and insert:
assist local government and the private sector, when determined
to be necessary by the State Coordinating Officer, in meeting
safety



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/07/2021	.	
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The Committee on Rules (Brandes) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 670 and 671
insert:

(p) Notwithstanding any other law to the contrary,
beginning January 1, 2023, with approval of two members of the
Cabinet, restrict in-person K-12 public school attendance or
close K-12 public schools if deemed necessary to cope with the
emergency.

(q) Notwithstanding any other law to the contrary,
beginning January 1, 2023, with approval of two members of the



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Cabinet, restrict the operations of or close any business if
deemed necessary to cope with the emergency.

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

And the directory clause is amended as follows:

Delete line 568

and insert:

that section and paragraphs (p) and (q) are added to present
subsection (5) of that section, and subsections (1) and (2) and
paragraph (c) of

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

And the title is amended as follows:

Delete line 70

and insert:

during a state of emergency; requiring two members of
the Cabinet to approve the Governor's restriction of
or closing of K-12 public schools or businesses
beginning on a specified date; creating s. 252.3611,



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/07/2021	.	
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The Committee on Rules (Burgess) recommended the following:

Senate Amendment (with title amendment)

Delete lines 681 - 787
and insert:
declared state of emergency, the Executive Office of the
Governor or the appropriate agency shall submit a copy of such
contract to the Legislature. For contracts executed during the
first 90 days of the emergency, the Executive Office of the
Governor or the appropriate agency shall submit a copy to the
Legislature within the first 120 days of the declared emergency.



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(b) The Executive Office of the Governor or the appropriate agency shall submit monthly reports to the Legislature of all state expenditures, revenues received, and funds transferred by an agency during the previous month to support the declared state of emergency.

(3) Once an emergency exceeds 1 year, the Auditor General shall conduct a financial audit of all associated expenditures and a compliance audit of all associated contracts entered into during the declared emergency. The Auditor General must update the audit annually until the emergency is declared to be ended.

(4) Following the expiration or termination of a state of emergency, the Auditor General shall conduct a financial audit of all associated expenditures and a compliance audit of all associated contracts entered into during the state of emergency.

Section 10. Subsection (3) of section 252.365, Florida Statutes, is amended to read:

252.365 Emergency coordination officers; disaster-preparedness plans.—

(3) Emergency coordination officers shall ensure ~~These individuals shall be responsible for ensuring~~ that each state agency and facility, such as a prison, office building, or university, has a disaster preparedness plan that is coordinated with the applicable local emergency-management agency and approved by the division.

(a) The disaster-preparedness plan must outline a comprehensive and effective program to ensure continuity of essential state functions under all circumstances, including, but not limited to, a pandemic or other public health emergency. The plan must identify a baseline of preparedness for a full



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range of potential emergencies to establish a viable capability to perform essential functions during any emergency or other situation that disrupts normal operations. This baseline must consider and include preparedness for rapid and large-scale increases in the public's need to access government services through technology or other means during an emergency, including, but not limited to, a public health emergency.

(b) The plan must include, at a minimum, the following elements: identification of essential functions, programs, and personnel; procedures to implement the plan and personnel notification and accountability; delegations of authority and lines of succession; identification of alternative facilities and related infrastructure, including those for communications; identification and protection of vital records and databases; provisions regarding the availability of, and distribution plans for, personal protective equipment; and schedules and procedures for periodic tests, training, and exercises.

(c) The division shall develop and distribute guidelines for developing and implementing the plan. By December 31, 2022, each agency must update its plan to include provisions related to preparation for pandemics and other public health emergencies consistent with the plan developed pursuant to s. 381.00315. Each agency plan must be updated as needed to remain consistent with the state public health emergency management plan.

Section 11. Subsection (3) of section 252.37, Florida Statutes, is amended, subsection (7) is added to that section, and subsection (2) of that section is amended contingent upon SB 1892 or similar legislation creating the Emergency Preparedness and Response Fund taking effect, to read:



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252.37 Financing.—

(2)(a) It is the legislative intent that the first recourse be made to funds specifically ~~regularly~~ appropriated to state and local agencies for disaster relief or response.

(b) If the Governor finds that the demands placed upon these funds in coping with a particular disaster declared by the Governor as a state of emergency are unreasonably great, she or he may make funds available by transferring and expending moneys ~~appropriated for other purposes, by transferring and expending moneys out of any unappropriated surplus funds, or from the~~ Emergency Preparedness and Response ~~Budget Stabilization~~ Fund. The Governor may request additional funds to be appropriated to the Emergency Preparedness and Response Fund by a budget amendment, subject to approval of the Legislative Budget Commission.

(c) Following the expiration or termination of the state of emergency, the Governor may transfer moneys with a budget amendment, subject to approval by the Legislative Budget Commission, to satisfy the budget authority granted for such emergency. The transfers and expenditures supporting the amendment must be directly related to the declared disaster or emergency.

(3) Nothing contained in this section shall be construed to limit the authority of the Governor to apply for, ~~administer,~~ ~~and expend~~ any grants, gifts, or payments in aid of emergency prevention, mitigation, preparedness, response, or recovery.

(7) A state agency must submit a detailed spending plan for any grants, gifts, loans, funds, payments, services, equipment, supplies, or materials received under this section in aid of or



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for the purpose of emergency prevention, response, recovery,
mitigation, and preparedness to the President of the Senate, the
Speaker of the House of Representatives, and the chairs of the
legislative appropriations committees. The information must be
submitted as soon as practicable, but not later than 30 days
after initiation of any expenditures and continuing every 30
days for the duration of the emergency and thereafter while
funds continue to be disbursed in response to the emergency.

(8) The division must submit quarterly reports to the
President of the Senate, the Speaker of the House of
Representatives, and the chairs of the legislative
appropriations committees detailing the status of public
assistance requests submitted under the federal Public
Assistance Program. The report must include information for each
agency and local government, including information on requests
by event and the status of reimbursement

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

And the title is amended as follows:

Delete lines 74 - 99

and insert:

specified entities to submit specified contracts to
the Legislature; directing specified entities to
submit reports to the Legislature; directing the
Auditor General to conduct specified financial audits;
amending s. 252.365, F.S.; requiring that disaster
preparedness plans of specified agencies address
pandemics and public health emergencies and include
certain increases in public access of government



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services and availability and distribution of personal protective equipment during an emergency; directing agencies to update disaster preparedness plans by a specified date; amending s. 252.37, F.S.; revising legislative intent; authorizing the Governor to transfer and expend moneys in the Emergency Preparedness and Response Fund; authorizing the Governor to request additional funds from the Emergency Preparedness and Response Fund, subject to approval by the Legislative Budget Commission; providing construction; requiring state agencies to submit to the Legislature a spending plan for certain emergency funds; requiring the Division of Emergency Management to submit to the Legislature a report detailing public assistance requests; amending s. 252.385, F.S.; requiring



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/07/2021	.	
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The Committee on Rules (Diaz) recommended the following:

Senate Amendment (with title amendment)

Delete lines 788 - 890

and insert:

Section 12. Section 252.38, Florida Statutes, is amended to read:

252.38 Emergency management powers of political subdivisions.—Safeguarding the life and property of its citizens is an innate responsibility of the governing body of each political subdivision of the state. However, political subdivisions are given police powers to preserve, not impair,



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private rights. Therefore, a political subdivision that deprives any person of a constitutional right, a fundamental liberty, a statutory right, or property to address a purported emergency bears the burden of proving that the exercise of police power is narrowly tailored, serves a compelling governmental interest, and accomplishes the intended goal through the use of the least intrusive means.

(1) COUNTIES.—

(a) In order to provide effective and orderly governmental control and coordination of emergency operations in emergencies within the scope of ss. 252.31-252.90, each county within this state shall be within the jurisdiction of, and served by, the division. Except as otherwise provided in ss. 252.31-252.90, each local emergency management agency shall have jurisdiction over and serve an entire county. Unless part of an interjurisdictional emergency management agreement entered into pursuant to paragraph (3) (b) which is recognized by the Governor by executive order or rule, each county must establish and maintain such an emergency management agency and shall develop a county emergency management plan and program that is coordinated and consistent with the state comprehensive emergency management plan and program. Counties that are part of an interjurisdictional emergency management agreement entered into pursuant to paragraph (3) (b) which is recognized by the Governor by executive order or rule shall cooperatively develop an emergency management plan and program that is coordinated and consistent with the state comprehensive emergency management plan and program.

(b) Each county emergency management agency created and



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41 established pursuant to ss. 252.31-252.90 shall have a director.
42 The director must meet the minimum training and education
43 qualifications established in a job description approved by the
44 county. The director shall be appointed by the board of county
45 commissioners or the chief administrative officer of the county,
46 as described in chapter 125 or the county charter, if
47 applicable, to serve at the pleasure of the appointing
48 authority, in conformance with applicable resolutions,
49 ordinances, and laws. A county constitutional officer, or an
50 employee of a county constitutional officer, may be appointed as
51 director following prior notification to the division. Each
52 board of county commissioners shall promptly inform the division
53 of the appointment of the director and other personnel. Each
54 director has direct responsibility for the organization,
55 administration, and operation of the county emergency management
56 agency. The director shall coordinate emergency management
57 activities, services, and programs within the county and shall
58 serve as liaison to the division and other local emergency
59 management agencies and organizations.

60 (c) Each county emergency management agency shall perform
61 emergency management functions within the territorial limits of
62 the county within which it is organized and, in addition, shall
63 conduct such activities outside its territorial limits as are
64 required pursuant to ss. 252.31-252.90 and in accordance with
65 state and county emergency management plans and mutual aid
66 agreements. Counties shall serve as liaison for and coordinator
67 of municipalities' requests for state and federal assistance
68 during postdisaster emergency operations.

69 (d) During a declared state or local emergency and upon the



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request of the director of a local emergency management agency, the district school board or school boards in the affected area shall participate in emergency management by providing facilities and necessary personnel to staff such facilities. Each school board providing transportation assistance in an emergency evacuation shall coordinate the use of its vehicles and personnel with the local emergency management agency.

(e) County emergency management agencies may charge and collect fees for the review of emergency management plans on behalf of external agencies and institutions. Fees must be reasonable and may not exceed the cost of providing a review of emergency management plans in accordance with fee schedules established by the division.

(2) MUNICIPALITIES.—Legally constituted municipalities are authorized and encouraged to create municipal emergency management programs. Municipal emergency management programs shall coordinate their activities with those of the county emergency management agency. Municipalities without emergency management programs shall be served by their respective county agencies. If a municipality elects to establish an emergency management program, it must comply with all laws, rules, and requirements applicable to county emergency management agencies. Each municipal emergency management plan must be consistent with and subject to the applicable county emergency management plan. In addition, each municipality must coordinate requests for state or federal emergency response assistance with its county. This requirement does not apply to requests for reimbursement under federal public disaster assistance programs.

(3) EMERGENCY MANAGEMENT POWERS; POLITICAL SUBDIVISIONS.—



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(a) In carrying out the provisions of ss. 252.31-252.90, each political subdivision shall have the power and authority:

1. To appropriate and expend funds; make contracts; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to the victims of any emergency; and direct and coordinate the development of emergency management plans and programs in accordance with the policies and plans set by the federal and state emergency management agencies.

2. To appoint, employ, remove, or provide, with or without compensation, coordinators, rescue teams, fire and police personnel, and other emergency management workers.

3. To establish, as necessary, a primary and one or more secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.

4. To assign and make available for duty the offices and agencies of the political subdivision, including the employees, property, or equipment thereof relating to firefighting, engineering, rescue, health, medical and related services, police, transportation, construction, and similar items or services for emergency operation purposes, as the primary emergency management forces of the political subdivision for employment within or outside the political limits of the subdivision.

5. To request state assistance or invoke emergency-related mutual-aid assistance by declaring a state of local emergency in the event of an emergency affecting only one political subdivision. The duration of each state of emergency declared



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locally is limited to 7 days; it may be extended, as necessary, in 7-day increments. Further, the political subdivision has the power and authority to waive the procedures and formalities otherwise required of the political subdivision by law pertaining to:

a. Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community.

b. Entering into contracts.

c. Incurring obligations.

d. Employment of permanent and temporary workers.

e. Utilization of volunteer workers.

f. Rental of equipment.

g. Acquisition and distribution, with or without compensation, of supplies, materials, and facilities.

h. Appropriation and expenditure of public funds.

(b) Upon the request of two or more adjoining counties, or if the Governor finds that two or more adjoining counties would be better served by an interjurisdictional arrangement than by maintaining separate emergency management agencies and services, the Governor may delineate by executive order or rule an interjurisdictional area adequate to plan for, prevent, mitigate, or respond to emergencies in such area and may direct steps to be taken as necessary, including the creation of an interjurisdictional relationship, a joint emergency plan, a provision for mutual aid, or an area organization for emergency planning and services. A finding of the Governor pursuant to this paragraph shall be based on one or more factors related to the difficulty of maintaining an efficient and effective



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emergency prevention, mitigation, preparedness, response, and recovery system on a unijurisdictional basis, such as:

1. Small or sparse population.

2. Limitations on public financial resources severe enough to make maintenance of a separate emergency management agency and services unreasonably burdensome.

3. Unusual vulnerability to emergencies as evidenced by a past history of emergencies, topographical features, drainage characteristics, emergency potential, and presence of emergency-prone facilities or operations.

4. The interrelated character of the counties in a multicounty area.

5. Other relevant conditions or circumstances.

(4) INVALIDATION OF CERTAIN EMERGENCY MEASURES.—The Governor, or the Legislature by concurrent resolution, may at any time invalidate an order, an ordinance, a proclamation, a rule, or any other measure issued by a political subdivision to address a purported emergency if the Governor or the Legislature determines that such order unnecessarily restricts a constitutional right, a fundamental liberty, or a statutory right.

Section 13. Subsections (1), (2), and (3) of section 252.385, Florida Statutes, are amended to read:

252.385 Public shelter space.—

(1) It is the intent of the Legislature that this state not have a deficit of safe public hurricane evacuation shelter space in any region of the state ~~by 1998 and thereafter~~.

(2)(a) The division shall administer a program to survey existing schools, universities, community colleges, and other



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state-owned, municipally owned, and county-owned public buildings and any private facility that the owner, in writing, agrees to provide for use as a public hurricane evacuation shelter to identify those that are appropriately designed and located to serve as such shelters. The owners of the facilities must be given the opportunity to participate in the surveys. The state university boards of trustees, district school boards, community college boards of trustees, and the Department of Education are responsible for coordinating and implementing the survey of public schools, universities, and community colleges with the division or the local emergency management agency.

(b) By January 31 of each even-numbered year, the division shall prepare and submit a statewide emergency shelter plan to the Governor and Cabinet for approval, subject to the requirements for approval in s. 1013.37(2). The emergency shelter plan must project, for each of the next 5 years, the hurricane shelter needs of the state, including periods of time during which a concurrent public health emergency may necessitate more space for each individual to accommodate physical distancing. In addition to information on the general shelter needs throughout this state, the plan must ~~shall~~ identify the general location and square footage of special needs shelters, by regional planning council region, ~~during the next 5 years.~~ The plan must ~~shall~~ also include information on the availability of shelters that accept pets. The Department of Health shall assist the division in determining the estimated need for special needs shelter space and the adequacy of facilities to meet the needs of persons with special needs based on information from the registries of persons with special needs



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and other information.

(3) The division shall annually provide to the President of the Senate, the Speaker of the House of Representatives, and the Governor a list of facilities recommended to be retrofitted using state funds. State funds should be maximized and targeted to regional planning council regions with hurricane evacuation shelter deficits. ~~Retrofitting facilities in regions with public hurricane evacuation shelter deficits shall be given first priority and should be completed by 2003. All recommended facilities should be retrofitted by 2008.~~ The owner or lessee of a public hurricane evacuation shelter that is included on the list of facilities recommended for retrofitting is not required to perform any recommended improvements.

Section 14. Subsection (1) of section 252.44, Florida Statutes, is amended to read:

252.44 Emergency mitigation.—

(1) In addition to prevention measures included in the state and local comprehensive emergency management plans, the Governor shall consider on a continuing basis steps that could be taken to mitigate the harmful consequences of emergencies. At the Governor's direction and pursuant to any other authority and competence they have, state agencies, including, but not limited to, those charged with responsibilities in connection with protecting and maintaining the public health, flood plain management, stream encroachment and flow regulation, weather modification, fire prevention and control, air quality, public works, land use and land use planning, and construction standards, shall make studies of emergency-mitigation-related matters. The Governor, from time to time, shall make such



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recommendations to the Legislature, local governments, and other appropriate public and private entities as may facilitate measures for mitigation of the harmful consequences of emergencies.

Section 15. Present subsection (3) of section 252.46, Florida Statutes, is redesignated as subsection (6), a new subsection (3) and subsections (4) and (5) are added to that section, and subsection (2) of that section is amended, to read:

252.46 Orders and rules.—

(2) All orders and rules adopted by the division or any political subdivision or other agency authorized by ss. 252.31-252.90 to make orders and rules have full force and effect of law after adoption in accordance with ~~the provisions of~~ chapter 120 in the event of issuance by the division or any state agency or, if adopted ~~promulgated~~ by a political subdivision of the state or agency thereof, when filed in the office of the clerk or recorder of the political subdivision or agency adopting ~~promulgating~~ the same. Failure of a political subdivision to file any such order or rule with the office of the clerk or recorder within 3 days after issuance voids the declaration or order. All existing laws, ordinances, and rules inconsistent with ~~the provisions of~~ ss. 252.31-252.90, or any order or rule issued under the authority of ss. 252.31-252.90, must ~~shall~~ be suspended during the period of time and to the extent that such conflict exists.

(3) Emergency ordinances, declarations, and orders adopted by a political subdivision under the authority of ss. 252.31-252.90, including those enacted by a municipality pursuant to s. 166.041(3)(b), must be available on a dedicated webpage



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273 accessible through a conspicuous link on the political
274 subdivision's homepage. The dedicated webpage must identify the
275 emergency ordinances, declarations, and orders currently in
276 effect. Each political subdivision adopting emergency
277 ordinances, declarations, or orders must provide the division
278 with the link to the political subdivision's dedicated webpage.
279 The division must include these links in an easily identifiable
280 format on its website.

281 (4) An order issued by a political subdivision
282 automatically expires 10 days after its issuance; however, such
283 an order may be extended before its expiration by a majority
284 vote of the governing body of the political subdivision if
285 deemed necessary. Upon the expiration of an order, a political
286 subdivision may not issue a substantially similar order to
287 respond to the same emergency. In the event the governing body
288 of the political subdivision is unable to convene before the
289 expiration of the emergency order due to the impacts of a
290 hurricane or other weather-related natural disaster, the 10-day
291 period is tolled until the governing body is able to convene.
292 However, an emergency order issued under this section may not be
293 in effect for more than 30 days unless the governing body
294 approves an extension of the order.

295 (5) An order issued by a political subdivision pursuant to
296 this section which imposes a curfew restricting the travel or
297 movement of persons during designated times must nonetheless
298 allow persons to travel during the curfew to their places of
299 employment to report for work and to return to their residences
300 after their work has concluded.



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

And the title is amended as follows:

Delete lines 99 - 112

and insert:

emergency funds; amending s. 252.38, F.S.; specifying that a political subdivision has the burden of proving the proper exercise of its police power in the issuance of certain emergency orders; authorizing the Governor or the Legislature to invalidate emergency measures issued by a political subdivision under specified conditions; amending s. 252.385, F.S.; requiring the division's hurricane shelter plan to address hurricane shelter needs during public health emergencies; amending s. 252.44, F.S.; requiring emergency mitigation planning by state agencies to include agencies with jurisdiction over public health; amending s. 252.46, F.S.; providing that a failure by a political subdivision to file certain orders and rules with specified entities within a specified timeframe voids the issued orders or rules; requiring that certain orders be available on a dedicated website; requiring the Division of Emergency Management to provide such links on its website in a specified format; providing for the automatic expiration of emergency orders issued by a political subdivision; authorizing the extension of such orders if certain conditions are met; prohibiting a political subdivision from issuing a subsequent order for the same emergency that is substantially similar to the



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331 expired order; providing for the tolling of the
332 automatic expiration of an order if certain conditions
333 exist; requiring that orders issued by a political
334 subdivision which impose a curfew restricting travel
335 or movement allow persons to travel during the curfew
336 to and from their places of employment; amending s.
337 377.703, F.S.;



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/07/2021	.	
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The Committee on Rules (Diaz) recommended the following:

Senate Amendment (with title amendment)

Delete lines 788 - 890

and insert:

Section 12. Section 252.38, Florida Statutes, is amended to read:

252.38 Emergency management powers of political subdivisions.—Safeguarding the life and property of its citizens is an innate responsibility of the governing body of each political subdivision of the state. However, political subdivisions are given police powers to preserve, not impair,



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private rights. Therefore, a political subdivision that deprives any person of a constitutional right, a fundamental liberty, a statutory right, or property to address a purported emergency bears the burden of proving that the exercise of police power is narrowly tailored, serves a compelling governmental interest, and accomplishes the intended goal through the use of the least intrusive means.

(1) COUNTIES.—

(a) In order to provide effective and orderly governmental control and coordination of emergency operations in emergencies within the scope of ss. 252.31-252.90, each county within this state shall be within the jurisdiction of, and served by, the division. Except as otherwise provided in ss. 252.31-252.90, each local emergency management agency shall have jurisdiction over and serve an entire county. Unless part of an interjurisdictional emergency management agreement entered into pursuant to paragraph (3) (b) which is recognized by the Governor by executive order or rule, each county must establish and maintain such an emergency management agency and shall develop a county emergency management plan and program that is coordinated and consistent with the state comprehensive emergency management plan and program. Counties that are part of an interjurisdictional emergency management agreement entered into pursuant to paragraph (3) (b) which is recognized by the Governor by executive order or rule shall cooperatively develop an emergency management plan and program that is coordinated and consistent with the state comprehensive emergency management plan and program.

(b) Each county emergency management agency created and



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41 established pursuant to ss. 252.31-252.90 shall have a director.
42 The director must meet the minimum training and education
43 qualifications established in a job description approved by the
44 county. The director shall be appointed by the board of county
45 commissioners or the chief administrative officer of the county,
46 as described in chapter 125 or the county charter, if
47 applicable, to serve at the pleasure of the appointing
48 authority, in conformance with applicable resolutions,
49 ordinances, and laws. A county constitutional officer, or an
50 employee of a county constitutional officer, may be appointed as
51 director following prior notification to the division. Each
52 board of county commissioners shall promptly inform the division
53 of the appointment of the director and other personnel. Each
54 director has direct responsibility for the organization,
55 administration, and operation of the county emergency management
56 agency. The director shall coordinate emergency management
57 activities, services, and programs within the county and shall
58 serve as liaison to the division and other local emergency
59 management agencies and organizations.

60 (c) Each county emergency management agency shall perform
61 emergency management functions within the territorial limits of
62 the county within which it is organized and, in addition, shall
63 conduct such activities outside its territorial limits as are
64 required pursuant to ss. 252.31-252.90 and in accordance with
65 state and county emergency management plans and mutual aid
66 agreements. Counties shall serve as liaison for and coordinator
67 of municipalities' requests for state and federal assistance
68 during postdisaster emergency operations.

69 (d) During a declared state or local emergency and upon the



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request of the director of a local emergency management agency, the district school board or school boards in the affected area shall participate in emergency management by providing facilities and necessary personnel to staff such facilities. Each school board providing transportation assistance in an emergency evacuation shall coordinate the use of its vehicles and personnel with the local emergency management agency.

(e) County emergency management agencies may charge and collect fees for the review of emergency management plans on behalf of external agencies and institutions. Fees must be reasonable and may not exceed the cost of providing a review of emergency management plans in accordance with fee schedules established by the division.

(2) MUNICIPALITIES.—Legally constituted municipalities are authorized and encouraged to create municipal emergency management programs. Municipal emergency management programs shall coordinate their activities with those of the county emergency management agency. Municipalities without emergency management programs shall be served by their respective county agencies. If a municipality elects to establish an emergency management program, it must comply with all laws, rules, and requirements applicable to county emergency management agencies. Each municipal emergency management plan must be consistent with and subject to the applicable county emergency management plan. In addition, each municipality must coordinate requests for state or federal emergency response assistance with its county. This requirement does not apply to requests for reimbursement under federal public disaster assistance programs.

(3) EMERGENCY MANAGEMENT POWERS; POLITICAL SUBDIVISIONS.—



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(a) In carrying out the provisions of ss. 252.31-252.90, each political subdivision shall have the power and authority:

1. To appropriate and expend funds; make contracts; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to the victims of any emergency; and direct and coordinate the development of emergency management plans and programs in accordance with the policies and plans set by the federal and state emergency management agencies.

2. To appoint, employ, remove, or provide, with or without compensation, coordinators, rescue teams, fire and police personnel, and other emergency management workers.

3. To establish, as necessary, a primary and one or more secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.

4. To assign and make available for duty the offices and agencies of the political subdivision, including the employees, property, or equipment thereof relating to firefighting, engineering, rescue, health, medical and related services, police, transportation, construction, and similar items or services for emergency operation purposes, as the primary emergency management forces of the political subdivision for employment within or outside the political limits of the subdivision.

5. To request state assistance or invoke emergency-related mutual-aid assistance by declaring a state of local emergency in the event of an emergency affecting only one political subdivision. The duration of each state of emergency declared



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locally is limited to 7 days; it may be extended, as necessary, in 7-day increments. Further, the political subdivision has the power and authority to waive the procedures and formalities otherwise required of the political subdivision by law pertaining to:

a. Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community.

b. Entering into contracts.

c. Incurring obligations.

d. Employment of permanent and temporary workers.

e. Utilization of volunteer workers.

f. Rental of equipment.

g. Acquisition and distribution, with or without compensation, of supplies, materials, and facilities.

h. Appropriation and expenditure of public funds.

(b) Upon the request of two or more adjoining counties, or if the Governor finds that two or more adjoining counties would be better served by an interjurisdictional arrangement than by maintaining separate emergency management agencies and services, the Governor may delineate by executive order or rule an interjurisdictional area adequate to plan for, prevent, mitigate, or respond to emergencies in such area and may direct steps to be taken as necessary, including the creation of an interjurisdictional relationship, a joint emergency plan, a provision for mutual aid, or an area organization for emergency planning and services. A finding of the Governor pursuant to this paragraph shall be based on one or more factors related to the difficulty of maintaining an efficient and effective



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emergency prevention, mitigation, preparedness, response, and recovery system on a unijurisdictional basis, such as:

1. Small or sparse population.

2. Limitations on public financial resources severe enough to make maintenance of a separate emergency management agency and services unreasonably burdensome.

3. Unusual vulnerability to emergencies as evidenced by a past history of emergencies, topographical features, drainage characteristics, emergency potential, and presence of emergency-prone facilities or operations.

4. The interrelated character of the counties in a multicounty area.

5. Other relevant conditions or circumstances.

(4) INVALIDATION OF CERTAIN EMERGENCY MEASURES.—The Governor, or the Legislature by concurrent resolution, may at any time invalidate an order, an ordinance, a proclamation, a rule, or any other measure issued by a political subdivision to address a purported emergency if the Governor or the Legislature determines that such order unnecessarily restricts a constitutional right, a fundamental liberty, or a statutory right.

Section 13. Subsections (1), (2), and (3) of section 252.385, Florida Statutes, are amended to read:

252.385 Public shelter space.—

(1) It is the intent of the Legislature that this state not have a deficit of safe public hurricane evacuation shelter space in any region of the state ~~by 1998 and thereafter.~~

(2)(a) The division shall administer a program to survey existing schools, universities, community colleges, and other



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state-owned, municipally owned, and county-owned public buildings and any private facility that the owner, in writing, agrees to provide for use as a public hurricane evacuation shelter to identify those that are appropriately designed and located to serve as such shelters. The owners of the facilities must be given the opportunity to participate in the surveys. The state university boards of trustees, district school boards, community college boards of trustees, and the Department of Education are responsible for coordinating and implementing the survey of public schools, universities, and community colleges with the division or the local emergency management agency.

(b) By January 31 of each even-numbered year, the division shall prepare and submit a statewide emergency shelter plan to the Governor and Cabinet for approval, subject to the requirements for approval in s. 1013.37(2). The emergency shelter plan must project, for each of the next 5 years, the hurricane shelter needs of the state, including periods of time during which a concurrent public health emergency may necessitate more space for each individual to accommodate physical distancing. In addition to information on the general shelter needs throughout this state, the plan must ~~shall~~ identify the general location and square footage of special needs shelters, by regional planning council region, ~~during the next 5 years.~~ The plan must ~~shall~~ also include information on the availability of shelters that accept pets. The Department of Health shall assist the division in determining the estimated need for special needs shelter space and the adequacy of facilities to meet the needs of persons with special needs based on information from the registries of persons with special needs



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and other information.

(3) The division shall annually provide to the President of the Senate, the Speaker of the House of Representatives, and the Governor a list of facilities recommended to be retrofitted using state funds. State funds should be maximized and targeted to regional planning council regions with hurricane evacuation shelter deficits. ~~Retrofitting facilities in regions with public hurricane evacuation shelter deficits shall be given first priority and should be completed by 2003. All recommended facilities should be retrofitted by 2008.~~ The owner or lessee of a public hurricane evacuation shelter that is included on the list of facilities recommended for retrofitting is not required to perform any recommended improvements.

Section 14. Subsection (1) of section 252.44, Florida Statutes, is amended to read:

252.44 Emergency mitigation.—

(1) In addition to prevention measures included in the state and local comprehensive emergency management plans, the Governor shall consider on a continuing basis steps that could be taken to mitigate the harmful consequences of emergencies. At the Governor's direction and pursuant to any other authority and competence they have, state agencies, including, but not limited to, those charged with responsibilities in connection with protecting and maintaining the public health, flood plain management, stream encroachment and flow regulation, weather modification, fire prevention and control, air quality, public works, land use and land use planning, and construction standards, shall make studies of emergency-mitigation-related matters. The Governor, from time to time, shall make such



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recommendations to the Legislature, local governments, and other appropriate public and private entities as may facilitate measures for mitigation of the harmful consequences of emergencies.

Section 15. Present subsection (3) of section 252.46, Florida Statutes, is redesignated as subsection (6), a new subsection (3) and subsections (4) and (5) are added to that section, and subsection (2) of that section is amended, to read:

252.46 Orders and rules.—

(2) All orders and rules adopted by the division or any political subdivision or other agency authorized by ss. 252.31-252.90 to make orders and rules have full force and effect of law after adoption in accordance with ~~the provisions of~~ chapter 120 in the event of issuance by the division or any state agency or, if adopted ~~promulgated~~ by a political subdivision of the state or agency thereof, when filed in the office of the clerk or recorder of the political subdivision or agency adopting ~~promulgating~~ the same. Failure of a political subdivision to file any such order or rule with the office of the clerk or recorder within 3 days after issuance voids the declaration or order. All existing laws, ordinances, and rules inconsistent with ~~the provisions of~~ ss. 252.31-252.90, or any order or rule issued under the authority of ss. 252.31-252.90, must ~~shall~~ be suspended during the period of time and to the extent that such conflict exists.

(3) Emergency ordinances, declarations, and orders adopted by a political subdivision under the authority of ss. 252.31-252.90, including those enacted by a municipality pursuant to s. 166.041(3)(b), must be available on a dedicated webpage



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273 accessible through a conspicuous link on the political
274 subdivision's homepage. The dedicated webpage must identify the
275 emergency ordinances, declarations, and orders currently in
276 effect. Each political subdivision adopting emergency
277 ordinances, declarations, or orders must provide the division
278 with the link to the political subdivision's dedicated webpage.
279 The division must include these links in an easily identifiable
280 format on its website.

281 (4) An order issued by a political subdivision
282 automatically expires 10 days after its issuance; however, such
283 an order may be extended before its expiration by a majority
284 vote of the governing body of the political subdivision if
285 deemed necessary. Upon the expiration of an order, a political
286 subdivision may not issue a substantially similar order to
287 respond to the same emergency. In the event the governing body
288 of the political subdivision is unable to convene before the
289 expiration of the emergency order due to the impacts of a
290 hurricane or other weather-related natural disaster, the 10-day
291 period is tolled until the governing body is able to convene.
292 However, an emergency order issued under this section may not be
293 in effect for more than 30 days unless the governing body
294 approves an extension of the order.

295 (5) An order issued by a political subdivision pursuant to
296 this section which imposes a curfew restricting the travel or
297 movement of persons during designated times must nonetheless
298 allow persons to travel during the curfew to their places of
299 employment to report for work and to return to their residences
300 after their work has concluded.



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

And the title is amended as follows:

Delete lines 99 - 112

and insert:

emergency funds; amending s. 252.38, F.S.; specifying that a political subdivision has the burden of proving the proper exercise of its police power in the issuance of certain emergency orders; authorizing the Governor or the Legislature to invalidate emergency measures issued by a political subdivision under specified conditions; amending s. 252.385, F.S.; requiring the division's hurricane shelter plan to address hurricane shelter needs during public health emergencies; amending s. 252.44, F.S.; requiring emergency mitigation planning by state agencies to include agencies with jurisdiction over public health; amending s. 252.46, F.S.; providing that a failure by a political subdivision to file certain orders and rules with specified entities within a specified timeframe voids the issued orders or rules; requiring that certain orders be available on a dedicated website; requiring the Division of Emergency Management to provide such links on its website in a specified format; providing for the automatic expiration of emergency orders issued by a political subdivision; authorizing the extension of such orders if certain conditions are met; prohibiting a political subdivision from issuing a subsequent order for the same emergency that is substantially similar to the



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331 expired order; providing for the tolling of the
332 automatic expiration of an order if certain conditions
333 exist; requiring that orders issued by a political
334 subdivision which impose a curfew restricting travel
335 or movement allow persons to travel during the curfew
336 to and from their places of employment; amending s.
337 377.703, F.S.;



942642

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/07/2021	.	
	.	
	.	
	.	

The Committee on Rules (Gibson) recommended the following:

Senate Amendment to Amendment (602576) (with title amendment)

Delete lines 10 - 18
and insert:
political subdivision of the state. Notwithstanding any other law, an emergency order issued by a political subdivision must be narrowly tailored to serve a compelling public health or safety purpose and must contain specific findings supporting the existence of such a purpose. Any such emergency order must be limited in duration, applicability, and scope in order to reduce



942642

12 any infringement on individual liberty to the greatest extent
13 possible.

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

16 And the title is amended as follows:

17 Delete lines 307 - 309

18 and insert:

19 limitations on emergency orders issued by political
20 subdivisions; authorizing the



828322

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/07/2021	.	
	.	
	.	
	.	

The Committee on Rules (Gibson) recommended the following:

Senate Amendment to Amendment (602576) (with title amendment)

Delete lines 170 - 177.

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

And the title is amended as follows:

Delete lines 309 - 312

and insert:

issuance of certain emergency orders; amending s.
252.385, F.S.;



726470

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/07/2021	.	
	.	
	.	
	.	

The Committee on Rules (Gibson) recommended the following:

Senate Amendment to Amendment (602576) (with title amendment)

Delete lines 285 - 287
and insert:
deemed necessary. In the event the governing body

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

And the title is amended as follows:

Delete lines 328 - 331
and insert:



726470

12 if certain condition are met; providing for the
13 tolling of the



673282

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/07/2021	.	
	.	
	.	
	.	

The Committee on Rules (Gruters) recommended the following:

Senate Amendment (with title amendment)

Between lines 1038 and 1039
insert:

Section 17. Section 381.00316, Florida Statutes, is created
to read:

381.00316 COVID-19 vaccine documentation.—

(1) It is the intent of the Legislature to protect the
fundamental rights and privacies of its residents and the free
flow of commerce within this state during the state of emergency
declared in connection with the COVID-19 pandemic. The



673282

Legislature recognizes that during this state of emergency,
individuals may be unable to obtain, or may not wish to obtain,
a COVID-19 vaccination due to health, religious, or other
reasons. It is further the intent of the Legislature that
vaccination against COVID-19 is not required by law during this
time.

(2) A Florida business entity, as defined in s. 606.03 to
include any business operating in this state, may not require
patrons or customers to provide any documentation certifying
COVID-19 vaccination or post-transmission recovery to gain
access to, entry upon, or service from the business. This
subsection does not otherwise restrict businesses from
instituting screening protocols in accordance with state or
federal law to protect public health.

(3) A Florida governmental entity, its subdivisions,
agents, or assigns may not issue to a third party vaccine
passports, vaccine passes, or other standardized documentation
for the purpose of certifying that an individual has been
vaccinated against COVID-19 or otherwise publish or share an
individual's COVID-19 vaccination history, unless specifically
authorized by the individual or the individual's legal guardian
or representative.

(4) This section may not be construed to interfere with an
individual's right to access his or her own personal health
information under federal law.

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

And the title is amended as follows:

Delete line 119



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and insert:

request assistance with specified duties; creating s.
381.00316, F.S.; providing legislative intent;
prohibiting a Florida business entity from requiring
patrons or customers to provide documentation
certifying vaccination against or recovery from COVID-
19; authorizing specified screening protocols;
prohibiting specified entities from issuing vaccine
passports, passes, or other standardized documentation
for a specified purpose, or publishing or sharing an
individual's COVID-19 vaccination history; providing
an exception; providing construction; amending s.

By the Committee on Appropriations; and Senator Burgess

576-03674-21

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1 A bill to be entitled
 2 An act relating to emergency management; amending s.
 3 11.90, F.S.; authorizing the Legislative Budget
 4 Commission to convene to transfer certain funds to the
 5 Emergency Preparedness and Response Fund; amending s.
 6 252.311, F.S.; revising legislative intent with
 7 respect to the State Emergency Management Act;
 8 amending s. 252.34, F.S.; defining terms; amending s.
 9 252.35, F.S.; requiring that the state comprehensive
 10 emergency management plan provide for certain public
 11 health emergency communications and include the
 12 Department of Health's public health emergency plan;
 13 requiring the Division of Emergency Management to
 14 cooperate with federal and state health agencies;
 15 requiring statewide awareness and education programs
 16 to include education on public health emergency
 17 preparedness and mitigation; requiring the division to
 18 complete and maintain an inventory of personal
 19 protection equipment; directing the division to submit
 20 a specified annual report to the Governor, the
 21 Legislature, and the Chief Justice of the Supreme
 22 Court; providing limitations on the timeframe for
 23 delegation of certain authorities by the division;
 24 requiring the division to submit a specified biennial
 25 report to the Chief Justice of the Supreme Court;
 26 amending s. 252.355, F.S.; requiring the division to
 27 maintain certain information on special needs options
 28 during certain public health emergencies; deleting
 29 obsolete language; amending s. 252.356, F.S.;

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

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30 requiring state agencies that contract with providers
 31 for the care of persons with certain disabilities or
 32 limitations to include in such contracts a procedure
 33 for providing essential services in preparation for,
 34 during, and following public health emergencies;
 35 amending s. 252.359, F.S.; redefining the term
 36 "essentials" to include personal protective equipment
 37 used during public health emergencies; amending s.
 38 252.36, F.S.; limiting the duration of emergency
 39 orders, proclamations, and rules issued by the
 40 Governor; providing legislative intent; providing a
 41 presumption that K-12 public schools should remain
 42 open, if possible, during an extended public health
 43 emergency; providing a presumption that businesses
 44 should remain open, if possible, during an extended
 45 public health emergency; requiring the Governor to
 46 include specific reasons for closing or restricting
 47 in-person attendance at K-12 public schools and for
 48 closing or restricting operations of businesses during
 49 an extended public health emergency; requiring the
 50 Governor to provide specific reasons if such schools
 51 or businesses are closed as part of an emergency
 52 declaration; requiring the Governor to regularly
 53 review and reassess any issued emergency declarations;
 54 requiring the Governor to provide notice of
 55 declarations of emergencies to the Legislature;
 56 expanding the Legislature's authority to terminate
 57 states of emergency; requiring that all emergency
 58 declarations and orders be filed with the Division of

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

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59 Administrative Hearings within a specified timeframe;
 60 specifying that failure to timely file such
 61 declarations or orders results in their being voided;
 62 requiring the division to index and make such
 63 emergency orders available on its website within a
 64 specified timeframe; requiring such orders to be
 65 searchable by specified criteria; requiring that the
 66 Division of Emergency Management publish a link to the
 67 index on its website; providing for retroactive
 68 application; directing the Governor to report certain
 69 department and agency activities to the Legislature
 70 during a state of emergency; creating s. 252.3611,
 71 F.S.; requiring specified information to be included
 72 in orders, proclamations, and rules issued by the
 73 Governor, the division, or an agency; directing the
 74 Governor to submit specified contracts to the
 75 Legislature; directing specified entities to submit
 76 reports to the Legislature; directing the Auditor
 77 General to conduct specified financial audits;
 78 amending s. 252.365, F.S.; requiring that disaster
 79 preparedness plans of specified agencies address
 80 pandemics and public health emergencies and include
 81 certain increases in public access of government
 82 services and availability and distribution of personal
 83 protective equipment during an emergency; directing
 84 agencies to update disaster preparedness plans by a
 85 specified date; amending s. 252.37, F.S.; revising
 86 legislative intent; authorizing the Governor to
 87 transfer and expend moneys in the Emergency

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88 Preparedness and Response Fund; requiring certain
 89 notice and approval for the transfer and expenditure
 90 of specified funds; providing that if the President of
 91 the Senate and Speaker of the House of Representatives
 92 object in writing to the transfer, the Governor must
 93 void the action; authorizing the Governor to request
 94 additional funds from the Emergency Preparedness and
 95 Response Fund, subject to approval by the Legislative
 96 Budget Commission; providing construction; requiring
 97 state agencies, counties, or municipalities to submit
 98 to the Legislature a spending plan for certain
 99 emergency funds; amending s. 252.385, F.S.; requiring
 100 the division's hurricane shelter plan to address
 101 hurricane shelter needs during public health
 102 emergencies; amending s. 252.44, F.S.; requiring
 103 emergency mitigation planning by state agencies to
 104 include agencies with jurisdiction over public health;
 105 amending s. 252.46, F.S.; providing that a failure by
 106 a political subdivision to file certain orders and
 107 rules with specified entities within a specified
 108 timeframe voids the issued orders or rules; requiring
 109 that certain orders be available on a dedicated
 110 website; requiring the Division of Emergency
 111 Management to provide such links on its website in a
 112 specified format; amending s. 377.703, F.S.;
 113 conforming a cross-reference; amending s. 381.00315,
 114 F.S.; revising a definition; directing the Department
 115 of Health to develop a specified public health
 116 emergency plan; directing the State Health Officer to

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117 establish methods of reporting certain data;
 118 authorizing the State Health Officer to order and
 119 request assistance with specified duties; amending s.
 120 406.11, F.S.; requiring district medical examiners to
 121 certify deaths and to assist the State Health Officer
 122 with certain functions upon request; providing that
 123 any emergency orders issued before a specified date
 124 will expire but may be reissued if certain conditions
 125 exist and a certain requirement is met; requiring the
 126 Department of Business and Professional Regulation, by
 127 a specified date, to review all executive orders
 128 issued under its delegated authority during the COVID-
 129 19 pandemic to make recommendations to the
 130 Legislature; providing effective dates.

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

134 Section 1. Contingent upon SB 1892 or similar legislation
 135 creating the Emergency Preparedness and Response Fund taking
 136 effect, subsection (8) is added to section 11.90, Florida
 137 Statutes, to read:

138 11.90 Legislative Budget Commission.—

139 (8) The commission may convene to transfer unappropriated
 140 surplus funds to the Emergency Preparedness and Response Fund.

141 Section 2. Section 252.311, Florida Statutes, is amended to
 142 read:

143 252.311 Legislative intent.—

144 (1) The Legislature finds and declares that the state is
 145 vulnerable to a wide range of emergencies, including natural,

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146 technological, and manmade disasters, all of which threaten the
 147 life, health, and safety of its people; damage and destroy
 148 property; disrupt services and everyday business and
 149 recreational activities; and impede economic growth and
 150 development. The Legislature further finds that this
 151 vulnerability is exacerbated by the tremendous growth in the
 152 state's population, especially the growth in the number of
 153 persons residing in coastal areas, in the elderly population, in
 154 the number of seasonal vacationers, and in the number of persons
 155 with special needs. This growth has greatly complicated the
 156 state's ability to coordinate its emergency management resources
 157 and activities.

158 (2) It is the intent of the Legislature to reduce the
 159 vulnerability of the people and property of this state; to
 160 prepare for efficient evacuation and shelter of threatened or
 161 affected persons; to provide for the rapid and orderly provision
 162 of relief to persons and for the restoration of services and
 163 property; to prepare for and efficiently respond to public
 164 health emergencies; and to provide for the coordination of
 165 activities relating to emergency preparedness, response,
 166 recovery, and mitigation among and between agencies and
 167 officials of this state, with similar agencies and officials of
 168 other states, with local and federal governments, with
 169 interstate organizations, and with the private sector.

170 (3) It is further the intent of the Legislature to promote
 171 the state's emergency preparedness, response, recovery, and
 172 mitigation capabilities through enhanced coordination, long-term
 173 planning, and adequate funding. State policy for responding to
 174 disasters is to support local emergency response efforts. In the

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case of a major or catastrophic disaster, however, the needs of residents and communities will likely be greater than local resources. In these situations, the state must be capable of providing effective, coordinated, and timely support to communities and the public. Therefore, the Legislature hereby determines and declares that the provisions of this act fulfill an important state interest.

(4) It is further the intent of the Legislature to minimize the negative effects of an extended emergency, such as a pandemic or another public health emergency. The Legislature recognizes that there are significant negative impacts on children and families associated with school closures during a public health emergency such as the COVID-19 pandemic. The Legislature also recognizes the significant negative impacts of such emergencies on the economy due to business closures.

(5) It is further the intent of the Legislature that all aspects of emergency preparedness, response, and recovery be made transparent to the public to the greatest extent possible.

Section 3. Present subsections (9) and (10) of section 252.34, Florida Statutes, are redesignated as subsections (10) and (12), respectively, and new subsections (9) and (11) are added to that section, to read:

252.34 Definitions.—As used in this part, the term:

(9) "Personal protective equipment" means protective clothing or equipment designed to protect an individual person from injury or the spread of infection.

(11) "Public health emergency" means any occurrence, or threat thereof, whether natural or manmade, which results or may result in substantial injury or harm to the public health from

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infectious disease, chemical agents, nuclear agents, biological toxins, or situations involving mass casualties or natural disasters, declared as a public health emergency as declared by the State Health Officer.

Section 4. Subsection (2) of section 252.35, Florida Statutes, is amended to read:

252.35 Emergency management powers; Division of Emergency Management.—

(2) The division is responsible for carrying out the provisions of ss. 252.31-252.90. In performing its duties, the division shall:

(a) Prepare a state comprehensive emergency management plan, which shall be integrated into and coordinated with the emergency management plans and programs of the Federal Government. The division shall ~~must~~ adopt the plan as a rule in accordance with chapter 120. The plan must ~~shall~~ be implemented by a continuous, integrated comprehensive emergency management program. The plan must contain provisions to ensure that the state is prepared for emergencies and minor, major, and catastrophic disasters, and the division shall work closely with local governments and agencies and organizations with emergency management responsibilities in preparing and maintaining the plan. The state comprehensive emergency management plan must ~~shall~~ be operations oriented and:

1. Include an evacuation component that includes specific regional and interregional planning provisions and promotes intergovernmental coordination of evacuation activities. This component must, at a minimum: contain guidelines for lifting tolls on state highways; ensure coordination pertaining to

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evacuees crossing county lines; set forth procedures for directing people caught on evacuation routes to safe shelter; establish strategies for ensuring sufficient, reasonably priced fueling locations along evacuation routes; and establish policies and strategies for emergency medical evacuations.

2. Include a shelter component that includes specific regional and interregional planning provisions and promotes coordination of shelter activities between the public, private, and nonprofit sectors. This component must, at a minimum: contain strategies to ensure the availability of adequate public shelter space in each region of the state; establish strategies for refuge-of-last-resort programs; provide strategies to assist local emergency management efforts to ensure that adequate staffing plans exist for all shelters, including medical and security personnel; provide for a postdisaster communications system for public shelters; establish model shelter guidelines for operations, registration, inventory, power generation capability, information management, and staffing; and set forth policy guidance for sheltering people with special needs.

3. Include a postdisaster response and recovery component that includes specific regional and interregional planning provisions and promotes intergovernmental coordination of postdisaster response and recovery activities. This component must provide for postdisaster response and recovery strategies according to whether a disaster is minor, major, or catastrophic. The postdisaster response and recovery component must, at a minimum: establish the structure of the state's postdisaster response and recovery organization; establish procedures for activating the state's plan; set forth policies

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used to guide postdisaster response and recovery activities; describe the chain of command during the postdisaster response and recovery period; describe initial and continuous postdisaster response and recovery actions; identify the roles and responsibilities of each involved agency and organization; provide for a comprehensive communications plan; establish procedures for monitoring mutual aid agreements; provide for rapid impact assessment teams; ensure the availability of an effective statewide urban search and rescue program coordinated with the fire services; ensure the existence of a comprehensive statewide medical care and relief plan administered by the Department of Health; and establish systems for coordinating volunteers and accepting and distributing donated funds and goods.

4. Include additional provisions addressing aspects of preparedness, response, recovery, and mitigation as determined necessary by the division.

5. Address the need for coordinated and expeditious deployment of state resources, including the Florida National Guard. In the case of an imminent major disaster, procedures should address predeployment of the Florida National Guard, and, in the case of an imminent catastrophic disaster, procedures should address predeployment of the Florida National Guard and the United States Armed Forces.

6. Establish a system of communications and warning to ensure that the state's population and emergency management agencies are warned of developing emergency situations, including public health emergencies, and can communicate emergency response decisions.

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7. Establish guidelines and schedules for annual exercises that evaluate the ability of the state and its political subdivisions to respond to minor, major, and catastrophic disasters and support local emergency management agencies. Such exercises shall be coordinated with local governments and, to the extent possible, the Federal Government.

8. Assign lead and support responsibilities to state agencies and personnel for emergency support functions and other support activities.

9. Include the public health emergency plan developed by the Department of Health pursuant to s. 381.00315.

The complete state comprehensive emergency management plan must ~~shall~~ be submitted to the President of the Senate, the Speaker of the House of Representatives, and the Governor on February 1 of every even-numbered year.

(b) Adopt standards and requirements for county emergency management plans. The standards and requirements must ensure that county plans are coordinated and consistent with the state comprehensive emergency management plan. If a municipality elects to establish an emergency management program, it must adopt a city emergency management plan that complies with all standards and requirements applicable to county emergency management plans.

(c) Assist political subdivisions in preparing and maintaining emergency management plans.

(d) Review periodically political subdivision emergency management plans for consistency with the state comprehensive emergency management plan and standards and requirements adopted

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under this section.

(e) Cooperate with the President, the heads of the Armed Forces, the various federal emergency management agencies, federal or state health agencies, and the officers and agencies of other states in matters pertaining to emergency management in the state and the nation and incidents thereof and, in connection therewith, take any measures that it deems proper to carry into effect any request of the President and the appropriate federal officers and agencies for any emergency management action, including the direction or control of:

1. Emergency management drills, tests, or exercises of whatever nature.

2. Warnings and signals for tests and drills, attacks, or other imminent emergencies or threats thereof and the mechanical devices to be used in connection with such warnings and signals.

(f) Make recommendations to the Legislature, building code organizations, and political subdivisions for zoning, building, and other land use controls; safety measures for securing mobile homes or other nonpermanent or semipermanent structures; and other preparedness, prevention, and mitigation measures designed to eliminate emergencies or reduce their impact.

(g) In accordance with the state comprehensive emergency management plan and program for emergency management, ascertain the requirements of the state and its political subdivisions for equipment and supplies of all kinds in the event of an emergency; plan for and either procure supplies, medicines, materials, and equipment or enter into memoranda of agreement or open purchase orders that will ensure their availability; and use and employ from time to time any of the property, services,

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and resources within the state in accordance with ss. 252.31-252.90.

(h) Anticipate trends and promote innovations that will enhance the emergency management system.

(i) Institute statewide public awareness programs, including, This shall include an intensive public educational campaign on emergency preparedness issues. Such programs must include, including, but need not be limited to, the personal responsibility of individual residents ~~citizens~~ to be self-sufficient for up to 72 hours following a natural or manmade disaster or a public health emergency. The public educational campaign must ~~shall~~ include relevant information on public health emergency mitigation, statewide disaster plans, evacuation routes, fuel suppliers, and shelters. All educational materials must be available in alternative formats and mediums to ensure that they are available to persons with disabilities.

(j) In cooperation with the Department of Education, coordinate with the Agency for Persons with Disabilities to provide an educational outreach program on disaster preparedness and readiness to individuals who have limited English skills and identify persons who are in need of assistance but are not defined under special-needs criteria.

(k) Prepare and distribute to appropriate state and local officials catalogs of federal, state, and private assistance programs.

(l) Coordinate federal, state, and local emergency management activities and take all other steps, including the partial or full mobilization of emergency management forces and organizations in advance of an actual emergency, to ensure the

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availability of adequately trained and equipped forces of emergency management personnel before, during, and after emergencies and disasters.

(m) Establish a schedule of fees that may be charged by local emergency management agencies for review of emergency management plans on behalf of external agencies and institutions. In establishing such schedule, the division shall consider facility size, review complexity, and other factors.

(n) Implement training programs to improve the ability of state and local emergency management personnel to prepare and implement emergency management plans and programs. This shall include a continuous training program for agencies and individuals that will be called on to perform key roles in state and local postdisaster response and recovery efforts and for local government personnel on federal and state postdisaster response and recovery strategies and procedures.

(o) Review periodically emergency operating procedures of state agencies and recommend revisions as needed to ensure consistency with the state comprehensive emergency management plan and program.

(p) Make such surveys of industries, resources, and facilities within the state, both public and private, as are necessary to carry out the purposes of ss. 252.31-252.90.

(q) Prepare, in advance whenever possible, such executive orders, proclamations, and rules for issuance by the Governor as are necessary or appropriate for coping with emergencies and disasters.

(r) Cooperate with the Federal Government and any public or private agency or entity in achieving any purpose of ss. 252.31-

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252.90 and in implementing programs for mitigation, preparation, response, and recovery.

(s) Complete an inventory of portable generators owned by the state and local governments which are capable of operating during a major disaster. The inventory must identify, at a minimum, the location of each generator, the number of generators stored at each specific location, the agency to which each generator belongs, the primary use of the generator by the owner agency, and the names, addresses, and telephone numbers of persons having the authority to loan the stored generators as authorized by the division during a declared emergency.

(t) Maintain an inventory list of generators owned by the state and local governments. In addition, the division may keep a list of private entities, along with appropriate contact information, which offer generators for sale or lease. The list of private entities shall be available to the public for inspection in written and electronic formats.

(u) Acquire and maintain a supply of personal protective equipment owned by the state for use by state agencies and to assist local government and the private sector in meeting safety needs during a declared emergency. The division shall conduct regular inventories of the supply, which must include projections of the need for additional personal protective equipment, as assessed by each governmental agency, to maintain the supply and replace expired items. The division shall maintain and replace the equipment on a standardized schedule that recognizes equipment expiration and obsolescence. This paragraph is subject to appropriation. The initial inventory must be reported by December 31, 2021, to the Governor, the

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President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court and, thereafter, the inventory must be reported by each December 31 to those officers.

(v) Assist political subdivisions with the creation and training of urban search and rescue teams and promote the development and maintenance of a state urban search and rescue program.

(w) ~~(v)~~ Delegate, as necessary and appropriate, authority vested in it under ss. 252.31-252.90 and provide for the subdelegation of such authority. The duration of each such delegation or subdelegation during an emergency may not exceed 60 days; however a delegation or subdelegation may be renewed during the emergency, as necessary.

(x) ~~(w)~~ Report biennially to the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the Governor, no later than February 1 of every odd-numbered year, the status of the emergency management capabilities of the state and its political subdivisions. This report must include the emergency management capabilities related to public health emergencies, as determined in collaboration with the Department of Health.

(y) ~~(x)~~ In accordance with chapter 120, create, implement, administer, adopt, amend, and rescind rules, programs, and plans needed to carry out ~~the provisions of~~ ss. 252.31-252.90 with due consideration for, and in cooperating with, the plans and programs of the Federal Government. In addition, the division may adopt rules in accordance with chapter 120 to administer and distribute federal financial predisaster and postdisaster

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assistance for prevention, mitigation, preparedness, response, and recovery.

~~(z)-(y)~~ Do other things necessary, incidental, or appropriate for the implementation of ss. 252.31-252.90.

Section 5. Subsection (2) of section 252.355, Florida Statutes, is amended to read:

252.355 Registry of persons with special needs; notice; registration program.—

(2) In order to ensure that all persons with special needs may register, the division shall develop and maintain a special needs shelter registration program. During a public health emergency in which physical distancing is necessary, as determined by the State Health Officer, the division must maintain information on special needs shelter options that mitigate the threat of the spread of infectious diseases ~~The registration program must be developed by January 1, 2015, and fully implemented by March 1, 2015.~~

(a) The registration program shall include, at a minimum, a uniform electronic registration form and a database for uploading and storing submitted registration forms that may be accessed by the appropriate local emergency management agency. The link to the registration form shall be easily accessible on each local emergency management agency's website. Upon receipt of a paper registration form, the local emergency management agency shall enter the person's registration information into the database.

(b) To assist in identifying persons with special needs, home health agencies, hospices, nurse registries, home medical equipment providers, the Department of Children and Families,

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the Department of Health, the Agency for Health Care Administration, the Department of Education, the Agency for Persons with Disabilities, the Department of Elderly Affairs, and memory disorder clinics shall, and any physician licensed under chapter 458 or chapter 459 and any pharmacy licensed under chapter 465 may, annually provide registration information to all of their special needs clients or their caregivers. The division shall develop a brochure that provides information regarding special needs shelter registration procedures. The brochure must be easily accessible on the division's website. All appropriate agencies and community-based service providers, including aging and disability resource centers, memory disorder clinics, home health care providers, hospices, nurse registries, and home medical equipment providers, shall, and any physician licensed under chapter 458 or chapter 459 may, assist emergency management agencies by annually registering persons with special needs for special needs shelters, collecting registration information for persons with special needs as part of the program intake process, and establishing programs to educate clients about the registration process and disaster preparedness safety procedures. A client of a state-funded or federally funded service program who has a physical, mental, or cognitive impairment or sensory disability and who needs assistance in evacuating, or when in a shelter, must register as a person with special needs. The registration program shall give persons with special needs the option of preauthorizing emergency response personnel to enter their homes during search and rescue operations if necessary to ensure their safety and welfare following disasters.

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(c) The division shall be the designated lead agency responsible for community education and outreach to the public, including special needs clients, regarding registration and special needs shelters and general information regarding shelter stays.

(d) On or before May 31 of each year, each electric utility in the state shall annually notify residential customers in its service area of the availability of the registration program available through their local emergency management agency by:

1. An initial notification upon the activation of new residential service with the electric utility, followed by one annual notification between January 1 and May 31; or

2. Two separate annual notifications between January 1 and May 31.

The notification may be made by any available means, including, but not limited to, written, electronic, or verbal notification, and may be made concurrently with any other notification to residential customers required by law or rule.

Section 6. Subsection (5) of section 252.356, Florida Statutes, is amended to read:

252.356 Emergency and disaster planning provisions to assist persons with disabilities or limitations.—State agencies that contract with providers for the care of persons with disabilities or limitations that make such persons dependent upon the care of others shall include emergency and disaster planning provisions in such contracts at the time the contracts are initiated or upon renewal. These provisions shall include, but shall not be limited to:

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(5) A procedure for providing the essential services the organization currently provides to special needs clients in preparation for, ~~and during~~, and following, a disaster, including, but not limited to, a public health emergency.

Section 7. Subsection (2) of section 252.359, Florida Statutes, is amended to read:

252.359 Ensuring availability of emergency supplies.—

(2) As used in this section, the term “essentials” means goods that are consumed or used as a direct result of a declared emergency, or that are consumed or used to preserve, protect, or sustain life, health, safety, or economic well-being. The term includes, but is not limited to, personal protective equipment used in the event of a public health emergency.

Section 8. Present subsections (3) through (10) of section 252.36, Florida Statutes, are redesignated as subsections (4) through (11), respectively, a new subsection (3) is added to that section, and subsections (1) and (2) and paragraph (c) of present subsection (5) of that section are amended, to read:

252.36 Emergency management powers of the Governor.—

(1) (a) The Governor is responsible for meeting the dangers presented to this state and its people by emergencies. In the event of an emergency beyond local control, the Governor, or, in the Governor’s absence, her or his successor as provided by law, may assume direct operational control over all or any part of the emergency management functions within this state, and she or he shall have the power through proper process of law to carry out the provisions of this section. The Governor is authorized to delegate such powers as she or he may deem prudent.

(b) Pursuant to the authority vested in her or him under

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paragraph (a), the Governor may issue executive orders, proclamations, and rules and may amend or rescind them. Such executive orders, proclamations, and rules shall have the force and effect of law. An executive order, a proclamation, or a rule must be limited to a duration of not more than 60 days and may be renewed as necessary during the duration of the emergency. If renewed, the order, proclamation, or rule must specifically state which provisions are being renewed.

(c) The Legislature intends that, during an extended public health emergency, such as the COVID-19 pandemic, there should be a presumption that K-12 public schools, to the greatest extent possible, should remain open so long as the health and safety of students and school personnel can be maintained by specific public health mitigation strategies recommended by federal or state health agencies for educational settings. The Legislature also intends that during such an event, there be a presumption that businesses should remain open to the greatest extent possible so long as the health and safety of employees and customers can be reasonably protected by specific public health mitigation strategies recommended by federal or state health agencies, including but not limited to the Occupational Safety and Health Administration.

1. If the Governor declares by executive order or proclamation that the emergency requires closure of or restricted in-person attendance at K-12 public schools, the executive order or proclamation must contain specific reasons for those determinations, and he or she must review and reassess the situation regularly.

2. If the Governor declares by executive order or

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proclamation that the emergency requires businesses to restrict their operations or close, the executive order or proclamation must contain specific reasons for those determinations, and he or she must review and reassess the situation regularly.

(2) A state of emergency ~~must~~ shall be declared by executive order or proclamation of the Governor if she or he finds an emergency has occurred or that the occurrence or the threat thereof is imminent. The state of emergency ~~must~~ shall continue until the Governor finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist and she or he terminates the state of emergency by executive order or proclamation, but no state of emergency may continue for longer than 60 days unless renewed by the Governor. ~~The Legislature by concurrent resolution may terminate a state of emergency at any time. Thereupon, the Governor shall issue an executive order or proclamation ending the state of emergency.~~ All executive orders or proclamations issued under this section ~~must~~ shall indicate the nature of the emergency, the area or areas threatened, and the conditions which ~~have~~ brought the emergency about or which make possible its termination. An executive order or proclamation ~~must~~ shall be promptly disseminated by means calculated to bring its contents to the attention of the general public; and, unless the circumstances attendant upon the emergency prevent or impede such filing, the order or proclamation ~~must~~ shall be filed promptly with the Department of State, the President of the Senate and the Speaker of the House of Representatives, and ~~in~~ the offices of the county commissioners in the counties to which the order or proclamation applies.

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(3) (a) At any time, the Legislature, by concurrent resolution, may terminate a state of emergency or any specific order thereunder. Upon such concurrent resolution, the Governor shall issue an executive order or proclamation consistent with the concurrent resolution.

(b) Notwithstanding s. 252.46(2), all emergency declarations and orders, regardless of how titled, issued under the authority of this part by the Governor or any agency, whether by direct, delegated, or subdelegated authority, before, during, or after a declared emergency, must be immediately filed with the Division of Administrative Hearings. Failure to file any such declaration or order with the division within 5 days after issuance voids the declaration or order. The division shall index all such declarations and orders and make them available in searchable format on its website within 3 days of filing. The searchable format must include, but is not limited to, searches by term, referenced statutes, and rules and must include a search category that specifically identifies emergency orders in effect at any given time. A link to the division's index must be placed in a conspicuous location on the Division of Emergency Management's website. This subsection applies retroactively to all executive emergency declarations and orders in effect on July 1, 2021.

(6)-(5) In addition to any other powers conferred upon the Governor by law, she or he may:

(c) Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency services. The transfer of the direction, personnel, or functions of state departments

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and agencies must be reported monthly on a cumulative basis to the President of the Senate and the Speaker of the House of Representatives.

Section 9. Section 252.3611, Florida Statutes, is created to read:

252.3611 Transparency; audits.—

(1) Each order, proclamation, or rule issued by the Governor, the division, or any agency must specify the statute or rule being amended or waived, if applicable, and the expiration date for the order, proclamation, or rule.

(2) When the duration of an emergency exceeds 90 days:

(a) Within 72 hours of executing a contract executed with moneys authorized for expenditure to support the response to the declared state of emergency, the Governor shall submit a copy of such contract to the Legislature. For contracts executed during the first 90 days of the emergency, the Governor shall submit a copy to the Legislature within the first 120 days of the declared emergency.

(b) The Executive Office of the Governor or the appropriate agency shall submit monthly reports to the Legislature of all state expenditures, revenues received, and funds transferred by an agency during the previous month to support the declared state of emergency.

(3) Once an emergency exceeds 1 year, the Auditor General shall conduct a financial audit of all associated expenditures and a compliance audit of all associated contracts entered into during the declared emergency. The Auditor General must update the audit annually until the emergency is declared to be ended.

(4) Following the expiration or termination of a state of

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emergency, the Auditor General shall conduct a financial audit of all associated expenditures and a compliance audit of all associated contracts entered into during the state of emergency.

Section 10. Subsection (3) of section 252.365, Florida Statutes, is amended to read:

252.365 Emergency coordination officers; disaster-preparedness plans.—

(3) Emergency coordination officers shall ensure ~~These individuals shall be responsible for ensuring~~ that each state agency and facility, such as a prison, office building, or university, has a disaster preparedness plan that is coordinated with the applicable local emergency-management agency and approved by the division.

(a) The disaster-preparedness plan must outline a comprehensive and effective program to ensure continuity of essential state functions under all circumstances, including, but not limited to, a pandemic or other public health emergency. The plan must identify a baseline of preparedness for a full range of potential emergencies to establish a viable capability to perform essential functions during any emergency or other situation that disrupts normal operations. This baseline must consider and include preparedness for rapid and large-scale increases in the public's need to access government services through technology or other means during an emergency, including, but not limited to, a public health emergency.

(b) The plan must include, at a minimum, the following elements: identification of essential functions, programs, and personnel; procedures to implement the plan and personnel notification and accountability; delegations of authority and

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lines of succession; identification of alternative facilities and related infrastructure, including those for communications; identification and protection of vital records and databases; provisions regarding the availability of, and distribution plans for, personal protective equipment; and schedules and procedures for periodic tests, training, and exercises.

(c) The division shall develop and distribute guidelines for developing and implementing the plan. By December 31, 2022, each agency must update its plan to include provisions related to preparation for pandemics and other public health emergencies consistent with the plan developed pursuant to s. 381.00315. Each agency plan must be updated as needed to remain consistent with the state public health emergency management plan.

Section 11. Subsection (3) of section 252.37, Florida Statutes, is amended, subsection (7) is added to that section, and subsection (2) of that section is amended contingent upon SB 1892 or similar legislation creating the Emergency Preparedness and Response Fund taking effect, to read:

252.37 Financing.—

(2) (a) It is the legislative intent that the first recourse be made to funds specifically regularly ~~regularly~~ appropriated to state and local agencies for disaster relief or response.

(b) If the Governor finds that the demands placed upon these funds in coping with a particular disaster declared by the Governor as a state of emergency are unreasonably great, she or he may make funds available by transferring and expending moneys ~~appropriated for other purposes, by transferring and expending moneys out of any unappropriated surplus funds, or from the~~ Emergency Preparedness and Response Budget Stabilization Fund.

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Notice of such action, as provided in s. 216.177, must be delivered at least 7 days before the effective date of the action. If the President of the Senate and the Speaker of the House of Representatives timely advise in writing that they object to the transfer, the Governor must void such action. The Governor may request additional funds to be appropriated to the Emergency Preparedness and Response Fund by a budget amendment, subject to approval of the Legislative Budget Commission.

(c) Following the expiration or termination of the state of emergency, the Governor may transfer moneys with a budget amendment, subject to approval by the Legislative Budget Commission, to satisfy the budget authority granted for such emergency. The transfers and expenditures supporting the amendment must be directly related to the declared disaster or emergency.

(3) Nothing contained in this section shall be construed to limit the authority of the Governor to apply for, ~~administer,~~ and ~~expend~~ any grants, gifts, or payments in aid of emergency prevention, mitigation, preparedness, response, or recovery.

(7) Before any expenditures are made, an agency, a county, or a municipality must submit a detailed spending plan for any grants, gifts, loans, funds, payments, services, equipment, supplies, or materials received under this section in aid of or for the purpose of emergency prevention, management, mitigation, preparedness, response, or recovery to the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees. If an emergency situation precludes the advance submission of a detailed spending plan, the plan must be submitted as soon as

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practicable, but not later than 30 days after initiation of any expenditures and continuing every 30 days for the duration of the emergency and thereafter while funds continue to be disbursed in response to the emergency.

Section 12. Subsections (1), (2), and (3) of section 252.385, Florida Statutes, are amended to read:

252.385 Public shelter space.—

(1) It is the intent of the Legislature that this state not have a deficit of safe public hurricane evacuation shelter space in any region of the state ~~by 1998 and thereafter.~~

(2) (a) The division shall administer a program to survey existing schools, universities, community colleges, and other state-owned, municipally owned, and county-owned public buildings and any private facility that the owner, in writing, agrees to provide for use as a public hurricane evacuation shelter to identify those that are appropriately designed and located to serve as such shelters. The owners of the facilities must be given the opportunity to participate in the surveys. The state university boards of trustees, district school boards, community college boards of trustees, and the Department of Education are responsible for coordinating and implementing the survey of public schools, universities, and community colleges with the division or the local emergency management agency.

(b) By January 31 of each even-numbered year, the division shall prepare and submit a statewide emergency shelter plan to the Governor and Cabinet for approval, subject to the requirements for approval in s. 1013.37(2). The emergency shelter plan must project, for each of the next 5 years, the hurricane shelter needs of the state, including periods of time

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813 during which a concurrent public health emergency may
 814 necessitate more space for each individual to accommodate
 815 physical distancing. In addition to information on the general
 816 shelter needs throughout this state, the plan must ~~shall~~
 817 identify the general location and square footage of special
 818 needs shelters, by regional planning council region, ~~during the~~
 819 ~~next 5 years~~. The plan must ~~shall~~ also include information on
 820 the availability of shelters that accept pets. The Department of
 821 Health shall assist the division in determining the estimated
 822 need for special needs shelter space and the adequacy of
 823 facilities to meet the needs of persons with special needs based
 824 on information from the registries of persons with special needs
 825 and other information.

826 (3) The division shall annually provide to the President of
 827 the Senate, the Speaker of the House of Representatives, and the
 828 Governor a list of facilities recommended to be retrofitted
 829 using state funds. State funds should be maximized and targeted
 830 to regional planning council regions with hurricane evacuation
 831 shelter deficits. ~~Retrofitting facilities in regions with public~~
 832 ~~hurricane evacuation shelter deficits shall be given first~~
 833 ~~priority and should be completed by 2003. All recommended~~
 834 ~~facilities should be retrofitted by 2008.~~ The owner or lessee of
 835 a public hurricane evacuation shelter that is included on the
 836 list of facilities recommended for retrofitting is not required
 837 to perform any recommended improvements.

838 Section 13. Subsection (1) of section 252.44, Florida
 839 Statutes, is amended to read:

840 252.44 Emergency mitigation.—

841 (1) In addition to prevention measures included in the

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842 state and local comprehensive emergency management plans, the
 843 Governor shall consider on a continuing basis steps that could
 844 be taken to mitigate the harmful consequences of emergencies. At
 845 the Governor's direction and pursuant to any other authority and
 846 competence they have, state agencies, including, but not limited
 847 to, those charged with responsibilities in connection with
 848 protecting and maintaining the public health, flood plain
 849 management, stream encroachment and flow regulation, weather
 850 modification, fire prevention and control, air quality, public
 851 works, land use and land use planning, and construction
 852 standards, shall make studies of emergency-mitigation-related
 853 matters. The Governor, from time to time, shall make such
 854 recommendations to the Legislature, local governments, and other
 855 appropriate public and private entities as may facilitate
 856 measures for mitigation of the harmful consequences of
 857 emergencies.

858 Section 14. Present subsection (3) of section 252.46,
 859 Florida Statutes, is redesignated as subsection (4), a new
 860 subsection (3) is added to that section, and subsection (2) of
 861 that section is amended, to read:

862 252.46 Orders and rules.—

863 (2) All orders and rules adopted by the division or any
 864 political subdivision or other agency authorized by ss. 252.31-
 865 252.90 to make orders and rules have full force and effect of
 866 law after adoption in accordance with ~~the provisions of~~ chapter
 867 120 in the event of issuance by the division or any state agency
 868 or, if adopted promulgated by a political subdivision of the
 869 state or agency thereof, when filed in the office of the clerk
 870 or recorder of the political subdivision or agency adopting

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~~promulgating~~ the same. Failure of a political subdivision to file any such order or rule with the office of the clerk or recorder within 3 days after issuance voids the declaration or order. All existing laws, ordinances, and rules inconsistent with ~~the provisions of~~ ss. 252.31-252.90, or any order or rule issued under the authority of ss. 252.31-252.90, shall be suspended during the period of time and to the extent that such conflict exists.

(3) Emergency ordinances, declarations, and orders adopted by a political subdivision under the authority of ss. 252.31-252.90, including those enacted by a municipality pursuant to s. 166.041(3)(b), must be available on a dedicated webpage accessible through a conspicuous link on the political subdivision's homepage. The dedicated webpage must identify the emergency ordinances, declarations, and orders currently in effect. Each political subdivision adopting emergency ordinances, declarations, or orders must provide the division with the link to the political subdivision's dedicated webpage. The division must include these links in an easily identifiable format on its website.

Section 15. Paragraph (a) of subsection (2) of section 377.703, Florida Statutes, is amended to read:

377.703 Additional functions of the Department of Agriculture and Consumer Services.—

(2) DUTIES.—The department shall perform the following functions, unless as otherwise provided, consistent with the development of a state energy policy:

(a) The Division of Emergency Management is responsible for the development of an energy emergency contingency plan to

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respond to serious shortages of primary and secondary energy sources. Upon a finding by the Governor, implementation of any emergency program shall be upon order of the Governor that a particular kind or type of fuel is, or that the occurrence of an event which is reasonably expected within 30 days will make the fuel, in short supply. The Division of Emergency Management shall then respond by instituting the appropriate measures of the contingency plan to meet the given emergency or energy shortage. The Governor may utilize the provisions of s. 252.36(6) ~~s. 252.36(5)~~ to carry out any emergency actions required by a serious shortage of energy sources.

Section 16. Paragraph (c) of subsection (1) and subsection (2) of section 381.00315, Florida Statutes, are amended to read:

381.00315 Public health advisories; public health emergencies; isolation and quarantines.—The State Health Officer is responsible for declaring public health emergencies, issuing public health advisories, and ordering isolation or quarantines.

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

(c) "Public health emergency" means any occurrence, or threat thereof, whether natural or manmade, which results or may result in substantial injury or harm to the public health from infectious disease, chemical agents, nuclear agents, biological toxins, or situations involving mass casualties or natural disasters.

(2)(a) The department shall prepare and maintain a state public health emergency management plan to serve as a comprehensive guide to public health emergency response in this state. The department shall develop the plan in collaboration with the Division of Emergency Management, other executive

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agencies with functions relevant to public health emergencies, district medical examiners, and national and state public health experts and ensure that it integrates and coordinates with the public health emergency management plans and programs of the Federal Government. The plan must address each element of public health emergency planning and incorporate public health and epidemiological best practices to ensure that the state is prepared for every foreseeable public health emergency. The plan must include an assessment of state and local public health infrastructure, including information systems, physical plant, commodities, and human resources, and an analysis of the infrastructure necessary to achieve the level of readiness proposed by the plan for short-term and long-term public emergencies. Beginning July 1, 2022, the department shall submit the plan to the Division of Emergency Management for inclusion in the state comprehensive emergency management plan pursuant to s. 252.35. The department shall review the plan after the declared end of each public health emergency, and, in any event, at least every five years, and update its terms as necessary to ensure continuous planning.

(b) Before declaring a public health emergency, the State Health Officer shall, to the extent possible, consult with the Governor and shall notify the Chief of Domestic Security. The declaration of a public health emergency shall continue until the State Health Officer finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist and he or she terminates the declaration. However, a declaration of a public health emergency may not continue for longer than 60 days unless the Governor concurs in the renewal

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of the declaration.

(c) The State Health Officer, upon declaration of a public health emergency, shall establish by order the method and procedure for identifying and reporting cases and deaths involving the infectious disease or other occurrence identified as the basis for the declared public health emergency. The method and procedure must be consistent with any standards developed by the Federal Government specific to the declared emergency or, if federal standards do not exist, must be consistent with public health best practices as identified by the State Health Officer. During the pendency of a public health emergency, the department is the sole entity responsible for the collection and official reporting and publication of cases and deaths. The State Health Officer, by order or emergency rule, may ensure necessary assistance from licensed health care providers in carrying out this function and may request the assistance of district medical examiners in performing this function.

(d) The State Health Officer, upon declaration of a public health emergency, may take actions that are necessary to protect the public health. Such actions include, but are not limited to:

1. Directing manufacturers of prescription drugs or over-the-counter drugs who are permitted under chapter 499 and wholesalers of prescription drugs located in this state who are permitted under chapter 499 to give priority to the shipping of specified drugs to pharmacies and health care providers within geographic areas ~~that have been~~ identified by the State Health Officer. The State Health Officer must identify the drugs to be shipped. Manufacturers and wholesalers located in the state must

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20212006c1

respond to the State Health Officer's priority shipping directive before shipping the specified drugs.

2. Notwithstanding chapters 465 and 499 and rules adopted thereunder, directing pharmacists employed by the department to compound bulk prescription drugs and provide these bulk prescription drugs to physicians and nurses of county health departments or any qualified person authorized by the State Health Officer for administration to persons as part of a prophylactic or treatment regimen.

3. Notwithstanding s. 456.036, temporarily reactivating the inactive license of the following health care practitioners, when such practitioners are needed to respond to the public health emergency: physicians licensed under chapter 458 or chapter 459; physician assistants licensed under chapter 458 or chapter 459; licensed practical nurses, registered nurses, and advanced practice registered nurses licensed under part I of chapter 464; respiratory therapists licensed under part V of chapter 468; and emergency medical technicians and paramedics certified under part III of chapter 401. Only those health care practitioners specified in this paragraph who possess an unencumbered inactive license and who request that such license be reactivated are eligible for reactivation. An inactive license that is reactivated under this paragraph shall return to inactive status when the public health emergency ends or before the end of the public health emergency if the State Health Officer determines that the health care practitioner is no longer needed to provide services during the public health emergency. Such licenses may only be reactivated for a period not to exceed 90 days without meeting the requirements of s.

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20212006c1

456.036 or chapter 401, as applicable.

4. Ordering an individual to be examined, tested, vaccinated, treated, isolated, or quarantined for communicable diseases that have significant morbidity or mortality and present a severe danger to public health. Individuals who are unable or unwilling to be examined, tested, vaccinated, or treated for reasons of health, religion, or conscience may be subjected to isolation or quarantine.

a. Examination, testing, vaccination, or treatment may be performed by any qualified person authorized by the State Health Officer.

b. If the individual poses a danger to the public health, the State Health Officer may subject the individual to isolation or quarantine. If there is no practical method to isolate or quarantine the individual, the State Health Officer may use any means necessary to vaccinate or treat the individual.

c. Any order of the State Health Officer given to effectuate this paragraph ~~is shall be~~ immediately enforceable by a law enforcement officer under s. 381.0012.

~~(e)(2)~~ Individuals who assist the State Health Officer at his or her request on a volunteer basis during a public health emergency are entitled to the benefits specified in s. 110.504(2), (3), (4), and (5).

Section 17. Subsection (1) of section 406.11, Florida Statutes, is amended, and paragraph (c) is added to subsection (2) of that section, to read:

406.11 Examinations, investigations, and autopsies.—

(1) In any of the following circumstances involving the death of a human being, the medical examiner of the district in

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which the death occurred or the body was found shall determine the cause of death and certify the death and shall, for that purpose, make or ~~perform~~ have performed such examinations, investigations, and autopsies as he or she ~~deems shall deem~~ necessary or as ~~shall be~~ requested by the state attorney:

(a) When any person dies in this ~~the~~ state:

1. Of criminal violence.
2. By accident.
3. By suicide.
4. Suddenly, when in apparent good health.
5. Unattended by a practicing physician or other recognized practitioner.
6. In any prison or penal institution.
7. In police custody.
8. In any suspicious or unusual circumstance.
9. By criminal abortion.
10. By poison.
11. By disease constituting a threat to public health.
12. By disease, injury, or toxic agent resulting from employment.

(b) When a dead body is brought into this ~~the~~ state without proper medical certification.

(c) When a body is to be cremated, dissected, or buried at sea.

(2)

(c) A district medical examiner shall assist the State Health Officer in identifying and reporting deaths upon a request by the State Health Officer under s. 381.00315.

Section 18. For purposes of this act, all executive orders

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issued pursuant to an emergency declaration by the Governor, including through delegated or subdelegated authority, which are issued more than 60 days before July 1, 2021, expire upon the effective date of this act; however, an expired executive order may be reissued for 60-day periods if the emergency conditions persist, and if the reissued order states with specificity the provisions being reissued.

Section 19. No later than September 30, 2021, the Department of Business and Professional Regulation must review all executive orders issued under its delegated authority during the COVID-19 pandemic and make written recommendations to the Legislature regarding any issues that should be codified in law.

Section 20. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2021.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6/21
Meeting Date

2006
Bill Number (if applicable)

Topic Emergency Management

AA 942642
Amendment Barcode (if applicable)

Name Tonnette Graham

(Gibson)

Job Title Assoc. Director of Public Policy

Address 100 S. Monroe St. Phone 850.509.5333
Street

Tallah FL 32301 Email tgraham@fl-
City State Zip counties.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FL Association of Counties

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-6-21

Meeting Date

2006

Bill Number (if applicable)

AA 942642

Amendment Barcode (if applicable)

Topic AA to 2006

Name Scott Dudley

Job Title Legislative Affairs

Address 301 ~~SW~~ South Bronough

Street

Tallahassee FL 32301

City

State

Zip

Phone 850-570-7296

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6/21
Meeting Date

2006
Bill Number (if applicable)

Topic Emergency Management

AA 828322
Amendment Barcode (if applicable)

Name Tonnette Graham

(Gibson)

Job Title Assoc. Director of Public Policy

Address 100 S. Monroe St.
Street

Phone 850.509.5333

Tallah, FL 32301
City State Zip

Email tgraham@fl-counties.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FL Association of Counties

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-6-21

2006

Meeting Date

Bill Number (if applicable)

AA 828322

Amendment Barcode (if applicable)

Topic

Name Scott Dudley

Job Title Legislative Affairs

Address 301 S. Bronough

Street

Tallahassee FL 32301

City

State

Zip

Phone

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6/21

Meeting Date

2006

Bill Number (if applicable)

Topic Emergency Management

AA 726470

Amendment Barcode (if applicable)

(Gibson)

Name Tonnette Graham

Job Title Assoc. Director of Public Policy

Address 100 S. Monroe St.

Phone 850.509.5333

Street

Tallah

FL

City

32301

State

Zip

Email tgraham@fl-

counties.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FL Assoc. of Counties

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-6-21

2006

Meeting Date

Bill Number (if applicable)

Topic

AA to 602576

AA

726470

Amendment Barcode (if applicable)

Name

Scott Dudley

Job Title

Legislative Affairs

Address

301 S. Brunnough

Phone

850-570-7246

Street

City

Tallahassee FL 32301

State

Zip

Email

sdudley

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Florida League of Cities

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-6-21

Meeting Date

2006

Bill Number (if applicable)

602576

Amendment Barcode (if applicable)

Topic Emergency Powers for Local Govt

Name Scott Dudley

Job Title Director, Fed Affairs + Field Advocacy

Address 3015 Branough Suite 300

Street

Phone 850-570-7296

Tallahassee FL 32301

City

State

Zip

Email sdudley@cities.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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THE FLORIDA SENATE
APPEARANCE RECORD

4-6-21

Meeting Date

2006

Bill Number (if applicable)

602576

Amendment Barcode (if applicable)

Topic _____

Name Jess M. McCarty

Job Title Executive Assistant County Attorney

Address 111 NW First Street, Suite 2810

Phone 305-979-7110

Street

Miami

FL

33128

Email jmm2@miamidade.gov

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Miami-Dade County

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/6/21

Meeting Date

2006

Bill Number (if applicable)

602576

Amendment Barcode (if applicable)

(Diaz)

Topic Emergency Management

Name Tonnelle Graham

Job Title Assoc. Director of Public Policy

Address 100 S. Monroe St.

Street

Phone 850.509.5333

Tallahassee, FL

City

32301

State

Zip

Email tgraham@fi-

counties.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Assoc. of Counties

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

April 6, 2021

Meeting Date

SB - 2006

Bill Number (if applicable)

Topic Emergency Management

Amendment Barcode (if applicable)

Name Chief Ray Colburn

Job Title Executive Director

Address 5289 Palm Drive

Street

Melbourne Beach

City

FL

State

32951

Zip

Phone 407-468-6622

Email ray@ffca.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Fire Chiefs' Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/6/21

Meeting Date

2006

Bill Number (if applicable)

Topic Emergency Management

AA

828322

Amendment Barcode (if applicable)

Name Mark Jeffries

Job Title

Address 201 S. Rosalind Ave

Street

Orlando, FL 32801

City

State

Zip

Phone 407-836-5909

Email mark.jeffries@ocfl.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Orange County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6/2021

Meeting Date

2006

Bill Number (if applicable)

828322

Amendment Barcode (if applicable)

Topic Emergency Management

Name Devon West

Job Title Legislative Policy Advisor

Address 100 S. Andrews Ave.
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Phone 954-789-9293

Fort Lauderdale, FL 33301
City State Zip

Email dewest@broward.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Broward County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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**This information was not read
into the record by the Chair**

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/6/21

2006

Meeting Date

Bill Number (if applicable)

602576

Amendment Barcode (if applicable)

Topic Emergency Management

Name MARK Jeffries

Job Title

Address 201 S. Rosalind Ave

Street

ORlando

FL

32801

City

State

Zip

Phone 407-836-5909

Email mark.jeffries@ocfl.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Orange County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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into the record by the Chair

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 7064

INTRODUCER: Commerce and Tourism Committee

SUBJECT: Public Records/Investigations by the Department of Legal Affairs

DATE: April 2, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
<u>Harmsen</u>	<u>McKay</u>		CM Submitted as Comm. Bill/Fav
1. <u>Harmsen</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 7064 creates a public records exemption for information received by the Department of Legal Affairs (DLA) pursuant to a notification of a violation under the Florida Privacy Protection Act or received pursuant to an investigation made by the DLA or a law enforcement agency.

The bill permits the DLA to disclose this confidential and exempt information during an active investigation under specific circumstances.

Once an investigation is completed or once an investigation ceases to be active, the following information received by the DLA will remain confidential and exempt:

- All information to which another public record exemption applies;
- Personal information;
- A computer forensic report;
- Information that would otherwise reveal weaknesses in a business' data security; and
- Information that would disclose a business' proprietary information.

The bill provides for the repeal of the exemption on October 2, 2026, unless it is reenacted by the Legislature under the Open Government Sunset Review Act.

The bill takes effect on the same date that linked bill SB 1734 (implementing the Florida Privacy Protection Act) takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Current Public Records Exemptions for Investigations Conducted by the Department of Legal Affairs

Florida's public records laws currently make most information obtained by the Department open to the public.²⁷ In the absence of a specific legislative exemption, investigative records made or received by public agencies are open to public inspection pursuant to ch. 119, F.S.²⁸ Further, an agency's disclosure of records of its investigative proceedings upon the completion of a preliminary investigation does not violate an individual's right of privacy.²⁹

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ See *State ex rel. Veale v. City of Boca Raton*, 353 So. 2d 1194 (Fla. 4th DCA 1977), *cert. denied* 360 So. 2d 1247 (Fla. 1978).

²⁸ See *State ex rel. Veale v. City of Boca Raton*, 353 So.2d 1194 (Fla. 4th DCA 1977), *cert. denied*, 360 So.2d 1247 (Fla. 1978).

²⁹ See *Garner v. Florida Comm'n. on Ethics*, 415 So.2d 67 (Fla. 1st DCA 1982), *rev. denied*, 424 So.2d 761 (Fla. 1983).

Section 119.071(2), F.S., exempts various records and information from public inspection, including the following information when held by the DLA:

- Complaint and information held pursuant to an investigation of a violation of the Florida False Claims Act—this information may be disclosed after the completion of the DLA’s investigation, or as otherwise provided in the exemption.³⁰
- Information received pursuant to a notice of a data breach or pursuant to certain investigation is confidential until the investigation is completed or ceases to be active. Disclosure of this information is authorized under specific circumstance.³¹
- Criminal or civil intelligence, investigative information, or any other information held by any state or federal agency that is obtained by the DLA in the course of an investigation under Part II of Ch. 501, regarding Deceptive and Unfair Trade Practices. If this information is confidential or exempt from disclosure pursuant to s. 119.07(1), F.S., when held by the originating agency, it will retain that exemption when obtained by the DLA.³²

Florida Privacy Protection Act

SB 1734 creates the Florida Privacy Protection Act (Act). The Act grants consumers specific rights relating to their personal information, namely (1) the right to opt-out of the sale or sharing of their personal information, and (2) the right to correct or delete their personal information held by a business.

Specific businesses must act to accommodate these consumer privacy rights and provide notice to consumers about their collection and sale of personal information. Additionally, the businesses cannot discriminate against consumers based on their decision to opt-out of the sale or sharing of their personal information.

The Act grants the Florida Department of Legal Affairs (DLA) (also known as the Office of the Attorney General) authority to institute appropriate legal proceedings against businesses that it believes have violated or are violating the Act.

As created, then, any information obtained by the DLA during an investigation of the Act is subject to disclosure under ch. 119, F.S. This may present a hurdle to the DLA’s investigation and enforcement because it will stifle the disclosure of pertinent information from law enforcement or consumers to the DLA.³³ Additionally, the release of consumer personal information could subject them to identity theft or further harm.

III. Effect of Proposed Changes:

SB 7064 makes information received by the DLA pursuant to a notification of a violation of certain statutory requirements or received by the DLA pursuant to an investigation by the DLA or a law enforcement agency confidential and exempt.

³⁰ Section 68.083(8), F.S.

³¹ Section 501.171(11), F.S.

³² Section 501.2065, F.S.

³³ Florida Department of Law Enforcement, *HB 1239 Agency Analysis* (Mar. 6, 2019), (on file with the Senate Committee on Commerce and Tourism).

During an active investigation, the DLA may disclose confidential and exempt information:

- In furtherance of its official duties and responsibilities;
- For print, publication, or broadcast if the DLA determines that such release would assist in notifying the public or locating or identifying a person believed to be a victim of the improper use or disposal of customer records; or
- To another governmental entity in the furtherance of its official duties and responsibilities.

Once an investigation is completed or once an investigation ceases to be active, the following information received by the DLA will remain confidential and exempt:

- All information to which another public record exemption applies;
- Personal information;
- A computer forensic report;
- Information that would otherwise reveal weaknesses in a business' data security; and
- Information that would disclose a business' proprietary information.

For purposes of this public records exemption, "proprietary information" means information that:

- Is owned or controlled by the business
- Is intended to be private and treated as such by the business because disclosure would harm the business or its business operations;
- Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public;
- Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as it was received by the DLA; and
- Includes trade secrets and competitive interests.

This provision will be subject to an Open Government Sunset Review in accordance with s. 119.15, F.S., and will stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill will become effective on the same date that SB 1734 (2021) or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill creates a new public records exemption, thus the bill requires an extraordinary vote for enactment.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill creates a new public records exemption, thus the bill contains a statement of public necessity.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. This bill creates a public records exemption for certain information held by the DLA during its investigations of violations of the Florida Privacy Protection Act, and maintains the exemption indefinitely for specific personal information and business information. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 501.177 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By the Committee on Commerce and Tourism

577-03191-21

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A bill to be entitled

An act relating to public records; amending s. 501.177, F.S.; providing an exemption from public records requirements for information relating to investigations by the Department of Legal Affairs and law enforcement agencies of certain data privacy violations; defining the term "proprietary information"; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (4) is added to section 501.177, Florida Statutes, as created by SB 1734, 2021 Regular Session, to read:

501.177 Civil actions; private right of action; Attorney General; rules.—

(4) (a) All information received by the department pursuant to a notification of a violation under this act, or received by the department pursuant to an investigation by the department or a law enforcement agency, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the investigation is completed or ceases to be active. This exemption shall be construed in conformity with s. 119.071(2) (c).

(b) During an active investigation, information made confidential and exempt pursuant to paragraph (a) may be

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disclosed by the department:

1. In the furtherance of official duties and responsibilities;

2. For print, publication, or broadcast if the department determines that such release would assist in notifying the public or locating or identifying a person the department believes to be a victim of improper use or disposal of customer records, except that information made confidential and exempt by paragraph (c) may not be released pursuant to this subparagraph; or

3. To another governmental entity in the furtherance of its official duties and responsibilities.

(c) Upon completion of an investigation or once an investigation ceases to be active, all of the following information received by the department remains confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. All information to which another public records exemption applies.

2. Personal information.

3. A computer forensic report.

4. Information that would otherwise reveal weaknesses in a business' data security.

5. Information that would disclose a business' proprietary information.

(d) For purposes of this subsection, the term "proprietary information":

1. Means information that:

a. Is owned or controlled by the business.

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b. Is intended to be private and is treated by the business as private because disclosure would harm the business or its business operations.

c. Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public.

d. Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the department.

2. Includes:

a. Trade secrets as defined in s. 688.002.

b. Competitive interests, the disclosure of which would impair the competitive business of the business who is the subject of the information.

(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. The Legislature finds that it is a public necessity that all information received by the Department of Legal Affairs pursuant to a notification of a violation of this act, or received by the department pursuant to an investigation by the department or a law enforcement agency, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for the following reasons:

(1) A notification of a violation of this act may result in an investigation of such violation. The premature release of such information could frustrate or thwart the investigation and

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impair the ability of the department to effectively and efficiently administer its duties pursuant to s. 501.177, Florida Statutes. In addition, release of such information before completion of an active investigation could jeopardize the ongoing investigation.

(2) The Legislature finds that it is a public necessity to continue to protect from public disclosure all information to which another public record exemption applies once an investigation is completed or ceases to be active. Release of such information by the department would undo the specific statutory exemption protecting that information.

(3) An investigation of a data privacy violation is likely to result in the gathering of sensitive personal information, including social security numbers, identification numbers, and personal financial information. Such information could be used for the purpose of identity theft. In addition, release of such information could subject possible victims of data privacy violations to further harm.

(4) Notices received by the department and information received during an investigation of a covered business' violations of this act are likely to contain proprietary information, including trade secrets, about the security of the system. The release of the proprietary information could result in the identification of the system's vulnerabilities, which could ultimately lead to the improper access of personal information held by the covered business. In addition, a trade secret derives independent, economic value, actual or potential, from being generally unknown to, and not readily ascertainable by, other persons who might obtain economic value from its

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117 disclosure or use. Allowing public access to proprietary
118 information, including a trade secret, through a public records
119 request could destroy the value of the proprietary information
120 and cause a financial loss to the business submitting the
121 information. Release of such information could weaken the
122 position of the entity supplying the proprietary information in
123 the marketplace.

124 Section 3. This act shall take effect on the same date that
125 SB 1734 or similar legislation takes effect, if such legislation
126 is adopted in the same legislative session or an extension
127 thereof and becomes a law.

CourtSmart Tag Report

Room: KB 412

Case No.: -

Type:

Caption: Senate Rules Committee

Judge:

Started: 4/6/2021 9:31:08 AM

Ends: 4/6/2021 3:02:39 PM **Length:** 05:31:32

9:31:08 AM Meeting called to order
9:31:16 AM Roll call
9:31:49 AM Quorum is present
9:32:38 AM Temporarily postpone the following bills: CS/SB 78, CS/CS/90, CS/SB1014, CS/SB1924
9:32:51 AM Chair Passidomo gives instructions to public at civic center
9:33:08 AM CS/SB 26 Relief of the Estate of Crystle Marie Galloway/Hillsborough County Board of County Commissioners by Senator Cruz
9:33:51 AM Senator Thurston presents the bill for Senator Cruz
9:34:18 AM No questions
9:34:22 AM No public appearance
9:34:32 AM No debate, Senator Thurston waives close.
9:34:39 AM Roll call vote: CS/SB 26 is reported favorably
9:35:18 AM CS/SB 968 Public Records/ Economic Development Agency by Senator Gainer
9:35:25 AM Senator Gainer explains the bill
9:36:07 AM No questions
9:36:35 AM Public appearance:
9:36:40 AM Ethan Perry, Florida Department of Economic Opportunity, waives in support
9:36:52 AM No Debate
9:36:56 AM Senator Gainer waives close
9:36:58 AM Roll call vote: CS/SB 968 is reported favorably
9:37:35 AM CS/SB268 Preemption of Local Occupational Licensing by Senator Perry
9:37:45 AM Senator Perry explains the bill
9:38:01 AM Questions: hold for amendment
9:38:28 AM Late filed amendment 815936 by Senator Farmer is explained
9:39:49 AM No questions on the amendment
9:39:55 AM Public appearance
9:39:57 AM Martha Edenfield, Lee County, waives in support
9:40:02 AM Edward Labrador, Florida Association of Counties, speaking in support
9:40:46 AM Matt McDonald, Florida Stormwater Association, waives in support
9:40:56 AM Christian Camara, Institute for Justice, waives against the amendment
9:41:09 AM Jess M. McCarty, Miami-Dade County, waives in support
9:41:24 AM Devon West, Broward County, waives in support of amendment
9:41:37 AM Debate on amendment
9:41:45 AM Senator Perry comments on amendment
9:42:34 AM Senator Farmer closes on the amendment
9:42:40 AM Senator Farmer withdraws the amendment
9:43:24 AM Back on the bill
9:43:27 AM Senator Brandes with a question
9:43:45 AM Senator Perry answers on business license
9:44:06 AM Senator Brandes with follow up question on requirements
9:44:17 AM Senator Perry answers
9:44:25 AM Public appearance
9:45:07 AM Edward Labrador, FL Association of Counties, speaks against the bill
9:46:28 AM Matthew McDonald, Florida Stormwater Association, waives against the bill
9:46:37 AM JB Clark, Florida Electrical Workers Association, waives in support
9:46:42 AM Christian Camara, Institute for Justice, waives in support
9:46:49 AM Diego Echeverri, Americans for Prosperity, waives in support
9:46:51 AM David Cullen, Sierra Club of Florida, speaks in opposition
9:50:08 AM Jess McCarty, Miami-Dade County, in opposition
9:50:38 AM Chair Passidomo asks for any additional speakers
9:50:41 AM Devon West, Broward County, speaks in opposition
9:51:03 AM Debate:

9:51:26 AM Senator Powell - regarding local licensure
9:52:05 AM Senator Gibson in debate
9:53:10 AM Senator Baxely in debate
9:53:52 AM Senator Farmer in debate regarding local government intent
9:55:11 AM Senator Farmer in debate
9:55:24 AM Senator Brandes comments on possible multiple licensures
9:57:27 AM Senator Perry closes on the bill
9:58:23 AM Roll call vote: CS/SB 268 is reported favorably
9:59:04 AM CS/SB 1802 Interception of Wire, Oral or Electronic Communications Made in Violation of Protective Orders-move to tab 11 Senator Pizzo - not in room
9:59:38 AM SB 628 Urban Agriculture by Senator Rouson
9:59:45 AM Senator Rouson explains the bill
10:00:08 AM Amendment 372958 by Senator Rouson is explained
10:00:30 AM No questions
10:00:40 AM Public appearance: Jeffery Sharkey, City of St. Petersburg, waives in support
10:01:07 AM No debate on amendment
10:01:12 AM Senator Rouson waives close
10:01:19 AM Amendment is adopted
10:01:40 AM No questions on bill as amended
10:01:46 AM No public appearance, no debate
10:01:49 AM Senator Rouson waives close
10:01:51 AM Roll call vote: CS/SB 628 is reported favorably
10:02:35 AM CS/SB 1176 Barber Services by Senator Stewart
10:02:45 AM Senator Bracy explains the bill
10:03:50 AM No questions
10:03:52 AM Public Appearance
10:03:55 AM Diego Echeverri, Americans for Prosperity, waives in support
10:04:01 AM Christian Camara, Institute for Justice, waives in support
10:04:16 AM No debate
10:04:19 AM Senator Bracy waives close
10:04:22 AM Roll call vote: CS/SB 1176 is reported favorably
10:05:02 AM CS/SB 932 Minor Time-sharing for Parent Convicted of or Had Adjudication Withheld for a Specified Offense by Senator Wright
10:05:56 AM Senator Wright explains the bill
10:06:20 AM Amendment 735846 by Senator Wright is explained
10:06:49 AM No questions
10:06:52 AM No public appearance
10:07:00 AM No debate
10:07:03 AM Senator Wright waives close
10:07:06 AM Amendment 735846 is adopted
10:07:12 AM Back on the bill as amended
10:07:16 AM Public Appearance
10:07:18 AM No questions
10:07:32 AM Khanh-Lien Banko, Florida PTA, Orlando waives in support
10:07:46 AM Senator Brandes has question
10:07:59 AM Senator Wright responds
10:08:09 AM No debate
10:08:14 AM Roll call vote: CS/CS/SB 932 is reported favorably
10:08:54 AM CS/CS/SB 1788 Construction Permits by Senator Boyd
10:09:11 AM Senator Boyd explains the bill
10:10:15 AM No questions
10:10:18 AM Dane Bennett, Florida Home Builders Association, waives in support
10:10:24 AM No debate
10:10:34 AM Senator Boyd waives close
10:10:37 AM Roll call vote: CS/CS SB 1788 is reported favorably
10:11:24 AM CS/SB 1802 Interception of Wire, Oral, or Electronic Communications Made in Violation of Protective Orders by Senator Pizzo
10:11:30 AM Senator Pizzo explains the bill
10:11:51 AM No questions
10:11:55 AM No public appearance
10:12:00 AM No debate, Senator Pizzo waives close
10:12:05 AM Roll call vote: CS/SB 1802 is reported favorably

10:12:48 AM CS/SB 1734 Consumer Data Privacy by Senator Bradley
10:13:07 AM There are 4 amendments
10:13:18 AM 655390 by Senator Bradley is explained
10:15:58 AM 3 AAs on the strike all amendment
10:17:03 AM Late filed amendment 960668 by Senator Gruters is explained
10:17:16 AM Senator Gruters withdraws the amendment
10:17:25 AM Late filed amendment 968992 by Senator Gruters is explained
10:17:55 AM No questions
10:17:58 AM Public appearance
10:18:02 AM Brewster Bevis, Associated Industries of Florida, waives in support
10:18:31 AM Debate: Senator Bradley does not oppose the amendment
10:18:40 AM Senator Gruter closes. The amendment is adopted.
10:18:54 AM Amendment 286888 late filed by Senator Bradley is explained
10:19:03 AM Senator Powell in questions
10:19:58 AM Senator Bradley answers
10:20:34 AM Senator Powell with follow up re contractual relationships
10:20:48 AM Senator Bradley responds
10:21:09 AM Senator Book in questions
10:21:50 AM Senator Bradley clarifies
10:22:07 AM Senator Farmer with a question regarding enforcement
10:22:21 AM Senator Bradley answers - this is a question on the bill before amended but responds
10:23:20 AM Carolyn Johnson, FL Chamber of Commerce, waives in support
10:23:36 AM No debate on AA
10:23:45 AM Senator Bradley closes
10:23:47 AM Amendment 286888 is adopted
10:23:54 AM Back on the main amendment 655390
10:24:05 AM Questions on this amendment: Senator Brandes in questions regarding cost of compliance
10:24:29 AM Senator Bradley responds
10:25:23 AM Senator Brandes with follow up question
10:25:34 AM Senator Bradley responds
10:25:42 AM Senator Bradley talks on website agreements
10:25:55 AM Senator Bradley responds referring to the strike all
10:26:26 AM Senator Brandes with follow up
10:26:33 AM Senator Bradley answers
10:26:42 AM Senator Brandes continues in questions
10:26:49 AM Senator Bradley responds regarding sales on information that may be sold
10:27:26 AM Public appearance:
10:27:28 AM Alfred Saikali speaking in support of the amendment
10:29:07 AM Grace Lovett, Florida Retail Federation speaking in support wants to speak on bill
10:29:40 AM Robert Fingar, Florida Petroleum Marketers Association, waives in support
10:29:58 AM Carolyn Johnson, Florida Chamber of Commerce, waives in support
10:30:04 AM William Large, Florida Justice Reform Institute, speaks in support
10:30:40 AM Jefferey Sharkey, Quicken Loans/Rocket Mortgage, waives in support
10:30:54 AM George Feijoo, US Chamber Institute for Legal Reform, with information
10:31:45 AM Senator Brandes with question for Mr. Feijoo
10:32:46 AM Mr. Feijoo responds
10:33:45 AM Edward Bowman, FL Petroleum Marketers Association, waives in support
10:33:58 AM No debate on amendment
10:34:04 AM Senator Bradley closes on the amendment
10:34:14 AM Amendment 655390 is adopted
10:34:24 AM Back on the bill as amended
10:34:30 AM Questions: Senator Gibson in questions regarding business employment info
10:35:16 AM Senator Bradley responds
10:35:39 AM Senator Gibson with a question on benefits
10:35:49 AM Senator Bradley answers - will follow up on question
10:36:23 AM Alfred J Saikali, Miami speaks in opposition; Senator Brandes has question on business gross sales
10:37:23 AM Senator Brandes clarifies question amount
10:37:34 AM Mr. Saikali responds
10:38:18 AM Brewster Bevis, Associate Industries of Florida, speaks against the bill though states it is much improved
10:40:29 AM Grace Lovett, Florida Retail Federation, speaks in opposition
10:41:20 AM Anthony DiMarco Florida Bankers Association is opposed
10:41:25 AM Kenneth Pratt, Florida Bankers Association, speaks on the bill

10:42:30 AM Debate on the bill as amended
10:43:33 AM Senator Baxley in debate
10:45:43 AM Senator Farmer in debate
10:49:31 AM Senator Brandes in debate
10:52:27 AM Senator Brandes can't support today
10:52:35 AM Senator Bradley closes on the bill
10:54:33 AM Roll call vote: CS/CS/SB 1734 is reported favorably
10:55:37 AM SB 7064 Public Records/Investigations by the Department of Legal Affairs by Senator Bradley
10:55:45 AM Senator Bradley explains the bill
10:56:28 AM No questions
10:56:51 AM No public appearance
10:57:00 AM No debate
10:57:04 AM Senator Bradley waives close
10:57:08 AM Roll call vote: SB 7064 is reported favorably
10:57:40 AM CS/SB 714 Resource Information of Individuals with Disabilities by Senator Taddeo
10:57:50 AM Senator Taddeo explains the bill
10:58:21 AM Amendment 299350 by Senator Taddeo is explained
10:58:58 AM No questions
10:59:16 AM Senator Taddeo waives close
10:59:19 AM Amendment 229350 is adopted
10:59:26 AM No questions on bill as amended
10:59:33 AM Khanh-Lien Banko, FL PTA, waives in support
10:59:47 AM Debate: Senator Baxley with comments in support
11:00:41 AM Senator Taddeo closes on the bill
11:01:05 AM Roll call vote: CS/CS/SB 714 is reported favorably
11:01:56 AM SB 998 Contractor Advertising by Senator Brodeur
11:01:59 AM Senator Brodeur explains the bill
11:02:26 AM Questions: Senator Powell asks about necessity of the bill
11:02:40 AM Senator Brodeur responds
11:03:57 AM Senator Gibson with a question
11:04:14 AM Senator Brodeur clarifies on permits to companies
11:04:16 AM Public appearance
11:04:41 AM Christian Camara, Institute for Justice, waives in support
11:04:57 AM No debate
11:04:59 AM Senator Brodeur waives close
11:05:03 AM Roll call vote: SB998 is reported favorably
11:05:37 AM SB 1634 Public Records Aquaculture Department of Agriculture and Consumer Services by Senator Brodeur is explained
11:06:24 AM No questions
11:06:30 AM Emily Duda Buckley, FL Department of Agriculture and Consumer Services, waives in support
11:06:42 AM No debate. Senator Brodeur waives close
11:06:46 AM Roll call vote: SB 1634 is reported favorably
11:07:51 AM CS/SB 2006 Emergency Management by Senator Burgess is explained
11:11:34 AM Amendment 796836 by Senator Burgess
11:12:34 AM Senator Burgess explains the amendment
11:12:50 AM No questions
11:13:00 AM No public appearance
11:13:01 AM No debate. Senator Burgess waives close.
11:13:18 AM Amendment 796836 is adopted
11:13:26 AM Amendment 675998 by Senator Brandes is explained, then withdrawn.
11:16:02 AM Chair: Show 675998 withdrawn
11:16:22 AM Amendment 937570 by Senator Burgess is explained
11:17:10 AM No questions
11:17:16 AM No public appearance
11:17:19 AM No debate
11:17:28 AM Senator Burgess waives close
11:17:31 AM Amendment 937570 is adopted
11:17:38 AM Amendment 602576 by Senator Diaz is explained
11:19:11 AM Late filed AA 942642 by Senator Gibson is explained
11:20:21 AM No questions
11:20:37 AM Tonnette Graham, FL Association of Counties, speaks in support
11:21:22 AM Scott Dudley, FL League of Cities in support of Amendment

11:21:41 AM Debate: Senator Diaz wishes to work with Sentor Gibson on language
 11:22:35 AM Senator Gibson closes on Amendment
 11:22:42 AM AA 942642 is withdrawn
 11:23:15 AM AA 828322 late filed by Senator Gibson is explained
 11:23:41 AM No questions
 11:23:55 AM Tonnette Graham FI Association of Counties. speaks in support
 11:24:49 AM Scott Dudley, FL League of Cities, speaks in support
 11:25:09 AM Senator Diaz comments on amendment
 11:25:40 AM Senator Gibson closes the amendment
 11:26:39 AM AA 828322 is not adopted
 11:26:48 AM AA 726470 late filed by Senator Gibson is explained
 11:27:17 AM No questions
 11:28:18 AM Tonnette Graham, FI Association of Counties, speaks in support
 11:29:24 AM Scott Dudley, League of Cities in support
 11:29:39 AM Debate: Senator Diaz in debate to the amendment regarding language
 11:30:45 AM Senator Gibson withdraws the amendment
 11:31:45 AM Show AA 726470 withdrawn
 11:31:53 AM Back on amendment 602576:
 11:32:12 AM Questions: Senator Book asks about communication with Emergency Management
 11:32:35 AM Senator Diaz replies
 11:33:21 AM Senator Book with follow up
 11:34:07 AM Senator Diaz responds
 11:35:23 AM Scott Dudley, FL League of Cities, is against the amendment
 11:37:12 AM Jess M. McCarty, Miami-Dade County, waives in opposition
 11:37:20 AM Tonnette Graham, FL Association of Counties, waives against amendment
 11:37:38 AM Debate: Senator Farmer has questions to bill sponsor about the amendment
 11:38:35 AM Senator Burgess responds
 11:40:44 AM Senator Diaz closes on the amendment
 11:41:11 AM Amendment 602576 is adopted
 11:42:12 AM Amendment 673282 late filed by Senator Gruters
 11:43:41 AM Questions on the amendment: Senator Gibson - asks what the amendment will do
 11:44:40 AM Senator Gruters responds
 11:44:44 AM Senator Gruters explains what the vaccination passport is
 11:45:05 AM Senator Book with a question
 11:45:30 AM Senator Gruters responds
 11:45:39 AM Senator Book asks about institutions of higher learning
 11:45:49 AM Senator Gruters responds
 11:45:59 AM Senator Gibson question on vaccinations
 11:46:36 AM Senator Gruters clarifies
 11:47:07 AM Senator Gibson with a follow up
 11:47:33 AM Senator Gruters responds
 11:47:48 AM Senator Gibson with a follow up
 11:48:14 AM Senator Gruters responds
 11:48:37 AM Senator Gibson asks regarding restaurants
 11:48:43 AM Senator Gruters responds
 11:48:55 AM Senator Book requests thoughts from bill sponsor on the amendment
 11:49:45 AM Senator Burgess responds
 11:51:54 AM Senator Gruters moves to withdraw amendment 673282. Show the amendment barcode 673282 withdrawn.
 11:52:21 AM Back on the bill as amended
 11:52:27 AM Chief Ray Colburn, Florida Fire Chief's Association, waives in support of the bill as amended
 11:52:50 AM Debate: Senator Farmer in debate
 11:56:08 AM Senator Burgess closes on the bill
 11:57:32 AM Roll call vote: CS/CS/SB 2006 is reported favorably
 11:59:07 AM Recording Paused in recess 10 minute to 12:10 pm
 12:08:57 PM Recording Resumed
 12:09:09 PM Tab 7 CS/SB400 Public Records by Senator Rodrigues
 12:09:15 PM Senator Rodrigues explains the bill
 12:09:28 PM No questions
 12:10:20 PM No public appearance
 12:10:32 PM No debate
 12:10:36 PM Senator Rodrigues waives close

12:10:38 PM Roll call vote: CS/SB 400 is reported favorably
12:11:20 PM CS/CS/SB 582 Parental Rights by Senator Rodrigues
12:11:30 PM Senator Rodrigues explains the bill
12:12:26 PM Questions: Senator Gibson asks about statutes of parental rights
12:13:25 PM Senator Rodrigues responds
12:14:08 PM Senator Gibson with follow up question regarding school boards
12:14:36 PM Senator Rodrigues clarifies
12:14:58 PM Senator Book in questions regarding abused children
12:15:52 PM Senator Rodrigues responds
12:16:36 PM Senator Book with follow up question
12:17:10 PM Senator Rodrigues further responds
12:17:29 PM Senator Farmer with a question
12:18:26 PM Senator Rodrigues responds
12:19:54 PM Senator Farmer discussing a child needing help
12:20:14 PM Senator Rodrigues responds
12:20:27 PM Senator Farmer follow up
12:21:03 PM Senator Rodrigues responds
12:21:15 PM Senator Farmer with follow up
12:21:26 PM Senator Rodrigues responds
12:21:56 PM Senator Farmer continues on interpretations
12:22:29 PM Senator Rodrigues comments
12:22:56 PM Senator Stargel in questions
12:23:13 PM Senator Rodrigues responds
12:23:40 PM Senator Book with question on line 274
12:24:38 PM Senator Rodrigues responds on further conversation
12:24:38 PM Public appearance
12:25:39 PM Patti Sullivan, Parental Rights Florida, speaking in support
12:28:12 PM Vallie Osborne, Okaloosa County, speaks in support
12:30:27 PM Abbagael Sullivan, Florida Families, speaking in support
12:31:29 PM Devon Graham, American Athiests, speaking against
12:31:50 PM Carrie Boyd, SPLC Action Fund, waives against
12:32:38 PM Dana Hammett, Parental Rights Florida, speaking in support
12:33:50 PM Trish Neely, League Women Voters, waives against
12:34:08 PM AnnaCatherine Hammett, Parental Rights Florida, speaking in support
12:35:01 PM Ida N. Eskamani, Florida Rising, waives against
12:35:08 PM Heidi Daniels, Florida Citizens Alliance, speaks in support
12:36:35 PM Barbara Devane, Florida NOW, waives against
12:36:43 PM Karen Woodall, FL Center for Fiscal and EC Policy, waives against
12:36:50 PM Ken Kniepmann, Florida Catholic Bishops, waives in support
12:37:18 PM Debate:
12:37:23 PM Senator Farmer in debate
12:40:22 PM Senator Stargel in debate
12:42:33 PM Senator Baxley in debate
12:43:37 PM Senator Gibson in debate
12:44:18 PM Senator Gibson in debate - has difficulty with additional language
12:46:37 PM Senator Rodrigues closes on the bill
12:47:58 PM Roll call vote: CS/CS/SB 582 is reported favorably
12:49:02 PM Moving on with Senator Rodrigues' bills
12:49:03 PM SB 1136: Board of Directors of Florida ABLE, Inc. by Senator Rodrigues
12:49:04 PM Senator Rodrigues explains the bill
12:49:43 PM No questions
12:50:42 PM No public appearance
12:50:51 PM No debate
12:50:55 PM Senator Rodrigues waives close
12:51:00 PM Roll call vote: SB 1136 is reported favorably
12:51:36 PM SB 1140: Unlawful Use of DNA by Senator Rodrigues
12:51:49 PM Senator Rodrigues explains the bill
12:52:10 PM Amendment 110124 by Senator Rodrigues as a strike all amendment
12:52:52 PM Senator Rodrigues explains the amendment
12:54:19 PM Questions: Senator Brandes with a question
12:55:23 PM Senator Rodrigues responds
12:55:35 PM Senator Brandes in questions

12:55:42 PM Senator Brandes has concerns
 12:56:13 PM Senator Rodrigues responds
 12:56:41 PM Senator Powell with a question
 12:57:13 PM Senator Rodrigues responds
 12:57:54 PM Senator Powell follow up on getting DNA without consent
 12:58:12 PM Senator Rodrigues responds
 12:58:17 PM No public appearances
 12:58:31 PM No debate on the amendment
 12:58:40 PM Senator Rodrigues waives close
 12:58:44 PM Amendment 110124 is adopted
 12:58:54 PM No questions on bill as amended
 12:59:01 PM No public appearance
 12:59:09 PM No debate
 12:59:13 PM Senator Rodrigues waives close
 12:59:17 PM Roll call vote: CS/SB 1140 is reported favorably
 1:00:05 PM CS/SB 1890 Campaign Financing by Senator Rodrigues
 1:00:15 PM Senator Rodrigues explains the bill
 1:00:59 PM 2 Amendments:
 1:01:15 PM Amendment 704498 by Senator Farmer is explained
 1:01:19 PM No questions: no public appearance.
 1:01:26 PM No debate
 1:01:40 PM Senator Rodrigues comments on amendment
 1:02:11 PM Senator Farmer closes on the amendment
 1:02:41 PM Voice call vote for amendment
 1:02:55 PM Amendment is not adopted
 1:03:29 PM Late filed amendment 257762 by Senator Brandes is explained
 1:04:34 PM No questions
 1:05:35 PM No public appearance
 1:05:43 PM No debate
 1:05:51 PM Senator Rodrigues makes comment on the amendment
 1:06:07 PM Senator Brandes waives close
 1:06:13 PM Amendment 257762 is adopted
 1:06:21 PM Back on the bill as amended
 1:06:26 PM Questions: Senator Powell with question regarding contribution limits
 1:07:00 PM Senator Rodrigues responds
 1:07:16 PM Senator Brandes with a question
 1:07:42 PM Senator Rodrigues responds
 1:11:11 PM Senator Thurston asks question
 1:12:11 PM Senator Rodrigues clarifies on contributions
 1:12:36 PM Senator Thurston with follow up question
 1:12:54 PM Senator Rodrigues responds
 1:13:03 PM Senator Thurston continues
 1:13:20 PM Senator Rodrigues responds
 1:14:09 PM Senator Thurston follows up on discussion of committees
 1:14:31 PM Senator Rodrigues responds
 1:15:18 PM Senator Brandes interprets bill differently
 1:15:58 PM Senator Rodrigues responds
 1:16:58 PM Senator Gibson has question regarding contribution amounts
 1:17:28 PM Senator Rodrigues answers
 1:17:54 PM Senator Gibson with follow up about contributions
 1:18:55 PM Senator Rodrigues responds
 1:19:46 PM Senator Gibson continues on limitations
 1:20:15 PM Senator Rodrigues explains about initiative view
 1:20:42 PM Senator Thurston requests if willing to accept handwritten amendment at this time
 1:21:48 PM Chair Passidomo: TP SB 1890 until the amendment can be taken care of
 1:22:10 PM CS/SB 398 Relief of the Estate of Emilio Jesus Viscaino-Aday by Miami-Dade County by Senator Rodriguez
 1:22:27 PM Senator Rodriguez explains the bill
 1:22:48 PM No questions
 1:23:07 PM Debate: none
 1:23:13 PM No debate
 1:23:17 PM Roll call vote: CS/SB 398 is reported favorably

1:23:55 PM SB 1212 Construction Contracting Exemptions by Senator Rodriguez is explained
 1:23:59 PM Senator Rodriguez explains the bill
 1:24:32 PM No questions
 1:24:47 PM No public appearance
 1:24:54 PM No debate
 1:24:57 PM Senator Rodriguez waives close
 1:25:02 PM Roll call vote: SB 1212 is reported favorably
 1:25:56 PM CS/SB 430 Petroleum Fuel Measuring Devices by Senator Rodriguez
 1:26:13 PM Senator Rodriguez explains the bill
 1:26:18 PM Amendment 258574 late filed by Senator Rodriguez
 1:26:53 PM Senator Rodriguez explains the amendment
 1:27:00 PM Late filed AA 862802 by Senator Rodriguez is explained
 1:27:16 PM Questions: Senator Powell with a question
 1:27:34 PM Senator Rodriguez responds
 1:27:59 PM Senator Book asks question
 1:28:19 PM No further question
 1:28:36 PM No public appearance
 1:28:37 PM Debate on the AA862802
 1:28:45 PM No debate, Senator waives close
 1:28:51 PM Amendment to Amendment 862802 is adopted
 1:28:57 PM Back on amendment as amended
 1:29:08 PM No appearance forms
 1:29:13 PM No debate
 1:29:16 PM Senator Rodrigues waive close
 1:29:18 PM Amendment 258574 is adopted
 1:29:29 PM Back on bill as amended
 1:29:37 PM Edward Bowman, FL Petroleum Marketer Association, waives in support
 1:29:52 PM Robert Fingar, FL Petroleum Marketers Association, waives in support
 1:30:27 PM Emily Duda Buckley, FL Department of Agriculture and Consumer Services, provides information
 1:30:54 PM Senator Brandes with a question
 1:31:33 PM Emily Duda Buckley responds on Department's position
 1:31:56 PM No debate on bill
 1:32:00 PM Senator Rodriguez waives close
 1:32:03 PM Roll call vote: CS/SB 430 is reported favorably
 1:32:43 PM Return to CS/SB 1890 late amendment is filed and distributed
 1:33:04 PM Senator Thurston explains the amendment
 1:33:14 PM Amendment adds to the language
 1:33:33 PM No questions
 1:33:48 PM No public appearance
 1:33:53 PM Debate
 1:34:01 PM Senator Brandes in debate
 1:34:41 PM Senator Book comments on process
 1:35:11 PM Senator Rodriguez comments on amendment
 1:35:28 PM Senator Rodrigues waives close
 1:35:33 PM Amendment is adopted
 1:35:43 PM Senator Powell with a question
 1:36:31 PM Senator Rodrigues responds on court challenges
 1:38:00 PM Senator Powell with follow up question: limiting public's rights
 1:38:29 PM Senator Rodrigues responds
 1:38:50 PM Senator Powell continues
 1:39:06 PM Senator Rodrigues responds regarding the constitution
 1:39:46 PM Public appearance
 1:39:48 PM Maras R. McCoy, Florida State Network of African American Clergy Alliance, waives in opposition
 1:39:58 PM Robert McKinnon, Faith In Public Life, waives against
 1:40:03 PM Jonathan Webber, Florida Conservation Voters, speaks against the bill
 1:41:35 PM Ida V. Eskamani, Florida Rising & Florida Immigrant Coalition, speaks against
 1:44:12 PM Trish Neely, League of Women Voters, speaks against
 1:45:14 PM Christopher Emmanuel, Florida Chamber of Commerce, speaks in support
 1:46:27 PM Pamela Burch Fort, ACLU & NAACP Florida State Conference, waives against
 1:46:38 PM Carrie Boyd, SPLC Action Fund, waives against
 1:46:47 PM Civic Center appearance
 1:46:51 PM Robert Mckinnon is against with public comment

1:48:12 PM Debate: Senator Thurston thanks the sponsor for accepting amendment
 1:48:44 PM Senator Brandes with comments
 1:52:02 PM Senator Farmer with comment
 1:53:21 PM Senator Rodrigues closes on the bill
 1:54:28 PM Roll call vote: CS/CS/SB 1890 is reported favorably
 1:55:33 PM Senator Mayfield moves to allow staff to make Technical corrections to the bill. With no objections show the motion adopted.
 1:55:52 PM HB 529 moments of Silence in Public Schools by Representative Fine
 1:55:59 PM Senator Baxley explains the bill
 1:56:31 PM Late filed amendment 844728 by Senator Thurston is explained
 1:57:10 PM Questions: Senator Farmer asks if amendment has same substance as was previously in this bill
 1:58:11 PM Senator Thurston responds
 1:58:31 PM Senator Farmer asks Chair Passidomo why we are taking up house bill
 1:59:06 PM Chair Passidomo responds
 1:59:26 PM Senator Farmer continues
 1:59:33 PM Chair Passidomo responds
 2:00:02 PM Senator Gibson with procedural question regarding amendments
 2:00:26 PM Chair Passidomo explains
 2:00:37 PM Public appearance
 2:00:50 PM Heidi Daniels, FL Citizens Alliance waives in support of the bill
 2:01:13 PM Debate on the amendment: Senator Baxley
 2:02:17 PM Senator Gibson in debate
 2:04:02 PM Senator Farmer echoes Senator Gibson
 2:05:56 PM Senate Gibson debates the substance of the amendment
 2:07:44 PM Senator Thurston in debate regarding committee bill
 2:08:28 PM Amendment is adopted
 2:08:46 PM Questions on the bill as amended
 2:09:19 PM Senator Powell with question to Senator Baxley on process
 2:09:43 PM Senator Baxley responds on negotiations
 2:11:36 PM Senator Stargel asks question of Senator Thurston
 2:12:12 PM Senator Thurston accepts the question.
 2:13:23 PM Back on the bill as amended questions:
 2:13:35 PM Senator Powell asks Senator Baxley about amendment prohibitions
 2:14:12 PM Senator Baxley responds
 2:14:20 PM Public appearance:
 2:14:24 PM Devon Graham, American Athiests, speaking against
 2:16:19 PM Heidi Daniels, FI Citizens Alliance, in support
 2:16:26 PM Rabbi Oirechman, Chabad speaking in support
 2:20:47 PM Pamela Burch Fort, ACLU FL & NAACP Florida State Conference, waives against
 2:20:59 PM Barbara Devane, FL NOW, waives against
 2:21:16 PM Senator Baxley moves to reconsider his vote on the amendment 844728
 2:21:52 PM Senator Farmer objects
 2:21:55 PM Senator Farmer with a question
 2:22:09 PM Chair Passidomo states the motion is debatable
 2:23:03 PM Senator Farmer debates the reconsideration motion
 2:23:19 PM Senator Thurston makes objection
 2:24:25 PM Senator Hutson debates & suggests a roll call on the motion
 2:24:46 PM Chair Passidomo comments
 2:25:33 PM Senator Powell in debate and requests clarity
 2:26:11 PM Chair Passidomo responds
 2:26:44 PM Chair Passidomo further comments
 2:27:05 PM Senator Powell has no objection to reconsider
 2:27:27 PM Senator Stargel in debate
 2:27:51 PM Senator Farmer parliamentary inquiry regarding rule 2.35(3)
 2:28:09 PM 2.35(3) is read by Senator Farmer
 2:28:35 PM Chair comments
 2:29:13 PM Motion to reconsider the vote on Senator Thurston's amendment-Chair discusses
 2:29:40 PM Senator Gibson asks for clarification
 2:30:19 PM Chair explains that after debate, first vote on motion made by Senator Baxley to reconsider
 2:30:38 PM Debate is concluded
 2:31:03 PM 1st vote motion to reconsider vote on amendment; roll is called out -Chair announces the motion to reconsider the vote passes

2:31:43 PM 2nd Vote roll call on amendment 844728 is called out. Chair announces the amendment not adopted - bill is not amended.
2:32:42 PM No further debate on bill
2:32:49 PM Senator Baxley closes on the bill
2:33:18 PM Roll call vote: HB 529 is reported favorably
2:34:23 PM Senator Farmer moves to reconsider the vote on the final passage HB 529.
2:34:53 PM Recording paused: Chair Passidomo: taking recess for a few moments while the motion is considered.
Recording is paused.
2:39:26 PM Recording Resumed
2:39:31 PM Recording Paused
2:39:35 PM Recording Resumed
2:39:45 PM Back from recess. We will take up HB529 next week on the continued order of business
2:40:44 PM Tab 18 CS/SB1048 Public Records/Conviction Integrity\Unit Reinvestment Information
2:40:52 PM Senator Bean explains the bill
2:41:44 PM No questions
2:41:50 PM No public appearance
2:42:06 PM No debate
2:42:17 PM Senator Bean waives close
2:42:22 PM Roll call vote: on CS/SB 1048
2:42:42 PM CS/SB 1048 is reported favorably
2:43:06 PM Tab 28 CS/CS/SB 1868 Priveleged Communications Made to Crime Stoppers Organizations
2:43:17 PM Senator Bean explains bill
2:43:52 PM No questions
2:44:04 PM No debate
2:44:11 PM Senator Bean waives close
2:44:19 PM Roll call on 1868
2:44:27 PM CS/CS/SB 1868 is reported favorably
2:44:56 PM Tab 5 CS/SB 342 Vehicle and Vessel Registration by Senator Diaz
2:45:04 PM Senator Diaz explains bill
2:45:13 PM No questions
2:45:21 PM Andrew Ketchel, Dealer Services Network waives in support
2:45:34 PM No debate
2:45:37 PM Senator Diaz waives close
2:45:45 PM Roll call on SB 342
2:45:54 PM CS/SB 342 is reported favorably
2:46:21 PM Tab 27 CS/SB 1826 Human Trafficking by Senator Diaz
2:46:28 PM Senator Diaz explains bill
2:47:13 PM Amendment 252674 by Senator Diaz is explained
2:47:47 PM No questions
2:48:11 PM No public appearance
2:48:15 PM No debate
2:48:27 PM Senator Diaz waives close
2:48:31 PM Amendment 252674 is adopted
2:48:41 PM No questions on the bill as amended
2:48:47 PM Daniel Olson, Office of the Attorney General in support
2:49:19 PM Khanh-Lien Banko, Florida PTA waives in support
2:49:37 PM Senator Diaz waives close
2:49:44 PM Roll call vote: CS/CS/SB 1826 is reported favorably
2:50:39 PM Tab 13 SB 904 Doorstep Refuse and Recycling Collection Containers by Senator Diaz
2:50:53 PM Senator Diaz explains the bill
2:51:11 PM Questions: Senator Gibson with a question
2:52:14 PM Jon Pasqualone, FL Fire Marshalls & Inspectors Association, is against
2:52:46 PM Jim Milligan, FL Fire Marshalls Association, speaks against
2:54:13 PM Chief Ray Colburn, Florida Fire Chief's Association, waives against
2:54:25 PM Julius Halas, Department of Financial Services speaks against
2:56:55 PM Kelly Mallette, Affinity Waste Solutions speaks in support
2:59:31 PM No debate
2:59:37 PM Senator Diaz waives close on 904
2:59:44 PM Roll call vote: SB 904 is reported favorably
3:00:27 PM Senator's votes to be recorded as favorable: Senator Thurston: Tab 28, Tab5; Senator Powell Tabs 7, 28, 5; Senator Gibson Tabs 6, 22, 8, 20; Senator Gruters Tab 6.
3:01:27 PM Tab 4 Senator Albritton vote after in the affirmative

3:01:36 PM Senator Baxley on Tab 7 - CS/SB 400 fav
3:01:47 PM Senator Book -record vote after no on Tab 4
3:01:55 PM No objections
3:01:59 PM Senator Bracy favorable on Tab 7, 5
3:02:09 PM Senator Farmer favorable Tab 7, 1, 15
3:02:20 PM No objection, the motions are adopted
3:02:26 PM Senator Garcia moves to adjourn. The meeting is adjourned.